No. 24-3521

In the
United States Court of Appeals
for the
Eighth Circuit

THE STATE OF KANSAS, ET AL.
Plaintiffs-Appellees,

v.

UNITED STATES OF AMERICA, ET AL.,
Defendants-Appellants.

On Appeal from the United States District Court
for the District of North Dakota, No. 1:24-CV-00150-DMT-CRH
Hon. Daniel M. Traynor

BRIEF OF *AMICI CURIAE* CLAUDIA MOYA LOPEZ, HYUN KIM, DANIA QUEZADA TORRES, AND CASA, INC. IN SUPPORT OF REVERSAL

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1(a) and Eighth Circuit Rule 26.1A, CASA, Inc. hereby certifies that it is a non-profit organization, has no parent corporation, and no publicly held corporation owns ten percent or more of its stock.

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INTERESTS OF *AMICI CURIAE*

Amici Claudia Moya Lopez, Hyun Kim, and Dania Quezada Torres are noncitizens who came to the United States as children, have lived most of their lives here, and were granted deferred action through the Deferred Action for Childhood Arrivals ("DACA") program. *Amicus* CASA, Inc. is a membership-based immigrant rights organization in the mid-Atlantic region whose more than 100,000 members include Lopez, Kim, and thousands of DACA recipients. CASA's core mission includes supporting its members in improving their physical and mental health and social stability.[1]

Amici have a vital interest in defending the Centers for Medicare and Medicaid Services ("CMS") final rule at issue in this lawsuit, which for the first time permits DACA recipients to purchase affordable health insurance through the marketplaces established by the Affordable Care Act ("ACA"). 89 Fed. Reg. 39,392 (May 8, 2024) (the "Rule"). Before the Rule, many DACA recipients, including the individual *amici*, struggled to pay healthcare costs and often resorted to second-best options, or no

[1] Declarations Kim ("Kim.Decl."), Lopez ("Lopez.Decl."), and George Escobar on CASA's behalf ("Escobar.Decl."), are docketed at App.Dkt. 5468356.

healthcare at all. In 2023, for example, Claudia was diagnosed with leukemia and hospitalized for five weeks. Lopez. Decl. ¶10. Although the hospital fortunately covered her treatment's cost, she still faces medical debt exceeding her annual income from her small business—and nearly half of her savings—and requires ongoing monitoring for leukemia recurrence that she cannot afford. *Id.* ¶¶11-15. Hyun has not had a physical in three years and has not been tested for diabetes despite a family history of the illness. Kim.Decl. ¶8. Torres tried to treat a bacterial infection on her own because she had already used the single school-clinic doctor's visit she gets through coverage provided by her university. R.Doc.49-3 ¶14. The pain continued to worsen until she was forced to go to urgent care. *Id*. She also has had to ration her prescription medication. *Id*. ¶13.

The Rule promised an end to *amici*'s decade-long wait for access to affordable healthcare. When it took effect November 1, 2024, the individual *amici* and more than 2,600 other DACA recipients in Plaintiff States purchased health insurance through the ACA marketplaces. App.205, R.Doc.119-1 ¶16. But the district court's order preliminarily enjoining and staying the Rule in 19 States effectively canceled those

States' resident DACA recipients' ability to get healthcare through the exchanges. In Virginia, the order prevents Lopez, Kim, and many CASA members who purchased health plans from getting healthcare and from renewing their Virginia Marketplace plans in the future. *See, e.g.*, Lopez.Decl. ¶¶17-18; Kim.Decl. ¶¶13, 15, Escobar.Decl. ¶¶14-16. For those denied healthcare, the order will thus delay access to important health insurance and medical care, forcing them to choose between foregoing medical treatment and assuming crushing medical debt. Further, if the order stands, CASA will need to expend funds to educate DACA recipients about the change to their ACA eligibility and help them attempt to secure alternative healthcare options.

To protect these interests, *amici* jointly moved to intervene below to defend the Rule, R.Doc.49, but the court granted preliminary relief without deciding that motion. To avoid complicating the expedited timeline entered by this Court, *amici* have chosen to participate as *amici* for now, rather than continuing to seek intervention at this stage.[2]

[2] Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *amici* state that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amici*, their members, and their counsel, made any monetary contribution toward the preparation or submission of this brief.

INTRODUCTION

DACA recipients are vital contributors to their families, employers, schools, communities, and the economy. They have lived most of their lives in this country, yet many have been waiting for access to health insurance for more than a decade. Under the Rule, thousands of DACA recipients—including all three individual *amici*—were finally able to purchase their first ACA healthcare policies. App.205, R.Doc.119-1 ¶16. But the district court's preliminary injunction and stay prematurely terminated those enrollments based on a flawed legal theory. *Amici* thus join Defendants' arguments to reverse that order, and write separately to emphasize additional points and authorities in support of those arguments.

