No. 20-1775

In the Supreme Court of the United States

STATE OF ARIZONA, ET AL., PETITIONERS

v.

CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS

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QUESTION PRESENTED

Whether the court of appeals erred or abused its discretion in denying petitioners' motion to intervene to challenge preliminary injunctions against enforcement of a federal rule that had already been vacated in a separate judicial decision at the time of petitioners' motion.

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OPINIONS BELOW

The order of the court of appeals denying intervention (Pet. App. 1-40) is reported at 992 F.3d 742. The opinion of the court of appeals affirming in part the district courts' preliminary injunctions (Pet. App. 41-89) is reported at 981 F.3d 742. The opinion of the court of appeals granting a stay pending appeal of the district courts' preliminary injunctions (Pet. App. 90-170) is reported at 944 F.3d 773. The district courts' orders granting plaintiffs' motions for preliminary injunctions (Pet. App. 171-307, 308-368) are reported at 408 F. Supp. 3d 1057 and 408 F. Supp. 3d 1191.

JURISDICTION

The order of the court of appeals denying intervention was entered on April 8, 2021. The petition for a writ of certiorari was filed on June 18, 2021, and was granted

on October 29, 2021. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

RULES INVOLVED

Pertinent provisions of the Federal Rules of Civil Procedure are reproduced in the appendix to this brief. App., *infra*, 1a-4a.

STATEMENT

This case concerns a 2019 rule modifying the criteria for determining whether certain noncitizens are eligible to be admitted to the United States or to adjust their status to that of lawful permanent residents. Despite being in effect for more than a year, the rule resulted in adverse decisions with respect to just five applications for adjustment of status. But the rule sparked extensive litigation—first in a wave of suits by States and others challenging the rule, and now in efforts by other States to intervene to defend it.

A. The 2019 Rule And The Resulting Legal Challenges

1. The Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, provides that an applicant for admission or adjustment of status is "inadmissible" if, "in the opinion of the [Secretary of Homeland Security] at the time of application for admission or adjustment of status," the applicant "is likely at any time to become a public charge." 8 U.S.C. 1182(a)(4)(A).[1] In August 2019, the United States Department of Homeland Security (DHS) adopted a rule under which DHS would treat certain applicants for admission or adjustment of status as likely to become "public charge[s]" for purposes of

[1] The statute refers to the Attorney General, but Congress has transferred authority to make such determinations in the relevant circumstances to the Secretary. See 8 U.S.C. 1103; 6 U.S.C. 557; see also 6 U.S.C. 211(c)(8).

that provision if the agency determined that the applicants were likely to receive specified public benefits, including Medicaid or Supplemental Nutrition Assistance Program benefits, for more than 12 months (in aggregate) within any 36-month period. 84 Fed. Reg. 41,292, 41,501 (Aug. 14, 2019) (2019 Rule). The 2019 Rule was a significant departure from the definition and standards that DHS had used for decades in applying the public-charge ground of inadmissibility.

2. Plaintiffs who had opposed adoption of the 2019 Rule filed suits in five district courts in four circuits alleging that the rule was unlawful on numerous grounds.

a. All five district courts concluded that the 2019 Rule was likely unlawful, and they each entered preliminary injunctions in October 2019 barring the rule from taking effect. See *Make the Road N.Y.* v. *Cuccinelli*, 419 F. Supp. 3d 647 (S.D.N.Y. 2019); *New York* v. *DHS*, 408 F. Supp. 3d 334 (S.D.N.Y. 2019); *Cook County* v. *McAleenan*, 417 F. Supp. 3d 1008 (N.D. Ill. 2019); *Casa de Maryland, Inc.* v. *Trump*, 414 F. Supp. 3d 760 (D. Md. 2019); Pet. App. 171-307 (N.D. Cal.); Pet. App. 308-368 (E.D. Wash.).

The government sought stays pending appeal. The Fourth and Ninth Circuits granted stays of the preliminary injunctions entered in their jurisdictions, see Order, *Casa de Maryland, Inc.* v. *Trump*, No. 19-2222 (4th Cir. Dec. 9, 2019); Pet. App. 90-170, while the Second and Seventh Circuits declined to do so, see *New York* v. *DHS*, No. 19-3591, 2020 WL 95815 (2d Cir. Jan. 8, 2020); Order, *Cook County* v. *Wolf*, No. 19-3169 (7th Cir. Dec. 23, 2019). This Court subsequently granted the government's motions for stays of the preliminary injunctions entered in Illinois and New York. See *Wolf* v. *Cook*

County, 140 S. Ct. 681 (2020); *DHS* v. *New York*, 140 S. Ct. 599 (2020).

b. DHS began implementing the 2019 Rule in February 2020. See *New York* v. *DHS*, 969 F.3d 42, 58 (2d Cir. 2020). The government's appeals of the preliminary injunctions proceeded, and the Second, Seventh, and Ninth Circuits affirmed the injunctions entered in their respective jurisdictions. See *id.* at 50, 88-89; *Cook County* v. *Wolf*, 962 F.3d 208 (7th Cir. 2020); Pet. App. 41-89. Although the Ninth Circuit affirmed the preliminary injunctions entered by the district courts in California and Washington, it narrowed their scope to the plaintiffs' jurisdictions (*i.e.*, to the District of Columbia and 18 States that did not include petitioners). Pet. App. 87-88.[2] The government filed petitions for writs of certiorari seeking this Court's review of all three decisions. See *DHS* v. *New York*, No. 20-449 (filed Oct. 7, 2020); *Wolf* v. *Cook County*, No. 20-450 (filed Oct. 7, 2020); *United States Citizenship & Immigration Services* v. *City & County of San Francisco*, No. 20-962 (submitted on Jan. 19, 2021, and docketed on Jan. 21, 2021).

A divided panel of the Fourth Circuit initially reversed the preliminary injunction entered by the District of Maryland, see *Casa de Maryland, Inc.* v. *Trump*, 971 F.3d 220 (2020), but the en banc court vacated that decision and set the case for re-argument, see 981 F.3d 311 (2020).

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[2] The Second Circuit limited the injunctions before it to apply only within the Second Circuit, and the preliminary injunction entered in the Northern District of Illinois was limited to the State of Illinois from the outset. See *New York*, 969 F.3d at 87-88; *Cook County*, 962 F.3d at 217.

c. In November 2020, the District Court for the Northern District of Illinois entered a partial final judgment under Federal Rule of Civil Procedure 54(b), which vacated the 2019 Rule on a nationwide basis under the Administrative Procedure Act (APA), 5 U.S.C. 501 *et seq.*, 701 *et seq.* See *Cook County* v. *Wolf*, 498 F. Supp. 3d 999 (N.D. Ill. 2020).[3] Relying on the Seventh Circuit's earlier decision affirming the preliminary injunction, the district court concluded that the 2019 Rule did not represent a reasonable interpretation of the INA and that DHS had acted arbitrarily and capriciously in adopting it. See *id.* at 1003-1005. The court reserved decision on the plaintiffs' additional claim that the 2019 Rule had been adopted for an impermissible discriminatory purpose, in violation of the equal-protection component of the Fifth Amendment, while the plaintiffs pursued discovery from senior White House advisors and others. See *id.* at 1007-1010; see also 19-cv-6334 D. Ct. Doc. 190, at 2 (N.D. Ill. July 24, 2020) (requiring government to designate Senior Advisor to the President Stephen Miller and former Acting White House Chief of Staff Mick Mulvaney as custodians for discovery purposes).

The Seventh Circuit thereafter granted a stay pending appeal of the partial final judgment, and it placed the appeal in abeyance pending the disposition of the government's petitions for writs of certiorari in *DHS* v.

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[3] The government has long argued that the APA does not authorize district courts to vacate regulations or other agency actions on a nationwide basis because relief should be limited to what is necessary to redress the injuries of the parties before the court. See, *e.g.*, Gov't Br. at 48-50, *Trump* v. *Pennsylvania*, 140 S. Ct. 2367 (2020) (No. 19-454). Lower courts have nonetheless asserted the authority to enter nationwide vacaturs, as the Northern District of Illinois did here (over the government's objection).

New York, No. 20-449, and *Wolf* v. *Cook County*, No. 20-450. See 20-3150 C.A. Doc. 21 (7th Cir. Nov. 19, 2020).

3. On February 2, 2021, after the change in Administration, President Biden directed the Secretary of Homeland Security and other agency heads to "review all agency actions related to implementation of the public charge ground of inadmissibility." Exec. Order No. 14,012, § 4, 86 Fed. Reg. 8277, 8278 (Feb. 5, 2021).

On February 22, 2021, this Court granted the government's petition for a writ of certiorari in *DHS* v. *New York*, No. 20-449. Approximately two weeks later, DHS announced that the government had determined that continuing to defend the 2019 Rule before this Court and in the lower courts would not be in the public interest or an efficient use of government resources. See DHS, *DHS Statement on Litigation Related to the Public Charge Ground of Inadmissibility* (Mar. 9, 2021), https://go.usa.gov/xtTUY. Consistent with that determination, on March 9, 2021, the government filed stipulations with the Clerk of this Court dismissing *DHS* v. *New York*, No. 20-449; *Mayorkas* v. *Cook County*, No. 20-450; and *United States Citizenship & Immigration Services* v. *City & County of San Francisco*, No. 20-962.

