No. 20-3152

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

LATOYA GILLIAM and KAYLA MCCROBIE,
on behalf of themselves and all others similarly situated,

Plaintiffs-Appellees,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE
and GEORGE ERVIN "SONNY" PERDUE III,
in his official capacity as Secretary of Agriculture,

Defendants-Appellants.

ON REVIEW OF AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA (HON. JOHN MILTON YOUNGE), GRANTING PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION IN CASE NO. 2:20-CV-03504

APPELLANTS' OPENING BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases: **Page(s)**

Statutes:

Regulations:

Legislative Materials:

Other Authorities:

INTRODUCTION

This appeal arises from a preliminary injunction that has already required the U.S. Department of Agriculture (USDA) to direct tens of millions of dollars from a limited congressional appropriation to Pennsylvania—at the expense of every other State. In response to the economic fallout of the COVID-19 pandemic, Congress directed USDA to provide "emergency allotments" of Supplemental Nutrition Assistance Program (SNAP) benefits "to address temporary food needs not greater than the applicable maximum monthly allotment for the household size." USDA complied by raising every SNAP beneficiary up to the maximum monthly allotment—*i.e.*, no longer diminishing benefits based on household income, in recognition of the fact that the pandemic has caused widespread income loss and administrative difficulties in verifying income changes. Congress then asked USDA for a cost estimate and, in a companion bill enacted nine days later, appropriated an amount sufficient to cover the cost of implementing the Department's approach for six months.

Plaintiffs are Pennsylvania SNAP beneficiaries who did not receive emergency allotments because they were already collecting the maximum monthly allotment permitted by statute—meaning that their regular monthly benefits were not reduced by their household income. They assert that, by authorizing emergency allotments to address "temporary food needs not greater than the applicable maximum monthly allotment," Congress actually meant to *double* the applicable maximum monthly allotment for every SNAP household, including those whose presumed food needs

were already covered in full (without any household-income contribution) before the pandemic. Their theory mirrors claims raised in an earlier suit in the Northern District of California, where the district court denied preliminary equitable relief, and the Ninth Circuit denied an injunction pending appeal. Here, however, the district court issued a preliminary injunction requiring USDA to approve applications from the State of Pennsylvania in accordance with Plaintiffs' reading of the statute. JA.3-42. That injunction already has forced USDA to pay an additional $82 million to Pennsylvania in October alone, with similar outlays anticipated in the coming months.

The injunction is premised on fundamental error. No one suggests that Congress has increased the maximum allotment permitted by statute or reassessed the cost of feeding a family, as defined in the "thrifty food plan" provision—in other words, Congress has not revised its determination as to the food needs of American households. Thus, recipients of the maximum monthly allotment—whose benefits pay for the cost of the thrifty food plan without any income offset—have seen no change in their presumed food needs, which were already covered in full pre-pandemic. By contrast, beneficiaries who were previously covering a portion of their household's food needs on their own may now have "temporary food needs" up to the full cost of feeding their families because they have lost income from economic shutdowns and can no longer contribute the share they did beforehand. It was this disruption that Congress targeted by instructing the Secretary of Agriculture "to address temporary food needs not greater than the applicable maximum monthly allotment."

Plaintiffs' position, meanwhile, violates interpretive canons, departs from USDA practice in other disasters, and puts taxpayers on the hook for potentially billions of dollars more than Congress appropriated. At minimum, their reading is not so clearly correct as to overcome the deference to which the Secretary's reasonable interpretation is entitled. Accordingly, this Court should vacate the preliminary injunction.

STATEMENT OF JURISDICTION

The district court granted Plaintiffs' motion for a preliminary injunction on September 11, 2020. JA.3-42.[1] USDA filed a timely notice of appeal on October 21, 2020. JA.1-2. This Court has jurisdiction under 28 U.S.C. § 1292(a)(1).

STATEMENT OF THE ISSUES

1. Whether, by directing USDA to "address temporary food needs not greater than the applicable maximum monthly allotment," Congress meant to apply the statutory maximum to the full monthly allotment received by SNAP households (as USDA understood) or, instead, meant to authorize payments to SNAP households of up to twice the applicable maximum monthly allotment (as Plaintiffs contend). See JA.225-231.

2. Whether USDA's understanding of this directive—as providing flexibility to boost every SNAP household's monthly benefit up to the applicable maximum monthly allotment without regard to household income, which may prove inconsistent

[1] "JA" denotes the joint appendix; "DE" denotes a district court docket entry; "AD" denotes an appellate docket entry.

and impractical to report and verify during the pandemic—was at minimum a permissible interpretation of ambiguous statutory language. See JA.231-232.

3. Whether the district court erred in granting a preliminary injunction that has unsettled the uniform administration of a nationwide federal benefits program before any court has reached a plenary determination of the merits. See JA.234-236.

STATEMENT OF RELATED CASES

Aside from USDA's motion for a stay of the preliminary injunction pending appeal, AD.4, this case has not previously been before this Court.

Parallel litigation raising materially identical claims is pending in the Northern District of California and the Ninth Circuit. See *Hall* v. *USDA*, No. 4:20-cv-3454 (N.D. Cal.); *Hall* v. *USDA*, No. 20-16232 (9th Cir.); *infra* pp. 9-10. The district court in that case denied a preliminary injunction and is currently considering fully briefed and argued cross-motions for summary judgment. The Ninth Circuit declined to enter an injunction pending appeal and is currently considering a fully briefed and argued appeal of the district court's denial of a preliminary injunction.

STATEMENT OF THE CASE

I. Statutory and Regulatory Framework

A. The Supplemental Nutrition Assistance Program

1. In the Food and Nutrition Act of 2008 (FNA), Congress established a "supplemental nutrition assistance program" that allows "low-income households to obtain a more nutritious diet through normal channels of trade by increasing food

purchasing power." 7 U.S.C. § 2011. The FNA directed the Secretary to "formulate and administer" this program, known as "SNAP." *Id.* § 2013(a).

SNAP is a State-administered federal program wherein designated State agencies request monthly "allotments" for all eligible households in their State. 7 U.S.C. § 2013(a). Households that receive SNAP allotments then use these funds to purchase food at approved retailers. The FNA limits the value of the monthly allotment to the cost of the "thrifty food plan," minus 30% of the household's income. *Id.* § 2017(a). The "thrifty food plan" is defined as the cost required to feed a family of four (with adjustments for household size) and serves as the basis for the "maximum monthly allotment." *Id.* § 2012(u). If households have little or no income, they may receive the full "maximum monthly allotment" (or the total cost to feed a family of their size for one month under the statute) without being responsible for the 30% net-income offset. Households with higher (but still qualifying) levels of income receive diminished benefits. See 7 C.F.R. § 273.10(e)(2)(ii)(C).

2. The FNA also allows the Secretary to "establish temporary emergency standards of eligibility" in disaster-response situations that are separate from the usual eligibility standards set forth under the FNA. 7 U.S.C. § 2014(h)(1). These temporary standards may last "for the duration of the emergency" for all "households who are victims of a disaster" if they "are in need of temporary food assistance[.]" *Ibid.* Under this authority, USDA has created a benefit program called "Disaster Supplemental Nutrition Assistance" (or "D-SNAP"), which is targeted toward households that were

not participating in SNAP before the disaster. Households eligible under the temporary D-SNAP emergency standards are entitled to the maximum monthly allotment, without any adjustment based on income. See USDA, *D-SNAP FY2020 Income Eligibility Standards*, https://perma.cc/2TQL-E9JZ. For households that were already receiving SNAP benefits pre-disaster, USDA offers "supplements" that increase the total value of their monthly benefit up to the maximum monthly allotment for their household size, without the usual adjustment for income. USDA, *Disaster SNAP Guidance* 35 (July 2014), https://perma.cc/5BQS-ZQVX. USDA provides these supplements because "the food needs of SNAP households are already known and the impact of additional disaster-related expenses will weigh heavily on this low-income population." *Ibid.* Households that were already receiving the maximum monthly allotment in SNAP benefits before the disaster do not qualify for disaster-related supplements. *Ibid.*

3. The FNA limits the overall value of nationwide SNAP disbursements "to an amount not in excess of the appropriation for such fiscal year." 7 U.S.C. § 2027(b). If the Secretary "finds that the requirements of participating States will exceed the appropriation," the Secretary must direct States to reduce SNAP allotments as necessary to stay within the bounds of appropriated funds for that year. *Ibid.*

B. The COVID-19 Response Acts and the USDA Guidance

1. In response to the COVID-19 pandemic, Congress enacted the Families First Coronavirus Response Act ("Families First Act") on March 18, 2020. Pub. L. No. 116-127, 134 Stat. 177. As relevant here, Section 2302(a)(1) of the Families First Act

mandated that, "in the event of a [federal] public health emergency declaration" and "the issuance of a[] . . . disaster declaration by a State," the Secretary

> shall provide, at the request of a State agency . . . , for emergency allotments to households participating in the supplemental nutrition assistance program under the Food and Nutrition Act of 2008 to address temporary food needs not greater than the applicable maximum monthly allotment for the household size[.]

