No. 24-413

In the Supreme Court of the United States

DEPARTMENT OF EDUCATION, ET AL.,
PETITIONERS

v.

CAREER COLLEGES AND SCHOOLS OF TEXAS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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The Fifth Circuit held that core aspects of the Department of Education's borrower-defense program are likely unlawful, and the court suspended them on a nationwide basis. That decision contravenes the text of the Higher Education Act of 1965 (Education Act), 20 U.S.C. 1070 *et seq.*, and undermines the regime that has governed borrower defenses since the program's inception. The court's universal remedy is inconsistent with the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, 701 *et seq.*, and the longstanding equitable principles it incorporates. Respondent's defense of those rulings simply repeats the Fifth Circuit's errors and is meritless.

A. The Court Of Appeals' Decision Is Incorrect

1. The court of appeals erred in holding that the Education Act prohibits the Department's procedures for considering borrower defenses

In numerous statutory provisions, Congress granted the Secretary the power to prescribe regulations he deems necessary or appropriate to manage the Department and implement its programs, including the student loan program. See 20 U.S.C. 1082, 1221e-3, 3441, 3474. Congress also specifically empowered the Secretary to "compromise, waive, or release any right, title, claim, lien, or demand" that the Secretary has acquired in administering student loans. 20 U.S.C. 1082(a)(6); see 20 U.S.C. 1087e(a)(1). And Congress directed the Secretary to identify "which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a loan." 20 U.S.C. 1087e(h). Those statutory provisions confer ample authority for the Secretary to establish an administrative process in which borrowers may present defenses to repayment before they default—and may do so on a group basis when appropriate. See Pet. 16-25.

Respondent's contrary argument focuses (Br. in Opp. 17-21) almost exclusively on Section 1087e(h). But Section 1087e(h) is not the only relevant source of the Secretary's authority. The Secretary has invoked the broader authority to administer the student loan program since first adopting administrative procedures for addressing borrower defenses. See, *e.g.*, 81 Fed. Reg. 75,926, 75,932 (Nov. 1, 2016); 84 Fed. Reg. 49,788, 49,796 (Sept. 23, 2019); 87 Fed. Reg. 65,904, 65,910 (Nov. 1, 2022) (2022 Rule).

With respect to Section 1087e(h), respondent repeats (Br. in Opp. 18) the Fifth Circuit's errors, limiting the term "defense" to arguments asserted after "an offensive action has been commenced." But Section 1087e(h) does not refer to a defense in collection proceedings; instead, it refers to a "defense to repayment." 20 U.S.C. 1087e(h). The natural meaning of "defense" in that context plainly encompasses grounds a borrower may advance in contesting the obligation to make payments, including before default. Pet. 16-18.

Respondent also asserts (Br. in Opp. 18) that permitting borrowers to present pre-default defenses to the Department impermissibly creates a private cause of action. But the borrower-defense program does not permit the Department to adjudicate claims between private parties. The loan discharge proceedings are between the borrower and the government, and involve only the question of whether the borrower qualifies for statutory relief from federal repayment obligations based upon established regulatory standards.

Respondent likewise errs in suggesting (Br. in Opp. 15, 18) that permitting borrowers to present such a request for relief to the Department implicates sovereign immunity. Sovereign immunity is a defense asserted in adversarial proceedings initiated against a nonconsenting government. See, *e.g.*, *Block* v. *North Dakota ex rel. Board of University & School Lands*, 461 U.S. 273, 287 (1983). When federal student loan borrowers present a statutory ground for relief under regulations the Secretary has established, they are not bringing adversarial ac-

tions against the government to which sovereign immunity might apply.[1]

More fundamentally, respondent offers no reason why Congress would have required borrowers to default and be subject to collection proceedings before raising an available defense to repayment. That requirement would place a unique burden on Direct Loan borrowers, contrary to Congress's express mandate that Direct Loans must "have the same terms, conditions, and benefits" as Family Education Loans. 20 U.S.C. 1087e(a)(1). As respondent recognizes (Br. in Opp. 24-25), Family Education Loans are issued by private lenders and guaranteed by the government. Respondent further acknowledges (*id.* at 20-21) that under ordinary contract principles, parties may seek relief from contractual obligations before breach. See Pet. 18. Thus, when Congress sought an "estimate of the total number of borrowers filing for relief from repayment of" Family Education Loans the year before enacting Section 1087e(h), Congress would have understood that "filing for relief" includes borrowers seeking relief before default. Higher Education Amendments of 1992, Pub. L. No. 102-325, § 1403(a)(2), 106 Stat. 817; see Pet. 19-20. Moreover, the regulations respondent challenges simply provide a process for the parties to a Direct Loan agreement—the borrower and the government—to resolve an issue between them without resorting to

