No. 24A173

In the
Supreme Court of the United States

JOSEPH R. BIDEN, ET AL.,

Applicants,

v.

MISSOURI, ET AL.,

Respondents.

On Application for
Vacatur of Injunction Pending Appeal

BRIEF OF STATES OF MISSOURI, ARKANSAS, FLORIDA, GEORGIA, NORTH DAKOTA, OHIO, AND OKLAHOMA IN OPPOSITION

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TABLE OF CONTENTS

Table of Authorities .... **ii**

Introduction and Summary of Argument **1**

Background **4**

I. Statutory Background and the First Three "ICR" Rulemakings 4
II. The Final Rule 6
III. The States Challenge the Final Rule in Its Entirety. 10
IV. The District Court Enjoins Forgiveness Provisions in the Final Rule, and the Eighth Circuit Blocks the Government's Attempt to Evade That Injunction. 11

Argument **14**

I. The Federal Government Is Unlikely to Succeed on the Merits. 14
 A. The States easily have standing. 14
 B. The Secretary lacks authority to forgive principal or interest under the ICR statute. 21
 C. The Final Rule's revised payment amounts are unlawful. 29
II. The Eighth Circuit's relief is appropriate for MOHELA, a nationwide loan servicer. 31
III. The Equities Favor the States. 33
IV. The Court Should Speedily Resolve This Issue. 37

Conclusion **40**

TABLE OF AUTHORITIES

Cases Page(s)

Alabama Ass'n of Realtors v. *Dep't of Health & Hum. Servs.*,
594 U.S. 758 (2021) 1, 2, 21, 22, 23

Arizona State Legislature v. *Arizona Indep. Redistricting Comm'n*,
576 U.S. 787 (2015) 27

Biden v. *Nebraska*,
143 S. Ct. 2355 (2023) 1, 2, 3, 6, 7, 10, 15, 18, 21, 23

Bittner v. *United States*,
598 U.S. 85 (2023) 26

Career Colleges & Sch. of Texas v. *U.S. Dep't of Edu.*,
98 F.4th 220 (CA5 2024) 28

Corner Post, Inc. v. *Bd. of Governors of Fed. Reserve System*,
144 S. Ct. 2440 (2024) 15, 33

FDA v. *Brown & Williamson Tobacco Corp.*,
529 U.S. 120 (2000) 16

Food & Drug Admin. v. *All. for Hippocratic Med.*,
602 U.S. 367 (2024) 20

Gill v. *Whitford*,
585 U.S. 48 (2018) 31, 33

Graham Cnty. Soil & Water Conservation Dist. v. *U.S. ex rel. Wilson*,
559 U.S. 280 (2010) 2, 16

In re Goodvin,
No. 19-10623, 2020 WL 6821867 (Bankr. D. Kan. Sept. 1, 2020) 24

Labrador v. *Poe*,
144 S. Ct. 921 (2024) 33

New York State Telecommunications Ass'n, Inc. v. *James*,
101 F.4th 135 (CA2 2024) 13

Ng v. *Bd. of Regents of Univ. of Minnesota*,
64 F.4th 992 (CA8 2023) 37

Ohio v. *EPA*,
144 S. Ct. 2040 (2024) 36

Sprint Commun. Co., L.P. v. *APCC Services, Inc.*,
554 U.S. 269 (2008) 20

Taggart v. *Lorenzen*,
587 U.S. 554 (2019) 25

Terry v. *United States*,
593 U.S. 486 (2021) 15

Texas Children's Hosp. v. *Burwell*,
76 F. Supp. 3d 224 (D.D.C. 2014) 36

Texas v. *United States*,
50 F.4th 498 (CA5 2022) 20

United States v. *Texas*,
599 U.S. 670 (2023) 33

United States v. *United Foods, Inc.*,
533 U.S. 405 (2001) 16

Valentine v. *Collier*,
140 S. Ct. 1598 (2020) 1

Van Buren v. *United States*,
593 U.S. 374 (2021) 27

Statutes

5 U.S.C. § 801(a)(3) 35

5 U.S.C. § 705 33

5 U.S.C. § 706 33

20 U.S.C. § 1078(b)(9)(A) 2, 25

20 U.S.C. § 1087e(d)(1)(D) 2, 3, 4, 23, 24, 29

20 U.S.C. § 1087e(e)(5) 3, 4, 24, 28

20 U.S.C. § 1087e(e)(1) 30

Regulations

31 C.F.R. § 901.1 3

34 C.F.R. § 685.209 8

Other Authorities

Biden's New Income-Driven Repayment ("SAVE") Plan: Budgetary Cost Estimate Update, Penn Wharton (July 17, 2023) 10

Fact Sheet: How the New SAVE Plan Will Transform Loan Repayment and Protect Borrowers (June 30, 2023) 9

FACT SHEET: President Biden Cancels Student Debt for More Than 150,000 Student Loan Borrowers Ahead of Schedule, The White House (Feb. 21, 2024) 9, 30

Pelosi: Biden Lacks Authority to Cancel Student Debt, U.S. News & World Report (July 28, 2021) 27

Remarks by President Biden on the Saving on a Valuable Education Plan (Feb. 21, 2024) 7

SAVE Plan Announcement, Federal Student Aid (last visited August 14, 2024) 13

Secretary of Education and Biden-Harris Administration Committed to Helping Student Loan Borrowers, KQTV News (July 11, 2024) 34

Secretary Cardona Statement on Supreme Court Ruling on Biden Administration's One Time Student Debt Relief Plan, Department of Education (June 30, 2023) 7

State of the Union Address (Jan. 27, 2010) 5

Statement from President Joe Biden on Supreme Court Decision on Student Loan Debt Relief, The White House (June 30, 2023) 7

Wright & Miller, 13A *Federal Practice & Procedure* § 3531.4 (3d ed.) 20

INTRODUCTION AND SUMMARY OF ARGUMENT

The very same day this Court struck down the Federal Government's first attempt to mass cancel $430 billion in student loan debt, the Federal Government announced its Plan B. This backup plan relies on a different statute with even *less* plausible statutory authority and an even *higher* price tag: $475 billion. Worse, it asserts an unprecedented statutory interpretation that would give the Secretary of Education unfettered power to cancel every penny of every federal student loan.

Every judge to join or issue an opinion about the Final Rule has declared it unlawful. Yet the Government asks this Court to contradict both district courts and the unanimous panel of the Eighth Circuit—and to do so in a procedural posture where "the bar is high." *Valentine* v. *Collier*, 140 S. Ct. 1598, 1598 (2020) (Sotomayor, J., respecting denial). The Government must establish "that the lower court was demonstrably wrong in its application of accepted standards." *Ibid.* (quotation marks and citation omitted). It cannot. The States "not only have a substantial likelihood of success on the merits—it is difficult to imagine them losing." *Alabama Ass'n of Realtors* v. *Dep't of Health & Hum. Servs.*, 594 U.S. 758, 763 (2021).

In contending otherwise, the Government relies on (flawed) arguments that one court already declared waived and—in instances bordering on misrepresentation—omits a shocking amount of context undermining its position. The Court should reject the Government's aggressive request.

On standing, both the district court and the Eighth Circuit readily concluded that Article III is satisfied for the same reasons this Court explained in *Biden* v.

Nebraska, 143 S. Ct. 2355 (2023). The Government errs by isolating the provision directing the Secretary to forgive loans from those provisions that make borrowers eligible for forgiveness in the first place. All these provisions operate together and so should be assessed together. *Cf.*, *Graham Cnty. Soil & Water Conservation Dist.* v. *U.S. ex rel. Wilson*, 559 U.S. 280, 290 (2010) ("Courts have a 'duty to construe statutes, not isolated provisions.'").

On the merits, the Government fares no better. The Higher Education Act creates a number of "repayment plans" and dictates that their length is "not to exceed" a certain number of years. *E.g.*, 20 U.S.C. § 1078(b)(9)(A). The relevant type of plan here is the Income-Contingent Repayment or ICR plan, which the HEA says is "not to exceed 25 years." § 1087e(d)(1)(D). From this banal text about length that exists in many plans, the Secretary asserts authority to forgive every penny of every student loan. Indeed, under the Final Rule, nearly everybody receives forgiveness.

That assertion of authority is "staggering by any measure" and triggers the major questions doctrine, as both lower courts and the Eighth Circuit concluded. *Biden* v. *Nebraska*, 143 S. Ct., at 2373. The Government thus must identify "exceedingly clear language" authorizing forgiveness. *Alabama Ass'n of Realtors*, 594 U.S., at 764. It cannot. Instead, it relies on inference and implication, not explicit forgiveness authority.

The plain text of the HEA further undermines the Final Rule. Far from authorizing forgiveness, the ICR section expressly requires repayment. It mandates

"repayment," including "principal and interest" and says the "balance due" from ICR borrowers "*shall equal* the unpaid principal amount of the loan, any accrued interest, and any fees." § 1087e(d)(1)(D), (e)(5) (emphasis added). This is consistent with the general requirement of the Government to "aggressively collect all debts" absent an express exception. 31 C.F.R. § 901.1.

As to the payment provisions in the Final Rule that dictate forgiveness eligibility, the Government's arguments rest on the mistaken presumption that the Secretary can use ICR authority to forgive loans. Because he cannot, the Government must set payment amounts high enough for borrowers to actually repay. Instead, the Government set payments to $0 for millions of borrowers.

The Court should thus reject the Government's aggressive attempt to use an emergency application to vacate the Eighth Circuit's sound ruling. Indeed, given the Government's failure to follow settled legal principles, this Court would be justified in issuing a quick opinion that rejects the Government's statutory position, just like the Court did in *Alabama Association of Realtors*. Otherwise, the States do not oppose certiorari before judgment. The "staggering" "economic and political significance" here is even larger than in *Biden* v. *Nebraska*, 143 S. Ct., at 2373. And the procedural posture is the same. Because the Court granted certiorari there, the States acknowledge it is appropriate here too. Either way, the States have a strong interest in speedy resolution because the Government's response to the Eighth Circuit's ruling has imposed continuing harm on the States.

BACKGROUND

I. Statutory Background and the First Three "ICR" Rulemakings

For years the Federal Government did not issue student loans directly. Under the Higher Education Act, private organizations issued loans and the Government financially guaranteed them. Later amendments to the Act enabled the Government to issue loans directly and to create "repayment plans" for borrowers. §§ 1087a, *et seq*. These include a "standard repayment plan" (10 years, fixed payment amount); a "graduated repayment plan" (10 years, gradually increasing amounts); and an "extended repayment plan" (25 years, fixed or graduated). § 1087e(d)(1)(A)–(C).

Most relevant here is a fourth plan, the "income contingent repayment plan" or "ICR," which Congress authorized in 1993 and which allows payments to vary based on a borrower's annual income. It is the basis for the Final Rule. 88 Fed. Reg. 43,826–27. ICR allows for "varying annual repayment amounts based on the income of the borrower, paid over an extended period of time prescribed by the Secretary, not to exceed 25 years." § 1087e(d)(1)(D).

No ICR text expressly authorizes forgiveness of student loans. Indeed, like the provisions governing the standard, graduated, and extended plans, the ICR provision requires "repayment of such loan, including principal and interest." § 1087e(d)(1). It further requires that the "balance due" from each borrower "shall equal the unpaid principal amount of the loan, any accrued interest, and any fees." § 1087e(e)(5).

Between 1993 and 2023, the Secretary of Education promulgated three ICR plans. And despite the ICR statute not expressly authorizing forgiveness, the

Secretary chose to permit a small amount of forgiveness in each. These plans are called "ICR" (1994), "PAYE" (2012), and "REPAYE" (2015).

The first plan (confusingly called ICR) was promulgated in 1994. It stated that borrowers could have their remaining balances forgiven after 25 years of payments. But eligibility was strictly limited. Borrowers had to pay 20% of their income above the federal poverty line. *See* 59 Fed. Reg. 66,132, –135. Last year, the poverty line for a family of four was $30,000. The median household income was about $75,000. So under that plan, the median borrower would pay $9,000 every year for up to 25 years (up to $225,000 total). Because of these strict eligibility requirements, there was "low participation" and few people qualified for forgiveness. 77 Fed. Reg. 66,116.

In 2007, Congress amended the HEA to create a new type of plan where payments depend on annual income: the "income-*based* repayment program" or IBR. IBR is unlike ICR in two relevant respects. First, IBR expressly authorizes forgiveness—to "cancel any outstanding balance" after 25 years. § 1098e(a)(3), (b)(7). Second, IBR enshrines into statute specific income eligibility requirements. Individuals could participate if their annual payments would otherwise exceed 15% of income above 150% of the poverty line (rather than the 20% above 100% of the poverty line in the ICR regulation). § 1098e(a)(3)(B), (b)(1). Congress later made this program more generous. In 2010, the President urged Congress in his State of the Union to broaden eligibility for IBR. *State of the Union Address* at 5 (Jan. 27, 2010).[1]

[1] https://www.govinfo.gov/content/pkg/DCPD-201000055/pdf/DCPD-201000055.pdf

Congress accepted that invitation, decreasing the IBR eligibility amount to 10% (from 15%) and accelerating forgiveness to 20 years (from 25). § 1098e(e).

The Secretary then promulgated two new ICR plans (PAYE and REPAYE) in 2012 and 2015. These plans incrementally established eligibility/payment amounts generally in line with the statutory thresholds of the IBR program, and also adopted a 20-year forgiveness provision (for undergraduate borrowers) that matched the statutory IBR program. 77 Fed. Reg. 66,088; 80 Fed. Reg. 67,204.

The three ICR plans went unchallenged despite permitting some forgiveness. As the Eighth Circuit noted, "these plans were relatively uncontroversial as they were limited in scope and less generous than income-based repayment ('IBR') plans, which Congress had specifically established to enable more-favorable repayment terms and ultimately loan forgiveness." App.3a; *see also* 77 Fed. Reg. 66,116 (stating that later ICR plans simply altered ICR "consistent with the statutory changes to IBR"). Under these plans, comparatively few people ever became eligible for forgiveness: just 3% as much as the amount anticipated by the 2023 rule challenged here. App.7a.