134 Stat. at 188. The Act appropriated no funds for these emergency allotments.

2. Two days after the Families First Act was signed into law, USDA issued guidance to the States in the form of a request template. JA.425-429 ("Initial Guidance"). The Initial Guidance made clear that States could request "emergency allotment[s] to address temporary food needs to households to bring all households up to the maximum benefit due to pandemic[-]related economic conditions." JA.427.

3. While preparing the next installment of COVID-19 relief legislation, congressional staff from the House and Senate Appropriations Committees reached out to the Office of Management and Budget (OMB) for an estimate of the cost of administering Section 2302's emergency allotments. JA.290 ¶ 12. USDA estimated that its approach (*i.e.*, raising all SNAP households up to the maximum monthly allotment for their household size) would cost $2 billion in emergency allotments per month, for a six-month total of $12 billion; and that other overages in SNAP reliance would impose an additional $2.5 billion in costs over the same period, for total pandemic-related

SNAP outlays of $14.5 billion through the end of the fiscal year.[2] JA.284. This information about USDA's approach "was sent directly via email to staff members of the House and Senate Appropriations Committees on March 19, 2020." JA.292 ¶ 2.

4. Eight days later, Congress enacted the Coronavirus Aid, Relief, and Economic Security ("CARES") Act, Pub. L. No. 116-136, 134 Stat. 281 (March 27, 2020). The CARES Act appropriated $15.8 billion for SNAP, of which $15.5 billion—just over the $14.5 billion USDA had estimated—was to "be allocated as the Secretary deems necessary . . . to prevent, prepare for, and respond to coronavirus." *Id.* § 6002.

5. On April 21, 2020, USDA issued updated guidance, JA.420-424 ("Guidance"), reiterating to State administering agencies that "[a] household's [emergency allotment] cannot increase the current monthly household SNAP benefit allotment beyond the applicable maximum monthly allotment for the household size," JA.423. Accordingly, the Guidance concluded that "SNAP households that already receive the maximum monthly allotment for their household size are not eligible for [emergency allotments]." *Ibid.*

II. Pennsylvania's Requests for Emergency Allotments

Pennsylvania initially sought emergency allotments for all SNAP beneficiaries (including those already receiving the maximum monthly allotment) in the amount of

[2] USDA also determined that, if it were instead to provide each SNAP household with a separate emergency allotment equal to the maximum monthly allotment for its household size, SNAP would disburse an extra $6.5-7 billion per month, totaling around $40 billion over the same six-month period. JA.291 ¶ 17.

50% of the thrifty food plan for their household size. See JA.56 ¶ 33. However, following issuance of the Initial Guidance, the State submitted a new request consistent with USDA's construction of Section 2302(a)(1). JA.61 ¶ 53. USDA approved this application, "allowing [Pennsylvania] to issue emergency allotments to bring all SNAP households up to the maximum allotment amount." JA.61-62 ¶¶ 53-54.

III. Procedural History

A. The *Hall* Litigation

1. On May 21, 2020, a group of SNAP beneficiaries filed a complaint in the Northern District of California, alleging that USDA's Guidance was inconsistent with Section 2302. See *Hall* v. *USDA*, No. 20-cv-03454 (N.D. Cal.). The *Hall* plaintiffs sought a preliminary injunction compelling USDA to approve California's requests for emergency allotments to SNAP households that were already receiving the maximum monthly allotment permitted by statute.

2. The district court denied the preliminary-injunction motion. *Hall* v. *USDA*, 2020 WL 3268539, at *1 (N.D. Cal. June 17, 2020).

The court noted at the outset that, because "Plaintiffs seek a mandatory rather than prohibitory injunction," they shoulder "a heavy burden of establishing that [it] is warranted, since mandatory injunctions are 'particularly disfavored.'" *Hall*, 2020 WL 3268539, at *5. The court determined that the plaintiffs failed to meet that burden because, while their "facial reading of Section 2302 has some persuasive force," the court could not "find the statute unambiguous on its face." *Id.* at *6. The court pointed

to the fact that Section 2302 "references SNAP's 'maximum monthly allotment,' but does not explicitly raise this maximum[,] [n]or does it alter the 'thrifty food plan' on which this statutory maximum is based," despite the fact that the "the thrifty food plan—and the maximum monthly allotment—is assumed by definition to constitute the total cost needed to feed a household for a month." *Ibid.*

The court's textual analysis was buttressed by "subsequent legislation and legislative actions" as well—and, specifically, Congress's appropriation in the CARES Act of an amount consistent with USDA's approach. *Hall*, 2020 WL 3268539, at *7. "By contrast," the *Hall* court noted, "providing emergency allotments equivalent to the maximum monthly allotment for all SNAP households . . . would cost an additional $6.7 to $7 billion per month, and would quickly outpace SNAP's appropriated funds." *Ibid.*

3. The Ninth Circuit subsequently denied the *Hall* plaintiffs' motion for an injunction pending appeal. *Hall* v. *USDA*, No. 20-16232, Dkt. No. 14 (9th Cir. July 7, 2020). Their appeal of the order denying a preliminary injunction remains pending.

B. Proceedings Below

1. One month after the district court denied a preliminary injunction in *Hall*, Plaintiffs in this case filed a complaint raising materially identical claims in the Eastern District of Pennsylvania. See JA.47-77. Plaintiffs sought a preliminary injunction enjoining USDA from relying on its reading of Section 2302(a)(1) and compelling the Department to approve future requests from Pennsylvania for emergency allotments above the statutory cap. JA.78-118.

2. On September 11, 2020, the district court granted Plaintiffs' motion for a preliminary injunction. JA.3-42. At the outset, the court framed USDA's position as an "implementation of Section 2302(a)(1) [that] would deny any emergency allotments to approximately 40 percent of—and the poorest among—Pennsylvania's SNAP households." JA.4. The district court purported to apply the *Chevron* two-step analysis and concluded "that Section 2302(a)(1) and Congress's intent in enacting this provision are unambiguous" and thus no deference to the agency's interpretation was warranted. JA.22-23. That intent, in the court's view, was to provide supplemental emergency allotments for *all* SNAP households, including those already receiving the maximum monthly allotment. JA.27-30.[3]

After finding for Plaintiffs on the remaining injunctive-relief factors, JA.34-38, the court preliminarily enjoined USDA "from implementing, or denying such requested emergency allotments based upon, their unlawful guidance provisions, most recently updated as of April 21, 2020," and directed the Department to "approve or deny such requests in accordance with the statutory directive of Section 2302(a)(1) as construed by this Court in the Memorandum issued concurrently herewith," JA.41.

3. On September 22, Pennsylvania submitted a revised request for expanded emergency allotments extending back to March. Specifically, Pennsylvania sought (1) a disbursement for October in the amount of 50% of the thrifty food plan for all

[3] The district court acknowledged the contrary determination in *Hall* in a footnote but did not engage its reasoning. JA.27 n.11.

Pennsylvania SNAP households, including those already receiving the maximum monthly allotment; and (2) a special issuance of 50% of the thrifty food plan for each month going back to March, to be distributed to Pennsylvania households that were excluded from the earlier emergency-allotment approvals. JA.350 ¶¶ 12-14.

4. On October 2, USDA moved for (1) clarification as to whether the preliminary injunction mandated the type of retroactive relief that Pennsylvania was seeking and (2) a stay of the injunction pending appeal to this Court. JA.333-346. On October 21, the district court clarified that its order encompassed only prospective relief, JA.43-44, but declined to stay the injunction, *ibid.*; JA.45-46. USDA then disbursed to Pennsylvania additional emergency allotments in the amount of $82,106,090 for the month of October. AD.6:1. This Court denied USDA's motion for a stay pending appeal but expedited appellate proceedings. AD.12.

STANDARD OF REVIEW

To obtain preliminary equitable relief, the moving party must show "both a likelihood of success on the merits and a probability of irreparable harm. Additionally, the district court should consider the effect of the issuance of a preliminary injunction on other interested persons and the public interest." *Bradley* v. *Pittsburgh Bd. of Educ.*, 910 F.2d 1172, 1175 (3d Cir. 1990). "A party seeking a mandatory preliminary injunction that will alter the status quo bears a particularly heavy burden in demonstrating its necessity." *Acierno* v. *New Castle Cty.*, 40 F.3d 645, 653 (3d Cir. 1994). On appeal, this Court reviews whether, in applying the mandatory-injunction test, "the

[district] court abused its discretion, committed an obvious error of law, or made a serious mistake in considering the proof." *Ass'n of New Jersey Rifle & Pistol Clubs Inc.* v. *Attorney Gen. New Jersey*, 974 F.3d 237, 245 (3d Cir. 2020).

