

No. 25-1473

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

UNITED STATES SPORTSMEN'S ALLIANCE
FOUNDATION, *et al.*,
Plaintiff-Appellants,

v.

CENTERS FOR DISEASE CONTROL AND PREVENTION, *et al.*,
Defendant-Appellees.

On Appeal from the United States District Court
for the Western District of Michigan
No.1:24-cv-818 (Hon. P. Maloney)

PLAINTIFF-APPELLANTS' OPENING BRIEF

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit

Case Number: 25-1473

Case Name: U.S. Sportsmen's Alliance Foundation v

Name of counsel: Michael T. Jean

Pursuant to 6th Cir. R. 26.1, U.S. Sportsmen's Alliance Foundation

Name of Party

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1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

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Pursuant to 6th Cir. R. 26.1, Frieda Krpan

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STATEMENT ON ORAL ARGUMENT

In accordance with Sixth Circuit Rule 34(a), Plaintiffs-Appellants respectfully request oral argument. This case raises important administrative law questions and oral argument will facilitate the decisionmaking process.

INTRODUCTION

In recent years, eight courts—including this Court and the Supreme Court—have told Centers for Disease Control and Prevention (“CDC”) that it was interpreting 42 U.S.C. § 264(a) too broadly, and the illustrative examples in the second sentence of the statute limit the general rulemaking authority granted in the first sentence. *Alabama Ass’n of Realtors v. Dep’t of Health & Hum. Servs.*, 594 U.S. 758, 763 (2021) (eviction moratorium); *Tiger Lily, LLC v. United States Dep’t of Hous. & Urb. Dev. (Tiger Lily I)*, 992 F.3d 518, 522 (6th Cir. 2021) (eviction moratorium); *Tiger Lily, LLC v. United States Dep’t of Hous. & Urb. Dev. (Tiger Lily II)*, 5 F.4th 666, 670 (6th Cir. 2021) (eviction moratorium); *Brown v. Sec’y, U.S. Dep’t of Health & Hum. Servs.*, 4 F.4th 1220, 1224–25 (11th Cir.), *vacated*, 20 F.4th 1385 (11th Cir. 2021); *Skyworks, Ltd. v. Centers for Disease Control & Prevention*, 524 F. Supp. 3d 745, 757–58 (N.D. Ohio), *order clarified*, 542 F. Supp. 3d 719 (N.D. Ohio 2021) (eviction moratorium) *State v. Becerra*, 544 F. Supp. 3d 1241, 1268 (M.D. Fla. 2021) (cruise ship travel restriction); *P.J.E.S. by & through Escobar Francisco v. Wolf*, 502 F. Supp. 3d 492, 512 (D.D.C. 2020) (immigration

suspension); *Health Freedom Def. Fund, Inc. v. Biden*, 599 F. Supp. 3d 1144, 1157 (M.D. Fla. 2022), *vacated as moot sub nom. Health Freedom Def. Fund v. President of United States*, 71 F.4th 888 (11th Cir. 2023) (travel mask mandate).

CDC did not get that message. Here, it promulgated a rule forbidding dogs under the age of six months and without implanted microchips from entering or re-entering the country. In doing so, it read the first two sentences of § 264(a) disjunctively, contrary to those eight courts' teachings. 89 Fed. Reg. 41726, 41737 (May 13, 2024) (The "Dog Rule"). But even worse, the statute only authorizes CDC to issue regulations that are necessary to stop the introduction of disease. The age and microchip requirements, however, are fraud-detection measures. Their purported purpose is to help determine if the dog entering the country is vaccinated for rabies and matches the accompanying vaccination paperwork. But the rule does *not* require that dogs coming from countries that CDC has determined to be rabies-free or where there is a low risk of rabies to be vaccinated for rabies. And because there is no vaccination requirement, CDC is not checking vaccination paperwork or scanning microchips to ensure that the paperwork matches the dog. This is the epitome of ultra vires rulemaking and arbitrary and capricious decisionmaking. The Court should reverse the decision below, and preliminary enjoin the enforcement of the age and microchip requirements as to low-risk and rabies-free countries.

JURISDICTIONAL STATEMENT

The district court had subject matter jurisdiction under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States as defendant), and 5 U.S.C. § 702 (review of agency action). Compl. ¶ 10, RE 1, PageID.3. Relief is sought under the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 702, 703, 706, and Fed. R. Civ. P. 65. *Id.*

The district court adopted the Magistrate Judge’s Report and Recommendation denying Plaintiffs’ motion for a preliminary injunction on April 22, 2025. RE 23, PageID.366. Plaintiffs timely filed their notice of appeal on May 15, 2025. RE 27, PageID.383. This Court has appellate jurisdiction over the district court’s denial of a preliminary injunction. 28 U.S.C. § 1292(a)(1).

ISSUES FOR REVIEW

1. Whether Plaintiffs are likely to succeed on the merits of their claim that the CDC exceeded its statutory authority in promulgating a rule prohibiting dogs under six months of age and dogs without a microchip from entering or re-entering the United States, when the age and microchip requirements are not directly attributable to any particular statutory authority, and the agency’s position is contrary to the statutes upon which they are based?

2. Whether Plaintiffs are likely to succeed on the merits of their claim that CDC acted arbitrarily and capriciously in promulgating a rule prohibiting dogs under six months of age and dogs without a microchip from entering or re-entering the country for the purpose of determining if the dog's rabies-vaccination paperwork matches the dog but, contemporaneously, does not require those same dogs to actually be vaccinated or verify the dogs' age or microchip upon entry?

3. Whether Plaintiffs have suffered irreparable harm because of CDC's unlawful action when (a) damages are not available to them, (b) damages would be difficult to calculate because the harms are intangible, and (c) Plaintiffs will go out-of-business and permanently lose customer goodwill?

4. Whether the balance of equities and public interest favors enjoining CDC's unlawful and arbitrary and capricious rule?

STATEMENT OF THE CASE

I. STATUTORY BACKGROUND.

Subchapter II, part G of the Public Health Service Act of 1944 governs quarantines and inspections. 42 U.S.C. §§ 264–272. CDC invoked its authority under this Act to promulgate the Dog Rule. 89 Fed. Reg. at 41737. It primarily relies on 42 U.S.C. § 264(a), which provides:

The Surgeon General ... is authorized to make and enforce such regulations as in his judgment are necessary to prevent the introduc-

tion, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession. For purposes of carrying out and enforcing such regulations, the Surgeon General may provide for such inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection to human beings, and other measures, as in his judgment may be necessary.¹

As noted above, eight courts have ruled the second sentence limits the authority granted to CDC under the first.

The very next section of the statute, 42 U.S.C. § 265, provides:

Whenever the Surgeon General determines that by reason of the existence of any communicable disease in a foreign country there is serious danger of the introduction of such disease into the United States, and that this danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce such persons and property is required in the interest of the public health, the Surgeon General ... shall have the power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate in order to avert such danger, and for such period of time as he may deem necessary for such purpose.

See also 42 C.F.R. § 71.63(a). Section 265 requires three predicate findings to be made before introductions can be suspended: (1) a communicable disease is present in the country of origin, (2) there is a serious danger that the communicable disease will enter the United States from that country, and (3) introductions from that country will increase the risk that the disease will be introduced into the

¹ The Surgeon General's authority has since been transferred to CDC 20 U.S.C. § 3508; 31 Fed. Reg. 8855 (June 25, 1966).

United States.

The Animal Welfare Act (“AWA”), as amended, also regulates the importation of live dogs. With the exception of importations for “research purposes” or “veterinary treatment,” “no person shall import a dog into the United States for purposes of resale unless ... the dog (A) is in good health; (B) has received all necessary vaccinations; and (C) is at least 6 months of age.” 7 U.S.C. § 2148(b); *see also id.* § 2148(a) (defining importer and resale). The AWA does not restrict “dogs imported by a person who will use the dog as a personal pet, for sport, for shows or competitions, or for breeding or semen collection.” 79 Fed. Reg. 48653, 48654 (Aug. 18, 2014).

II. REGULATORY BACKGROUND.

Federal regulations first restricted dog importations in 1956. 21 Fed. Reg. 9789 (Dec. 12, 1956). Those regulations, revised in 1985, required that all dogs entering the country be inspected, and only dogs showing “no signs of communicable disease[s]” would be admitted. 42 C.F.R. § 71.51(b)(1) (1985). Dogs appearing unhealthy could be quarantined and inspected by a veterinarian. 42 C.F.R. § 71.51(b)(2) (1985). The regulations also required a rabies vaccination certificate unless the owner demonstrated that (i) a dog under six months old had only been in a rabies-free country, (ii) a dog over six months old had only been in rabies-free countries for the last six months, or (iii) the dog was being

taken to a research facility and a vaccine would interfere with the research. 42 C.F.R. § 71.51(c)(1) (1985); 42 C.F.R. § 71.51(a) (1985) (valid rabies vaccination certificates were only issued for dogs over three months old). Dogs could also be admitted to the country regardless of the vaccination certification requirement if they were quarantined. 42 C.F.R. § 71.51(c)(2) (1985).² CDC could also impose additional restrictions or exclude dogs coming from areas that have high rates of rabies. 42 C.F.R. § 71.51(e) (1985).

Those regulations worked. The United States has been free of the dog-maintained rabies virus variant (“DMRVV”), or “dog rabies,” since 2007. 89 Fed. Reg. at 41726. Many countries achieved that much sooner. Canada, for example, has been rabies-free since the 1960s. 88 Fed. Reg. 43978, 44006 (July 10, 2023).

