No. 19-36020

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN DOE #1, *et al.*,

Plaintiffs-Appellees,

v.

DONALD TRUMP, *et al.*,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Oregon

BRIEF FOR APPELLANTS

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INTRODUCTION

In the Immigration and Nationality Act (INA), Congress provided that the President may suspend the entry of any class of noncitizens or impose any restrictions on their entry that he deems appropriate whenever he finds that their entry would be detrimental to the interests of the United. States. 8 U.S.C. § 1182(f); *see also id*. § 1185(a)(1). "The exclusion of aliens" is also "a fundamental act of sovereignty," that "stems not alone from legislative power but is inherent in the executive power to control the foreign affairs of the nation." *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950).

In *Trump v. Hawaii*, 138 S. Ct. 2392 (2018), the Supreme Court upheld a Presidential Proclamation suspending entry of certain foreign nationals. The Court emphasized the "broad discretion" that § 1182(f) confers on the President "to suspend the entry of aliens into the United States." *Id.* at 2408. The Court rejected a claim that the proclamation was invalid because it was based on national-security concerns that the INA already addressed in other ways. *Id.* at 2410-12. And the Supreme Court rejected the suggestion that courts should impose implied limitations on the President's § 1182(f) authority lest the statute fall as an unconstitutional delegation of authority. *See id.*; *Hawaii v. Trump*, 878 F.3d 662, 690-92 (9th Cir. 2017); S. Ct. Br. for Respondents at 16-17, 51-52.

Pursuant to the President's statutory directive from Congress to ensure that intending immigrants are not detrimental to the interests of the United States, as well as his inherent executive authority to conduct foreign affairs, the President issued a Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System ("the Proclamation" or "PP 9945"). *See* 84 Fed. Reg. 53,991. The Proclamation is a straightforward effort by the President to ensure that immigrants traveling to our shores have a plan for carrying health insurance once they arrive in the United States and so do not unnecessarily burden the U.S. healthcare system. *Id*.

Yet despite the Supreme Court's precedents upholding Presidential proclamations under § 1182(f) and emphasizing the broad authority that provision gives the President, the district court here issued a universal injunction to prevent the Proclamation from taking effect, and in the process, the district court declared an application of § 1182(f) unconstitutional as a violation of the non-delegation doctrine. "The district court's extraordinary injunction ignores governing precedent, invents unjustified restrictions on the political branches, and inserts the courts into the President's well-established constitutional and statutory prerogative to place limits on persons entering this country." *Doe #1 v. Trump*, No. 19-36020, 2019 WL 7042420, at *2 (9th Cir. Dec. 20, 2019) (Bress, J., dissenting from the

denial of an administrative stay of the injunction). The district court's decision is wrong in multiple respects, and the injunction must be vacated.

STATEMENT OF JURISDICTION

Plaintiffs invoked the district court's jurisdiction under 28 U.S.C. § 1331, asserting claims under the Constitution and Federal Statutes. *See* Excerpts of Record (ER) 279. The government contests Plaintiffs' standing to raise these claims. The district court entered a preliminary injunction on November 26, 2019. ER 1-48. The government filed a timely notice of appeal on December 4, 2019. ER 49-53. This Court has jurisdiction under 28 U.S.C. § 1292(a)(1).

STATEMENT OF THE ISSUES

1. Whether the non-delegation doctrine renders constitutionally invalid the President's exercise of authority under 8 U.S.C. § 1182(f) and 8 U.S.C. § 1185(a)(1), to preclude the entry of certain noncitizens to the United States.

2. Whether, contrary to the Supreme Court's decision in *Hawaii*, the district court properly read implicit limits into the President's authority under 8 U.S.C. § 1182(f) based on a purported conflict with the "public charge" ground of inadmissibility in 8 U.S.C. § 1182(a)(4) and related provisions.

3. Whether a district court can issue a universal injunction on behalf of Plaintiffs who have not identified a concrete, non-hypothetical injury sufficient to establish standing or irreparable harm; issue an injunction on behalf of an

uncertified class without consideration of the requirements of Federal Rule of Civil Procedure 23; and issue an injunction that is substantially broader than necessary to provide complete relief to Plaintiffs based on the harms they allege.

STATEMENT OF THE CASE

I. Presidential Proclamation 9945

The President signed Presidential Proclamation 9945 on October 4, 2019. *See* Presidential Proclamation 9945, Suspension of Entry of Immigrants Who will Financially Burden the United States Healthcare System, 84 Fed. Reg. 53,991 (Oct. 9, 2019). The President issued PP 9945 to address the "substantial costs" U.S. healthcare providers and taxpayers bear "in paying for medical expenses incurred by people who lack health insurance or the ability to pay for their healthcare." *Id.* Hospitals and other healthcare providers "often administer care to the uninsured without any hope of receiving reimbursement from them," and these costs are passed on to the American people in the form of higher taxes, higher premiums, and higher fees for medical services. *Id*. Uncompensated care costs have exceeded $35 billion in each of the last 10 years, a burden that can drive hospitals into insolvency or strain Federal and State government budgets. *Id*. The uninsured also cause "overcrowding and delay" for emergency rooms and unnecessarily burden our emergency care system by using those essential facilities to obtain remedies for non-emergency conditions. *Id*.; *see also Doe*, 2019 WL

7042420, at *5 (Bress, J., dissenting) (noting harm from "disruption in the provision of emergency services").

The challenges caused by uncompensated care are exacerbated by admitting to the United States thousands of immigrants annually who have not demonstrated any ability to pay for their healthcare costs. 84 Fed. Reg. 53,991. Notably, "data show that lawful immigrants are about three times more likely than United States citizens to lack health insurance." *Id*. The President found that allowing entry into the United States of "certain immigrants who lack health insurance or the demonstrated ability to pay for their healthcare" would be detrimental to the interests of the United States by exacerbating the challenges that face our healthcare system and the burden on American taxpayers from uncompensated care. *Id*.

To address these challenges while still continuing the United States' "long history of welcoming immigrants who come lawfully in search of brighter futures," the President issued a targeted Proclamation pursuant to 8 U.S.C. § 1182(f) and 8 U.S.C. § 1185(a). 84 Fed. Reg. 53,991-92. The President, relying on his "broad discretion to suspend the entry of aliens into the United States," *Hawaii*, 138 S. Ct. at 2408, suspended, with certain exceptions, entry into the United States of immigrants who will financially burden the United States healthcare system, 84 Fed. Reg. 53,991-92. This includes immigrants who cannot satisfy a consular

officer at—or following—a visa interview that they will be covered by one of several types of approved health insurance, as set out in the Proclamation, within 30 days of entering the United States, or will have "the financial resources to pay for reasonably foreseeable medical costs." *Id*.

The Proclamation sets out a range of possible healthcare plans that an immigrant visa applicant can use to demonstrate to the consular officer that she will be covered by approved health insurance and thus is not subject to the entry restriction in PP 9945. 84 Fed. Reg. 53,992. Approved health insurance coverage includes the following:

> (i) an employer-sponsored plan, including a retiree plan, association health plan, and coverage provided by the Consolidated Omnibus Budget Reconciliation Act of 1985;
>
> (ii) an unsubsidized health plan offered in the individual market within a State;
>
> (iii) a short-term limited duration health policy effective for a minimum of 364 days—or until the beginning of planned, extended travel outside the United States;
>
> (iv) a catastrophic plan;
>
> (v) a family member's plan;
>
> (vi) a medical plan under chapter 55 of title 10, United States Code, including coverage under the TRICARE program;
>
> (vii) a visitor health insurance plan that provides adequate coverage for medical care for a minimum of 364 days—or until the beginning of planned, extended travel outside the United States;

(viii) a medical plan under the Medicare program.

Id. The Proclamation also authorizes and anticipates that, once it goes into effect, the range of plans that meet the definition of "approved health insurance" under the Proclamation may expand over time. *Id*. Under the Proclamation, approved health insurance also "means coverage under" "any other health plan that provides adequate coverage for medical care as determined by the Secretary of Health and Human Services or his designee." *Id*.

Immigrant visa applicants thus have many options for identifying approved health insurance plans that satisfy the Proclamation. 84 Fed. Reg. 53,992. These include plans that are readily available to travelers, including various Affordable Care Act (ACA) compliant, unsubsidized health plans offered in a state's individual market, employer-sponsored plans, a family member's plan, visitor health insurance plans, and short-term limited duration health coverage. *Id*. As one would expect, in addition to previously available options, there is already a growing private marketplace for plans to meet the Proclamation's requirements. *See, e.g.*, www.visitorscoverage.com/2019-Presidential-Proclamation-Immigrant-Insurance/ (offering range of visitor plans at range of prices); https://www.insubuy.com/immigrant-visa-medical-insurance/ (explaining various health insurance options that may satisfy the Proclamation). There are also resources from the U.S. Department of Health and Human Services (HHS) that can

help visa applicants identify plans prior to entry and begin the application process. *See, e.g.*, www.healthcare.gov (individuals can search for available healthcare options by state and obtain information on premiums); www.healthcare.gov/apply-and-enroll/get-help-applying (individuals can ask questions, apply for coverage, compare plans, and enroll by calling the federal exchange call center, which is available 24 hours a day, seven days a week, except certain holidays, and offers language assistance services).