SUMMARY OF ARGUMENT

I. By addressing "temporary food needs not greater than the applicable maximum monthly allotment" while leaving unchanged the maximum monthly allotment and the "thrifty food plan" upon which it is based, Congress plainly intended to apply—but not raise, and certainly not double—a familiar cap on SNAP benefits. USDA's interpretation is thus the only reading that rationally situates Section 2302(a)(1) both within its immediate context in the Families First Act and within the broader statutory framework governing SNAP. USDA's interpretation likewise aligns with its operation of SNAP in every other disaster setting, which Congress implicitly endorsed by using formulations in the section of the Families First Act authorizing emergency allotments that are identical to those in the section of the FNA authorizing disaster allotments. Were there any remaining doubt, Congress obviated it by soliciting a cost estimate from USDA and appropriating funding consistent with its approach—at a level far below what Plaintiffs' reading would entail. Plaintiffs' assertion that Congress instead intended to double the cap on monthly benefits for all SNAP households through an ancillary provision authorizing "SNAP [f]lexibilities" is untenable.

II. Even if this Court were to conclude that the statutory language is ambiguous, USDA's application of its Guidance in adjudicating State requests for

emergency allotments was at the very least premised on a reasonable interpretation within the Department's delegated authority and expertise. USDA's longstanding interpretation of similar authority in disaster settings reinforces its approach here. And the Secretary's determination that Congress intended the Families First Act to address sudden diminutions in household financial resources (rather than systemic food-supply disruptions) is a permissible reading that supports the Department's position.

III. Finally, even if Plaintiffs could demonstrate a likelihood of success on the merits, the balance of equities alone forecloses injunctive relief. USDA's approach preserves both the fiscal solvency and nationwide uniformity of a massive federal program until and unless its Guidance is set aside following a full adjudication on the merits. Plaintiffs, meanwhile, will continue to receive the maximum monthly allotment absent the injunction—as do SNAP beneficiaries in every other State—and Congress has assessed that benefit as the amount necessary to cover a household's food needs.

ARGUMENT

In October 2020, Pennsylvania received $82,106,090 in emergency SNAP allotments above its lawful entitlement. AD.6:1. Over 400,000 households in the State received total SNAP benefits that were at least 50% greater than the maximum monthly allotment based on the thrifty food plan, which Congress has established—and, in the COVID-19 response acts, left unchanged—as "the cost of . . . the diet required to feed a family" for one month. 7 U.S.C. § 2012(u). These enhanced benefits flowed to Pennsylvania—alone—from the common pool of SNAP funding that Congress

appropriated to cover uniform allotments to beneficiaries nationwide for the entire fiscal year. This inequitable situation is the result of the district court's injunction, which rests on an interpretation of Section 2302(a)(1) that ignores Congress's drafting choices, the surrounding provisions of the Families First Act, the companion appropriation enacted nine days later, the background statutory and regulatory framework governing SNAP, and the Secretary's reasonable reading. This Court should vacate the injunction.

I. The USDA Guidance Is Faithful to the Text, Context, and History of the Emergency Allotments Provision.

In confronting "question[s] of statutory construction[,] . . . [the Court] begin[s] by analyzing the statutory language, 'assum[ing] that the ordinary meaning of that language accurately expresses the legislative purpose.'" *Hardt* v. *Reliance Standard Life Ins. Co.*, 560 U.S. 242, 251 (2010); see also *In re Alberto*, 823 F.2d 712, 719 (3d Cir. 1987) ("In interpreting a federal statute, [this Court's] task is to ascertain congressional intent."). This Court "must enforce plain and unambiguous statutory language according to its terms," *Hardt*, 560 U.S. at 251, but where the text alone does not resolve the dispute, the Court "must turn to other canons of interpretation," *Green* v. *Brennan*, 136 S. Ct. 1769, 1776 (2016); see also *Gundy* v. *United States*, 139 S. Ct. 2116, 2126 (2019) (plurality) ("[S]tatutory interpretation" is "a 'holistic endeavor' which determines meaning by looking not to isolated words, but to text in context, along with purpose and history."). Here, every relevant interpretive tool supports USDA's interpretation and forecloses Plaintiffs'.

A. The Statutory Text Clearly Supports USDA's Interpretation.

Section 2302(a)(1) directs the Secretary to "provide . . . emergency allotments to households participating in the supplemental nutrition assistance program under the [FNA] to address temporary food needs not greater than the applicable maximum monthly allotment for the household size[.]" Ordinary grammar dictates that the limiting phrase—"not greater than the applicable maximum monthly allotment"—modifies its nearest antecedent: "temporary food needs." And because the maximum monthly allotment is, by statutory definition, the amount required to meet a household's monthly food needs, it follows that an allotment bringing a household up to the monthly maximum necessarily will "address" those needs. That reading is consistent with Congress's decision to leave untouched the maximum-monthly-allotment and thrifty-food-plan provisions, and with the evident purpose of the COVID-19 response statutes to target sudden income loss occasioned by pandemic-related shutdowns.

1. Pursuant to the Doctrine of the Last Antecedent, the "Applicable Maximum Monthly Allotment" Cap Modifies "Temporary Food Needs."

The district court apparently understood the phrase "not greater than the applicable maximum monthly allotment" in Section 2302(a)(1) as applying to "emergency allotments," capping each of those special benefits at the full maximum monthly amount. See JA.26. Although that limiting language is grammatically capable of being read to modify either "temporary food needs" (which immediately precedes it) or "emergency allotments" (earlier in the provision), any ambiguity is resolved by the

"the 'doctrine of last antecedent,' [which] teaches that qualifying . . . clauses are to be applied to the words or phrase immediately preceding and are not to be construed as extending to and including others more remote." *J.C. Penney Life Ins. Co.* v. *Pilosi*, 393 F.3d 356, 365 (3d Cir. 2004).[4] Here, the last antecedent is "temporary food needs," so it is those needs that can be "not greater than the applicable maximum monthly allotment for the household size." 134 Stat. at 188.

The district court did not address the last-antecedent doctrine in its opinion granting a preliminary injunction. Plaintiffs have not disputed that the last-antecedent doctrine would require that the phrase "not greater than the applicable maximum monthly allotment" be read to modify "temporary food needs" rather than "emergency allotments," but they have asserted that the Court should disregard that canon in this case because it would "strain[] grammar and common sense." AD.11:12. That is incorrect. The last-antecedent doctrine *is* a rule of grammar; indeed, had Congress intended the cap to operate as Plaintiffs posit, it could simply have placed the limiting phrase immediately after "emergency allotments." Instead, the last-antecedent doctrine makes clear that Congress sought to address "temporary food needs not greater than the applicable maximum monthly allotment for the household size," and Plaintiffs offer no reasoned basis for dispensing with that canon here. See *Industrial Union Dep't, AFL-*

[4] The last-antecedent doctrine is reinforced where, as here, there is no comma between the limiting phrase and the immediately preceding language. See *Resolution Tr. Corp.* v. *Nernberg*, 3 F.3d 62, 65 (3d Cir. 1993).

CIO v. *American Petroleum Inst.*, 448 U.S. 607, 712 (1980) (Marshall, J., dissenting) (A court is not free to simply "ignore[] applicable canons of construction . . . because it finds their existence inconvenient.").

2. Congress Has Not Revisited the "Thrifty Food Plan" or "Maximum Monthly Allotment" Amounts that Define the Upper Bound on SNAP Households' "Food Needs."

The Secretary's plain-text interpretation of Section 2302(a)(1) comports with the rest of the statutory edifice undergirding SNAP benefits, which Congress—tellingly—left unchanged.

In the normal course, a SNAP beneficiary's food need—what the beneficiary *needs* (but cannot afford on her own) to provide sufficient *food* for herself and her family—is the cost of the "thrifty food plan" reduced by 30% of the household's net income. 7 U.S.C. § 2017(a); see also *id.* § 2012(u) (defining "thrifty food plan" as "the diet required to feed a family of four persons," subject to adjustments for, *inter alia*, "household size"). That amount, in turn, "shall be the basis for uniform allotments," which the same section elsewhere defines to "mean[] the total value of benefits a household is authorized to receive during each month." Thus, the "maximum monthly allotment" available to SNAP households with $0 in "net monthly income" covers the full cost of the thrifty food plan (adjusted for household size). USDA, *SNAP Eligibility Frequently Asked Questions: "How Much Could I Receive in SNAP Benefits?"* (Aug. 14, 2019), https://www.fns.usda.gov/snap/recipient/eligibility ("Because SNAP households are expected to spend about 30 percent of their own resources on food, your allotment is

calculated by multiplying your household's net monthly income by 0.3, and subtracting the result from the maximum monthly allotment for your household size.").