II. The Final Rule

As this Court well knows, in 2022 the Government (for the first time ever) tried to mass cancel up to $20,000 in debt for nearly all student loan borrowers, with a total price tag around $430 billion. This Court agreed with the Eighth Circuit that the mass cancellation efforts were unlawful. *Biden* v. *Nebraska*, 143 S. Ct., at 2375.

Minutes later, the Secretary criticized the ruling sharply, calling it an "outrage," and announced he was "today" responding to the ruling by "finaliz[ing]" a

new regulation to again try to mass cancel nearly $500 billion in loans. *Secretary Cardona Statement on Supreme Court Ruling on Biden Administration's One Time Student Debt Relief Plan*, Department of Education (June 30, 2023).[2] Defendant Biden declared he would "stop at nothing" to mass cancel loans. *Statement from President Joe Biden on Supreme Court Decision on Student Loan Debt Relief*, The White House (June 30, 2023).[3] And he later gloated several times that "the Supreme Court blocked it. They blocked it. But that didn't stop me." *Remarks by President Biden on the Saving on a Valuable Education Plan* (Feb. 21, 2024).[4]

The Final Rule, finalized the same day as *Biden* v. *Nebraska* and published ten days later, amends and supersedes all three ICR plans. The biggest changes are to REPAYE, which the Government says was "fully replace[d]" by the new SAVE Plan. *Missouri* v. *Biden*, Case No. 4:24-cv-00520, ECF 52 at 2 (July 8, 2024) (Supp.App. 11a).[5] But the Final Rule changes all three ICR plans. While those plans previously existed through separate regulations, this new rule is an "umbrella" regulation that "combin[es]" previous plans and makes changes to each. 88 Fed. Reg. 43,820. As the Government stated last week, the Final Rule "governs all ICR" plans. Supp.App.04a.

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[2] https://www.ed.gov/news/press-releases/secretary-cardona-statement-supreme-court-ruling-biden-administrations-one-time-student-debt-relief-plan

[3] https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/30/statement-from-president-joe-biden-on-supreme-court-decision-on-student-loan-debt-relief/

[4] https://www.whitehouse.gov/briefing-room/speeches-remarks/2024/02/21/remarks-by-president-biden-on-the-saving-on-a-valuable-education-plan-culver-city-ca

[5] https://storage.courtlistener.com/recap/gov.uscourts.moed.211135/gov.uscourts.moed.211135.52.0.pdf. All ECF pages in this brief refer to the page number in the court stamp, not the page number demarcated by the parties in the document before filing.

In its application, the Government discusses just one forgiveness provision. But the Final Rule in fact includes three—25-year forgiveness, 20-year forgiveness, and 10-to-19-year forgiveness:[6]

> (1) 25-year forgiveness for borrowers "repaying at least one loan received for graduate or professional study" or "repaying under the [original 1994] ICR plan";
>
> (2) 20-year forgiveness for borrowers "repaying only loans received for undergraduate study"; and
>
> (3) 10-year to 19-year forgiveness for borrowers "repaying only loans received for undergraduate study" who had original principal balances of between $12,000 and $22,000.

88 Fed. Reg. 43,902–03 (amending 34 C.F.R. § 685.209); *see also* 88 Fed. Reg. 43,856 (noting that 20-year and 25-year forgiveness are provisions under the SAVE plan).

The Final Rule also includes several other challenged provisions that govern forgiveness eligibility. Most obvious are the new payment provisions. The old provisions were high enough that the typical borrower fully repaid each loan. For example, the 1994 ICR plan let individuals exempt only 100% of the poverty line and required payment of 20% of income above that line. *See* 59 Fed. Reg. 66,132, –135.

The Final Rule differs substantially. Its payment provisions let borrowers exempt more than twice as much income from calculation—225% of the family-adjusted poverty line—and require paying just 5% of income above that line. Thus, while a borrower in a family of four with a median household income on the 1994 ICR

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[6] The exact text is included in the first few pages of the States' Appendix, which supplements the Government's appendix. Supp.App.01a.

plan would pay back $9,000 per year for up to 25 years, a borrower on the new plan under the Final Rule would repay almost nothing: just over $30 a month.

In fact, under the Final Rule almost nobody would repay their loans. The income eligibility is so low that *millions* of borrowers enrolled in the plan "pay" $0. *FACT SHEET: President Biden Cancels Student Debt for More Than 150,000 Student Loan Borrowers Ahead of Schedule,* The White House (Feb. 21, 2024).[7] And for those who pay anything at all, the "average" undergraduate borrower will pay back only 61 cents per dollar borrowed. 88 Fed. Reg. 43,823, –80. Including graduate borrowers, that number ticks up only to 71 cents on the dollar. *Ibid.* Even borrowers with incomes higher than 98 percent of Americans receive some forgiveness. *Id.*, at 43,831. Even the most generous previous ICR plan (REPAYE), did not do that. Under that plan, the typical borrower repaid more than what he or she borrowed. *Id.*, at 43,880.

Other parts of the Final Rule also increase forgiveness. For example, the Final Rule changes the "family size" calculation for all three ICR plans. This change means certain borrowers "will no longer be required to include their spouse's income in their payment calculation." Department of Education, *Fact Sheet: How the New SAVE Plan Will Transform Loan Repayment and Protect Borrowers* at 1 (June 30, 2023).[8] Because of this change, those borrowers are able to shelter more income and thus pay less under all three ICR plans, leading to greater forgiveness. Similarly, the

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[7] https://www.whitehouse.gov/briefing-room/statements-releases/2024/02/21/fact-sheet-president-biden-cancels-student-debt-for-more-than-150000-student-loan-borrowers-ahead-of-schedule/
[8] https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/idrfactsheetfinal.pdf

Government notes that the Final Rule "credits certain periods of deferment" toward forgiveness that were not previously credited. This includes deferment for periods of bankruptcy and unemployment. 88 Fed. Reg. 43,853, –903. By crediting those periods toward the forgiveness timeline, the Final Rule enables borrowers under all ICR plans to obtain forgiveness years faster than they could before.

The estimated cost of just the "SAVE" plan part of the Final Rule is nearly $500 billion. The Government has not disputed that the Final Rule's lower estimate of $156 billion is wrong. 88 Fed. Reg. 43,820. That estimate wrongly assumed the Government would prevail in *Biden* v. *Nebraska* and that loan balances would be $430 billion lower. *Id*., at 43,875. The Secretary chose not to update the estimate before finalizing the rule, but Penn Wharton estimates the cost of just the SAVE plan to be $475 billion. *Biden's New Income-Driven Repayment ("SAVE") Plan: Budgetary Cost Estimate Update*, Penn Wharton (July 17, 2023).[9] This Court credited Penn Wharton's estimate in *Biden* v. *Nebraska*, 143 S. Ct., at 2373.

III. The States Challenge the Final Rule in Its Entirety.

Although the Government's application at times contends that the States challenged only one forgiveness provision in the Final Rule, it elsewhere admits (*e.g.*, at 13), as it must, that the States in fact challenged the entirety of the Final Rule.

The States have consistently challenged *all* provisions in the Final Rule that increase ICR forgiveness, not just the 10-to-19-year provision. Although parts of the

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[9] https://budgetmodel.wharton.upenn.edu/issues/2023/7/17/biden-income-driven-repayment-budget-update

complaint target that provision specifically, the complaint also expressly challenges the "Final Rule" in its entirety. ECF 1, at 43–45.[10] And in opposing the motion to dismiss, the States noted that they "challenge Defendants' decision to unlawfully subsidize interest and challenge the ability of Defendants to use ICR authority to engage in *any* forgiveness." ECF 26, at 61 (emphasis in original) (internal citation omitted);[11] *see also* ECF 10, at 33 (ICR "does not even include clear authority to forgive *any* student loans at all" (emphasis added)).[12] The States thus challenge not only 10-to-19-year forgiveness provision, but all ICR forgiveness provisions, plus other provisions (such as the payment provisions) that increase ICR forgiveness.

IV. The District Court Enjoins Forgiveness Provisions in the Final Rule, and the Eighth Circuit Blocks the Government's Attempt to Evade That Injunction.

After full briefing and several hours of oral argument, the district court's core conclusion held: "Congress has made it clear under what circumstances loan forgiveness is permitted, and the ICR plan is not one of those circumstances." App.59a. The court thus entered an injunction restricting the Government from using that authority to forgive loans.

The Government says (at 2, 26) that the district court enjoined only *one* of the Final Rule's provisions related to forgiveness: the 10-to-19-year provision. Not so.

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[10] https://storage.courtlistener.com/recap/gov.uscourts.moed.211135/gov.uscourts.moed.211135.1.0.pdf

[11] https://storage.courtlistener.com/recap/gov.uscourts.moed.211135/gov.uscourts.moed.211135.26.0.pdf

[12] https://storage.courtlistener.com/recap/gov.uscourts.moed.211135/gov.uscourts.moed.211135.10.0.pdf

The district court's order plainly says otherwise: "Defendants are preliminarily enjoined from any further loan forgiveness for borrowers under the Final Rule's SAVE plan."[13] App.15a. The Final Rule's SAVE plan includes *three* forgiveness provisions, not one. 88 Fed. Reg. 43,902–03. While the Government contends that only one of these provisions is new, it cannot dispute that all three are part of the SAVE Plan and that the plain text of the order enjoins *all* "forgiveness for borrowers under the Final Rule's SAVE plan." App.15a.

The Government nonetheless continued forgiving loans anyway, which "rendered the injunction a nullity." App.4a. As the Eighth Circuit put it, "[d]espite the district court's injunction, the Government continue[d] to forgive loans for borrowers enrolled in SAVE." *Ibid.* "It d[id] so through a new so-called 'hybrid rule'"—the Government's term—that "combine[d] the parts of SAVE that the district court did not enjoin, such as the payment-threshold provisions and nonaccrual of interest, with the forgiveness-of-principal provisions in REPAYE." *Ibid.*

When the Government announced it was continuing to forgive loans, the States immediately perceived several problems. First, the Government contended it was forgiving loans under REPAYE, but REPAYE no longer existed. The Government has repeatedly declared, "The SAVE Plan replaced the Revised Pay As You Earn

[13] The district court may have conflated the SAVE plan with the Final Rule in its entirety. The district court's opinion goes even further than the one-page preliminary injunction, stating that it is "necessary to enjoin Defendants from *any* further implementation of the Final Rule's loan forgiveness *provisions*." App.18a (emphasis added). The Final Rule's forgiveness provisions pertain not only to the SAVE plan, but also to the ICR and PAYE plans. For purposes of this response, the States adopt the narrowest view of the district court's injunction. Even then, the Government violated the injunction.

(REPAYE) Plan." *SAVE Plan Announcement*, Federal Student Aid (last visited August 14, 2024).[14] The Government thus had to concede to the district court that REPAYE was "fully replace[d]" by the SAVE plan. ECF 52, at 2 (Supp.App.11a).

Second, the Government could not rely on the REPAYE forgiveness provisions because those became part of SAVE, and the district court expressly enjoined all forgiveness provisions in the SAVE plan. *Cf.*, *New York State Telecommunications Ass'n*, *Inc*. v. *James*, 101 F.4th 135, 156 (CA2 2024) (government cannot "pick and choose powers from both regulatory regimes simultaneously") (emphasis omitted). Unlike the States, the Government never moved to clarify the injunction.

Third, the Government did not go through notice and comment. As the Government admitted to the district court, what the Government called its "hybrid" plan involved a combination of benefits that no borrower had ever received before. The Government acknowledged that "[i]t is true" that "they are trying to forgive loans between 20 and 25 years for borrowers who were never in any previous ICR program." ECF 52, at 12 (Supp.App.21a). The Government created this new set of benefits without public notice or comment.

The States thus sought emergency relief in the Eighth Circuit. "In light of the Government's post-injunction actions, [the Eighth Circuit] administratively stayed implementation of the hybrid rule on July 18 until the parties could fully brief the emergency motion for an injunction pending appeal." App.5a. Three weeks later, the

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[14] https://studentaid.gov/announcements-events/save-plan

Eighth Circuit issued an opinion granting the request for an injunction pending appeal, concluding that this second "attempt to engage in mass student-loan cancellation" is "even larger in scope" than the first and "the text of the HEA makes a showing [by the Government] of even mere plausibility difficult." App.5a, 6a, 8a.[15]

ARGUMENT

The Court should reject the application to vacate. The Government cannot meet any of the relevant factors.

I. The Federal Government Is Unlikely to Succeed on the Merits.

A. The States easily have standing.

As both the district court and Eighth Circuit easily concluded, the States proved the same theory of standing that prevailed in this Court last year. Specifically, Missouri's student loan instrumentality, MOHELA, earns administrative fees per borrower account by servicing those accounts. When the Federal Government cancels loans, that cancels MOHELA-serviced accounts, depriving MOHELA (and thus Missouri) of revenue. MOHELA has more than 8 million accounts, the substantial majority of which (if not all) would be eligible for at least some forgiveness under the Final Rule or the Government's new "hybrid" plan. *See, e.g.*, ECF 22-2 ¶¶ 3, 32.[16] At the base contract rate of $35.64 per account per

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[15] The Government moved the Eighth Circuit to clarify that the injunction did not (1) extend to forgiveness *other* than ICR nor (2) extend to the ICR and PAYE plans. The States opposed, noting that the States did not challenge forgiveness other than ICR (so clarification was unnecessary) and that the Final Rule alters the other ICR plans in ways that harm the States. Right before the States filed this response, the Eighth Circuit rejected the Government's motion in a one-sentence order.

[16] https://storage.courtlistener.com/recap/gov.uscourts.moed.211135/gov.uscourts.moed.211135.22.2.pdf

year (the rate when the suit was filed), MOHELA stands to lose up to about $285 million *each year* from cancellation.