The government also filed motions to dismiss active public-charge-related appeals in the lower courts, including the government's appeal of the partial final judgment entered in the Northern District of Illinois vacating the 2019 Rule and the government's appeal of the preliminary injunction entered by the District of Maryland. See 20-3150 C.A. Doc. 23 (7th Cir. Mar. 9, 2021); 19-2222 C.A. Doc. 210 (4th Cir. Mar. 9, 2021). The Seventh and Fourth Circuits granted the government's motions and dismissed the appeals. See 20-3150 C.A. Doc. 24-1 (7th Cir. Mar. 9, 2021); 19-2222 C.A. Doc. 211

(4th Cir. Mar. 11, 2021). Because the vacatur entered by the Northern District of Illinois had become final, DHS published a rule removing the 2019 Rule from the Code of Federal Regulations. United States Citizenship & Immigration Services (USCIS), DHS, *Inadmissibility on Public Charge Grounds; Implementation of Vacatur*, 86 Fed. Reg. 14,221, 14,221 (Mar. 15, 2021).

4. DHS had anticipated before the 2019 Rule's implementation that the rule would result in increased denials of lawful-permanent-resident status to applicants. See 84 Fed. Reg. at 41,348. In reality, the 2019 Rule proved to have an exceedingly modest impact on such denials: during the year the 2019 Rule was in effect, DHS "issued only 3 denials and two Notices of Intent to Deny based solely on the basis of the INA § 212(a)(4) public charge ground of inadmissibility evaluated under the 2019 Rule's totality of the circumstances framework." 19-cv-6334 D. Ct. Doc. 269-1, ¶ 8 (N.D. Ill. June 15, 2021) (Declaration of Michael Valverde). The 2019 Rule thus resulted in adverse decisions on only five of the 47,555 applications for adjustment of status to which it was applied. See 19-cv-6334 D. Ct. Doc. 269-2, ¶ 10 (N.D. Ill. June 15, 2021).

B. Petitioners' Intervention Motions

Petitioners are a group of States that did not participate in any of the above-described litigation or in the rulemaking that led to the 2019 Rule. Following the government's dismissal of its pending cases before this Court and its active appeals in the courts of appeals, petitioners filed motions attempting to intervene in order to revive the litigation about the 2019 Rule.

1. Of most direct relevance here, petitioners sought to intervene in the Ninth Circuit appeal of the preliminary injunctions entered in Washington and California.

19-17213 C.A. Docs. 143 (Mar. 10, 2021), 145 (Mar. 11, 2021), 152 (Mar. 29, 2021).[4] On April 8, 2021, the Ninth Circuit denied petitioners' motion to intervene over a dissent by Judge VanDyke. Pet. App. 1-40. Judge VanDyke would have granted petitioners' motion to intervene for the purpose of allowing petitioners to seek vacatur of the panel's opinion pursuant to *United States* v. *Munsingwear, Inc.*, 340 U.S. 36, 39 (1950). Pet. App. 35-40.

Overlapping groups of States filed motions to recall the mandate and to intervene in the Fourth and Seventh Circuits. 19-2222 C.A. Docs. 213, 214, 215 (4th Cir. Mar. 11, 2021); 20-3150 C.A. Doc. 25 (7th Cir. Mar. 11, 2021). Both courts of appeals denied the motions without noted dissent. 19-2222 C.A. Doc. 216 (4th Cir. Mar. 18, 2021); 20-3150 C.A. Doc. 26 (7th Cir. Mar. 15, 2021).

2. The States that had sought to intervene in the Seventh Circuit thereafter filed an application for a stay in this Court, which this Court denied. See *Texas* v. *Cook County*, 141 S. Ct. 2562 (2021). This Court's order noted the denial was "without prejudice to the States raising" arguments about DHS's dismissal of its appeal "before the District Court, whether in a motion for intervention or otherwise." *Ibid.*

The States subsequently filed a motion for relief from judgment under Federal Rule of Civil Procedure 60(b) and a motion to intervene in the Northern District of Illinois. 19-cv-6334 D. Ct. Docs. 256, 257, 259, 260 (May 12, 2021). The district court denied those motions on August 17, 2021. *Cook County* v. *Mayorkas*, No. 19-

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[4] Although the Ninth Circuit affirmed those preliminary injunctions in December 2020, the appeal remained pending because the court stayed the issuance of its mandate. 19-17213 C.A. Doc. 139 (Jan. 20, 2021).

cv-6334, 2021 WL 3633917 (N.D. Ill.), appeal pending, No. 21-2561 (7th Cir. filed Aug. 20, 2021). The court found that the States had been aware of the potential need to intervene well before the time for a notice of appeal had run in that case and that their failure to make any attempt to intervene for more than two months after the appeal deadline rendered their request untimely. *Id.* at *5-*16. The court further determined that even if the States were entitled to intervene, they had not demonstrated their entitlement to have the court set aside the judgment under Rule 60(b) and enter a new judgment that would re-start the time for filing a notice of appeal, or otherwise unsettle the court's November 2, 2020 final judgment. *Id.* at *16-*19.

3. On August 23, 2021, consistent with its previously announced intent, DHS published an Advance Notice of Proposed Rulemaking (ANPRM) with respect to the public-charge ground of inadmissibility. USCIS, DHS, *Public Charge Ground of Inadmissibility*, 86 Fed. Reg. 47,025; see USCIS, DHS, *Inadmissibility on Public Charge Grounds, Unified Agenda (Spring 2021)*, https://go.usa.gov/xt4DT. That ANPRM solicited information from the public, including States and other governmental entities, for use in a forthcoming Notice of Proposed Rulemaking that will, among other things, provide a new regulatory definition of the statutory term "public charge." 86 Fed. Reg. at 47,028. As with the rulemaking process that led to the adoption of the 2019 Rule, petitioners did not submit comments or otherwise respond to the ANPRM.

SUMMARY OF ARGUMENT

The court of appeals correctly determined that petitioners were not entitled to intervene as of right in this

case, and did not abuse its discretion in denying their request for permissive intervention.

A. 1. Under Federal Rule of Civil Procedure 24(a) and the related principles of intervention that apply here, a person who claims a mandatory right to intervene in existing litigation must demonstrate a direct, legally protectable interest in the subject matter of that litigation, not merely an indirect or downstream interest in the consequences of the judgment. See *Donaldson* v. *United States*, 400 U.S. 517, 531 (1971). The pertinent text of Rule 24(a) is based on, and substantially similar to, Federal Rule of Civil Procedure 19, which governs involuntary joinder. That deliberate overlap indicates that a litigant generally has a mandatory right of intervention only in circumstances where its interest would otherwise make it a "[r]equired [p]arty." Fed. R. Civ. P. 19(a)(1) (emphasis omitted).

2. Petitioners claim (Pet. 19-27) that they were entitled to intervene as of right in the court of appeals based on two asserted interests—their economic interest in reducing the number of people to whom they voluntarily provide government benefits, and their asserted quasi-sovereign interest in limiting the number of people permitted to enter or remain in the United States. Neither of those interests is sufficient.

As an initial matter, petitioners' asserted interests are unconnected with the preliminary injunctions that were before the court of appeals. Those preliminary injunctions are inapplicable in petitioners' jurisdictions. And they have no ongoing real-world effect in any jurisdiction because the 2019 Rule has been vacated in separate litigation. That by itself is sufficient reason to conclude that petitioners had no right to mandatory intervention.

Petitioners' interests are also insufficient in other respects. As for their asserted economic interest, petitioners do not claim that they were entitled to payments or other property under the 2019 Rule, such that they must be permitted to intervene to defend that legal right. Instead, they claim merely that enforcement of the 2019 Rule would have had downstream economic benefits for them by reducing the number of people eligible for social-welfare programs that petitioners have voluntarily established. But that sort of indirect interest in the possible consequences of a judgment, shared by countless other entities, is not enough to justify intervention as of right.

Nor is petitioners' asserted quasi-sovereign interest in immigration a sufficient basis. The Constitution assigns authority over immigration to Congress and the Executive Branch, not the States. The States thus have no legally cognizable interest in determining which noncitizens will be inadmissible to, or removable from, the United States. See *Arizona* v. *United States*, 567 U.S. 387, 394-395 (2012). Even where the States' quasi-sovereign interests are less attenuated, moreover, Rule 24 generally accounts for those interests through *permissive*, not mandatory, intervention. See Fed. R. Civ. P. 24(b)(2).

B. Petitioners also have not shown that the court of appeals abused its broad discretion in denying permissive intervention.

1. By the time petitioners first expressed interest in litigation surrounding the 2019 Rule, the Ninth Circuit had already narrowed the injunctions here such that they did not apply in petitioners' jurisdictions, and the Northern District of Illinois had already entered a final decision vacating the 2019 Rule. Given those facts, a

decision reversing the preliminary injunctions would have no real-world benefit for petitioners. Indeed, once the Northern District of Illinois's decision vacating the 2019 Rule became final, any dispute about the preliminary injunctions was moot. And the court of appeals reasonably determined that petitioners' disagreement with the final decision of the Northern District of Illinois was not an adequate basis for allowing them to intervene in, and prolong, this separate preliminary-injunction appeal.

Petitioners contend (Br. 29-30) that this preliminary-injunction appeal is not moot because the final vacatur entered by the Northern District of Illinois might still be set aside under Rule 60(b). That remote possibility is insufficient to keep this appeal alive. But even if that possibility avoided technical mootness, petitioners' contentions just illustrate the reasonableness of the Ninth Circuit's pragmatic determination not to extend an appeal of preliminary injunctions that are inapplicable in petitioners' jurisdictions.

