No. 22A____

IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA, ET AL., APPLICANTS

v.

STATE OF TEXAS AND STATE OF LOUISIANA

APPLICATION FOR A STAY OF THE JUDGMENT
ENTERED BY THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

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PARTIES TO THE PROCEEDING

Applicants (defendants-appellants below) are the United States of America; the U.S. Department of Homeland Security (DHS); U.S. Customs and Border Protection (CBP); U.S. Immigration and Customs Enforcement (ICE); U.S. Citizenship and Immigration Services (USCIS); Alejandro Mayorkas, in his official capacity as Secretary of Homeland Security; Chris Magnus, in his official capacity as Commissioner of CBP; Tae D. Johnson, in his official capacity as Acting Director of ICE; and Ur Jaddou, in her official capacity as Director of USCIS.

Respondents (plaintiffs-appellees below) are the States of Texas and Louisiana.

RELATED PROCEEDINGS

United States District Court (S.D. Tex.):

Texas v. United States, No. 21-cv-16 (June 10, 2022)

United States Court of Appeals (5th Cir.):

Texas v. United States, No. 21-40618 (Feb. 11, 2022)

Texas v. United States, No. 22-40367 (July 6, 2022) (denying stay pending appeal)

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Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Solicitor General, on behalf of applicants the United States of America, et al., respectfully applies for a stay of the judgment entered on June 10, 2022, by the United States District Court for the Southern District of Texas (App., infra, 38a-135a), pending the consideration and disposition of the government's 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.

This case concerns a district court's nationwide vacatur of September 2021 guidance issued by the Secretary of Homeland Security to carry out his statutory responsibility to set "national

immigration enforcement policies and priorities." 6 U.S.C. 202(5); see App., infra, 136a-142a (Guidance). The Department of Homeland Security (DHS) has long relied on such guidance to harmonize its efforts and focus its limited resources. In the Guidance at issue here, the Secretary identified as priorities for apprehension and removal noncitizens who threaten national security, public safety, and border security. App., infra, 138a-139a.

The Sixth Circuit recently stayed, and then reversed, a nationwide preliminary injunction against the Guidance in opinions by Chief Judge Sutton. Arizona v. Biden, 31 F.4th 469 (2022) (granting stay); Arizona v. Biden, No. 22-2372, 2022 WL 2437870 (July 5, 2022) (reversing injunction). The court held that three plaintiff States likely lacked Article III standing and were unlikely to succeed on claims that the Guidance required notice and comment and was arbitrary and capricious and contrary to law. Arizona, 2022 WL 2437870, at *3-*6, *9-*12. In a concurring opinion, Chief Judge Sutton added that the district court's entry of nationwide relief exceeded its authority. Id. at *12-*16.

In this case, the district court rejected each of the Sixth Circuit's conclusions and vacated the Guidance -- nationwide -- at the behest of two other States, Texas and Louisiana. App., infra, 38a-133a. The district court's reasoning contradicts not only the Sixth Circuit's decisions, but also the historical practices of the Executive Branch. And the court's remedy violated 8 U.S.C. 1252(f)(1): As an intervening decision of this Court makes clear,

Section 1252(f)(1) deprives the lower courts of jurisdiction to compel the Executive Branch to comply with their interpretation of the relevant statutory provisions. See Garland v. Aleman Gonzalez, No. 20-322 (June 13, 2022).

Despite all that, the Fifth Circuit declined to stay or even narrow the district court's judgment. App., infra, 1a-32a. As a result, DHS has been forced to halt all implementation of the Guidance that had been charting the agency's course for months. Thousands of DHS employees across the Nation have been told that they must disregard their training and stop considering the Secretary's instructions. And the district court's nationwide vacatur has given the plaintiff States in Arizona the very relief they were denied by the Sixth Circuit in their own suit.

The Court should stay the district court's judgment in full -- or, at minimum, to the extent it operates outside Texas and Louisiana. That judgment is thwarting the Secretary's direction of the Department he leads and disrupting DHS's efforts to focus its limited resources on the noncitizens who pose the gravest threat to national security, public safety, and the integrity of our Nation's borders. On the other side of the ledger, the States assert that they may make increased expenditures as an indirect result of enforcement decisions made under the Guidance. Such "indirect fiscal burdens" do not even establish Article III standing, Arizona, 2022 WL 2437870, at *6, let alone justify the disruptive relief entered here.

The need for this Court's intervention is especially acute because this case exemplifies a troubling trend. For most of our Nation's history, a suit like this would have been unheard of. Courts did not allow States to sue the federal government based on the indirect, downstream effects of federal policies. And district judges did not purport to enter nationwide relief, which "take[s] the judicial power beyond its traditionally understood uses," "incentivize[s] forum shopping," and "short-circuit[s]" the judicial process. Arizona, 2022 WL 2437878, at *14 (Sutton, C.J., concurring); see DHS v. New York, 140 S. Ct. 599, 599-600 (2020) (Gorsuch, J., concurring in the grant of stay). But suits like this have recently become routine. California, for example, "filed 122 lawsuits against the Trump administration, an average of one every two weeks," and Texas's Attorney General recently announced that he had "filed his 11th immigration-related lawsuit against the Biden Administration -- the 27th overall against Biden."[1]

That explosion of state suits seeking nationwide relief is inconsistent with bedrock Article III and equitable principles. Those suits enmesh the Judiciary in policy disputes between States and the federal government that should be -- and, until recently,

[1] Press Release, Att'y Gen. of Tex., AG Paxton Again Sues Biden Over Border (Apr. 28, 2022), www.texasattorneygeneral.gov/news/releases/ag-paxton-again-sues-biden-over-border-new-immigration-rules-drastically-lower-asylum-bar-forming; Nicole Nixon, California Attorney General Files Nine Lawsuits in One Day as Trump Leaves Office, Capital Public Radio (Jan. 19, 2021), www.capradio.org/articles/2021/01/19/california-attorney-general-files-nine-lawsuits-in-one-day-as-trump-leaves-office.

were -- resolved through the democratic process. And they allow single district judges to dictate national policy, nullifying decisions by other courts and forcing agencies to abruptly reverse course while seeking review of novel and contestable holdings.

This Court should stay this latest manifestation of that untenable trend. And given the importance of the issues presented and the conflict with the Sixth Circuit, the Court may wish to construe this application as a petition for a writ of certiorari before judgment, grant the petition, and set this case for argument in the fall. Cf. Nken v. Mukasey, 555 U.S. 1042 (2008).

STATEMENT

A. Background

1. This Court has long recognized that "an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion." Heckler v. Chaney, 470 U.S. 821, 831 (1985). The agency "must not only assess whether a violation has occurred, but whether agency resources are best spent on this violation or another, whether the agency is likely to succeed if it acts, whether the particular enforcement action requested best fits the agency's overall policies, and, indeed, whether the agency has enough resources to undertake the action at all." Ibid.