1. Trying to evade this obvious conclusion, "the United States offer[s] a sleight of hand." *Terry* v. *United States*, 593 U.S. 486, 494 (2021). The Government repeatedly asserts (*e.g.*, 18) that the Eighth Circuit reached back a decade to enjoin "the REPAYE plan's preexisting provision of forgiveness." And it argues that the preexisting provision imposes no harm, so there is no standing. That argument fails for many reasons, including that it misrepresents the Eighth Circuit's order.

First, even if the Government were correct that the Eighth Circuit enjoined a nine-year-old provision (that is not what happened), that would not matter. Application of that provision to MOHELA-held loans *now* harms MOHELA for all the reasons explained in *Biden* v. *Nebraska*: forgiveness deprives MOHELA of servicing fees. 143 S. Ct., at 2366. Perhaps the Government really means to say that the statute of limitations has run. That is not an argument about standing, the Government fails to develop it, and it is wrong. MOHELA is a directly regulated party and "suffers an injury from final agency action" every time the Secretary cancels a MOHELA-held account. *Corner Post, Inc.* v. *Bd. of Governors of Fed. Reserve System*, 144 S. Ct. 2440, 2450 (2024).

Second, and more fundamentally, the Government misstates the Eighth Circuit's decision. That court did not enjoin the REPAYE forgiveness provision in isolation. None of the forgiveness provisions in any ICR plan operates in isolation;

they operate in conjunction with eligibility provisions—*e.g.*, the payment provisions. The Eighth Circuit did not enjoin the forgiveness provision in the abstract, but in conjunction with eligibility provisions. App.9a. Indeed, the Eighth Circuit did not enjoin any "REPAYE" provision at all. REPAYE no longer exists; it was "fully replace[d]" by SAVE, as the Government conceded to the district court (but fails to mention here). ECF 52, at 2 (Supp.App.11a).[17]

The Eighth Circuit's decision to review the forgiveness provisions in conjunction with the payment provisions makes sense because the States' greatest harm comes from the combination of forgiveness and eligibility provisions. They operate together and must be assessed together, for as this Court has "stressed" for decades, the "the entire regulatory program must be considered in resolving the case." *United States* v. *United Foods, Inc*., 533 U.S. 405, 412 (2001). "Courts have a 'duty to construe statutes, not isolated provisions.'" *U.S. ex rel. Wilson*, 559 U.S., at 290; *accord FDA* v. *Brown & Williamson Tobacco Corp*., 529 U.S. 120, 132 (2000) ("a reviewing court should not confine itself to examining a particular statutory provision in isolation"). The Government violates this cardinal rule.

Indeed, the States were forced to seek emergency relief in the Eighth Circuit precisely because the Government did *not* implement the "preexisting provision of forgiveness" in isolation. Rather, the Government created a "hybrid" plan that

[17] For similar reasons, the Government's argument is not preserved. The district court expressly enjoined all forgiveness provisions in the SAVE plan. App.15a. This includes not just the 10-to-19-year provision, but also the other two provisions that carried over from REPAYE. The Government chose not to seek emergency relief in the Eighth Circuit from that order and thus cannot do so here.

combined forgiveness from a defunct rule with eligibility/payment provisions in the new rule. This harmed the States much more than the now-defunct REPAYE plan ever did because it substantially increased forgiveness eligibility by "an order of magnitude broader than anything that has come before." App.3a. Any provision in the Final Rule that increases forgiveness harms MOHELA. So Missouri can challenge any of them.

2. The Final Rule is brimming with new provisions that increase forgiveness. Four examples suffice. Most obvious is the new provision that authorizes the Secretary to cancel debt for millions of borrowers as early as 10 years after graduation. The Government does not here dispute this harms MOHELA.

The payment provisions do too. These hike the income-exemption amount (to 225% of the federal poverty line) and slash the payment amount (down to 5% above that line), thus dramatically increasing eligibility for forgiveness by "3,000 percent." App.7a. The Government cannot dispute that the payment provisions—operating together with forgiveness provisions—enable millions more borrowers to obtain forgiveness. That harms MOHELA, which services millions of those accounts.

Likewise, the "family size" provision harms MOHELA. That provision increases forgiveness eligibility by excluding certain income from consideration. Again, the Government cannot dispute that the provision leads to more forgiveness than could occur without it.

Finally, the provision crediting deferment for bankruptcy and unemployment harms MOHELA. It makes some borrowers newly eligible for forgiveness and makes other borrowers eligible for forgiveness sooner than they otherwise would be. Either event deprives MOHELA of servicing fees it otherwise would receive.[18]

In short, the three previous ICR plans always harmed MOHELA (and thus Missouri) because they unlawfully cancelled loans. But because their strict eligibility requirements meant they had "low participation," 77 Fed. Reg. 66,116, the harm was small, and nobody sued. In contrast, the changes made by the Final Rule to all three plans hiked the harm by "an order of magnitude broader than anything that has come before." App.3a. Forgiveness provisions must be assessed together with eligibility provisions. The Court should reject the Government's insistence otherwise.

3. Even in isolation, many of these provisions independently harm the States. Setting aside the three forgiveness provisions, which deprive MOHELA of servicing fees, other provisions harm MOHELA by depriving it of a stream of interest revenue—similar to how they deprive the *Alaska* applicants, No. 24A11. Recall that until 2010, student loans were often issued and held by organizations other than the Federal Government. MOHELA owns nearly "$1 billion" in those loans, *Biden* v. *Nebraska*, 143 S. Ct., at 2365, and receives a large stream of interest revenue: $51

[18] In a footnote, the Government argues that all these provisions will somehow "save MOHELA money." Application at 19 n.3 (emphasis in original). The district court expressly rejected that assertion, finding that the "purported benefits of the Final Rule to MOHELA do not offset the alleged and actual harms experienced by MOHELA." App.53a. The Government makes no attempt to contest this finding, which is subject to clear-error review.

million last year, ECF 1-7, at 14.[19] The Final Rule's provisions harm MOHELA by causing borrowers to refinance their legacy loans into direct loans so they can take advantage of the Final Rule's $0 payments. When borrowers refinance those loans, MOHELA loses that stream of interest revenue.[20]

Contrary to the Government's contention (at 20–21), MOHELA does not somehow *benefit* from losing this stream of revenue. The Government notes that when a borrower refinances, MOHELA immediately receives all principal due on that loan and insists MOHELA should prefer to have all loan principal today, rather than principal plus a stream of interest in the future. *Ibid.* This is economically illiterate. The very purpose of loans is to provide otherwise inaccessible capital to borrowers in exchange for repayment of principal *plus* interest. The Government suggests the loss of interest payments is no big deal. But it is a necessary element (and benefit) that underpins nearly every lending transaction. Under the Government's view, no loans (in any context) should ever exist, because lenders would always benefit from retaining (rather than lending) the principal. That is not reality.

So the Government next suggests the States should put economists on the stand to do an "accounting" exercise to prove future principal plus interest will exceed the present value of principal today. *Ibid.* But this is not a damages action, where

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[19] https://storage.courtlistener.com/recap/gov.uscourts.moed.211135/gov.uscourts.moed.211135.1.7.pdf

[20] The States presented several additional theories of standing to the district court. ECF 26, at 24–32. The Federal Government makes no attempt to rebut those other theories and so waives any challenge to them for purposes of this application.

courts assess whether benefits offset harms. For purposes of Article III, a single dollar of injury suffices. *E.g.*, *Sprint Commun. Co., L.P.* v. *APCC Services, Inc.*, 554 U.S. 269, 289 (2008) ("a dollar or two"). On standing, the universally settled rule is that "no attempt is made to ask whether the injury is outweighed by benefits." Wright & Miller, 13A *Federal Practice & Procedure* § 3531.4 (3d ed.). "In resolving standing, courts do not engage in such an 'accounting exercise.'" *Texas* v. *United States*, 50 F.4th 498, 518 (CA5 2022) (citing sources). In any event, the district court already rejected Defendants' argument on the facts, finding that any "purported benefits of the Final Rule to MOHELA do not offset the alleged and actual harms experienced by MOHELA." App.53a.

In a final attempt, the Government asserts (at 22) that whether individuals will refinance because of the Final Rule is speculative. Hardly. The States have easily "show[n] that the third parties will likely react in predictable ways that in turn will likely injure the plaintiffs." *Food & Drug Admin.* v. *All. for Hippocratic Med.*, 602 U.S. 367, 383 (2024) (quotation marks and citations omitted). It does not take a Ph.D. to understand why borrowers would prefer $0 "payments" under the Final Rule to actual repayment under their current loans.

Indeed, the States presented unrebutted evidence that right after the Government announced in late January that it was forgiving loans before July, refinancing of MOHELA loans more than *tripled* in February compared to December. Supp.App.23a–25a. The last time MOHELA saw a similar increase was 2022, when

Defendants announced their first attempt at mass forgiveness. *Ibid.* The idea that not a single borrower will refinance because of the Final Rule "strains credulity." *Alabama Ass'n of Realtors*, 594 U.S., at 760.

The Government's argument here is especially difficult to take seriously because the Government elsewhere encourages borrowers to refinance in order to take advantage of the Final Rule. ECF 1 ¶ 123 (citing sources). The Government cannot credibly claim that no borrowers refinance because of the Final Rule when federal officials publicly tout the Final Rule as the reason to refinance.

B. The Secretary lacks authority to forgive principal or interest under the ICR statute.

There is a reason the Final Rule is the Government's *backup* plan for mass loan forgiveness: the Government's statutory arguments are even weaker than in *Biden* v. *Nebraska*. The Final Rule easily flunks the major questions doctrine, and even "ordinary tools of statutory interpretation," *Biden* v. *Nebraska*, 143 S. Ct., at 2375, decisively prove that the ICR statute does not authorize forgiveness.

a. The Government's actions violate the major questions doctrine.

As both district courts and the Eighth Circuit readily concluded, the Secretary's assertion of unfettered authority to cancel every penny of every student loan—and his decision to cancel nearly $500 billion in student loans here—is obviously of "vast economic and political significance" and so triggers the major questions doctrine. *E.g.*, *Alabama Ass'n of Realtors*, 594 U.S., at 764. As the district court here put it, "there is no real dispute." App.61a.

The problem for the Government is that, having triggered the major questions doctrine, the Government is unable to satisfy its burden of identifying "exceedingly clear language" authorizing forgiveness. *Alabama Ass'n of Realtors*, 594 U.S., at 764. To date, the Government has never disputed that the ICR provisions (unlike other provisions in the Act) lack express forgiveness authority. The Government instead has repeatedly said forgiveness authority is *implied* from the text limiting ICR repayment plans to 25 years. *E.g.*, Application, at 23 (attempting to infer forgiveness authority from statutory structure). That is fatal to their claim. The major questions doctrine requires authority to be explicit, not implicit. The Secretary's assertion that he has authority to forgive every penny of every student loan thus undoubtedly violates the major questions doctrine.

Contrary to the Government's contention (at 24–25), it makes no difference that the REPAYE plan originally may have been "relatively uncontroversial." That plan no longer exists, and forgiveness provisions cannot be assessed in isolation. The previous ICR plans unlawfully authorized forgiveness, but hardly anybody qualified, as the Eighth Circuit recognized. App.7a. While that kind of plan might not trigger the doctrine, the doctrine *is* triggered by a plan that cancels $500 billion in loans across 98 percent of borrowers and asserts unfettered authority to go even further. The Government has "expand[ed] agency authority to such an extent that it alters it." *Ibid.* (citation omitted).

No better is the argument (at 29) that triggering the doctrine requires more than a showing of "vast economic and political significance." This Court's rule statements require nothing more. *E.g.*, *Alabama Ass'n of Realtors*, 594 U.S., at 763 ("We expect Congress to speak clearly when authorizing an agency to exercise powers of vast economic and political significance."); *Biden* v. *Nebraska*, 143 S. Ct., at 2374 (similar). In any event, even accepting the Government's invitation to look at the "history" and "breadth" of regulation, the Government's actions easily violate the doctrine. The Secretary's assertion of unfettered authority to cancel every penny of every loan is staggering in "breadth" and unprecedented in "history."

b. The Government's actions violate the plain text.

What the major questions doctrine reveals, the plain text reinforces. "Congress opted to make debt forgiveness available only in a few particular exigent circumstances." *Biden* v. *Nebraska*, 143 S. Ct., at 2369. As both the Eighth Circuit and the district court concluded, "the ICR plan is not one of those." App.7a (quoting the district court).

The Government does not dispute that no ICR text expressly authorizes forgiveness. The text enables the Secretary to promulgate "an income contingent repayment plan, with varying annual repayment amounts based on the income of the borrower, paid over an extended period of time prescribed by the Secretary, not to exceed 25 years." 20 U.S.C. § 1087e(d)(1)(D). Nothing here provides authority—express or implied—for loan forgiveness. It simply states that the Secretary can vary

payment amounts based on income (unlike the fixed amounts in other repayment plans) and can let borrowers stretch repayment up to 25 years instead of 10.

In fact, far from authorizing forgiveness, the text expressly requires "repayment." The statute describes ICR plans as "plans for *repayment* of such loan, *including principal and interest*," and goes on to say the "balance due" from each borrower on an "income contingent repayment" plan "*shall* equal the unpaid principal amount of the loan, any accrued interest, and any fees." § 1087e(d)(1)(D), (e)(5) (emphasis added). That matches the ordinary meaning of "repayment." "In the loan or finance context, repayment means paying the amount borrowed and the interest." *In re Goodvin*, No. 19-10623, 2020 WL 6821867, at *8 (Bankr. D. Kan. Sept. 1, 2020).

Against all this, the Government says the ICR statute authorizes forgiveness implicitly because it permits the Secretary to create repayment plans that are "not to exceed 25 years." According to the Government (at 23), the "only type of plan" that permits payments based on income in a period not to exceed 25 years is a plan that permits forgiveness.