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[1] Respondent asserts (Br. in Opp. 15) that the Court should deny certiorari because the petition did not address sovereign immunity. The Fifth Circuit included a single footnote stating that the Department had analogized borrower defenses to claims for restitution or rescission, which the court concluded would require a waiver of sovereign immunity. Pet. App. 45a-46a n.18. To the extent that could be considered a holding below, it would be encompassed by the first question presented. See Pet. I.

a lawsuit, a favored course that private parties to contracts commonly pursue.

Respondent nevertheless asserts (Br. in Opp. 18-22) that borrowers may only raise defenses to repayment in court. Once again, respondent fails to address the statutes granting the Secretary broad authority to implement the Direct Loan program. See p. 2, *supra*. Nor can respondent's arguments be squared with Congress's mandate that the Department conduct a predeprivation hearing before disclosing a past-due loan to credit reporting agencies or attempting to collect on the loan through offsets or garnishment. See Pet. 20. Congress would have understood that the agency would assess borrower defenses in those administrative proceedings.

Respondent also contends that when Congress intends to authorize the Department to "cancel" or "discharge" student loans, it uses that specific language. Br. in Opp. 20 (citation omitted). But here, Congress expressly provided for defenses to repayment, which necessarily permit the loan holder to discharge the obligation because the defenses are based on circumstances that have been found to undermine the transaction underlying the loan agreement.

Congress further provided the Department with authority to "compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right of redemption." 20 U.S.C. 1082(a)(6). Respondent does not dispute that Section 1082(a)(6) authorizes the Department to release loan obligations. Rather, respondent asserts (Br. in Opp. 21) that this provision applies only to the Family Education Loan program. That is incorrect. As the Secretary has long recognized, Section 1082 is incorporated into the Direct Loan Program because Congress mandated that such loans "shall have the same terms, conditions, and

benefits" as those under the Family Education Loan program. 20 U.S.C. 1087e(a)(1); see 81 Fed. Reg. 39,326, 39,368 (June 16, 2016). The Department's ability to "compromise, waive, or release" its right to repayment plainly qualifies as one of the "terms, conditions, and benefits" of a student loan. See *Sweet* v. *Cardona*, 641 F. Supp. 3d 814, 823-824 (N.D. Cal. 2022), aff'd in part and appeal dismissed in part, 121 F.4th 32 (9th Cir. 2024).[2]

Consistent with these statutory provisions, the Department has recognized its authority to consider borrower defenses in administrative proceedings since it first promulgated borrower-defense regulations. See 59 Fed. Reg. 61,664, 61,696 (Dec. 1, 1994) (borrower defenses may be raised in proceedings "includ[ing], but not limited to," administrative wage garnishment and offset proceedings). Respondent asserts (Br. in Opp. 23) that the 1994 rule "did not authorize the independent assertion of borrower defense claims." But that misses the point. The 1994 rule provided for borrowers to raise defenses in administrative proceedings and expressly stated that the referenced proceedings were not exclusive. 59 Fed. Reg. at 61,696. And as respondent acknowledges (Br. in Opp. 26), the Department has accepted borrower defenses to repayment outside of collection proceedings on various occasions dating back to 1998. See Pet. 16-17.

That history refutes respondent's appeal (Br. in Opp. 26) to the major-questions doctrine. The challenged

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[2] Contrary to respondent's assertion (Br. in Opp. 21), the Department has not waived reliance on Section 1082(a)(6). While briefing in the Fifth Circuit focused on correcting respondent's erroneous interpretation of Section 1087e(h), the government also cited Section 1082 as a source of authority. See Gov't C.A. Br. 31.

features of the borrower-defense program have been in effect for nearly a decade, and they implement a statutory provision that expressly authorizes defenses to repayment. This case does not involve an assertion of "highly consequential power beyond what Congress could reasonably be understood to have granted." *West Virginia* v. *EPA*, 597 U.S. 697, 724 (2022).

