No. 20-3152

In the United States Court of Appeals for the Third Circuit

LATOYA GILLIAM; KAYLA MCCROBIE,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE; SECRETARY UNITED STATES DEPARTMENT OF AGRICULTURE,

Appellant

On Appeal from the U.S. District Court for the Eastern District of Pennsylvania
No. 20-cv-3504-JMY

BRIEF OF APPELLEES LATOYA GILLIAM AND KAYLA MCCROBIE

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INTRODUCTION

Plaintiffs Latoya Gilliam and Kayla McCrobie are poor Pennsylvanians who have experienced severe temporary food needs as a result of the unprecedented COVID-19 pandemic. Even before COVID-19, Plaintiffs received maximum monthly Supplemental Nutrition Assistance Program (SNAP) allotments because they were among the poorest SNAP households and needed every penny for their families' ordinary food needs. COVID-19 has caused unprecedented interruptions to the U.S. economy, making food more expensive and harder to procure. Congress appropriately responded to this increase in food insecurity by enacting the Families First Coronavirus Response Act (FFCRA), which requires Defendant, the U.S. Department of Agriculture (USDA), to provide emergency allotments of additional SNAP benefits to cover "temporary food needs" of SNAP participants when requested by States. Those additional, emergency allotments are based on need demonstrated by the State's submission of data, and they may be as high as the ordinary maximum SNAP allotment.

USDA fundamentally misinterprets this congressional command and distorts both the reality of the food crisis caused by the pandemic and Congress's unambiguous response to it. According to USDA, SNAP participants like Plaintiffs who already received the maximum SNAP allotment for normal times—nearly 40% of Pennsylvania's SNAP households—cannot receive *any* emergency allotments to

cover temporary food needs caused by COVID-19. Thus, under USDA's reading of the FFCRA, Congress deprived households with the greatest temporary food needs of any emergency benefits, while providing substantial benefits to others with less need. This perverse outcome results from USDA reading the maximum limit Congress provided *only for the additional, emergency allotments* (which it capped at the ordinary maximum monthly SNAP allotment) as a limit on *the combined amount* of the normal allotment and the emergency allotment. USDA's tortured reading cannot stand. Every indication of Congressional intent—plain meaning, context, history, purpose, and common sense—precludes it. Congress did not deny temporary emergency allotments to the poorest of Pennsylvania's SNAP recipients. Plaintiffs and others similarly situated are in dire need of the additional emergency allotments Congress mandated and those allotments should be provided to them.

The district court properly considered the preliminary injunction factors and granted a preliminary injunction prohibiting USDA from applying its erroneous interpretation of the cap to Pennsylvania's request. That decision is well-supported and certainly not an abuse of discretion.

First, Plaintiffs showed a reasonable likelihood of success on the merits. As the district court explained, Congress instructed USDA to provide "emergency allotments" to all SNAP households, without exception, upon a properly supported State request. Those emergency benefits were clearly contemplated as separate

from, and not reduced by, a household's normal pre-COVID-19 allotments. By its plain terms, the limit of the monthly maximum allotment incorporated into the statute places a cap only on this additional emergency allotment, *not* the total combination of a household's normal allotment and the new benefit. Indeed, the statute never even mentions a household's preexisting allotment. The district court's reading also is consistent with use of the term "emergency allotments" in 7 U.S.C. § 2014(h)(3)(A)—which provides SNAP households that have lost food in disasters with additional benefits that may take their combined benefits over the normal statutory cap. USDA's extra-textual arguments regarding unrelated agency practice and post-enactment history are legally irrelevant and unpersuasive on their own terms. Its singular focus on lost income also is unsupported by the text and belied by common sense and the realities of the pandemic's effects on food needs. As Congress well understood—and the FFCRA reflects—the pandemic has increased food prices and caused increased food insecurity, especially for the poorest of SNAP recipients. The pandemic's effects are not limited to income loss, and neither is the temporary emergency benefit Congress provided to address those effects. Because USDA's interpretation is contrary to law, and arbitrary and capricious and not entitled to *Chevron* deference in all events, Plaintiffs are likely to succeed on the merits.

Second, USDA does not dispute that Plaintiffs' temporary food needs, unrelieved by assistance, constitute irreparable harm. Rather, USDA argues that the purported public interest in limiting the total amount of emergency benefits as USDA proposes outweighs that harm as an equitable matter. Not so. Plaintiffs' immediate food needs caused by the pandemic and their right to receive the benefits Congress provided to address those emergency needs far surpass any of the potential budget issues raised by USDA. Moreover, to support its claim of public harm, USDA speculates that *if* it were to lose other hypothetical cases, and *if* other states requested maximum allowable benefits, and *if* Congress does not appropriate more funds, then SNAP funds may be depleted. This combination of possibilities is speculative at best—indeed, Congress has *never* failed to appropriate more funds when requested by USDA to meet its obligations—and indisputably will not happen during the pendency of this case. And if USDA continues to lose in the manner it hypothesizes, that only confirms that Plaintiffs (and not USDA) are likely to succeed and establish that the payments at issue are precisely what Congress intended.

By contrast, poor Pennsylvanians' inability to obtain adequate food due to decreased purchasing power and diminished food sources during the pandemic (what *will* result if the preliminary injunction is reversed) is irreparable harm and harm to the public. Protecting these most vulnerable SNAP participants as Congress

intended certainly advances the public interest—and USDA has pointed to no countervailing interest that could outweigh it.

The grant of a preliminary injunction should be affirmed.

COUNTERSTATEMENT OF THE ISSUES

Whether the district court abused its discretion in granting a preliminary injunction given that:

a. FFCRA § 2302(a)(1) instructs USDA to provide emergency allotments to all SNAP households experiencing temporary food needs during the COVID-19 emergency in States submitting data to support that aid, with an upper limit on those emergency allotments of the normal maximum monthly allotment (as the district court concluded), and does not disqualify the poorest SNAP households from emergency aid (as USDA contends);

b. Absent an injunction, Plaintiffs and others like them will suffer irreparable harm of unmet food needs during the COVID-19 emergency.

c. The public interest plainly favors the preliminary injunction and USDA has not identified any harm to the USDA or the public from affirming, but instead focuses on speculative future harms if USDA ultimately were to lose this case and others like it around the country—irrelevant to the question of public interest in the preliminary injunction, and readily addressable by additional authorization of funds by Congress.

COUNTERSTATEMENT OF THE CASE

I. Factual Background.

In early 2020, the COVID-19 global public health crisis, the "deadliest pandemic in over a century," swept "across the globe and has upended the lives of the American people in previously unimaginable ways." *HAPCO v. City of Phila.*, No. 20-3300, 2020 WL 5095496, at *1 (E.D. Pa. Aug. 28, 2020). Among other severe crises, COVID-19 exacerbated and caused new and acute food shortages and spiked food prices—leading to increased hunger, malnutrition, and food insecurity throughout the country. Studies and U.S. Census Bureau statistics document the drastic "increase in food insecurity since the start of the pandemic"—food insecurity has doubled overall and tripled for households with children. J.A.6-7 (citations omitted). In Pennsylvania, over 11% of adults live in households that "sometimes or often" did not have "enough to eat" in a given week. *Id.*; *see also, e.g.*, JA.169 (unrefuted evidence regarding COVID-19's effect on job loss, childcare closing and not providing meals, public transportation being limited, grocery stores experiencing shortages, and food pantries closing); JA.201 (unrefuted evidence of food shortages and higher food costs).

Congress passed the FFCRA on March 18, 2020, Pub. L. No. 116-127, 134 Stat. 178, to address these dire "temporary food needs" caused by the COVID-19 pandemic by providing emergency benefits, as follows:

> (a) In the event of a public health emergency declaration by the Secretary of Health and Human Services … and the issuance of an emergency or disaster declaration by a State based on an outbreak of COVID-19, the Secretary of Agriculture—
>
> > (1) shall provide, at the request of a State agency ... that provides sufficient data … supporting such request, for emergency allotments to households participating in [SNAP] under the Food and Nutrition Act of 2008 [FNA] to address temporary food needs not greater than the applicable maximum monthly allotment for the household size[.]

FFCRA § 2302(a)(1).

This clear command to provide "emergency allotments" to households already participating in SNAP during the COVID-19 emergency was enacted against the backdrop of the SNAP program—whereby eligible households receive "allotments" equaling the cost of an elsewhere-defined "thrifty food plan" minus 30% of the household's income after deductions. 7 U.S.C. §§ 2013(a), 2017(a). Households with the lowest income are eligible to receive the maximum monthly allotment under the thrifty food plan. 7 C.F.R. § 273.10(e)(2)(ii)(A). Nearly 40% of Pennsylvanians who receive SNAP allotments are so poor as to receive maximum monthly allotments. JA.4. The FNA, which provides these benefits, states that its purpose is to "safeguard the health and well-being of the Nation's population by raising levels of nutrition among low-income households." 7 U.S.C. § 2011. It does that "by increasing food purchasing power for all eligible households who apply for participation." *Id.*

The FFCRA reflects Congress's judgment that temporary food needs caused by the ongoing pandemic exceed those needs covered by the typical SNAP framework. To further increase the "food purchasing power" of low-income households, *id.*, Congress created "emergency allotments" for all SNAP households to cover these temporary, additional needs, as demonstrated by States using sufficient data. FFCRA § 2302(a)(1). Congress placed a cap on that additional emergency allotment—tying it to the pre-COVID-19 regular maximum monthly allotment. *Id.*

On March 20, 2020 (two days after passage of the FFCRA), USDA issued guidance providing that emergency allotments may be used only "to address temporary food needs to households to bring all households up to the [pre-COVID-19] maximum benefit." JA.11. One week after that guidance, Congress passed another COVID-19 omnibus legislation (the CARES Act) that, among many other things, appropriated $15.8 billion for USDA to meet additional pandemic-related SNAP costs. Pub. L. No. 116-136, 134 Stat. 281, § 6002 (Mar. 27, 2020). On April 11, USDA issued a memorandum re-asserting its position that households previously receiving the pre-COVID-19 maximum allotment—the poorest SNAP participants—"may not receive an additional emergency allotment." JA.12. That memorandum attempted to justify USDA's interpretation by citing 7 U.S.C. § 2014(h)(3)(A), *see* JA.62, but USDA belatedly acknowledged in the litigation

below that Section 2014(h)(3)(A) actually supports Plaintiffs' position. *See infra*, Section I.A.6.