Plans like visitor health insurance for travelers are available to purchase abroad. Even plans that cannot be purchased before entry can satisfy the Proclamation since it requires the intending immigrant to show an *intent* to be covered within 30 days of entry. Before the district court, Plaintiffs argued that individual market plans are sometimes not effective until over 30 days after an application is submitted. But there are ways to avoid that risk of delay. For example, an individual could arrange to enter the country and select a plan before the 15th of the month to help ensure that the plan becomes effective within 30 days, as provided for under HHS regulations. *See* 45 C.F.R. §§ 147.104(b), 155.420(b)(1). And plans can be purchased directly from an insurer—rather than through an Exchange—to eliminate Exchange processing times that could delay the effective date of enrollment.

Alternatively, an intending immigrant can satisfy the consular officer that

her entry is not barred by the Proclamation by showing that she has "the financial resources to pay for reasonably foreseeable medical costs." 84 Fed. Reg. 53,992. If the intending immigrant plans to purchase insurance coverage after entering the United States and there is some other reason a plan might have a delayed effective date beyond the 30-day time period, the immigrant could also show that she has "the financial resources to pay for reasonably foreseeable medical costs" during the gap in coverage until the plan is effective. *See* 84 Fed. Reg. 53,992; ER 81 (consular officers "should consider whether the applicant has sufficient financial resources to pay for reasonably foreseeable medical costs for the amount of time until he or she is able to obtain approved health insurance"). Consular officers will assess all of the evidence presented by the applicant to meet the Proclamation's requirement and will inform the applicant if more information is needed. *See* 8 U.S.C. § 1201(g); 22 C.F.R. § 42.81(e). To the extent an intending immigrant purchases a particular insurance plan in advance of her entry, or shortly thereafter, and later wants to switch to or apply for a plan with different coverage or additional benefits, nothing in the Proclamation bars her from doing so. The Proclamation thus carefully tailors the restriction to the problem being solved, and restricts entry of only those noncitizens seeking to permanently immigrate to the United States who cannot demonstrate a plan to address their healthcare needs upon arrival.

There are accordingly a range of limitations on the Proclamation's reach. The Proclamation applies only to individuals who "seek[ ] to enter the United States pursuant to an immigrant visa." 84 Fed. Reg. 53,992, § 2; *id.* at 53,993, § 3. It does not apply to the overwhelming majority of noncitizens who seek to enter the United States on a nonimmigrant visa, including foreign students attending American schools, temporary agricultural workers, workers performing temporary or seasonal work, business travelers, or tourists. The Proclamation also does not apply to asylees or refugees. 84 Fed. Reg. 53,993, § 2.

The Proclamation also has further exceptions. Among others, the Proclamation exempts "any alien who is the child of a United States citizen or who is seeking to enter the United States pursuant to" various types of visas, including IR–2 (unmarried child under the age of 21); IR–3 (orphan adopted abroad); IR–4 (orphan to be adopted in the U.S.); IH–3 (child adopted abroad); or IH–4 (child to be adopted in the U.S.). *Id*. It exempts "any alien under the age of 18, except for any alien accompanying a parent who is also immigrating to the United States and subject to th[e] proclamation." *Id*. Thus, the Proclamation cannot result in a minor child remaining separated from a petitioning parent who is in the United States. Parents of U.S. citizens over the age of 21 who immigrate under an IR–5 visa are largely exempted, and need only demonstrate that their "healthcare will not impose a substantial burden on the United States healthcare system." *Id*. The Proclamation

does not apply to an applicant for a "Special Immigrant Visa" in the SI or SQ classifications who is a national of Afghanistan or Iraq, or his or her spouse and children. *Id*. Finally, the Proclamation exempts from its terms any alien "whose entry would further important United States law enforcement objectives, as determined by the Secretary of State or his designee based on a recommendation of the Attorney General or his designee," or "whose entry would be in the national interest, as determined by the Secretary of State or his designee on a case-by-case basis." *Id.* at 53,992-93.

The Proclamation provides that an immigrant visa applicant subject to PP 9945 must "establish to the satisfaction of a consular officer" that he or she meets its requirements, and that the Secretary of State "may establish standards and procedures governing such determinations." 84 Fed. Reg. 53,993. The review a consular officer conducts to ensure that an intending immigrant meets the requirements of PP 9945 "is separate and independent from the review and determination required by other statutes, regulations, or proclamations in determining the admissibility of an alien." *Id*.

Finally, the Proclamation provides that it "shall be implemented consistent with applicable law," and that the "proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities,

its officers, employees, or agents, or any other person." 84 Fed. Reg. 53,993-94.

II. Immigrant Visa Application Process

Under the INA, an alien seeking to enter the United States from abroad generally must apply for and be issued a visa. There are two types of visas: immigrant visas, for noncitizens seeking to reside in the United States permanently, and nonimmigrant visas, for individuals seeking temporary stays in the United States. *See* 8 U.S.C. §§ 1101(a)(15), 1181(a), 1182(a)(7), 1201(a). The Proclamation applies only to the former category. 84 Fed. Reg. 53,992, § 2.

Generally, before a noncitizen may apply for an immigrant visa, she must be the beneficiary of a petition from a prospective employer or a family member who is a U.S. citizen or lawful permanent resident. *See generally* 8 U.S.C. § 1153. The petition must be submitted to and approved by U.S. Citizenship and Immigration Services, which forwards the approved petition to the National Visa Center (NVC). The intending immigrant must then complete pre-processing with the NVC, which includes payment of visa fees, collection of required forms and civil documents, and then scheduling of an in-person interview before a consular officer at a U.S. embassy or consulate. *See* 8 U.S.C. § 1202(a), (e); 22 C.F.R. § 42.62.

A consular officer then makes a determination to issue or refuse the visa application. *See* 8 U.S.C. § 1201(a)(1), (g); 22 C.F.R. §§ 42.71, 42.81(a). The applicant bears the burden to demonstrate "to the satisfaction of the consular

officer" that he or she is eligible for the visa for which he or she is applying. 8 U.S.C. § 1361. No visa "shall be issued to an alien" if "it appears to the consular officer" from the application papers "that such alien is ineligible to receive a visa" or if "the consular officer knows or has reason to believe" that the alien is ineligible. *Id.* § 1201(g); *see* 22 C.F.R. § 40.6 (explaining that the term "'reason to believe' . . . shall be considered to require a determination based upon facts or circumstances which would lead a reasonable person to conclude that the applicant is ineligible to receive a visa"). Consular officers must accordingly make a range of predictive determinations about a visa applicant. *See, e.g.*, 8 U.S.C. § 1184(b); *see also* 9 Foreign Affairs Manual (FAM) § 401.1-3 (providing guidance on applying § 1184(b) and noting that consular officers must determine whether an applicant's intent is to engage in the activities authorized by the particular visa category and, for example, determine whether someone seeking a nonimmigrant visa actually improperly intends to immigrate permanently).

The process of applying for an immigrant visa, collecting the required documentation, and scheduling a consular interview can be lengthy. *See, e.g.*, *Siwen Zhang v. Cissna*, 2019 WL 3241187, *5 (C.D. Cal. Apr. 25, 2019) (noting that district courts often find that delays of three to five years in processing visa applications are not unreasonable); *Jamal v. Johnson*, No 2:15-CV-8088-ODW, 2016 WL 4374773, at *6 (C.D. Cal. Aug. 15, 2016) (four-year delay not

unreasonable); *Beyene v. Napolitano*, No. 12-CV-1149-WHA, 2012 WL 2911838, at *9 (N.D. Cal. July 13, 2012) (nearly five-year delay not unreasonable).

If an immigrant visa is issued and the intending immigrant is admitted to the United States on a valid immigrant visa, he or she will become a lawful permanent resident (LPR) upon admission to the U.S. Alternatively, certain categories of intending immigrants who are already in the U.S. for whom an immigrant visa is immediately available may adjust to LPR status without leaving the United States. *See* 8 U.S.C. § 1255(a). This process is called adjustment of status. *Id*. These individuals never enter the United States pursuant to an immigrant visa and therefore are not subject to the Proclamation.

III. Procedural History

The Proclamation was issued on October 4, 2019, and was set to go into effect 30 days later on November 3, 2019. 84 Fed. Reg. 53,994 § 7 (Effective Date). Plaintiffs filed this suit four days before that effective date, on October 30, 2019, and two days later, on Friday, November 1, 2019, moved for a temporary restraining order seeking to enjoin implementation of PP 9945 before its effective date. ER 271-370; 226-270. On the following day, Saturday, November 2, 2019, before the government had an opportunity to file a written response, the district court held a telephonic hearing and issued a temporary restraining order halting implementation of the Proclamation. ER 208-25.

On November 8, 2019, Plaintiffs filed a Motion for Class Certification and a Motion for a Preliminary Injunction. ER 150-202; 389-90. Plaintiffs raised a variety of challenges in their Complaint, but in the Motion for Preliminary Injunction, they made only three assertions. They argued that the Proclamation and its implementation conflicted with: (1) the INA's public charge statutory ground of inadmissibility, (2) various Administrative Procedure Act (APA) procedural and substantive requirements, and (3) the Due Process Clause. In spite of filing suit on behalf of a relief organization that operates in a single county and seven individuals, and without regard to established class actions rules, Plaintiffs asked the district court to issue a nationwide preliminary injunction "preventing Defendants and their agents from implementing or enforcing the proclamation." ER 201.

IV. District court decision

On November 26, 2019, the district court granted Plaintiffs' motion for a preliminary injunction. ER 1-48. The court held that "the President's Proclamation requiring legal immigrants to show proof of health insurance before being issued a visa by the State Department" (1) "was not issued under any properly delegated authority," and (2) "is inconsistent with the INA." ER 2.