CDC, however, began taking additional regulatory actions in 2019. It published guidance, noting that “rabies-free” countries were countries that were free of dog rabies but not necessarily free of other rabies variants. 84 Fed. Reg. 724 (January 31, 2019). Then in 2021, it suspended the importation of dogs from high-risk rabies countries. 86 Fed. Reg. 32041 (June 16, 2021). In doing so, CDC relied on 42 C.F.R. § 71.51(e) (1985) and 42 C.F.R. § 71.63. 86 Fed. Reg. at

² This was done through CDC Form 75.37. <https://omb.report/icr/202009-0920-024/doc/105037601> (last visited June 24, 2025)

32041–42. CDC made the predicate findings required under 42 U.S.C. § 265 and 42 C.F.R. § 71.63. 86 Fed. Reg. at 32049. That temporary suspension was extended on June 1, 2022, and January 27, 2023. *See* 88 Fed. Reg. 43570, 43572 (July 10, 2023). On July 10, 2023, the suspension was extended again “through July 31, 2024.” *Id.* CDC again made the findings required under 42 U.S.C. § 265 and 42 C.F.R. § 71.63(a). *Id.* at 43580.

CDC simultaneously published the Proposed Rule with the July 10, 2023, extension. 88 Fed. Reg. 43978. The Proposed Rule contained comprehensive amendments to 42 C.F.R. § 71.51. *Id.* at 44020–44029. The Rule was finalized on May 13, 2024, and took effect on August 1, 2024. 89 Fed. Reg. 41726.

The Final Dog Rule “requires for all dog imports: a microchip, six-month minimum age requirement for admission, and importer submission of a CDC import form (*CDC Dog Import Form*).” *Id.* at 41727; 42 C.F.R. §§ 71.51(g), (v)(xiv) (2024) (microchip); 42 C.F.R. §§ 71.51(f), (v)(xiii) (2024) (age); 42 C.F.R. §§ 71.51(h), (v)(ii) (2024) (import form). CDC claimed that the age and microchip requirements were necessary to prevent the introduction of dog rabies into the United States. 89 Fed. Reg. at 41727.

CDC, however, has published further guidance on its website clarifying that it is *not* inspecting any rabies records or microchips from dogs coming from rabies-free or low-risk countries: “Starting August 1, 2024, there are no veteri-

nary documents required for dogs arriving from dog-rabies free or low-risk countries. The only form needed for these dogs is the *CDC Dog Import Form* which is completed online by the importer.”³ The form does not ask for the dog’s microchip number or any rabies-vaccination information, if the dog is coming from a rabies-free or low-risk country.⁴ The form’s instructions state that writing the dog’s name is required, but giving its *age*, sex, breed, and color are *optional*.⁵

In December 2025, through the Office of Information and Regulatory Affairs, CDC announced it is undergoing the initial steps in the rulemaking process to “propose[] revisions and clarifications to the requirements for the importation of dogs.”⁶ CDC initially intended to propose a new rule by April 2025, but no such proposal has been published in the Federal Register.

III. PLAINTIFFS’ LAWSUIT.

Plaintiffs are the U.S. Sportsmen’s Alliance Foundation (“Sportsmen’s Alliance”), George Guthrie, and Frieda Krpan. Sportsmen’s Alliance is a non-

³ <https://www.cdc.gov/importation/hcp/dog-importation/index.html> (last visited July 7, 2025); <https://www.cdc.gov/importation/dogs/rabies-free-low-risk-countries.html>. (last visited July 7, 2025).

⁴ The form is available at <https://cdc-786687.workflowcloud.com/forms/090dc543-7b2f-4538-b2c7-2919d12ecc73> (last visited on July 7, 2025).

⁵ https://www.cdc.gov/importation/dogs/dog-import-form-instructions.html#cdc_generic_section_2-dogs-coming-from-dog-rabies-free-or-low-risk-countries (last visited on July 7, 2025).

⁶ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202410&RIN=0920-AA87> (last visited July 7, 2025).

profit organization representing the hunting, fishing, and trapping communities. Declaration of Todd Adkins (“Adkins Decl.”) RE 8-2, PageID.85–86, ¶¶ 4–8. Its members hunt with and trial dogs,⁷ and it advocates on their behalf. *Id.* PageID.86–87, ¶¶ 12–18. Sportsmen’s Alliance and its members believe in responsible dog breeding. *Id.* PageID.86, ¶ 11; Wilson Decl. PageID.115, ¶ 5; Declaration of Frida Krpan (“Krpan Decl.”) RE 8-9, PageID.113, ¶ 16; Declaration of Marc Gorelnik (“Gorelnik Decl.”) RE 8-6, PageID.101 ¶¶ 14–16; Declaration of Ken Herman (“Herman Decl.”) RE 8-8, PageID.108, ¶5. The Dog Rule injures Sportsmen’s Alliance members. Adkins Decl. PageID.86, 88, ¶¶ 10, 19.

Specifically, its members will not be able to cross the border for their next hunting trip or trial with their dogs unless they are over six months old and microchipped. Declaration of Todd Boswell (“Boswell Decl.”) RE 8-3, PageID.90, ¶¶ 8–9; Declaration of Sarah Gomes (“Gomes Decl.”) RE 8-5, PageID.97, ¶¶ 8–11; Herman Decl. PageID.108, ¶ 8; Wilson Decl. PageID.116, ¶ 10; Declaration of John Dewyse (“Dewyse Decl.”) RE 8-4, PageID.93, ¶ 8. They believe microchipping is unnecessary, and veterinarians they trust have not advised it. Boswell Decl. PageID.90, ¶ 7; Dewyse Decl. PageID.93, ¶ 9. And in some instances,

⁷ Field trials are competitive events designed to evaluate a hunting dog’s skills. *See* Declaration of Terry Wilson (“Wilson Decl.”) RE 8-10, PageID.116, ¶ 8; Adkins Decl. PageID.88, ¶16

microchipping has harmed their dogs. Gomes Decl. PageID.97, ¶ 13; Adkins Decl. PageID.88, ¶ 24–26. The Dog Rule will also result in fewer individuals attending Sportsmen’s Alliance members’ events. Wilson Decl. PageID.116, ¶ 9; Herman Decl. PageID.109, ¶¶ 10–13. Sportsmen’s Alliance members will no longer acquire dogs from outside the United States because of the additional time it takes to train and socialize dogs over six months old. Declaration of George Guthrie (“Guthrie Decl.”) RE 8-7 PageID.105, ¶ 5; Adkins Decl. PageID.88, ¶¶ 22–23; Gomes Decl. PageID.96, ¶¶ 6–7; Gorelnik Decl. PageID.103, ¶ 35; Krpan Decl. PageID.112, ¶ 15. Members who are looking to acquire a unique breed from abroad will now face additional challenges. Gorelnik Decl. PageID.101, ¶¶ 18–20, 23. And the Dog Rule hinders Sportsmen’s Alliance members’ operations. Gorelnik Decl. PageID.101–102, ¶¶ 24–26 (breeding program); Herman Decl. PageID.108, ¶¶ 7–8 (holding new trials in Canada). Sportsmen’s Alliance brings this lawsuit on behalf of its members and its organizational members’ members under *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977), and *New York State Club Ass’n v. City of New York*, 487 U.S. 1, 9 (1988).

Plaintiff George Guthrie is an avid hunter and dog trialer. Guthrie Decl. PageID.105, ¶¶ 3, 7. He is always looking for new dogs, but he will not buy a dog from abroad now that he cannot get it before six months because that is too

late to begin training the dog. *Id.* PageID.105, ¶¶ 5–6. He is also the president of the Wolverine State Coon Hunters Club, which hosts trials in Michigan. *Id.* PageID.105, ¶ 7. Canadians regularly attend his events and bring about three dogs each. *Id.* PageID.105, ¶ 8. He now expects to see fewer Canadians at his events because of the Dog Rule, which will hurt his club financially and lower the prestige of his events. *Id.* PageID.106, ¶¶ 10–11.

Plaintiff Frieda Krpan and her husband have been breeding beagles in Canada since the early 1970s. Krpan Decl. PageID.111, ¶¶ 3–6. She has produced approximately 250 champion beagles. *Id.* PageID.112, ¶ 10; Dewyse Decl. PageID.93, ¶ 4. She focuses on producing quality beagles, rather than a high quantity. Krpan Decl. PageID.112, ¶ 11. Individuals have purchased her beagles and then fraudulently claimed they produced the dog from their own stock, thereby trying to increase the value of their beagles. *Id.* PageID.112, ¶ 13. The United States accounts for about 90% of her business. *Id.* PageID.113, ¶ 18. She generally sells the dogs at the 8–10-week range because that is the best time for them to be socialized into and adjust to their new environment. *Id.* PageID.112, ¶¶ 14–15. The Dog Rule has harmed her business. At the time the preliminary injunction motion was filed below, she had already cancelled 20 orders into the United States and had to sell off some of her breeding stock to account for lower future sales. *Id.* PageID.113, ¶ 19. Her successful, 50-year

business will be forced to close if the Dog Rule remains in effect. *Id.* PageID.113, ¶ 21.

On August 7, 2025, Plaintiffs filed this lawsuit under the APA seeking declaratory and injunctive relief. Compl., RE 1. Defendants are CDC; Susan Monarez, Acting Director of the CDC in her official capacity; the Department of Health and Human Services (“HHS”); and Robert F. Kennedy, Jr., Secretary of HHS in his official capacity (collectively “CDC”).⁸

Plaintiffs moved to preliminary enjoin the age and microchip requirements as applied to countries CDC has determined to be rabies-free or have a low-risk of rabies. RE 8. After briefing was completed, the motion was referred to a Magistrate Judge. The Magistrate Judge issued a Report and Recommendation denying the preliminary injunction. RE 18. Plaintiffs timely objected to the Report and Recommendation. RE 19. The district court rejected Plaintiffs’ objections and denied the preliminary injunction on April 22, 2025. RE 23. This timely appeal followed on May 15, 2025. RE 27.