Article II empowers the Executive Branch to establish policies to guide subordinate officials' exercise of that discretion. The actions of those officials acquire their "legitimacy and ac-

countability to the public through 'a clear and effective chain of command' down from the President, on whom all the people vote." United States v. Arthrex, Inc., 141 S. Ct. 1970, 1979 (2021) (citation omitted). A department head, who is the President's "alter ego in the matters of that department," thus may "supervise and guide" officers' actions "to secure that unitary and uniform execution of the laws which Article II * * * evidently contemplated in vesting general executive power in the President alone." Myers v. United States, 272 U.S. 52, 133, 135 (1926).

2. Those principles apply to the enforcement of the Immigration and Nationality Act (INA), 8 U.S.C. 1101 et seq., at all stages of removal proceedings. "A principal feature of the removal system is the broad discretion exercised by immigration officials." Arizona v. United States, 567 U.S. 387, 396 (2012). "[T]he Executive has discretion to abandon" removal at "each stage" of the process: It "may decline to institute proceedings, terminate proceedings, or decline to execute a final order of [removal]." Reno v. American-Arab Anti-Discrimination Committee (AADC), 525 U.S. 471, 483-484 (1999) (citation omitted).

For over a century, the Executive Branch has established policies to guide immigration officials' exercise of that discretion. See App., infra, 144a-145a. In line with that historical practice, when Congress established DHS in 2002, it made the Secretary responsible for "[e]stablishing national immigration enforcement policies and priorities." 6 U.S.C. 202(5). Since then, DHS has

regularly issued such policies. See App., infra, 145a-147a, 150a (discussing policies issued in 2010, 2011, 2014, 2017, and 2021). Different administrations have pursued different approaches at different times. Policies issued in 2000 and 2011 adopted a "totality of the circumstances" approach that vested broad discretion in line-level officers; policies issued in 2010 and 2014 identified "categories of individuals who should be prioritized for enforcement"; and a policy issued in 2017 prioritized broad categories that "effectively described all removable noncitizens," thereby "delegat[ing] prioritization decisions to individual line agents." Id. at 145a, 147a.

3. In September 2021, the Secretary adopted the Guidance at issue here, App., infra, 136a-142a, which was accompanied by a 21-page memorandum explaining the considerations behind it, id. at 143a-163a (Considerations Memo). The Secretary observed that "there are more than 11 million undocumented or otherwise removable noncitizens in the United States" and DHS "do[es] not have the resources to apprehend and seek the removal of every one of these noncitizens." Id. at 137a. The Secretary noted that DHS must therefore "exercise [its] discretion and determine whom to prioritize for immigration enforcement action." Ibid.

The Guidance identifies three categories of noncitizens as priorities for "apprehension and removal": (1) those who pose "a danger to national security" -- for example, suspected terrorists; (2) those who pose a "threat to public safety, typically because

of serious criminal conduct"; and (3) those who pose "a threat to border security" -- i.e., noncitizens who are apprehended at the border or who arrived in the United States after November 1, 2020. App., infra, 138a-139a. The Guidance further provides a framework for determining whether a noncitizen poses a threat to public safety. Ibid. Rather than relying on "bright lines or categories," the Guidance calls for an assessment of "the totality of the facts and circumstances." Id. at 138a. The Guidance lists various "aggravating factors" that weigh in favor of enforcement action, including "the gravity of the offense of conviction" and the "use or threatened use of a firearm or dangerous weapon." Ibid. It also lists "mitigating factors," such as "advanced or tender age" and "military or other public service." Ibid.

The Guidance emphasizes that it "does not compel an action to be taken or not taken" in any particular case and that it "leaves the exercise of prosecutorial discretion to the judgment of [DHS] personnel." App., infra, 140a. And although the Guidance contemplates a process to allow the affected noncitizens to seek supervisory review of enforcement decisions by line officers, the Guidance emphasizes that it "is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter." Id. at 142a.

Of particular relevance here, the Guidance applies only to "apprehension and removal," App., infra, 138a, and "does not pro-

vide guidance pertaining to detention and release determinations" for noncitizens already in DHS custody, id. at 169a. The Considerations Memo thus emphasizes that the Guidance is "consistent with" and "do[es] not purport to override" two statutory provisions requiring that certain noncitizens be detained during the pendency of removal proceedings or while awaiting removal. Id. at 161a.

Under the first statutory provision, DHS "shall take into custody" noncitizens convicted of certain offenses when they are released from criminal custody, 8 U.S.C. 1226(c)(1), and "may release" such noncitizens "only" in limited circumstances, 8 U.S.C. 1226(c)(2). DHS explained that once a noncitizen subject to Section 1226(c) is in custody, "that noncitizen generally must remain in custody during the pendency of removal proceedings" unless release is authorized by Section 1226(c)(2) or a court order. App., infra, 161a. But it added that DHS -- and its predecessor, the Immigration and Naturalization Service (INS) -- have historically construed Section 1226(c) to leave intact the Executive Branch's "general prosecutorial discretion" to "choose not to pursue removal of such an individual in the first place." Id. at 160a.

Under the second statutory provision, DHS "shall remove" a noncitizen within a period of 90 days after a final order of removal. 8 U.S.C. 1231(a)(1)(A); see 8 U.S.C. 1231(a)(1)(B) (prescribing alternative trigger dates for the removal period). The first sentence of Section 1231(a)(2) adds that DHS "shall detain" the noncitizen during that 90-day removal period, and the second

sentence provides that "[u]nder no circumstance" shall DHS release a noncitizen who is removable on certain criminal or terrorist grounds. DHS explained that all noncitizens in its custody who are subject to the second sentence of Section 1231(a)(2) "must remain detained for the duration of the removal period unless release is required to comply with a court order." App., infra, 161a.

B. Proceedings Below

As relevant here, two sets of States filed suit challenging the Guidance. Arizona, Montana, and Ohio sued in the Southern District of Ohio. The Sixth Circuit determined that those States would not likely succeed on the merits and stayed -- and then reversed -- a preliminary injunction of the Guidance. In this case, Texas and Louisiana sued in the Southern District of Texas. After a trial, the district court entered judgment in their favor and vacated the Guidance nationwide. App., infra, 38a-133a.