In the district court's view, Plaintiffs were likely to succeed on their claim that § 1182(f) violates the nondelegation doctrine as applied to PP 9945 because

"[p]olicies pertaining to the entry of aliens and their right to remain here" are "entrusted exclusively to Congress." ER 19-20. The court stated that, for constitutional powers that are strictly and exclusively legislative, Congress can obtain assistance of other branches by delegating authority, but only if it supplies "an intelligible principle" to guide any exercise of the delegation. *Id*. The court held that § 1182(f) violates this principle because it "provides no guidance whatsoever for the exercise of discretion," as "the only limit to the President's discretion is the requirement" of a finding that entry would be "detrimental to the interests of the United States." ER 21.

In reaching this conclusion, the district court distinguished Supreme Court precedent holding that the nondelegation doctrine does not apply when the President is exercising authority "inherent in the executive power to control the foreign affairs of the nation," including "the decision to admit or to exclude an alien," by finding that the President has such authority "only in time of war or national emergency." ER 22, 25. The district court distinguished *Hawaii*, which upheld § 1182(f)'s "comprehensive delegation" of authority, as "not specifically address[ing] the nondelegation doctrine," and involving "important issues of national security and foreign affairs," including "vetting processes taking place in foreign countries." ER 25-26. And the court dismissed other cases upholding the President's authority in this area as similarly dealing with foreign affairs—

suggesting that PP 9945 does *not* concern foreign affairs. ER 25-26. Although PP 9945 deals with exclusion of aliens abroad and a vetting process that takes place in foreign countries, the court held that the Proclamation impermissibly "uses § 1182(f) to engage in *domestic* policymaking, without addressing any foreign relations or national security issue or emergency." ER 25-26.

The district court also concluded that Plaintiffs were likely to succeed on the claim that the Proclamation "contravenes or overrides specific provisions of the INA." ER 26. Specifically, the court pointed to 8 U.S.C. § 1182(a)(4), which establishes that a person is inadmissible if it appears to a consular officer that the individual is likely to become a public charge. The Proclamation does not alter anything about a consular officer's determination whether an applicant for an immigrant visa is likely to become a public charge. But the district court nevertheless found that the Proclamation conflicts with two aspects of 8 U.S.C. § 1182(a)(4): the statute's "totality of the circumstances" test, and an exception to the public-charge provision for victims of violence. ER 28-29, 33. The court stated that the Proclamation "makes ability to pay for anticipated care needs a single, dispositive factor," in conflict with § 1182(a)(4)'s requirement to consider the totality of the circumstances in evaluating whether an immigrant will be a "financial burden" on the United States, and that the Proclamation does so without "provid[ing] the same broad exemption" for victims of violence. ER 28-30, 33.

The court also held that the Proclamation improperly "reinstat[es] a bar that Congress expressly eliminated from the INA—the bar to 'paupers.'" ER 33.[1]

The court found that Plaintiffs were likely to suffer irreparable harm because family members of two of the named Plaintiffs could potentially have consular interviews "scheduled before a decision on the merits," and they "stated that they cannot afford the plans that are available to them." ER 36. The district court also accepted the organizational Plaintiff's claim that it "had to divert significant resources to deal with the Proclamation even before it went into effect." ER 36-37. In balancing the equities and public interest, and weighing these in Plaintiffs' favor, the court held that immigrants are generally a benefit to the country. ER 37-40. And although the court accepted Plaintiffs' bare allegations of potential harm, the court gave no weight to the harms the President found—the harms identified in the Proclamation that the Proclamation is designed to prevent—because the government had not provided "evidence that the Proclamation will have" its intended effect. ER 41-42.

Finally, the district court determined that a universal injunction was appropriate because such injunctions are allowed in "immigration matters" and

[1] The district court did not reach or grant an injunction based on Plaintiffs' due process or APA claims, or based on an asserted conflict with any other statute, including the Affordable Care Act. ER 16, 33. Accordingly, those issues are not before this Court in this appeal.

courts can, "before class certification has been decided," grant classwide "preliminary injunctive relief to preserve the *status quo*." ER 43-44. In response to the government's argument that classwide relief should not be granted on behalf of a putative class that could not possibly meet the requirements of Rule 23—because, among other problems, a substantial portion of the class was a subclass with no Plaintiff representative—the court held that it was not "require[d] . . . [to] engage" in any "analysis under Rule 23" before granting "classwide relief." ER 45.

The district court ordered that, until further order of the court, the government is "enjoined from taking any action to implement or enforce Presidential Proclamation No. 9945." ER 48.

SUMMARY OF THE ARGUMENT

The district court made multiple errors in entering a preliminary injunction barring the Proclamation from going into effect. Plaintiffs did not meet their heavy burden to demonstrate that preliminary injunctive relief is permissible or appropriate, much less a universal preliminary injunction. A "preliminary injunction is an extraordinary and drastic remedy," *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008), that should be granted only "upon a clear showing that the [movant] is entitled to such relief," *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). To obtain a preliminary injunction, the moving party must demonstrate (1) that it is likely to succeed on the merits of its claims; (2) that

it is likely to suffer an irreparable injury in the absence of injunctive relief; (3) that the balance of equities tips in its favor; and (4) that the proposed injunction is in the public interest. *Id.* at 20. The injunction here meets none of these factors.

First, Plaintiffs are not likely to prevail on the merits. The district court improperly held that Plaintiffs are likely to succeed on the merits of statutory challenges to the Proclamation, but these claims are non-justiciable. The Supreme Court has long recognized that the power to exclude aliens is a fundamental sovereign attribute exercised by the political branches, largely immune from judicial review. Statutory challenges to a decision to exclude an alien abroad, including to the denial of a visa, are not judicially reviewable.

Even if Plaintiffs could avoid the limits on judicial review in this area, they still cannot succeed on the merits of their claims. The Proclamation is a lawful exercise of the President's authority over entry of aliens and the broad delegation of authority Congress provided in § 1182(f) and § 1185(a)(1). Section 1182(f) provides that the President may suspend the entry of any class of noncitizens or impose any restrictions on their entry he deems appropriate whenever he finds that their entry would be detrimental to the interests of the United. States. 8 U.S.C. § 1182(f); *see also id.* § 1185(a)(1). Moreover, "[t]he exclusion of aliens" is "a fundamental act of sovereignty," that "stems not alone from legislative power but is inherent in the executive power to control the foreign affairs of the nation."

Knauff, 338 U.S. at 542. The Proclamation easily fits within Congress's comprehensive delegation of authority to the President and the district court's injunction is directly contrary to *Hawaii*, which recognized the President's broad authority under § 1182(f) to place restrictions on entry of classes of noncitizens beyond the existing grounds of inadmissibility. There is no viable argument that the Proclamation violates the review standard set forth in *Hawaii*, and there was no dissent from the aspect of *Hawaii* assessing the President's broad statutory authority.

To avoid *Hawaii*'s clear holding, the district court theorized that § 1182(f) violates the nondelegation doctrine. But this "unprecedented" application of the nondelegation doctrine directly conflicts with *Hawaii*, which upheld § 1182(f)'s "comprehensive delegation" to the President against a nondelegation challenge. *Doe*, 2019 WL 7042420, at *4 (Bress, J., dissenting). It also directly contradicts a long line of established Supreme Court precedent holding that a conferral of authority over alien entry is not subject to nondelegation principles, as both the President and Congress possess authority in this realm. *Knauff*, 338 U.S. 537. The President's power to regulate entry of noncitizens to the United States is inherent in the Executive's authority over foreign affairs. *Doe*, 2019 WL 7042420, at *4 (Bress, J., dissenting). Delegation concerns are at their nadir when the President is exercising his inherent constitutional authority over exclusion of aliens abroad. The

district court's attempts to distinguish this authority—as applying only at wartime, during a national or overseas emergency, or in cases involving *both* the entry of aliens *and* the district court's view of what qualifies as foreign affairs—are wrong and exactly the sort of narrowing constructions of the President's authority under § 1182(f) that the Supreme Court rejected in *Hawaii*, when it upheld the statute's "comprehensive delegation" to the President.

Plaintiffs are also unlikely to succeed on their claim that the Proclamation expressly conflicts with other statutory provisions. The district court's assessment that the Proclamation conflicts with provisions of the INA is fundamentally at odds with *Hawaii*'s holding that the President may "impose entry restrictions in addition to those elsewhere enumerated in the INA." 138 S. Ct. at 2408. The provisions the district court cites—the public charge ground of inadmissibility, provisions excepting certain crime victims from the public charge ground of inadmissibility, and repealed provisions barring the entry of "paupers"—do not preclude suspending entry of aliens on similar grounds or, as here, grounds focused on addressing healthcare needs and burdens. The Supreme Court made this clear in *Hawaii*, when it rejected an argument that other provisions of the INA that served related purposes to the entry bar at issue in that case should be read to impose implicit limits on the President's authority.

The Proclamation also serves a purpose distinct from the provisions the district court cites and addresses a more targeted problem—the damage imposed by those without insurance on the healthcare system as a whole, including uncompensated healthcare costs borne by private healthcare providers and the burden on emergency services—with a tailored solution, requiring intending immigrants to show that they will obtain one of several approved types of insurance within 30 days of entry or be able to afford reasonably foreseeable medical expenses. The Proclamation thus operates in a different manner than the public charge statute and addresses harms that are not explicitly covered by that provision. *Doe*, 2019 WL 7042420, at *5 (Bress, J., dissenting).