SUMMARY OF THE ARGUMENT

Despite eight courts, including the Supreme Court, instructing CDC it was reading § 264(a) of the Public Health Service Act too broadly to give itself near-

⁸ Acting Director Monarez and Secretary Kennedy were automatically substituted for their predecessors. Fed. R. Civ. P. 25(d).

dictatorial power, CDC continues to do so. Here, it applied the statute overly broad when it promulgated comprehensive amendments to its rule for importing dogs and added a requirement that all dogs entering the country have an implanted microchip and be at least six months old. Even worse, it combined § 264(a) with four other sections of the Public Health Service Act when it promulgated the amendments. CDC does not know which sections of the code authorize the age and microchip requirements. It simultaneously claims that the requirements are both “inspections” under § 264(a) and bans under § 265. But those statutes authorize different actions.

CDC’s position is untenable. The age and microchip requirements are not inspections under the ordinary meaning of the word, as it has been interpreted by the courts for over a century. Nor are the age and microchip requirements authorized under § 264(a)’s catchall. That interpretation is foreclosed by multiple canons of construction. Allowing bans under the catchall would also render § 265, which authorizes partial bans like the age and microchip requirements, and the more recent amendments to the Animal Welfare Act, which comprehensively regulate dog importations for resale, completely superfluous.

The age and microchip requirements are also arbitrary and capricious. CDC asserts they are necessary to ensure that dogs entering the country are adequately vaccinated for rabies and that the rabies paperwork is valid. Specifi-

cally, the six-month requirement ensures that the dog is old enough to have been vaccinated for rabies and the vaccine has had time to take effect. It requires the dog's microchip number to be written on the rabies-vaccination paperwork and other import forms to ensure that those forms match the dog.

The problem is that there is no rabies vaccination requirement for dogs entering the country from counties that CDC has determined to be rabies-free or pose a low risk of having rabies. Further, there is no requirement that one produce any vaccination paperwork from low-risk or rabies-free countries upon entry or re-entry. On the only required form, the dogs' age is *optional*, and there is no field for the dogs' microchip number. Accordingly, there is no checking of the dogs' age or scanning its microchip to cross-reference any paperwork upon entry. The age and microchip requirements are arbitrary and capricious.

The unlawful and arbitrary age and microchip requirements have irreparably harmed Plaintiffs and their members. They have suffered intangible injuries that cannot be accurately calculated, and money damages are not available to them. Plaintiff Krpan also sells a unique beagle breed, cultivated for 50 years that has produced 250 champions. The loss of a unique product is a textbook irreparable injury.

And the public interest and balance of equities favor granting the injunction because the Supreme Court has already ruled that CDC cannot exceed its

statutory authority in the interest of public health.

STANDARD OF REVIEW

The Court “review[s] a district court’s denial of a request for a preliminary injunction for abuse of discretion.” *Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp.*, 511 F.3d 535, 540–41 (6th Cir. 2007) (citations omitted). The “‘district court’s legal conclusions’” are reviewed “‘de novo and its factual findings for clear error.’” *Id.* at 541 (citation omitted). “The district court’s determination of whether the movant is likely to succeed on the merits is a question of law and is accordingly reviewed *de novo*.” *Id.* (citation omitted).

ARGUMENT

“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (collecting authorities).

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS.

“A party ‘is not required to prove his case in full at a preliminary injunction hearing.’” *Certified Restoration Dry Cleaning Network*, 511 F.3d at 542 (citation omitted). “It is ordinarily sufficient if the plaintiff has raised questions going to

the merits so serious, substantial, difficult, and doubtful as to make them a fair ground for litigation and thus for more deliberate investigation.” *Id.* (cleaned up).

A. The Dog Rule’s age and microchip requirements are ultra vires because bans are not authorized under § 264(a), and CDC did not make the required predicate findings under § 265.

“Administrative agencies are creatures of statute. They accordingly possess only the authority that Congress has provided.” *Nat’l Fed’n of Indep. Bus. v. Dep’t of Lab., Occupational Safety & Health Admin.*, 595 U.S. 109, 117 (2022). The APA “prohibits agencies from taking action ‘in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.’” *Tenn. Hosp. Ass’n v. Azar*, 908 F.3d 1029, 1037 (6th Cir. 2018) (citing 5 U.S.C. § 706(2)(C)). “An agency’s actions must be upheld, if at all, on the basis articulated by the agency itself, and not based on appellate counsel’s post hoc rationalizations.” *Hicks v. Comm’r of Soc. Sec.*, 909 F.3d 786, 808 (6th Cir. 2018) (cleaned up).

Here, CDC took a “shotgun” approach to the rulemaking. CDC comprehensively amended the Dog Rule, relying primarily on 42 U.S.C. § 264(a) and listing 42 U.S.C. §§ 265, 268, 270, 271 as secondary sources of authority. 89 Fed. Reg. 41737. But CDC never specified which statutory authority authorized which rule amendments. And it does not know which statutes authorize the age and microchip bans. This is evident from CDC’s Response to Plaintiffs’

Objection to Report and Recommendation. RE 21. There, it claimed that the age and microchip bans are “inspections” under § 264(a) because they are not “a complete prohibition” on dogs entering the country. *Id.* PageID.334. On the very next page, however, CDC claimed “[t]he Dog Rule does [what § 265 authorizes]: it prohibits the introduction of dogs from the countries and places CDC designated—here, all dogs under six months old or lacking a microchip because of the risk of fraud to circumvent entry requirements.” *Id.* PageID.335.

The age and microchip requirements cannot be both inspections and bans under § 264(a) and § 265. Those sections “authorize different” actions. Report and Recommendation, RE 18, PageID.267; *P.J.E.S.*, 502 F. Supp. 3d at 514. Moreover, an “agency action ‘cannot be upheld unless the grounds upon which the agency acted in exercising its powers were those upon which its action can be sustained.’” *Wolverine Pipe Line Co. v. United States Dep’t of Transportation, Pipeline & Hazardous Materials Safety Admin.*, 69 F.4th 365, 376 (6th Cir. 2023) (citation omitted).

Because CDC does not know what statute it was implementing when promulgating the age and microchip requirements, those requirements cannot be upheld. The specific statutory provision does not matter, however, because the age and microchip requirements are not authorized under either §§ 264(a) or 265.

1. *The age and microchip requirements are not authorized under the first sentence of § 264(a).*

CDC continues to take the position that has been rejected by courts time and time again: the second sentence of § 264(a) is disjunctive from the first and “*also* authorizes the Secretary to promulgate and enforce a variety of public health regulations to prevent the spread of communicable diseases, including” the illustrative examples in the second sentence. 89 Fed. Reg. at 41737 (emphasis added). Because CDC took a shotgun approach to rulemaking and applied § 264(a) in a way that has been rejected, *Alabama Ass’n of Realtors*, 594 U.S. at 763, it exceeded its statutory authority.

2. *The age and microchip requirements are not “inspections” under § 264(a).*

1. Perhaps realizing that its disjunctive reading of § 264(a) was untenable, CDC took a different approach in this litigation. In its Response in Opposition to Plaintiffs’ Motion for Preliminary Injunction, CDC argued that the age and microchip requirements are “inspections,” under the second sentence of § 264(a). RE 10, PageID.122, 123, 134, 136, 139, 141, 143, 149. The Magistrate Judge’s Report and Recommendation, however, correctly notes “the rule does not specifically address inspections.” RE 18, PageID.269. Indeed, inspections are covered by a different subsection of the Rule. 42 C.F.R. § 71.51(i). This post-hac rationalization should be rejected. *Hicks*, 909 F.3d at 808.

2. Even if there was a basis to conclude the age and microchip requirements were promulgated as inspections, these requirements would still fail. The Supreme Court ruled 140 years ago that “[a] state cannot make a law designed ... to guard against disease, and to cure the sick, an inspection law, within the constitutional meaning of that word, by calling it so in the title.” *People of State of New York v. Compagnie Generale Transatlantique*, 107 U.S. 59, 63 (1883) (interpreting U.S. Const. art. I, § 10, cl. 2). That is precisely what CDC did here. Instead, “inspection” means “looking at or weighing or measuring the thing ... or applying to it at once some crucial test.” *Id.* at 62; *D.C. v. Little*, 178 F.2d 13, 18 (D.C. Cir. 1949) (“Inspections” and “searches” are indistinguishable under the Fourth Amendment.). But an inspection is not the substantive criteria that is being tested for; it is the application of the test.

Inspection has had this meaning in the immigration context where the law has long prohibited entry “without inspection.” *United States ex rel. Rink v. Reimer*, 96 F. 2d 217, 219 (2d Cir. 1938); *Ex parte Saadi*, 23 F.2d 334, 336 (S.D. Cal. 1927), *aff’d*, 26 F.2d 458 (9th Cir. 1928). Yet nobody would believe that customs officials could impose substantive conditions for entry into the country under the guise of inspecting. CDC cannot either: “when Congress ‘borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that

were attached to each borrowed word.’” *United States v. Hansen*, 599 U.S. 762, 774 (2023) (citations omitted).

CDC’s interpretation also violates the ordinary-meaning canon. *Perrin v. United States*, 444 U.S. 37, 42 (1979). Justice Souter recently ruled “to ‘inspect’ does not mean to take notes, but rather ‘to look upon; to view closely and critically, esp. so as to ascertain quality or state, to detect errors, etc.; to scrutinize.” *Acosta v. Loc. Union 26, UNITE HERE*, 895 F.3d 141, 144 (1st Cir. 2018) (cleaned up). Indeed, CDC applies inspection under the Dog Rule as examining the dog for “signs of communicable diseases.” 42 C.F.R. §§ 71.51(i), (j)(1); 89 Fed. Reg. at 41740. Simply put, CDC cannot impose a ban and call it an inspection.