First, *amici* join Defendants' argument that venue is improper. OB.27-30. Plaintiffs strategically joined North Dakota so they could file in this Court. But North Dakota lacks Article III standing, so its participation cannot support venue. North Dakota does not run its own ACA marketplace, and it has just 126 DACA recipients in the entire state—the fewest of any Plaintiff except Montana. As Defendants explain (OB.18-19), Plaintiffs' speculation that DACA recipients impose any cost

on North Dakota is unsupported by the record, and is too attenuated to confer standing in any event. But even if that were not true, *amici* demonstrate that North Dakota, in particular, lacks standing because its DACA population's *de minimis* size makes it highly unlikely that the Rule will have any effect in the State.

Second, *amici* join Defendants' argument that the Rule is lawful. Indeed, the Rule is *compelled* by a proper interpretation of the pertinent statutes. The district court relied on the Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA"), which limits certain federal benefits to "qualified alien[s]." 8 U.S.C. § 1611(a). But that limitation does not apply to the ACA. Instead, Congress superseded it by specifying that all individuals who are "lawfully present in the United States" are "qualified individuals" who "may enroll" in and purchase qualified health plans under the ACA § 18032(d)(3), (f)(1), (3). Indeed, the ACA expressly *mandates* that "lawfully present" individuals obtain health insurance. 26 U.S.C. § 5000A(a), (d).

"Lawfully present" individuals can thus access the ACA marketplace regardless of whether they are "qualified aliens" under PRWORA. Deferred action recipients have been considered "lawfully present" under

regulations governing benefit access since PRWORA first used that term in 1996, and Congress is presumed to have been aware of and incorporated that definition when it borrowed the term in the ACA. Plaintiffs' challenge to the Rule thus lacks merit, and is unlikely to succeed. This Court should therefore vacate the district court's preliminary relief order.

BACKGROUND

I. Congress Enacts The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), Which Specifies The Federal Public Benefits Available To "Qualified Aliens" And Other "Lawfully Present" Noncitizens

Since 1996, noncitizens' access to federal public benefits has been governed mainly by PRWORA, 8 U.S.C. § 1611. PRWORA identifies two groups of noncitizens who may access those benefits. For most benefits, only "qualified alien[s]" are eligible. *Id.* § 1611(a). But a broader group—any noncitizen who is "lawfully present in the United States as determined by the Attorney General"—may access certain benefits (such as Social Security) that they have earned by working or contributed to funding, even if they are not "qualified alien[s]." *Id.* § 1611(b)(2)-(4).

The term "qualified alien" includes some noncitizens that meet the Immigration and Nationality Act ("INA") requirements for admission to

the United States, such as lawful permanent residents and asylum recipients. 8 U.S.C. § 1641(b)(1)-(2). But it also includes others who have been permitted to remain in the country solely as a result of the federal government's forbearance from removing them. For example, it includes certain individuals granted parole, meaning they have been allowed to enter the United States without a full determination of their admissibility, even though they may ultimately be determined to be inadmissible. *Id*. §§ 1182(d)(5)(A), 1641(b)(4). Another example is recipients of withholding of removal, which merely prevents the Department of Homeland Security ("DHS") from removing otherwise removable individuals to countries where they will face persecution. *Id.* §§ 1231(b)(3), 1641(b)(5).

II. The Attorney General Defines "Lawfully Present" To Include Deferred Action Recipients

Unlike "qualified alien," PRWORA does not define "lawfully present." Instead, it leaves the definition to be "determined by the Attorney General"—and now, as his successor, DHS. 8 U.S.C. § 1611(b)(2)-(4). Two weeks after PRWORA's enactment, the Attorney General exercised this authority through an interim Rule codified originally at 8 C.F.R. § 103.12 (1997), and now § 1.3 (2011). Recognizing that "Congress intended for qualified aliens … to be included in the definition of lawfully

present," 61 Fed. Reg. 47,039, 47,040/2 (Sept. 6, 1996), the rule defined "lawfully present" to include those individuals, plus individuals admitted with other status and short-term parolees, 8 C.F.R. § 103.12(a)(1); 8 C.F.R. § 1.3(a)(1)-(3).

The definition also included seven other groups who had been "permitted to remain in the United States either by an act of Congress or through some other policy determination affecting that class of aliens." 61 Fed. Reg. at 47,040/2. One was recipients of "deferred action," 8 C.F.R. § 103.12(a)(4)(vi) (1997); 8 C.F.R. § 1.3(a)(4)(vi)—"a regular practice" in which the government elects not to seek removal of individuals "for humanitarian reasons or simply for its own convenience," *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483-84 & n.8 (1999).

Together, these categories reflect a clear definition of "lawfully present": any individual whose "presence in the United States has been sanctioned by a policy determination that a particular class of aliens should be allowed to remain in the United States." 61 Fed. Reg. at 47,040/1.