2. Petitioners argue (Br. 27-29, 37-41) that intervention was warranted because of the government's supposedly "unprecedented[]" decision not to pursue further review of a decision striking down an agency rule. But such decisions are hardly unprecedented. Determining "[w]hether review of a decision adverse to the Government * * * should be sought depends on a number of factors which do not lend themselves to easy categorization," and Congress and the Executive Branch have made the "policy choice" to "concentrate[]" the authority to weigh those considerations "in a single official"—the Solicitor General. *Federal Election Comm'n* v. *NRA Political Victory Fund*, 513 U.S. 88, 96 (1994). This Court should not accept petitioners' invita-

tion to apply principles of intervention in a fashion that would overrule Congress's choice and instead vest the decision whether to appeal adverse decisions against the federal government in the Attorneys General of the 50 States.

ARGUMENT

THE COURT OF APPEALS PROPERLY DENIED PETITIONERS' MOTION TO INTERVENE

Although Federal Rule of Civil Procedure 24 applies of its own force only in district courts, this Court has recognized that it provides a useful guide for considering motions to intervene in the courts of appeals. See *International Union, United Auto., Aerospace & Agric. Implement Workers of America* v. *Scofield*, 382 U.S. 205, 217 n.10 (1965). Petitioners accept that principle (Br. 18-19), and do not contend that the standard governing intervention in the courts of appeals is any more liberal than the one set forth in Rule 24. But petitioners satisfy neither Rule 24(a)'s standard for intervention as of right nor Rule 24(b)'s standard for permissive intervention.

A. Petitioners Were Not Entitled To Intervene As Of Right

The court of appeals correctly denied petitioners' request to intervene in this appeal months after that court had ruled on the preliminary injunctions. Relying on Rule 24(a), petitioners principally contend (Br. 19-27) that they had an absolute right to intervene in the appeal, such that the court had no discretion about whether intervention at that late stage was appropriate. But the text, history, and structure of Rule 24 establish that mandatory intervention is available only where a litigant establishes a direct, legally protectable interest in the specific subject matter of the suit. Neither of the

interests petitioners invoke here—predicted downstream economic benefits from the 2019 Rule and a preference for tighter controls on immigration—satisfies that requirement.[5]

1. A litigant seeking to intervene as of right must establish a direct, legally protectable interest in the subject matter of the suit

a. The text and history of Rule 24 demonstrate that intervention as of right is available only to persons whose legal interests are directly and substantially at issue in an existing suit.

When Rule 24 originally took effect in 1938, it "amplifie[d] and restate[d] the present federal practices at law and in equity." Fed. R. Civ. P. 24 advisory committee's note (1937). Although "some elasticity was injected," *Cascade Natural Gas Corp.* v. *El Paso Natural Gas Co.*, 386 U.S. 129, 134 (1967), the rule largely reflected "the codification of general doctrines of intervention" as they stood at the time. *Missouri-Kansas Pipe Line Co.* v. *United States*, 312 U.S. 502, 508 (1941). The rule authorized intervention as of right in three narrowly defined circumstances.

First, Rule 24(a)(1) made intervention mandatory "when a statute of the United States confers an unconditional right to intervene." Fed. R. Civ. P. 24(a)(1) (1938).

Second, Rule 24(a)(2) provided for mandatory intervention when "the representation of the applicant's in-

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[5] Petitioners assert (Br. 19 n.8) that the courts of appeals are divided over the appropriate standard of review to apply to claims of mandatory intervention. Petitioners did not raise that conflict in the petition for a writ of certiorari, see Pet. i-ii, and the Court need not address the issue because petitioners' mandatory-intervention claim fails under any standard of review.

terest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action." Fed. R. Civ. P. 24(a)(2) (1938). That portion of the rule carried forward judicial decisions holding that an individual had a right to intervene when the person was represented by another party in a legal proceeding, the person would be bound by the judgment, and the person's representative was inadequate. James Wm. Moore & Edward H. Levi, *Federal Intervention I: The Right to Intervene and Reorganization*, 45 Yale L.J. 565, 591-592 (1936), cited in Fed. R. Civ. P. 24 advisory committee's note (1937). A stockholder purportedly represented by the corporation's directors in a bankruptcy proceeding, for example, was given a right to intervene upon a showing that the directors' representation of the stockholder's interests was inadequate. *Id.* at 592.

Third, the rule authorized intervention as of right "when the applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof." Fed. R. Civ. P. 24(a)(3) (1938); see Fed. R. Civ. P. 24(a)(2) (1948) (extending that provision to cover interests in property "subject to the control or disposition of the court"). That portion of the rule confirmed the established understanding that an "absolute right to intervene [ran] to a claimant of attached property, or the proceeds thereof, to the part owner of mortgaged personal property being foreclosed, to the purchaser of land from the defendant in a foreclosure action, [and] to the mortgagee of a leasehold interest sought to be forfeited." Moore & Levi, 45 Yale L.J. at 583 (footnotes omitted).

b. In 1966, this Court approved a modified version of Rule 24(a) that remains in effect without substantive change today. See Fed. R. Civ. P. 24 advisory committee's note (1987) (1987 "technical" modifications reflected no "substantive change"); Fed. R. Civ. P. 24 advisory committee's note (2007) (2007 changes were "stylistic only"). The modified version of Rule 24(a) provides a somewhat more flexible standard, but does not materially expand the "interests" that support intervention as of right.

Rule 24(a)(1) maintains the recognition that a litigant is entitled to intervene when "given an unconditional right to intervene by a federal statute." Fed. R. Civ. P. 24(a)(1). Petitioners do not rely on that principle here.

Petitioners rely instead on Rule 24(a)(2). Borrowing language from Rule 19, which addresses required joinder of absent parties, Rule 24(a)(2) now provides that a "court must permit anyone to intervene who * * * claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2); compare Fed. R. Civ. P. 19(a) (providing that a person is a "[r]equired [p]arty" if "that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may * * * as a practical matter impair or impede the person's ability to protect the interest") (emphasis omitted).

Accordingly, under the amended version of Rule 24(a)(2), "an applicant is entitled to intervene in an action when his position is comparable to that of a person

[required to be joined] under Rule 19(a)[] * * * unless his interest is already adequately represented in the action by existing parties." Fed. R. Civ. P. 24 advisory committee's note (1966); see *United States* v. *Vonn*, 535 U.S. 55, 64 n.6 (2002) ("[T]he Advisory Committee Notes provide a reliable source of insight into the meaning of a rule, especially when, as here, the rule was enacted precisely as the Advisory Committee proposed."). Similar to the rule's original version, the amended version requires a putative intervenor to establish a legal stake in the "subject of the action" by pointing to the intervenor's direct interest relating to the "property" or "transaction" at issue. Fed. R. Civ. P. 24(a)(2). Persons who might experience downstream effects from resolution of the parties' claims, by contrast, are not entitled to intervene as of right under Rule 24, just as they are not required to be joined under Rule 19.[6]

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[6] In addition to generally aligning Rules 19 and 24, the 1966 amendments addressed certain procedural complications that prevented intervention by persons whose legal interests were directly at issue in a given suit. See Fed. R. Civ. P. 24 advisory committee's note (1966). First, the prior requirement that a prospective intervenor "may be bound by a judgment in the action" could produce a paradox for a class member who sought to intervene because he believed the class representatives' representation would be inadequate: "if the representation was in fact inadequate, [the class member] would not be 'bound' by the judgment" and thus "was not entitled to intervene," but "if the representation was in fact adequate, there was no occasion or ground for intervention." *Ibid.* (citing *Sam Fox Publishing Co.* v. *United States*, 366 U.S. 683 (1961)). By eliminating the strict res-judicata requirement, the amended version of Rule 24(a) solved that problem. *Ibid.* Second, the Committee explained that the prior requirement that the property be in the court's possession or control had proved to be "unduly restricted" and thus been largely ignored. *Ibid.* By eliminating the requirement of judicial custody or control, the amended version of Rule

Other aspects of the Advisory Committee's notes accompanying the 1966 amendments further confirm that the revised version of Rule 24(a) did not authorize mandatory intervention based on merely indirect interests in a suit's subject matter. In discussing the inquiry into whether a potential intervenor's interest was already adequately represented, those notes cited three decisions illustrating the sorts of circumstances where mandatory intervention would be appropriate to protect a movant's interest. See Fed. R. Civ. P. 24 advisory committee's note (1966) (citing *Atlantic Refining Co.* v. *Standard Oil Co.*, 304 F.2d 387 (D.C. Cir. 1962); *International Mortgage & Investment Corp.* v. *Von Clemm*, 301 F.2d 857 (2d Cir. 1962); and *Wolpe* v. *Poretsky*, 144 F.2d 505 (D.C. Cir.), cert. denied, 323 U.S. 777 (1944)). In each of the cited cases, the court held that mandatory intervention was warranted only after determining that the intervenor had a direct, concrete interest in the litigation: in *Atlantic Refining*, the court held that intervention was appropriate for refiners whose gasoline-import quotas would be invalidated by a challenge to the federal regulation setting those quotas, see 304 F.2d at 394; in *Von Clemm*, the court held that intervention was appropriate for minority shareholders who asserted their "own right to a pro-rata share" of the corporate assets at issue, 301 F.2d at 860; and in *Wolpe*, the court held that intervention was appropriate for property owners who sought to intervene in defense of a zoning order applicable to adjoining property, where the inter-

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24(a) aligned with prevailing practice. Significantly, however, neither of those changes broadened the types of interest that could support mandatory intervention beyond a direct legal interest in the suit.

venors held a special statutory right to enforce the zoning order, 144 F.2d at 507.