Both the federal government and Pennsylvania have declared emergencies due to COVID-19. JA.55; JA.98 (citation omitted).[1] Pennsylvania applied to USDA for an emergency allotment equal to half of the regular maximum allotment for all SNAP households in the State on March 13, 2020. JA.13-14. In response to USDA's position that the poorest Pennsylvanian SNAP households—nearly 40% of Pennsylvania's SNAP households—could not receive any emergency allotment, Pennsylvania leaders repeatedly urged USDA to revise its erroneous interpretation, making clear how devastating USDA's interpretation was for the neediest Pennsylvania households. *See, e.g.*, JA.14 (expressing deep concern for families with young children who will go hungry); JA.15 (noting the poorest SNAP households "are unable to fill their pantries as recommend"). Before this litigation, Pennsylvania received emergency allotments for other SNAP households, but not the poorest households already receiving pre-COVID-19 maximum allotments.

[1] Pennsylvania has extended its emergency declaration into 2021. *Governor Wolf Signs Renewal to COVID-19 Disaster Declaration* (Nov. 25, 2020) https://www.governor.pa.gov/newsroom/governor-wolf-signs-renewal-to-covid-19-disaster-declaration.

II. Procedural History.

On July 16, 2020, Plaintiffs filed an action on behalf of themselves and a putative class of all SNAP participants in Pennsylvania who are receiving no or inadequate emergency allotments due to USDA's erroneous interpretation of FFCRA § 2302(a)(1). The complaint alleged that USDA's guidance violates the Administrative Procedure Act as "arbitrary and capricious" and "not in accordance with the law." JA.16. On July 27, 2020, Plaintiffs filed a motion for preliminary injunction. After full briefing and a hearing, on September 11, 2020 the Court granted the preliminary injunction against USDA's applying its limitation on the FFCRA emergency allotments for Pennsylvania SNAP households, holding that USDA's interpretation was "contrary to law." JA.16-42.

The district court rejected USDA's arguments for ignoring Congress's unqualified language providing emergency allotments to all SNAP households. The court demonstrated why USDA's arguments, which largely parroted the unpersuasive reasoning in *Hall v. USDA*, 467 F. Supp. 3d 838 (N.D. Cal. 2020), *appeal pending* Ninth Circuit Case No. 20-16232, were wrong. In particular, the district court found no textual support for USDA's argument that that FFCRA § 2302(a)(1) is directed only at remedying lost income. The court also held that extra-textual arguments surrounding subsequent appropriations and USDA's unrelated actions in disaster scenarios did not indicate how Congress meant for the

emergency allotments to function. And the district court held that Congress failing to raise the maximum for normal allotments does not answer whether the cap in Section 2302 applies to the sum of normal and emergency allotments, or just the latter. *See* JA.26-34 (rebutting reasons *Hall* used to find ambiguity, *contrast* 467 F. Supp. 3d at 845-47).

The district court recognized that Plaintiffs would suffer the irreparable harm of insufficient food access absent the preliminary injunction. JA.34-36. The court also noted "the balance of the equities tips decidedly in Plaintiffs' favor," as USDA's feared budgetary harms were speculative, and the injunction clearly supports the public interest in reducing food insecurity through emergency allotments for the COVID-19 pandemic as Congress instructed. JA.37-38.

After the preliminary injunction was entered, Pennsylvania submitted new requests on September 22 and 30, 2020 for emergency allotments for the poorest SNAP recipients. USDA did not fulfill these requests; it "unilaterally disregarded" the injunction in an act of "egregious disobedience." JA.44 nn.2-3. Instead, USDA waited until October 2, 2020 to file a purported motion for clarification regarding whether the injunction was retroactive. *See* JA.43. The court clarified the preliminary injunction is not retroactive (without deciding whether Plaintiffs would be entitled to retroactive relief if they ultimately prevail) and re-ordered immediate benefits. JA.43-44.

On October 21, USDA filed a notice of appeal, and filed a motion to stay in the district court the next day, which was subsequently denied. JA.45. USDA approved Pennsylvania's request to allocate around $58.7 million on October 22 and an additional $23.3 million on October 28, ECF No. 6, to cover requests for October. USDA's "approval" was accompanied by a threat—leveled without citation to authority—that it would seek reimbursement from Pennsylvania of monies paid to SNAP households under the preliminary injunction if the injunction were to be reversed or USDA were to prevail on the merits, despite the district court not requiring any injunction bond. *See* Dist. Ct. Dkt. 62-1 at 4, 8-10.[2] That threat (meant to obtain an effective stay of the injunction pending appeal notwithstanding the orders of this Court and the district court denying a stay) is yet another example of USDA's "egregious disobedience," and is the subject of a currently pending Motion to Enforce filed by Plaintiffs, *id.* at 1-3, and a district court Order to Show Cause "why [it] should not institute contempt proceedings." Dist. Ct. Dkt. 63.

SUMMARY OF ARGUMENT

USDA has failed to show that the district court abused its discretion in granting a preliminary injunction below.

[2] As a result of that threat, no extra funds have yet been disbursed to Plaintiffs and the putative class, and USDA's claim throughout its brief that it has actually paid $82 million, USDA.Br.2, 12, 14-15, 43-44, is simply false. Dist. Ct. Dkt. 62-1 at 5 (citing Dkts. 62-2, 62-3).

First, Plaintiffs have more than a reasonable likelihood of success on appeal. USDA's interpretation of FFCRA § 2302(a)(1) is contrary to the plain text of the provision, ignores the reality of the pandemic's effects on food costs and food insecurity, and yields irrational and perverse results. USDA's erroneous interpretation excludes the poorest SNAP households from receiving any emergency allotments. There is no textual indication that Congress intended to exclude these poorest households from emergency benefits and no possible argument that these households are shielded from the dire consequences of food instability caused by the pandemic. The text and context of the Act make clear that the emergency benefits are meant to address temporary food needs due to the COVID-19 emergency *above and beyond SNAP households' preexisting food needs*. Congress intentionally chose the term "emergency allotment," which is distinct from households' normal "allotments" and invokes the FNA's only other use of "emergency allotments" in the disaster context, where USDA acknowledges that a SNAP household's total benefits (emergency allotments plus normal allotments) may exceed the "maximum monthly allotment." The plain text and context show that FFCRA's emergency allotments must be driven by state-specific data of temporary food needs, and that only the emergency allotments themselves are limited to the maximum monthly allotment, regardless of the household's preexisting allotment.

USDA's counterarguments fail. They ignore the text, which makes the emergency allotment potentially available to *all* SNAP households and provides a cap only on the amount of the new emergency allotment, not the combined amount of the ordinary and emergency allotments. They also assume—counterfactually and with no support—that the only possible cause of temporary food needs necessitating emergency benefits is lost income. Congress was well aware that disruptions in transportation, food supply, and employment due to the pandemic would increase food insecurity for all SNAP recipients, including and especially the poorest of them, as the reference to food insecurity in the FFCRA makes clear.

USDA's reading further relies on a grammatically unnatural application of the last antecedent rule; an inapt analogy to disaster-context "supplements," while ignoring the much more analogous disaster-context "emergency allotments"; and post-enactment appropriations that say nothing about the correct interpretation here. USDA also repeatedly attacks straw men, rebutting Plaintiffs' supposed argument for an across-the-board increase in the monthly maximum allotment when Plaintiffs have never argued FFCRA does any such thing. Instead, Plaintiffs have argued for the flexible, state-by-state, data-driven approach to providing SNAP households emergency allotments, separate from and not reduced by those households' regular SNAP benefits, that Congress commanded.

Second, the undisputed evidence credited below shows Plaintiffs will suffer the irreparable harm of hunger and nutrition deprivation if the preliminary injunction is reversed. The USDA's unreasonable interpretation abandons the most needy nearly 40% of Pennsylvania's SNAP households, who receive *no* emergency relief despite their indisputable need for that relief. USDA's only response assumes the merits of its case, asserting Plaintiffs are not missing any benefit to which they are entitled. That is irrelevant to the irreparable harm question, which is clearly satisfied.

Third, the balance of equities and public interest plainly favor the injunction. Case law is clear that public food assistance is necessary to avoid societal harms and to improve the interests of the entire public. Thus, the public interest clearly supports addressing the severe temporary food needs of the poorest nearly 40% of Pennsylvania SNAP households, as Congress intended. USDA's fearmongering about "budgetary shortfalls" is inadequate as a matter of law given the critical public interest in addressing dire food needs by the poorest SNAP households during the pandemic. That claimed budgetary shortfall is also grossly inflated and fails on its own terms. USDA has not shown that it has asked Congress for more money to fund benefits at the level required and been rejected—as it is required to do under the statute. The additional funds will be used as Congress intended for the poorest SNAP recipients, and Congress has *never* failed to provide additional appropriations

to meet the needs of the SNAP program when requested. And the amounts at issue are far less than the USDA portrays.

The district court did not abuse its discretion in issuing the preliminary injunction, so this Court should affirm.