III. In the Affordable Care Act (ACA), Congress Requires Lawfully Present Noncitizens To Purchase Health Insurance And Allows Them To Do So Through Newly Created Health Insurance Marketplaces

Against this background, Congress passed the ACA in 2010 to

ensure broad access to health insurance and reduce the number of uninsured and underinsured individuals. Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as 42 U.S.C. § 18001 *et seq.*). To achieve that goal, the ACA included a provision (the "Individual Mandate") that required each U.S. citizen and each "alien lawfully present in the United States"—unless incarcerated or exempt for religious reasons—to obtain a minimum level of health insurance. 26 U.S.C. § 5000A(a), (d). Although Congress later eliminated the penalty for violating the Individual Mandate, the mandate itself remains in the statute and informs its original meaning.

For individuals who cannot access health insurance through their employers or by other means, the ACA establishes online health insurance marketplaces where consumers can compare and buy approved health insurance plans. 42 U.S.C. §§ 18031, 18041. Most of the Plaintiff States here opted to use the federal government's centrally operated marketplaces. App.58, R.Doc.27 ¶¶46-48. Only three—Idaho, Kentucky, and Virginia—operate their own marketplaces. *Id.*

Consistent with the Individual Mandate's requirement that "lawfully present" noncitizens obtain health insurance, the ACA also permits them as "qualified individual[s]" to access the health insurance

marketplaces established by the Act. 42 U.S.C. § 18032(a)(1), (f)(1), (3). Congress accordingly chose to define the limits on marketplace access not by using PRWORA's category of "qualified alien[s]," but rather by using its other key term—"lawfully present"—which had consistently been interpreted to include deferred actions recipients. *Id*.

CMS's initial regulation interpreting the ACA's reference to "lawfully present" thus closely tracked the regulation defining that term for purposes of PRWORA. In particular, it stated that all persons granted "deferred action" are "lawfully present." 45 C.F.R. § 152.2(4)(vi) (2010).

IV. DHS Adopts DACA, But CMS Excludes Recipients From ACA Marketplaces

In 2012, DHS announced DACA, which allowed persons with generally good records and proof of educational attainment, attendance, or military service, to seek deferred action and work authorization. Janet Napolitano, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,* DHS, 2 (June 15, 2012), tinyurl.com/2nwmu6fb ("Napolitano Memorandum"). The policy is limited to individuals who arrived in the country by 2007 and have remained present continuously since then. *Id.* DHS's goal was to prevent removal of "low [enforcement] priority individuals" who had "already contributed

to our country in significant ways." *Id.*

Although then-existing ACA regulations likewise would have treated DACA recipients as "lawfully present"—and thus eligible to purchase health insurance on the marketplaces—CMS arbitrarily amended those regulations to exclude them from the definition of "lawfully present," while continuing to treat all other deferred action recipients as lawfully present. 77 Fed. Reg. 52,614, 52,615 (Aug. 30, 2012) (adding 45 C.F.R. § 152.2(8)). This change "was not based on health policy"—"rather, it relied on a desire not to interfere with immigration policymaking" or to appear too lenient on immigration issues. Medha D. Makhlouf, *Interagency Dynamics in Matters of Health and Immigration*, 103 B.U. L. Rev. 1095, 1126-27 (2023); 77 Fed. Reg. at 52,614-15.

Without marketplace access, DACA recipients without adequate access to employment-based coverage have had few options. A recent survey found 20% lacked any health coverage—nearly triple the national average. National Immigration Law Center, DACA Recipients' Access to Health Care: 2024 Report, 1 (May 2024), tinyurl.com/yw6zw2y4. 36% skipped recommended medical tests or treatments due to the cost of care. *Id.* at 3. The lack of coverage also had financial implications: 27% took

on debt to afford a medical procedure, and 12% took on debt to afford medication. *Id.*

V. CMS Restores DACA Recipients' Access To Health Insurance Marketplaces

In May 2024, CMS issued the Rule eliminating the arbitrary DACA carve out from marketplace eligibility. CMS explained that it was "re-consider[ing] its position" and "chang[ing] its interpretation" to once again treat *all* deferred action recipients as "lawfully present" for ACA purposes because it had "no statutory mandate to distinguish" DACA recipients from "other deferred action recipients." 89 Fed. Reg. at 39,395/1. Under the Rule, DACA recipients could purchase health insurance in the ACA marketplace during the enrollment period for 2025, beginning November 1, 2024. *Id*. at 39,392/1. Many—including *amici* Claudia and Hyun, Lopez.Decl. ¶17-18; Kim.Decl. ¶¶13, 15—did so and paid their first premiums (or received advanced premium tax credits through their plan).