Moreover, “identical words and phrases within the same statute should normally be given the same meaning.” *Powerex Corp. v. Reliant Energy Servs., Inc.*, 551 U.S. 224, 232 (2007). Other portions of the statute use “inspection” consistent with its common meaning. 42 U.S.C. § 267(b) (“Hours of inspection”); 42 U.S.C. § 269(c) (indicating that inspection is part of the “quarantine procedure”). CDC’s interpretation is inconsistent with all these precedents.

3. *The age and microchip requirements are not authorized under § 264(a)’s catchall.*

1. Section 264(a)’s catchall allows for “other measures” that CDC believes are “necessary to prevent the introduction, transmission, or spread of communi-

cable diseases.” But that does not authorize the age and microchip requirements. The catchall was not the grounds for the age and microchip requirements and cannot be used to uphold them. *Wolverine Pipe Line Co.*, 69 F.4th at 376. Again, CDC repeatedly claimed the age and microchip requirements were inspections. *See* *20 *supra*.

2. Multiple canons of statutory construction also demonstrate that the catchall cannot support the age and microchip requirements. The first is *ejusdem generis*. Entry bans do not share any of the ““common attributes”” in the other enumerated items in the series—“fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection to human beings”—all of which are (1) individualized actions that (2) take place inside the country, and (3) apply to animals and articles that have been found to be or are at least likely to be the sources of infections. *Bissonnette v. LePage Bakeries Park St., LLC*, 601 U.S. 246, 252 (2024) (citation omitted); *Tiger Lily I*, 992 F.3d at 523 (applying *ejusdem generis* to § 264(a) and holding that an eviction moratorium is not akin to “government intrusion on property to sanitize and dispose of infected matter.”); *Becerra*, 544 F. Supp. 3d at 1269 (applying the *noscitur a sociis* canon in a similar fashion to resolve any ambiguities in § 264(a)). Indeed, a visual inspection occurs at the border, but the follow-up inspection by a veterinarian happens

inside the country. 42 C.F.R. § 71.51(i)(1)–(2); Declaration of Dr. Emily Pieracci (Pieracci Decl.) RE 10-1, PageID.179, ¶ 69 (Microchip scanners are only available at 18 airports.). And if CDC believed that a dog was rabid, it would “be immediately euthanized and tested,”⁹ which § 264(a) authorizes.

Next is the major-question doctrine. “[A]dministrative agencies must be able to point to clear congressional authorization when they claim the power to make decisions of vast economic and political significance.” *West Virginia v. EPA*, 597 U.S. 697, 735 (2022) (Gorsuch, J., concurring) (cleaned up). This Court has already construed § 264(a) narrowly because of the major-question doctrine. *Tiger Lily II*, 5 F.4th at 671. Requiring vaccines is a major question. *Nat’l Fed’n of Indep. Bus.*, 595 U.S. at 122–23 (opinion of Gorsuch, J.). So is the power to say what items can come into the country—\$3.36 trillion worth of goods were imported into the United States in 2024.¹⁰ Imposing bans on goods that facilitates the “inspection” through a catchall is a major question that Congress would ordinarily address in more detail and warrants a narrow reading.

The nondelegation doctrine also warrants a narrow reading of the statute.

⁹ <https://www.cdc.gov/rabies/hcp/veterinarians/index.html> (last visited July 7, 2025).

¹⁰ <https://www.cbp.gov/newsroom/stats/trade> (last visited July 7, 2025).

“[A] nondelegation inquiry always begins (and often almost ends) with statutory interpretation.” *Gundy v. United States*, 588 U.S. 128, 135 (2019). The crucial question is whether Congress provided an “‘intelligible principle to which the person or body authorized to exercise the delegated authority is directed to conform.’” *Id.* (citation and brackets omitted). If CDC can impose any substantive restrictions on articles entering the country by merely believing that it is necessary to stop the spread of a disease, then the statute “would grant the CDC director near-dictatorial power.” *Tiger Lily II*, 5 F.4th at 672. This Court construed § 264(a) narrowly to avoid that problem. *Id.*; *Tiger Lily I*, 992 F.3d at 523; *see also Becerra*, 544 F. Supp. 3d at 1288 (ruling that CDC’s interpretation violates the nondelegation doctrine). It should do so again here.

3. This interpretation of § 264(a) is also consistent with the legislative history. “As a key drafter explained, ‘the second sentence of subsection (a)’ was written ... to ‘expressly authorize inspections and other steps necessary in the *enforcement of quarantine*.’” *Alabama Ass’n of Realtors*, 594 U.S. at 769 (Bryer J., dissenting) (quoting Hearings on H. R. 3379 before the Subcommittee of the Committee on Interstate and Foreign Commerce, 78th Cong., 2d Sess., 139 (1944) (emphasis added) (alterations omitted)). This is because the statute is directed towards quarantining. *P.J.E.S.*, 502 F. Supp. 3d at 513–14. Section 264(a) allows for remedial actions regarding property, and an isolated quarantine

would be necessary during fumigation or sanitation procedures. That is how the Dog Rule was traditionally applied: dogs that did not appear healthy could be quarantined and inspected by a veterinarian. 42 C.F.R. § 71.51(b)(2) (1985).

4. The case law and historical practices establish precedents for bans. The Supreme Court, in dicta, stated that “[r]egulations under this authority have generally been limited to quarantining infected individuals and prohibiting the import or sale of animals known to transmit disease.” *Alabama Ass’n of Realtors*, 594 U.S. at 761 (citing 40 Fed. Reg. 22543 (May 23, 1975)). That was an overstatement. Again, the Dog Rule never banned these types of entries—it only set conditions upon which dogs could enter the country. And the turtle regulation cited by the Court did not ban the importation of turtles—it only banned the commercial, *not the private*, sale of some small turtles. 21 C.F.R. § 1240.62(b) (1975); 40 Fed. Reg. at 22545.

Moreover, § 264(a) regulations were traditionally limited to “animals *known* to transmit disease” or “turtles *known* to be carriers of salmonella.” *Alabama Ass’n of Realtors*, 594 U.S. at 761 (emphasis added). That is because § 264(a)’s text concerns “animals and articles *found* to be so infected or contaminated as to be sources of dangerous infection to human beings.” (Emphasis added); *Brown*, 4 F.4th at 1251 (11th Cir.) (Tjoflat, J., concurring) (COVID-19 “eviction moratorium without regard to whether the affected tenants are in-

infected with COVID-19 or reasonably believed to be infected with COVID-19, is not such an ‘other measure’ authorized by the statute.”).

Once the finding is made, moreover, the statute “only” authorizes regulations that are “‘necessary’ to prevent the spread of disease.” *McAfee v. United States Food & Drug Admin.*, 36 F.4th 272, 277 (D.C. Cir. 2022). Indeed, the small turtles regulated were “an uncommon pet,” *Skyworks*, 524 F. Supp. 3d at 760, 54% of which “were contaminated by *salmonella* and *Arizona*”—after they were certified to be free of contamination—and were responsible for “280,000 of the estimated 2,000,000 cases of salmonellosis in the United States each year.” 40 Fed. Reg. at 22543. In contrast, dogs are very common pets, and dogs from rabies-free or low-risk countries are not known to or likely to be infected with rabies. CDC has “not observed any [rabies] infections ... among dogs imported from [rabies]-free or low-risk countries.” 89 Fed. Reg. at 41805. And it estimates that 900,000 dogs enter the country from low-risk or rabies-free countries every year, Pieracci Decl. PageID.163, ¶12. Thus, over the last decade, the chances of a dog coming from a rabies-free or low-risk country introducing rabies to the United States are *zero in 9 million*.

CDC only knows of four rabid dogs coming into the country between 2015 and 2021, *all* of which came from high-risk countries for resale purposes, which makes them regulated under the AWA. Pieracci Decl. PageID.163–64, ¶¶ 13–

14. And only one of those dogs came through Canada, a rabies-free country, with forged Egyptian paperwork during that period. *Id.* PageID.163, ¶ 13. With 900,000 dogs entering from low-risk or rabies-free countries every year, and only one rabid dog, diverted from Egypt, coming between 2015 and 2021, the odds of a rabid dog coming through a low-risk or rabies free country are ***one in 6.3 million***. That is incomparable to the 54% of turtles that were found to be infected—after they were certified to be free of contamination.

The Dog Rule is the same type of indirect restriction the Supreme Court rejected: “If evictions occur, some subset of tenants might move from one State to another, and some subset of that group might do so while infected with COVID–19.” *Alabama Ass’n of Realtors*, 594 U.S. at 763–64. Here, the theory is if dogs from rabies-free and low-risk countries can enter the country, some subset of those dogs will be diverted from high-risk countries, and some subset of those dogs will have rabies. Likewise, the government failed to show that the risk of migrants spreading COVID was ““a real problem”” when “CBP encountered on average just one migrant per day who tested positive for COVID.” *Huisha-Huisha v. Mayorkas*, 642 F. Supp. 3d 1, 24 (D.D.C.), *cert. and stay granted sub nom. Arizona v. Mayorkas*, 143 S. Ct. 478 (2022), and *vacated*, 2023 WL 5921335 (D.C. Cir. Sept. 7, 2023). The age and microchip requirements, as applied to low-risk and rabies-free countries, fail for the same reason.