Nonsense. There are innumerable ways the Secretary can require payments that are based on income but still high enough for individuals to repay their loans within 25 years. For example, the Secretary could promulgate a plan stating that a borrower each year shall pay X% of annual income or 4% of the principal balance, whichever is higher. Similarly, the Secretary could permit lower payments for four years but require catch-up payments in the fifth to keep a borrower on track to repay.

Far from granting the Secretary authority, this text *limits* him, requiring that he promulgate payment amounts *high* enough for borrowers to repay within 25 years.

The "not to exceed" language cannot implicitly authorize forgiveness because the same text is used in four other repayment plans, including the 10-year standard repayment plan, see § 1078(b)(9)(A), and the Secretary admitted to the district court that he has no authority to forgive loans under those plans. ECF 22, at 43. When Congress "transplanted" that "not to exceed" language into the ICR statute, it brought "the old soil with it." *Taggart* v. *Lorenzen*, 587 U.S. 554, 560 (2019). Not even the Secretary thinks that language creates authority to forgive loans on the standard repayment plan, so the language is insufficient with respect to ICR as well.

And in stark contrast to the ICR provisions, other provisions in the HEA (passed both before and after the 1993 ICR amendments) expressly authorize forgiveness. For example, amendments passed in 1986 expressly authorize forgiveness for teachers, military service members, and Peace Corps volunteers. § 1087ee. And the IBR program, created in 2007, expressly permits forgiveness. § 1098e(b)(7). In fact, the IBR program creates the only vehicle for forgiveness for borrowers on ICR (other than Public Service Loan Forgiveness). ICR borrowers can obtain forgiveness, but only *after* switching to the IBR program. § 1098e(b)(7)(A), (b)(7)(B)(iv) (authorizing forgiveness for borrowers who have "made payments under an income-contingent repayment plan" but requiring them first to shift to IBR).[21]

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[21] The Government asserts (at 24) that the 2007 amendments endorsed the idea that ICR includes forgiveness authority. That is a strange way of describing a new bill that *departs* from ICR by creating

"When Congress includes particular language in one section of a statute but omits it from a neighbor," as Congress did in the Higher Education Act, "we normally understand that difference in language to convey a difference in meaning." *Bittner* v. *United States*, 598 U.S. 85, 94 (2023).

Finally, the Government's interpretation makes a mockery of the IBR program and its statutory history. That program provides forgiveness to persons who have incomes satisfying the statutory definition of "partial financial hardship." § 1098e(a)(3). The Final Rule provides far more forgiveness and does not have those income eligibility requirements. So the Final Rule provides benefits to *rich* borrowers that Congress did not even provide to *poor* borrowers. On its own, that is good reason to be skeptical of the Government's position.

Congress also spent years negotiating the specific payment provisions and forgiveness timeline in IBR and enshrined all those provisions into statute. The program required borrowers to pay 15% of their income above 150% of the federal poverty line. § 1098e(a)(3)(B), (b)(1). Then advocates—including President Obama—called on Congress to make the program more generous, which Congress did in 2010, decreasing payments to 10% above 150% of the poverty line and accelerating forgiveness from 25 years to 20 years. § 1098e(e).

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express forgiveness authority for IBR and by letting ICR borrowers obtain forgiveness only if they first switch to IBR. § 1098e(b)(7)(A), (b)(7)(B)(iv). On the same page, the Government says the 2007 amendments also included provisions that defined how to calculate the 25-year period. That of course says nothing about forgiveness authority.

"What chumps!" *Arizona State Legislature* v. *Arizona Indep. Redistricting Comm'n*, 576 U.S. 787, 825 (2015) (Roberts, C.J., dissenting). "Didn't they realize that all they had to do was" forgive whatever they wanted at the stroke of a pen? *Ibid.* Of course not. They legislated. They authorized forgiveness—but only through bicameralism and presentment. They did the hard work the Government does not want to do here. This history was long recognized on both sides of the political aisle *until* the Government published the Final Rule. *See* Lauren Camera, *Pelosi: Biden Lacks Authority to Cancel Student Debt,* U.S. News & World Report (July 28, 2021) ("People think that the President of the United States has the power for debt forgiveness. He does not. . . . That has to be an act of Congress. . . . The President can't do it.").[22] This history also "underscores the implausibility of the Government's interpretation." *Van Buren* v. *United States*, 593 U.S. 374, 394 (2021).

After considering the text, the Eighth Circuit and the district court easily concluded that "Congress has made it clear under what circumstances loan forgiveness is permitted, and the ICR plan is not one of those circumstances." App.7a (quoting the district court). Indeed, "the text of the HEA makes a showing [by the Federal Government] of even mere plausibility difficult." App.8a.

All these arguments apply just as much to forgiveness of interest as to forgiveness of principal. The Government makes no attempt to defend the district court's analysis about interest, which erroneously conflated interest "accrual" with

[22] https://www.usnews.com/news/education-news/articles/2021-07-28/pelosi-biden-lacks-authority-to-cancel-student-debt

interest "capitalization." App.58a. Instead, the Government now briefly suggests (at 31) it is not forgiving interest at all, only deciding whether to include interest when calculating balances due. These are verbal gymnastics. As the Government cannot deny, before the Eighth Circuit's order federal officials were not requiring individuals to pay interest and were instead picking up the tab. That is forgiveness, and it is forbidden. § 1087e(e)(5) (the "balance due" "shall" include "accrued interest").

c. The Government's nontextual arguments fail.

Short on text, the Government resorts next to flawed atmospherics. First, the Government asserts (at 23–24) that "every Secretary of Education since" 1993 has understood the ICR statute to permit forgiveness. Even if that were true, there is no "adverse possession" rule letting agencies change the meaning of statutes simply by taking action that goes unchallenged. *See Career Colleges & Sch. of Texas* v. *U.S. Dep't of Edu.*, 98 F.4th 220, 241 (CA5 2024). But it is also not true. The Government is able to identify just *two* Secretaries out of nine since 1993 who adopted this position before the Final Rule. The other seven never engaged in ICR rulemaking and so had no reason to assess the question. Similarly, the Government stresses (at 23) that "no court ha[s] ever questioned" ICR forgiveness, but the Government is unable to cite even a single case where the issue was presented. There is no precedent either way.

None of this is surprising. While the previous ICR plans were unlawful, the question was never litigated because those plans "were limited in scope." App.3a. The question went unlitigated because no previous Secretary ever asserted unfettered authority to cancel every penny of every loan. This Secretary is the first.

Finally, the Government suggests (at 26) the Eighth Circuit acted improperly by describing the Government's actions as a "hybrid plan." But that is how the *Government itself* described its actions. As the Government acknowledged to the district court, its previous REPAYE plan was "fully replace[d]" by SAVE in the Final Rule. ECF 52, at 2 (Supp.App.11a). So when the district court "preliminarily enjoined [the Government] from any further loan forgiveness for borrowers under the Final Rule's SAVE plan," App.15a, the Government tried to resurrect the now-defunct REPAYE plan and mix-and-match forgiveness from that nonexistent plan with the payment provisions in the new SAVE plan. It was the Government that described this new plan as a "hybrid." ECF 52, at 4 (Supp.App.13a). The Eighth Circuit rightly conclude that this hybrid was an aggressive attempt to "render[ ] the injunction largely a nullity." App.8a.

C. The Final Rule's revised payment amounts are unlawful.

Because the Secretary lacks statutory authority to forgive student loan balances under the ICR program, it necessarily follows that the Secretary acted unlawfully when he decided to slash payments amounts so low that monthly payments will *never* result in the "repayment of such loan, including principal and interest." 20 U.S.C. § 1087e(d)(1)(D). The States do not dispute that the Secretary has a fair amount of discretion in setting payment amounts based on income, but that discretion has limits: namely, payment amounts must be large enough for borrowers to actually repay their loans within 25 years.

The Secretary has done the opposite. Under the Final Rule, *millions* of borrowers—57% of all borrowers on the new plan—"pay" $0 per month. *See FACT SHEET: President Biden Cancels Student Debt for more than 150,000 Student Loan Borrowers Ahead of Schedule,* The White House (Feb. 21, 2024).[23] That is not "repayment." It is not even "partial repayment." It is forgiveness. Even for those who pay anything greater than $0, the typical borrower "repays" only 71 cents on the dollar. 88 Fed. Reg. 43,880.

The Secretary has thus failed to "establish procedures for determining the borrower's repayment obligation on that loan for such year, and such other procedures as are *necessary to implement effectively* income contingent repayment." 20 U.S.C. § 1087e(e)(1) (emphasis added). Where forgiveness is off the table, procedures "necessary to implement effectively income contingent repayment," require payment amounts large enough for borrowers to repay fully within 25 years. Finding otherwise would lead to an absurdity: The Secretary, by promulgating formulas too low for borrowers to repay their loans, would push borrowers into *default* at the end of 25 years because the Secretary lacks authority to forgive unpaid balances and yet is telling borrowers *not* to repay their loans within 25 years.

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[23] https://www.whitehouse.gov/briefing-room/statements-releases/2024/02/21/fact-sheet-president-biden-cancels-student-debt-for-more-than-150000-student-loan-borrowers-ahead-of-schedule/

II. The Eighth Circuit's relief is appropriate for MOHELA, a nationwide loan servicer.

The Government raises the same scope-of-injunction arguments it raised in its *Biden* v. *Nebraska* application, which this Court did not accept. Those arguments fail for several reasons.

First, the Government is flat wrong to contend that the Eighth Circuit granted what is commonly called a "universal injunction." To the contrary, the court made clear it was "craft[ing] an injunction that is no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." App.9a (citation omitted). The court followed the well-established rule—very common, for example, in nuisance actions—that relief can extend incidentally to nonparties if necessary to provide complete relief to the plaintiff. *Cf.*, *Gill* v. *Whitford*, 585 U.S. 48, 67 (2018) ("[T]he only way to vindicate an individual plaintiff's right to an equally weighted vote was through a wholesale 'restructuring of the geographical distribution of seats in a state legislature.'" (citation omitted)).

What is true for nuisance actions is also true here. MOHELA is a nationwide loan servicer with 8 million accounts. These accounts are dynamic. For example, in 2022, about two million accounts were transferred from one servicer to MOHELA. Earlier this year, about 1.5 million were transferred out. In light of the dynamic, nationwide nature of MOHELA's practice, the Eighth Circuit's injunction was necessary to give the States complete relief.

It is far from clear what other injunction the Eighth Circuit could have issued and still given the States adequate relief. The Government provides no answer. The Eighth Circuit could not, for example, have limited relief to accounts currently held by MOHELA. That would permit the Government to simply transfer accounts before forgiving the balances. The harm to MOHELA would be just as high, if not higher.

Second, in contending (at 34) that the Eighth Circuit went "beyond the rule to reach the implementation of provisions that long predated it," the Government misrepresents both its own actions and the Final Rule. As the Government conspicuously refuses to acknowledge, it responded to the district court's injunction by forgiving loans not under the now-defunct 2015 regulation but instead under what the Government itself described as a "hybrid" plan that mixed and matched various provisions from various regulations in a combination no borrower had ever before received. Similarly, while the Government admits (at 34) that the States "sought injunctive relief from implementation of the Final Rule," the Government omits that the Final Rule includes at least three forgiveness provisions, not one. 88 Fed. Reg. 43,902–03. The district court expressly enjoined the Government "from *any* further loan forgiveness for borrowers under the Final Rule's SAVE plan." App.15a. So the Government's actions were flagrantly unlawful not only because the Government promulgated a new plan without notice and comment, but also because its actions violated the plain text of the district court's order. The Eighth Circuit had a cornucopia to choose from to rule against the Government.

Finally, even if the Eighth Circuit order implicated questions about universal injunctions (it does not), the Government harps on the limits of *equitable* remedies, citing *Labrador* v. *Poe*, 144 S. Ct. 921 (2024), but ignores that (unlike *Poe*) this is an APA case with available statutory remedies, 5 U.S.C. §§ 705, 706. Members of this Court have expressed different views about whether those statutory remedies permit defendant-specific relief or only plaintiff-specific relief. *Compare Corner Post*, 144 S. Ct., at 2460–70 (Kavanaugh, J., concurring); *and* Tr. Oral Arg., *United States* v. *Texas*, No. 22-58, at 35 (2022) (Roberts, C.J.); *id.*, at 68 (Jackson, J.); *with United States* v. *Texas*, 599 U.S. 670, 693, 702 (2023) (Gorsuch, J., concurring). The Court should not decide that issue summarily in the emergency posture, especially when even the critics of defendant-specific relief recognize there is "more than 30 years" of settled Court of Appeals precedent in favor of that relief. *Id.*, at 701.

III. The Equities Favor the States.

1. The Government's argument on irreparable harm rests on the same meritless arguments raised against standing. It should be rejected for the same reasons. As already explained, Missouri stands to lose hundreds of millions of dollars each year if the Government is allowed to continue its unlawful mass cancellation program. The Eighth Circuit held that "the States cannot turn back the clock on any loans that have already been forgiven." App.9a.

The equities favor maintaining the injunction here even more strongly than in 2022. Back then, the Government had not yet started forgiving loans when the Eighth Circuit entered an injunction (which this Court declined to lift). Here,

however, the Government was forgiving loans every day until the Eighth Circuit ordered relief. Indeed, just last month, the Secretary emailed student loan borrowers informing them that "our Administration will continue to implement the SAVE Plan to the fullest extent possible" "no matter how many times Republican elected officials try to stop us." Scott, *Secretary of Education and Biden-Harris Administration Committed to Helping Student Loan Borrowers*, KQTV News (July 11, 2024).[24]

2. In contrast, the Government will face no harm from the Eighth Circuit's order because the Government has no legitimate interest in unlawful action. Nor will an injunction harm borrowers. Rather, their positions will remain the same. In response to the Eighth Circuit's injunction, the Government placed "all borrowers currently impacted by [the order] in administrative forbearance," so they are "not required to pay principal or interest" while litigation proceeds. App.9a. If Defendants were to prevail on appeal, they could simply forgive loans then.