1. The district court held that Texas has Article III standing (and thus did not address Louisiana's standing). App., infra, 63a n.46. The court concluded that the Guidance was improperly issued without notice and comment; that the Secretary's explanation was arbitrary and capricious; and that some of the Guidance's applications were contrary to the INA. Id. at 102a-120a. The court then ordered the "wholesale vacatur" of the "entire" Guidance. Id. at 128a. The court refused to limit relief to "the named plaintiffs," instead decreeing that its vacatur "applies

universally." Id. at 129a. And it held that it could grant that relief notwithstanding 8 U.S.C. 1252(f)(1), which strips the federal courts of jurisdiction to "enjoin or restrain the operation of" the statutory provisions at issue here. App., infra, 131a n.71. The court declined to stay its nationwide vacatur pending appeal. Id. at 33a-37a.

2. The Fifth Circuit likewise denied a stay pending appeal. App., infra, 1a-32a. The court first held that Texas has Article III standing. Id. at 7a-12a. The court reasoned that the Guidance "shifted the cost of incarcerating or paroling certain criminal aliens from DHS to Texas" and increased the number of noncitizens present in Texas who might consume public benefits, thereby injuring Texas "financial[ly]." Id. at 8a. The court also stated, without elaboration, that the Guidance injures Texas's interests as "parens patriae." Id. at 8a.

On the merits, the court of appeals concluded that the Guidance likely violates federal law in three ways. App., infra, 20a-30a. The court held that the Guidance was likely procedurally defective because it was issued without notice and comment. Id. at 30a. The court additionally found that the Guidance was likely arbitrary and capricious based on the Secretary's failure to adequately consider "recidivism among the relevant population" and "costs * * * to the States and their reliance interests." Id. at 27a-28a; see id. at 26a-29a. And the court concluded that some applications of the enforcement discretion contemplated by the

Guidance likely violate the "mandatory detention" requirements in 8 U.S.C. 1226(c) and 1231(a)(2). Id. at 23a; see id. at 20a-26a.

Turning to remedy, the court found that 8 U.S.C. 1252(f)(1) likely does not preclude lower courts from vacating agency action. App., infra, 13a-14a. But the court addressed the proper scope of relief only in a footnote, concluding that nationwide uniformity is important in immigration law and that universal relief is necessary to prevent noncitizens not subject to enforcement from traveling to Texas or Louisiana. Id. at 31a n.18.

The Fifth Circuit acknowledged that its decision "depart[ed] from the Sixth Circuit's recent opinion in Arizona," a "nearly identical challenge." App., infra, 31a. The court attributed its differing conclusion on standing to the record in this case. Id. at 32a; but see Arizona, 2022 WL 2437870, at *5 (disagreeing with the district court's standing analysis in this case). As to other issues, the Fifth Circuit simply "disagree[d] with [its] sister circuit's legal conclusions," either because of "circuit precedent" or the panel's independent analysis. App., infra, 32a.

ARGUMENT

An applicant for a stay pending appeal and certiorari must establish (1) "a reasonable probability that this Court would eventually grant review," (2) "a fair prospect that the Court would reverse," and (3) that the applicant "would likely suffer irreparable harm absent the stay" and "the equities" otherwise support

relief. Merrill v. Milligan, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring). Those requirements are satisfied here.

I. THIS COURT WOULD LIKELY GRANT REVIEW IF THE COURT OF APPEALS AFFIRMED THE DISTRICT COURT'S NATIONWIDE VACATUR

The district court's nationwide vacatur thwarts the Secretary of Homeland Security's exercise of his statutory authority to set priorities for the agency he leads. That decision -- and the Fifth Circuit's refusal to stay it -- squarely conflicts with the Sixth Circuit's decision in Arizona v. Biden, 2022 WL 2437870 (July 5, 2022), which rejected materially identical arguments. And the lower courts' reasoning would invalidate not just the 2021 Guidance, but all of the enforcement priorities adopted by DHS and its predecessors over decades. This Court's review would plainly be warranted if the Fifth Circuit adhered to its stay opinion and affirmed the district court's unprecedented decision.

II. THE GOVERNMENT IS LIKELY TO SUCCEED ON THE MERITS

For multiple independent reasons, there is more than a "fair prospect that the Court would reverse" if it granted review. Merrill, 142 S. Ct. at 880 (Kavanaugh, J., concurring). The States lack Article III standing; the Guidance is procedurally and substantively valid; and 8 U.S.C. 1252(f)(1) deprived the district court of jurisdiction to vacate the Guidance. At a minimum, this Court would likely narrow the district court's nationwide relief.

A. The States Lack Article III Standing

Under Article III, federal courts "do not exercise general legal oversight of the Legislative and Executive Branches." TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2203 (2021). Instead, a plaintiff must establish an injury that is both "legally and judicially cognizable." Raines v. Byrd, 521 U.S. 811, 819 (1997). "This requires, among other things, that the plaintiff have suffered 'an invasion of a legally protected interest which is . . . concrete and particularized,' and that the dispute is 'traditionally thought to be capable of resolution through the judicial process.'" Ibid. (citations omitted). The plaintiff States cannot satisfy those fundamental requirements.

The Guidance does not require the States to do or refrain from doing anything. Instead, it simply guides federal officials in the enforcement of federal law against individuals who are strangers to this case. Yet the courts below concluded that Texas has standing because those enforcement decisions will have downstream, incidental effects on Texas's fisc. The courts reasoned that the Guidance will increase the number of noncitizens in Texas; that some subset of those noncitizens will commit crimes or use social services; and that Texas will then expend additional sums in response. That theory of standing is inconsistent with bedrock Article III principles and foreign to our Nation's history. And if it were accepted, that theory would allow the federal courts to be drawn into all manner of generalized grievances at the behest

of States seeking to secure by court order what they were unable to obtain through the political process.

1. Initially, and fundamentally, a plaintiff ordinarily lacks standing to challenge the government's decisions and policies concerning enforcement actions against third parties. This Court applied that principle in Linda R. S. v. Richard D., 410 U.S. 614 (1973), which held that a mother lacked Article III standing to challenge a district attorney's refusal to prosecute the father of her child for failure to pay child support. Id. at 616-619. The Court emphasized that, in "American jurisprudence at least, a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another." Id. at 619.

The same principle applies to immigration enforcement. This Court has explained, citing Linda R. S., that a plaintiff has "no judicially cognizable interest in procuring enforcement of the immigration laws." Sure-Tan, Inc. v. NLRB, 467 U.S. 883, 897 (1984). And "an agency's refusal to institute proceedings shares to some extent the characteristics of the decision of a prosecutor in the Executive Branch not to indict -- a decision which has long been regarded as the special province of the Executive Branch." Heckler v. Chaney, 470 U.S. 821, 832 (1985).