4. The Animal Welfare Act and § 265 further show that entry bans are not authorized under § 264(a).

Any support for the age and microchip requirements being authorized under § 264(a) disappears when § 265 and the AWA are considered. Section 265—the very next section of the statute—contains a process for banning the introduction of people or items in whole or in part from specific places, but only if specific predicate findings are made. CDC, in fact, invoked § 265 as a secondary authority in promulgating the Rule, 89 Fed. Reg. 41737, and that was the authority on which CDC relied when it suspended entries in 2019 and 2021, 86 Fed. Reg. at 32049. Yet in promulgating the Dog Rule, CDC never made the three predicate findings under the statute: (1) the communicable disease “exist[s] ... in a foreign country,” (2) “there is a serious danger” that the communicable disease will enter the United States because of its existence in that country, and (3) the danger of the introduction of the disease is “increased by the introduction of persons and property from such country.” 42 U.S.C. § 265. It made the opposite findings by declaring certain countries to be rabies free and low risk.

1. Section 265 eliminates the possibility that the age and microchip bans could be promulgated under § 264(a). Judge Sullivan accurately interpreted the interplay between §§ 264(c) and 265: “CDC [can] create regulations that allow for the ‘apprehension, detention, examination, or conditional release of individuals’ entering from foreign countries to stop the spread of communicable dis-

eases from those countries, 42 U.S.C. § 264; and then in times of serious danger, to halt the ‘introduction of persons’ from designated foreign countries. 42 U.S.C. § 265.” *P.J.E.S.*, 502 F. Supp. 3d at 514. There is no reason to think that Congress intended for § 264(a) to override § 265 when § 264(c) does not. Indeed, § 264(a) supplements the quarantine restrictions in the other portions of § 264. *Alabama Ass’n of Realtors*, 594 U.S. at 769 (Bryer J., dissenting).

Other precedents support this interpretation as well. It has been hornbook law for over 50 years that an agency cannot look to a broader statute for a grant of authority that is cabined in a more-direct statute. In 1974, the Supreme Court ruled that the Attorney General cannot delegate wiretap-authorization authority using general delegation powers when the wiretap statute provided specific, more-limited, delegation authority. *United States v. Giordano*, 416 U.S. 505, 507-08 (1974); *Halverson v. Slater*, 129 F.3d 180, 181, 185 (D.C. Cir. 1997) (same). Simply put, “a ‘general grant of rulemaking power cannot trump the specific provisions of the act.’” *Air All. Houston v. Env’t Prot. Agency*, 906 F.3d 1049, 1061 (D.C. Cir. 2018) (cleaned up). CDC “may not ‘accommodate’ two statutes by allowing one to ‘override’ the more specific requirements of the other.” *Id.* (citation omitted). Through § 265, “Congress saw fit to place ... statutory limit[s] on” CDC’s authority to restrict entries into the country, “and this court ‘must give effect to the unambiguously expressed intent of congress.’” *Air All. Houston*,

906 F.3d at 1061 (citations omitted).

The first reason for this is that statutes must be read to avoid superfluity and redundancies. *Halverson*, 129 F.3d at 185. Second, the more specific statute governs the general in these circumstances. *Air All. Houston*, 906 F.3d at 1061. It does not matter that both sections allow for regulations without expressly contradicting the other. The statutes at issue in *Giordano*, *Halverson*, and *Air All. Houston* all contained general and specific authorization sections, and the courts uniformly rejected that argument. Through the specific provisions “Congress saw fit to place ... statutory limit[s] on” CDC, “and this court ‘must give effect to the unambiguously expressed intent of congress.’” *Air All. Houston*, 906 F.3d at 1061 (citations omitted).

Section 265, through its predicate findings, imposes “statutory limits on” the process for banning objects in whole or in part from entering the United States to prevent the spread or introduction of a communicable disease from other countries. *Air All. Houston*, 906 F.3d at 1061. It is absurd to think Congress would have allowed CDC to circumvent § 265’s limitations by imposing a broader, global ban through a catchall or a broad reading of “inspection.” Congress could have ended the statute with § 264. *Tiger Lily II*, 5 F.4th 670 (applying the surplusage canon to § 264). Indeed, this Court would not read § 264(a) to expand on authority granted to CDC in §§ 264(b)–(d). *Tiger Lily I*, 992 F.3d at

523–24. It makes no sense that § 264(a) would expand § 265.

2. Section 265’s legislative history further bears this out. Section 265 “is based on and substantially similar to a provision in a statute enacted in 1893.” *P.J.E.S.* 502 F. Supp. 3d at 522 (citing Act of February 15, 1893, ch. 114, § 7, 27 Stat. 449, 452).¹¹ That act was passed because of the “very considerable” danger and great “apprehension” of cholera coming to the United States from Europe. 24 Cong. Rec. 359 (1893).¹² The physicians’ letters in the record speak to the seriousness of the danger that is required under the statute. The “great danger” was limited to the disease coming from “steerages,” i.e., ships, from Europe. *Id.* at 363. Another physician advocated for suspending immigration for a year, “except that from North and South American ports,” where there was no serious risk of cholera introduction. *Id.* Congress did not intend for there to be any restrictions on land borders because the risk came primarily from European ships, and the Marine Hospital Service, which was located inside the United States, could adequately stop the spread of cholera at the Mexican and Canadian borders. *Id.* at 370. Thus, individuals or objects coming from places where there

¹¹ Available at <https://uscode.house.gov/statviewer.htm?volume=27&page=452> (last visited July 7, 2025).

¹² Available at <https://www.congress.gov/bound-congressional-record/1893/01/06/senate-section> (last visited July 7, 2025).

was no serious risk of introducing the disease were supposed to be quarantined at the hospital, which is what § 264(a) allows.

Instead, the appropriate way to harmonize the statutes is that whole or partial bans must be made under § 265, while § 264(a) is individual in nature and allows the government to inspect items and impose conditional quarantine or disinfecting-type restrictions on the items entering the country that are likely to be the sources of infection.

3. This problem is further compounded by the AWA. “In its current form, the AWA is a comprehensive regulatory scheme which covers, among other things, ... requirements concerning the importation of live dogs.” *United States v. Gibert*, 677 F.3d 613, 618–19 (4th Cir. 2012) (citing 7 U.S.C. § 2148). The AWA forbids importing dogs “into the United States *for purposes of resale* unless ... the dog” is healthy, vaccinated, and over six months old. 7 U.S.C. § 2148(b)(1) (emphasis added). Despite its comprehensiveness, Congress deliberately chose to leave the importation of personal pet dogs unregulated. When Congress leaves something unregulated, its intent is clear. *Chamber of Com. of U.S. v. Brown*, 554 U.S. 60, 68–69 (2008); *see also P.J.E.S.*, 502 F. Supp. 3d at 542 (Immigration statutes were more specific than § 265.).

Section 2148 of the AWA was enacted via § 14210 of the Food, Conservation, and Energy Act of 2008. Pub. L. No. 110–234, 122 Stat 923 (May 22,

2008). It is undeniable that, through that amendment, Congress sought to regulate “the importation of live dogs.” *Gibert*, 677 F.3d at 618–19. The AWA is therefore “‘last in time’” and “‘prevails as the most recent expression of the legislature’s will.’” *Int’l Union, United Auto., Aerospace & Agr. Implement Workers of Am., Loc. 737 v. Auto Glass Emps. Fed. Credit Union*, 72 F.3d 1243, 1248–49 (6th Cir. 1996) (citation omitted).¹³

Furthermore, the real threat of rabies introduction is it spreading through dogs that are imported for resale, who are in contact with other dogs. Rabies does not spread through humans: “There have been no confirmed instances of human-to-human transmission of rabies virus aside from those attributable to organ and tissue transplantation.”¹⁴ Thus, enjoining the Dog Rule will not undo the rabies eradication efforts because the AWA protections are still in place.

The second AWA problem for CDC is that “an administrative agency’s power to promulgate legislative regulations is limited to the authority delegated by Congress.” *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). Congress gave rulemaking authority under the AWA to the Secretary of Agriculture.

¹³ The Farm Security and Rural Investment Act of 2002 further curtails CDC’s authority by authorizing the Department of Agriculture to restrict the entries of animals in order “to prevent the introduction into or dissemination within the United States of any ... disease of livestock.” 7 U.S.C. § 8303, Pub. L. No. 107–171, 116 Stat. 496 (May 13, 2002).

¹⁴ <https://www.cdc.gov/rabies/hcp/clinical-overview/index.html> (last visited July 7, 2025).

7 U.S.C. §§ 2132(b), 2151. CDC cannot exercise authority Congress delegated to another agency. *Bayou Lawn & Landscape Servs. v. Sec’y of Lab.*, 713 F.3d 1080, 1084–85 (11th Cir. 2013); *Union Pac. R.R. Co. v. Surface Transportation Bd.*, 863 F.3d 816, 823 (8th Cir. 2017). This is especially true where CDC is not a subordinate agency within the Department of Agriculture. *U.S. Telecom Ass’n v. F.C.C.*, 359 F.3d 554, 565–66 (D.C. Cir. 2004). The AWA, therefore, does not give CDC any authority to regulate dog imports. Yet, CDC still thought it needed to pass the age restriction for consistency with the AWA, 89 Fed. Reg. at 41727, and to reduce AWA fraud. It was wrong.

The age and microchip requirements are not inspections or authorized under § 264(a)’s catchall. They are bans that can only be promulgated under § 265, if certain predicate findings are made, which CDC did not and could not make as to low-risk and rabies-free countries. They are not in accordance with the law and should be enjoined.

B. The Dog Rule is arbitrary and capricious and is not the result of reasoned decisionmaking.

Even if the Dog Rule is authorized by statute, it is still unlawful because it is not the result of “‘reasoned decisionmaking.’” *Atrium Med. Ctr. v. U.S. Dep’t of Health & Hum. Servs.*, 766 F.3d 560, 567 (6th Cir. 2014) (citation omitted). An agency action is arbitrary and capricious when it:

has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Id. (citation omitted).