STANDARD OF REVIEW

This Court will affirm a preliminary injunction "unless the [district] court abused its discretion, committed an obvious error of law, or made a serious mistake in considering the proof." *Ass'n of N.J. Rifle & Pistol Clubs Inc. v. Att'y Gen. New Jersey*, 974 F.3d 237, 245 (3d Cir. 2020). Purely legal questions are reviewed de novo. *Greater Phila. Chamber of Commerce v. City of Phila.*, 949 F.3d 116, 134 (3d Cir. 2020). The scope of this Court's review is "narrow," and "an appellant who is attempting to overturn a district court order granting … a preliminary injunction carries a heavy burden." *CIBA-GEIGY Corp. v. Bolar Pharm. Co.*, 719 F.2d 56, 57 (3d Cir. 1983).

In order to obtain a preliminary injunction, the movant has to "generally show: (1) a reasonable probability of eventual success in the litigation," and (2) that they likely will suffer irreparable harm absent the injunction. *Acierno v. New Castle Cty.*, 40 F.3d 645, 653 (3d Cir. 1994). The district court also must consider (3) "the effect of the issuance of a preliminary injunction on other interested persons" and (4) "the public interest." *Bradley v. Pittsburgh Bd. of Educ.*, 910 F.2d 1172, 1175 (3d Cir.

1990). The latter two factors "merge when the Government is the opposing party." *Hope v. Warden York Cty. Prison*, 972 F.3d 310, 332 (3d Cir. 2020). Movants seeking mandatory injunctions, as here, "must meet a higher standard of showing irreparable harm in the absence of an injunction," *Bennington Foods LLC v. St. Croix Renaissance, Grp.*, 528 F.3d 176, 179 (3d Cir. 2008), but the other factors remain unchanged. *See Ferring Pharm., Inc. v. Watson Pharm., Inc.*, 765 F.3d 205, 219 n.13 (3d Cir. 2014) (requiring non-speculative harm in light of this burden).

This Court recently reaffirmed its sliding scale approach to preliminary injunctions, under which district courts have "full discretion to balance the four factors once gateway thresholds are met." *Reilly v. City of Harrisburg*, 858 F.3d 173, 178 (3d Cir. 2017), *as amended* (June 26, 2017). For example, a preliminary injunction is appropriate where "the movant demonstrates it will face irreparable harm" and the equities favor it, even if the claim on the merits is merely "plausible;" "the more net harm an injunction can prevent, the weaker the plaintiff's claim on the merits can be while still supporting" preliminary relief. *Id.* (citation omitted). The flip-side is also true: "A sufficiently strong showing on either the likelihood of success or irreparable harm may justify an injunction, though a petitioner's showing on the other factors may be lacking." *Neo Gen Screening, Inc. v. TeleChem Int'l, Inc.*, 69 F. App'x 550, 554 (3d Cir. 2003). Abuse of discretion has long been the standard of review *because* consideration of the preliminary injunction factors "by

the district court requires a 'delicate balancing'" involving this sliding scale approach, *Delaware River Port Auth. v. Transamerican Trailer Transp., Inc.*, 501 F.2d 917, 920, 923 (3d Cir. 1974)—a balancing district courts are better equipped to conduct, *Reilly*, 858 F.3d at 178-79.

ARGUMENT

I. Plaintiffs Have a More Than Sufficient Likelihood of Success on the Merits.

To satisfy this factor, Plaintiffs need show only a "reasonable probability of eventual success," and need not show they are "likely" to succeed on the merits. *Reilly*, 858 F.3d at 179 & n.3. Moreover, where, as here, the balance of harms weighs heavily in favor of the preliminary injunction, the showing of likelihood of success need not be strong. *See Constructors Ass'n of W. Pennsylvania v. Kreps*, 573 F.2d 811, 815 (3d Cir. 1978).

In all events, Plaintiffs' likelihood of success is high, as the district court correctly held that USDA's interpretation of FFRCA § 2302(a)(1) is contrary to law. The challenged guidance is a final agency action subject to APA review. *See Bennett v. Spear*, 520 U.S. 154, 177-78 (1997). Under the APA, courts shall "hold unlawful and set aside agency action" that is "arbitrary, capricious," or "not in accordance with the law" or "in excess of statutory" authority. 5 U.S.C. § 706(2). Because USDA's guidance conflicts with the statute, and is also arbitrary and capricious, Plaintiffs clearly satisfy this factor.

A. The District Court Correctly Interpreted the Statute to Require that All SNAP Participants Are Eligible for Emergency Allotments.

Any analysis of FFCRA § 2302(a)(1) must start, as the district court recognized, with "the language of the statute itself." *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*, 484 U.S. 49, 56 (1987); *see City of Phila. v. Att'y Gen.*, 916 F.3d 276, 284 (3d Cir. 2019). That textual analysis should carefully scrutinize the plain text of the words chosen by Congress, placing them in "the broader statutory context," *Shalom Pentecostal Church v. DHS*, 783 F.3d 156, 164-65 (3d Cir. 2015), and taking into account "the problem Congress sought to solve." *NRDC v. EPA*, 489 F.3d 1364, 1373 (D.C. Cir. 2007). Here, a plain reading of the FFCRA's text forecloses USDA's interpretation that the *sum* of a SNAP household's normal allotment *and* emergency allotment together cannot exceed the maximum monthly allotment. JA.26.

1. *The statute uses mandatory and comprehensive language.*

The FFCRA's text provides that when a State has declared a state of emergency and requests emergency SNAP allotments, providing "sufficient data … supporting such request," USDA "shall" provide for "emergency allotments to households participating in [SNAP] to address temporary food needs not greater than the applicable maximum monthly allotment for the household size." FFCRA § 2302(a)(1). That clear language mandates *additional* emergency allotments

(designed to address temporary food needs) up to the amount of the normal maximum monthly allotment for all SNAP households when requested by the State and supported with sufficient data. In other words, during the period of the emergency, SNAP recipients may receive their preexisting benefit plus another benefit up to the maximum allotment to address temporary food needs.

The district court correctly observed that the FFCRA's requirement is both mandatory and comprehensive. JA.27 (quoting FFCRA § 2302(a)(1)). If a SNAP household is in a State that has declared an emergency and has requested emergency allotments to address temporary food needs based on sufficient data, that household is covered by the statute. The plain text does not exclude any SNAP participants from emergency allotments by referring to ineligible households—and certainly not on the basis of income or the level of pre-COVID-19 SNAP benefits. As such, USDA cannot unilaterally create a disfavored class of SNAP recipients who are ineligible for the emergency allotments. *See id.*; *In re Cont'l Airlines, Inc.*, 932 F.2d 282, 288 (3d Cir. 1991) (forbidding qualification of "language that Congress has left unqualified"). Courts may not permit abandonment of "unqualified statutory language" or countenance the "considerable mischief" that would result from attempting to "divine" which households "falling within the literal words" of the statute are not "worthy" of emergency allotments. *Smith v. Fid. Consumer Disc. Co.*, 898 F.2d 907, 912 (3d Cir. 1990).

Yet USDA's interpretation of FFCRA § 2302(a)(1) does just that—revising the unqualified statutory term to fit USDA's preferred policy of impermissibly making the poorest of the poor, nearly 40% of SNAP recipients in Pennsylvania, ineligible for any emergency relief. *See Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1738 (2020) (forbidding adding to, remodeling, or detracting from statutory terms chosen by "the people's representatives").

2. *"Emergency allotments" are distinct from normal allotments.*

The statute clearly provides "emergency allotments" for SNAP households in addition to preexisting "allotments," but USDA's guidance makes the separate "emergency allotment" superfluous and meaningless for the nearly 40% of Pennsylvania's SNAP households that were receiving the maximum normal allotment before the pandemic began. USDA's reading violates a "core tenet of statutory interpretation": "that no provision shall be superfluous, void, or insignificant." *Massie v. HUD*, 620 F.3d 340, 352 (3d Cir. 2010). It also conflicts with the basic rule that different terms should be interpreted differently—here, that "emergency allotments" are distinct from regular SNAP benefits, referred to as "allotments." JA.28; *see Geisinger Cmty. Med. Ctr. v. HHS,* 794 F.3d 383, 392 (3d Cir. 2015) ("One of our 'most basic interpretive canons' is that '[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.'").

Ignoring these principles, USDA insists that the outer limit FFCRA § 2302(a)(1) places on "emergency allotments" actually applies to the combined value of both normal allotments and emergency allotments. But SNAP households' normal, preexisting allotments are nowhere mentioned in FFCRA § 2302(a)(1), which instead focuses only on a *new* temporary emergency benefit. When Congress provided that the limit for this new emergency benefit be set at "the applicable maximum monthly allotment," it was only setting a limit for the new benefit. The fact that the statute limits the new benefit to the maximum amount of ordinary allotments doesn't change the fact that Congress was by its terms only setting a limit on the new benefit. If Congress had wanted to set a limit on the *combined* amount of the ordinary and emergency allotments, it would have written Section 2302(a) differently. *See* JA.27-29.

USDA's construction also ignores the use of the term "emergency allotment" elsewhere in the FNA. Under FNA Section 5(h), a SNAP household receiving maximum monthly benefits may also receive "emergency allotments" that cannot be "greater than the applicable maximum monthly allotment." 7 U.S.C. § 2014(h)(3)(A). These "emergency allotments" are replacement benefits "to replace food destroyed in a disaster," provided *in addition to* and *not reduced by* regular allotments. As USDA consistently has acknowledged, *see* JA.242; Dist. Ct. Dkt. 61 at 23, households receiving maximum monthly allotments on a normal basis

also may receive emergency allotments up to that amount to replace destroyed food. 7 U.S.C. § 2014(h)(3)(A); 7 C.F.R. § 280.1. Just the same here, Congress decided that additional "emergency allotments" are needed to ameliorate temporary food needs during the COVID-19 pandemic.