VI. District Court Preliminarily Enjoins And Stays The Rule

Three months after CMS issued the Rule, North Dakota and fourteen other States filed this suit challenging the Rule on August 8, 2024. App.14, R.Doc.1. For venue, Plaintiffs chose the District of North Dakota,

based on Plaintiff North Dakota's participation, even though North Dakota does not operate its own exchange and only 126 DACA recipients reside there. App.53, 59-60, R.Doc.27 ¶¶22, 55-61; App.179-80, R.Doc.111-1 ¶¶3-5; R.Doc.103 ¶¶4-5. To establish standing, North Dakota speculated that some of those 126 individuals might one day leave the country if denied healthcare, but might stay if the rule remains in place, imposing speculative costs on the State. App.59, R.Doc.27 ¶55.

Weeks later, more States joined the suit, and the 19 Plaintiff States sought a preliminary injunction. R.Doc.35. Rather than rule before open enrollment began November 1, 2024, the district court waited until December 9, 2024—38 days later—before finally granting preliminary relief.

ARGUMENT

I. The District Of North Dakota Is Not A Proper Venue

The order below must be reversed at the threshold because the District of North Dakota is not a permissible venue for this suit. Based on North Dakota's participation as a plaintiff, Plaintiffs asserted venue under 28 U.S.C. § 1391(e)(1)(C), which provides for venue where any "plaintiff resides." But as the district court recognized, "[f]or venue to be

proper" on that basis, "North Dakota must have standing independent of the other Plaintiffs." Add.5. Because that requirement is not met, venue is improper, and the court lacked authority to grant preliminary relief.

A. North Dakota Lacks Article III Standing

"As the party invoking federal jurisdiction, the plaintiffs bear the burden of demonstrating that they have standing." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 430-31 (2021). "The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

"To establish injury in fact, a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo*, 578 U.S. at 339. "Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is *certainly* impending." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013). When "a plaintiff's asserted injury arises from the government's allegedly unlawful regulation," it is "'substantially

more difficult' to establish" standing because "causation and redressability ordinarily hinge on the response of the regulated … third party." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 562 (1992). At the pleadings stage, "it becomes the burden of the plaintiff to [plead] facts showing that [the] choices [made by the third party in response to the regulation] have been or will be made in such manner as to produce causation and permit redressability of injury." *Id.* at 562.

Here, the district court erroneously concluded that North Dakota had Article III standing based on Plaintiffs' theory that the Rule decreased DACA recipients' attrition from the State and, therefore, required the State to incur financial harms they would have otherwise avoided. *See* App.59, R.Doc.27 ¶¶55-56. Among these costs, the Amended Complaint lists "education, healthcare, law enforcement, [and] public assistance." App.59-11, R.Doc.27 ¶¶56-62. The district court adopted this reasoning, concluding that North Dakota had standing based on the purportedly "common-sense inference" that "the powerful incentive of health care will encourage aliens who may otherwise vacate" North Dakota to stay and, thereby, cause the State "monetary harm via [its] issuing licenses and providing education." Add.9-10.

But these alleged injuries are too diffuse and generalized to satisfy the injury-in-fact element of Article III standing for *any* State. And that is especially true for North Dakota because—by its own admission—only 126 DACA recipients even reside in the State.

1. The Rule's Alleged Effects On State Spending Are Too Speculative And Attenuated To Support Standing

As the Supreme Court recently warned, "federal policies frequently generate indirect effects on state revenues or state spending," but such generalized impacts are too "attenuated" to provide standing to sue. *United States v. Texas*, 143 S. Ct. 1964, 1972 n.3 (2023). After all, were such "peripheral costs on a State" sufficient to create Article III standing, "what limits on state standing [would] remain?" *Arizona v. Biden*, 40 F.4th 375, 386 (6th Cir. 2022). As Judge Sutton explained in evaluating several States' challenge to DHS's immigration enforcement priorities, "the States' boundless theory of standing—in which all peripheral costs imposed on States by actions of the President create a cognizable Article III injury—would allow them to challenge a 'disagreeable war.'" *Id.* That is not the law, so Plaintiffs are wrong to rely on these peripheral costs.

This Court has similarly rejected "vague and speculative" injuries as insufficient to confer Plaintiffs with Article III standing to challenge a regulation. In *Morehouse Enterprises, LLC v. ATF*, for example, this Court held that several States lacked Article III standing to challenge a gun regulation because their alleged harms—"fewer firearms in circulation and therefore less crime deterrence," frustration of "state firearm policy," and a decrease in "state tax revenue" from firearm dealers closing—were "vague and speculative." 78 F.4th 1011, 1017 n.5 (8th Cir. 2023). The harms alleged here are the same type of downstream generalized costs that proved too "vague and speculative" to establish standing in *Morehouse*.