It is undisputed that the Families First Act did not revise the definition of "thrifty food plan" or expand the "monthly maximum allotment" based on it. Thus, both before and after enactment of that statute, a SNAP household that qualifies for the maximum monthly allotment had a statutorily presumed permanent food need equaling the entire cost of the thrifty food plan. By contrast, a SNAP household that was expected to shoulder some of its own food expenses before the pandemic had a *permanent* food need amounting to the cost of the thrifty food plan minus 30% of net household income. But the latter household may newly experience a *temporary* food need covering the entire cost of the thrifty food plan in the event that pandemic-related economic conditions have caused that household's net monthly income to evaporate. The "emergency allotments" disbursed pursuant to the USDA Guidance make up the difference between the latter household's permanent food need and its temporary food need—in other words, however much it takes to bring that household up to the maximum monthly allotment.

Ultimately, Plaintiffs' argument amounts to a claim that Congress should have revisited its determination as to the cost of providing adequate food in light of systemic food-supply-related difficulties occasioned by the COVID-19 pandemic. They averred below, for example, that "prices . . . have gone up since the pandemic" and that "food pantry . . . sources . . . have dried up." JA.35. But those complaints concern "the diet

required to feed a family" and "[t]he cost of such diet," including "current food prices" and "consumption patterns"—all of which are components of the "thrifty food plan" definition *that Congress left untouched*. 7 U.S.C. § 2012(u). Indeed, in recognition of many of the market pressures that Plaintiffs here posit, USDA recently announced "a more than 5% increase in the cost of the Thrifty Food Plan," which is "more than double the 20-year annual average increase" and will cause "SNAP participants' maximum monthly benefit allotment [to] be at the highest level in the history of the program." USDA, *SNAP Benefits to Increase in Fiscal Year 2021* (July 29, 2020), https://www.fns.usda.gov/news-item/fns-001020. But, importantly, USDA implemented that increase in the normal course of reassessing the sufficiency of the thrifty food plan—demonstrating that the standard mechanisms of the FNA are adequate to ascertain and remediate the supply-side challenges that Plaintiffs point to, and suggesting that Congress, in the Families First Act, meant to empower the Secretary to address a different problem—sudden and potentially unreportable collapses in household income—that could not be effectively remediated through the routine adjustment of the thrifty-food-plan amount. See 7 U.S.C. § 2012(u)(4) (directing the Secretary to, "each October 1[,] . . . adjust the cost of the [thrifty food plan] to reflect the cost of the diet in the preceding June").

Had Congress intended Section 2302(a)(1) to provide an across-the-board augmentation to address systemic food-supply-related difficulties, it could simply have increased either the "thrifty food plan" amount or the "maximum monthly allotment" based on it—as Congress has done explicitly in other circumstances. See American

Recovery and Reinvestment Act of 2009 ("Recovery Act"), Pub. L. No. 111-5, § 101(1), 123 Stat. 115, 120 (providing that SNAP benefits should be temporarily calculated using 113.6% of the thrifty food plan).[5] Instead, as the *Hall* court noted, Congress "reference[d]" these familiar statutory terms but "d[id] not explicitly raise" their amounts. 2020 WL 3268539, at *6. Congress's determination to leave fixed the statutory contours of the thrifty food plan and the maximum monthly allotment conclusively demonstrates that Section 2302(a)(1) was not intended to further supplement SNAP households that already receive those benefits in full.

Plaintiffs' alternative reading would require this Court to disregard the static statutory definition of "thrifty food plan" and instead read the emergency allotments provision in isolation as a new, freestanding benefit untethered from Congress's assessment of American households' food needs—in effect, to "treat these [allotments] as islands unto themselves," *Graham Cty. Soil & Water Conservation Dist.* v. *United States ex rel. Wilson*, 559 U.S. 280, 289-290 (2010), entirely divorced from the rest of the statutory framework governing SNAP. But as the Supreme Court has instructed,

[5] Alternatively, Congress could have directed the Secretary to undertake a pandemic-specific review in which he "re-evaluate[d] and publish[ed] the market baskets of the thrifty food plan based on current food prices, food composition data, consumption patterns, and dietary guidance," as he must do "[b]y 2022 and at 5-year intervals thereafter" anyway. 7 U.S.C. § 2012(u). That Congress neither increased the allotments based on the thrifty food plan (as it did in the Recovery Act) nor directed the Secretary to "re-evaluate" the adequacy of the thrifty food plan confirms that the Families First Act was not intended to reassess food costs but instead to mitigate sudden diminutions in household financial resources.

"[c]ourts have a 'duty to construe statutes, not isolated provisions.'" *Id.* at 290. This obligation is especially pronounced in cases involving complex regulatory schemes, such as that underlying SNAP, where this Court "should not confine itself to examining a particular statutory provision in isolation," but must instead "interpret the statute as a symmetrical and coherent regulatory scheme, and fit, if possible, all parts into an harmonious whole." *Thorpe* v. *Borough of Thorpe*, 770 F.3d 255, 263 (3d Cir. 2014) (cleaned up). In light of the entirety of the SNAP statutory framework—including those portions of the FNA that Congress referenced in Section 2302(a)(1) without amending—the USDA Guidance best effectuates the text by "provid[ing]" "emergency allotments" to SNAP households in order to address "temporary food needs" that are "not greater than the maximum monthly allotment for the household size."

3. The Surrounding Provisions Make Clear that Congress's Concern Was Assisting SNAP Households Experiencing Sudden Changes in Reportable Income.

Even if Plaintiffs' "interpretation of [Section 2302(a)(1)] might be plausible were [this Court] to interpret that provision in isolation, . . . it simply is not tenable in light of the . . . surrounding provisions" of the Families First Act. *Gade* v. *National Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 99 (1992) (plurality); see also *ibid.* ("We must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law."); cf. *Florida Dep't of Revenue* v. *Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 47 (2008) ("[S]tatutory titles and section headings are tools available for the resolution of a doubt about the meaning of a statute." (quotation marks omitted)).

In Section 2302—entitled "Additional SNAP Flexibilities in a Public Health Emergency"—the Families First Act empowered the Secretary to do two things "in the event of a [federal] public health emergency declaration . . . based on an outbreak of coronavirus disease 2019 (COVID-19) and the issuance of an emergency or disaster declaration by a State based on an outbreak of COVID-19":

> (1) [to] 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 [*the emergency allotments provision*];
>
> and
>
> (2) [to] adjust, at the request of State agencies or by guidance in consultation with one or more State agencies, issuance methods and application and reporting requirements under the [FNA] to be consistent with what is practicable under actual conditions in affected areas.
> [*the logistical adjustments provision*]

134 Stat. at 188. In making the latter adjustment, the Secretary was instructed to "consider the availability of offices and personnel in State agencies, any conditions that make reliance on electronic benefit transfer systems described in . . . [the FNA] impracticable, any disruptions of transportation and communication facilities, and any health considerations that warrant alternative approaches." *Ibid.*

While the parties dispute the meaning of the first of these two authorizations, the second evinces a clear aim: permitting operational contingencies in recognition of the pandemic's "disrupti[ve]" impact on "State agencies" that handle the logistics of verifying eligibility and disbursing benefits. Congress thus expressly anticipated that

pandemic-related disruption would render, *inter alia*, the standard "application and reporting requirements under the [FNA]" no longer "practicable under actual conditions in affected areas." Consequently, the Families First Act conferred "[f]lexibilities" on the Secretary to "adjust" such requirements as necessary following federal and State "emergency or disaster declaration[s]," reflecting Congress's recognition that State agencies charged with administering SNAP would likely lack otherwise-required information about SNAP households—such as income changes affecting their benefit entitlement—for the duration of the public-health emergency.

By contrast to its evident determination that the preexisting "methods" and "requirements" of SNAP would be rendered "impracticable" by pandemic-related logistical "disruptions," nowhere in either provision did Congress express or imply Plaintiffs' view that the preexisting "maximum monthly allotment" would be rendered insufficient by pandemic-related food-supply disruptions. To the contrary (and as discussed above), Congress *invoked* that cap without amending it. And—again unlike the logistical adjustments provision—the emergency allotments provision does not tether the ongoing applicability of standard SNAP strictures, such as the maximum monthly allotment, to the Secretary's assessment of "actual conditions in affected areas." Simply put, it beggars belief that Congress chose to address procedural disruptions expressly—but to double SNAP's financial exposure *sub silentio*. USDA's interpretation thus gives effect to the differences between the logistical adjustments provision and the emergency allotments provision it follows.