By using the same terminology, Congress intended for the FFCRA "emergency allotments" to operate the same way: as new benefits *distinct from and in addition to* normal allotments. *See Smith v. City of Jackson, Miss.*, 544 U.S. 228, 233 (2005) (noting presumption that "when Congress uses the same language" in related statutes, it "intended that text to have the same meaning"). The longstanding principle that "identical words used in different parts of the same" law are intended to have "the same meaning" clearly applies here. *Gustafson v. Alloyd Co.*, 513 U.S. 561, 570 (1995); *Ratzlaf v. United States*, 510 U.S. 135, 143 (1994). USDA's brief recognizes this principle, USDA.Br.28-29, and escapes its application here only by completely ignoring 7 U.S.C. § 2014(h)(3)(A)—which it inexplicably mentions nowhere in its brief.

3. *USDA's singular focus on lost income is contrary to the FFCRA.*

The district court properly rejected USDA's unsupported assumption that FFCRA § 2302(a)(1) is meant to address only households who have lost income as a result of the COVID-19 pandemic. *See* JA.29-30. USDA repeats that false claim on appeal. USDA.Br.1-2, 16, 24-25, 28, 29 n.6, 38-39. In fact, FFCRA § 2302(a)(1)

makes clear emergency allotments are meant "to address temporary food needs," and did not limit the cause of those food needs to lost income. Whether a SNAP household's COVID-19-related food needs are caused by increased food prices, decreased income, lost financial resources, scarce or closed food pantries—all undisputed results of the COVID-19 pandemic that the FFCRA is responding to, *see* JA.166; JA.186-187; JA.201; USDA.Br.39 n.11—or any other reason, they are still temporary food needs that may justify an emergency allotment.

Income loss indisputably is not the only cause of temporary food needs. The record shows that other causes include increased food prices due to scarcity or demand, or food pantries having less supply or shuttering from stay at home orders or lack of volunteers. *E.g.*, JA.186-187; JA.166; JA.201. Other temporary food needs may be caused by disruptions in food production and distribution, children staying home from school, or travel restrictions making shopping risky and increasing prices—and the list could go on.

No COVID-19 related food need is excluded from, and loss of income is nowhere mentioned in, Section 2302. *See Smith*, 898 F.2d at 912 (forbidding limiting unqualified statutory language). Moreover, most SNAP households nationwide have no *possibility* of lost income because only 30% of SNAP households had any earned income (not depending on assistance like social security) in the latest available data. *See* USDA, *Characteristics of Supplemental Nutrition*

Assistance Program Households: Fiscal Year 2018, https://www.fns.usda.gov/snap/characteristics-supplemental-nutrition-assistance-program-households-fiscal-year-2018. And for those income-earning households, USDA already has mechanisms to rapidly adjust upwards their SNAP benefits when income falls. *See* 7 C.F.R. § 273.12(c). The district court was correct to reject the USDA's unfounded assertion that the FFCRA's emergency allotments are meant *only* to make up for lost income. JA.29-30.

USDA's singular focus on lost income is also contradicted by FFCRA § 2302(c)—which USDA ignores. It states that the FFCRA's measures are meant "to address the food security needs of affected populations during the emergency." FFCRA § 2302(c). USDA itself has described "food security" as "access by all people at all times to enough food for an active, healthy life." *Food Security in the U.S.*, Economic Research Service, USDA, https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us (last accessed Nov. 30, 2020). USDA's assertion now that temporary food needs and food security needs *must* be limited to the "demand-side problem" of lost income, and *must* exclude "supply-side problem[s]" like "disruptions to the food supply," is made up out of whole cloth. USDA.Br.29 n.6; *see* USDA.Br.20.[3] All these problems decrease low-income

[3] Demand-side problems are not limited to lost income in all events; what about increased childcare costs and other expenses, school closures, and travel restrictions?

households' "food purchasing power"—the thing all SNAP funds are meant to increase. 7 U.S.C. § 2011. All "food security" problems lead to decreased "access" to food, and to "temporary food needs."

USDA's assertion that Congress "nowhere" expressed the view that pre-pandemic SNAP allotments are no longer sufficient for SNAP recipients during the pandemic is hard to take seriously and only underscores how egregiously USDA misreads the FFCRA. USDA.Br.24. Congress explicitly recognized and provided emergency allotments to address "temporary food needs" and "food security needs" caused by the COVID-19 pandemic that necessarily did not exist beforehand. FFCRA § 2302(a)(1), (c).

Moreover, USDA's interpretation does not even further the "lost-income" justification it hypothesizes. Rather than actually account for lost income, USDA has chosen to "top off" every single SNAP household below the maximum amount without regard to whether their income has decreased. *See, e.g.*, USDA.Br.3-4 (its interpretation "boost[s]" every household up to the pre-COVID maximum "without regard to household income"); JA.30 (explaining this "illogical result"). So even USDA's implementation is not tied to the concern it claims (without evidence) that Congress meant to address: lost income.

USDA's practice of lifting all households to the maximum allotment is also hard to square with its repeated argument that Congress did *not* establish an "across-

the-board increase in benefits" but rather provided "flexibility." USDA.Br.25. It is *USDA's* approach that awards across-the-board benefit increases, excluding the poorest SNAP households; whereas Plaintiffs' interpretation properly rests on the statute's data-driven, state-by-state approach. *See* JA.30-31.

Nor can USDA find support for its "lost income" theory in the next subsection of the FFCRA (§ 2302(a)(2)), which it attempts to do on appeal. USDA.Br.23-35. That subsection *also* never mentions income and does not purport to limit the temporary food needs that must be addressed. Rather, it provides that USDA can adjust States' methods of issuing benefits and the application and reporting requirements for SNAP households if normal avenues of issuance or reporting are impractical during the pandemic. FFCRA § 2302(a)(2). Section 2302(a)(2) does *not* say that if reporting is difficult, USDA can simply raise every household up to the maximum monthly allotment.[4] The ability to adjust reporting requirements says nothing about how to interpret emergency allotments, which are tied only to "temporary food needs" as proven by State data—and do not depend on whether State agencies need to adjust issuance, application, or reporting requirements.[5]

[4] Moreover, income loss is not the only thing that SNAP households may need to report. USDA.Br.25. Changes in dependent care costs, child support payments, medical expenses, shelter expenses and other things could also affect households' normal SNAP allotments. *See* 7 U.S.C. § 2014(d)-(e).

[5] USDA later admits that 7 U.S.C. § 2014(h)(3)(B)'s allowance for adjusting issuance and reporting methods during disasters is nearly identical to FFCRA

USDA is left with simply rewriting the statute. USDA insists FFCRA is meant only to support "newly indigent SNAP households" and to address "sudden income loss." USDA.Br.25. But the text includes all SNAP households and explicitly states emergency allotments are meant to address "temporary food needs" without any modification like "caused by income loss." USDA's rewrite of the statute is impermissible. *See Bostock*, 140 S. Ct. at 1738.

4. *The last antecedent rule does not help USDA.*

USDA's reliance on the "last-antecedent doctrine"—its only gesture at interpreting the actual text of Section 2302(a)(1)—is demonstrably flawed. USDA contends FFCRA's instruction that it provide "emergency allotments … to address temporary food needs not greater than the applicable maximum monthly allotment" should be interpreted such that "not greater than the applicable maximum" modifies "temporary food needs" and not "emergency allotments." USDA.Br.16-18. This reading is unhelpful to USDA's position and wrong in all events.

It is unhelpful to USDA's position because it provides no support for the idea that someone who had their typical food needs covered *before* the COVID-19 pandemic will not have *additional* temporary food needs caused by the pandemic.

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§ 2302(a)(2), USDA.Br.29 n.7, yet fails to recognize that the "emergency allotments" provided for in the subsection immediately preceding 7 U.S.C. § 2014(h)(3)(B) are *not* meant to make up for lost income—but are instead meant to "replace food destroyed in a disaster." *Id.* § 2014(h)(3)(A).

So even if the cap does limit "temporary food needs" that may be addressed by emergency allotments, rather than the emergency allotments themselves, that is a distinction without a difference. Evidence in this case clearly establishes (and the district court found) that Plaintiffs and others like them who receive the pre-pandemic maximum do *in fact* suffer from additional temporary food needs. *See* JA.29-30; JA.93-95. USDA never challenges this factual finding, let alone demonstrates clear error. Congress clearly provided emergency allotments to address temporary needs, so long as that emergency allotment (or in the USDA's reading, the additional temporary need) does not exceed the applicable maximum.

USDA's application of the last antecedent rule is also wrong because—as a matter of simple grammar and logic—that statute's limitation, "not greater than the applicable maximum," is not a limit on the "temporary food needs" that a family is permitted to have, but on the new benefit that USDA is required to provide. Congress did not (and could not) impose a statutory limit on a family's temporary food needs. Nor does it make any sense in the context of "emergency" relief that Congress would presume that a family's temporary food needs would not exceed the normal monthly allotment, or have any view of how the global pandemic would affect food needs. That is the reason Congress tied the emergency allotments to *data* provided by *States*—to allow a "flexible" approach to responding to the unprecedented and unpredictable national crisis. FFCRA § 2302.