Finally, respondent offers no support for the Fifth Circuit's holding that the Department may not consider borrower defenses on a group basis. See Br. in Opp. 22 n.2. The same authorities that permit the Department to assess borrower defenses administratively likewise permit consideration of such defenses on a group basis. See Pet. 21. Respondent faults (Br. in Opp. 22 n.2) the government for declining to challenge the court's holding regarding the particular process the 2022 Rule sets out for group defenses. But as we have explained (Pet. 14-15), the government has limited the petition to issues that would frustrate the Department's ability to administer the Direct Loan program and address the overwhelming backlog. Group proceedings are essential to that process, even if the Department would have to revise the procedures it uses in response to other rulings by the Fifth Circuit.

2. The court of appeals' ordering of universal relief was improper

This Court's review is also warranted to address the Fifth Circuit's serious errors in barring implementation of the challenged provisions of the 2022 Rule nationwide. Under longstanding Article III and equitable principles, courts may not issue equitable remedies "more burdensome to the defendant than necessary to [redress]" the plaintiff's injuries. *Califano* v. *Yama-*

saki, 442 U.S. 682, 702 (1979). The relief ordered here is inconsistent with those principles and with the APA.

Respondent does not dispute that the relief here extends far beyond what is necessary to address its alleged harms. Rather, respondent cites (Br. in Opp. 27-29) cases in which this Court granted relief that affected persons in addition to the plaintiffs. But those cases simply show that broader relief may be appropriate to fully remedy a party's harms, if consistent with the overall equities. In redistricting cases, for example, a successful challenge to one district's makeup will necessarily result in changes to "such districts as are necessary to reshape the voter's district." *Gill* v. *Whitford*, 585 U.S. 48, 67 (2018). But that does not entitle the plaintiff to statewide redistricting. *Id.* at 66-67. Similarly, in desegregation cases, courts redress an individual's harm by desegregating the school district at issue. See *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 15-16 (1971). But the "task" is nonetheless limited to correcting the "condition that offends the Constitution." *Id.* at 16.

For the same reason, respondent's assertion (Br. in Opp. 28-29) that Congress conceived of plaintiffs serving as private attorneys general enforcing certain civil rights, public-accommodation, antitrust, environmental, and other laws, is irrelevant. In those cases, remedying the plaintiff's injury may often require a change in the defendant's conduct that will redound to the benefit of others. But the existence of such special circumstances does not give courts license to ignore established equitable principles or extend the relief beyond what is necessary to address the plaintiff's asserted harm.

Respondent fares no better in referring (Br. in Opp. 27-28) to facial challenges, overbreadth challenges, and

third-party standing doctrine. Those are *legal theories* on which a plaintiff might base her suit. A plaintiff's legal theory is distinct from the remedy a court may enter if that theory succeeds, and under equitable principles the remedy must be limited to addressing the harm to the plaintiff. See Samuel L. Bray, *Multiple Chancellors: Reforming the National Injunction*, 131 Harv. L. Rev. 417, 424-428 (2017).

Congress did not abandon those principles in enacting the APA. Section 705 "was primarily intended to reflect existing law under the *Scripps-Howard* doctrine * * * and not to fashion new rules of intervention for District Courts." *Sampson* v. *Murray*, 415 U.S. 61, 69 n.15 (1974). While *Scripps-Howard* recognized that courts could issue a stay pending appeal of an agency order granting a permit to a single licensee, the Court did not purport to authorize universal relief extending beyond what is necessary to protect the parties to the proceeding. See *Scripps-Howard Radio, Inc.* v. *FCC*, 316 U.S. 4, 11 (1942).

That Congress intended Section 705 to incorporate equitable principles and focus on possible harm to the plaintiff challenging the agency action is evident from the text's authorization of interim relief only "to the extent necessary to prevent irreparable injury," and "necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings." 5 U.S.C. 705. Respondent emphasizes (Br. in Opp. 29) that Section 705 permits postponement of the effective date as one form of relief pending review. But including that form of relief does not mean that it will be "necessary to prevent irreparable injury" or "necessary and appropriate" in every case in which the court determines interim relief is warranted. When the agency ac-

tion regulates only the parties to the proceeding, postponement of the effective date of the challenged action may be appropriate. But when the agency action extends beyond the challenging party and that party's status or rights can be preserved with more limited relief, such as a party-specific preliminary injunction, universal postponement is inconsistent with Section 705. See Pet. 28-29; see also H.R. Rep. No. 1980, 79th Cong., 2d Sess. 43 (1946) (explaining that the authority granted by Section 705 "is equitable" and "would normally, if not always, be limited to the parties complainant").