At the outset, CDC has a serious credibility problem defending its decisionmaking. CDC can only promulgate regulations that are “‘necessary’ to prevent the spread of disease.” *McAfee*, 36 F.4th at 277. In promulgating the Dog Rule, CDC originally required that “[d]ogs imported from DMRVV-free or low-risk countries would also require a document certified by an official government veterinarian, but HHS/CDC will allow a greater number of potential documents as specified in 42 CFR 71.51(u).” 89 Fed. Reg. at 41735. CDC believed the government-issued paperwork requirement struck the “appropriate balance” of addressing “importers moving dogs from DMRVV high-risk countries through DMRVV-free countries to avoid U.S. entry requirements.” 89 Fed. Reg. at 41777. But it dropped that requirement before the rule took effect.¹⁵ CDC also took steps to revisit the rule before oral argument could be heard on the preliminary injunction motion. Overall, that casts serious doubt on what CDC believes is necessary to prevent the introduction of disease.

¹⁵ <https://www.cdc.gov/media/releases/2024/s0722-dog-importation.html> (last visited July 7, 2025).

1. The age requirement is not based on defensible and reasoned decisionmaking.

All of CDC’s justifications for the age requirement focus on determining whether the dog has been vaccinated for rabies, but CDC does not require dogs from low-risk or rabies-free countries to be vaccinated. CDC is not even checking the dogs’ vaccination status. It is not “‘necessary’ to prevent the spread of disease.” *McAfee*, 36 F.4th at 277. It is arbitrary and capricious.

1. The first justification is that six months “aligns with current USDA requirements for commercial dog imports under the Animal Welfare Act.” 89 Fed. Reg. at 41727; *see also id.* at 41747 (Table 1 Justification), 41766. But as noted above, the AWA only applies to imports for resale. Congress clearly did not intend for CDC, or any federal agency, to limit personal dog imports to only dogs that are above six months of age under the AWA. And it is even worse for CDC because, as noted above, it has no authority to enforce the AWA; only the Department of Agriculture does. Relying on the AWA makes the age requirement arbitrary and capricious in itself—it demonstrates that CDC attempted to regulate what Congress chose to leave unregulated. *Lynd v. Rusk*, 389 F.2d 940, 947 (D.C. Cir. 1967).

The AWA also protects the wellbeing of dogs “during transportation in commerce.” 7 U.S.C. § 2131. But CDC factored that into the rulemaking: “[T]ransporting dogs under six months of age under conditions with unstable

and fluctuating air temperatures, such as those present in the cargo area of a plane, may subject these young animals to adverse events (illness or death) because young animals cannot regulate their body temperature as efficiently as adult animals.” 89 Fed. Reg. at 41752; *id.* at 41746 (Table 1) (“The increased age requirement will ... improve health and safety for dogs being transported.”). CDC also repeatedly considered the rule’s potential impact on livestock. 89 Fed. Reg. at 41726, 41736, 41750 (Table 1), 41799, 41800. Like the AWA, Congress gave the Department of Agriculture the authority to regulate animal imports to protect the spread of disease to livestock. 7 U.S.C. § 8303. This is acknowledged in the Rule. 89 Fed. Reg. at 41736. And by attempting to regulate the dogs’ wellbeing and the effects on livestock, CDC went beyond its authority to promulgate a regulation that is necessary to prevent the introduction of a communicable disease. *McAfee*, 36 F.4th at 277. CDC “relied on factors which Congress has not intended it to consider.” *Atrium Med. Ctr.*, 766 F.3d at 567 (citation omitted).

2. The next justification for the age requirement is directly related to the rabies vaccination. The Dog Rule notes that dogs cannot be effectively rabies-vaccinated before they are four months old, but there is no reliable way to tell if a dog is four months old. 89 Fed. Reg. at 41765. A dog can be more accurately aged at six months by checking for adult incisors and canine teeth. *Id.* Thus,

CDC concluded that the six-month requirement is necessary because it provides another tool to age a dog, which can indicate if the dog is old enough to be fully vaccinated for rabies.

That, however, does not pass muster as applied to rabies-free or low-risk countries. When the disease is not present, the restriction is not justified. *Kentucky v. Fed. Highway Admin.*, 728 F. Supp. 3d 501, 520 n.16 (W.D. Ky. 2024) (Agency’s justification must be rational and supported by evidence.). The risk of rabies is so low that “[t]here are no vaccination requirements” for dogs entering “from [a] DMRVV-Free or DMRVV Low-Risk Country.” 89 Fed. Reg. at 41731 (Table E1). CDC admitted below that it is not checking for vaccination paperwork: “CDC decided not to require proof of vaccination for those dogs because ‘CDC has confidence in rabies-free and low-risk countries which demonstrate adequate surveillance capacity and vaccination control measures.’” Opposition to Plaintiffs’ Motion for Preliminary Injunction, RE 10, PageID.145 (cleaned up). Indeed, the only thing required to bring a dog into the United States from a rabies-free country is the automatically generated *Dog Import Form* receipt. *Id.* The *Dog Import Form* application is not reviewed by a human before the receipt is automatically generated. 89 Fed. Reg. at 41769. Supplying the dog’s age is optional. *See* n.5, *supra*. “The form is administrative in nature and does not capture medical information about the dog.” 89 Fed. Reg. at 41770.

Because CDC is neither requiring a vaccination nor checking medical records to begin with, it cannot justify checking the dog's teeth to ensure the dog is old enough to have received the vaccination or has valid vaccination paperwork. *See, e.g., Solenex, LLC v. Haaland*, 626 F. Supp. 3d 110, 127 (D.D.C. 2022) (Agency arbitrarily decided that the area potentially effected by a project was the Tribe's entire Traditional Cultural District, without regards to the "proposed activity."). This is equivalent to eliminating the minimum age to purchase alcohol but still requiring individuals to show identification to purchase it. The identification is no longer necessary without the underlying age requirements. CDC's age requirement is not necessary either.

Moreover, while all dogs are subject to inspection under the rule, very few are, and even fewer dogs get their teeth examined. Customs and border patrol agents do not check or count the dog's teeth. Pieracci Decl. PageID.179, 181, ¶¶ 68, 79. Veterinarians do, and out of the approximately one million dogs that arrive in the United States every year, an average of 38 are inspected, many of which are inspected because they arrived dead in transit. *Id.* PageID.179, ¶ 68. Thus, checking the dog's teeth is not necessary to prevent the introduction of rabies. If it were, CDC would be doing it.

3. The age requirement is not necessary to detect "dyskinetic or uncoordinated movement." 89 Fed. Reg. at 41766. Those terms are never mentioned

in the Proposed Rule. And, in the Final Rule, they are only made in response to comments—the final, cumulative sentences of a response spanning two-thirds of a page. 89 Fed. Reg. at 41765–417668. It was clearly an afterthought. It also runs counter to the evidence because CDC trusts rabies-free and low-risk countries. Instead, CDC is viewing these movements in a vacuum—ignoring the fact that the dog came from a rabies-free and low-risk country and is therefore highly unlikely to have rabies. Moreover, according to the Merck Veterinary Manual, “[t]he most reliable indicators [for rabies] are sudden and severe behavioral changes and unexplained paralysis that worsens over time.”¹⁶ Other signs include increased aggression, i.e., “the classic ‘mad dog’ syndrome” or the “paralytic form,” which “usually involves paralysis of the throat and jaw muscles, often with excess salivation and the inability to swallow.” *Id.*; Pieracci Decl. PageID.164–65, ¶ 16 (The rabid dog “appeared agitated.”). These symptoms will not be confused with normal puppy movements, or Dyskinesia, which is rare and has the appearance of an epileptic seizure without salivation.¹⁷ And any dog exhibiting those symptoms would be “subject to additional examination.” 42 C.F.R. § 71.51(i)(2). The appropriate response is to quarantine the dog and

¹⁶ <https://www.merckvetmanual.com/dog-owners/brain-spinal-cord-and-nerve-disorders-of-dogs/rabies-in-dogs> (last visited July 7, 2025).

¹⁷ <https://www.merckvetmanual.com/multimedia/video/paroxysmal-dyskinesia-dog> (last visited June 30, 2025).

get it the appropriate treatment as 264(a) authorizes, i.e., sanitation, disinfection, or euthanasia. 42 C.F.R. § 71.51(i)(2). Putting a dog believed to be rabid back on a plane, 42 C.F.R. §§ 71.51(f)(2), (g)(5), would make the potential spread of disease worse.

4. Even worse for CDC's untenable position is that "CDC has not observed any DMRVV infections ... among dogs imported from DMRVV-free or low-risk countries." 89 Fed. Reg. at 41753. Thus, CDC is combating a problem that it has *never* seen before, which is arbitrary. *Atlantic Fish Spotters Association v. Daley*, 8 F. Supp. 2d 113, 115, 117 (D. Mass. 1998) (The lack of evidence that fishing permit holders' use of spotter airplanes resulted in any increased harvest of undersized fish rendered the rule restricting spotter airplanes arbitrary and capricious.).

5. Detecting fraud does not save the Rule, either. It is arbitrary and capricious when "HHS improperly elevate[s] the objective of fraud prevention ... above the [statute's] primary purpose." *City of Columbus v. Cochran*, 523 F. Supp. 3d 731, 762 (D. Md. 2021) (citation omitted). Here, the statutory scheme does not restrict animals that are not known to be carriers of a communicable disease. *Alabama Ass'n of Realtors*, 594 U.S. at 761. The agency could undue entire regulatory schemes in the name of preventing fraud, thereby giving it "near-dictatorial power." *Tiger Lily II*, 5 F.4th at 672. Moreover, conclusory statements

about a problem existing are not enough when empirical data is readily obtainable. *Huntco Pawn Holdings, LLC v. U.S. Dep't of Def.*, 240 F. Supp. 3d 206, 225 (D.D.C. 2016) (citation omitted).