Moreover, even if the harms alleged by Plaintiffs were legally cognizable, they cannot establish causation or an imminent injury in fact. In other words, the Supreme Court has explained, "[w]hen, ... as in this case, a plaintiff's asserted injury arises from the government's allegedly unlawful regulation (or lack of regulation) of *someone else*"—here, DACA recipients residing in North Dakota—standing is "'substantially more difficult' to establish" because, "[i]n that circumstance, causation and redressability ordinarily hinge on the response of the ... third party to the

government action or inaction." *Lujan*, 504 U.S. at 562; *see Arizona*, 40 F.4th at 383. To meet this high bar, plaintiffs bear the burden to "adduce facts showing that those [third-party] choices [in response to the government action or inaction] have been or will be made in such manner as to produce causation and permit redressability of injury." *Lujan*, 504 U.S. at 562. And, "a mere possibility is not enough for standing"—this Court has explained that plaintiffs must provide "detailed factual support for plaintiffs' allegations of future injury," such as that alleged here. *In re SuperValu, Inc.*, 870 F.3d 763, 769, 771 (8th Cir. 2017); *see also id.* at 770 (concluding that plaintiff's allegation that his financial information was involved in a data breach is not sufficient to establish a substantial risk of identity theft for purposes of Article III standing).

Here, Plaintiffs have failed to allege facts sufficient to demonstrate that North Dakota will incur any injury at all. They merely offer the conclusory prediction that "aliens who would otherwise have returned to their countries of origin will instead remain in the United States because of the eligibility for ACA coverage provided by the Rule." App.59, R.Doc.27 ¶55. This theory of harm based upon a speculative decrease in the attrition rate of DACA recipients ignores the reality of the policy.

Eligibility for DACA requires an individual to have resided in the country for at least five years prior to June 5, 2012, Napolitano Memorandum, so every current DACA recipient in the country must have resided in the country continuously since at least 2007, even though none of those DACA recipients has been permitted to purchase healthcare on the ACA marketplaces to date.

Plaintiffs' attrition theory thus depends on the dubious, and at best speculative, assumption that DACA recipients who have already chosen to remain in the country for at least the past seventeen years without access to the ACA marketplaces will leave the country imminently unless granted the right to access the marketplace for the first time. Not only that, but the theory further presumes that these individuals will leave the country in sufficient numbers to materially alter Plaintiffs' spending on public services. Even after the district court allowed the parties to take jurisdictional discovery, R.Doc.87, Plaintiffs offer nothing but speculation in support of these far-fetched assumptions. Such "a speculative or hypothetical risk is insufficient" to establish standing. *Braitberg v. Charter Commc'ns, Inc.*, 836 F.3d 925, 930 (8th Cir. 2016).

2. North Dakota's DACA Population Is Too Small For The Rule To Plausibly Affect State Spending

Even if Plaintiffs' attrition theory were legally cognizable in theory, it makes no sense as applied to North Dakota given the vanishingly small size of its population of DACA recipients—only 126 individuals. R.Doc.103, at.2.

The Rule was in effect for more than a month before the district court stayed it. But in that time, only ***one*** DACA recipient in North Dakota obtained insurance through its ACA marketplace. App.205, R.Doc.119-1 ¶16. While there was still another month left for others to enroll absent a stay, only a fraction of North Dakota's 126 DACA recipient residents are even eligible. The Rule estimates that 27% of DACA recipients nationally are uninsured, and only "70 percent of this group will opt to enroll in the Exchanges." 89 Fed. Reg. at 39,425/2, 39,428/1. That works out to just 19% of DACA recipients nationally—or fewer than 24 enrollees in North Dakota. And that is assuming enrollment in North Dakota tracks CMS's predictions nationwide. As of the district court's order, it had fallen short, and North Dakota offers no evidence that would have changed.

Nor is there any evidence that any North Dakota enrollee would have left North Dakota without the Rule. Plaintiffs' own evidence suggests they would not. A study linked in the Amended Complaint asserts that 15.5 million of what the study disparagingly calls "illegal alien[s]" were present in the United States as of 2022. *See* R.Doc.50-1, at.13-14; *see also* App.61, R.Doc.27 ¶67. Of those 15.5 million, a declaration submitted in support of Plaintiffs' preliminary injunction motion asserts that from 2010 to 2018, just 305,000—or less than 2%—left the country voluntarily. App.75-76, R.Doc.35-1 ¶8. Even assuming that the same departure rate applies to DACA recipients, that would amount to approximately ***two*** departures by a DACA recipient from North Dakota ***per decade***. And in reality, the departure rate is likely lower for DACA recipients given their deep ties to this country and the fact that DACA is only available to individuals who remained in the country continuously since 2007.

It is doubtful, therefore, that even a single DACA recipient in North Dakota intends to leave the country in the next decade, much less imminently. And it is even more speculative that any DACA recipient in North Dakota who intends to leave the country imminently would be deterred

from doing so by the promise of health insurance—especially when the absence of health insurance to date has not been a sufficient deterrent.