Given that Congress did not place a statutory limit on the food needs from which poor SNAP households are allowed to suffer, the only grammatically possible subject that is limited is the *benefit* USDA must provide. *See Shendock v. Dir., Office of Workers' Comp. Programs*, 893 F.2d 1458, 1464 (3d Cir. 1990) (courts do not restrict qualifying word to immediate antecedent where the "sense of the entire act" forbids doing so). There are only two options for what benefit is so limited: either the emergency allotments, or the sum total of all normal and emergency allotments a household receives. The statute makes the answer clear; the only benefit ever mentioned before the limiting phrase is the "emergency allotment." Section 2302(a)(1) never mentions a household's preexisting allotment and never indicates that its cap applies to a family's total benefits. Arguing that the cap applies to a family's temporary food needs does not in any way support USDA's separate conclusion that the cap limits the *total* benefits that a family may receive.

USDA ignores these grammatical and logical problems by simply asserting that the "last-antecedent doctrine *is* a rule of grammar," so the tortured logic of its reading must be overlooked. USDA.Br.17. That response is incompatible with clear case law refusing to apply the last antecedent rule if doing so would create an unnatural construction that strains the "ordinary usage" of words. *United States v. Hayes*, 555 U.S. 415, 425-26 (2009). The rule is not "absolute and can assuredly be overcome by other indicia of meaning," *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003);

J.C. Penny Life Ins. Co. v. Pilosi, 393 F.3d 356, 365 (3d Cir. 2004), as here where following the rule strains grammar and common sense.

Moreover, USDA ignores that the rule typically applies to interpret "statutes that include a list of terms or phrases followed by a limiting clause." *Lockhart v. United States*, 136 S. Ct. 958, 962 (2016); *Pellegrino v. TSA*, 937 F.3d 164, 177 (3d Cir. 2019) ("so-called rule of last antecedent" applies to a "limiting phrase that appears at the end of [a] list"). In Section 2302(a)(1), there is no list. Rather, the limiting clause follows the phrase "emergency allotments … to address temporary food needs"—a "concise and 'integrated' clause." *Cyan, Inc. v. Beaver Cty. Emps. Retirement Fund*, 138 S. Ct. 1061, 1077 (2018) (concluding "most natural way to view the modifier [was] as applying to the entire preceding clause … because that clause hangs together as a unified whole, referring to a single thing"). The benefit limit applies to the entire phrase—*i.e.*, to the only benefit mentioned in the section.

5. *USDA's observation that Congress did not change the normal allotment maximum is irrelevant.*

USDA's repeated observation that Congress did not use the FFCRA (an emergency COVID-19 response legislation) to change the thrifty food plan and normal allotments for all SNAP households going forward is also irrelevant. *See* USDA.Br.18-22. Congress provided an *additional* benefit to address *temporary* pandemic-induced food needs. USDA admits that the thrifty food plan covers a family's food needs only "[i]n the normal course," USDA.Br.18—*i.e.*, absent a

global pandemic causing additional temporary food needs. USDA's assumption that receiving the maximum amount under the thrifty food plan means that all of a family's food needs are covered by definition is unsupported. USDA.Br.2. Additional pandemic-induced food needs, on top of one's previous "permanent need," USDA.Br.19, are not only possible and documented in this case, JA.29-30, but were clearly contemplated by Congress with this emergency COVID-19 relief. While USDA thinks it would be problematic to treat emergency allotments as a "freestanding benefit untethered from Congress's assessment of American households' food needs," USDA.Br.21, that begs the question—given that Section 2302(a) represents "Congress's assessment" that Americans have *additional* temporary food needs caused by the pandemic. And Congress is certainly entitled to address the problem of temporarily increased food needs by creating a new, additional benefit rather than amending or increasing a preexisting benefit.

Congress intended for the emergency allotments it was creating to last only for a limited time based on real-world need—requiring sufficient data to prove actual temporary needs in each State. FFCRA § 2302(a)(1). Given that purpose, it makes much more sense to create an additional benefit tied to the emergency rather than increase the thrifty food plan or maximum normal allotment "on a long-term or permanent basis that could only later be altered by a further amendment to the statute." JA.32. Congress took the more sensible approach in adding a new

emergency benefit that automatically goes away once the emergency need is gone, and that may vary among States.

Still, USDA insists that because FFCRA § 2302(a)(1) *references* the preexisting monthly maximum allotment and does not *amend* that preexisting maximum (or the thrifty food plan on which it is based), the preexisting maximum must apply to all of SNAP households' combined benefits. USDA.Br.21-22 (citing *Hall*, 467 F. Supp. 3d at 845). This logic is nonsensical. Merely referencing the un-amended normal maximum does not automatically mean it limits the sum of normal and emergency allotments. *See, e.g.*, 7 U.S.C. § 2014(h)(3)(A) (referencing the monthly maximum allotment, yet permitting sum of normal and emergency allotments to exceed that cap, as USDA admits, JA.242). Rather, the Court should look at *how* the statute references the maximum: it incorporates the maximum for normal allotments as the cap on emergency allotments (not all combined benefits). Given this framework, it would be unnecessary to *also* amend the cap Congress intended to apply to emergency allotments.

At base, this focus on what Congress did not do appears to be a response to a straw man argument that Plaintiffs never made. USDA insists throughout its brief that Plaintiffs have argued that "every SNAP household[]" should get "up to twice the applicable maximum" in some sort of "across-the-board" boost in all households' benefits. USDA.Br.3, 20, 25; *see* USDA.Br.19-20 (claiming

"Plaintiffs' argument amounts to a claim that Congress should have revisited its determination as to the cost of providing adequate food" for everyone). These characterizations are false. Plaintiffs agree that *if* Congress wanted to effectuate a perpetual, across-the-board increase in the monthly maximum, "it could simply have increased either the 'thrifty food plan' amount or the 'maximum monthly allotment' based on it." USDA.Br.20. But Plaintiffs have never argued that's what Congress wanted to do. Rather than a uniform national increase, Congress explicitly adopted a flexible approach suited to the unpredictable pandemic context—emergency allotments to address state-specific needs, determined by "data" on a state-by-state basis. FFCRA § 2302(a)(1). The monthly maximum cap only comes into play as an upper limit on the emergency allotments that are otherwise tailored to changing real-world needs.[6]

And a SNAP household would only receive "twice the applicable maximum" if it already received the maximum amount *and* its State demonstrated with sufficient data than an additional maximum amount was needed. Pennsylvania has not

[6] For the same reasons, it is irrelevant that the USDA recently increased the thrifty food plan by 5%, USDA.Br.20, or that the U.S. House of Representatives proposed to increase the monthly maximum allotment to 115% in a failed bill, USDA.Br.39 n.11; *see* USDA.Br.34 n.9. Whether to separately increase the thrifty food plan that applies to all SNAP recipients is a separate question from whether to provide additional flexible emergency allotments based on demonstrated temporary increased need.

requested an additional maximum for anyone. No across-the-board increase results from Plaintiffs' approach—so there are no "elephants" in "mouseholes" here. USDA.Br.33-34. In fact, the only approach that leads to a one-size-fits-all solution that Congress did not employ is USDA's—which takes Congress's *flexible data-driven plan* and replaces it with USDA's "blanket topping-off approach." USDA.Br.40. Only Plaintiffs' interpretation honors the plan enacted by Congress.

6. *USDA's extra-textual arguments fare no better.*

Finding no support in the statute, USDA turns to arguments regarding agency practice and post-enactment history—neither of which support USDA's interpretation or are legally relevant to the statutory interpretation question. These arguments are unpersuasive and are "extratextual considerations" that cannot limit clear statutory language. *Bostock*, 140 S. Ct. at 1737.

First, USDA argues that its interpretation "comports with" how it administers SNAP in disaster settings. USDA.Br.30-33. That assertion is incorrect, and USDA's disaster practices in fact support the district court's interpretation.

As an initial matter, USDA misrepresents the nature of SNAP supplements it provides during disasters, arguing they account for financial effects to households like lost income. USDA.Br.26 (citing USDA, *Disaster SNAP Guidance* 12 (July 2014) https://fns-prod.azureedge.net/sites/default/files/D-SNAP_handbook_0.pdf (*D-SNAP Guidance*)). The financial effects USDA lists, however, apply only to new

households seeking to apply for SNAP benefits during disasters—*not* to preexisting SNAP households that receive "supplements" to bring those households "up to the maximum allotment for their household size." Those supplements are given only "to provide parity between new D-SNAP households"—who automatically receive the maximum allotment—"and ongoing clients, who are not eligible for D-SNAP benefits." *D-SNAP Guidance*, *supra*, at 35. It is simply wrong to assert that D-SNAP supplements are tied to lost income.

USDA also misrepresents the benefits available to SNAP households who have been affected by a disaster. It contends "no additional monthly benefits are provided to households that were already eligible for the maximum monthly allotment, because they were already receiving the full cost of feeding their household, as defined by the thrifty-food-plan provision[.]" USDA.Br.26. This statement ignores that those households may receive an "emergency allotment" to replace any food destroyed in the disaster under 7 U.S.C. § 2014(h)(3)(A), which USDA previously has recognized may result in a SNAP household receiving a full, *additional* maximum allotment. JA.242; Dist. Ct. Dkt. 61 at 23; *see D-SNAP Guidance*, *supra*, at 37 (discussing "replacement benefits"). FFCRA's "emergency allotments" are much more analogous to these replacement "emergency allotments" than to disaster "supplements."

Indeed, USDA's FFCRA guidance originally analogized the FFCRA's emergency allotments to 7 U.S.C. § 2014(h)(3)(A). *See* JA.62. In the district court, Plaintiffs pointed out that that section *supports Plaintiffs' position* because it provides "emergency allotments" that can raise a households SNAP benefits above the normal monthly maximum. *See* 8/20/20 Hr'g Tr. 27-28. USDA responded by admitting that statute does *not* support its interpretation of the FFCRA, and reversing its position—trying to distinguish the statute it previously relied on. *See id.* at 29, 34-35 (admitting Section 2014(h)(3)(A) does not support USDA, and instead trying to distinguish it as a "unique" circumstance despite using the exact same words with the same limit). USDA's about-face focus on disaster "supplements" (USDA.Br.26-28), rather than disaster "emergency allotments," should be easily rejected.

