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THE SUPREME COURT

JUNE 15, 2022

REBECCA A. WOMELDORF
REPORTER OF DECISIONS

Syllabus

ARIZONA ET AL. *v.* CITY AND COUNTY OF SAN FRANCISCO ET AL.

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

No. 20–1775. Argued February 23, 2022—Decided June 15, 2022
Certiorari dismissed. Reported below: 992 F. 3d 742.

Mark Brnovich, Attorney General of Arizona, argued the cause for petitioners. With him on the briefs were *Joseph A. Kanefield*, *Brunn W. Roysden III*, Solicitor General, *Drew C. Ensign*, Deputy Solicitor General, *Kate B. Sawyer*, Assistant Solicitor General, *Katlyn J. Divis*, Assistant Attorney General, *Tyler R. Green*, and *Cameron T. Norris*, *Steve Marshall*, Attorney General of Alabama, *Leslie Rutledge*, Attorney General of Arkansas, *Theodore E. Rokita*, Attorney General of Indiana, *Derek Schmidt*, Attorney General of Kansas, *Jeff Landry*, Attorney General of Louisiana, *Lynn Fitch*, Attorney General of Mississippi, *Eric S. Schmitt*, Attorney General of Missouri, *Austin Knudsen*, Attorney General of Montana, *John M. O'Connor*, Attorney General of Oklahoma, *Alan Wilson*, Attorney General of South Carolina, *Ken Paxton*, Attorney General of Texas, and *Patrick Morrisey*, Attorney General of West Virginia.

Deputy Solicitor General Fletcher argued the cause for the federal respondents. With him on the brief were *Solicitor General Prelogar*, *Deputy Solicitor General Gannon*, *Deputy Assistant Attorney General Harrington*, *Benjamin W. Snyder*, *Daniel Tenny*, and *Gerard Sinzdak*.

Helen H. Hong, Deputy Solicitor General of California, argued the cause for the state respondents. With her on the brief were *Rob Bonta*, Attorney General, *Michael J. Mongan*, Solicitor General, *Michael L. Newman* and *Renu R. George*, Senior Assistant Attorneys General, *Cherokee DM Melton*, Supervising Deputy Attorney General, *Anna Rich*, Deputy Attorney General, and *Kimberly M. Castle*, Associate Deputy Solicitor General, *Philip J. Weiser*, Attorney

General of Colorado, *Kathleen Jennings*, Attorney General of Delaware, *Karl A. Racine*, Attorney General of the District of Columbia, *Holly T. Shikada*, Attorney General of Hawaii, *Kwame Raoul*, Attorney General of Illinois, *Aaron M. Frey*, Attorney General of Maine, *Brian E. Frosh*, Attorney General of Maryland, *Maura Healey*, Attorney General of Massachusetts, *Dana Nessel*, Attorney General of Michigan, *Keith Ellison*, Attorney General of Minnesota, *Aaron D. Ford*, Attorney General of Nevada, *Andrew J. Bruck*, Acting Attorney General of New Jersey, *Hector Balderas*, Attorney General of New Mexico, *Ellen F. Rosenblum*, Attorney General of Oregon, *Josh Shapiro*, Attorney General of Pennsylvania, *Peter F. Neronha*, Attorney General of Rhode Island, *Mark R. Herring*, Attorney General of Virginia, and *Robert W. Ferguson*, Attorney General of Washington. *Sara J. Eisen-berg* filed a brief for respondents City and County of San Francisco et al. With her on the brief were *James R. Williams*, *Greta S. Hansen*, and *Raphael N. Rajendra*.*

PER CURIAM.

The writ of certiorari is dismissed as improvidently granted.

It is so ordered.

CHIEF JUSTICE ROBERTS, with whom JUSTICE THOMAS, JUSTICE ALITO, and JUSTICE GORSUCH join, concurring.

This case involves a regulation known as the Public Charge Rule, promulgated by the Department of Homeland

*Briefs of *amici curiae* urging reversal were filed for the State of Ohio et al. by *Dave Yost*, Attorney General of Ohio, *Benjamin M. Flowers*, Solicitor General, and *John L. Rockenbach*, Deputy Solicitor General, and by the Attorneys General for their respective States as follows: *Treg R. Taylor* of Alaska, *Daniel Cameron* of Kentucky, and *Douglas J. Peterson* of Nebraska; for the America First Legal Foundation by *Christopher E. Mills* and *Reed D. Rubinstein*; and for the Immigration Law Reform Institute by *Lawrence J. Joseph* and *Christopher J. Hajec*.