At the same time, those courts recognized that entities with less-direct interests in the litigation would not be entitled to intervene as of right. In *Atlantic Refining*, the court held that intervention was *not* appropriate for a refiner whose "allocation of foreign crude oil" would not be directly affected by a judgment in the case, even though the refiner might be placed at a "competitive [dis]advantage" if the challenge succeeded. 304 F.2d at 394. And in *Wolpe*, the court suggested that the adjoining property owners would not have been permitted to intervene merely because their economic interests would be "damaged by the violation of a zoning order," emphasizing that "the basis of [the property owners'] right to intervene" was the fact that an adverse judgment "would bind [them]" by "taking away their statutory right to an independent action based on the order." 144 F.2d at 507.

c. Like the text and history of Rule 24(a) itself, the broader structure and context indicate that a litigant must establish a direct, legal interest relating to the property or transaction at issue to be entitled to mandatory intervention under Rule 24(a)(2).

Rule 24(b)(2) separately addresses intervention by "a federal or state governmental officer or agency" in circumstances where "a party's claim or defense is based on * * * a statute or executive order administered by the officer or agency; or * * * any regulation, order, requirement, or agreement issued or made under the statute or executive order." The rule provides that such intervention is permissive, not mandatory—the court "may permit" intervention by such an officer or agency in the "exercis[e] [of] its discretion." Fed. R.

Civ. P. 24(b)(2) and (3). That structure demonstrates that the substantial but indirect practical effects of a potential judgment are not a sufficient basis for *mandatory* intervention: a judicial decision interpreting an agency's regulations or organic statute may have significant practical consequences for the agency's future operations, yet Rule 24(b) indicates that such an interest does not entitle the agency to intervene as of right.

d. Decisions of this Court and the courts of appeals following the 1966 amendments confirm that, to justify mandatory intervention, a litigant must establish a "significantly protectable interest" in the litigation, *Donaldson* v. *United States*, 400 U.S. 517, 531 (1971), meaning one that is "legally protectible," *Tiffany Fine Arts, Inc.* v. *United States*, 469 U.S. 310, 315 (1985), and "direct and concrete," *Diamond* v. *Charles*, 476 U.S. 54, 75 (1986) (O'Connor, J., concurring in part and concurring in the judgment).

In *Donaldson*, the government petitioned a district court to enforce administrative summonses that the IRS had issued to Donaldson's former employer (Acme) and its accountant (Mercurio) to acquire testimony and documentary evidence about Donaldson's tax liability. 400 U.S. at 518-520. The employer and accountant, as the witness-respondents against whom the government sought judicial relief, had the right to "challenge the summons[es] on any appropriate ground." *Id.* at 526. But neither opposed enforcement, as both were willing to comply with any court order. *Id.* at 521 n.5, 531. Donaldson himself therefore sought to intervene, asserting that he "possesse[d] 'an interest relating to the property or transaction which is the subject of the [enforcement] action,'" in that the records the government sought "presumably contain[ed] details" bearing on his

tax situation that he did not want the IRS to obtain. *Id.* at 527, 531 (citation omitted; second set of brackets in original).

This Court held that, although that practical interest in the litigation's outcome "loom[ed] large in [Donaldson's] eyes," it was not the sort of direct interest that could support intervention as of right under Rule 24(a)(2). *Donaldson*, 400 U.S. at 530-531. Successful enforcement of the administrative summonses could have substantial downstream consequences for Donaldson, but he possessed no "proprietary interest" in his employer's records or legally recognized "privilege" that he could assert. *Id.* at 530. And Donaldson's pragmatic interest in "counter[ing] and overcom[ing] Mercurio's and Acme's willingness, under summons, to comply and to produce records," the Court held, was not the type of "significantly protectable interest" necessary to support mandatory intervention under Rule 24(a)(2). *Id.* at 531; see *Tiffany Fine Arts*, 469 U.S. at 315 (describing *Donaldson* as holding that denial of intervention was appropriate where the asserted interest "was not legally protectible").

Petitioners do not address *Donaldson* in their opening brief. At the certiorari stage, they asserted (Cert. Reply Br. 7) that *Donaldson*'s reasoning applies only to "interven[tion] in a tax case," and is thus inapplicable where putative intervenors assert "monetary interests" in the outcome of litigation. That argument cannot be squared with *Donaldson* itself, where the movant had an obvious, but indirect, monetary interest in preventing disclosure of information bearing on his tax liability. See *Donaldson*, 400 U.S. at 531. Indeed, relying on *Donaldson*, courts of appeals have recognized that indirect economic interests—even substantial ones—are

not a sufficient basis for intervening as of right. See, *e.g.*, *Mountain Top Condominium Ass'n* v. *Dave Stabbert Master Builder, Inc.*, 72 F.3d 361, 366 (3d Cir. 1995) ("[A] mere economic interest in the outcome of the litigation is insufficient to support a motion to intervene."); *New Orleans Public Service, Inc.* v. *United Gas Pipe Line Co.*, 732 F.2d 452, 466 (5th Cir.) (en banc) (holding that "an economic interest alone is insufficient" to support intervention under Rule 24(a)(2), because "such intervention is improper when the intervenor does not itself possess the only substantive legal right it seeks to assert in the action"), cert. denied, 469 U.S. 1019 (1984); see also *Medical Liability Mutual Insurance Co.* v. *Alan Curtis LLC*, 485 F.3d 1006, 1008 (8th Cir. 2007) ("An economic interest in the outcome of the litigation is not itself sufficient to warrant mandatory intervention."); *Greene* v. *United States*, 996 F.2d 973, 976 (9th Cir. 1993) ("An economic stake in the outcome of the litigation, even if significant," is insufficient under Rule 24(a)(2)).

A contrary understanding—under which any person who might experience downstream "economic injury" from the result of a case is entitled to intervene as of right, Pet. Br. 24—would be utterly unworkable. Litigation often has indirect economic consequences for countless different entities. Here, for example, DHS recognized from the start that the 2019 Rule might have varying economic effects not only on federal agencies and state governments, but also on numerous others, including local governments, healthcare providers, medical-supply manufacturers, pharmaceutical companies, grocery retailers, landlords, other "large and small businesses, and individuals." 84 Fed. Reg. at 41,301; see J.A. 123. A rule that authorized all such entities to in-

tervene as of right unless one of the existing parties adequately represented their interests would "clutter too many lawsuits with too many parties," *City of Chicago* v. *Federal Emergency Management Agency*, 660 F.3d 980, 985 (7th Cir. 2011), frustrating the "just, speedy, and inexpensive determination of every action and proceeding" that the Federal Rules of Civil Procedure are designed to accomplish. Fed. R. Civ. P. 1.

Perhaps unsurprisingly, then, courts have not adopted petitioners' view (Br. 24) that indirect downstream financial consequences are "a classic protectable interest supporting intervention" as of right. As just discussed, numerous court of appeals decisions have squarely held the opposite. And none of petitioners' three cases (see *ibid.*) supports their contrary view.

In *United States* v. *Alisal Water Corp.*, 370 F.3d 915 (2004), the Ninth Circuit concluded that the prospective intervenor's economic interest was too attenuated to support intervention as of right and cited with approval its decision in *Greene*, *supra*, which held that even a prospective intervenor's "significant" economic interest in the subject of litigation was insufficient to support a right to intervene. *Greene*, 996 F.2d at 976; see *Alisal Water Corp.*, 370 F.3d at 919.

In *National Parks Conservation Ass'n* v. *United States Environmental Protection Agency*, 759 F.3d 969 (2014), the Eighth Circuit emphasized that economic injury is sufficient under Rule 24(a)(2) only where a lawsuit implicates an intervenor's "direct financial interests," such as where a "third party files suit to compel government agency action that would directly harm a regulated company." *Id.* at 976. That case thus tracks the distinction, discussed above, between entities whose legal rights will be directly implicated (such as the oil

refiners who stood to lose import quotas in *Atlantic Refining*) and entities who are affected only indirectly and thus have no right to intervene (such as the oil refiner who would have faced only indirect competitive disadvantage).

And in *Utahns for Better Transportation* v. *United States Department of Transportation*, 295 F.3d 1111 (2002), the Tenth Circuit acknowledged that, in comparison to other courts of appeals, it "has tended to follow a somewhat liberal line in allowing intervention." *Id.* at 1115. Even so, it emphasized that, under Rule 24(a)(2), an intervenor's interest must be "direct, substantial, and legally protectable." *Ibid.* The economic interest there was direct because the intervenors had "existing contracts and pending bids for approved transportation projects specifically attacked in th[e] lawsuit." *Id.* at 1113. Accordingly, even assuming that the decision is correct, it does not support petitioners' rule, under which anyone who stands to "save * * * money" if a case comes out a particular way may intervene as of right. Pet. Br. 24.