USDA's interpretation likewise gives effect to the shared aim of the two provisions, and specifically to Congress's stated objective of authorizing "[a]dditional SNAP [f]lexibilities"—rather than an across-the-board increase in benefits—during the pandemic. Cf. Recovery Act, 123 Stat. at 120 (enacting the across-the-board boost in SNAP benefits under the heading "Temporary *Increase in Benefits* Under the Supplemental Nutrition Assistance Program" (emphasis added)). Read together, the two authorizations in Section 2302 of the Families First Act envision a world in which pandemic-related shutdowns have caused households to experience "temporary food needs" beyond those they are expected to shoulder based on their pre-pandemic financial resources; the beneficiaries are, in turn, unable to communicate changes in household income and resulting needs to "State agencies" due to shutdown-related "disruptions of transportation and communication facilities"; and USDA is thus given "[f]lexibilit[y]" to waive certain "application and reporting requirements" for the duration of the public-health emergency and to apportion "emergency allotments" that bring each beneficiary up to "the maximum monthly allotment for the household size" so that newly indigent SNAP households do not suffer from the Department's inability to verify their sudden income loss.

Thus, USDA's interpretation best harmonizes the dual flexibilities that Congress imparted in the Families First Act and reflects "an understanding of the statute as a symmetrical and coherent regulatory scheme" that "fit[s] . . . all parts into an harmonious whole." *Thorpe*, 770 F.3d at 263.

B. Consistent Agency Practice, of Which Congress Is Presumed to Be Aware When Legislating, Supports USDA's Interpretation.

The USDA Guidance likewise comports with how the Department has consistently administered SNAP in previous disaster settings.

1. For years, USDA has made clear that, in exigent circumstances, it will bring all SNAP households up to the "maximum monthly allotment," or the total cost to feed that household, regardless of whether beneficiaries could otherwise make an income contribution. See USDA, *Disaster SNAP Guidance* 35 (July 2014), https://perma.cc/5BQS-ZQVX. This policy explicitly accounts for the disaster's financial effects on household resources—specifically, "reduction or termination of income, or a delay in receipt of income during the benefit period due to the disaster"; "[i]naccessible liquid resources (*e.g.*, banks are closed due to the disaster) during the benefit period"; and "[o]ut of pocket disaster-related expenses" such as "damage to or destruction of the household's home or self-employment business"—but does not mention increased food costs, diminished food options, or any other food-supply-related difficulties. *Id.* at 12. Accordingly, 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, without any pre-disaster personal-income contribution. *Id.* at 35. Though under normal circumstances SNAP households experiencing a drop in income may be eligible to apply for and receive a higher monthly allotment in due

course, supplemental disaster allotments allow households affected by a disaster to receive aid quickly rather than going through the income-verification and documentation processes otherwise required, see 7 C.F.R. § 273.2(f), which may be difficult to accomplish in times of disaster—or pandemic—when access to State services is limited.

2. Congress enacted Section 2302(a)(1) against this regulatory backdrop, and the Secretary reasonably interpreted that provision to authorize emergency allotments in a pandemic consistently with supplemental allotments in a disaster. If Congress had intended for USDA to respond to this pandemic differently than it does during other emergencies, it could have said so explicitly—*e.g.*, by quantitatively increasing the maximum allotment via formula, as Congress did in the Recovery Act, see *supra* pp. 20-21. That Congress instead entrusted assessment of "temporary food needs" to USDA reflects its expectation that the Department will operate these emergency allotments in the same way it has long operated disaster-response benefits under the FNA. Cf. *Mejia-Castanon* v. *Attorney Gen. of the United States of Am.*, 931 F.3d 224, 235 (3d Cir. 2019) (courts generally "presume[] Congress is aware of an administrative interpretation of a statute and that it adopts that interpretation when it reenacts the statute in materially similar language").

Contextualizing the emergency allotments provision within USDA's general disaster-response framework thus confirms the correctness of the Secretary's interpretation. By allowing households with extremely limited or no income to receive

the benefits equal to the full cost of feeding their family members, Congress's scheme already addressed those households' permanent need for SNAP benefits. The emergency allotments provision, by contrast, exists to ensure that all SNAP households are receiving sufficient benefits to meet their food needs, regardless of any income changes due to COVID-19-related economic disruption and without the need to meet income-verification requirements or access State benefits offices during the pandemic. Treating all beneficiaries as if they may temporarily need the full cost of the thrifty food plan during the pandemic reflects the same logic as treating all beneficiaries as if they may temporarily need the full cost of the thrifty food plan during a disaster, and Plaintiffs point to nothing in the text or legislative history evidencing Congress's intent that USDA depart from this longstanding approach.

3. Interpreting Section 2302(a)(1) in light of that regulatory backdrop is not inappropriate simply because the Families First Act is a new statute rather than a "reenact[ment]" of the FNA. *Mejia-Castanon*, 931 F.3d at 235. Much of the operative language that Congress used—*e.g.*, "temporary food needs"—is not new at all. In fact, prior to the Families First Act, the term "temporary food needs" appeared only once in Title 7: in Section 2014(h)(1), the FNA provision under which the Secretary established the programs for D-SNAP and supplemental allotments during disasters. See 7 U.S.C. § 2014(h)(1) (authorizing the Secretary to "establish temporary emergency standards of eligibility for the duration of the emergency for households who are victims of a disaster" once "commercial channels" are again "available to meet the temporary food

needs of such households").[6] That Congress opted to "import" the same language of "an existing statutory provision" whose "meaning" had been "settled" by consistent agency interpretation strongly indicates Congress's expectation that USDA would respond to this pandemic in the same manner that it has responded to previous disasters.[7] *Merrill Lynch, Pierce, Fenner & Smith Inc.* v. *Dabit*, 547 U.S. 71, 85 (2006) (Congress's "repetition of the same language in a new statute indicates, as a general

[6] Congress's recognition in Section 2014(h)(1) that "temporary food needs" can be effectively remediated by extra SNAP allotments only after "commercial channels of food distribution have again become available" further undermines Plaintiffs' overarching argument that pandemic-related disruptions to the food supply are themselves the "temporary food needs" that Congress intended to address in Section 2302(a)(1). In short, Congress targeted a demand-side problem (loss of household income) rather than a supply-side problem (systemic disruptions to the food supply).

[7] Congress's intent that USDA's response to COVID-19 mirror its response to other disasters is further evidenced by the remainder of Section 2302 of the Families First Act, which—in language taken almost verbatim from the emergency contingencies codified in 7 U.S.C. § 2014—affords the Secretary leeway to make logistical adjustments in SNAP operations in light of "what is practicable under actual conditions." Compare Families First Act § 2302(a)(2) ("[The Secretary] may adjust . . . issuance methods and application and reporting requirements under the [FNA] to be consistent with what is practicable under actual conditions in affected areas. (In making this adjustment, the Secretary shall consider the availability of offices and personnel in State agencies, any conditions that make reliance on electronic benefit transfer systems described in section 7(h) of the [FNA] impracticable, [and] any disruptions of transportation and communication facilities . . . .)"), with 7 U.S.C. § 2014(h)(3)(B) ("The Secretary shall adjust issuance methods and reporting and other application requirements to be consistent with what is practicable under actual conditions in the affected area. In making this adjustment, the Secretary shall consider the availability of the State agency's offices and personnel, any conditions that make reliance on electronic benefit transfer systems described in section 2016(h) of this title impracticable, and any damage to or disruption of transportation and communication facilities.").

matter, the intent to incorporate" the "broad construction [of that language] adopted by both this Court and the [agency]" in construing previous statutes).

C. Congress Confirmed USDA's Interpretation of Section 2302(a)(1) by Appropriating Funding Consistent with USDA's Approach in the Companion Bill Enacted Nine Days Later.

1. The emergency-allotments program was functionally enacted in two pieces of legislation over a ten-day window in March 2020. First, Congress enacted Section 2302(a)(1) in the Families First Act, which became law on March 18, 2020. Then, Congress funded Section 2302(a)(1)'s allotments in the CARES Act, which became law on March 27, 2020.

Between those two enactments, staff from the House and Senate Appropriations Committees sent requests to OMB to estimate the cost of providing the emergency allotments authorized by Section 2302(a)(1). In response to these requests, USDA estimated that providing emergency allotments consistently with the Secretary's approach—*i.e.*, raising all SNAP households to the maximum monthly allotment, but providing no emergency allotments to SNAP beneficiaries already receiving the maximum monthly allotment—would cost an additional $2 billion per month over preexisting SNAP liabilities. See JA.288-290 ¶¶ 5, 12, 15.