Second, the remaining preliminary injunction factors also weighed heavily against granting an injunction and support overturning the district court's order. The Plaintiffs' barebone declarations speculating that they could not satisfy the requirements of the Proclamation are not sufficient to justify blocking an important national immigration initiative that is designed to prevent new immigrants from imposing irreparable costs on the U.S. healthcare system. Speculation about hypothetical effects the Proclamation may have on the Plaintiffs at some unknown point in the potentially distant future does not establish the type of immediate, irreparable harm that justifies preliminary injunctive relief. Similarly, the organizational Plaintiff's alleged harm, based on potential diversion of resources,

is far too speculative to justify the requirements for equitable relief or even to establish an Article III case or controversy. Providing assistance to help "identify viable health-care options for members who need to comply with the Proclamation" cannot be an injury, let alone an irreparable one, for an organization that represents its "mission is to educate and empower Multnomah County Latinos to achieve physical and mental health," including through providing "health and wellness programs." ER 282, 359.

Even if Plaintiffs could establish the requisite injury, it would be outweighed by the harm to the government and the public caused by the injunction. The harms to the national interest the Proclamation was designed to address will continue as long as the injunction is in place, and there is no avenue for the government to reverse those harms if, as is likely, Plaintiffs' challenges fail and the Proclamation is held to be a lawful exercise of the President's authority. Until the Proclamation can take effect, the government will continue to admit individuals whose entry the President has found will be detrimental to the United States, including to the U.S. healthcare system, private healthcare providers, emergency room care, and U.S. taxpayers. The Proclamation cannot be applied to individuals who have already entered the United States, so the harms that accrue during the injunction will be irreparable.

The injunction also invalidates as unconstitutional the President's application of an Act of Congress, irreparable harm in and of itself when the judgments of the political branches charged with addressing these issues are restrained. It further overrides the President's inherent constitutional authority to protect the nation from harm he identifies from the entry of certain classes of aliens. Under the rubric of applying the injunctive factors, the district court viewed itself as the best judge of the necessity and effectiveness of the Proclamation. But the Constitution makes clear that these determinations should be made by Congress and the President, critical principles that are fundamental to our system of government and that the district court disregarded. The balance of harms thus strongly favors reversing the district court's ruling.

Third, the scope of the injunction is vastly overbroad. The injunction violates the principle, expressed repeatedly in recent decisions of this Court, that an injunction must be narrowly tailored to the scope of the alleged injury, and no broader than necessary to provide complete relief to the actual litigants before the court. Here the court issued a universal injunction that is substantially broader than necessary to provide complete relief for the Plaintiffs' alleged harms. Even if the court could consider the alleged harms to the organizational Plaintiff, a universal injunction is wholly unnecessary and overbroad because that organization operates

only in Multnomah County. Plaintiffs did not adequately show that complete relief could not be obtained through a much narrower injunction.

The district court justified universal relief as an effort to preserve the status quo for an uncertified class, but did so without any consideration of the requirements of Federal Rule of Civil Procedure 23, and granted relief on behalf of a class with inherent conflicts, that includes members with no connection to this country, and that could not have been certified because it does not have class representatives for all subclasses. In granting relief to individuals who are not part of this case and who were not before the court, the injunction violates bedrock principles of equity and Article III.

This Court should set aside the district court's extraordinary, legally flawed universal preliminary injunction.

STANDARD OF REVIEW

The grant of a preliminary injunction is reviewed for abuse of discretion, but "the district court's interpretation of the underlying legal principles is subject to de novo review and a district court abuses its discretion when it makes an error of law." *E. & J. Gallo Winery v. Andina Licores S.A.*, 446 F.3d 984, 989 (9th Cir. 2006) (punctuation omitted).

ARGUMENT

I. Plaintiffs are not likely to succeed on the merits of their claims.

A. Courts may not review non-constitutional challenges to the political branches' decisions to exclude aliens.

The district court improperly held that Plaintiffs were likely to succeed on the merits of statutory claims that are non-justiciable. The Supreme Court has "long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 210 (1953)). The Supreme Court has permitted extremely limited review only where U.S. citizens claim that a visa denial burdens their own constitutional rights. *See Kleindienst v. Mandel*, 408 U.S. 753 (1972).

Congress "may, if it sees fit, . . . authorize the courts to" review decisions to exclude aliens. *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) (citation omitted). But Congress has never authorized review of a denial of a visa, and in fact has expressly rejected such a cause of action. *See* 6 U.S.C. § 236(f); *Bruno v. Albright*, 197 F.3d 1153, 1159 (D.C. Cir. 1999) (denial of visa to alien abroad "is not subject to judicial review . . . unless Congress says otherwise"). Accordingly, with respect to non-constitutional claims, it is a fundamental separation-of-powers principle, long recognized by courts, that the political branches' decision to

exclude aliens abroad is not judicially reviewable.

In granting a preliminary injunction based on non-constitutional claims, the district court held that these claims are judicially reviewable because "the Supreme Court has reviewed on the merits challenges to Presidential proclamations involving immigration, including proclamations under § 1182(f)," and cited to the Court's decision in *Hawaii*. ER 18. In *Hawaii*, however, the Supreme Court did not hold that statutory claims are reviewable. *Hawaii*, 138 S. Ct. at 2407. Rather, the Court "assume[d] without deciding that plaintiffs' statutory claims [were] reviewable," and did not need to answer this question because, "even assuming that some form of review is appropriate," the challenges to the entry restrictions at issue in that case failed on the merits. *Id*. at 2407, 2409-11.

B. The Proclamation is a valid exercise of the President's broad authority under 8 U.S.C. § 1182(f).

Even if Plaintiffs' claims were judicially reviewable, the Proclamation is a valid exercise of the broad authority Congress granted the President in § 1182(f), and the district court's ruling is contrary to the Supreme Court's recent holding addressing this statute in *Hawaii*.

Section 1182(f) provides that "[w]henever the President finds that the entry of . . . any class of aliens into the United States would be detrimental to the interests of the United States, he may . . . suspend entry of . . . any class of aliens . . . or impose on the entry of aliens any restrictions he may deem to be

appropriate." 8 U.S.C. § 1182(f); *see also id.* § 1185(a)(1). Section 1182(f) "exudes deference to the President in every clause," and in that statute Congress "entrusts to the President the decisions whether and when to suspend entry," "whose entry to suspend," "for how long," and "on what conditions." *Hawaii*, 138 S. Ct. at 2408.

Here, the President lawfully exercised this authority after "find[ing] that the unrestricted immigrant entry into the United States" of "thousands of aliens who have not demonstrated any ability to pay for their healthcare costs" "would . . . be detrimental to the interests of the United States." 84 Fed. Reg. 53,991; *see also Hawaii,* 138 S. Ct. at 2408 (explaining that "the sole prerequisite" to this "comprehensive delegation" "set forth in § 1182(f) is that the President 'find[]' that entry of the covered aliens 'would be detrimental to the interests of the United States'"). The Proclamation sets out the President's reasons for finding that entry of covered immigrant visa applicants would be detrimental to the United States, with the goal being to ensure that immigrants entering the country carry a minimum level of insurance or have sufficient financial resources to reduce uncovered healthcare costs borne by healthcare providers and the public. 84 Fed. Reg. 53,991. The lack of insurance also causes new arrivals to unnecessarily disrupt the provision of emergency services by using emergency rooms for treatment of a variety of non-emergency conditions. *Id.*; *see also Doe*, 2019 WL

7042420, at *5 (Bress, J., dissenting). This is a problem because new arrivals lack health insurance at rates around three times those of citizens. 84 Fed. Reg. 53,991.

Importantly, *Hawaii* made clear that Plaintiffs cannot succeed on an attack on the sufficiency of the findings in a Presidential Proclamation. 138 S. Ct. at 2409 (finding "questionable" argument that President must "explain [his] finding[s]"). The Supreme Court also emphasized that, "even assuming that some form of review is appropriate," the proclamation at issue in that case (like the one here) contained more detailed findings than prior proclamations. *Id.* (citing Proclamation No. 6958, where President Clinton explained in only "one sentence why suspending entry of members of the Sudanese government and armed forces" was in the interests of the United States, and Proclamation No. 4865, where President Reagan suspended entry of certain "undocumented aliens from the high seas" with a five-sentence explanation). A more "searching inquiry" into the findings "is inconsistent with the broad statutory text and the deference traditionally accorded the President in this sphere." *Id.*

Plaintiffs thus cannot challenge the Proclamation based on their "perception of its effectiveness and wisdom," and courts "cannot substitute [their] own assessment for the Executive's predictive judgments." *Id*. at 2421. That is precisely what the district court did in enjoining the Proclamation based on its view that the Proclamation "is unlikely to make any meaningful difference to address the

problem" of our country's overburdened healthcare system. ER 31. "Reasoning such as this improperly supplanted the district court's view for that of the President, to whom the Constitution and Congress through § 1182(f) have accorded great discretion." *Doe*, 2019 WL 7042420, at *5 (Bress, J., dissenting). "'Whether the President's chosen method' of addressing perceived risks is justified from a policy perspective is 'irrelevant to the scope of his [§ 1182(f)] authority.'" *Hawaii*, 138 S. Ct. at 2409 (quoting *Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 187-88 (1993)).[2] The President is not required to "conclusively link all of the pieces in the puzzle before [courts] grant weight to [his] empirical conclusions." *Hawaii*, 138 S. Ct. at 2409. In any case, Plaintiffs' own allegations that the Proclamation will impact them because they do not have, and do not plan to obtain, adequate health insurance is consistent with the findings and concern identified in the Proclamation—the high rate at which new arrivals lack insurance.