2. Petitioners lack a direct, legally protectable interest in the subject matter of this suit

The court of appeals' denial of intervention here was consistent with those standards. Petitioners rest their claim to mandatory intervention on two interests: their belief that the 2019 Rule would "save the States money," and their asserted "interests in the immigration context." Pet. Br. 24-25. But those are not the sort of direct, legally protectable interests that could sup-

port intervention as of right under Rule 24 (and compulsory joinder under Rule 19, see pp. 16-17, *supra*).[7]

a. Petitioners primarily contend (Br. 24) that they are entitled to intervene because the 2019 Rule would "save [them] money" by reducing the number of people eligible to receive benefits under their social-welfare programs. Br. 24-25. That asserted economic interest is insufficient to justify mandatory intervention for multiple reasons.

i. As an initial matter, petitioners assert (Br. 24) a general interest in "the Public Charge Rule's continuing validity." But that generalized interest in the 2019 Rule is unconnected with the preliminary-injunction appeal actually before the Court. The court of appeals' December 2020 decision on the merits upheld the preliminary injunctions only insofar as they temporarily barred DHS from enforcing the 2019 Rule in the *plaintiffs'* jurisdictions—none of which overlap with petitioners' jurisdictions. See Pet. App. 58, 65-66. As modified, therefore, the preliminary injunctions did not prevent enforcement of the 2019 Rule with respect to noncitizens in petitioners' jurisdictions.

Even in the jurisdictions as to which the court of appeals sustained the district courts' preliminary injunctions, moreover, those injunctions no longer have effect. As petitioners acknowledge (Br. 9), the United States District Court for the Northern District of Illinois "vacat[ed] the Rule nationwide" in separate litigation, that

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[7] Petitioners separately claim (Br. 28) that their "APA notice-and-comment rights" could support *permissive* intervention, but do not assert that such rights support *mandatory* intervention. Nor could they. Because anyone can participate in the notice-and-comment process, a standard making those participatory rights a basis for mandatory intervention would have no limiting principle.

court's judgment became final, and the 2019 Rule was accordingly removed from the Code of Federal Regulations. That sequence of events—not the preliminary injunctions at issue in this case—now controls the applicability of the 2019 Rule. And petitioners' disagreement with a final judgment of the Northern District of Illinois provides no basis for mandatory intervention in a preliminary-injunction appeal before the Ninth Circuit. Indeed, as explained below, that preliminary-injunction appeal is now moot. See pp. 35-37, *infra*.

ii. In any event, petitioners' asserted economic interest in the 2019 Rule is itself indirect and speculative, not "direct," "concrete," and "legally protectible." *Diamond*, 476 U.S. at 75 (O'Connor, J., concurring in part and concurring in the judgment); *Tiffany Fine Arts*, 469 U.S. at 315.

Petitioners do not contend that a decision invalidating the 2019 Rule would deprive them of funds to which they are otherwise entitled, such that the judgment would implicate "property" or a "transaction" in which they have a legal interest. Fed. R. Civ. P. 24(a)(2). This case is thus unlike circumstances in which States have intervened to defend federal laws under which they were entitled to receive direct payments from the federal government. See, *e.g.*, *California* v. *Texas*, 141 S. Ct. 2104 (2021); Mot. to Intervene and Mem. in Support Thereof at 11-15, *Texas* v. *United States*, No. 18-cv-167 (N.D. Tex. Apr. 9, 2018) (motion by California and other States seeking to intervene in litigation regarding the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119, based on their

interest in $650 billion in direct payments they received annually under that statute).[8]

Instead, petitioners maintain only (Br. 24-25) that they would benefit indirectly from a judgment that resulted in reinstatement of the 2019 Rule. Specifically, they anticipate that if the 2019 Rule were placed back into effect, it would over time reduce the number of people eligible to receive payments under social-welfare programs that petitioners have chosen to establish and plan to maintain in the future. Petitioners state (Br. 25) that the anticipated reduction would, in turn, "free[] up dollars" to spend on other "economically disadvantaged" people in their States.

As already discussed, see pp. 14-24, *supra*, that sort of indirect, downstream economic interest in the outcome of a case is not the type of "legally protectible" interest, *Tiffany Fine Arts*, 469 U.S. at 315, that entitles a person to intervene as of right under Rule 24(a) or that might correspondingly require joinder under Rule 19. If it were, the number of parties in the case—including not just States like petitioners, but also everyone else with similarly indirect, downstream economic interests, from local governments to landlords to grocery stores, see J.A. 123—would be unmanageable. And petitioners do not explain why *their* indirect economic interests in the validity of the 2019 Rule are sufficient, but the interests of those other entities would not be.

In addition to being indirect, moreover, petitioners' interests are highly speculative. Petitioners rely (Br. 24) on DHS's preliminary estimate that the 2019 Rule would reduce cumulative state expenditures by approx-

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[8] The Court accordingly need not decide whether intervention in such circumstances would be mandatory or merely permissive.

imately $1.01 billion annually. See J.A. 122. But in making that initial projection, DHS acknowledged that it was "difficult to predict" the 2019 Rule's effects because DHS had "neither a precise count nor reasonable estimate" of how many noncitizens "are both subject to the public charge ground of inadmissibility and are eligible for public benefits." 84 Fed. Reg. at 41,313; see J.A. 143. And subsequent real-world experience shows that few applicants for adjustment of status were, in fact, receiving the covered benefits: as explained above, during the roughly one year that the 2019 Rule was in effect, it resulted in just *five* adverse decisions on applications for adjustment of status that would otherwise have been granted. Declaration of Michael Valverde ¶ 8.[9]

Petitioners have no persuasive response to that evidence. Although we highlighted it at the certiorari stage, see Gov't Br. in Opp. 6, 17-18, petitioners ignored it in their certiorari reply and do so again in their opening brief. And when many of the same States were forced to grapple with the evidence in related district-court litigation, they did not dispute it. Instead, their only response was that "[e]ven one such instance leading to increased public spending by the State[] Intervenors would be sufficient to establish their standing." 19-cv-6334 D. Ct. Doc. 278, at 3 (N.D. Ill. July 1, 2021) (brief joined by 12 of the 13 States that are petitioners here).

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[9] As we discuss below, confusion about the 2019 Rule did have significant effects on benefits usage not actually covered by the rule, including usage by citizens and lawful permanent residents. See pp. 45-46, *infra*. But petitioners have never suggested that they have a legal right to benefit from confusion about the scope of the 2019 Rule.

That is a far cry from the "hundreds of millions of dollars in budgetary obligations" (Pet. Br. 3) that petitioners suggest are at stake here. The bare possibility that a few noncitizens who would have been denied adjustment of status under the 2019 Rule may seek and receive public benefits from petitioners does not give petitioners a "significant protectable interest" sufficient to justify mandatory intervention. *Donaldson*, 400 U.S. at 531. And even if it could, petitioners identify no non-speculative basis for concluding that any of the small number of noncitizens who would have been inadmissible under the 2019 Rule will actually affect petitioners' social-welfare spending (as opposed to spending in the other 37 States). Cf. *Clapper* v. *Amnesty International USA*, 568 U.S. 398, 409 (2013) (emphasizing that Article III requires a plaintiff to identify an injury that is "*certainly impending*," and that "allegations of *possible* future injury are not sufficient") (brackets, citations, and internal quotation marks omitted).

b. Petitioners also contend (Br. 25) that their "interests in the immigration context" entitle them to intervene as of right. As with the economic interest just discussed, that asserted quasi-sovereign interest is unconnected with the preliminary injunctions actually at issue in this appeal. See pp. 25-26, *supra*. And even if evaluated as an interest in "the Public Charge Rule's continuing validity" (Pet. Br. 24) more broadly, petitioners' asserted interest in immigration does not entitle them to intervention as of right.

Third parties generally lack a "judicially cognizable interest" in the "legal framework" that a sovereign adopts to guide its "individual enforcement decisions." *Diamond*, 476 U.S. at 64-65. Apart from directly regulated parties, only the sovereign with authority to make

those enforcement decisions has a "direct stake" in "the standards embodied" in its framework. *Id.* at 65 (citation and internal quotation marks omitted).

That principle applies with particular force in the context of immigration law. "The power to regulate immigration—an attribute of sovereignty essential to the preservation of any nation—has been entrusted by the Constitution to the political branches of the Federal Government." *United States* v. *Valenzuela-Bernal*, 458 U.S. 858, 864 (1982). The authority to craft and implement immigration policy rests with Congress and the Executive Branch. *Arizona* v. *United States*, 567 U.S. 387, 394-395 (2012). Neither private parties nor "the 50 separate States" have a legally recognizable interest in which noncitizens will be inadmissible to, or removable from, the United States. *Id.* at 395. Petitioners thus get the law backwards when they assert (Br. 25) that "federal courts should be particularly solicitous of" their interests in this area.

Moreover, even in areas where the States' quasi-sovereign interests are less attenuated, Rule 24 does not give them a generalized right to mandatory intervention. Under Rule 24(a)(1) and 28 U.S.C. 2403, a State has a statutory right to intervene whenever "the constitutionality of any statute of that State * * * is drawn in question." 28 U.S.C. 2403(b). But beyond that narrow circumstance, Rule 24 addresses the States' sovereign or quasi-sovereign interests through permissive intervention, providing that a "court *may* permit a * * * state governmental officer or agency to intervene if a party's claim or defense is based on: (A) a statute or executive order administered by the officer or agency; or (B) any regulation, order, requirement, or agreement issued or made under the statute or execu-

tive order." Fed. R. Civ. P. 24(b)(2) (emphasis added); see pp. 19-20, *supra*. Nothing in Rule 24 suggests that States' sovereign or quasi-sovereign interests give them a greater right to intervene in suits implicating *federal* law than in suits implicating their own laws.