Respondent dismisses (Br. in Opp. 33-35) the significant costs imposed by universal relief, but Members of this Court have repeatedly called for the Court to "confront the[] important objections to this increasingly widespread practice." *DHS* v. *New York*, 140 S. Ct. 599, 600 (2020) (Gorsuch, J., concurring in the grant of stay); see *Trump* v. *Hawaii*, 585 U.S. 667, 713 (2018) (Thomas, J., concurring); *Labrador* v. *Poe*, 144 S. Ct. 921, 927 (2024)(Gorsuch, J., concurring in the grant of stay). Nor can respondent show (Br. in Opp. 34) that requiring tailored remedies is unworkable. If a court enjoins the application of an agency action to individual parties, the agency may exercise discretion to cease applying the action more broadly. To the extent numerous parties are injured, class actions under the APA are available. See, *e.g.*, *Scholl* v. *Mnuchin*, 489 F. Supp. 3d 1008 (N.D. Cal. 2020). Respondent thus provides no basis to depart from traditional equitable principles in APA cases.

B. The Decision Below Warrants Further Review

The Fifth Circuit's decision erroneously bars fundamental aspects of the borrower-defense program that have been in place for nearly a decade. And the court's extension of preliminary relief to borrowers and schools

with no connection to respondent leaves the Department unable to address problems that have rendered the program unworkable. This Court's review is warranted even in the absence of a circuit conflict. See Pet. 31-33.

Respondent protests (Br. in Opp. 2, 14-15) that the Court should not grant review because the Fifth Circuit ordered preliminary relief barring application of the 2022 Rule on other grounds that the petition does not challenge. But as we have explained (Pet. 14-15), the petition focuses on the essential aspects of the rule that are necessary to the effective functioning of any borrower-defense program. This Court has previously granted certiorari to address important aspects of a court of appeals' decision, even if the decision also rested on other grounds. See, *e.g.*, *Seven County Infrastructure Coalition* v. *Eagle County*, No. 23-975 (argued Dec. 10, 2024); *NRA* v. *Vullo*, 602 U.S. 175, 186 & n.3 (2024).

Any concern with the Fifth Circuit's other holdings is even less relevant in this case, where many of those holdings mischaracterize the 2022 Rule. See Pet. 15 n.2; For example, the court mistakenly assumed that borrowers who consolidate their loans may obtain a discharge of the entire consolidated loan even if the school's misconduct affected only some of the original loans. Pet. App. 36a-37a. The rule nowhere purports to have that effect. The court also viewed the rule as permitting full discharge even for a school's inadvertent misrepresentations. *Id.* at 42a. But the Department explained that it will not award relief unless the "totality of the circumstances, including the *nature and degree* of the acts or omissions," warrant full relief from the repayment obligations, meaning that defenses based on "inadvertent errors are unlikely to be approved." 87 Fed. Reg. at 65,921 (emphasis added). Thus, because

the 2022 Rule does not function in the way the court suggested, the Department may clarify those issues in further proceedings.

Respondent also speculates (Br. in Opp. 16) that the incoming Administration will not defend the 2022 Rule. But the regulations issued in 2019 reaffirmed the key aspect of the borrower-defense program that the government seeks to preserve here—the Department's ability to administratively assess borrower defenses before default. See 84 Fed. Reg. at 49,796. The Court should not proceed on the assumption that such a foundational aspect of the program would be abandoned. Nor should the Court delay resolving the question while upwards of 150,000 borrowers continue to face delays caused by the Fifth Circuit's decision.

Moreover, the appropriate scope of APA relief is independently important now and will have significant implications for the implementation of future policies well beyond the borrower-defense program. This case provides an ideal vehicle for addressing that issue because it calls for resolution regardless of the outcome on the first question presented. See Pet. 26.

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The petition for a writ of certiorari should be granted.

Respectfully submitted.

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