Moreover, the district court correctly noted there is *no evidence* that Congress intended FFCRA to operate similar to D-SNAP supplements, JA.32-34, and USDA points to none on appeal. Courts do not assume Congress's awareness of administrative practices (like USDA's D-SNAP supplements) that are not results of notice-and-comment rulemaking. *See* JA.33 (citing *Rabin v. Wilson-Coker*, 362 F.3d 190, 197 (2d Cir. 2004)).

In all events, the fact that Congress chose to issue "emergency allotments" and *not* "supplements" must be given meaning. *See* JA.32-34; *Geisinger*, 794 F.3d at 391 ("courts must presume that a legislature says in a statute what it means and

means in a statute what it says there"). Congress did not state that USDA should provide disaster supplements to address COVID-19, despite USDA's argument apparently assuming that it did. JA.32. Rather, Congress commanded "emergency allotments," which all agree can take a family's total benefits above the normal maximum in the disaster context. *See* JA.242.

Having identified no evidence that D-SNAP supplements are meant to govern FFCRA emergency allotments, USDA brazenly faults Plaintiffs for not pointing to any FFCRA "text or legislative history evidencing Congress's intent that USDA depart" from the disaster-supplement approach. USDA.Br.28. That gets the burden exactly backwards. USDA cannot simply assert guidance in an unrelated context applies despite no congressional indication, and then demand proof to the contrary.

Second, USDA turns from inapposite agency practice to legally irrelevant post-enactment appropriations. USDA.Br.30-33. Post-enactment history "is not a legitimate tool of statutory interpretation." *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 242 (2011). The reason is obvious: post-enactment statements or actions "could have had no effect on the congressional vote," so they cannot inform Congress's purpose in enacting the prior legislation. *Id.*; *see also Bostock*, 140 S. Ct. at 1747 ("Arguments based on subsequent legislative history … should not be taken seriously[.]").

Undeterred, USDA asserts that the Court should read Congress's appropriation of $15.8 billion in the subsequent CARES Act to cover increased pandemic-related costs as confirmation of USDA's interpretation of the FFRCA. USDA.Br.30-31. Not so. USDA insists that after the appropriation-less FFRCA was passed, it informed the OMB—which in turn informed congressional staff—that USDA estimated nationwide emergency allotments would total $2 billion per month. USDA insists that it used its interpretation of FFRCA § 2302 to calculate this number, but never provides any evidence that the OMB or congressional staff (let alone any Congress members) knew how USDA arrived at its $2 billion-per-month estimate.[7] As the district court properly concluded, "there is zero indication that members of Congress" were aware of USDA's requested $2 billion per month, or USDA's interpretation of FFCRA § 2302(a)(1), or that that interpretation informed Congress's $15.8 billion appropriation. JA.11 n.5. And USDA has pointed to none on appeal, just insisting that the appropriation "is consistent with" its estimation of $2 billion per month spread over six months (despite that the appropriation is actually nearly $4 billion greater than that estimate, and that the appropriation never states it is meant to last for six months). *See* USDA.Br.30-31.

[7] The only evidence USDA ever produced is a single declaration stating that congressional staff "reached out to" OMB "for a cost estimate," and USDA "staff determined that the additional cost was $2 billion per month." JA.290 ¶ 12.

Even if Congress did rubber stamp the number provided to its staff by the OMB, the utter lack of evidence that Congress was aware of USDA's interpretation dooms any case for implied ratification. *See Shalom Pentecostal Church*, 783 F.3d at 167; *Cape Cod Hosp. v. Sebelius*, 630 F.3d 203, 214 (D.C. Cir. 2003).

A communication expressing an agency's view of a statute is "not 'legislative history' at all" because it "does not speak for a single Member of Congress." *Bd. of Trade of City of Chicago v. SEC*, 187 F.3d 713, 720 (7th Cir. 1999). And here, there wasn't even a communication of USDA's view of the statute—or any communication to Congress for that matter. USDA identifies no case ever relying on an appropriation request from an agency that eventually was communicated to committee staff second-hand for any indication of congressional intent.

The two cases USDA does cite (at 31-33) regarding "companion statutes" are wholly inapplicable. *Wisconsin Central Ltd. v. United States* contrasted the *language* in two companion statutes to hold that two different phrases—"money remuneration" in one and "all remuneration" in the other—had different meanings. 138 S. Ct. 2067, 2071-72 (2018). That is nothing like attempting to read the tea leaves of later appropriations' effect on prior congressional language. Similarly, *POM Wonderful LLC v. Coca-Cola Co.* merely advises that two complementary statutes should not be interpreted so that one statute "preclude[s] the operation of the other." 573 U.S. 102, 115 (2014). Interpreting the FFCRA so that the CARES Act

appropriation lasts for less than the six months USDA would prefer does not *preclude* operation of either statute and certainly allows the two statutes to "co-exist[]." USDA.Br.33 n.8.

Applying the FFCRA as written would not "thwart the purpose" of the statute. USDA.Br.32. If expenses exceed Congress's initial appropriation (a not-uncommon result with many statutes), Congress can appropriate more funds. Indeed, even under USDA's unsupported theory, Congress appropriated only six months' worth of emergency allotments *more than six months ago*. And USDA admits Congress has not yet appropriated additional emergency-allotment funds for this fiscal year, USDA.Br.44, yet never argues that means Congress thinks emergency allotments should cease. At this point, USDA likely will have to go back to Congress for more funds no matter how FFCRA § 2302(a)(1) is interpreted. *See* 7 U.S.C. § 2027(d) (requiring USDA to inform Congress of insufficient funds to allow additional appropriation).

In all events, the potential need for additional appropriations is a matter for Congress and provides no reason to deviate from the plain meaning of the FFCRA's text. The only cases USDA cites regarding subsequent appropriations make this very point, undermining USDA's argument. USDA.Br.33 n.8. They hold that subsequent appropriations, even if inadequate to cover prior statutory requirements, cannot change those requirements. The Supreme Court reiterated this year the

longstanding principle that "the mere omission to appropriate a sufficient sum" does not change a preexisting federal obligation. *Maine Cmty. Health Options v. United States*, 140 S. Ct. 1308, 1324 (2020) (citing *United States v. Vulte*, 233 U.S. 509, 515 (1914); *United States v. Langston*, 118 U.S. 389, 394 (1886) (appropriating "a less amount" than is necessary to meet earlier requirements does not change them)). USDA's argument assumes that prior legislation should be interpreted a certain way based on subsequent appropriation, but these cases forbid such a result. *See also Concerned Residents of Buck Hill Falls v. Grant*, 537 F.2d 29, 35 n.12 (3d Cir. 1976) ("Appropriations acts generally cannot serve as a vehicle of substantive legislation or as a ratification of prior agency action.").

B. USDA's Guidance Is Arbitrary and Capricious.

Plaintiffs also have a reasonable likelihood of success because USDA's interpretation is arbitrary and capricious. The district court concluded it need not address this argument, since the interpretation is contrary to law, JA.34 n.12, but this Court can rely on any reason to affirm, *see Blake v. JP Morgan Chase Bank*, 927 F.3d 701, 705 (3d Cir. 2019).

USDA fell short of its obligation to engage in reasoned decision-making that "articulate[s] a satisfactory explanation for its action" and demonstrates that it considered "important aspect[s] of the problem" presented. *Prometheus Radio*

Project v. FCC, 939 F.3d 567, 577, 585 (3d Cir. 2019); *Mun. Power-Ohio, Inc. v. FERC*, 863 F.2d 70, 73 (D.C. Cir. 1988). Post-hoc rationalizations do not suffice.

First, USDA's guidance concludes that FFCRA's "emergency allotments" will be treated "similar to [D-SNAP] supplements" unavailable to households receiving maximum SNAP benefits rather than similar to "emergency allotments" issued to replace food destroyed in disasters that are available to all SNAP households. That decision came with no explanation at all, and USDA has since admitted the explanation was lacking. 8/20/20 Hr'g Tr. 29, 34-35. Second, USDA failed to explain how its interpretation comports with SNAP's purposes of raising the "levels of nutrition among low-income households" by increasing their "food purchasing power," 7 U.S.C. § 2011, given that it disqualifies the *lowest-income* households from receiving *any* emergency allotments. Third, USDA's decision to tie emergency allotments to lost income, ignoring other causes of "temporary food needs," and then issuing emergency allotments to all non-maximum SNAP participants irrespective of lost income, also required explanation. These failures of explanation at the time of USDA's guidance made it arbitrary and capricious. *DHS v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1909 (2020) (agency action stands or falls on "the grounds that the agency invoked when it took the action"); *see also* JA.102-105; JA.249-253.

C. *Chevron* Deference Is Inappropriate Here.

Lastly, USDA invokes *Chevron* deference to argue it will succeed on the merits. USDA.Br.34. No such deference is warranted, however, for three reasons.

First, as demonstrated above, the intent of Congress is clear and the statute is only susceptible to the interpretation adopted by the district court—so even if the *Chevron* framework applies, USDA cannot get past the first step and "*Chevron* leaves the stage." *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1630 (2018).

Second, even if there were some ambiguity here (there is not), *Chevron* deference does not apply to USDA's March 20 and April 21 guidance. That deference is only owed to "administrative implementation of a particular statutory provision" when (1) "Congress delegated authority to the agency generally to make rules carrying the force of law" *and* (2) that the relevant agency interpretation "was promulgated in the exercise of that authority." *United States v. Mead Corp.*, 533 U.S. 218, 226-27 (2001). Neither prerequisite is satisfied here.