B. The Court Of Appeals Did Not Abuse Its Discretion In Denying Permissive Intervention

Because petitioners' indirect economic interest and attenuated interest in immigration did not entitle them to intervene as of right, they could intervene only through an exercise of the court of appeals' discretion. See Fed. R. Civ. P. 24(b)(1) (describing circumstances in which a court "may permit" intervention). In general, "it is wholly discretionary with the court whether to allow intervention under Rule 24(b)," 7C Charles A. Wright et al., *Federal Practice and Procedure* § 1913, at 476 (3d ed. 2007); see *Crown, Cork & Seal Co., Inc.* v. *Parker*, 462 U.S. 345, 350 n.4 (1983) ("[P]ermissive intervention * * * may be denied in the discretion of the District Court."). A court may consider any factor "rationally relevant" to the intervention determination when deciding how to exercise its discretion in a particular case. *T-Mobile Northeast LLC* v. *Town of Barnstable*, 969 F.3d 33, 40-41 (1st Cir. 2020) (citation omitted). See *Planned Parenthood of Wisconsin, Inc.* v. *Kaul*, 942 F.3d 793, 803 (7th Cir. 2019) (observing that "[p]ermissive intervention allows the district court to consider a wide variety of factors").

"The exercise of discretion in a matter of this sort" may not be set aside by a reviewing court "unless clear abuse is shown." *Allen Calculators* v. *National Cash Register Co.*, 322 U.S. 137, 142 (1944). Indeed, "[r]eversal of a decision denying permissive intervention is extremely rare, bordering on nonexistent." *South Dakota*

ex rel. Barnett v. *United States Department of Interior*, 317 F.3d 783, 787 (8th Cir. 2003); see *Ingebretsen* v. *Jackson Public School Dist.*, 88 F.3d 274, 281 (5th Cir.) (describing appellate courts' "exceedingly deferential" review of decisions on permissive intervention) (citation omitted), cert. denied, 519 U.S. 965 (1996); 7C Wright, *Federal Practice and Procedure* § 1923, at 642-643 & n.21 (identifying only two cases "in which an appellate court has reversed solely because of an abuse of discretion in denying permissive intervention").

The court of appeals exercised its discretion soundly here. Petitioners did not participate in any capacity in the underlying rulemaking or earlier stages of this litigation. And by the time they sought to intervene, a different court had already entered a final judgment vacating the 2019 Rule. Particularly in that posture, the court of appeals' decision not to allow petitioners to intervene in these preliminary-injunction appeals was eminently reasonable. In contending otherwise, petitioners claim (Br. 27-28) that the government's decision not to pursue further review was "unprecedented[]" and amounted to "circumvent[ion]" of the APA that they must be permitted to intervene to stop. Those overheated claims lack foundation: the federal government routinely makes the judgment not to seek further review of adverse decisions, including in APA cases like this one. As a matter of both constitutional structure and statute, that judgment is vested in the federal Executive Branch, not the Attorneys General of the 50 States. The court of appeals did not abuse its discretion in declining to alter that structure here.

1. The court of appeals reasonably determined that petitioners should not be permitted to intervene in and prolong this preliminary-injunction appeal

a. Petitioners were latecomers to this case, and to the controversy surrounding the 2019 Rule more generally. To the government's knowledge, they made no attempt to participate in the rulemaking process in 2018 and 2019. After the 2019 Rule went into effect, they did not participate in any way before any of the five district courts to consider, and ultimately grant, preliminary injunctions against the rule's enforcement. See p. 3, *supra*. They were not among the scores of amici who submitted dozens of briefs to aid the courts of appeals in their review of those injunctions. See, *e.g.*, Pet. App. 52-56. Nor did petitioners submit amicus briefs in this Court as it considered applications for stays, motions to lift those stays, and the government's petitions for writs of certiorari. Petitioners' inaction continued even after President Biden, in early February, directed the Secretary of Homeland Security and others to give fresh consideration to the government's approach to public-charge determinations. See Exec. Order No. 14,012, § 4, 86 Fed. Reg. at 8278. For the 29 months following DHS's initial proposal of the 2019 Rule, petitioners were simply passive bystanders.

By the time petitioners finally sought to intervene, therefore, much had already happened. Among other things, the court of appeals had already affirmed the preliminary injunctions at issue here, while at the same time narrowing their scope such that they did not apply outside the plaintiff States' jurisdictions (and thus did not apply in any of petitioners' jurisdictions). Pet. App. 41-89. The Clerk of this Court had accepted the government's stipulations dismissing its requests for review of

the three court of appeals decisions affirming preliminary injunctions against the 2019 Rule. See p. 6, *supra*. And, most significantly, the 2019 Rule had been vacated in a final judgment entered in separate litigation. See *Cook County* v. *Wolf*, 498 F. Supp. 3d 999 (N.D. Ill. 2020).

Regardless of whether petitioners' motion was technically untimely—a question this Court need not resolve—it was well within the court of appeals' discretion to conclude that intervention was unwarranted in light of those considerations.[10] As already discussed, the combination of the narrowed geographical scope of the preliminary injunctions in this case and the separate final judgment vacating the 2019 Rule made clear that this appeal was not a proper forum for litigating petitioners' objections. Petitioners faced no direct consequences from the preliminary injunctions and could obtain no direct benefits by having those injunctions set aside. Accordingly, the court could reasonably determine that the burden on the existing parties of reviving and perpetuating the appeal outweighed any benefit that intervention would afford petitioners. See Fed. R. Civ. P. 24(b)(3) (requiring court to consider "delay or prejudice" to existing parties in deciding whether to grant permissive intervention).

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[10] Petitioners filed their motion to intervene before the district court in this case entered final judgment and before the time for seeking further review of the court of appeals' decision had run. See Pet. Br. 22-23. Given those facts and the absence of any unusual circumstances causing the existing parties prejudice from the delay, the government does not contend that the court of appeals would have been barred on timeliness grounds alone from granting petitioners' motion. See Fed. R. Civ. P. 24(b) (providing that a court "may" grant a "timely motion" for permissive intervention).

b. In fact, because the preliminary injunctions had no ongoing real-world effect by the time the court of appeals ruled on the motion to intervene, any further review of those preliminary injunctions was moot. See *University of Texas* v. *Camenisch*, 451 U.S. 390, 394 (1981) (When enjoined conduct has ceased, "the correctness of the decision to grant [the] preliminary injunction * * * is moot.").

Petitioners' contrary arguments lack merit. As an initial matter, they contend (Br. 30) that "[e]ven if a court thought the underlying appeal was moot, it could still grant Petitioners meaningful relief by vacating all prior decisions under" *United States* v. *Munsingwear, Inc.*, 340 U.S. 36 (1950). That prospect of "effectual relief," they further contend (Br. 29-30), means that they "clear the mootness threshold." But that is circular. The *Munsingwear* doctrine is an equitable *response* to mootness. See *Munsingwear*, 340 U.S. at 39. If the mere possibility of *Munsingwear* vacatur were enough to keep a case from becoming moot in the first place, there would never be occasion to enter such a vacatur.

Petitioners also argue (Br. 30-31) that the case is not moot because of the "voluntary cessation" exception. That exception to ordinary mootness principles has no application in these circumstances. It exists to ensure that a defendant cannot cease its offending conduct to moot a legal challenge, then resume that same conduct once the case is dismissed. See *Friends of the Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 189 (2000) (explaining that "voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice" because "if it did, the courts would be compelled to leave the defendant . . . free to return to his

old ways") (brackets, citations, and internal quotation marks omitted). This case did not become moot, however, because of some voluntary pause in enforcement that DHS may abandon at will; it became moot as a result of a final judicial decree vacating the 2019 Rule.

Petitioners contend (Br. 32-33) that the dispute nevertheless remains live because of the prospect that the final vacatur might be set aside in other litigation. That possibility is at best remote, not "reasonably * * * expected to [oc]cur." *Friends of the Earth*, 528 U.S. at 189 (citation omitted). The district court in that case has already denied motions to intervene and for Rule 60(b) relief. *Cook County* v. *Mayorkas*, No. 19-cv-6334, 2021 WL 3633917 (N.D. Ill. Aug. 17, 2021), appeal pending, No. 21-2561 (7th Cir. filed Aug. 20, 2021). In doing so, it observed that even the States that sought to intervene to defend the 2019 Rule "in fact 'agree that the Seventh Circuit's holding [in its earlier preliminary-injunction decision] likely establishes the law of the case for this [c]ourt,'" precluding a decision under Rule 60(b) that would set aside the prior vacatur order. *Id.* at *18 (citation omitted). That (necessary) concession likewise precludes a decision by the Seventh Circuit that would place the 2019 Rule back into effect.

Petitioners will no doubt contend that *this* Court might still take up the Northern District of Illinois litigation, reverse the district court's final judgment, and hold that the 2019 Rule was lawful. Even if the odds of that occurring were sufficiently high to prevent this preliminary-injunction appeal from being technically moot, however, petitioners' reliance on a chain of contingencies culminating in a Rule 60(b) decision by this Court in separate litigation amply illustrates the reasonableness of the court of appeals' decision denying in-

tervention. Petitioners' objection, at root, concerns the nationwide vacatur entered by the Northern District of Illinois; the Ninth Circuit did not abuse its discretion in concluding that the appeal of preliminary injunctions that do not even apply in petitioners' jurisdictions is not the appropriate forum in which to air that objection.