That principle decides this case. The States' grievance boils down to the contention that DHS is declining to enforce the immigration laws against noncitizens the States would prefer to see apprehended and removed. But the States have "no judicially cog-

nizable interest in procuring enforcement of the immigration laws" against third parties. Sure-Tan, 467 U.S. at 897. That is true even if the Executive's enforcement policies have indirect, derivative effects on the States. Such indirect effects on third parties are ubiquitous, but have never been regarded as judicially cognizable. The mother in Linda R. S., for example, "no doubt suffered an injury stemming from the failure of her child's father to contribute support payments." 410 U.S. at 618. Even so, because she was "neither prosecuted nor threatened with prosecution," she "lack[ed] standing to contest the policies of the prosecuting authority." Id. at 619. So too here.[2]

2. Our constitutional structure and history confirm that a State may not leverage a federal policy's potential downstream effects on the State's exercise of its own sovereign authority into an Article III case or controversy. The Constitution, unlike the Articles of Confederation, empowers the National Government to act on individuals directly, rather than through the States. See Murphy v. NCAA, 138 S. Ct. 1461, 1476 (2018). When the federal government acts or fails to act upon individuals within a State, that will have some incidental effects on the State's own actions

[2] These principles are reflected in the INA itself, which contains comprehensive provisions governing judicial review at the behest of the noncitizens who are subject to enforcement proceedings, see 8 U.S.C. 1252, but no provision for judicial review at the behest of third parties, including States. And even as to noncitizens, Congress generally foreclosed judicial review of the exercise of enforcement discretion in commencing proceedings, adjudicating cases, and executing removal orders. See 8 U.S.C. 1252(g); AADC, 525 U.S. at 485-487.

with respect to the same individuals -- and, derivatively, on the State itself. But the autonomy of the national and state sovereigns, each acting directly upon individuals, is inconsistent with the notion that a State has a "legally and judicially cognizable" interest in avoiding such derivative effects. Raines, 521 U.S. at 819. And the absence of suits like this during the vast majority of our Nation's history is powerful evidence that they were not "traditionally thought to be capable of resolution through the judicial process." Ibid. (citation omitted); see id. at 826-829.

The decision in Florida v. Mellon, 273 U.S. 12 (1927), further confirms that the incidental effects of federal policy on a State do not establish an Article III injury. There, Florida challenged a federal inheritance tax, asserting that it would injure the State by "inducing potential tax-payers to withdraw property from the state." Id. at 17-18. The Court rejected that theory, explaining that Florida had failed to identify "any direct injury as the result of the enforcement of the act in question." Id. at 18.

The States' contrary theory has startling implications. On their view, which the Fifth Circuit endorsed, any federal action that results in an "'increase in the number of aliens in [a State]'" is "sufficient to establish standing" because it indirectly increases the State's expenditures. App., infra, 9a (citation omitted). Other States could use equivalent logic to claim injury from any federal action reducing their noncitizen populations, on the theory that noncitizens pay state taxes. If such incidental,

indirect financial effects were deemed sufficient to satisfy Article III, the federal courts could be drawn into every immigration policy dispute between a State and the federal government. Nor is the problem limited to immigration. Virtually any federal action -- from prosecuting crimes, to imposing taxes, to managing property -- could be said to have some incidental effect on a State's population or fisc. It would be astonishing "to say that any federal regulation of individuals * * * that imposes peripheral costs on a State creates a cognizable Article III injury." Arizona, 2022 WL 2437870, at *6. Yet that is the necessary result of "the States' boundless theory of standing." Ibid.

3. As the Sixth Circuit explained in specifically rejecting the district court's standing analysis in this case, the States' theory also fails on its own terms. Arizona, 2022 WL 2437870, at *5. Nothing in the Guidance provides for a reduction in immigration enforcement; the Guidance instead simply prioritizes some enforcement actions above others. "That the National Government decides to remove or detain person A over person B does not establish that it will pursue fewer people." Id. at *3. And even if it did, the Guidance prioritizes the very enforcement actions in which the States are most interested -- those addressing "the greatest risks to public safety." Ibid. The Guidance thus may well "decrease burdens on the States." Ibid.

Although the courts below concluded that the Guidance has decreased overall levels of immigration enforcement, the courts

misunderstood the figures they invoked. The district court stated, for example, that the relatively low number of removals carried out in Fiscal Year (FY) 2021 "make[s] clear that the [Guidance] is dramatically impacting civil immigration enforcement." App., infra, 57a. But FY2021 ended in September 2021, before the Guidance even took effect. And removals were down in FY2021 (and FY2020) because DHS has been expelling hundreds of thousands of noncitizens encountered at the southwest border under a public-health order that took effect in March 2020 (the middle of FY2020). See U.S. Customs & Border Protection, Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions FY2021 (Dec. 2, 2021), https://go.usa.gov/xuUph (showing more than one million Title 42 expulsions in FY2021).

Similarly, the court of appeals stated that the Guidance has decreased the number of noncitizens with criminal convictions in DHS custody. App., infra, 9a-11a. But the court's own statistics show that the number has been essentially unchanged since the Guidance took effect. Id. at 11a. And the decrease earlier in 2021 is explained by the fact that DHS's "detention population is increasingly occupied by recent border crossers." Id. at 167a.

In any event, even if the Guidance led to a reduction in overall enforcement, the States still have not shown injury. Although the Guidance took effect seven months ago, the district court cited no evidence that the States' net spending has materially increased. The court merely noted that ICE rescinded detainer

requests for some noncitizens in Texas criminal custody.[3] App., infra, 54a. But the record contains evidence of just 15 rescissions for noncitizens in Texas's custody after the Guidance took effect, and no evidence of any rescissions for noncitizens in Louisiana's custody. Ibid. (The court of appeals stated that DHS had rescinded 170 detainers since January 20, 2021, id. at 4a-5a, but the bulk of those occurred before the Guidance took effect and were governed by materially different DHS policies, see id. at 2a-3a.) The fact that ICE officers rescinded a handful of detainers (out of hundreds) after determining that executing them would be an unjustified use of resources does not suffice to show that the States are incurring increased law-enforcement expenditures.

4. Finally, the court of appeals stated that, under Massachusetts v. EPA, 549 U.S. 497 (2007), States are entitled to "special solicitude" in assessing Article III standing. App., infra, 7a. But as the Sixth Circuit observed, the sovereign "with authority and 'solicitude' with respect to immigration is the National Government, not the States." Arizona, 2022 WL 2437870, at *6. In any event, Massachusetts involved a "uniquely sovereign harm": the threatened loss of the sovereign's territory. Ibid. This case, by contrast, involves "indirect fiscal burdens allegedly flowing" from a federal policy -- the type of "humdrum" consequence

[3] Detainers are sent by DHS to state and local law enforcement agencies to facilitate transfers of custody of noncitizens who are subject to removal. Detainers ask agencies to notify DHS before releasing noncitizens and, if necessary, to hold them for up to 48 hours to allow DHS to take custody. App., infra, 171a-172a.

that can affect not only States but also private entities. Ibid. Massachusetts accordingly provides no basis to find standing here.[4]

B. The Guidance Is Lawful

The courts below held that the Guidance is (1) procedurally defective because it was issued without notice and comment, (2) arbitrary and capricious, and (3) contrary to law in a subset of its applications. Each of those conclusions is wrong.