The Government's actions in its relentless drive to cancel as many loans as possible have also been extraordinarily inequitable. The Government rushed the rule out in response to *Biden* v. *Nebraska*, declining to update the cost estimate that rested on the flawed assumption the Government would prevail in that case. The Government knew that assumption was false and yet deliberately underestimated the cost of the rule by $300 billion. Next, the Government violated the Congressional Review Act, under which "major rules" are not permitted to take effect until 60 days

[24] https://www.kq2.com/news/top-stories/secretary-of-education-and-biden-harris-administration-committed-to-helping-student-loan-borrowers/article_f2d69004-3f8a-11ef-8484-0fc1698b6a9f.html

after publication. 5 U.S.C. § 801(a)(3). The Final Rule was labeled a major rule, 88 Fed. Reg. 43,867, but the Government implemented parts it the same month it was published. Then, even though the Final Rule said the Government would not start implementing the 10-to-19-year forgiveness provision until July 2024, the Government announced in late February 2024 that it had already started doing so. Worst of all, following the district court's injunction, the Secretary unlawfully tried to resurrect a now-defunct regulation, mix and match that old regulation with a new regulation to create a brand new "hybrid" plan never before seen—all without notice and comment and all to evade the district court's injunction, "render[ing] that injunction a nullity." App.4a. And the Government did so in violation of the plain text of the district court's injunction, which enjoined *all* forgiveness provisions in the SAVE plan. On equity grounds alone, the Court has more than enough justification to reject the Government's application.

The Government (at 36–37) raises various arguments about administrability, repeatedly citing a declaration by Denise Carter. But these arguments were never presented to the district court. The Government tried this same gambit—through the same declarant—in a motion to the District of Kansas *after* that court issued its ruling. That court rightly rejected those arguments because it was "the first time the court has seen these declarations or heard about any of the difficulties that they predict." *Alaska* v. *Dep't of Educ.*, No. 24-1057, ECF 84 (June 28, 2024). The

Government was worse here: it did not present these arguments *at all* to the Missouri district court. These arguments are waived, just as they were in the Kansas case.

Even if the Government could present compelling equities in its favor, that would not justify relief. As this Court held two months ago, when "each side has strong arguments about the harms they face and equities involved, our resolution of these stay requests ultimately turns on the merits and the question who is likely to prevail at the end of this litigation." *Ohio* v. *EPA*, 144 S. Ct. 2040, 2053 (2024). Here, the States established hundreds of millions of dollars in harm.

3. No better is the Government's argument about delay. Contrary to the Government's suggestion (at 35), the district court *rejected* the argument that there was any delay warranting denial of all relief.

The Government also misrepresents the timeline. The Government suggests the clock began in July 2023, when the rule was published. But it was not scheduled to go into full effect until July 2024. Had the States sued a year ago, Defendants no doubt would have argued the injury was not sufficiently imminent. For the next five months, the Missouri Attorney General's Office sought non-litigation remedies by participating in a negotiated rulemaking process to alter this Final Rule. ECF 26, at 56. That attempt was unsuccessful, but there is no delay where a party "pursued non-litigation avenues first." *Texas Children's Hosp.* v. *Burwell*, 76 F. Supp. 3d 224, 245 (D.D.C. 2014).

At the earliest, the clock began ticking on February 21, 2024, when the Government first announced it had already cancelled $1.2 billion in student loans even though forgiveness was slated initially to begin four months later. The States launched their lawsuit just over a month later (and just days after receiving the evidence through open-records requests needed to seek a preliminary injunction).

The States also properly sought only prospective relief in their preliminary-injunction motion—three months before the rule was scheduled to go into full effect. In doing so, the States complied with controlling Eighth Circuit precedent, which holds, "[d]elay is only significant if the harm has occurred and the parties cannot be returned to the status quo." *Ng* v. *Bd. of Regents of Univ. of Minnesota*, 64 F.4th 992, 998 (CA8 2023). By seeking only prospective relief in the preliminary injunction motion, the States did not try to unwind harm that had already occurred.

IV. The Court Should Speedily Resolve This Issue.

Ordinarily, the States would argue that this Court should simply reject the application without comment because the Government cannot meet its burden.

But this case is not ordinary. It has the same price tag, policy topic, and procedural posture as *Biden* v. *Nebraska*. And it involves the same failure to follow settled legal principles that undermined the Government's case last time. This Court

would thus be justified in issuing a quick opinion that rejects the Government's statutory position, just like the Court did in *Alabama Association of Realtors*.[25]

If the Court declines that path, the States acknowledge that certiorari is justified just like it was in *Biden* v. *Nebraska*. The scope of the plan is so enormous that—absent a quick opinion like that in *Alabama Association of Realtors*—a certiorari petition is virtually guaranteed from whichever party ultimately loses in the Eighth Circuit. Certiorari would also enable this Court to address all relevant arguments in the case, not just the statutory arguments both sides prioritized here in this truncated briefing.

Regardless of which path this Court chooses, a better vehicle is unlikely to materialize than what the Court already has on the emergency-application docket. No other State has an organization like MOHELA. Missouri thus has the strongest standing of any potential plaintiff in the nation. Missouri also raises—as a backup standing argument—an argument similar to the ones in the *Alaska* case, No. 24A11, which this Court could also hear. And the Eighth Circuit has already issued an opinion, so further percolation in that court is unlikely to be helpful.

Finally, the Government's reaction to the Eighth Circuit order has imposed continuing harm on the States. By placing every borrower into forbearance, freeing them from interest accrual and payments for the indefinite future, the Government

[25] If the Court does so, it should definitively declare that the Secretary lacks forgiveness authority under the ICR statute. A ruling on other grounds risks the Secretary trying to evade this Court's decision by crafting another "hybrid" plan.

has created yet another reason for borrowers to refinance their MOHELA loans into direct loans, depriving MOHELA of up to $50 million each year in interest revenue. MOHELA is continuing to see sky-high refinancing rates. In July—after the district court's injunction—the dollar amount refinanced was still more than twice as high as in December, which was the last month before the Government started announcing it would forgive loans under the Final Rule. Supp.App.23a–25a. MOHELA is thus continuing to experience harm. Speedy resolution of this case is necessary.

If the Court grants certiorari, the States are fine with the Government's request for a November argument, but would strongly prefer the second week of the November sitting in light of Counsel of Record's October litigation schedule, which counsel will explain to the Clerk's Office if this Court grants certiorari.

But the Court should alter somewhat the Government's suggested questions presented. As to the first question, this Court already settled the issue of standing, so that question is unnecessary. The States agree with the second question. The Court should reformulate the third question to "whether the Final Rule violates the APA." As the Government acknowledges (at 39 n.7), certiorari before judgment "would include the entire case." The Government's third question is underinclusive because it omits some provisions that the States have challenged and omits the arbitrary-and-capriciousness arguments the States have pressed. For example, the States argued below that the Final Rule is arbitrary and capricious because the

Government deliberately underestimated the cost of the rule by $300 billion. The States should be afforded an opportunity to present that argument, if needed.

CONCLUSION

For the forgoing reasons, this Court should either reject the application outright or do the same thing it did in *Biden* v. *Nebraska*: grant certiorari and defer ruling on this application until after oral argument.

Date: August 19, 2024

Respectfully submitted,

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No. 24A173

In the
Supreme Court of the United States

JOSEPH R. BIDEN, ET AL.,

Applicants,

v.

MISSOURI, ET AL.,

Respondents.

On Application for
Vacatur of Injunction Pending Appeal

RESPONDENTS' SUPPLEMENTAL APPENDIX TO THE BRIEF OF STATES OF MISSOURI, ARKANSAS, FLORIDA, GEORGIA, NORTH DAKOTA, OHIO, AND OKLAHOMA IN OPPOSITION

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August 19, 2024

TABLE OF CONTENTS

Forgiveness Provisions in the Final Rule .... Supp. App. 01a

DOJ Emergency Motion for Clarification (CA8).................................. Supp. App. 02a

DOJ Response to Plaintiffs' Motion for Clarification (E.D. MO.) .... Supp. App. 010a

MOHELA Consolidation/Refinancing Activity by Month .... Supp. App. 023a

Forgiveness Provisions in the Final Rule, 88 Fed. Reg. 43,900, 902–03

(a) General. Income-driven repayment (IDR) plans are repayment plans that base the borrower's monthly payment amount on the borrower's income and family size. The four IDR plans are—

(1) The Revised Pay As You Earn (REPAYE) plan, which may also be referred to as the Saving on a Valuable Education (SAVE) plan;

…

(k) Forgiveness timeline.

(1) In the case of a borrower repaying under the REPAYE plan who is repaying at least one loan received for graduate or professional study, or a Direct Consolidation Loan that repaid one or more loans received for graduate or professional study, a borrower repaying under the IBR plan who is not a new borrower, or a borrower repaying under the ICR plan, the borrower receives forgiveness of the remaining balance of the borrower's loan after the borrower has satisfied 300 monthly payments or the equivalent in accordance with paragraph (k)(4) of this section over a period of at least 25 years;

(2) In the case of a borrower repaying under the REPAYE plan who is repaying only loans received for undergraduate study, or a Direct Consolidation Loan that repaid only loans received for undergraduate study, a borrower repaying under the IBR plan who is a new borrower, or a borrower repaying under the PAYE plan, the borrower receives forgiveness of the remaining balance of the borrower's loans after the borrower has satisfied 240 monthly payments or the equivalent in accordance with paragraph (k)(4) of this section over a period of at least 20 years;

(3) Notwithstanding paragraphs (k)(1) and (k)(2) of this section, a borrower receives forgiveness if the borrower's total original principal balance on all loans that are being paid under the REPAYE plan was less than or equal to $12,000, after the borrower has satisfied 120 monthly payments or the equivalent, plus an additional 12 monthly payments or the equivalent over a period of at least 1 year for every $1,000 if the total original principal balance is above $12,000.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

STATE OF MISSOURI, et al., *Plaintiffs-Appellees / Cross-Appellants,* *v.* JOSEPH R. BIDEN, JR., et al., *Defendants-Appellants / Cross-Appellees.*	Nos. 24-2332, 24-2351

EMERGENCY MOTION FOR CLARIFICATION

Defendants-cross-appellees (collectively, the Department) move for clarification of the scope of the injunction pending appeal issued by this Court. The Department respectfully requests that the Court rule on this motion by Friday, August 16, 2024, to avoid further disruption of student-loan programs unrelated to this litigation and to facilitate the Supreme Court's review of the Department's forthcoming application to vacate the injunction pending appeal.[1]

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[1] The Court's clarification will also assist the parties in the parallel *Alaska* litigation in responding to the Tenth Circuit's order to submit supplemental briefs "defining the scope of the Eighth Circuit's injunction" and explaining how it might affect the *Alaska* case. Order, *Alaska v. U.S. Dep't of Educ.*, Nos. 24-3089 & 24-3094 (Aug. 12, 2024) (ordering briefs to be filed by noon MDT on August 19).

This litigation involves a challenge to a rule adopted by the Department entitled *Improving Income Driven Repayment for the William D. Ford Federal Direct Loan Program and the Federal Family Education Loan (FFEL) Program*, 88 Fed. Reg. 43,820 (July 10, 2023) (the Final Rule). As the government previously explained, the Final Rule made various changes to the REPAYE plan, a previously existing income contingent repayment plan, and provides that this newly amended version of REPAYE could also be referred to as the SAVE plan. But the Final Rule did more than amend specific regulations governing REPAYE. Rather, as explained by the Department, the Final Rule adopted new regulations that "streamline and standardize the Direct Loan Program repayment regulations by categorizing repayment plans into three types": "(1) fixed payment repayment plans," "(2) income-driven repayment (IDR) plans," which include both income contingent repayment (ICR) plans and income-based repayment (IBR) plans, and "(3) the alternative repayment plan." 88 Fed. Reg. at 43,820. Thus, the regulatory text adopted by the Final Rule governs all three types of repayment plans. *See id.* at 43,899-905. The Final Rule also makes various changes that apply to IBR plans and to ICR plans other than REPAYE (i.e., the original ICR plan and PAYE), including amending the

regulatory definition of "family size," *see id.*at 43,856 ("The new family size definition . . . will apply to the PAYE, IBR, and [original] ICR plans."), eliminating "burdensome and confusing" requirements relating to annual income recertification, *id.* at 43,865 (explaining that the Department "simplif[ied] the annual income recertification process" for all "borrowers in IDR plans"), and crediting periods of deferment caused by cancer treatment and military service toward forgiveness, *id.* at 43,903 (providing that "cancer treatment" and "military service" deferments will count towards forgiveness under "all IDR plans"); *see generally id.* at 43,898 ("The Department amended [34 C.F.R.] § 685.209 to include regulations for all of the IDR plans . . . . These amendments include changes to the PAYE, REPAYE, IBR and ICR plans.").

This Court's injunction pending appeal provides that "for any borrower whose loans are governed in whole or in part by the terms of" the Final Rule, the Department is "enjoined from any further forgiveness of principal or interest, from not charging borrowers accrued interest, and from further implementing SAVE's payment-threshold provisions." Op. 9. Because the Final Rule promulgates regulatory text that governs all ICR and IBR plans, the text of the injunction could be understood to prohibit all forgiveness—

regardless of the underlying authority—for any borrower enrolled in one of these plans. For example, borrowers enrolled in an ICR plan may become eligible for Public Service Loan Forgiveness (PSLF), *see* 20 U.S.C. § 1087e(m), but the injunction could be understood to prohibit forgiveness because those borrowers' loans are governed at least in part by the Final Rule.

The Department does not believe, however, that the Court intended to sweep so broadly. For example, elsewhere in the opinion, the Court stated that Congress had imposed a "clear statutory requirement that loans in certain programs, such as IBR plans, be canceled." Op. 7; *see* 20 U.S.C. § 1098e(b)(7). Both plaintiffs and the district court have identified the PSLF program as another example. *See* Mot. Injunction Pending Appeal 7; R. Doc. 35, at 5-6, 44-45.[2] This Court also stated that "borrowers who have remained in PAYE . . . are not impacted" by plaintiffs' request for injunctive relief. Op.