2. Petitioners' criticisms of the federal government's litigation decisions do not justify intervention

Petitioners close (Br. 37-41) with the same policy argument that runs throughout their brief. They contend that the government's decision not to continue litigating about the validity of the 2019 Rule was improper and that "[d]enying intervention in these circumstances would sow disorder." *Id.* at 37 (emphasis omitted). Petitioners' criticisms of the government's conduct of this litigation are misplaced, and it is their approach to intervention that would represent a departure from established practice.

a. Petitioners' argument rests (Br. 13) on the faulty premise that the federal government's decision not to continue to pursue review of the adverse judgments against the 2019 Rule was "unprecedented." To be sure, it is very unusual for the government to withdraw a petition for a writ of certiorari. But petitioners are wrong in asserting (Br. 12) that, under its "[t]raditional[]" practices, the government would "*not* simply drop[] its litigation defenses and acquiesce[] to a final substantive judgment against it, especially one vacating its rule." While it is often appropriate for the government to continue defending a rule that has been invalidated by a lower court, there is a substantial difference between deciding not to devote resources to further defense of an action or policy (what the government did here) and a decision to concede that a challenged action was un-

lawful. See 28 U.S.C. 530D(a)(1)(B)(ii) (distinguishing between a decision "not to appeal or request review of" an adverse decision affecting the constitutionality of a regulation and a decision to "refrain * * * from defending or asserting" the constitutionality of a regulation). The United States does not appeal every adverse decision entered against it, and a decision not to seek further review may be based on a variety of legal and prudential considerations. There is nothing new about that practice. Thus, the government has, over the decades, either declined to appeal or dropped appeals in numerous cases in which agencies' rules were invalidated on substantive grounds—including even on constitutional grounds, decisions for which Congress has requested special notification under Section 530D(a)(1)(B)(ii).[11]

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[11] Such cases are legion and include, for example: *Merck & Co.* v. *United States Department of Health & Human Services*, 962 F.3d 531 (D.C. Cir. 2020) (affirming vacatur of Department of Health and Human Services rule requiring disclosure of cost of prescription drugs paid for by Medicare or Medicaid on the ground that the rule exceeded statutory authority; no certiorari sought); *Chamber of Commerce of United States* v. *United States Department of Labor*, 885 F.3d 360 (5th Cir. 2018) (invalidating 2016 Department of Labor "fiduciary rule" on the ground that it was inconsistent with statutory text; no certiorari sought); *National Ass'n of Manufacturers* v. *SEC*, 800 F.3d 518, 530 (D.C. Cir. 2015) (invalidating Commission's rule on the ground that it required companies to make disclosures that violated the First Amendment; no certiorari sought); *National Ass'n for Advancement of Colored People* v. *DeVos*, 485 F. Supp. 3d 136, 145 (D.D.C. 2020) (declaring Department of Education "interim final rule" to be "void" on the grounds that it was substantively inconsistent with the governing statute and beyond the agency's delegated authority; no further review sought); *Tiwari* v. *Mattis*, 363 F. Supp. 3d 1154 (W.D. Wash. 2019) (invalidating Department of Defense regulation on the ground that it violated equal-protection component of the Due Process Clause), appeal dismissed, No. 19-35293 (9th Cir. Apr. 26, 2019); *Desert Survivors* v. *United States*

Contrary to petitioners' charge (Br. 28), that long-standing practice does not amount to "circumvent[ion]" of the APA. The APA itself provides for judicial review of final agency actions. See 5 U.S.C. 706. When a district court or court of appeals exercises that power, complying with its judgment does not overthrow the APA's design but rather is consistent with it. The government is of course free to seek, and often does seek, review of the lower court's decision. But nothing in the

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Department of Interior, 336 F. Supp. 3d 1131 (N.D. Cal. 2018) (vacating legally binding Department of the Interior policy, adopted in 2014 after notice and comment, on the ground that it represented an impermissible interpretation of the governing statute), appeal dismissed, No. 18-17054 (9th Cir. Nov. 19, 2018); *Latif* v. *Holder*, 28 F. Supp. 3d 1134, 1162-1163 (D. Or. 2014) (holding that procedures to challenge asserted inclusion on the "No-Fly List" did not satisfy due process), appeal dismissed, No. 14-36027 (9th Cir. Dec. 31, 2014); *Free Speech Coalition, Inc.* v. *Holder*, 957 F. Supp. 2d 564, 570 (E.D. Pa. 2013), aff'd in part, vacated in part, remanded *sub nom. Free Speech Coalition, Inc.* v. *Attorney General of the United States*, 825 F.3d 149 (3d Cir. 2016) (no cross-appeal of district court judgment holding that a Department of Justice regulation relating to record-keeping requirements for producers of sexually explicit material violated the Fourth Amendment); *Gonzales & Gonzales Bonds & Insurance Agency Inc.* v. *DHS*, 913 F. Supp. 2d 865, 880 (N.D. Cal. 2012) (declaring 2003 DHS regulation "invalid" on the ground that it was "inconsistent with Congress's statutory mandate"), appeal dismissed, No. 13-15415 (9th Cir. Aug. 9, 2013); *Boardley* v. *Department of Interior*, 605 F. Supp. 2d 8 (D.D.C. 2009), aff'd in part, No. 09-5176, 2009 WL 3571278 (D.C. Cir. Oct. 19, 2009), rev'd in part, 615 F.3d 508 (D.C. Cir. 2010) (no appeal from portion of district court order invalidating Park Service regulation governing permitting process for demonstrations and picketing); *Linares* v. *Jackson*, 548 F. Supp. 2d 21, 24 (E.D.N.Y. 2008) (enjoining the Department of Housing and Urban Development from enforcing regulation allowing no-cause evictions on the ground that it denied tenants due process), appeal dismissed, No. 08-4522 (2d Cir. Dec. 18, 2008).

APA or any other source of law requires that the government do so invariably.

b. Federal law in fact recognizes just the opposite. By statute, the "Solicitor General" and other "officer[s] of the Department of Justice" as the Attorney General may direct have responsibility for "attend[ing] to the interests of the United States" in the courts. 28 U.S.C. 517. "[T]he Attorney General and the Solicitor General" are further charged with "conduct[ing] and argu[ing] suits and appeals in the Supreme Court." 28 U.S.C. 518(a). In the case of the Solicitor General, those responsibilities have long included "[d]etermining whether, and to what extent, appeals will be taken by the Government to" the courts of appeals, and whether to seek further review before this Court. 28 C.F.R. 0.20; see 34 Fed. Reg. 20,388, 20,390 (Dec. 31, 1969) (similar).

As this Court has previously recognized, the decision to give the Attorney General and Solicitor General authority to determine not just *how* but *whether* to pursue appellate review "represents a policy choice by Congress." *Federal Election Comm'n* v. *NRA Political Victory Fund*, 513 U.S. 88, 96 (1994). "Whether review of a decision adverse to the Government * * * should be sought depends on a number of factors which do not lend themselves to easy categorization." *Ibid.* The Solicitor General has a "broad[] view of litigation in which the Government is involved throughout the state and federal court systems" and is therefore better positioned to evaluate the overall costs and benefits of pursuing a particular appeal than are others with more "parochial view[s]" of a given case. *Ibid.* The Court has acknowledged that the Court itself "is well served by such a practice" and that "the practice also serves the Government well." *Ibid.*

Preserving that "exercise of discretion in seeking to review judgments unfavorable to [the government]" was a significant basis for the Court's holding that nonmutual offensive collateral estoppel does not apply against the government. *United States* v. *Mendoza*, 464 U.S. 154, 163 (1984). The Court recognized that, in deciding whether to appeal an adverse decision, the Solicitor General appropriately considers "prudential" and "institutional concerns," in addition to "the panoply of important public issues raised in governmental litigation" that "may quite properly lead successive administrations of the Executive Branch to take differing positions with respect to the resolution of a particular issue." *Id.* at 161. Against that backdrop, a court of appeals does not abuse its discretion by showing respect for the decision of the federal officer whom Congress and the Executive Branch have charged with determining whether to seek further review of decisions against the government.

Petitioners urge this Court to adopt an approach to intervention in government litigation that is squarely at odds with that "policy choice by Congress." *NRA Political Victory Fund*, 513 U.S. at 96. Congress determined that decisions about whether to pursue further review in such cases are best "concentrated in a single official." *Ibid.* But petitioners instead propose (Br. 39) that whenever "the Government stops defending [a] rule," anyone else who can meet the minimum Article III requirements should be permitted to step into the shoes of the Department of Justice and "raise all arguments in defense of the rule" that they might like. Nothing in Rule 24 or broader principles of intervention warrants overruling the judgment of Congress and the Executive Branch in that fashion.

c. Petitioners claim (Br. 39) that "[a]llowing intervention in those circumstances will not cause any real problems," but they are wrong. For example, one significant factor that the Solicitor General considers in evaluating whether the government should pursue an appeal is the likelihood that further review will result in precedent adverse to the government's long-term interests in other areas. Because it is often the case that "hard cases make bad law," *Northern Securities Co.* v. *United States*, 193 U.S. 197, 400 (1904) (Holmes, J., dissenting), the Solicitor General—in partnership with other components of the Department of Justice and its client agencies—must carefully weigh the prospect of winning against the potential costs of losing. A third party seeking to proceed in the government's stead, however, need not consider such effects and may have few qualms about accepting the risks of an adverse decision by a higher court, however substantial they may be.