1. Notice and comment. Federal agencies routinely adopt enforcement priorities without notice and comment. See 1 Richard J. Pierce, Administrative Law Treatise § 6.3, at 424 (5th ed. 2010). DHS and INS, for example, did so in adopting the 2000, 2010, 2014, and 2017 policies that preceded the Guidance. App., infra, 145a-147a. Yet the lower courts reasoned that public comment is required whenever an agency adopts enforcement policies that bind line officers -- a rule that would invalidate DHS's prior enforcement policies, and countless others throughout the Executive Branch. Id. at 114a-120a. That was error.

The Administrative Procedure Act's (APA) notice-and-comment requirement does not apply to "general statements of policy, or rules of agency organization, procedure, or practice." 5 U.S.C. 553(b). A general statement of policy "advise[s] the public pro-

[4] The court of appeals also suggested that Texas has parens patriae standing to sue on behalf of its citizens. App., infra, 8a. But a State cannot sue the federal government as parens patriae; in that context, it is the federal government, not the States, that represents the interests of citizens. Alfred L. Snapp & Son, Inc. v. Puerto Rico, 458 U.S. 592, 610 n.16 (1982); Massachusetts v. Mellon, 262 U.S. 447, 485-486 (1923).

spectively of the manner in which the agency proposes to exercise a discretionary power." Lincoln v. Vigil, 508 U.S. 182, 197 (1993) (citation omitted). A rule of agency practice regulates the agency's conduct without changing the legal rights of third parties. See Mendoza v. Perez, 754 F.3d 1002, 1023 (D.C. Cir. 2014).

Like other enforcement priorities, the Guidance is exempt from notice and comment both as a general statement of policy and as a rule of agency practice. The Guidance advises the public how DHS will exercise its discretion and allocate its resources: DHS will prioritize the apprehension and removal of noncitizens in specified categories. See Arizona, 2022 WL 2437870, at *12. And while the Guidance guides the actions of officials within DHS, it does not change the legal rights of anyone outside DHS. To the contrary, the Guidance expressly provides that it "does not compel" any action, that it "leaves the exercise of prosecutorial discretion to the judgment" of personnel, and that it does not create any "right or benefit * * * enforceable at law." App., infra, 140a, 142a; see Arizona, 2022 WL 2437870, at *12.

The court of appeals concluded that the Guidance could not be a general statement of policy because, in its view, the Guidance is "binding" on lower-level officials. App., infra, 30a. But the Guidance preserves officials' case-by-case discretion. Id. at 140a. And even if it did not, Congress has vested the Secretary with the authority to enforce the INA, to set enforcement priorities, and to "have control, direction, and supervision" of immi-

gration officers. 8 U.S.C. 1103(a)(1) and (2); see 6 U.S.C. 202(5). The Secretary retains discretion to modify the policy set forth in the Guidance at any time; the extent to which the Guidance binds lower-level employees is irrelevant. A blanket policy is still a policy, and rules of agency practice and procedure routinely bind agency employees; indeed, that is their very purpose.

2. Arbitrary and capricious. The arbitrary-and-capricious standard is "'narrow'" and "deferential"; a court "may not substitute [its] judgment" for that of the agency, "but instead must confine [itself] to ensuring that [the agency] remained 'within the bounds of reasoned decisionmaking.'" Department of Commerce v. New York, 139 S. Ct. 2551, 2569 (2019) (citations omitted). The Guidance amply satisfies that standard. See Arizona, 2022 WL 2437870, at *11. Indeed, the accompanying 21-page Considerations Memo provides far more explanation for the Guidance than is typical for an agency's internal enforcement policies. Once again, therefore, the lower courts' logic would invalidate not just the Guidance, but DHS's prior enforcement priorities.

The lower courts believed that DHS failed to consider "high rates of abscondment and recidivism among criminal aliens and aliens with final orders of removal." App., infra, 109a; see id. at 27a. But as the Sixth Circuit observed, DHS did consider that issue. See Arizona, 2022 WL 2437870, at *11. The Guidance prioritizes the removal of noncitizens who pose a threat to public safety, see App., infra, 138a, and the Considerations Memo explains

that agents should consider the "risk of recidivism" in determining whether a noncitizen falls within that category, id. at 153a. The Considerations Memo also explains that DHS "exercised its expert judgment and experience to identify those factors that make an offender particularly more likely or less likely to recidivate." Id. at 155a. The Considerations Memo notes that "the Department's judgments regarding these factors are further supported by evidence developed by the United States Sentencing Commission." Ibid. The court of appeals faulted DHS for failing to provide even more detailed evidence, id. at 27a-28a, but the "APA imposes no general obligation on agencies to conduct or commission their own empirical or statistical studies." FCC v. Prometheus Radio Project, 141 S. Ct. 1150, 1160 (2021). And that is especially true in formulating internal guidance for the exercise of prosecutorial discretion.

The lower courts also believed that DHS had failed to consider "the costs its decision imposes on the States" or "their reliance interests." App., infra, 112a; see id. at 29a. But the Considerations Memo "includes an 'Impact on States' section." Arizona, 2022 WL 2437870, at *11 (citation omitted). DHS discussed the potential "negative effects" of its policy "on States," both in the form of "indirect, downstream impacts" and the "undermining [of] reliance interests." App., infra, 156a. DHS found it challenging to measure indirect effects, but observed that the net effects might well be positive. Id. at 157a. And DHS was unaware

of any State that changed positions to its detriment based on prior policies. Id. at 158a. DHS ultimately concluded that "none of the asserted negative effects on States" outweighs the "benefits" of the Guidance. Ibid. The APA does not empower a court to second-guess an agency's "value-laden * * * weighing of risks and benefits," Department of Commerce, 139 S. Ct. at 2571 (citation omitted), in setting its own enforcement priorities.

3. Contrary to law. The lower courts devoted most of their analysis to their conclusion that the Guidance "contradicts the detention mandates under Sections 1226(c) and 1231(a)(2)" by allowing immigration officials to exercise discretion in deciding whether to take enforcement action against certain noncitizens. App., infra, 104a; see id. at 20a-26a. But unlike the lower courts' procedural holdings, that conclusion could not justify the wholesale vacatur of the Guidance because many applications of the Guidance do not implicate Sections 1226(c) and 1231(a)(2) at all; those provisions cover only a subset of the noncitizens potentially subject to immigration enforcement. And even for that population, the courts were wrong.