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[2] Notably, plaintiffs have never sought to enjoin forgiveness under IBR or PSLF. *See* R. Doc. 48, at 2 ("Defendants may still, of course, use authority other than ICR authority to forgive loans, such as authority under the Income-Based Repayment program and the Public Service Loan Forgiveness program.").

9.[3] The Department therefore believes that the Court did not intend to enjoin either (1) loan forgiveness offered under statutory authorities other than ICR (such as IBR or PSLF), or (2) loan forgiveness offered to borrowers enrolled in previously existing ICR plans (i.e., the original ICR plan or PAYE) on timelines established as part of those plans. Rather, in light of the full opinion, the Department understands the Court's objective with respect to forgiveness to be an injunction of any forgiveness, on any timeline, offered to borrowers enrolled in the SAVE plan (also known as REPAYE).

The Department respectfully seeks clarification of this Court's order to confirm that its understanding of the Court's injunction is correct. The Department further respectfully requests that this Court rule on the motion

[3] The omitted language referred to borrowers who remain on REPAYE, suggesting that the Court understood REPAYE and SAVE to be different plans. In fact, SAVE and REPAYE are the same plan. *See* 88 Fed. Reg. at 43,822 (explaining that the Department did not "creat[e] another repayment plan" but rather "reform[ed] the current REPAYE plan" and "decided to rename REPAYE" as SAVE). Thus, there are no borrowers on REPAYE that would not be affected by an injunction directed at the SAVE plan. The Department understands the Court to refer to borrowers on ICR plans that do not include the features of the Final Rule specifically challenged by plaintiffs, notably the revised payment-threshold provisions and the shortened timeline to forgiveness for certain smaller loans. Currently, this group consists of borrowers on the original ICR plan and PAYE.

for clarification by August 16 to avoid further disruption of student-loan programs that the Court appears not to have intended to enjoin and to facilitate the Supreme Court's consideration of the government's forthcoming application to vacate the injunction.

Respectfully submitted,

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AUGUST 2024

CERTIFICATE OF COMPLIANCE

This response to a motion complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 1,047 words. It also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Word for Microsoft 365 in Century Expanded BT 14-point font, a proportionally spaced typeface.

Pursuant to Circuit Rule 28A(h)(2), I further certify that the brief has been scanned for viruses, and the brief is virus free.

/s/ Thomas Pulham
Thomas Pulham

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2024, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Thomas Pulham
Thomas Pulham

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

STATE OF MISSOURI, *et al.*, *Plaintiffs*, v. JOSEPH R. BIDEN, JR., in his official capacity as President of the United States, *et al.*, *Defendants*.	Case No. 4:24-cv-520-JAR

DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR CLARIFICATION

Plaintiffs move to clarify this Court's June 24, 2024 Preliminary Injunction. ECF No. 36. As a general matter, Defendants do not oppose the idea of clarification, which would ensure that all parties operate from a shared understanding of the reach of the Court's order, going forward.

Nevertheless, Plaintiffs err in urging the Court to "clarify" that it subtly enjoined all future loan forgiveness under the terms of *all* income-contingent repayment (ICR) plans—even plans that predated the Final Rule (sometimes by several decades), which were never challenged in this lawsuit, and which remain in effect today. That would not be a "clarification," but a significant and unwarranted expansion of the preliminary injunction in this case. The plain text of the injunction, which is expressly limited to forgiveness "under the Final Rule's SAVE plan," *id.* at 1, cannot support that unexpected result.

Instead, for the reasons that follow, the Court should clarify that the operative language in the Court's injunction means what it says: future loan forgiveness under the terms of "the Final Rule's SAVE Plan," *id.*—*i.e.*, the only income-contingent repayment plan that Plaintiffs have ever challenged—has now been enjoined. Loan forgiveness under the terms of other preexisting (and still-existing) ICR plans—such as the original ICR plan, PAYE, and REPAYE—has not.

BACKGROUND

Thirty years ago, the Secretary first carried out his statutory mandate to create an ICR plan for the repayment of federal direct student loans (the original ICR plan). At that time, the Secretary observed that "[s]ome borrowers in the ICR plan may not earn sufficient income to fully repay their loans within the statutory 25-year time period." *William D. Ford Federal Direct Loan Program*, 59 Fed. Reg. 61,664, 61,666 (Dec. 1, 1994). In such an instance, the Secretary specified, he would "forgive any outstanding loan balance (principal plus interest) that is unpaid after 25 years." *Id.* That approach to loan forgiveness was repeated in 2012 when, under the name "PAYE," a new ICR plan was created that (among other changes) shortened the timeline to forgiveness to 20 years for some borrowers. *Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program*, 77 Fed. Reg. 66,088, 66,089 (Nov. 1, 2012). A third iteration of an ICR plan providing for forgiveness of outstanding loan balances at the end of a 20- or 25-year period arrived in 2015 (as "REPAYE"). *Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program*, 80 Fed. Reg. 67,204, 67,205 (Oct. 30, 2015). And finally, most recently, the Secretary promulgated a new ICR plan, SAVE, last July, through the Final Rule at issue in this case. *Improving Income Driven Repayment for the William D. Ford Federal Direct Loan Program and the Federal Family Education Loan (FFEL) Program*, 88 Fed. Reg. 43,820 (July 10, 2023). In SAVE, the Secretary hewed closely to the original ICR plan, PAYE, and REPAYE in providing for the forgiveness of outstanding loan balances after the maximum period of repayment pursuant to regulation had elapsed.

Both the original ICR plan and the PAYE plan remain in effect today, *see* 88 Fed. Reg. at 43,827, with several million enrolled borrowers. *See* Dep't of Education, *Federal Student Aid*, https://studentaid.gov/data-center/student/portfolio. SAVE was intended to amend and fully replace REPAYE on July 1, 2024, *see* 88 Fed. Reg. at 43,820, so the universe of borrowers enrolled in REPAYE and borrowers enrolled in SAVE is entirely coextensive.

Of these four ICR plans, promulgated across 30 years, Plaintiffs challenged only the most recent one when they brought this lawsuit, explicitly and repeatedly targeting in their request for relief the July 2023 Final Rule that enacted the SAVE Plan, which sought to amend REPAYE (as relevant

here) by offering many borrowers a shorter timeline to forgiveness. *See* Compl. ¶¶ 75-103, ECF No. 1 (describing the Final Rule); *id.* ¶¶ 112-60 (alleging harms stemming from the Final Rule); *id.* ¶¶ 168-78 (alleging that the Final Rule exceeds the Department's statutory authority); *id.* ¶¶ 179-202 (claiming violations of the APA related to the Final Rule's promulgation); *id.* at 60, Prayer for Relief (seeking relief as related to the Final Rule). Correspondingly, when the Court held that Plaintiffs had satisfied the test for a preliminary injunction, it granted (partial) relief tailored to the legal theories and harms that Plaintiffs alleged. The Court's order thus reads as follows:

> **IT IS HEREBY ORDERED** that Defendants are preliminarily enjoined from any further loan forgiveness for borrowers under the Final Rule's SAVE plan until such time as this Court can decide the case on the merits.

Prelim. Inj. at 1. The Court denied all other relief that Plaintiffs requested.

On June 27, Defendants filed a notice of appeal. ECF No. 37. The next day, Plaintiffs filed a notice of cross-appeal. ECF No. 42. Plaintiffs also moved for an injunction pending appeal, ECF No. 41, which the Court denied a few hours later.[1] That motion included a footnote that expressed "concern[s]" with Defendants' interpretation of the Court's preliminary injunction order. Mot. for Inj. Pending Appeal at 3 n.3.

Shortly thereafter, Defendants filed a notice of compliance, ECF No. 44, confirming that, "[u]pon receipt of the preliminary injunction and in compliance with it, Defendants immediately ceased processing any additional loan forgiveness for borrowers enrolled in SAVE on the shortened

[1] Plaintiffs' motion for an injunction pending appeal requested time-sensitive relief from this Court and represented that Plaintiffs would soon be seeking time-sensitive relief in the Eighth Circuit. *See, e.g.*, Mot. for Inj. Pending Appeal at 1 ("As directed by Fed. R. App. P. 8(a)(1)(C), Plaintiff States must move this Court for an injunction pending appeal before so moving in the Eighth Circuit."); *id.* at 7 ("In the alternative, the States ask for a temporary administrative injunction lasting only long enough for the Eighth Circuit to rule on the States' forthcoming motion."). But after the Court considered Plaintiffs' motion on an expedited basis and denied it, Order, ECF No. 45, Plaintiffs never moved for relief in the Eighth Circuit. As a result, all parts of the SAVE Plan that were not enjoined by this Court have now taken effect—in part because the Tenth Circuit granted in full Defendants' motion for a stay pending appeal of an injunction in parallel litigation, on the afternoon of Sunday, June 30. *See* Order, *Alaska v. Dep't of Educ.*, No. 24-3089 (10th Cir. June 30, 2024). Plaintiffs in the *Alaska* case have since filed an emergency application with the Supreme Court of the United States, seeking vacatur of the stay pending appeal that was issued by the Tenth Circuit.

timelines provided for in the Final Rule." In the interest of transparency and for the avoidance of doubt, Defendants also made clear that "Defendants do not understand the injunction to apply, in contrast, to the Department's preexisting programs that were not challenged in this lawsuit, including other income-contingent repayment plans (*i.e.*, REPAYE) that authorize loan forgiveness after 20 or 25 years of payments." *Id.*[2]

In sum, and as discussed further below, *see infra* at 9-10, the status quo is now as follows: The original ICR plan and the PAYE plan remain in full effect, with several million borrowers still enrolled in those plans. REPAYE has now almost entirely been replaced by SAVE, with the notable exception being the REPAYE provisions governing the amount of time spent in repayment before a borrower is eligible for forgiveness of his or her remaining loan balance. In other words, because the Court has enjoined Defendants from implementing the forgiveness-related provisions of "the Final Rule's SAVE Plan," those provisions of SAVE have *not* replaced the corresponding provisions of REPAYE. As a result, all SAVE borrowers (and all REPAYE borrowers, which, to be clear, is the same group of borrowers), are now, by operation of the Court's order, enrolled in something of a hybrid, which falls short of the agency's original intent. Currently, that plan is governed by the terms of the Final Rule's SAVE Plan in all respects *except* for the criteria regarding time spent in repayment before eligibility for loan forgiveness; those criteria have now reverted to the terms of REPAYE, in compliance with this Court's injunction.

Plaintiffs now ask the Court to "clarify" that its preliminary injunction "does not permit Defendants to use ICR authority to forgive loans for any borrowers enrolled in the SAVE plan." Pls.' Mot. for Clarification at 2, ECF No. 48 ("Pls.' Mot."). The Court ordered Defendants to file a response by today. ECF No. 49.

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[2] Plaintiffs say that Defendants' notice of compliance was filed "only after prodding by Plaintiff States." Pls.' Mot. at 1. If Plaintiffs are implying that Defendants would not have filed their notice in the absence of the footnoted language in Plaintiffs' motion for a stay pending appeal, they are mistaken. Defendants were in the process of finalizing their notice for filing when Plaintiffs filed their motion.

ARGUMENT

Plaintiffs' interpretation of the Court's preliminary injunction is unmoored from the text of the order, from the relief requested in Plaintiffs' own filings, and from the Federal Rules of Civil Procedure. On Plaintiffs' view, although they never challenged any plan other than the SAVE Plan in this lawsuit, the Court's injunction should now be construed as prohibiting loan forgiveness under all prior ICR plans, too—at the very least, with respect to borrowers enrolled in the SAVE Plan (though the precise boundaries of Plaintiffs' interpretation is at times difficult to discern from their filing). Regardless, Plaintiffs' interpretation should be rejected, and the Court should reaffirm that its injunction applies only to future loan forgiveness under the terms of "the Final Rule's SAVE Plan," Prelim. Inj. at 1—not to forgiveness under the terms of any of the other preexisting (and still operational) ICR plans, including the original ICR Plan, PAYE, and (in relevant part) REPAYE.

1. The text of the Court's preliminary injunction order is enough to resolve the matter: "Defendants are preliminarily enjoined from any further loan forgiveness for borrowers *under the Final Rule's SAVE plan* until such time as this Court can decide the case on the merits." *Id.* (emphasis added). That language means what it says. Any new loan forgiveness under the terms of "the Final Rule's SAVE Plan" is now enjoined. Loan forgiveness under the terms of other income-contingent repayment plans is not. The Court need go no further than that to reject Plaintiffs' interpretation, which would curtail the agency's authority to provide loan forgiveness under the terms of preexisting ICR plans that are not "the Final Rule's SAVE Plan," including REPAYE.

2. Even setting aside the text of the Court's injunction order, the context in which it was issued resolves any doubt. *See, e.g.*, *Garrido v. Dudek*, 731 F.3d 1152, 1159 (11th Cir. 2012) ("Although the parties to an injunction must be able to ascertain from the four corners of the order precisely what acts are forbidden, that rule does not preclude an examination of context."). It is unsurprising that the Court's injunction is expressly limited to forgiveness under the authority of "the Final Rule's SAVE Plan." Prelim. Inj. at 1. That is because Plaintiffs in this case have never challenged any income-contingent repayment plan other than "the Final Rule's SAVE Plan," *id.*—including the forgiveness

provisions of REPAYE, which remain in effect (in relevant part) because of the Court's injunction preventing the changes contemplated by the Final Rule from taking effect.