Congress then appropriated roughly $15.8 billion for SNAP in Section 6002 of the CARES Act, of which $15.5 billion—just over the $14.5 billion that USDA had estimated—was to "be allocated as the Secretary deems necessary to support participation should cost or participation exceed budget estimates to prevent, prepare

for, and respond to coronavirus." 134 Stat. at 508; see also 166 Cong. Rec. S1927 (daily ed. Mar. 23, 2020) (remarks of Sen. Hoeven) ("The bill also includes an additional $15.5 billion for the SNAP program—for the Supplemental Nutrition Assistance Program, for food stamps—to provide nutrition assistance for those affected by this economic downturn."). Consistent with USDA's cost projections (plus a small buffer "should cost or participation exceed budget estimates," 134 Stat. at 508), that appropriation allowed the Department to provide emergency allotments bringing all SNAP households up to the monthly cap for the next six months—through the end of the 2020 fiscal year. JA.290-291 ¶¶ 12, 16.

2. Notwithstanding this substantial evidence of congressional intent, the district court found "zero indication that members of Congress reviewed and considered this e-mail correspondence . . . and that such correspondence directly informed the $15.81 billion appropriations amount." JA.11 n.5. But even if the underlying legislative *history* is not dispositive, comparisons between these two pieces of enacted *legislation* certainly carry interpretive weight.

Not only was the CARES Act enacted by the same Congress that had enacted the Families First Act, but the later legislation was a necessary companion effort to the earlier act because, as Plaintiffs have acknowledged, the Families First Act was "appropriation-less." AD.11:13. As the Supreme Court has repeatedly and recently held, a "companion statute" later enacted by "[t]he same Congress" can be a useful guidepost for determining that Congress's intent in the earlier-enacted legislation. See

Wisconsin Cent. Ltd. v. *United States*, 138 S. Ct. 2067, 2071-2072 (2018) ("The same Congress that enacted the Railroad Retirement Tax Act [later] enacted a companion statute, the Federal Insurance Contributions Act (FICA), to fund social security pensions for employees in other industries . . . . [P]resumption[s] [drawn from comparing statutory schemes] must bear particular strength when the same Congress passed both statutes to handle much the same task."). Here, Congress's appropriation of an amount consistent with USDA's interpretation just days after the Department published its Initial Guidance indicates that Congress implicitly ratified the Secretary's approach to implementing its earlier enactment in the Families First Act.

At minimum, Congress could not have reasonably contemplated the kind of outlays that Plaintiffs' reading entails. As the *Hall* court correctly determined, "providing emergency allotments equivalent to the maximum monthly allotment for all SNAP households, as Plaintiffs contend is possible under their interpretation, would cost an additional $6.7 to $7 billion per month, and would quickly outpace SNAP's appropriated funds." 2020 WL 3268539, at *7. Had Congress endorsed Plaintiffs' proposal, it would certainly have provided appropriations of a magnitude sufficient to support that outcome. In the absence of such an appropriation, Plaintiffs' reading "would thwart the purpose of the overall statutory scheme," *In re Magic Restaurants, Inc.*, 205 F.3d 108, 116 (3d Cir. 2000), because doubling the cap on SNAP benefits would have depleted Congress's $15.8-billion appropriation well before the end of the last fiscal year. Thus—even setting aside the iterative process between Congress, OMB,

and USDA, attested to in USDA's declarations below—Plaintiffs' understanding of congressional intent cannot be squared with the complementary statutes that Congress actually enacted. See *POM Wonderful LLC* v. *Coca-Cola Co.*, 573 U.S. 102, 115 (2014) ("When two statutes complement each other, it would show disregard for the congressional design to hold that Congress nonetheless intended one federal statute to preclude the operation of the other.").[8]

D. Plaintiffs' Reading Rests on the Insupportable Premise that Congress Created an Open-Ended, Multibillion-Dollar Extension of SNAP Outlays Without Saying So Clearly.

Congress does not make enormous changes to regulatory schemes in "vague terms or ancillary provisions," nor would it hide the "elephant[]" of doubling the financial exposure of a massive federal benefits program—to the tune of tens of billions of dollars—in the "mousehole[]" of a stopgap measure addressing "temporary food needs." *Whitman* v. *American Trucking Ass'ns*, 531 U.S. 457, 468 (2001). The last time Congress directed USDA to issue SNAP payments in excess of the full cost of the

[8] A "mere failure to appropriate does not repeal or discharge an obligation to pay," *Maine Cmty. Health Options* v. *United States*, 140 S. Ct. 1308, 1324 (2020), nor may Congress "abrogat[e] or suspen[d]" such an obligation by "subsequent enactments [that] merely appropriated a less amount" than was necessary to meet its earlier promises, *United States* v. *Langston*, 118 U.S. 389, 394 (1886); accord *United States* v. *Vulte*, 233 U.S. 509, 515 (1914) (repeal of a federal obligation requires "something more than the mere omission to appropriate a sufficient sum"). But neither party argues that the CARES Act impliedly repealed any part of the emergency allotments provision enacted in the Families First Act. To the contrary, USDA's interpretation treated the "two statutes [as] capable of co-existence" and "regard[ed] each as effective," *Maine Cmty. Health Options*, 140 S. Ct. at 1323, with the successor bill offering confirmation of Congress's intent for how the predecessor provision would operate.

thrifty food plan, it was pellucid in that aim: the Recovery Act described the authorization as a "Temporary Increase in Benefits" and spelled out that "the value of benefits . . . shall be calculated using 113.6 percent of the June 2008 value of the thrifty food plan." 123 Stat. at 120. Here, by contrast, Plaintiffs suggest that Congress enacted a much *greater* expansion of federal outlays—permitting payments up to 200% of the thrifty-food-plan amount, potentially totaling several *billion* dollars each month—under the inconspicuous guise of providing "[a]dditional SNAP [f]lexibilities" without adjusting or amending the benefits cap.[9] Even if it were not foreclosed by interpretive canons, consistent agency practice, and the corresponding appropriation, that reading would strain credulity.

II. At Minimum, the USDA Guidance Represents a Permissible Interpretation Within the Agency's Area of Expertise.

As discussed above, the text, structure, context, and history of SNAP in general and Section 2302(a)(1) in particular confirm that USDA's interpretation "give[s] effect to the unambiguously expressed intent of Congress." *Chevron, U.S.A., Inc.* v. *Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984). However, to the extent this Court determines that the statutory text is "ambiguous with respect to the specific issue" of the upper

[9] Indeed, in floor remarks shortly after the enactment of the Families First Act, Speaker Pelosi noted that Congress was not able to agree on an across-the-board increase in SNAP payments in its COVID-19 response legislation. See 166 Cong. Rec. H1848 (daily ed. Mar. 27, 2020) ("One thing we couldn't get in the bill was the increase, the 15 percent increase, in food stamps for our children, for our seniors, for those who qualify, bigger direct payments.").

bound on temporary food needs, USDA's interpretation is at the very least a "permissible construction" of Congress's directive and "must be given controlling weight" under *Chevron*. *Fair Hous. Rights Ctr. in Se. Pennsylvania* v. *Post Goldtex GP, LLC*, 823 F.3d 209, 215 (3d Cir. 2016) (cleaned up).[10]

A. USDA's Adjudication of State Requests for Emergency Allotments Is the Type of Authoritative Agency Interpretation that Warrants Judicial Deference.

The Supreme Court has "justified [agency] deference on the premise that a statutory ambiguity represents an 'implicit' delegation to an agency to interpret a 'statute which it administers,'" *Epic Sys. Corp.* v. *Lewis*, 138 S. Ct. 1612, 1629 (2018), and this Court "will not disturb an agency's settled, authoritative interpretation of a statute it is charged with implementing unless that interpretation is plainly unreasonable in light of the plain language of the statute taken as a whole," *Pinho* v. *Gonzales*, 432 F.3d 193, 207 (3d Cir. 2005). USDA has been charged with administering SNAP since the program's inception and routinely renders interpretations of provisions governing the availability and administration of SNAP benefits. See, *e.g.*, Supplemental Nutrition Assistance Program Eligibility, Certification, and Employment and Training Provisions of the Food, Conservation and Energy Act of 2008, 84 Fed. Reg. 4677 (Feb. 19, 2019)

[10] As noted above, the district court purported to apply the *Chevron* framework but, upon concluding that "the intent of Congress [was] clear," did not extend any deference to USDA's interpretation. JA.22-23.

(amending process for accessing SNAP benefits in drug- and alcohol-treatment centers and group-living arrangements).