The district court failed to engage with any of this evidence. Instead, it found it sufficient that "[a]t least one" DACA recipient "eligible to enroll in a QHP will reside in North Dakota" and that healthcare benefits provide a "powerful incentive" to remain. Add.8-9. But whatever added incentive access to the ACA marketplace may create to remain in the United States is irrelevant if only a handful of individuals in North Dakota actually enroll, those individuals were never planning to leave, and none of them imposes any cost on the state. North Dakota offers no evidence to the contrary, so it has failed to establish Article III standing.

B. Without Article III Standing, North Dakota's Participation Cannot Support Venue

North Dakota's lack of Article III standing undercuts Plaintiffs' attempt to establish venue in the district court, and thus requires vacatur of all relief granted by that court.

In suits against the government, venue is available only where (A) a defendant resides, (B) the events underlying the claim occurred, or (C) the plaintiff resides. 28 U.S.C. § 1391(e)(1). Here, the defendants reside, and the Rule was adopted, in the District of Columbia. Only

North Dakota resides in the District of North Dakota, so venue there depends on North Dakota's participation in the suit.

Given North Dakota's lack of standing, however, its participation cannot support venue. "When venue is based [on] a plaintiff's residence, that particular plaintiff must have standing to bring the claims asserted." *Ctr. for Biological Diversity v. Spellmon*, 2022 WL 3541879, at *3 (D. Mont. Aug. 18, 2022); *see also Associated Gen. Contractors of Am., Inc. v. Fed. Acquisition Regul. Council*, 2024 WL 1078260, at *7 (W.D. La. Mar. 12, 2024) (collecting cases). That well-established rule ensures that a "plaintiff cannot manufacture venue by adding … as a party" an entity "lack[ing] standing to bring th[e] action." *Inst. of Certified Pracs. v. Bentsen*, 874 F. Supp. 1370, 1372 (N.D. Ga. 1994). Otherwise, plaintiffs could easily skirt the venue requirements and engage in forum shopping in every case by arbitrarily joining co-plaintiffs with no Article III standing or interest in the case. Because "venue cannot be based on the joinder of a plaintiff" that has been added solely "for the purpose of creating venue in the district," 14D Charles Alan Wright & Arthur R. Miller,

Federal Practice & Procedure § 3815 (4th ed.), North Dakota's participation here cannot support venue in the District of North Dakota.

The lack of a proper venue, in turn, should have precluded the district court from ordering preliminary relief. Under 28 U.S.C. § 1406(a), if venue is improper, the Court "shall" either dismiss the case or transfer it to a permissible venue. 28 U.S.C. § 1406(a); Fed. R. Civ. P. 12(b)(3). That threshold determination must be decided "prior to addressing the merits of any claim, including a preliminary injunction." *Proctor & Gamble Co. v. Ranir, LLC*, 2017 WL 3537197, at *4 (S.D. Ohio Aug. 17, 2017) (collecting authorities). This Court has therefore reversed preliminary relief where venue was not proper. *E.g.*, *Maybelline Co. v. Novell Corp.*, 813 F.2d 901, 907 (8th Cir. 1987). Plaintiffs' strategic decision to file in a court that lacks venue requires the same result here.

II. The District Court's Order Rests On Erroneous Statutory Interpretation

The district court also erred in concluding that Plaintiffs established a likelihood of success on the merits. *See* Add.11-14. As the Government explained in its Opening Brief, the district court misinterpreted the Rule, PRWORA, and the ACA in reaching the conclusion that the Rule was unlawful because it purportedly "redefin[ed] who is a qualified

alien," Add.14. *See* OB.41-44. But the government fails to explain the full extent of the deficiencies with the district court's reasoning.

A. PRWORA's Limitation of Benefits to Qualified Aliens Does Not Apply to the ACA Marketplaces

Eligibility to purchase health insurance through the ACA marketplace is governed by the ACA, not PRWORA. Under 42 U.S.C. § 18032(d)(3), anyone who meets the ACA's definition of "qualified individual may enroll in any qualified health plan." And § 18032(f) treats all state residents as "qualified individual[s]" if they "resid[e] in [a] State," "seek to enroll in a qualified health plan," are not incarcerated, and are either citizens, nationals, or "lawfully present." *Id.* § 18032(f)(1), (3). Any lawfully present state resident who is not incarcerated thus "may" participate in that state's ACA marketplace. *Id.* § 18032(d)(3).

Plaintiffs argue—and the district court appeared to accept (Add.14)—that PRWORA bars DACA recipients from the ACA marketplaces because it limits federal benefits to noncitizens that meet PRWORA's definition of "qualified aliens." R.Doc.35, at.10 (quoting 8 U.S.C. § 1611(a)). But as CMS explained, this restriction does not "appl[y] to the ACA," 89 Fed. Reg. at 39,413/1-2, for several reasons.