As stated above, the empirical evidence shows that one rabid dog came from Egypt through Canada and false *Egyptian paperwork* was presented at the border. That is not evidence of fraudulently claiming that the dog had only been in a rabies-free country; one would not present Egyptian paperwork and claim that the dog had only been in Canada. Indeed, CDC repeatedly identifies fraudulent paperwork, not country-of-origin fraud, as the justification for the rule. 89 Fed. Reg. at 41726, 41727, 41728, 41743; 41745, 41747 (Table 1), 41752, 41755, 41758; Pieracci Decl. PageID.166, 172–73 175, ¶¶ 20, 22, 45, 55. The only other possible “evidence” are conclusory and speculative statements that rescue organizations have brought rabid dogs in large shipments from high-risk countries. Pieracci Decl. PageID.163, ¶ 13. “Professing that an agency action ameliorates a real problem but then citing no evidence demonstrating that there is in fact a problem is not reasoned decisionmaking.” *Huisha-Huisha*, 642 F. Supp. 3d 24 (citation omitted). And if there is fraud occurring, the appropriate solution is to prosecute, not to obliterate the statutory regime.

Additionally, a material misapprehension of the baseline conditions existing in advance of an agency action can lay the groundwork for an arbitrary and

capricious decision.” *Friends of Back Bay v. U.S. Army Corps of Engineers*, 681 F.3d 581, 588 (4th Cir. 2012). That is the situation here. CDC noticed the increase in dog imports during the COVID pandemic, when demand for dogs was high. *E.g.*, 89 Fed. Reg. at 41759. At that time, CDC issued complete bans from high-risk countries. 86 Fed. Reg. 32041 (June 16, 2021); 88 Fed. Reg. at 43572. The high demand and the bans in place promote an environment for committing fraud. Both of those conditions have subsided. Sportsmen’s Alliance member, the Drentsche Patrijshond Club of North America, noted to CDC in comment, the COVID-driven spike in demand for dogs has subsided and cited two reports from 2023 in support. Gorelnik Decl. ¶ 27 (Dkt. 10-6).¹⁸ Yet the Dog Rule asserts that “[s]ince 2021, the demand for puppies and rescue dogs has remained high.” 89 Fed. Reg. at 41759. The authorities for that statement are four reports from 2020 and 2021. *Id.* nn. 132–135. While the APA does not require mathematical precision behind every decision, the agency cannot “‘*ignore* new and better data,’” and it must provide “‘meaningful comment on the significance of more current compiled data.’” *Zen Magnets, LLC v. Consumer Prod. Safety Comm’n*, 841 F.3d 1141, 1150 n.10 (10th Cir. 2016) (emphasis in original) (citations omitted).

Likewise, CDC did not follow its “duty to respond to ‘significant points

¹⁸ The Comments are available at. https://downloads.regulations.gov/CDC-2023-0051-0499/attachment_1.pdf (last visited July 7, 2025). *See* *4 nn.9–10.

raised by the public.’” *Oakbrook Land Holdings, LLC v. Comm’r of Internal Revenue*, 28 F.4th 700, 713 (6th Cir. 2022) (citation omitted). CDC claims it did not ignore the data because it “received 118,312 signatures from supporters of international dog rescues, suggesting the demand for dogs and the desire to import dogs from DMRVV high-risk countries remains high.” 89 Fed. Reg. at 41759. But the number of comments in support or opposition to a rule is completely irrelevant—reasoned decisionmaking is not a popularity contest. *W. Coal Traffic League v. Surface Transportation Bd.*, 998 F.3d 945, 950 n.4 (D.C. Cir. 2021); *Nat. Res. Def. Council, Inc. v. U.S. EPA*, 822 F.2d 104, 122 n.17 (D.C. Cir. 1987). CDC failed to respond to comments and misunderstood the baseline problem it attempted to address. The age requirement is arbitrary and capricious.

6. Lastly, CDC did not consider the corrective measures that rabies-free countries take to domestically contain the virus. CDC has a high rate of confidence in rabies-free countries and their efforts to combat rabies. 89 Fed. Reg. at 41739. This is especially true when it comes to Canada, a country that euthanized the only dogs known to test positive for rabies since the 1960s.¹⁹ Canada requires all dogs over three months old to be vaccinated for rabies or

¹⁹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10273786/>; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9902034/> (both last visited July 7, 2025).

proof that the dog is under three months.²⁰ These factors should have been considered. *Cf. Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am.*, 415 F.3d 1078, 1095 (9th Cir. 2005) (Department of Agriculture rule was not arbitrary and capricious for relying on Canada’s corrective measures for fighting mad cow disease.).

2. *The microchip requirement is not based on reasoned decisionmaking.*

The microchip requirement fails for the same reasons as the age requirement. CDC’s justifications for the microchip are “to help ensure that dogs presented for admission are the same dogs as those listed on the rabies vaccination records or other documents.” 89 Fed. Reg. at 41727. The Final Rule also added a requirement that the “microchip must have been implanted on or before the date the most recent rabies vaccine was administered.” *Id.* at 41740; *see also* 42 C.F.R. § 71.51(g)(2). This change was implemented “to ensure that the dog receiving the rabies vaccine is properly identified by the microchip.” *Id.*; *see also id.* at 41747–48 (Table 1 Justification), 41767. But there is no vaccination or paperwork requirement for dogs coming from low-risk and rabies free countries. *See n.3 supra*. Thus, there is no reason to require the implementation of a micro-

²⁰ <https://inspection.canada.ca/en/importing-food-plants-animals/pets> (last visited July 7, 2025).

chip before administration of the vaccine so that it can be scanned and matched to paperwork. 42 C.F.R. §§ 71.51(g)(2)-(3). And again, CDC is not aware of any rabid dogs coming from those countries. 89 Fed. Reg. at 41753. It fails for additional reasons as well.

1. Microchips will not reduce fraud. Even if fraud could sweep away the Public Health Service Act's requirement that the regulation be necessary to prevent the introduction of disease, that does not suffice here. Scanning a microchip only produces the microchip's serial number. Pieracci Decl. PageID.178, ¶ 65. That number then needs to be cross-referenced with something for verification. Here, that cross-reference is spelled out in the rule: "The microchip number must be ... if the dog is arriving from a DMRVV low-risk or DMRVV-free country, *documented on one of the forms listed in paragraph (u)(2) of this section and all accompanying veterinary records. The microchip number must also be documented on the CDC dog import form.*" 42 C.F.R. § 71.51(g)(3) (emphases added).²¹

Subsection (u)(2) lists the acceptable documents that must be certified by a government official demonstrating the dog has only been in a rabies-free or low-risk country. 42 C.F.R. § 71.51(u)(2). As noted above, CDC completely dropped the subsection (u)(2) paperwork requirements for dogs coming from a

²¹ These are the same justifications listed in the previous paragraph.

low-risk or rabies-free country, and the microchip number “is neither a required nor optional field” on the dog import form if the dog is coming from a rabies-free or low-risk country. Pieracci Decl. PageID.167, ¶ 26. Without requiring those forms and having microchip numbers on them, there is nothing for CDC to verify. The requirement is not necessary under the statute.

CDC also intended to refer violators of the regulations to the Department of Justice for prosecution. 42 C.F.R. § 71.51(gg); 89 Fed. Reg. at 41737, 41738. It can no longer do that for potential microchip and paperwork fraud because it dropped the underlying requirements. And because CDC changed the paperwork requirements on its website—without going through notice-and-comment rulemaking under 42 C.F.R. § 71.51(u)(2)(vi)—the paperwork requirement cannot be a legislative rule. The APA mandates that legislative rules be amended through the same notice-and-comment procedures by which they were promulgated. *Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 101 (2015) (citation omitted). An agency cannot implement a legislative rule through a “press release” on its website. *Safari Club Int’l v. Zinke*, 878 F.3d 316, 323, 331–34 (D.C. Cir. 2017).

Unlike legislative rules, “interpretive rules” lack the “force and effect of law” and can be amended without notice-and-comment rulemaking. *Mann Constr., Inc. v. United States*, 27 F.4th 1138, 1143 (6th Cir. 2022) (citation omitted). Section 71.51(u) functions as an interpretive rule, which means there is no

legally binding “[r]equirement for proof that a dog has been only in DMRVV low-risk or DMRVV-free countries” *or microchip documentation*. 42 C.F.R. §§ 71.51(g)(3), (u)(2). Thus, the fraud that CDC is trying to prevent cannot be prosecuted.

2. CDC cannot detect fraud because only 38 dogs are inspected each year. Pieracci Decl. PageID.179, 181, ¶¶ 68, 79. CDC does not verify anything or detect fraud by requiring a microchip to be implanted in dogs coming from rabies-free or low-risk countries. But perhaps most telling, CDC may allow the dog to enter the country if the owner implants a microchip at a CDC-registered animal care facility *at land borders*. *Id.* PageID.179, ¶ 70. There would be no information associated with the microchip in that case; it serves no purpose. CDC has, again, “offered an explanation for its decision that runs counter to the evidence.” *Atrium Med. Ctr.*, 766 F.3d at 567.

3. There is one additional, glaring flaw with the microchip requirement. Part of the rationale for it was to bring the United States in alignment with “international standards and practice.” 89 Fed. Reg. at 41767. But at least two bills have been introduced in Congress to require microchipping. *See* Section 10404A of The Healthy Dog Importation Act of 2023, S. 502; H.R. 6921 in 2020. Neither passed. CDC, therefore, is attempting to run an end-around the legislative pro-

cess, *West Virginia*, 597 U.S. at 743 (Gorsuch, J., concurring), and consider things that Congress did not intend it to consider.