It is undisputed that USDA's Guidance represents the Department's authoritative interpretation of Section 2302(a)(1). In that provision, Congress expressly envisioned that the Secretary would promulgate "guidance" setting out the bounds of appropriate State requests under the emergency allotments provision. See Families First Act § 2302(a)(1), 134 Stat. at 188 (authorizing the Secretary to "determine[] . . . through guidance" what constitutes "sufficient data . . . supporting [a State] request[] for emergency allotments . . ."); cf. *United States* v. *Mead Corp.*, 533 U.S. 218, 229 (2001) ("We have recognized a very good indicator of delegation meriting *Chevron* treatment in express congressional authorizations to engage in the process of rulemaking or adjudication that produces regulations or rulings for which deference is claimed."). The Secretary did so in the form of a template request form, which advises that "[a] household's [emergency allotment] cannot increase the current monthly household SNAP benefit allotment beyond 'the applicable maximum monthly allotment for the household size.'" JA.423. And the Secretary has properly applied that Guidance in adjudicating State requests for emergency allotments.

Indeed, the genesis of this litigation confirms that the USDA Guidance embodies the Secretary's authoritative interpretation of the emergency allotments provision. As the district court noted, "USDA issued a blanket denial of all state waiver requests, including Pennsylvania's original request, that 'seek to adjust SNAP eligibility

requirements by: . . . [p]roviding emergency allotments that exceed the maximum benefit for a household's size,'" in violation of its Guidance. JA.15 (quoting USDA, *SNAP—Mass Denial of Certain Requests to Adjust SNAP Regulations* (Apr. 10, 2020), https://fns-prod.azureedge.net/sites/default/files/resource-files/SNAP-COVID19-Multiple-Adjustment-Denials.pdf). Under this Court's caselaw, USDA's denial of benefits to Pennsylvania (and the other applicant States) in reliance on its Guidance may be "afforded *Chevron* deference as it gives ambiguous statutory terms concrete meaning through a process of case-by-case adjudication." *Castillo* v. *Attorney Gen. U.S.*, 729 F.3d 296, 302 (3d Cir. 2013) (cleaned up). And the Supreme Court has "accorded *Chevron* deference not only to agency regulations, but to authoritative agency positions set forth in a variety of other formats," including informal adjudications, agency letters, and no-action notices. *Christensen* v. *Harris Cty.*, 529 U.S. 576, 590 (2000) (Scalia, J., concurring) (cataloguing examples).

B. The Secretary's Interpretation Is Reasonable and Therefore Controls Under *Chevron*.

Under principles of agency deference, this Court "may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency." *Chevron*, 467 U.S. at 844. Factors bearing on the "reasonableness" inquiry include whether the interpretation exhibits "[c]onsistency over time and across subjects," *Valdiviezo-Galdamez* v. *Attorney Gen. of U.S.*, 663 F.3d 582, 604 (3d Cir. 2011), and whether it "'represents a reasonable accommodation of

conflicting policies that were committed to the agency's care by the statute,'" *Kosak* v. *Aguirre*, 518 F.3d 210, 213 (3d Cir. 2008). As explained at length above, USDA's interpretation of the temporary food needs addressed by Section 2302(a)(1) is consistent with the Department's approach to assessing and remediating temporary food needs in every other disaster scenario in which SNAP plays a role.

And USDA's determination to adhere to its longstanding practice is entirely reasonable in these circumstances. The Families First Act evinced one overriding goal: preserving, to the extent possible, the status quo of household financial resources while vast segments of the national economy were being shut down in an effort to arrest the spread of COVID-19. Cf. 166 Cong. Rec. E321-03 (daily ed. Mar. 16, 2020) (remarks of Rep. Grivalja) (expressing support for the Families First Act's aim of "keeping our working families *financially* secure" through "*economic* relief and safeguards for families, seniors, and children" (emphases added)). That aim is reflected in the textual and contextual evidence discussed above, which uniformly indicates Congress's focus on the immediate toll of lost income due to pandemic-related shutdowns and reveals no legislative findings whatsoever related to food prices or availability.

USDA thus reasonably determined that Congress intended it to approach this scenario the same way it has when other disasters have brought local and state economies to a sudden halt: by temporarily providing every SNAP household with the full cost of the thrifty food plan for its household size without enforcing the standard 30% net-income offset. That approach rationally serves the income-stabilization aim

of the COVID-19 response legislation: SNAP beneficiaries who had no net monthly income before the pandemic have, by definition, suffered no cognizable income loss for SNAP purposes as a result of the pandemic;[11] meanwhile, a SNAP beneficiary who was previously expected to contribute a share of her monthly income to covering her household's food needs may now be experiencing "temporary food needs" up to the full cost of feeding her family (in other words, "no greater than the applicable maximum monthly allotment for [her] household size") due to pandemic-related shutdowns and economic disruption. Moreover, in light of Congress's expectation that widespread "disruptions of transportation and communication facilities" will reduce "the availability of offices and personnel in State agencies" that otherwise handle "application and reporting requirements," such as those reflecting sudden income

[11] This is not to suggest that Plaintiffs—and other indigent SNAP beneficiaries—have been spared any hardships attributable to COVID-19. As is often the case in disasters, the poorest Americans are among those hardest-hit by the public-health crisis. See Jeanna Smialek, *Poor Americans Hit Hardest by Job Losses Amid Lockdowns, Fed Says*, N.Y. Times (May 14, 2020), https://www.nytimes.com/2020/05/14/business/economy/coronavirus-jobless-unemployment.html. But "Congress has wide latitude to set spending priorities," and it "may selectively fund a program . . . it believes to be in the public interest, without at the same time funding an alternative program which seeks to deal with the problem in another way." *Nat'l Endowment for the Arts* v. *Finley*, 524 U.S. 569, 588 (1998) (quotation marks omitted). Congress's determination first to stabilize household finances for those experiencing a sudden loss of income due to pandemic-related shutdowns before turning to other remedial measures is not irrational, nor—as the *Hall* court noted, 2020 WL 3268539, at *7—does it preclude Congress from enacting broader-based benefit enhancements going forward. See, *e.g.*, Health and Economic Recovery Omnibus Emergency Solutions ("HEROES") Act, H.R. 6800, § 60606, 116th Cong. (2020) (House-passed legislation that would increase "the value of [SNAP] benefits" to "115 percent of the June 2019 value of the thrifty food plan").

changes, it may be impractical for a newly needy SNAP beneficiary to communicate her "temporary food needs"—a predictable regulatory blind spot that amply justifies a blanket topping-off approach like the one applied in other disaster scenarios.

Even if this Court determines that the USDA Guidance is not the "only"—or even the "best"—interpretation of Section 2302(a)(1), it is, at minimum, a rational application of an ambiguous statute. See *Nat'l Cable & Telecommunications Ass'n* v. *Brand X Internet Servs.*, 545 U.S. 967, 983 (2005) ("[A] court's opinion as to the best reading of an ambiguous statute an agency is charged with administering" does not preclude the agency from "choos[ing] a different construction, since the agency remains the authoritative interpreter (within the limits of reason) of such statutes."). Plaintiffs have not shown that their interpretation is the *only* permissible reading of Section 2302(a)(1), and the district court reversibly erred in so concluding.

C. Alternatively, the Secretary's Interpretation Is Entitled to Substantial Weight Under *Skidmore*.

In the event this Court concludes that the Secretary's interpretation does not warrant *Chevron* deference, it should at least apply "deference proportional to [the interpretation's] 'power to persuade'" under *Skidmore* v. *Swift & Co.*, 323 U.S. 134 (1944), because "the regulatory scheme is highly detailed, and [USDA] can bring the benefit of specialized experience to bear" on the provision of SNAP benefits in disaster settings, *Mead Corp.*, 533 U.S. at 235.

This Court treats "the *Skidmore* framework as a 'sliding-scale' test in which the level of weight afforded to an interpretation varies depending on [its] analysis of the enumerated factors." *Hagans* v. *Comm'r of Soc. Sec.*, 694 F.3d 287, 304 (3d Cir. 2012). Among those factors are the interpretation's "thoroughness, logic, and expertness, [and] its fit with prior interpretations." *Mead*, 533 U.S. at 235. This Court also has "noted that more deference is granted under *Skidmore*'s sliding scale test when the agency's interpretation is 'issued contemporaneous[ly] with a statute,'" while "[l]ess deference is afforded when an agency's interpretation is inconsistent with its prior positions." *Hagans*, 694 F.3d at 304. Ultimately, "[t]he most important considerations are whether the agency's interpretation 'is consistent and contemporaneous with other pronouncements of the agency and whether it is reasonable given the language and purpose of the Act.'" *Delaware Dep't of Nat. Res. & Envtl. Control* v. *U.S. Army Corps of Engineers*, 685 F.3d 259, 284 (3d Cir. 2012).