The district court also concluded that the Proclamation exceeds the President's authority under § 1182(f) to suspend entry because it is "indefinite." ER 31-32. This reasoning similarly cannot be squared with *Hawaii*, which rejected an identical argument. 138 S. Ct. at 2409. Just like the proclamation in *Hawaii*, this Proclamation includes no specific end date, but requires regular reporting to the

[2] The Proclamation is also a valid exercise of § 1185(a)(1), *see* 84 Fed. Reg. 53,991, which permits the President to place limitations on entry without requiring specific findings.

President on its "continued necessity," including requiring various cabinet secretaries to immediately advise the President if it is no longer warranted. 84 Fed. Reg. 53,993. As the Supreme Court explained in *Hawaii*, the President is not "required to prescribe in advance a fixed end date for the entry restrictions," and "[i]n fact, not one of the 43 suspension orders issued prior to this litigation has specified a precise end date." 138 S. Ct. at 2409-10.

C. The nondelegation doctrine does not prohibit Congress from granting broad discretion to the President in the field of foreign affairs.

Unable to avoid the clear holding of *Hawaii*, the district court based its injunction in large part on a conclusion that Congress's delegation of authority in § 1182(f) lacks any intelligible principle and thus must be struck down as unconstitutional under the nondelegation doctrine. ER 26. This novel ruling directly contradicts Supreme Court decisions addressing the nondelegation doctrine, as well as *Hawaii*, which affirmed Congress's "comprehensive delegation" of authority to the President in § 1182(f) in the face of a nondelegation challenge. 138 S. Ct. at 2408.

As recently articulated by the Supreme Court, the nondelegation doctrine "bars Congress from transferring its legislative power to another branch of Government." *Gundy v. United States*, 139 S. Ct. 2116, 2121, 2131 (2019) ("Congress . . . may not transfer to another branch powers which are strictly and

exclusively legislative."). However, the Supreme Court has, in our entire history, only twice held that a delegation of authority violates this doctrine. *Id.* at 2130-31 (Alito, J., concurring) (noting that "since 1935, the Court has uniformly rejected nondelegation arguments and has upheld provisions that authorized agencies to adopt important rules pursuant to extraordinarily capacious standards"); *Doe*, 2019 WL 7042420, at *2, *4 (Bress, J., dissenting) (noting that district court's injunction is "based on the nondelegation doctrine—among the most brittle limbs in American constitutional law"—which has been applied "only twice in this country's history").

Moreover, the nondelegation doctrine does not apply in the field of foreign affairs, where the Supreme Court has made clear that Congress need not "lay down narrowly definite standards by which the President is to be governed." *United States v. Curtiss-Wright Export Co.*, 299 U.S. 304, 320-22 (1936); *Zivotofsky ex rel. Zivotofsky v. Kerry*, 135 S. Ct. 2076, 2089 (2015) (recognizing that "Congress may grant the President substantial authority and discretion in the field of foreign affairs"); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 636 n.2 (1952) (Jackson, J., concurring) (The "limitation upon congressional delegations of power to the President over internal affairs does not apply with respect to delegations of power in external affairs."). Even the dissent in *Gundy*, which favored stricter limits on delegation, explicitly distinguished cases dealing with "foreign affairs

powers," which "are constitutionally vested in the president under Article II," so there is "no separation-of-powers problem" with "a congressional statute [that] confers wide discretion to the executive" in this area. 139 S. Ct. at 2137 (Gorsuch, J., dissenting) (citing *Curtiss-Wright*).

Consistent with this view, the Supreme Court in *Knauff* rejected a nondelegation challenge to § 1182(f)'s predecessor, which authorized the President to, "upon finding that the interests of the United States required it, impose additional restrictions and prohibitions on the entry into . . . the United States during the national emergency proclaimed May 27, 1941." 338 U.S. 541. The Court held this law was not an "unconstitutional delegation[] of legislative power," explaining "there [wa]s no question of inappropriate delegation of legislative power involved" because "[t]he exclusion of aliens is a fundamental act of sovereignty." *Id*. at 542. The President's authority to exclude aliens "stems not alone from legislative power but is inherent in the executive power to control the foreign affairs of the nation." *Id*. The Supreme Court has emphasized that broad delegations of authority in this area "find overwhelming support in the unbroken legislative practice which has prevailed almost from the inception of the national government." *Curtiss-Wright*, 299 U.S. at 321-24. Thus, § 1182(f) "does not set forth any judicially enforceable limits that constrain the President"; "[n]or could it, since the President has *inherent* authority to exclude aliens from the country."

Hawaii, 138 S. Ct. at 2424 (Thomas, J., concurring); *see also Doe*, 2019 WL 7042420, at *4 (Bress, J., dissenting) (noting that the injunction is based on the "mistaken assumption that the President's authority in this area is entirely delegated").

As the Supreme Court explained in *Youngstown*, the President's power to act "must stem either from an act of Congress or from the Constitution itself." 343 U.S at 585. Unlike the steel seizure order in *Youngstown*, which was not authorized by any statute or constitutional provision, *id.* at 585-87, here the President acted both pursuant to his inherent executive power over foreign affairs *and* a broad, express delegation of authority in § 1182(f). When the President "acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate." *Id*. at 635 & n.2 (Jackson, J., concurring) (citing as the primary example of this class of cases the President's power over foreign or external affairs). The Proclamation is thus a quintessential exercise of the President's power at its peak. *Id*. at 635-37.

The district court attempted to avoid these clearly contrary Supreme Court decisions by limiting *Knauff* and the permissible constitutional scope of § 1182(f)'s delegation to cases of "national emergency." ER 22. But in *Hawaii*, the Supreme Court rejected that argument. 138 S. Ct. at 2412-13. The Court noted that, despite

borrowing other language from these previous statutes "nearly verbatim" in § 1182(f), Congress explicitly *removed* the national emergency requirement in § 1182(f), and lawfully broadened the delegation. *Id*. The district court also attempted to distinguish *Hawaii* on the basis that "the Supreme Court did not specifically address the nondelegation doctrine," ER 24, but the issue was squarely before the Supreme Court. In *Hawaii*, this Court had ruled that § 1182(f) must be narrowly construed as a matter of constitutional avoidance to prevent nondelegation concerns, and Plaintiffs challenged § 1182(f) as an unconstitutional delegation in their brief to the Supreme Court. *See Hawaii v. Trump*, 878 F.3d 662, 690-92 (9th Cir. 2017); S. Ct. Br. for Respondents at 16-17, 51-52. The Supreme Court nonetheless upheld the "comprehensive delegation" of authority in § 1182(f) and rejected a rule of constitutional law that "would inhibit the flexibility" of the President "to respond to changing world conditions" pursuant to this type of comprehensive delegation. *Hawaii*, 138 S. Ct. at 2408, 2419-20.

The district court also attempted to distinguish earlier proclamations by reasoning that "nondelegation concerns are lessened" in cases that involve "foreign relations or national security" and concluded that this was not such a case. ER 25. But the lesson of Supreme Court precedent is that entry of aliens from abroad is *always* a foreign affairs matter over which the President has independent constitutional authority. *Knauff*, 338 U.S. at 542. In *Hawaii*, the Supreme Court

cited approvingly a number of cases that discussed the President's broad authority in this sphere even in the absence of an explicit national security or foreign affairs goal. 138 S. Ct. at 2408 (citing *Sale*, 509 U.S. 155, and *Abourezk v. Reagan*, 785 F.2d 1043 (D.C. Cir. 1986), *aff'd* 484 U.S. 1 (1987)). This authority derives from political branches' shared Constitutional authority to exclude noncitizens, where it is permissible to delegate to the President the role of determining which noncitizens would have a detrimental impact if allowed to enter the United States.

The Proclamation does not, as the district court held, deal solely with "*domestic* policymaking," ER 25, because immigration from foreign countries where visa applications are adjudicated by consular officers, necessarily implicates protecting the United States from identified harms, and thus the Proclamation fits squarely within the President's foreign affairs powers. *See, e.g.*, *Nishimura Ekiu*, 142 U.S. at 659 (explaining that "the department of state, having the general management of foreign relations," can be assigned the role of determining which aliens may be permitted to travel to the United States); *Curtiss-Wright*, 299 U.S. at 321 (noting the "marked difference between foreign affairs and domestic affairs" in distinguishing the actions of the State Department from other executive departments); *Fong Yue Ting v. United States*, 149 U.S. 698 705 (1893) ("the exclusion of aliens" is a matter of "international relations," and a constitutional power exercised by the President).

Further, contrary to the district court's ruling, the exclusion of noncitizens from abroad does not become *solely* a domestic-policy issue simply because the entry of some aliens would impose harms within the United States. Section 1182(f) speaks to aliens whose entry *into* the United States would be detrimental, so the harm being addressed will often occur domestically. *See, e.g.*, *Hawaii*, 138 S. Ct. at 2404 (upholding restriction on entry of individuals who could pose a threat to individuals *within* the United States). Presidents have in the past exercised this authority to exclude certain noncitizens to advance domestic interests. *See, e.g.*, Executive Order No. 12807, 57 Fed. Reg. 23133 (1992) (aimed at the "serious problem of persons attempting" to enter the U.S. "illegally" and "without necessary documentation"); Proclamation No. 4865, 46 Fed. Reg. 48107 (1981) (suspending entry of undocumented individuals who, if allowed to enter, would strain "law enforcement resources" and threaten "the welfare and safety of communities" within the United States). Yet no court has ever concluded or suggested that § 1182(f) violates the nondelegation doctrine. Instead, the Supreme Court has expressly rejected the limits on the President's authority that the district court imposed here. "The district court's novel decision ignores this well-settled law and fails to accord the political branches the deference they are understandably due in this area." *Doe*, 2019 WL 7042420, at *4 (Bress, J., dissenting).