First, if PRWORA limited ACA marketplace access to "qualified aliens," it would conflict with § 18032's instruction that all "lawfully present" individuals are "qualified individuals" who "may enroll" in ACA plans. 42 U.S.C. § 18032(d)(3), (f)(1), (3). "[W]here tension exists between a specific statute and a more general statute, the specific statute governs." *United States v. Sutton*, 625 F.3d 526, 529 (8th Cir. 2010); *United States v. Kidd*, 963 F.3d 742, 748-49 (8th Cir. 2020). And § 18032 is the more specific statute because it governs eligibility solely for the ACA marketplace, and it specifically addresses which noncitizens are eligible. PRWORA, by contrast, governs "*any* Federal public benefit" generally—including a wide array of "retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit[s]," and "other similar benefit[s]." 8 U.S.C. § 1611(a), (c) (emphasis added). Section 18032's grant of marketplace eligibility to *all* lawfully present noncitizens thus supersedes PRWORA.

Second, a contrary reading would render § 18032(f)(3) superfluous. If PRWORA already limited marketplace access to "qualified aliens"—all of whom are necessarily considered "lawfully present," *see supra* at 8-9—a separate provision limiting access to "lawfully present" individuals, as

§ 18032(f)(3) does, would be unnecessary and inconsequential. Plaintiffs' interpretation would thus violate the general "presum[ption] that statutory language is not superfluous." *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 299 n.1 (2006).

Third, it is clear as day that Congress intended to allow *all* lawfully present noncitizens—whether qualified aliens or not—to purchase health insurance on the ACA marketplaces because it *required* them to do so if they could not acquire insurance elsewhere. The Individual Mandate applies to anyone who meets the definition of "applicable individual," 26 U.S.C. § 5000A(a), which includes *any* "individual" in the United States—where a citizen or not—unless one of three exceptions applies, *id.* § 5000A(d)(1). One exception exempted anyone who "is not a citizen or national of the United States or an alien lawfully present in the United States." *Id.* § 5000A(d)(3). The other exceptions (for religious reasons and incarcerated individuals, *id.* § 5000A(d)(2), (4)) are not relevant. No exception exempted lawfully present individuals who are not qualified aliens.

When the ACA was first enacted, therefore, all lawfully present individuals were subject to the Individual Mandate and faced a potentially

steep tax penalty if they failed to obtain health insurance. *California v. Texas*, 593 U.S. 659, 665 (2021). It is thus inconceivable that Congress meant to prohibit them from doing what the federal statute required. Courts do not tolerate interpretations that "engende[r] absurd consequences," *Ashley, Drew & N. Ry. Co. v. United Transp. Union*, 625 F.2d 1357, 1365 (8th Cir. 1980), and reading a statute to require "compliance with a regulatory regime" when compliance is "an impossibility" is as "absurd" as it gets, *United States v. Fontaine*, 697 F.3d 221, 230 (3rd Cir. 2012). The ACA cannot be read to put lawfully present individuals who are not qualified aliens in the "impossible position" where "they could not comply with the statute." *Quarles v. St. Clair*, 711 F.2d 691, 712 (5th Cir. 1983).

To be sure, Congress effectively eliminated the Individual Mandate when it zeroed out the penalty. *California*, 593 U.S. at 665. But that change was driven by opposition to the mandate—it had nothing to do with altering eligibility for the ACA marketplace. *See* 163 Cong. Rec. S7672 (daily ed. Dec. 1, 2017) (statement of Sen. Toomey) ("We don't change eligibility.").

Fourth, CMS's longstanding regulations confirm its current interpretation. Although *Loper Bright Enterprises v. Raimondo* eliminated judicial "deference" to agency interpretations, it nonetheless reaffirmed the centuries-old principle that "respect to Executive Branch interpretations" is "especially warranted" when the interpretation "was issued roughly contemporaneously with enactment of the statute and remained consistent over time." 144 S. Ct. 2244, 2257-58 (2024). Here, CMS regulations have allowed all individuals that CMS considered "lawfully present" to access the ACA marketplaces since it first implemented those marketplaces. That "longstanding," "contemporaneou[s]," and "consistent" interpretation warrants "'great respect.'" *Id*.

B. DACA Recipients Are Lawfully Present

DACA recipients meet the ACA's eligibility standard because DACA is a deferred action policy, and recipients of deferred action have long been considered "lawfully present" for purposes of benefits statutes using that term. In fact, the Attorney General and DHS have consistently interpreted the term "lawfully present" since it was used in PRWORA 30 years ago to include deferred action recipients who "have been permitted to remain in the United States either by an act of

Congress or through some other policy determination affecting that class of aliens." 61 Fed. Reg. at 47,040/2; *see* 8 C.F.R. § 1.3(a)(4)(vi). Because that "longstanding" interpretation arose "contemporaneously" with PRWORA's enactment and has remained "consistent" ever since, it warrants "'very great respect.'" *Loper Bright*, 144 S. Ct. at 2257-58.