Each of these factors indicates that the Secretary's interpretation is entitled to substantial weight. USDA's interpretation of Section 2302(a)(1) was contemporaneous: the Department published its Initial Guidance—making clear that emergency allotments could "bring all households up to the maximum benefit" but no further—on March 20, 2020, just two days after Congress enacted the Families First Act. See *supra* p. 7. USDA's interpretation is likewise consistent with prior practice: as explained above, the Department's approach to this pandemic deliberately mirrored its topping-off approach in other disaster scenarios, when USDA uses special SNAP benefits to

raise all affected households to the maximum monthly allotment without individualized consideration of their net household income but provides no additional monthly benefit to SNAP households already at the statutory cap pre-disaster. See *supra* pp. 26-28. And USDA's interpretation was persuasively and transparently reasoned: the Initial Guidance explained the Department's understanding that emergency allotments were intended to remediate "pandemic related economic conditions" and requested information from State agencies as to the economic impact of COVID-19 on households in the State. JA.427 (inquiring whether, *inter alia*, "[s]ome or all areas of the State are containment or quarantine zones," "[b]usinesses have closed or significantly reduced their hours," and "[t]he State's residents have experienced economic impacts due to job suspensions or losses"). Thus, even if not controlling under *Chevron*, USDA's contemporaneous, consistent, and rational implementation of Section 2302(a)(1) warrants this Court's deference under *Skidmore*.

III. Even Apart from the Merits, the District Court Abused Its Discretion in Granting the Preliminary Injunction.

In addition to establishing "a likelihood of success on the merits," "[a] party seeking a preliminary injunction must [also] show . . . that it will suffer irreparable harm if the injunction is denied; . . . that granting preliminary relief will not result in even greater harm to the nonmoving party; and . . . that the public interest favors such relief." *Kos Pharm., Inc.* v. *Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004). "A party seeking a mandatory preliminary injunction that will alter the status quo bears a particularly heavy

burden in demonstrating its necessity" on the equitable factors. *Acierno*, 40 F.3d at 653. Plaintiffs have not carried that "particularly heavy burden" here.

A. The Harm to USDA and the Public Is Immediate and Substantial.

"The comparison of harm to the Government as opposed to the harm to [Plaintiffs] turns mostly on matters of public interest because these considerations 'merge when the Government is the opposing party.'" *Hope* v. *Warden York Cty. Prison*, 972 F.3d 310, 332 (3d Cir. 2020); cf. *Virginia Petroleum Jobbers Ass'n* v. *Fed. Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958) ("In litigation involving the administration of regulatory statutes designed to promote the public interest, [the equitable] factor necessarily becomes crucial. The interests of private litigants must give way to the realization of the public purposes."). The preliminary injunction has already caused (and will likely continue to cause) significant harm to USDA, the public fisc, and SNAP beneficiaries across the nation. By contrast, in the absence of the injunction, Plaintiffs—who already receive the full cost of the thrifty food plan—will miss out only on an additional allotment that Congress has not authorized.

1. If they continue to be submitted and fulfilled, Pennsylvania's requests for enhanced emergency allotments will accelerate the consumption of a limited pool of resources for SNAP benefits to the detriment of all other SNAP households. In the short time the injunction has been in effect, Pennsylvania already has requested and received over $82 million (at least an extra 50% of the maximum monthly allotment for all SNAP households statewide) in additional federal funds to benefit its citizens in a

manner disproportionate to the benefits received by citizens in every other State—and that is just for the month of October.[12] See JA.350 ¶¶ 13-14; AD6. The original $15.5-billion CARES Act appropriation has already been depleted, JA.349 ¶ 9, and Congress has not earmarked any additional funding specifically for emergency SNAP allotments. Instead, in the continuing resolution passed at the beginning of October, Congress simply continued baseline SNAP funding at the pre-pandemic FY2020 level ($57 billion for the whole fiscal year). JA.350 ¶ 16. USDA must therefore fund *both* standard SNAP benefits *and* any further emergency allotments—including those for Pennsylvania—only out of this fixed appropriation. The added strain the injunction here imposes on that appropriation will virtually ensure a budgetary shortfall in the near future absent congressional intervention—which has not been forthcoming in the eight months since the last COVID-19 relief bill. Such a shortfall would result in reduced benefits for all SNAP-eligible households—Plaintiffs' included. See *supra* p. 6.

2. Moreover, the preliminary injunction places Pennsylvania in a privileged position vis-à-vis other States: only Pennsylvanians are presently entitled to receive SNAP benefits above the monthly maximum amount set by statute. If it remains in effect, the injunction may encourage other States to seek similar relief for their own citizens, in order to prevent Pennsylvania from drawing down more than its fair share of the limited funds appropriated by Congress. If USDA were forced to provide

[12] The State's future requests could be even higher, as Plaintiffs' reading permits emergency allotments up to 100% of the value of the thrifty food plan.

emergency allotments consistent with the injunction to *all* SNAP-eligible families nationwide, it could face additional costs between $35.8 billion and $48 billion over the next three months. JA.351 ¶¶ 18, 21. Such outlays would deplete, over the course of a single quarter, nearly 70% of the appropriation intended for all SNAP households for the entire fiscal year—an outcome that is flatly irreconcilable with the public interest in SNAP's ongoing operation and solvency. See *Brock* v. *Pierce Cty.*, 476 U.S. 253, 262 (1986) ("[T]he protection of the public fisc is a matter that is of interest to every citizen.").

And even if every State does not follow Pennsylvania's lead, the court's order has already resulted in conflicting judicial determinations and a patchwork of State-specific entitlements that undermine "the important interest of uniformity in administration of a federal program," which "is particularly strong here, where Congress instructed USDA to 'establish uniform national standards' for eligibility for SNAP benefits." *District of Columbia* v. *USDA*, No. 20-cv-119, 2020 WL 1236657, at *37 (D.D.C. Mar. 13, 2020) (quoting 7 U.S.C. § 2014(b)). "Subjecting different states and the individuals within those states to different policies about who can and cannot get benefits is not only needlessly complicated, it is fundamentally unfair," *ibid.*—and directly contrary to Congress's design.

B. Plaintiffs Will Suffer No Deficiency in Meeting Their Statutorily Presumed Household Food Needs Absent the Injunction.

Finally, restoring the status quo under USDA's Guidance as to Plaintiffs' monthly SNAP benefits is not the kind of injury that outweighs the substantial budgetary and programmatic consequences occasioned by the preliminary injunction. Although SNAP benefits are undoubtedly vital to their recipients, Plaintiffs will continue to receive the maximum monthly allotment for their household size, just as SNAP households in every other State do. And in Congress's judgment, SNAP benefits equal to the statutory maximum—and, thus, paying for the thrifty food plan, adjusted for household size, with no net-income offset—are, by definition, sufficient to cover a family's monthly dietary needs. See 7 U.S.C. § 2012(u). Moreover, as noted above, USDA has recently increased the thrifty-food-plan amount by more than 5% to offset pandemic-related inflation in food prices—a measure that will further mitigate the harms Plaintiffs asserted below. See *supra* p. 20. Unlike authorities cited by the district court, JA.35,[13] this is not a case in which Plaintiffs stand to be excluded entirely from essential benefits; rather, USDA seeks only to limit Plaintiffs (and all other Pennsylvania SNAP beneficiaries) to the statutory cap that Congress has seen fit to adopt and

[13] See *Haskins* v. *Stanton*, 794 F.2d 1273, 1276 (7th Cir. 1986) (concerning "food stamp applicants whose applications are denied"); *Abreu* v. *Callahan*, 971 F. Supp. 799, 821 (S.D.N.Y. 1997) (concerning a "denial" of "eligibility for SSI benefits and food stamps"); *Garnett* v. *Zeilinger*, 313 F. Supp. 3d 147, 157 (D.D.C. 2018) ("*[W]ithout benefits*, class members are unable to obtain enough food for themselves and their families[.]" (emphasis added)).

maintain, in order to avoid a budgetary shortfall that would harm all SNAP beneficiaries in the near future. The equities favor that outcome.

CONCLUSION

For the foregoing reasons, this Court should vacate the preliminary injunction.

Respectfully submitted,

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November 17, 2020

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 11,777 words (excluding those portions exempted by Federal Rule of Appellate Procedure 32(f)), as verified by the word-count feature of Microsoft Word 2019.

2. This brief complies with the type-size and type-face requirements of Federal Rules of Appellate Procedure 32(a)(5) and (6) because it has been prepared in 14-point Garamond font.

3. This brief has been scanned for viruses with the most recent version of McAfee Endpoint Security, version 10.50, which is continuously updated, and according to that program, is free of viruses.

4. Undersigned counsel of record is a registered user with this Court's Electronic Case Filing system and an attorney for the federal government who is exempt from the Court's bar-admission requirement.

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CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2020, I caused the foregoing brief to be served upon the Filing Users identified through the United States Court of Appeals for the Third Circuit's Case Management/Electronic Case Filing system.

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