D. The Proclamation does not violate separation of powers or the INA.

The district court alternatively held that the Proclamation is unconstitutional—a violation of separation of powers—because it conflicts with various other provisions of the INA, including the "public charge" ground of inadmissibility in 8 U.S.C. § 1182(a)(4). ER 26-31. That is incorrect. The Proclamation does not conflict at all with the public-charge provision or any other part of the INA—much less have Plaintiffs shown the sort of "express[ ] override" of some INA provision that would be necessary for them to prevail on their challenge. *Hawaii*, 138 S. Ct. at 2411.

Section 1182(f) vests broad authority in the President to impose *additional* limitations on entry beyond the inadmissibility grounds in the INA. The district court disregarded what the Supreme Court made clear just eighteen months ago in *Hawaii*: "[T]hat § 1182(f) vests the President with 'ample power' to impose entry restrictions *in addition* to those elsewhere enumerated in the INA." 138 S. Ct. at 2408 (emphasis added) (quoting *Sale*, 509 U.S. at 187); *see also Abourezk*, 785 F.2d at 1049 n.2 (describing § 1182(f)'s "sweeping proclamation power" as enabling the President to supplement the INA inadmissibility grounds). Congress's enactment of particular bars to admissibility like the public charge provision thus does not limit the President's authority under § 1182(f) to find that entry of other aliens would be detrimental to the United States. *See Doe*, 2019 WL 7042420,

at *5 (Bress, J., dissenting). This is the purpose of § 1182(f): to permit the President to restrict the entry of aliens who otherwise would be admissible to the United States. *Hawaii*, 138 S. Ct. at 2412.

In *Hawaii*, the Supreme Court rejected an argument virtually identical to the district court's reasoning, and no Justice dissented from that aspect of the Court's holding. There, plaintiffs argued that Proclamation No. 9645 exceeded the President's authority because it addressed vetting concerns that Congress had already addressed through the Visa Waiver Program and individualized vetting. *Id.* at 2410-12. Plaintiffs argued that the proclamation's entry restrictions overrode Congress's individualized vetting system. *Id.* The Court rejected these arguments because the proclamation did not "expressly override particular provisions of the INA." *Id.* at 2411. The Court refused to sanction a "cramped" reading of the President's authority under § 1182(f) based on plaintiffs' attempt to identify implicit limits on the President's authority in other provisions of the INA. *Id.* at 2412. Instead, the Court held that § 1182(f) gives the President authority to impose *additional* limitations on entry. *Id.*

In *Sale*, the Supreme Court similarly held that it is "perfectly clear that 8 U.S.C. § 1182(f)" grants the President "ample power to establish a naval blockade that would simply deny illegal Haitian migrants the ability to disembark on our shores." 509 U.S. at 187-88. This is true even though Congress specifically

provided migrants with a statutory right to seek asylum if they reach our shores. *Id.* Similarly, *Abourezk* addressed whether an INA provision permitted exclusion of an alien whose presence or entry would be detrimental to public welfare, or whether the provision required a finding that the alien would engage in detrimental activities after entry. 785 F.2d at 1053. The D.C. Circuit noted that, even if Congress had not permitted exclusion of aliens solely on the basis that their "mere entry would threaten" the country's interests, "the Executive would not be helpless" because he still "may act pursuant to section 1182(f) to suspend or restrict 'the entry of any aliens or any class of aliens' whose presence here he finds 'would be detrimental to the best interests of the United States.'" *Id*. at 1053 n.2. Thus, the Executive's authority in § 1182(f) to suspend entry of certain classes of aliens "preserve[s] the President's potency in this area" regardless of "the formulation Congress adopted" for inadmissibility in the INA. *Id*.

Critically, the statutory grounds of inadmissibility are not provisions that affirmatively permit entry whenever they do not apply and therefore would be "expressly overrid[den]," *Hawaii*, 148 S. Ct. at 2411, by a Proclamation establishing additional bars on entry; instead, they are provisions that prevent entry, which may be supplemented by the President under the authority Congress conferred in § 1182(f). It is thus not uncommon for Presidential proclamations to address harms that are quite similar to existing statutory grounds of inadmissibility.

For example, Presidential Proclamation 8342 bars entry of foreign government officials responsible for failing to combat human trafficking, 74 Fed. Reg. 4093 (Jan. 22, 2009), even though Congress separately made human traffickers inadmissible. *See* 8 U.S.C. § 1182(a)(2)(H); *compare also* 8 U.S.C. § 1182(a)(3)(E) (inadmissibility for genocide, Nazi persecution, and acts of torture or extrajudicial killings), *with* Proclamation No. 8697, 76 Fed. Reg. 49277 (Aug. 9, 2011) (covering persons participating in violence based on race, religion, and similar grounds or who participated in war crimes, crimes against humanity, and serious violations of human rights), *and* Proclamation No. 7452, 66 Fed. Reg. 34775 (June 29, 2001) (covering persons responsible for wartime atrocities); *compare* 8 U.S.C. § 1182(a)(2) (setting out specific grounds of inadmissibility based criminal conduct), *with* Proclamation No. 7750, 69 Fed. Reg. 2287 (Jan. 12, 2004) (covering persons engaged in or benefitting from corruption).

Consistent with this long line of authority, Proclamation 9945 complements the existing provisions of the INA and establishes an additional bar to entry based on a distinct harm to the national interest—the high rate at which new immigrants lack healthcare coverage and the costs and burdens this imposes on the healthcare system. The Proclamation thus explicitly addresses harms that would not be covered by the public charge grounds, such as uncompensated healthcare costs borne by private healthcare providers and the burden imposed by those relying on

emergency room care for basic needs. 84 Fed. Reg. 53,991. These harms called for a tailored solution, the need for intending immigrants to have a plan for healthcare. The Proclamation addresses this problem in a targeted way, by permitting a noncitizen to enter once she shows that she will be covered by approved health insurance—where there is already a developing market to meet needs through readily available plans at various price points—or has adequate financial resources to cover reasonably foreseeable medical costs.

The public charge provision, on the other hand, renders inadmissible, with limited exceptions, an alien who is likely to become a public charge. Importantly, nothing in the Proclamation alters the public charge analysis; consular officers must still evaluate inadmissibility under § 1182(a)(4) irrespective of the Proclamation. 84 Fed. Reg. 53,993 ("The review required by [the Proclamation] is separate and independent from the review . . . required by other statutes . . . in determining the admissibility of an alien."). The Proclamation cannot "expressly override" the public-charge provision, *Hawaii*, 138 S. Ct. at 2411, when it has no impact *at all* on how consular officers administer that provision.

For similar reasons, the district court was wrong to find any inconsistency with Congressional actions relating to the inadmissibility of "paupers" or the exceptions to the public charge ground of inadmissibility. ER 33-34. As an initial matter, Plaintiffs' motion for a preliminary injunction did not raise any arguments

based on provisions addressing "paupers." The district court nonetheless held that Plaintiffs were likely to succeed on a claim they had not raised, that the Proclamation "reinstate[s] a bar that Congress expressly eliminated from the INA—the bar to 'paupers,'" a term that previously was included in the public charge ground of inadmissibility. *Id.*; *see also City & Cty. of San Francisco v. USCIS*, 944 F.3d 773, 793 (9th Cir. 2019) ("In 1910, Congress enacted a statute that deemed 'paupers; persons likely to become a public charge; professional beggars;' and similar people inadmissible."). Contrary to the district court's ruling, the Proclamation does not "categorically exclude 'paupers' from entry," ER 35—it does not even mention the words "pauper," "indigent," "poor," or "public charge," for that matter. Nor does the Proclamation affect who a consular officer might find is likely to become a public charge; as explained above, it addresses a different harm and operates independently of the INA's inadmissibility provisions. Moreover, Congress's decision to remove the reference to paupers from the public charge provision cannot be read as a decision to affirmatively permit or require entry of these individuals, so there is no express conflict with the Proclamation.

The district court also incorrectly found the Proclamation inconsistent with 8 U.S.C. § 1182(a)(4)(E), which exempts victims of certain crimes, and their relatives, from the public charge ground of inadmissibility. There are several problems with this conclusion. First, Plaintiffs lacked standing to assert such a

conflict, as none of them even had alleged that they or their family members would fall under that exemption. *See Town of Chester, N.Y. v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1651 (2017) ("For all relief sought, there must be a litigant with standing" as "standing is not dispensed in gross"). Moreover, neither § 1182(a)(4)(E), nor any other provision in the INA speaks to a broad "financial burden" exemption that guarantees a noncitizen will be admissible, and § 1182(a)(4)(E) certainly does not prevent the President from exercising his authority under § 1182(f) to suspend the entry of aliens who might otherwise be admissible. Although Congress might enact particular conditions for, or exceptions to, a ground of inadmissibility, these limitations do not cabin the President's § 1182(f) authority to suspend entry *even when* suspending entry of a similar group of aliens. *Hawaii*, 138 S. Ct. at 2410-12.