Whatever significance these regulations may have in interpreting PRWORA, moreover, they are dispositive as to how the term "lawfully present" should be interpreted in the ACA because Congress presumptively borrowed the term's longstanding interpretation. "When a statutory term is 'obviously transplanted from another legal source,' it 'brings the old soil with it.'" *Taggart v. Lorenzen*, 587 U.S. 554, 560 (2019). Accordingly, "[w]hen Congress codifies language that has already been given meaning in a regulatory context, there is a presumption that the meaning remains the same." *Strickland v. Comm'r, Me. Dep't of Hum. Servs.*, 48 F.3d 12, 20 (1st Cir. 1995). Congress is "presum[ed]" to be "aware" that the language "ha[s] acquired a settled … administrative interpretation," and courts thus "accept the already settled meaning" when construing the phrase. *Comm'r v. Keystone Consol. Indus., Inc.*, 508 U.S. 152, 159 (1993); *see also Medina Tovar v. Zuchowski*, 982 F.3d 631, 636-

37 (9th Cir. 2020) (relying on settled administrative interpretation of term).

Here, the ACA's term "lawfully present" is obviously borrowed from PRWORA because the two statutes address a similar subject—the eligibility for federal programs of noncitizens who are not "qualified aliens." Congress was thus presumptively aware of the Attorney General and DHS's longstanding interpretation that deferred action recipients are "lawfully present" for purposes of determining access to benefits, and presumptively intended the same meaning.

Plaintiffs' contrary argument that DACA recipients are not "lawfully present" because they are "inadmissible," R.Doc.35, at.9-10, ignores these settled rules of construction. Further, if admissibility were a prerequisite to lawful presence, multiple categories of "qualified aliens" who can receive federal public benefits under PRWORA would not be "lawfully present," and could not access the ACA marketplace. As explained, *supra* at 9, some persons granted parole are merely allowed to enter the United States temporarily without having been "admitted," and withholding of removal merely prevents DHS from removing otherwise removable individuals to specific countries. Yet recipients of both forms of

relief are included in PRWORA's statutory definition of "qualified alien," 8 U.S.C. § 1641(b)(4)-(5)—and "Congress intended for qualified aliens ... to be included in the definition of lawfully present." 61 Fed. Reg. at 47,040/2. Indeed, separate statutes governing eligibility for housing assistance expressly refer to recipients of parole, 42 U.S.C. § 1436a(a)(4), and withholding of removal, *id.* § 1436a(a)(5), as "lawfully present in the United States." Lawful presence thus necessarily includes individuals who—like some parole recipients and all recipients of withholding of removal or deferred action—are not admissible and have been permitted to remain in the country solely as a result of the federal government forbearing from removing them.

The district court fails to grapple with these arguments in concluding that DACA recipients are not "lawfully present." Add.14. Nor do either of the decisions on which the district court relied for that conclusion—*Estrada v. Becker*, 917 F.3d 1298 (11th Cir. 2019) and *Texas v. United States*, 50 F.4th 498 (5th Cir. 2022)—neither of which involved the unique statutory context at issue here.

Estrada interpreted a *state* policy that limited admissions to certain colleges to "lawfully present" individuals. 917 F.3d at 1301. The court

did not interpret PRWORA, the ACA, or any federal immigration provision using that term. The closest it came was dismissing as irrelevant a statute using the term "*un*lawfully present," which the court did not interpret because it "d[id] not … apply" to the plaintiffs anyway. *Id.* at 1305 (emphasis added).

Texas, meanwhile, involved distinct components of DACA regulated by distinct federal statutes. To start, the Fifth Circuit recently upheld and reinstated the deferred action component of DACA—that is "'forbearance from removal.'" *Texas v. United States*, 2025 WL 227244, at *17-18 (5th Cir. Jan. 17, 2025). The court stood by its earlier decision, striking down the other original components of DACA, such as work authorization. *Id.* at *15. *Amici* fundamentally disagree with that holding. But whatever its merits, each of the components of DACA that *Texas* invalidated is distinguishable from ACA marketplace access.

The benefits at issue in *Texas* were governed by PRWORA and other statutes enacted *before* the Attorney General formally adopted a definition of "lawfully present" that includes deferred action. *Texas*, 2025 WL 227244, at *15. By contrast, by the time the ACA used the term "lawfully present," federal agencies had interpreted that term to include

deferred action for more than 20 years. Congress thus presumptively gave the term its "settled meaning." *Keystone*, 508 U.S. at 159. Because *Texas* had no occasion to—and did not—consider that presumption, it has no relevance to the ACA.

CONCLUSION

The district court's December 9, 2024 order should be reversed.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation set forth in FRAP 29(a)(5) and 32(a)(7)(B)(i). This document contains 6,487 words, excluding the parts exempted by FRAP 32(f). This document complies with the typeface requirements of FRAP 32(a)(5) and the type-style requirements of FRAP 32(a)(6). It has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point New Century Schoolbook font.

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CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2025, I filed the foregoing brief using the Court's CM/ECF system, which will send a notice of the filing to counsel for all parties.

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