Permitting third parties to take up an appeal when the federal government declines to do so will also frequently waste judicial and executive resources. Where an agency has committed to correcting a deficiency in a previous rulemaking or to engaging in a new rulemaking, further litigation about the invalidated rule is likely to be overtaken by events, wasting the judicial time and resources expended in that litigation in the interim. Such further litigation is also likely to require the federal government's involvement, forcing it to divert resources from the rulemaking—and potentially complicating the rulemaking process by requiring the agency to take positions on the relevant factual and legal issues before the notice-and-comment process is complete.

This case illustrates the point. Although petitioners describe the government's actions as an "end-run around APA rulemaking requirements," Pet. Br. 16, DHS is in the midst of conducting a rulemaking on the public-charge ground of inadmissibility. As part of that effort, on August 23, 2021, the agency issued an ANPRM seeking input on the contours of a new rule. 86 Fed. Reg. 47,025. The comment period closed on October 22, 2021. *Ibid.* The Fall 2021 Unified Agenda of Regulatory and Deregulatory Actions forecasted that a notice of proposed rulemaking will issue early this year. See USCIS, DHS, *Inadmissibility on Public Charge Grounds, Unified Agenda (Fall 2021)*, https://go.usa.gov/xt4Dm. Thus, any further litigation over the validity of the 2019 Rule may be rendered superfluous within the year. There is accordingly little reason for the courts, plaintiffs, and the Executive Branch to expend additional resources in that litigation, including in potentially intrusive discovery into the sensitive communications of senior executive-branch officials around the time of the 2019 Rule's adoption. See p. 5, *supra*. Indeed, petitioners themselves would have had no objection to a request by the federal government to place all litigation about the 2019 Rule in abeyance while pursuing a new rule, thus "conserving the resources of the parties, the government, and the judiciary." Pet. Br. 11.[12]

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[12] Judge VanDyke argued that by dismissing its appeals in the cases challenging the 2019 Rule, the government left standing lower-court judgments that would make it "difficult for any future administration to promulgate another rule like the 2019 rule." Pet. App. 28. Petitioners do not endorse that argument, and it is incorrect. The Northern District of Illinois, which issued the only final judgment at issue, has since stated that its judgment "does not preclude DHS in the future from promulgating a public charge regula-

d. This case also demonstrates how allowing third parties to step into the government's shoes to perpetuate government litigation can undermine the public interest more broadly. As discussed above, see p. 7, *supra*, the 2019 Rule proved to have only a negligible effect on actual adjustment-of-status decisions, and thus failed to generate its intended benefits. But the mere existence of the rule nonetheless imposed significant costs. When DHS adopted the 2019 Rule, it acknowledged that the rule was likely to cause "confusion" and lead some individuals to forgo public benefits to which they are entitled even if they are not subject to the public-charge ground of inadmissibility (such as U.S. citizens who share a household with noncitizens). 84 Fed. Reg. at 41,313. The agency further recognized that the unnecessary reduction in public-benefit enrollment was likely to increase "food insecurity [and] housing scarcity," and to adversely affect "public health and vaccinations." *Ibid.*

The COVID-19 pandemic gave greater salience to those concerns. See USCIS, *Fact Sheet* (Mar. 13, 2020), *reprinted in* App. to Mot. to Lift Stay at 44, *DHS* v. *New York*, No. 19A785 (Apr. 13, 2020) (USCIS Fact Sheet) (recognizing that, in light of the rule, noncitizens "impacted by COVID-19 may be hesitant to seek necessary medical treatment or preventive services, * * * including vaccines, if a vaccine becomes available"); see also *DHS* v. *New York*, 140 S. Ct. 2709 (2020) (No. 19A785) (denying States' motion to lift stay in response to COVID-19 pandemic, but clarifying that "[t]his order

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tion identical to the [2019] rule." *Cook County* v. *Mayorkas*, 2021 WL 3633917, at *15. And the other relevant decisions, including all of the appellate decisions, were issued in a preliminary-injunction posture, and thus would not have preclusive effect.

does not preclude a filing in the District Court"); *New York* v. *DHS*, 475 F. Supp. 3d 208 (granting new injunction against enforcement of 2019 Rule in light of the changed circumstances brought about by the COVID-19 pandemic), stay pending appeal granted on jurisdictional grounds, 974 F.3d 210 (2d Cir. 2020), appeal dismissed, No. 20-2537 (2d Cir. Mar. 17, 2021). Although DHS took steps to mitigate such effects while the 2019 Rule was in effect, see USCIS Fact Sheet, there is no dispute that the rule, in fact, caused large numbers of individuals to unnecessarily disenroll in public benefits before and during an ongoing health crisis. See Pet. App. 118-121. The government's decision not to maintain its appeal of the Northern District of Illinois's vacatur of the 2019 Rule alleviated the adverse effects that confusion over the rule's scope had spawned. Allowing petitioners to intervene in an attempt to resuscitate the rule would reintroduce those concerns.

e. Petitioners appear to acknowledge that the government should not be forced to continue litigating the validity of a rule that the relevant agency is actively reconsidering. They assert (Br. 11-12), however, that the only appropriate course is to seek to place the litigation into abeyance pending the rulemaking. Often, the government concludes that seeking abeyance is the most appropriate way to advance the interests of the United States. Indeed, as petitioners acknowledge, the government has taken that approach in a number of pending cases in which agencies are considering replacing a challenged rule or policy. See Br. 12 (citing examples); see also, *e.g.,* Order, *State of New York* v. *United States Department of Health & Human Services*, No. 19-4254 (2d Cir. Feb. 6, 2021); Order, *Samma* v. *Department of Defense*, No. 20-5320 (D.C. Cir. June 30, 2021).

Petitioners' concession that similar abeyances in these cases would have been appropriate in February 2021 is difficult to square with their assertion that APA compliance now demands that they be allowed to intervene and pursue at least some of the litigation to termination notwithstanding the ongoing rulemaking proceedings. And in any event, petitioners err in asserting that seeking such abeyances is the *only* appropriate course. To the contrary, as explained above, the government sometimes chooses to comply with an adverse decision rather than continuing to litigate or seeking to place the case in abeyance pending further rulemaking. See pp. 37-40 & n. 11, *supra*. And the litigation over the 2019 Rule had several features that distinguished it from the more typical cases on which petitioners rely.

First, the litigation over the 2019 Rule involved a case in which this Court had granted certiorari. Petitioners are correct that lower courts are often willing to hold a challenge to an existing rule in abeyance for an extended period while an agency pursues a new rule, Pet. Br. 11-12 & n.6, but such a course would be far more exceptional in a case pending before this Court.

Second, in this case, the stays previously entered against the preliminary injunctions and final vacatur of the 2019 Rule meant that a request to place the relevant appeals in abeyance would have left the 2019 Rule in effect. The plaintiffs challenging the 2019 Rule surely would have objected to such a course. It is thus far from clear that the government would have been able to persuade all of the relevant courts to hold the litigation in abeyance.

Third, even if the litigation could have been placed into abeyance, that would have done little to further the 2019 Rule's intended objectives—because, again, the

rule had only a negligible impact on actual adjustment-of-status decisions. But abeyance would have maintained (and possibly worsened) the 2019 Rule's significant unintended adverse consequences during an ongoing pandemic.

Under that unique combination of circumstances, attempting to place all of the pending appeals in abeyance would not have been in the best interests of the United States. Petitioners are free to criticize the federal government's judgment not to do so, but their disagreement with that judgment is not a sufficient basis for concluding that the court of appeals abused its considerable discretion in denying permissive intervention here.

CONCLUSION

For the foregoing reasons, the court of appeals' order denying petitioners' motion to intervene should be affirmed.

Respectfully submitted.

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APPENDIX

1. Fed. R. Civ. P. 19 provides:

Required Joinder of Parties

(a) PERSONS REQUIRED TO BE JOINED IF FEASIBLE.

(1) *Required Party.* A person who is subject to service of process and whose joinder will not deprive the court of subject matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

(2) *Joinder by Court Order.* If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

(3) *Venue.* If a joined party objects to venue and the joinder would make venue improper, the court must dismiss that party.

(b) WHEN JOINDER IS NOT FEASIBLE. If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:

(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:

(A) protective provisions in the judgment;

(B) shaping the relief; or

(C) other measures;

(3) whether a judgment rendered in the person's absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

(c) PLEADING THE REASONS FOR NONJOINDER. When asserting a claim for relief, a party must state:

(1) the name, if known, of any person who is required to be joined if feasible but is not joined; and

(2) the reasons for not joining that person.

(d) EXCEPTION FOR CLASS ACTIONS. This rule is subject to Rule 23.

2. Fed. R. Civ. P. 24 provides:

Intervention

(a) INTERVENTION OF RIGHT. On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by a federal statute; or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(b) PERMISSIVE INTERVENTION.

(1) *In General*. On timely motion, the court may permit anyone to intervene who:

(A) is given a conditional right to intervene by a federal statute; or

(B) has a claim or defense that shares with the main action a common question of law or fact.

(2) *By a Government Officer or Agency*. On timely motion, the court may permit a federal or state governmental officer or agency to intervene if a party's claim or defense is based on:

(A) a statute or executive order administered by the officer or agency; or

(B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.

(3) *Delay or Prejudice.* In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

(c) NOTICE AND PLEADING REQUIRED. A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.