Furthermore, the agency cannot just adopt or reject international standards—it must explain its reasoning as to why it is adopting or rejecting the standards. *California v. Env’t Prot. Agency*, 72 F.4th 308, 315–16 (D.C. Cir. 2023) (EPA explained that adopting international standards would get more countries to adopt them, which would be better to prevent climate change than adopting more stringent domestic standards.).

The microchip requirement is arbitrary and capricious and should be set aside. However, if the microchip requirement is upheld, then the justification for the six-month restriction goes away because the microchip will have all the information readily available, and the six-month requirement will be unnecessary.

* * *

The APA “calls on the court to intervene not merely in case of procedural inadequacies, or bypassing of the mandate in the legislative charter, but more broadly if the court becomes aware, especially from a combination of danger signals, that the agency has not really taken a ‘hard look’ at the salient problems, and has not genuinely engaged in reasoned decision-making.” *Greater Bos. Television Corp. v. F.C.C.*, 444 F.2d 841, 851 (D.C. Cir. 1970). Those factors and

signals are abundant here. Plaintiffs are likely to succeed on the merits. The Court should intervene and reverse the district court's ruling.

II. PLAINTIFFS HAVE ALREADY AND WILL CONTINUE TO SUFFER IRREPARABLE HARM.

Neither the Magistrate's Report and Recommendation, RE 18, PageID.277, nor the district court's denial of the preliminary injunction addressed the remaining factors, RE 23, PageID.375. When the district court does not address the remaining factors after erroneously finding that the plaintiff is not likely to succeed on the merits, this Court can consider them "in order not to unduly prolong the resolution of the ... motion for preliminary injunction." *Certified Restoration Dry Cleaning Network*, 511 F.3d at 543. The Court should do that here. Plaintiffs filed their motion on August 21, 2024. RE 8, PageID.36. Remanding for additional considerations will only prolong the resolution of the motion while Plaintiffs are forced to comply with an unlawful regulation.

A. Plaintiffs' harms are irreparable because monetary damages are not available.

"A plaintiff's harm from the denial of a preliminary injunction is irreparable if it is not fully compensable by monetary damages." *Certified Restoration Dry Cleaning Network*, 511 F.3d at 550 (citation omitted). Economic injury is irreparable under the APA because damages are not available. 5 U.S.C. § 702; *Ohio v. Becerra*, 87 F.4th 759, 783 (6th Cir. 2023). *Kentucky v. Biden*, 23 F.4th 585,

611 n.19 (6th Cir. 2022) (citation omitted).

Ninety percent of Plaintiff-Appellant Krpan’s sales are to the United States. Krpan Decl. PageID. 113, ¶ 18. She is going out. business because of the Dog Rule. *Id.* PageID. 113, ¶ 21. Other Plaintiffs and Plaintiffs’ members have outlined their damages as well. *See* the bullet points below. Because monetary damages are not available, Plaintiffs do not have any adequate remedies at law.

B. Monetary damages would be difficult to calculate if they were available.

Even if monetary damages were available to Plaintiffs, they would be difficult to calculate and are therefore irreparable. *Certified Restoration Dry Cleaning Network*, 511 F.3d at 550. Indeed, “intangible harms”—such as “coerced compliance with irreversible vaccinations—likely cannot be economically quantified, and thus cannot be monetarily redressed.” *Kentucky*, 23 F.4th at 611 n.19.

There is no effective way to calculate the value for:

- the extra time, effort, and total cost that it will take to socialize and train a dog acquired after six months, or the value of having a dog that could be trained and socialized sooner, Guthrie Decl. PageID.105, ¶ 6; Gomes Decl. PageID. 96, ¶¶ 6–7; Adkins Decl. PageID. 88, ¶¶ 22–23
- the emotional harm that the dog might endure by being separated at a later age compared to an earlier age, Krpan Decl. PageID. 112, ¶ 15;
- the lost prestige of an event due to the limited competition, Guthrie Decl. PageID.106, ¶ 11; or
- the reduction of an already small North American breeding stock, Gorelnik Decl. PageID. 101–102, ¶¶ 24–26.

These are classic intangible damages that cannot be reliably calculated and are therefore irreparable.

C. Plaintiff Krpan will be going out of business and losing goodwill.

“The impending loss or financial ruin of [a] business constitutes irreparable injury.” *Performance Unlimited, Inc. v. Questar Publishers, Inc.*, 52 F.3d 1373, 1382 (6th Cir. 1995). There is no evidence in the record contradicting Krpan’s claims that she will be going out of business because of the rule, which is sufficient to establish that her injury is irreparable. *Id.*

The “loss of customer goodwill” is also sufficient to establish irreparable injury. *S. Glazer’s Distributors of Ohio, LLC v. Great Lakes Brewing Co.*, 860 F.3d 844, 852 (6th Cir. 2017) (citation omitted). This includes the loss of a “unique product,” like a craft beer that accounts for “25% of the [distributor’s] beer revenue and 4% of ... overall revenue.” *Id.* at 835. Such loss is a “substantial,” “intangible, irreparable harm.” *Id.*

Krpan has spent over 50 years cultivating her beagle pedigree. Krpan Decl. PageID. 111, 113. ¶¶ 3, 21; *Reinders Bros. v. Rain Bird E. Sales Corp.*, 627 F.2d 44, 52–53 (7th Cir. 1980) (loss of business’s goodwill established over 20 years was irreparable). She has produced approximately 250 champions. Krpan Decl. PageID. 112, ¶ 10. She and her beagles have a great reputation in the community. Dewyse Decl. PageID. 93, ¶ 4. Others have fraudulently claimed that her

beagles were beagles from their own stock for financial gain. Krpan Decl. PageID. 112, ¶ 13. Moreover, people who purchase hunting dogs, even more so than the general public, want their dogs young to start their training. George Guthrie Decl. PageID.105, ¶ 6; Sarah Gomes Decl. PageID.96 ¶¶ 6–7; Adkins Decl. PageID.88, ¶¶ 22–23. This is more than enough to establish irreparable harm.

III. THE BALANCE OF EQUITIES AND PUBLIC INTEREST FAVORS GRANTING THE INJUNCTION.

The final two “factors merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). And the first factor largely controls in administrative law cases because “our system does not permit agencies to act unlawfully even in pursuit of desirable ends”—including “combating the spread of [a virus].” *Alabama Ass’n of Realtors*, 594 U.S. at 766; *League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (The government has no interest in enforcing an unlawful regulation.). Instead, “the public interest lies in a correct application of the federal constitutional and statutory provisions upon which the claimants have brought this claim and ultimately ... upon the will of the people ... being effected in accordance with [the] law.” *Coalition to Defend Affirmative Action v. Granholm*, 473 F.3d 237, 252 (6th Cir. 2006) (internal quotation and citation omitted). This is especially true, here, where the new rule up-

ended a longstanding regulation. *Tennessee v. Cardona*, 737 F. Supp. 3d 510, 569 (E.D. Ky. 2024); *see also* 50 Fed. Reg. 1516 (Jan. 11, 1985) (The prior Dog Rule took effect in 1985.)

To that end, the “38,150,911” COVID cases, at a rate of “150,000 new cases per day,” including “629,139” deaths, did not justify the ultra vires eviction moratorium. *Alabama Ass’n of Realtors*, 594 U.S. at 771 (Bryer, J., dissenting). Those numbers dwarf any potential threat from dog rabies. In addition to the importation data cited above, at *27 *supra*, a report co-authored by Defendants’ expert confirms this.²² According to that report, there were a total of 125 human rabies cases in the United States from 1960-2018, and approximately two deaths per year. *Id.* These numbers are attributable to all types of rabies—not just dog rabies. Rabies was acquired outside the United States in 36 (28.8%) of those cases. *Id.* Among the 89 cases where rabies was acquired in the United States, 62 (70%) were attributable to bats. *Id.* Domestic dogs accounted for only 8 (6.4%) of the cases from 1960-2018, the last of which occurred in the early 1990s. *Id.* (Figure 2.).

²² Defendants submitted a declaration by Dr. Emily Pieracci below. RE 10-1, PageID.159. That declaration does not mention the report that she co-authored for CDC titled *Vital Signs: Trends in Human Rabies Deaths and Exposures—United States, 1938–2018* (June 14, 2019), available at <https://www.cdc.gov/mmwr/volumes/68/wr/mm6823e1.html> (last visited July 7, 2025).

CDC has two options. It can ask Congress for additional authority, *Alabama Ass'n of Realtors*, 594 U.S. at 766, or it can fix the flawed rule through additional rulemaking, which it has indicated that it is doing. It cannot continue to enforce unlawful regulations.

CONCLUSION

Because Plaintiff-Appellants have established that they are likely to succeed on the merits and the other three factors favor preliminary relief, this Court should reverse the lower court and remand with instructions to preliminarily enjoin CDC from enforcing the Dog Rule's age and microchip requirements as to low-risk and rabies-free countries.

Date: July 8, 2025

Respectfully submitted:

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Plaintiff-Appellants' Opening Brief complies with Federal Rule of Appellate Procedure 32(a). The brief is prepared in 14-point Calisto MT font, a proportionally spaced typeface; it is double-spaced; and it contains 12,841 words (exclusive of items listed in Rule 32(f)), as measured by Microsoft Word.

/s/ Michael T. Jean
Michael T. Jean

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Date: July 8, 2025

/s/ Daniel R. Olson
Daniel R. Olson

ADDENDUM**DESIGNATION OF RELEVANT LOWER COURT DOCUMENTS**

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Exhibit C, Declaration of John Dewyse	8/21/24	8-4	92
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