II. The remaining factors weigh against a preliminary injunction.

A. Plaintiffs failed to show irreparable injury absent injunctive relief.

Contrary to the district court's conclusion, Plaintiffs have not established that they would suffer irreparable injury absent an injunction. To be sure, the "Proclamation concerns matters of great consequence," *Doe*, 2019 WL 7042420, at *2 (Bress, J., dissenting), but because the alleged harm to Plaintiffs is wholly speculative and far from irreparable, "the law prevented the district court from doing what it did here," *id*.

Rather than require Plaintiffs to "demonstrate immediate threatened injury as a prerequisite to preliminary injunctive relief," *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988), the district court improperly relied on speculation upon speculation to find that the Proclamation could cause Plaintiffs' family members to "leave the United States for an indefinite period of time" while they seek immigrant visas abroad. ER 35-36. The district court had to rely on a long chain of hypotheticals to construct this highly speculative injury, and a "[s]peculative injury does not constitute irreparable injury sufficient to warrant granting a preliminary injunction." *Id.*; *see also Park Vill. Apartment Tenants Ass'n v. Mortimer Howard Tr.*, 636 F.3d 1150, 1160 (9th Cir. 2011) ("An injunction will not issue if the person or entity seeking injunctive relief shows a mere 'possibility of some remote future injury.'") (quoting *Winter*, 555 U.S. at 22).

The district court first found that two of the named Plaintiffs "had interviews scheduled that were postponed due to the Proclamation." ER 36. But the Proclamation did not force them to postpone their interviews. Moreover, the district court supposed it "likely that those interviews will be rescheduled before a decision on the merits," ER 36, but there is no support for that in the record.

According to Plaintiffs' allegations, they have no information about potential dates for when their interviews will be rescheduled.[3] ER 148, ¶ 14; ER 144, ¶ 10.

The district court next found that those two Plaintiffs were "not likely to meet the requirements of the Proclamation, and there is no indication that they will otherwise fail any of the requirements of § 1182(a)"—in other words, no indication that they will otherwise be ineligible for immigrant visas. ER 36. Again, both of these assumptions are entirely unsupported by the record. There are myriad eligibility requirements that a consular officer must assess, and Plaintiffs provided no information about how they believed they were otherwise eligible for immigrant visas, let alone show that a consular officer would find them eligible but for the Proclamation. The district court also accepted Plaintiffs' bare allegations that "they cannot afford the [health insurance] plans that are available to them," ER 36, even though Plaintiffs did not specify what plans they considered available to them or why they could not afford a single one of those plans. As detailed above, the Proclamation sets out a range of approved health insurance plans that immigrant

[3] Indeed, in their Motion for Temporary Restraining Order, Plaintiffs argued that they faced irreparable harm because some Plaintiffs had consular interviews scheduled for the first week of November—the week following the TRO hearing. *See, e.g.*, ER 234. After obtaining a universal TRO based on that alleged harm, Plaintiffs revealed in their PI motion that the individuals who had been scheduled for consular interviews already had postponed those interviews prior to the TRO hearing, ER 194-95, but they did not disclose this development in arguing for a TRO on that basis at the TRO hearing on November 2, 2019, *see* ER 148, ¶ 14; ER 144, ¶ 10; ER 206, 18-25.

visa applicants can obtain to demonstrate to the consular officer that they satisfy the Proclamation's requirements. 84 Fed. Reg. 53,992. These include unsubsidized health plans offered in a state's individual market, employer-sponsored plans, a family member's plan, and certain short-term and visitor plans. *Id*. And there is already a developing private visitor insurance marketplace to provide insurance options in order to satisfy the Proclamation. *See, e.g.*, www.visitorscoverage.com/2019-Presidential-Proclamation-Immigrant-Insurance/ (offering range of visitor plans at range of prices). There is no evidence that Plaintiffs actually considered the full range of available options before alleging that they cannot afford any plans. Similarly, the district court relied on Plaintiffs' unsupported assertions of "existing health problems" that would "result in reasonably [foreseeable] medical expenses," ER 36, despite Plaintiffs' failure to provide details about those "health problems," the expected cost of medical care, or why it would be unaffordable.

In addition, the district court also ignored that Plaintiffs failed to establish, as they must, that any harm stemming from the Proclamation would be irreparable. At the end of a consular interview, the consular officer will either issue or refuse the visa. 22 C.F.R. § 42.81(a). If the officer refuses the visa application, the officer must inform the applicant orally and in writing of the provision of law under which the visa has been refused. 8 U.S.C. § 1182(b); 9 FAM § 504.11-3. For example, if

a consular officer is not satisfied that the applicant is eligible for the visa and requests additional documentation consistent with 8 U.S.C. § 1202(b), the consular officer can refuse the visa under 8 U.S.C. § 1201(g), and inform the applicant of the additional information she may need to submit to establish eligibility. The applicant would then have a full year to provide the additional information and seek reconsideration of their eligibility for a visa on that same visa application. 22 C.F.R. § 42.81(e). This further undermines the district court's conclusion that Plaintiffs are "likely to suffer irreparable harm before a decision on the merits can be rendered." ER 35 (quoting *Boardman v. Pac. Seafood Grp.*, 822 F.3d 1011 (9th Cir. 2016)).

Accordingly, the district court's conclusion that irreparable harm is likely to occur is based on a finding that a Plaintiff's intending immigrant relative would have an interview scheduled in the near future, *and* the intending immigrant would meet all other visa eligibility requirements, *and* would be unable to provide sufficient information to show an intent to seek approved health insurance or sufficient financial resources for reasonably foreseeable medical expenses, *and* if the visa was refused solely under the Proclamation, *also* could not provide satisfactory information over the next year to establish she was not subject to the Proclamation's restrictions, *and* that the district court would not be able to render a decision on the merits of Plaintiffs' claims over the next year following those

future interviews. This unlikely chain of hypotheticals simply cannot be the basis for a preliminary injunction. *See Winter*, 555 U.S. at 22 (mere "possibility" of harm insufficient).

Even if, as the district court speculated, intending immigrant family members may be outside of the United States for some period beyond the time otherwise normally required for consular processing, ER 35-36, there is no "right to reside in the United States with non-citizen family members," *Gebhardt v. Nielsen*, 879 F.3d 980, 988 (9th Cir. 2018). And courts have held that delays of three to five years in processing of immigrant visas—which can be a lengthy process to begin with—are reasonable. *See, e.g.*, *Siwen Zhang*, 2019 WL 3241187, at *5. Plaintiffs established nothing approaching that kind of delay.

Finally, the district court erred in finding that organizational Plaintiff Latino Network would suffer irreparable harm by "divert[ing] resources and abandon[ing] a significant portion of its core mission." ER 36-37.[4] Latino Network represents that its "mission is to educate and empower Multnomah County Latinos to achieve physical and mental health," including through providing "health and wellness

[4] The district court's finding that the government did "not address the irreparable harm claimed by Plaintiff Latino Network," ER 36, is also incorrect, *see, e.g.*, ER 140 ("Even if it could establish standing, increased expenses in assisting clients with obtaining health insurance—which presumably would benefit their clients—is not the type of irreparable injury that justifies injunctive relief at all, much less a nationwide injunction.").

programs." ER 282, ¶ 21; ER 359, ¶ 214. It is unclear how ensuring compliance with the Proclamation—which encourages planning for medical costs—is somehow contrary to that mission.

B. The balance of hardships and public interest weigh against injunctive relief.

The balance of harms and the public interest also weigh against injunctive relief here. A party seeking a preliminary injunction must demonstrate that "the balance of equities tilts in [its] favor, and that an injunction is in the public interest." *Winter*, 555 U.S. at 20. "These factors merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

Here, in contrast to Plaintiffs' failure to demonstrate irreparable harm from the Proclamation, the injunction "produces irreparable harm every day it persists." *Doe*, 2019 WL 7042420, at *4 (Bress, J., dissenting). As set out in the Proclamation, the President issued PP 9945 to address the "substantial costs" U.S. healthcare providers and taxpayers bear "in paying for medical expenses incurred by people who lack health insurance or the ability to pay for their healthcare." 84 Fed. Reg. 53,991. Hospitals and other healthcare providers "often administer care to the uninsured without any hope of receiving reimbursement from them," and these costs are passed on to the American people in the form of higher taxes, higher premiums, and higher fees for medical services. *Id*. Uncompensated care costs have exceeded $35 billion in each of the last 10 years, a

burden that can drive hospitals into insolvency. *Id*. The uninsured also strain Federal and State government budgets through reliance on publicly funded programs, which are ultimately funded by taxpayers. *Id*. The lack of insurance also causes new arrivals to unnecessarily disrupt the provision of emergency services by using emergency rooms for treatment of a variety of non-emergency conditions. *Id*.; *see also Doe*, 2019 WL 7042420, at *5 (Bress, J., dissenting).

The impact of the injunction is permanent because the Proclamation does not apply to an immigrant once she has been admitted to the United States. 84 Fed. Reg. 53,992-93. Thus, the chance to encourage immigrants to obtain any necessary healthcare coverage is lost, and "the government can never recover health care costs incurred by individuals admitted during the period that the district court's injunction remains in place." *Doe*, 2019 WL 7042420, at *5 (Bress, J., dissenting). Notably, "data show that lawful immigrants are about three times more likely than United States citizens to lack health insurance." 84 Fed. Reg. 53,991. Plaintiffs do not dispute that figure, and their insistence that the Proclamation would affect a large percentage of immigrants effectively concedes that the harm caused by the injunction "is not only irreparable, but significant." *City & Cty. of San Francisco*, 944 F.3d at 806; *see also Doe*, 2019 WL 7042420, at *6 (Bress, J., dissenting). Other harms identified in the Proclamation, such as "disruption in the provision of

emergency services," also will continue for the duration of the injunction. *Doe*, 2019 WL 7042420, at *5 (Bress, J., dissenting).