Plaintiffs began this case by explicitly identifying "the subject of this lawsuit" as the "new rule" issued by the Department of Education, "referred to by Defendants as the 'SAVE Plan,'" which was "set to take full effect on July 1, 2024." Compl. ¶ 7; *see also id.* ¶ 6 ("The Final Rule is titled 'Improving Income Driver Repayment for the William D. Ford Federal Direct Loan Program and the Federal Family Education Loan (FFEL Program).' *See* 88 Fed. Reg. 43,820."). As they explained, "[t]he Final Rule makes several significant changes to preexisting regulations," including, as relevant here, to "accelerate[] cancellation to as quick as 10 years." Compl. ¶ 81. As a result, "[u]nder the Final Rule, loans are eligible for complete cancellation after 10 years if the original balance was less than $12,000," and then "the number of years increases for every $1,000 in original principle [sic] balance." *Id.* ¶ 82. Plaintiffs described this as a "significant change of course from past practice" created by the Final Rule because, previously, under the terms of all other income-contingent repayment plans, "loans would only be forgiven after 20-25 years." *Id.* ¶ 237.

As for their statutory claims, Plaintiffs alleged that, "[b]ecause the Final Rule violates separation of powers" and "is contrary to the HEA," it "should be set aside." *Id.* ¶¶ 178, 204. And in their prayer for relief, Plaintiffs asked the Court to "temporarily restrain and preliminarily and permanently enjoin implementation and enforcement of the Final Rule." *Id.* at 60, Prayer for Relief ¶ (d). Nowhere in the complaint did Plaintiffs challenge (let alone seek any relief relating to) any of the three preexisting ICR plans.

Just as they did in their complaint, Plaintiffs also explicitly requested relief against the SAVE Plan—but no other repayment plan—in their motions for injunctive relief:

> Under 5 U.S.C. § 705, Plaintiff States move for a stay of the Final Rule titled "Improving Income Driven Repayment for the William D. Ford Federal Direct Loan Program and the Federal Family Education Loan (FFEL) Program." *See* 88 Fed. Reg. 43,820. In the alternative, Plaintiffs move for a preliminary injunction under Fed. R. Civ. P. 65 to enjoin Defendants from implementing or enforcing that rule.

Pls.' Mot. for a Stay or Prelim. Inj., ECF No. 7; *see also* Pls.' Mot. for a Stay or TRO, ECF No. 6 (using the same language, except replacing "preliminary injunction" with "temporary restraining order"). Similarly, the concluding paragraph of Plaintiffs' brief in support of those motions also made two more explicit references to "the Final Rule," but no references to any other ICR plan. Mem. in Supp. of Pls.' Mots. for a Stay or a TRO & Prelim. Inj. at 50, ECF No. 10.

This was not the only conceivable approach. In fact, in parallel litigation in the District of Kansas, another group of plaintiff States explicitly requested broader relief—not just against SAVE, but also any other plan "not expressly authorized by Congress":

> Pursuant to Federal Rule of Civil Procedure 65(a), Plaintiffs States . . . move for a Preliminary Injunction enjoining Defendants . . . from implementing or acting pursuant to the Final Rule promulgated by the Department of Education titled "Improving Income Driven Repayment for the William D. Ford Federal Direct Loan Program and the Federal Family Education Loan (FFEL) Program," 88 Fed. Reg. 43,820, or from undertaking any form of student debt relief not expressly authorized by Congress.

Pls.' Mot. for Prelim. Inj. at 1, *Alaska v. Cardona*, No. 24-cv-01057, ECF No. 23 (D. Kan. Apr. 5, 2024). In that case, Defendants argued (and the district court agreed) that that bolder request for relief was meritless and overbroad. *Alaska v. Cardona*, No. 24-cv-1057, 2024 WL 3104578, at *17 (D. Kan. June 24, 2024) ("This vague request—asking the court to enjoin defendants from undertaking any form of unlawful debt relief—is not helpful. . . . The court will not enter such a broad, unguided injunction."). But the approach of the *Alaska* Plaintiffs stands in stark contrast to Plaintiffs here, who challenged the SAVE Plan alone.

Plaintiffs have, to be sure, at times suggested that they believe that at least some other loan-forgiveness plans are unlawful. *See, e.g.*, Compl. ¶ 42 (asserting that the loan-forgiveness provisions of the original ICR plan were issued "without explicit authorization" from Congress). But that belief, stated vaguely and in passing, is not enough to obtain judicial relief, especially the "extraordinary remedy" of a preliminary injunction, *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 24 (2008), against other agency actions that were not actually challenged in the complaint or in Plaintiffs' motion for a preliminary injunction.

Plaintiffs argue that some language in the Court's opinion casts doubt on the legality of other (decades-old) ICR plans. But rationales do not amount to injunctions. If Plaintiffs had challenged any of those plans, Defendants might, for example, have raised arguments of laches or the statute of limitations. *See, e.g.*, *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, No. 22-1008, 2024 WL 3237691, at *4 (U.S. July 1, 2024) (in an APA case, "[t]he default statute of limitations for suits against the United States requires 'the complaint [to be] filed within six years after the right of action first accrues'" (quoting 28 U.S.C. § 2401(a))). And Defendants would have had even stronger equitable arguments about Plaintiffs' extensive delay before seeking a TRO and a preliminary injunction from this Court. *See* Mem. & Order at 56, ECF No. 35 ("Because of Plaintiffs' delay, some alleged harms have already occurred, which also weighs against Plaintiffs' position."). After all, although Plaintiffs waited nine months to challenge the SAVE Plan, they (in this hypothetical) would have waited 10 years to challenge REPAYE, 80 Fed. Reg. at 67,204, 12 years to challenge PAYE, 77 Fed. Reg. at 66,088, and 30 years to challenge the original ICR plan, 59 Fed. Reg. at 61,664. Because of Plaintiffs' litigation choices, those issues (and others) have never been briefed. So those questions are simply not before this Court, and never have been.

In sum, the Court's order is expressly limited to future loan forgiveness "under the Final Rule's SAVE plan." Prelim. Inj. at 1. Interpreting that language to prohibit loan forgiveness (for any borrowers) under the terms provided for in other preexisting ICR plans would be impossible to square not only with the text of the order, but also with Plaintiffs' intentional and repeated choice to seek narrower relief.

3. In response to Defendants' notice of compliance, Plaintiffs seem not to dispute that they challenged only the SAVE Plan. Instead, Plaintiffs argue that "the REPAYE program no longer exists; it was replaced by SAVE," which (in their view) means that "[a] challenge to SAVE is thus necessarily a challenge to REPAYE, which became SAVE." Pls.' Mot. at 3. This (partial) response—which, as Plaintiffs seem to concede, applies only to Defendants' arguments about REPAYE, rather than to PAYE or the original ICR plan, *see id.* at 3 n.2—cannot withstand scrutiny.

It is true that the Department of Education intended and expected that, starting on July 1, 2024, REPAYE would "no longer exist[]," and instead would be "replaced by SAVE" in its entirety. Pls.' Mot. at 3; *see also* 88 Fed. Reg. at 43,900. But due to this litigation, the agency's anticipated outcome has now been prevented, in relevant part, by the very injunction that Plaintiffs purportedly seek to clarify—which expressly *prohibits* Defendants from implementing the portions of the SAVE Plan relating to loan forgiveness. Prelim. Inj. at 1. As a result of the injunction, then, those changes to REPAYE are now on hold, until further notice, as required by this Court's order. Accordingly, the status quo that existed before this lawsuit (and before the SAVE Plan)—that is, loan forgiveness governed by the terms of REPAYE, after 20 or 25 years of qualifying payments, 80 Fed. Reg. at 67,205—is now in effect, rather than the forgiveness criteria provided for by the (now partially enjoined) SAVE Plan. That is a scenario that Plaintiffs should have anticipated when they challenged the "change of course from past practice" reflected in the Final Rule's provisions for faster loan forgiveness. Compl. ¶ 237. As a result, on the specific issue of loan forgiveness, Plaintiffs are incorrect to say that "the REPAYE program no longer exists" or that "it was replaced by SAVE." Pls.' Mot. at 3.[3] Instead, on the issue of loan forgiveness, the REPAYE criteria remain operative, unless and until the changes contemplated by SAVE are permitted to take effect.[4]

For similar reasons, Plaintiffs are mistaken to say that "Defendants are continuing to forgive loans under the SAVE plan." *Id.* at 4. In fact, as Plaintiffs acknowledge in their own complaint, *see* Compl. ¶ 81, the loan forgiveness provisions of the SAVE Plan make one (and only one) change that is implicated by the Court's injunction: to allow some borrowers "to receive forgiveness after as few as 10 years" of payments, when "[p]reviously, all income-contingent loans would only be forgiven

[3] Plaintiffs point to similar language on the Department of Education's website, Pls.' Mot. at 3, which was published before this Court's injunction and had not yet been updated as of the date of Plaintiffs' motion. The Department of Education is working to update all language on the many relevant websites to describe the status quo more accurately—a status quo that has been a moving target in recent days.

[4] For the same reasons, had the Court granted the full scope of relief that Plaintiffs requested—that is, an injunction against the Final Rule's SAVE Plan in its entirety, rather than just the provisions about loan forgiveness—then REPAYE would be in full effect today.

after 20-25 years." *Id.* ¶ 236-37. Again, that "change of course from past practice" has now been enjoined, *id.* ¶ 237, which is why, "[u]pon receipt of the preliminary injunction and in compliance with it, Defendants immediately ceased processing any additional loan forgiveness for borrowers enrolled in SAVE on the shortened timelines provided for in the Final Rule." Defs.' Notice of Compliance. Nothing more was required. The fact that Defendants may continue to forgive loans (for any borrower) under the terms provided for by *other* ICR plans does not mean that "Defendants are continuing to forgive loans under the SAVE plan." Pls.' Mot. at 4. It just means that the previous status quo that existed *before* the SAVE Plan—that is, in Plaintiffs' words, under which "all income-contingent loans would only be forgiven after 20-25 years," Compl. ¶ 236—is now back in effect.

4. Plaintiffs' motion for clarification does not address the actual language of the Court's preliminary injunction. Instead, Plaintiffs lean heavily on quotations from the Court's opinion—divorced from their context—that Plaintiffs interpret to cast doubt on the legality of other income-contingent repayment plans that they never actually challenged. For example, Plaintiffs repeatedly quote the Court as saying "Congress has made it clear under what circumstances loan forgiveness is permitted, and the ICR plan is not one of those circumstances." Pls.' Mot. at 1-2 (quoting Mem. & Order at 44). But that very paragraph concludes, just a few sentences later, with a far less definitive statement, which also makes explicit reference to the SAVE Plan: that "Defendants' interpretation is questionable," and thus that "Plaintiffs, therefore, have a 'fair chance' of success on the merits on their claim that the Secretary has overstepped its authority by promulgating a loan forgiveness provision *as part of the SAVE program*." Mem. & Order at 45 (emphasis added). Although that language supports Plaintiffs' interpretation of the statute, on the merits—at least at this early stage—it does not purport to be a definitive pronouncement about the Court's views, let alone a binding order. And even if it were, the Court's stated conclusion was expressly limited to "the SAVE program." *Id.*; *see also, e.g.*, *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981) ("[T]he findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits.").

Of course, a court's opinion can provide useful "context" for interpreting "the four corners of the order," *Garrido*, 731 F.3d at 1159, particularly if the order is ambiguous. But, as discussed above,

the "context" here confirms that the SAVE Plan was the only ICR plan ever before this Court. And ultimately, it is the Court's order that controls. A federal court "afford[s] relief *through the exercise of its power*, not through the persuasive or even awe-inspiring effect of the opinion *explaining* the exercise of its power." *Haaland v. Brackeen*, 599 U.S. 255, 294 (2023) (emphasis in original); *see also, e.g.*, *Abbs v. Sullivan*, 963 F.2d 918, 924 (7th Cir. 1992) ("[A] judgment and the reasons given in support of it are two different things."). The Court's opinion—although of great interest to the parties and the public—itself has no coercive power. That is why the Court appropriately included separate, bolded language at the end of its Memorandum & Order at 61, ECF No. 35, and then also issued a separate document—captioned "**PRELIMINARY INJUNCTION**"—which sets forth the precise terms with which Defendants are legally obligated to comply, Prelim. Inj. at 1.

That separate decretal language was not some superfluous formality. Rather, it was required by Federal Rule of Civil Procedure 65(d), which provides that "[e]very order granting an injunction . . . must . . . state its terms specifically," and "describe in reasonable detail . . . the act or acts restrained." Rule 65 includes this requirement for good reason: such specificity and precision is the only way for Defendants to know, exactly, what is and is not enjoined, and thus what conduct will or will not subject Defendants to the risk of contempt. *See, e.g.*, *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974) ("[T]he specificity provisions of Rule 65(d) are no mere technical requirements. The Rule was designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood."). Thus, on Defendants' interpretation of the injunction, the Court complied fully with the requirements of Rule 65(d) by specifying in a separate order that the injunction applies only to future loan forgiveness "under the Final Rule's SAVE Plan," Prelim. Inj. at 1.

By contrast, on Plaintiffs' view, to determine what is or is not enjoined, Defendants would have had to parse a 60-page opinion, distinguishing the sentences that purported to operate as binding legal obligations from the sentences that merely reflect the Court's discussion of various arguments and counterarguments—and then risk contempt for any misstep about the Court's subjective intent. That is the sort of outcome that is prevented by Rule 65(d), and by the short, separate order that the

Court issued in compliance therewith. After all, "[s]ince an injunctive order prohibits conduct under threat of judicial punishment, basic fairness requires that those enjoined receive explicit notice of precisely what conduct is outlawed." *Schmidt*, 414 U.S. at 476; *accord Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 444 (1974) ("[O]ne basic principle built into Rule 65 is that those against whom an injunction is issued should receive fair and precisely drawn notice of what the injunction actually prohibits."). These concerns are heightened in a case like this one, in which the judiciary is being forced to referee a dispute between sovereigns. *Cf. Gunn v. Univ. Comm. to End War in Vietnam*, 399 U.S. 383, 389 (1970) (Rule 65(d) "is essential in cases where private conduct is sought to be enjoined. . . . It is absolutely vital in a case where a federal court is asked to nullify a law duly enacted by a sovereign State.").