As a threshold matter, the Guidance expressly applies only to "apprehension and removal." App., infra, 138a. It "does not provide guidance pertaining to detention and release determinations." Id. at 169a. As the Considerations Memo emphasizes, the Guidance is "consistent with" and "do[es] not purport to override" any statutory detention requirements. Id. at 161a.

The courts below appeared to read Sections 1226(c) and 1231(a)(2) not merely to require DHS to continue to detain noncitizens already in its custody, but also to seek out and arrest every noncitizen covered by those provisions. Decisions about whom to seek out and arrest, however, lie at the core of the Executive's law-enforcement discretion. Neither Section 1226(c) nor Section 1231(a)(2) displaces that discretion.

Section 1226(c) provides that DHS "shall take into custody" noncitizens convicted of certain crimes. 8 U.S.C. 1226(c)(1). But this Court has held, in a variety of contexts, that even "seemingly mandatory legislative commands" using "shall" do not displace background principles of "law-enforcement discretion." Town of Castle Rock v. Gonzales, 545 U.S. 748, 761 (2005); see, e.g., City of Chicago v. Morales, 527 U.S. 41, 62 n.32 (1999); Chaney, 470 U.S. at 835. No sound reason exists to read the term "shall" in Section 1226 any differently.

Section 1226, moreover, applies only during the pendency of removal proceedings. See 8 U.S.C. 1226(a). Accordingly, Section 1226(c)'s "shall take into custody" language comes into play only after DHS decides to institute or maintain removal proceedings. See Arizona, 2022 WL 2437870, at *11. But that threshold decision is "generally committed to an agency's absolute discretion." Chaney, 470 U.S. at 831; see AADC, 525 U.S. at 483-484. Thus, even assuming Section 1226(c) imposes a mandatory obligation, it

does not require DHS to take a noncitizen into custody when DHS has decided not to proceed against him in the first place.

Section 1231(a)(2), meanwhile, addresses the continued detention of noncitizens who have received final orders of removal. But the district court erred in relying on that provision because Section 1231(h) expressly provides that "[n]othing in this section shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers." 8 U.S.C. 1231(h). Moreover, Section 1231(a)(2) does not address the arrest of noncitizens who are not already in detention.

The court of appeals reasoned that the word "shall" in Sections 1226(c) and 1231(a)(2) connotes a command because Congress elsewhere used the word "may." App., infra, 22a. But the same was true in Castle Rock. See 545 U.S. at 764 n.11. And as the Sixth Circuit explained, the juxtaposition of "'may'" and "'shall'" in these provisions says little, because the States "have a juxtaposition problem of their own." Arizona, 2022 WL 2437870, at *10. Section 1231(a)(2) provides: "During the removal period, [DHS] shall detain the alien. Under no circumstance during the removal period shall [DHS] release an alien who has been found inadmissible [on specified criminal and terrorist grounds]." 8 U.S.C. 1231(a)(2) (emphasis added). "Having argued that the juxtaposition between the 'may' and 'shall' language in the two statutes supports [their] position, the States must acknowledge that

the juxtaposition between the 'shall' and 'under no circumstance' language supports [DHS's] position." Arizona, 2022 WL 2437870, at *10.

The lower courts' apparent interpretation of Sections 1226(c) and 1231(a)(2) would be practically infeasible. Congress has not appropriated "the resources to apprehend and seek the removal" of every removable noncitizen. App., infra, 137a. And if DHS "were required to arrest, take into custody, and detain all known noncitizens described in § 1226(c) or § 1231(a)(2), it would completely overwhelm [DHS's] current capacity." Id. at 183a. Devoting all available detention space to those noncitizens would also compromise DHS's ability to protect the public from more serious threats. For example, "a noncitizen with two petty theft offenses could be subject to detention under § 1226(c) or § 1231(a)(2)," but a noncitizen "with pending charges for sex offenses or other violent felonies may not." Ibid. The lower courts erred in interpreting the INA to require such counterintuitive and unprecedented results, and to prohibit the Executive Branch from using priorities to guide its use of its limited enforcement resources.

C. The District Court Lacked Jurisdiction To Vacate The Guidance

Section 1252(f)(1) deprived the district court of jurisdiction to vacate the Guidance. That provision directs that "[r]egardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the

Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of [8 U.S.C. 1221-1232]," the provisions of the INA governing arrest, detention, and removal. 8 U.S.C. 1252(f)(1). This Court recently explained that "the 'operation of' the relevant statutes is best understood to refer to the Government's efforts to enforce or implement them." Garland v. Aleman Gonzalez, No. 20-322 (June 13, 2022), slip op. 4. Accordingly, the Court held that Section 1252(f)(1) "generally prohibits lower courts from entering injunctions that order federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out the specified statutory provisions." Ibid.; see Biden v. Texas, No. 21-954 (June 30, 2022), slip op. 8.

Here, the district court styled its judgment as a "vacatur" rather than an injunction. App., infra, 128a. But that vacatur likewise "enjoins or restrains" the operation of the covered provisions. Under Fifth Circuit precedent, vacatur renders an agency decision "void." Texas v. Biden, 20 F.4th 928, 957 (2021), rev'd on other grounds, 142 S. Ct. ____ (2022). The district court's vacatur thus bars DHS from relying on the Guidance. Just as in Aleman Gonzalez, the district court's order compels government officials "to refrain from actions" that, in the government's view, are "allowed by" the covered statutory provisions. Slip op. 7.

The court of appeals nonetheless concluded that vacatur is not precluded by Section 1252(f)(1) because it is not an injunction. App., infra, 13a-14a. But the statute is not limited to

injunctive relief. Instead, it covers orders that "enjoin or restrain" the Executive Branch's operation of the covered provisions, no matter how they are labeled. 8 U.S.C. 1252(f)(1). Taken together, "[t]he ordinary meaning of" the terms "'enjoin'" and "'restrain,'" Aleman Gonzalez, slip op. 4, indicates that a court may not impose coercive relief that "interfere[s] with the Government's efforts to operate" the covered provisions in a particular way, id. at 7; see Black's Law Dictionary 529 (6th ed. 1990) ("[e]njoin" means to "require," "command," or "positively direct") (emphasis omitted); id. at 1314 ("[r]estrain" means to "limit" or "put compulsion upon") (emphasis omitted). That meaning readily encompasses vacatur of agency policies.

Indeed, this Court has interpreted even narrower language to extend beyond injunctive relief. For example, the Court interpreted a statute conferring jurisdiction over appeals from an "injunction in any civil action * * * required * * * to be heard and determined by a district court of three judges," 28 U.S.C. 1253 (emphasis added), to apply to orders with a "coercive * * * effect." Aberdeen & Rockfish R.R. v. Students Challenging Regulatory Agency Procedures (SCRAP), 422 U.S. 289, 307 (1975). In reaching that conclusion, the Court commented that it had "repeatedly exercised jurisdiction under [the provision] over appeals from orders * * * not cast in injunctive language but which by their terms simply 'set aside' or declined to 'set aside' orders of the [agency]." Id. at 308 n.11.