(1) FFCRA § 2302(a)(1) authorizes USDA to issue "guidance" on one thing only: how to determine what data is sufficient for a State to request emergency allotments. That Section does *not* grant USDA rulemaking authority to decide which SNAP households are eligible for emergency allotments or where to set the cap for those emergency allotments. The statute itself explains the answers to those questions. So the quote from *Mead* at USDA.Br.36 demonstrates why "*Chevron*

treatment" is *not* merited here—Congress did not expressly authorize USDA to engage in "rulemaking or adjudication that produces regulations or rulings for which deference is claimed," *Mead*, 533 U.S. at 229, for anything besides data sufficiency.

(2) The USDA's interpretation also was not promulgated under any such rulemaking authority. The March 20 and April 21 memoranda state they "do not have the force and effect of law," JA.422; JA.426, and they are clearly "interpretive guidelines"—not regulations and not the result of any "notice-and-comment." *Hagans v. Comm'r of Soc. Sec.*, 694 F.3d 287, 302 (3d Cir. 2012). In such circumstances, *Chevron* doesn't apply. *Id.* (citing *Packard v. Pittsburgh Transp. Co.*, 418 F.3d 246, 252-53 (3d Cir. 2005); *Mercy Catholic Med. Ctr. v. Thompson*, 380 F.3d 142, 155 (3d Cir. 2004)). Statutory "interpretations contained in policy statements, agency manuals, and enforcement guidelines," *Christensen v. Harris Cty.*, 529 U.S. 576, 587 (2000), or otherwise "far removed … from notice-and-comment process" and any other semblance of formality, public input, or careful and reasoned analysis, *Mead*, 533 U.S. at 231, "do not warrant *Chevron*-style deference." *Christensen*, 529 U.S. at 587.

USDA's reliance (at 37) on *Castillo v. Attorney General* is also misplaced, as USDA did not give FFCRA § 2302(a)(1) "concrete meaning through a process of case-by-case adjudication" like the Board of Immigration Appeals does with the Immigration and Naturalization Act. 729 F.3d 296, 302 (3d Cir. 2013). Rather,

USDA announced its interpretation in an informal guidance outside the context of any adjudication. Merely applying that interpretation later does not give any additional meaning through case-by-case adjudication.

Congress left no gap for USDA to fill with its informal guidance at issue here. If *Chevron* deference applied to cases like this one, "agencies would enjoy virtually limitless hegemony, a result plainly out of keeping with *Chevron* and quite likely with the Constitution as well." *Texas v. United States*, 809 F.3d 134, 186 (5th Cir. 2015) (quoting *Ethyl Corp. v. EPA*, 51 F.3d 1053, 1060 (D.C. Cir. 1995)). No *Chevron* deference is owed to USDA's interpretation.[8]

Third, USDA's interpretation is not reasonable. For all the reasons discussed, *supra*, in Sections I.A and I.B, it is unreasonable to conclude that FFCRA § 2302(a)(1)—which provides for emergency allotments to all SNAP households (without exception) to address temporary food needs (not limited to income) and ties this new emergency benefit to data provided by States and caps it at the normal allotment monthly maximum—actually meant to "top off" only the more well-off SNAP participants to address "sudden loss of income," USDA.Br.39 n.11, and to ignore real-world food-need data. In its reasonableness section, USDA invokes its

[8] USDA claims that the district court applied *Chevron*, USDA.Br.35, but the court was clear that it did *not* resolve whether *Chevron* deference would apply if the statute was ambiguous; rather, it held it "need not resolve" that issue given its holding that the statute clearly supports Plaintiffs. JA.22 n.10.

disaster supplements, USDA.Br.38-40, saying its approach here "deliberately mirrored its topping-off approach" there, USDA.Br.41, again without recognizing the separate "emergency allotments" provided in disaster scenarios that do *not* act as mere top offs. That is the height of unreasonable inconsistency. USDA also pins its "income loss" argument on one floor statement from one Representative about one general goal of the FFCRA that does not refer at all to Section 2302(a)(1), USDA.Br.38, again highlighting the baselessness of USDA's position. And it is unreasonable to conclude that Congress meant to exclude the poorest nearly 40% of Pennsylvania SNAP recipients from *any* emergency relief without saying so (especially given USDA's admission that they are "among those hardest-hit" by the pandemic, USDA.Br.39 n.11).

USDA's interpretation is "plainly unreasonable in light of the plain language of the statute." *Pinho v. Gonzales*, 432 F.3d 193, 207 (3d Cir. 2005). Thus, even if there were any ambiguity in the statute and *Chevron* applied (neither is true), deference to USDA's position is unwarranted.

Finally, USDA fares no better in seeking *Skidmore*-style deference. USDA.Br.40-42 (invoking *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944)). Agency guidance is "entitled to respect" under *Skidmore* "only to the extent that those interpretations have the power to persuade." *Christensen*, 529 U.S. at 587. The "most important" considerations in this inquiry are consistency with other agency

pronouncements and the reasonableness of the agency's interpretation. *See Hagans*, 694 F.3d at 304. For the same reasons USDA's arguments regarding interpretation of Section 2302 are unpersuasive, USDA's guidance is not entitled to respect under *Skidmore*. *See Christensen*, 529 U.S. at 587.

II. Plaintiffs Will Suffer Irreparable Harm Without A Preliminary Injunction.

This second factor requires a showing of likely irreparable harm absent the preliminary injunction. *Acierno*, 40 F.3d at 653. "[T]o show irreparable harm a plaintiff must demonstrate potential harm which cannot be redressed by a legal or an equitable remedy following a trial." *Id.* Mandatory injunctions like this one are appropriate when the status quo "is exactly what will inflict the irreparable injury." *Hernandez*, 872 F.3d at 999. This Court reviews the district court's factual finding as to likelihood of irreparable harm for clear error. *Novartis Consumer Health, Inc. v. Johnson & Johnson-Merck Consumer Pharm. Co.*, 290 F.3d 578, 595 (3d Cir. 2002) (whether party "would likely suffer irreparable harm if a preliminary injunction did not issue … [is] reviewed for clear error").

Plaintiffs and other SNAP recipients like them clearly are "likely to suffer irreparable injury." Here, absent the preliminary injunction, the poorest nearly 40% of SNAP participants in Pennsylvania *certainly* will go without *any* emergency allotments to assist with temporary food needs during this case. That "easily qualifies as irreparable" harm to all those participants. JA.36.

The case for irreparable harm is overwhelming, and USDA does not even challenge the lower court's finding, let alone show clear error. *See* JA.34-36. Indeed, USDA does not dispute the fact found by the district court that, as a result of their pandemic-caused food needs, Plaintiffs and other SNAP participants like them "have had to go without food." JA.35 (citing declarations, including: "Because of the pandemic, I cannot buy all the food I need for proper nutrition. I sometimes don't have enough food, and skip meals." And: Increased food prices "make[] it even harder for my son and me to eat nutritious food on our SNAP benefit."). Nor does USDA deny the legal point that going without food is an irreparable harm. *See, e.g.*, *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970) (denying subsistence benefits to eligible individuals denies them "the very means by which to live"); *Haskins v. Stanton*, 794 F.2d 1273, 1276-77 (7th Cir. 1986) ("the deprivation of food is extremely serious and is quite likely to impose lingering, if not irreversible, hardships"); *Maldonado v. Houstoun*, 177 F.R.D. 311, 333 (E.D. Pa. 1997) ("[A] reduction in subsistence benefits constitutes irreparable harm to persons on the margin of subsistence."). "Going without food is an irreparable harm," as it causes "psychological and physical distress" that "back payments cannot erase." *D.C. v. USDA*, 444 F. Supp. 3d 1, 43 (D.D.C. 2020) (citations omitted); *see Abreu v. Callahan*, 971 F. Supp. 799, 821 (S.D.N.Y. 1997) (denial of SSI benefits and food

stamps "almost universally has been regarded as irreparable injury because welfare recipients depend upon them … to sustain life").

Rather, USDA dismissively ignores these serious, tangible, and immediate harms to impacted SNAP beneficiaries, boldly asserting that they "will continue to receive" regular allotments which supposedly are "sufficient to cover a family's monthly dietary needs." USDA.Br.46. But that just assumes the merits of USDA's argument, and ignores the district court's finding (and Congress's judgment in creating emergency allotments) that "regular SNAP allotments do not put the same amount of food on the table during these extraordinary times" and that emergency allotments are needed "to address [the poorest SNAP participants'] temporary food needs resulting from the COVID-19 crisis." JA.36.

USDA never denies that missing meals or being denied needed food benefits causes harm that is "irreparable"—the word never even appears in USDA's one-paragraph argument about Plaintiffs' harms. USDA.Br.46-47. Instead, USDA assumes that "Congress has seen fit to adopt and maintain" *USDA's* interpretation of the statute, so the harm to Plaintiffs is not contrary to Congress's design. *Id.* So too, USDA attempts to distinguish some of the cases the district court relied on by asserting they involved the total denial of "essential benefits" that Congress had created. USDA.Br.46. Of course, Plaintiffs and the putative class members *have* been entirely deprived of the "essential benefit" of emergency allotments during the

pandemic—making Section 2302(a)(1) a nullity for nearly 40% of Pennsylvania SNAP households. And USDA doesn't disagree. It just thinks those benefits aren't statutorily required: again, assuming the merits of the case and refusing to engage on the irreparable harm question.