Indeed, Plaintiffs' own motion for clarification itself is unable to settle on any single, definitive interpretation of what is or is not enjoined. *See, e.g.*, Pls.' Mot. at 3 n.2 (arguing in a footnote, in the alternative, that "[e]ven if SAVE had not replaced REPAYE, Defendants would at most be permitted by the injunction to forgive loans on other plans, not loans enrolled in the SAVE plan"). An interpretation of the Court's order in which Defendants (or even Plaintiffs) "are left to guess about its intended" scope should be rejected out of hand, *Granny Goose*, 415 U.S. at 444—especially in the context of what purports to be a motion for "clarification."

In any event, even focusing on the opinion alone, the Court's bottom-line conclusion was that Plaintiffs "are *likely* to be successful on the merits" of the claim "that the Secretary lacks the requisite congressional authority to forgive loans *under the SAVE plan*." Mem. & Order at 60 (emphases added). There is no basis to expand that conclusion now to reach other questions that were not before the Court during the actual briefing on Plaintiffs' motion for a preliminary injunction.

5. Finally, Plaintiffs argue that "Defendants' position makes no sense for the additional reason that they are trying to forgive loans between 20 and 25 years for borrowers who were never in any previous ICR program." Pls.' Mot. at 4. But Plaintiffs offer no explanation as to why that "makes no sense," *id.*, or how that approach would violate this Court's order. It is true that many borrowers signed up for (what they thought would be) the SAVE Plan who had not previously signed up for

other income-contingent repayment plans. *See* Dep't of Education, *Federal Student Aid*, https://studentaid.gov/data-center/student/portfolio. But as long as this Court's preliminary injunction is in effect, none of those recent enrollees (nor anyone else) will receive loan forgiveness under the terms of the SAVE Plan (rather than under the terms of other ICR plans, like REPAYE). Regardless, the proportion of recent enrollees has nothing to do with the extent of the Department's legal authorities. Nothing in the Court's preliminary injunction purports to cut off past, present, or future enrollment for any group of borrowers, in any plan. And borrowers often switch between different repayment plans. *See* 20 U.S.C. § 1087e(d)(3); 34 C.F.R. § 685.210(b). So Plaintiffs' observation about recent SAVE enrollees has nothing to do with the question before the Court.

CONCLUSION

For these reasons, the Court should clarify that it has preliminarily enjoined future loan forgiveness only under the terms of "the Final Rule's SAVE Plan," Prelim. Inj. at 1—not under the terms of any other income-contingent repayment plans, such as REPAYE, PAYE, or the original ICR Plan.

Dated: July 8, 2024

Respectfully submitted,

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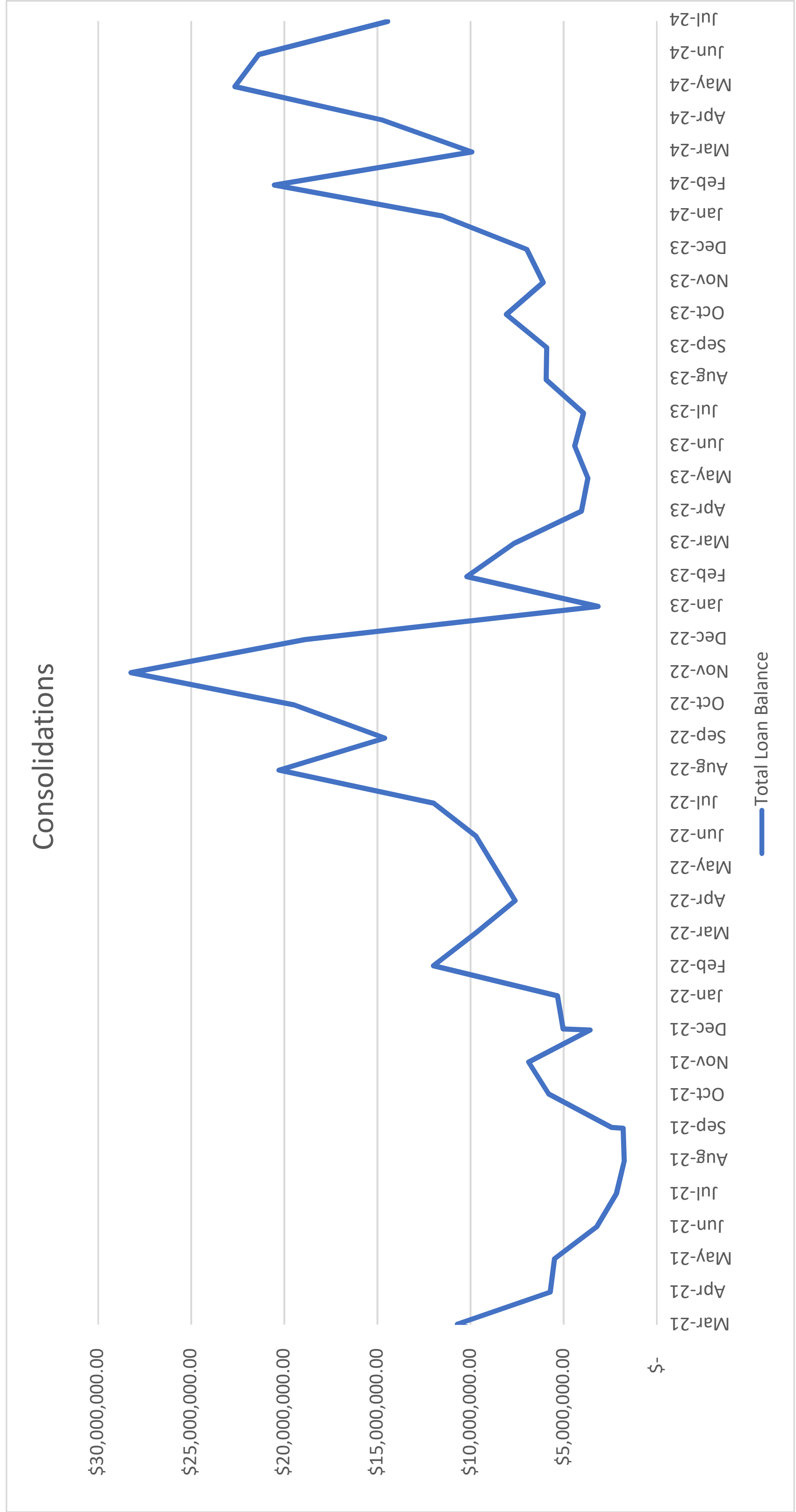
Counsel for Defendants

MOHELA - Consolidation Activity - Dept of Education (Transaction Code 1070)
Monthly Summary

Dates	Principal	Interest	Total Loan Balance	Borrower Count	Average Balance per Borrower	12 Month Average
Sep-19	$ 3,249,551.67	$ 127,657.58	$ 3,377,209.25	153	$ 22,073.26	
Oct-19	$ 4,673,497.42	$ 286,350.06	$ 4,959,847.48	185	$ 26,809.99	
Nov-19	$ 3,973,462.39	$ 175,858.65	$ 4,149,321.04	179	$ 23,180.56	$ 3,807,162.47
Dec-19	$ 3,937,704.85	$ 204,341.45	$ 4,142,046.30	173	$ 23,942.46	
Jan-20	$ 3,232,030.34	$ 136,324.28	$ 3,368,354.62	165	$ 20,414.27	
Feb-20	$ 3,953,934.30	$ 228,580.78	$ 4,182,515.08	164	$ 25,503.14	
Mar-20	$ 4,733,304.98	$ 207,266.84	$ 4,940,571.82	197	$ 25,079.04	
Apr-20	$ 3,268,939.09	$ 83,350.97	$ 3,352,290.06	172	$ 19,490.06	
May-20	$ 4,832,658.64	$ 295,848.70	$ 5,128,507.34	153	$ 33,519.66	
Jun-20	$ 2,970,485.25	$ 153,727.58	$ 3,124,212.83	127	$ 24,600.10	
Jul-20	$ 3,029,381.36	$ 127,528.01	$ 3,156,909.37	117	$ 26,982.13	
Aug-20	$ 2,975,014.43	$ 120,416.81	$ 3,095,431.24	114	$ 27,152.91	
Sep-20	$ 3,012,062.23	$ 194,234.71	$ 3,206,296.94	128	$ 25,049.19	
Oct-20	$ 3,723,782.56	$ 115,710.38	$ 3,839,492.94	101	$ 38,014.78	
Nov-20	$ 2,759,038.07	$ 114,386.83	$ 2,873,424.90	114	$ 25,205.48	$ 3,929,942.60
Dec-21	$ 3,453,919.87	$ 129,098.19	$ 3,583,018.06	114	$ 31,429.98	
Jan-21	$ 2,722,103.34	$ 139,075.11	$ 2,861,178.45	110	$ 26,010.71	
Feb-21	$ 4,281,050.61	$ 234,599.70	$ 4,515,650.31	134	$ 33,698.88	
Mar-21	$ 10,254,150.18	$ 453,982.43	$ 10,708,132.61	367	$ 29,177.47	
Apr-21	$ 5,543,161.03	$ 188,113.11	$ 5,731,274.14	207	$ 27,687.31	
May-21	$ 5,215,955.02	$ 280,934.83	$ 5,496,889.85	165	$ 33,314.48	
Jun-21	$ 2,955,620.59	$ 273,224.96	$ 3,228,845.55	109	$ 29,622.44	
Jul-21	$ 2,094,436.27	$ 81,632.29	$ 2,176,068.56	72	$ 30,223.17	
Aug-21	$ 1,693,204.69	$ 53,890.86	$ 1,747,095.55	74	$ 23,609.40	
Sep-21	$ 1,736,435.51	$ 73,749.39	$ 1,810,184.90	75	$ 24,135.80	
Oct-21	$ 2,288,860.57	$ 138,687.73	$ 2,427,548.30	98	$ 24,770.90	
Nov-21	$ 5,432,361.03	$ 362,540.25	$ 5,794,901.28	228	$ 25,416.23	$ 10,701,300.54
Dec-21	$ 6,640,755.64	$ 235,503.59	$ 6,876,259.23	272	$ 25,280.36	
Jan-22	$ 4,809,174.50	$ 223,263.83	$ 5,032,438.33	220	$ 22,874.72	

Feb-22	$ 5,071,585.76	$ 258,158.96	$ 5,329,744.72	209	$ 25,501.17	
Mar-22	$ 11,399,248.51	$ 603,998.08	$ 12,003,246.59	468	$ 25,647.96	
Apr-22	$ 9,156,917.97	$ 544,304.33	$ 9,701,222.30	342	$ 28,366.15	
May-22	$ 7,032,132.07	$ 571,172.44	$ 7,603,304.51	294	$ 25,861.58	
Jun-22	$ 9,143,460.75	$ 563,138.47	$ 9,706,599.22	376	$ 25,815.42	
Jul-22	$ 11,231,795.96	$ 756,257.29	$ 11,988,053.25	522	$ 22,965.62	
Aug-22	$ 18,736,421.64	$ 1,563,333.52	$ 20,299,755.16	801	$ 25,343.02	
Sep-22	$ 13,438,223.36	$ 1,177,512.51	$ 14,615,735.87	547	$ 26,719.81	
Oct-22	$ 17,905,006.09	$ 1,559,339.94	$ 19,464,346.03	822	$ 23,679.25	
Nov-22	$ 26,232,142.65	$ 2,004,162.31	$ 28,236,304.96	1,107	$ 25,507.05	$ 8,683,792.34
Dec-22	$ 17,387,592.20	$ 1,502,988.23	$ 18,890,580.43	653	$ 28,928.91	
Jan-23	$ 2,909,161.53	$ 251,630.85	$ 3,160,792.38	113	$ 27,971.61	
Feb-23	$ 9,588,125.65	$ 616,769.31	$ 10,204,894.96	354	$ 28,827.39	
Mar-23	$ 7,062,713.84	$ 618,291.58	$ 7,681,005.42	269	$ 28,553.92	
Apr-23	$ 3,706,433.74	$ 336,279.74	$ 4,042,713.48	126	$ 32,085.03	
May-23	$ 3,417,258.39	$ 292,784.84	$ 3,710,043.23	133	$ 27,895.06	
Jun-23	$ 4,000,504.03	$ 408,411.60	$ 4,408,915.63	146	$ 30,198.05	
Jul-23	$ 3,632,345.88	$ 297,322.70	$ 3,929,668.58	116	$ 33,876.45	
Aug-23	$ 5,495,888.71	$ 448,613.91	$ 5,944,502.62	179	$ 33,209.51	
Sep-23	$ 5,447,555.87	$ 469,314.24	$ 5,916,870.11	169	$ 35,011.07	
Oct-23	$ 7,424,193.24	$ 655,022.99	$ 8,079,216.23	283	$ 28,548.47	
Nov-23	$ 5,606,245.78	$ 489,634.81	$ 6,095,880.59	213	$ 28,619.16	$ 14,258,810.41
Dec-23	$ 6,274,282.85	$ 707,089.45	$ 6,981,372.30	225	$ 31,028.32	
Jan-24	$ 10,393,568.30	$ 1,122,753.02	$ 11,516,321.32	412	$ 27,952.24	
Feb-24	$ 18,657,603.35	$ 1,885,154.49	$ 20,542,757.84	729	$ 28,179.37	
Mar-24	$ 9,022,815.83	$ 909,215.26	$ 9,932,031.09	388	$ 25,598.02	
Apr-24	$ 13,250,023.88	$ 1,515,343.44	$ 14,765,367.32	547	$ 26,993.36	
May-24	$ 20,490,622.70	$ 2,169,199.28	$ 22,659,821.98	803	$ 28,218.96	
Jun-24	$ 19,396,445.56	$ 1,984,398.22	$ 21,380,843.78	610	$ 35,050.56	
Jul-24	$ 12,999,596.48	$ 1,455,300.99	$ 14,454,897.47	487	$ 29,681.51	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