The district court's universal injunction also invalidates the President's application of an Act of Congress, undermines the Executive Branch's constitutional and statutory authority over immigration, and constitutes an "unwarranted judicial interference in the conduct of foreign policy." *Kiobel v. Royal Dutch Petroleum*, 569 U.S. 108, 116 (2013). Enjoining the President from taking action effectuating an Act of Congress always imposes irreparable harm. *Cf. Maryland v. King*, 133 S. Ct. 1, 3 (2012) (Roberts, C.J., in chambers); *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers) (noting that "any time a State is enjoined from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury"). Here, that harm is particularly acute because the injunction affects the entry of noncitizens, a core power assigned to the political branches. In imposing that harm, the injunction invalidates the President's application of an important Act of Congress that gives the President authority and flexibility to adopt restrictions on entry beyond the existing statutory grounds whenever he identifies a detriment to the national interest that Congress has not sufficiently addressed in existing provisions. *See Doe*, 2019 WL 7042420, at *5 (Bress, J., dissenting). It also undermines the President's authority at the core of his power under Article II to

protect the United States from harms from abroad. *Cf. Hawaii*, 138 S. Ct. at 2419-20 (noting that "'[a]ny rule of constitutional law that would inhibit the flexibility' of the President 'to respond to changing world conditions should be adopted only with the greatest caution,'" and thus a court's "inquiry into matters of entry" is "highly constrained" (quoting *Mathews v. Diaz*, 426 U.S. 67, 81-82 (1976))). The injunction therefore creates "an unprotected spot in the Nation's armor," *Chew v. Colding*, 344 U.S. 590, 602 (1953), that Congress cannot easily close, and it undermines the political branches' legitimate interests in regulating entry to protect the country from harms from abroad. The balance of harms thus strongly favors setting aside the preliminary injunction.[5]

III. Even if injunctive relief were warranted, universal injunctive relief is not warranted in this case.

The "extraordinary scope of the district court's injunction" directly conflicts with recent decisions from the Supreme Court and this Court addressing the permissible scope of preliminary injunctive relief. *See Doe*, 2019 WL 7042420, at *6 (Bress, J., dissenting). Thus, even if the injunction is not vacated entirely, it should be narrowed.

[5] For these same reasons, even if Plaintiffs had demonstrated "serious questions going to the merits" under this Court's alternative preliminary injunction standard, they certainly did not show "a balance of hardships that tips sharply" in Plaintiffs' favor. *See All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

The universal injunction defies the rule that, under Article III, a "plaintiff's remedy must be tailored to redress the plaintiff's particular injury," *Gill v. Whitford*, 138 S. Ct. 1916, 1934 (2018), and must "be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs," *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994). This is "because a court's role is 'to provide relief' only 'to claimants . . . who have suffered, or will imminently suffer, actual harm.'" *Trump v. Int'l Refugee Assistance Project (IRAP)*, 137 S. Ct. 2080, 2090 (2017) (Thomas, J., concurring in part and dissenting in part) (quoting *Lewis v. Casey*, 518 U.S. 343, 349 (1996)). These principles apply with even greater force to a preliminary injunction, which is an equitable tool designed merely to preserve the status quo during litigation. *University of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981); *see also Doe*, 2019 WL 7042420, at *6 (Bress, J., dissenting) ("[W]hile the plaintiffs assume that the status quo is a world without the Presidential Proclamation . . . the actual status quo is a legal environment in which the President possesses 'sweeping proclamation power in § 1182(f),' and in which Proclamation No. 9945 is therefore authorized." (quoting *Hawaii*, 138 S. Ct. at 2408)).

This Court recently expressed concern that universal injunctions "deprive" other parties of "the right to litigate in other forums." *California v. Azar*, 911 F.3d 558, 583 (9th Cir. 2018). The "Supreme Court has repeatedly emphasized that

nationwide injunctions have detrimental consequences to the development of law and deprive appellate courts of a wider range of perspectives." *East Bay Sanctuary Covenant v. Barr*, 934 F.3d 1026, 1030 (9th Cir. 2019); *see also Califano v. Yamasaki*, 442 U.S. 682 (1979). Therefore, this Court recently has rejected universal injunctions on multiple occasions and in similar contexts where the "specific harm" alleged could be remedied more narrowly. *East Bay*, 934 F.3d at 1029-30; *Azar*, 911 F.3d at 584 (limiting a nationwide injunction to "the plaintiff states" as that would "provide complete relief to them"); *see also IRAP*, 137 S. Ct. at 2088; *City & Cty. of San Francisco v. Trump*, 897 F.3d 1225, 1244 (9th Cir. 2018).

The district court dismissed these recent decisions and instead cited to a few district court cases—and one unpublished, two-paragraph order from this Court—to support the proposition that, "when a plaintiff requests preliminary injunctive relief before class certification has been decided, a court may consider the harm to the putative class and grant classwide appropriate preliminary injunctive relief to preserve the *status quo*." ER 43-44. But such a standard "would justify nationwide injunctions in every putative class action, contrary to law." *Doe*, 2019 WL 7042420, at *6 (Bress, J., dissenting). It is well established that a district court may grant relief to a putative class before a ruling on class certification only if necessary to afford complete relief *to the named plaintiffs*, not to the putative class.

Azar, 911 F.3d at 582 (explaining that this "rule applies with special force where there is no class certification"); *East Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 779 (9th Cir. 2018) (citing *Bresgal v. Brock*, 843 F.2d 1163, 1170 (9th Cir. 1987)). In addition to misapplying the law, the cases the district court cited are inapposite. For example, in *J.L. v. Cissna*, 341 F. Supp. 3d 1048 (N.D. Cal. 2018), the injunction extended to a narrow putative class of children in one state, and the named plaintiffs were indisputably members of the class. In *Chhoeun v. Marin*, 306 F. Supp. 3d 1147 (C.D. Cal. 2018), the injunction was tailored to apply only to 92 specific individuals. And the unpublished, two-paragraph order from this Court, *Just Film, Inc. v. Merchant Servs., Inc.*, 474 F. App'x 493 (9th Cir. 2012), emphasized that the injunction at issue had been "carefully tailored." There was no such careful tailoring here.

Moreover, the district court did not even address whether "provisional" class certification would be appropriate under a preliminary injunction standard. Indeed, in response to the government's argument that classwide relief should not be granted on behalf of a putative class that could not possibly meet the requirements of Rule 23, the court held that it was not "require[d] . . . [to] engage" in any "analysis under Rule 23" before granting "classwide relief." ER 45. This lack of analysis "short-circuits the procedures for class certification by giving thousands of

persons not before the court the relief that the class certification process is designed to evaluate." *Doe*, 2019 WL 7042420, at *6 (Bress, J., dissenting).

Among other problems with the putative class, at the time of the district court's ruling, a substantial portion of the class—the "visa applicant subclass"—did not have a class representative. The only named individual Plaintiffs were U.S. citizens who had sponsored noncitizen spouses and parents for immigrant visas. Plaintiffs later conceded this by insisting that their First Amended Complaint now has "at least one representative of each subclass." Opposition to Motion for Stay Pending Appeal, *Doe v. Trump*, No. 19-36020, at 22 n.5 (9th Cir. Dec. 16, 2019). But the amended complaint was filed *after* the district court issued the universal injunction based on a putative "U.S. petitioner subclass." Moreover, the new purported named plaintiff, a spouse of a U.S. citizen, is in a far different position than the many intending immigrants covered by the injunction who have no familial connection to the United States. *Hawaii*, 138 S. Ct. at 2419; *Mandel*, 408 U.S. at 762 (1972); *see also IRAP*, 137 S. Ct. at 2088-89 (noting that the equities "do not balance the same way" in the context of "foreign nationals abroad who have no connection to the United States" and staying injunction to the extent it applied to foreign nationals who could not "credibly claim a bona fide relationship with a person or entity in the United States").

In any case, a universal injunction is wholly unnecessary to provide relief to the seven individual Plaintiffs. And even if the court could consider alleged harms to the organizational Plaintiff with a dubious claim of standing, the injunction is vastly overbroad. According to Plaintiffs, Latino Network's clients all live in Multnomah County. There is no basis for issuing a universal, worldwide injunction to remedy potential harms to a handful of individual Plaintiffs and an organizational Plaintiff whose clients are limited to one county. At a minimum, the injunction should be stayed as to everyone other than the individual named Plaintiffs and specifically identified clients of Latino Network. *See U.S. Dep't of Def. v. Meinhold*, 510 U.S. 939 (1993); *Log Cabin Republicans v. United States*, 658 F.3d 1162, 1167-68 (9th Cir. 2011); *Azar*, 911 F.3d at 584.

CONCLUSION

For these reasons, the Court should reverse the district court's decision and vacate the preliminary injunction.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Ninth Circuit Rule 32-1(a) because it contains 13,894 words. This brief also complies with the typeface and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared in a proportionally spaced typeface using Word 14-point Times New Roman font.

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CERTIFICATE OF SERVICE

I hereby certify that on January 2, 2020, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

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