The court of appeals emphasized that Section 1252(f)(1) bears the title "Limit on injunctive relief." App., infra, 14a (citation omitted). But a title, almost by definition, abridges "the detailed provisions of the text"; to restate every detail of the text in the title would be "ungainly as well as useless." Railroad Trainmen v. Baltimore & Ohio R.R., 331 U.S. 519, 528 (1947). Thus, this Court has long held that a section heading "cannot limit the plain meaning of the text." Id. at 529. Here, although the heading refers to "injunctive relief," the text uses the phrase "enjoin or restrain," making plain that the provision extends beyond injunctions. 8 U.S.C. 1252(f)(1) (emphasis altered).

The court of appeals also reasoned that vacatur of an agency decision is a "less drastic remedy" than an injunction. App., infra, 13a (quoting Monsanto Co. v. Geertson Seed Farms, 561 U.S. 139, 165 (2010)). That may be true when an injunction would extend beyond the agency action under review -- by, for example, barring future agency actions, not just the challenged one. See Monsanto Co., 561 U.S. at 144. But the vacatur at issue here is effectively equivalent to an injunction barring DHS from implementing the Guidance. Indeed, the district court denied plaintiffs' request for injunctive relief in part on the ground that an injunction would not provide any additional relief. App., infra, 131a. And even if vacatur is "less drastic" than an injunction in other respects, Monsanto Co., 561 U.S. at 165, it still violates Section 1252(f)(1) because it "order[s] federal officials to take or to

refrain from taking actions to enforce, implement, or otherwise carry out" the covered statutory provisions. Aleman Gonzalez, slip op. 5.

D. The District Court Erred In Granting Universal Relief

Even assuming the district court had authority to vacate the Guidance, it erred in doing so "universally." App., infra, 129a. As Members of this Court have recognized, such universal remedies are "inconsistent with longstanding limits on equitable relief and the power of Article III courts" and impose a severe "toll on the federal court system." Trump v. Hawaii, 138 S. Ct. 2392, 2425 (2018) (Thomas, J., concurring); see DHS v. New York, 140 S. Ct. 599, 599-601 (2020) (Gorsuch, J., concurring in the grant of stay).

1. Under Article III, "a plaintiff's remedy must be limited to the inadequacy that produced [his] injury." Gill v. Whitford, 138 S. Ct. 1916, 1930 (2018) (citation and internal quotation marks omitted; brackets in original). This Court has accordingly narrowed relief that "improper[ly]" "grant[ed] a remedy beyond what was necessary to provide relief to [the injured parties]." Lewis v. Casey, 518 U.S. 343, 360 (1996).

Principles of equity reinforce that constitutional limitation. A federal court's authority is generally confined to the relief "traditionally accorded by courts of equity" in 1789. Grupo Mexicano de Desarrollo, S. A. v. Alliance Bond Fund, Inc., 527 U.S. 308, 319 (1999); see id. at 318-319. Such relief must "be no more burdensome to the defendant than necessary to provide complete

relief to the plaintiffs." Califano v. Yamasaki, 442 U.S. 682, 702 (1979). Thus, English and early American "courts of equity" typically "did not provide relief beyond the parties to the case." Hawaii, 138 S. Ct. at 2427 (Thomas, J., concurring). Some plaintiffs' injuries can be remedied only in ways that incidentally benefit nonparties. See ibid. (citing "[i]njunctions barring public nuisances"). And in properly certified class actions, relief may extend to all class members. Califano, 442 U.S. at 702. But even in those cases, courts may adjudicate only the rights of, and grant relief to, the parties before them.

Universal relief is irreconcilable with these constitutional and equitable limitations. By definition, it extends to parties who were not "plaintiff[s] in th[e] lawsuit, and hence were not the proper object of th[e court's] remediation." Lewis, 518 U.S. at 358. And when a court awards relief to nonparties, it exceeds the relief "traditionally accorded by courts of equity" in 1789. Grupo Mexicano, 527 U.S. at 319; see Samuel L. Bray, Multiple Chancellors: Reforming the National Injunction, 131 Harv. L. Rev. 417, 424-445 (2017) (Bray) (detailing historical practice).

Universal relief also creates other legal and practical problems. It circumvents the procedural rules governing class actions. See Fed. R. Civ. P. 23. It encourages forum shopping by empowering a single district court to nullify the decisions of other courts upholding the challenged agency action. See New York, 140 S. Ct. at 601 (Gorsuch, J., concurring in the grant of stay). And it

operates asymmetrically: The government must prevail in every suit to keep its policy in force, but plaintiffs can derail a federal statute or regulation nationwide with a single district-court victory. Ibid.

The prospect that a single district-court decision can halt a government policy nationwide for years while the ordinary appellate process unfolds often leaves the Executive Branch with little choice but to seek emergency appellate relief. See New York, 140 S. Ct. at 600-601 (Gorsuch, J., concurring in the grant of stay). Emergency litigation in turn deprives the judicial system, including this Court, of the benefits that accrue when different courts grapple with complex legal questions in a considered, orderly dialogue. Ibid.

This case starkly illustrates those problems. The decision below effectively countermands the Sixth Circuit's decision in Arizona, even within the plaintiff States in that case. It also pretermits challenges to the Guidance in two other district courts. See Coe v. Biden, No. 21-cv-168 (S.D. Tex. Mar. 22, 2022); Alabama v. Mayorkas, No. 22-cv-418 (N.D. Ala.). In effect, the district court below claimed a veto power over all other federal judges in the country. And the court's nationwide vacatur has compelled the government to seek emergency relief from this Court, short-circuiting the ordinary process of percolation.

2. The lower courts offered various justifications for the nationwide relief in this case, all of which are unpersuasive.

The court of appeals addressed the proper scope of relief in a footnote. See App., infra, 31a n.18. It reasoned that "[i]n the context of immigration law, broad relief is appropriate to ensure uniformity and consistency in enforcement." Ibid. That logic usurps the role of the political branches. "[T]he admission and exclusion of foreign nationals is a 'fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control.'" Hawaii, 138 S. Ct. at 2418 (quoting Fiallo v. Bell, 430 U.S. 787, 792 (1977)). When a district court issues coercive relief barring the government from applying a federal immigration policy to the plaintiffs, the political branches may choose to achieve uniformity by suspending the policy elsewhere until the litigation is resolved, or may instead continue to apply the policy to everyone except the parties to the suit. In either case, that decision is for the political branches, not the Judiciary.