Security in 2019. See 84 Fed. Reg. 41292 (2019). The Rule set out the test the Department planned to use to determine whether an applicant for admission into the country or adjustment to lawful permanent resident status is "likely at any time to become a public charge," which would make him ineligible. 8 U. S. C. §1182(a)(4)(A). Several parties filed lawsuits arguing that the Rule was unlawful because it defined "public charge" too broadly.

We granted certiorari in this case not to address the merits of that argument, but to decide whether the petitioners—13 States which support the Rule—should have been permitted to intervene in this litigation to defend the Rule's legality in the Court of Appeals. Petitioners argue that the answer is yes, in light of the Government's actions.

When this and other suits challenging the Rule were first brought in 2019, the Government defended it. And when multiple lower courts, including the District Court here, found the Rule unlawful, the Government appealed those decisions. After a change in administrations, though, the Government reversed course and opted to voluntarily dismiss those appeals, leaving in place the relief already entered.

A new administration is of course as a general matter entitled to do that. But the Government then took a further step. It seized upon one of the now-consent judgments against it—a final judgment vacating the Rule nationwide, issued in a different litigation—and leveraged it as a basis to immediately repeal the Rule, without using notice-and-comment procedures. 86 Fed. Reg. 14221 (2021) ("Because this rule simply implements the district court's vacatur of the August 2019 rule . . . DHS is not required to provide notice and comment."). This allowed the Government to circumvent the usual and important requirement, under the Administrative Procedure Act, that a regulation originally promulgated using notice and comment (as the Public Charge Rule was) may only be repealed through notice and comment, 5 U. S. C. §551(5); see *Perez* v. *Mortgage Bankers*

Assn., 575 U. S. 92, 101 (2015). As part of this tactic of "rulemaking-by-collusive-acquiescence," *City and County of San Francisco* v. *United States Citizenship and Immigration Servs.*, 992 F. 3d 742, 744 (CA9 2021) (VanDyke, J., dissenting), the Government successfully opposed efforts by other interested parties—including petitioners here—to intervene in order to carry on the defense of the Rule, including possibly before this Court.

These maneuvers raise a host of important questions. The most fundamental is whether the Government's actions, all told, comport with the principles of administrative law. But bound up in that inquiry are a great many issues beyond the question of appellate intervention on which we granted certiorari, among them standing; mootness; vacatur under *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950); the scope of injunctive relief in an APA action; whether, contrary to what "[t]he government has long argued," the APA "authorize[s] district courts to vacate regulations or other agency actions on a nationwide basis," Brief for Federal Respondents 5, n. 3; how the APA's procedural requirements apply in this unusual circumstance, cf. § 551(5); *FCC* v. *Fox Television Stations, Inc.*, 556 U. S. 502, 515 (2009); and more.

It has become clear that this mare's nest could stand in the way of our reaching the question presented on which we granted certiorari, or at the very least, complicate our resolution of that question. I therefore concur in the Court's dismissal of the writ of certiorari as improvidently granted. But that resolution should not be taken as reflective of a view on any of the foregoing issues, or on the appropriate resolution of other litigation, pending or future, related to the 2019 Public Charge Rule, its repeal, or its replacement by a new rule. See *Cook County* v. *Mayorkas*, 340 F. R. D. 35 (ND Ill. 2021), appeal pending, No. 21–2561 (CA7); 87 Fed. Reg. 10571 (2022) (new proposed rule that would "implement a different policy than the 2019 Final Rule").

Reporter's Note

The attached opinion has been revised to reflect the usual publication and citation style of the United States Reports. The revised pagination makes available the official United States Reports citation in advance of publication. The syllabus has been prepared by the Reporter of Decisions for the convenience of the reader and constitutes no part of the opinion of the Court. A list of counsel who argued or filed briefs in this case, and who were members of the bar of this Court at the time this case was argued, has been inserted following the syllabus. Other revisions may include adjustments to formatting, captions, citation form, and any errant punctuation. The following additional edits were made:

p. 766, line 2: "collective" is replaced with "collusive"