Given that it is conceded that Plaintiffs have missed meals (and will continue to do so absent the injunction) as a result of no emergency allotments, and given that missing meals is an undisputed irreparable harm, Plaintiffs are not merely likely to suffer irreparable harm. It is a conceded certainty that they will. That harm more than supports the mandatory injunction and causes the "sliding scale" to strongly support an injunction even were this Court not entirely convinced on the likelihood-of-success question. *Reilly*, 858 F.3d at 178.

III. The Balance of Equities and the Public Interest Support the Preliminary Injunction.

Balance of equities and public interest are considered together here, *Nken v. Holder*, 556 U.S. 418, 435 (2009), and they are reviewed for clear error, *Novartis*, 290 F.3d at 595, 597.

The district court correctly held these factors strongly favor the preliminary injunction. JA.37-38. Indeed, providing emergency food assistance to the most needy Pennsylvanians during this continuing unprecedented food crisis as commanded by Congress clearly supports the public interest. *See, e.g.*, *Goldberg*, 397 U.S. at 265 (The "uninterrupted provision" of "[p]ublic assistance" is not "mere

charity, but a means to 'promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity.'"); *Kathleen S. v. Dep't of Pub. Welfare of Com.*, 10 F. Supp. 2d 476, 481 (E.D. Pa. 1998) ("It is clearly in the interest of the public to enforce the mandate of Congress" to provide mandated services without "delay."). Affirming the preliminary injunction will assuredly "advance social welfare by ensuring that low-income SNAP households receive assistance necessary to meet the[ir families'] basic and essential food needs … during this once-in-a-generation public health crisis." JA.38 (noting that the FNA establishes that raising nutrition levels "promote[s] the general welfare," so enforcing USDA's SNAP obligations necessarily promotes the public interest).

The district court also noted that USDA never even argued below that the "injunction is against the public interest." *Id.* Nor could it—as the public and Congress have a clear interest in the issuance of emergency benefits to combat the acute food crisis sweeping the nation. Indeed, the money at issue here would not be diverted away from any other congressional purpose. Congress clearly wanted to provide additional aid to SNAP recipients, and the $82 million per month will come out of the SNAP fund to assist the poorest of poor SNAP households in Pennsylvania.

Rather than dispute any of the above, USDA musters only two meager arguments for why it thinks other interests outweigh the obvious interests in

ameliorating the overwhelming and acute food needs caused by COVID-19. Neither of USDA's arguments shows any harm to the public or the USDA that will result from the preliminary injunction, however, let alone harm that outweighs the irreparable harm Plaintiffs and others like them will suffer without the injunction.

First, USDA bemoans that the Pennsylvania-specific preliminary injunction places Pennsylvania SNAP households in a "privileged position vis-à-vis other States" and undermines "the important interest of uniformity in administration of a federal program." USDA.Br.44-45; *see* USDA.Br.4. The case USDA cites for the argument that a state-specific injunction by definition harms the public interest does not support it. *See D.C.*, 444 F. Supp. 3d at 52. The relevant discussion does not come in the "balance of equities and public interest" section of that case, but rather appears only when the court is considering the proper remedy; and that court concluded a nationwide injunction was appropriate for several reasons, including nationwide consistency. *Id.* The court imposed a nationwide injunction *over the objections of USDA*, which argued the injunction should *not* apply nationwide. *Id.* Indeed, in this case, USDA specifically requested the preliminary injunction "be limited to Pennsylvania." JA.236-237.

USDA's about-face argument here that state-specific injunctions are not permitted, if accepted, would perversely incentivize (if not always require) nationwide injunctions when enjoining the government. That result is contrary to

USDA's arguments in this case and other cases, and contrary to this Court's case law. *See Wilson v. HHS*, 796 F.2d 36, 43 (3d Cir. 1986) (faulting court for not limiting preliminary injunction to class members' home state), *vacated on other grounds*, 482 U.S. 923.

The limited nature of this injunction causes no harm to the USDA or the public—as proven by the fact that USDA claims it is already administering the Pennsylvania-specific injunction and has pointed to no uniformity-related harms. *See Al Otro Lado v. Wolf*, 952 F.3d 999, 1007 (9th Cir. 2020) ("the best evidence of harms likely to occur because of the injunction [is] evidence of harms that did occur because of the injunction" while in effect). And the limited nature of the injunction also means that SNAP funds will *not* be quickly depleted as a result of the injunction, contrary to USDA's other unpersuasive argument.

Second, USDA argues that providing emergency allotments to the poorest Pennsylvania SNAP households will "accelerate the consumption" of SNAP funds "to the detriment of other SNAP households." USDA.Br.43-44. USDA notes that it has approved $82 million in additional emergency allotments for October under the injunction and that Congress has not yet appropriated any funding for emergency allotments for this fiscal year (having appropriated $57 billion for general SNAP benefits). *Id.* According to USDA, the "added strain" from the injunction "will

virtually ensure a budgetary shortfall in the near future absent congressional intervention." USDA.Br.44.

This argument is as unpersuasive as it is speculative. As the district court recognized below—and USDA has never disputed—SNAP benefits have always been fully funded by Congress and there is no reason to believe that Congress would not step up to appropriate additional funds for emergency allotments if USDA asks them to do so. Indeed, before USDA is even *permitted* to reduce benefits to SNAP participants due to budgetary shortfall, USDA is required to alert Congress so it can appropriate more funds, JA.8-9; 7 U.S.C. § 2027(c)-(d)—another fact USDA troublingly omits in its brief. USDA has presented *no evidence* that it has notified Congress of its additional needs and been denied, and history reveals that USDA has *never* had "to implement an across-the-board allotment reduction because Congress declined or was unable to provide supplemental appropriations." JA.9 n.3. "[R]egardless of the political party controlling the White House and Congress, regardless of economic conditions, and regardless of the relative popularity of [SNAP], Congress, USDA, and the President [historically] have worked together to prevent allotment reductions." *Id.* (citing JA.265-266); *see* JA.37. In light of the fact that USDA has yet to request more funds from Congress and Congress has never turned down such a request, USDA's "dire speculation" about any budgetary shortfall was aptly described by the lower court as "a straw man argument resting

on a dubious premise." JA.20 n.8; *see In re Revel AC, Inc.*, 802 F.3d 58, 575 (3d Cir. 2015) ("counsel's hollow representations of harm" cannot substitute for "record evidence").

In any event, USDA's budgetary arguments are wrong on their own terms. USDA provides no reason to think that paying an additional $82 million per month to the poorest SNAP participants in Pennsylvania during this case (which has already seen summary judgment briefing below, Dist. Ct. Dkts. 52, 61) will cause any budgetary shortfall. USDA never argues that it cannot finance $82 million (just 0.14% of USDA's current SNAP appropriation) per month during the pendency of this case without reducing benefits to other SNAP households.

Implicitly recognizing that it will *not* suffer any budgetary shortfall as a result of the preliminary injunction, USDA shifts to hypothesizing that *if* every State were to request the maximum amount of emergency allotments possible for "*all* SNAP-eligible families nationwide" (which not even Pennsylvania has done) *and* every State were to successfully pursue its own litigation against USDA, *then* SNAP funds would be depleted over the course of several months. USDA.Br.44-45. Such unsupported speculation does not show any likely (or even plausible) harm to the public during the pendency of this case.

Thus, USDA is left with the mere proposition that "protection of the public fisc is a matter [of public] interest." USDA.Br.45. But the case it relies on merely

permitted the Department of Labor to recover admittedly misused grant funds, and did not involve any injunction or stay request. *See Brock v. Pierce Cty.*, 476 U.S. 253, 262 (1986). Moreover, the public fisc's general importance is "clearly outweighed by the public interest in providing immediate assistance to low-income SNAP households that would otherwise be eligible for relief but have not received much needed emergency allotments." JA.37 (citing *Wilson v. Heckler*, 622 F. Supp. 649, 655 (D.N.J. 1985) ("Faced with such a conflict between financial concerns and preventable human suffering, we have little difficulty concluding that the balance of hardships tips decidedly in plaintiffs' favor."); *Blanco v. Anderson*, 39 F.3d 969, 973 (9th Cir. 1994) (concluding lack of resources cannot excuse failing to provide the plaintiffs food benefits to which they are statutorily entitled)).

USDA never even addresses that logic and ignores that the public has a legitimate interest in providing assistance to poor SNAP households—just as it has an important interest in all the COVID-19 relief Congress has provided, even if it does cost the public fisc $2.6 trillion and counting. JA.257.

CONCLUSION

For these reasons, the Court should affirm the preliminary injunction.

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Respectfully submitted,

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CERTIFICATE OF BAR MEMBERSHIP, COMPLIANCE WITH TYPE-VOLUME LIMITATION AND TYPEFACE REQUIREMENTS, AND VIRUS CHECK

I, David B. Salmons, counsel for Appellees Latoya Gilliam and Kayla McCrobie, certify, pursuant to Local Appellate Rule 28.3(d), that I am a member in good standing of the Bar of this Court. I further certify, pursuant to Federal Rules of Appellate Procedure 32(a)(5)-(7), and Local Appellate Rules 31.1(c) and 32.1(c), that the foregoing Brief of Appellees is proportionately spaced and has a typeface of 14-point Times New Roman, contains 12,965 words, and that the text of the electronic brief is identical to the text of the paper copies. I further certify, pursuant to Local Appellate Rule 31.1(c), that McAfee Endpoint Security did not detect a virus.

Dated: December 1, 2020

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CERTIFICATE OF SERVICE

I, David B. Salmons, counsel for Appellees Latoya Gilliam and Kayla McCrobie, certify that on December 1, 2020, I electronically filed the foregoing Brief of Appellees Latoya Gilliam and Kayla McCrobie with the Clerk of the Court for the United States Court of Appeals for the Third Circuit using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the Court's CM/ECF system.

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