The court of appeals additionally concluded that "[t]here is a substantial likelihood that a geographically-limited injunction would be ineffective because criminal aliens not subject to enforcement would be free to move among states." App., infra, 31a n.18 (brackets and citation omitted). That possibility is entirely speculative. In any event, the court failed to explain why vacating the Guidance within Texas and Louisiana would be inadequate to deter unlawfully present noncitizens from relocating there or to enable authorities to apprehend such noncitizens upon their

arrival. See Arizona, 2022 WL 2437870, at *15 (Sutton, C.J., concurring) (rejecting same argument). And even if the operation of the Guidance in other States might conceivably inflict some harm on Texas and Louisiana, that would not justify the grossly disproportionate remedy of nationwide vacatur. Cf. Winter v. NRDC, Inc., 555 U.S. 7, 32 (2008) ("An injunction is a matter of equitable discretion" and must be informed by "the balance of equities and consideration of the public interest.").

Finally, the district court -- but not the court of appeals -- concluded that universal vacatur was authorized (and perhaps even compelled) by 5 U.S.C. 706(2), which provides that a reviewing court "shall hold unlawful and set aside agency action, findings, and conclusions" found to be unlawful. App., infra, 125a, 129a-131a. That is wrong. At the outset, Section 706(2) does not pertain to remedies at all. Instead, it directs a court to disregard unlawful "agency action, findings, and conclusions" in resolving the case before it. 5 U.S.C. 706(2); see John Harrison, Section 706 of the Administrative Procedure Act Does Not Call for Universal Injunctions or Other Universal Remedies, 37 Yale J. on Reg. Bull. 37, 42 (2019-2020). That understanding is consistent with the standard account of judicial review of statutes, which holds that judicial review is merely "the negative power to disregard an unconstitutional enactment in deciding a case." Massachusetts v. Mellon, 262 U.S. 447, 488 (1923). Of course, when a court declines to give effect to an agency action in the case

before it on the ground that the action is unlawful, it may issue appropriate relief. But 5 U.S.C. 703 points outside the APA for the available remedies, specifying that "[t]he form of proceeding" is a traditional "form of legal action," such as "actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus."

Even if Section 706 did speak to available remedies, it would not suggest that courts should "set aside," 5 U.S.C. 706(2), a rule on a universal basis, rather than as applied to the parties. Congress enacted the APA against a background rule that statutory remedies should be construed in accordance with "traditions of equity practice," Hecht Co. v. Bowles, 321 U.S. 321, 329 (1944), including the principle of party-specific relief, see Samuel Bray, A Response to The Lost History of the "Universal" Injunction, Yale J. on Reg. N. & C. (Oct. 6, 2019); Bray 438 n.121. The district court identified nothing suggesting that the APA "upset the bedrock practice of case-by-case judgments with respect to the parties in each case or create[d] a new and far-reaching power" allowing every district judge to nullify agency action nationwide. Arizona, 2022 WL 2437870, at *15 (Sutton, C.J., concurring).

To the contrary, the APA confirms traditional limitations on available relief by, among other things, providing that the statute's authorization of judicial review does not affect "the power or duty of the court to * * * deny relief on any * * * equitable ground," 5 U.S.C. 702(1); see Abbott Labs. v. Gardner, 387 U.S.

136, 155 (1967). Moreover, interpreting the APA to authorize universal vacatur would impose many of the "same" practical "harm[s]" as universal injunctions. Virginia Soc'y for Human Life, Inc. v. FEC, 263 F.3d 379, 394 (4th Cir. 2001), overruled on other grounds by The Real Truth About Abortion, Inc. v. FEC, 681 F.3d 544 (4th Cir. 2012), cert. denied, 568 U.S. 1114 (2013).

III. THE EQUITIES OVERWHELMINGLY FAVOR A STAY

The district court's judgment causes serious harm to the federal government. Under Article II, "the choice of how to prioritize and how aggressively to pursue legal actions against defendants who violate the law falls within the discretion of the Executive Branch." TransUnion, 141 S. Ct. at 2207. And Congress vested the Secretary with the authority and duty to set immigration enforcement priorities and to supervise the officers and employees who enforce the immigration laws on his behalf. 6 U.S.C. 202(5); 8 U.S.C. 1103(a)(1) and (2). The Secretary developed the Guidance through a months-long review process, including extensive engagement with DHS employees, state and local governments, and the public. App., infra, 151a. The Guidance reflects the Secretary's judgment about how best to fulfill the vital mission of the Department he is charged with leading. The vacatur "causes irreparable harm to [DHS] by interfering with its authority to exercise enforcement discretion and allocate resources toward [the Secretary's] priorities." Arizona, 2022 WL 2437870, at *12.

The Guidance has been charting DHS's approach for seven months, with the agency undertaking "extensive targeted and continuous training" of "more than thirteen thousand officers, agents, and support personnel." App., infra, 170a. The district court's vacatur has upended those efforts, requiring DHS to halt all implementation of the Guidance and instruct employees to disregard their training. As a result, individual officers are "left without a rubric to guide their [enforcement] decisions." Id. at 188a. The vacatur replaces a system of "uniform guidance" with one in which each immigration official decides how to enforce the INA, leading to "disparate prioritization across the country and a lack of consistency in enforcement actions." Id. at 185a, 187a.

The vacatur also disserves the public interest by undermining the Guidance's central objective: Ensuring that DHS's limited resources are used most effectively to protect public safety, national security, and border security. In particular, as DHS "continues to direct resources to the border, it is all the more critical" to ensure that it can "prioritize its finite law enforcement resources on its public safety mission and targeted enforcement operations to locate and arrest national security and public safety threats." App., infra, 184a-185a.

On the other side of the ledger, the States rely on indirect and incidental effects on state expenditures that are unquantified and speculative. "[T]he extent of those costs is filled with ifs and maybes." Arizona, 2022 WL 2437870, at *12. Given that "the

relevant federal statutes do not tell the Department how to deploy its resources, do not stop it from setting prioritization categories, and do not prevent it from sending its enforcement agents wherever it wishes," "it is hard to see how [staying the district court's judgment pending appeal] will result in substantial and distinct injuries" to the States. Ibid. Again, the only concrete harm the district court identified is that, over a span of several months, the Guidance caused DHS to rescind a total of just 15 detainers in Texas. App., infra, 54a. That does not remotely justify allowing the district court's nationwide vacatur to continue in effect for a prolonged period while the court's disruptive and unprecedented holdings are subject to appellate review.

CONCLUSION

The application for a stay of the district court's judgment vacating the Guidance should be granted. At a minimum, the Court should stay the district court's judgment outside Texas and Louisiana. In addition, the Court may wish to construe this application as a petition for a writ of certiorari before judgment, grant the petition, and set this case for argument in the fall. Cf. Nken v. Mukasey, 555 U.S. 1042 (2008).

Respectfully submitted.

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