IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

TOM GOULD, ANN MILLS, and THE TENNESSEE WALKING HORSE NATIONAL CELEBRATION ASSOCIATION,

Plaintiffs,

v.

U.S. DEPARTMENT OF AGRICULTURE; BROOKE ROLLINS, in her official capacity as Secretary of Agriculture; ANIMAL AND PLANT HEALTH INSPECTION SERVICE; MICHAEL WATSON, in his official capacity as Administrator of the Animal and Plant Health Inspection Service,

Defendants.

Civil Action No.: 2:25-cv-147-Z

District Judge Matthew J. Kacsmaryk

ORAL ARGUMENT REQUESTED

PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR A PRELIMINARY INJUNCTION

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

The government's brief confirms that the Court should grant Plaintiffs' motion and enter the requested injunction. The Department of Agriculture ("USDA" or "Agency") concedes that Plaintiffs are likely to succeed on their due process claims. Opp. 15. That is telling. Without a mechanism to provide due process, USDA should not be disqualifying horses at all. And USDA offers only a minimal defense of the other challenged rules. The Agency euphemistically concedes that the Scar Rule is "antiquated" (*i.e.*, indefensible) and should be "modernized" (*i.e.*, replaced). Opp. 1. As this Court is aware, the Agency has known that the Scar Rule was fatally flawed since its own commissioned experts informed it in 2021 that "the rule as written is not enforceable." *See* Nat'l Acads. of Scis., Eng'g, & Med. ("NAS"), A Review of Methods for Detecting Soreness in Horses 10, 83 (2021), https://doi.org/10.17226/25949 ("NAS Report"). The Agency tried to replace the Rule with the new Dermatologic Conditions Indicative of Soring ("DCIS") Rule, but this Court rightly vacated that Rule because it provided inspectors even *more* unfettered discretion than the Scar Rule and "fail[ed] to provide a remedy" to the defects in the Scar Rule. *Tenn. Walking Horse Nat'l Celebration Ass'n v. USDA*, 765 F. Supp. 3d 534, 543 (N.D. Tex. 2025) ("*TWHNCA*"). Having failed to fix the situation, USDA's view is that it should now be allowed to just go back to applying the Scar Rule indefinitely—for no better reason than the fact that the Rule has been used "under the [Act] since the 1970s." Opp. 2. That is not a defense of the Scar Rule, and the Court should reject it.

Indeed, USDA barely offers *any* substantive support for any of the challenged rules on the merits. Instead, they claim that portions of Plaintiffs' claims are time-barred, relying on the mistaken premise that a request for vacatur of the challenged rules—each of which was applied to Plaintiffs within the past six years—somehow creates a separate cause of action subject to separate analysis for the statute of limitations. Settled law in this Circuit forecloses that argument.

USDA also argues that Plaintiffs fail to show irreparable harm because they cannot show that they *will* be disqualified at the Celebration or other future shows with 100% certainty. But it is certain that USDA will apply the unlawful rules to Plaintiffs Gould and Mills and will force the Tennessee Walking Horse National Celebration Association ("Association") to apply them to others. At the

same time, the entire point of this lawsuit and motion is that, once USDA decides to disqualify a horse, neither the individual Plaintiffs nor the Association will be able to unring that bell. Finally, USDA suggests that the recent decision in *Trump v. CASA, Inc.*, 145 S. Ct. 2540 (2025) somehow forecloses the scope of the relief sought here. That argument ignores that the Court in *CASA* expressly stated its ruling should not be interpreted to bar vacatur under the Administrative Procedure Act—the very relief Plaintiffs seek here.

Enough is enough. Court intervention is needed to stop USDA from flouting the law with its unlawful rules. Plaintiffs' motion should be granted.

ARGUMENT

I. Plaintiffs Are Likely To Succeed On The Merits Of Their Challenges Seeking To Set Aside USDA's Unlawful Rules.

Plaintiffs have shown they are likely to succeed in showing that the USDA rules applied in the disqualification decisions they are challenging were unlawful. USDA fails to demonstrate otherwise.

A. Plaintiffs' Challenges To Disqualifications Are Timely.

USDA's theory that parts of Plaintiffs' claims are time-barred is meritless. USDA acknowledges that Plaintiffs Gould and Mills' "claims challenging their specific disqualifications . . . are timely [and] that Plaintiffs may raise arguments concerning the validity of the applicable regulations in seeking to overturn their specific disqualifications." Opp. 11. The Association also challenges specific disqualifications that occurred at last year's Celebration, which means it is asserting the exact same claims as Plaintiffs Gould and Mills. *See* Compl. ¶ 157 (noting that the Association challenges 174 specific disqualifications). USDA nevertheless asserts that Plaintiffs may not obtain the *remedy* of an order preliminarily (or permanently) vacating and enjoining those rules (what USDA styles as "facial" relief). Opp. 8. That is not correct.

USDA confuses a request for a remedy (vacatur) with a separate cause of action subject to separate analysis for the statute of limitations. It is well settled, however, that when an agency rule is applied to a party, that party may challenge the rule itself, even if the rule was promulgated decades before. As the Fifth Circuit has explained:

> It is possible, however, to challenge a regulation after the limitations period has expired, provided that the ground for the challenge is that the issuing agency exceeded its constitutional or statutory authority. To sustain such a challenge, however, the claimant must show some direct, final agency action involving the particular plaintiff within six years of filing suit.

Dunn-McCampbell Royalty Int., Inc. v. Nat'l Park Serv., 112 F.3d 1283, 1287 (5th Cir. 1997); *see also Am. Stewards of Liberty v. Dep't of Interior*, 960 F.3d 223, 229 (5th Cir. 2020) ("[A] plaintiff who misses [the statute of limitations] window may still obtain effective review of the regulation by instead bringing a challenge within six years of a later final agency action that applies the regulation to the plaintiff."). In other words, the straightforward rule is that "an agency's application of a rule to a party creates a new, six-year cause of action to challenge . . . the agency's constitutional or statutory authority." *Dunn-McCampbell*, 112 F.3d at 1287; *see also CREW v. FEC*, 971 F.3d 340, 349 (D.C. Cir. 2020) (endorsing *Dunn-McCampbell*). And there is no question that, within the last six years, USDA has applied the challenged rules in final disqualification decisions that (i) as to Plaintiffs Gould and Mills, disqualified their horses, and (ii) as to the Association, required it to disqualify horses at its shows. *See* Br. 9-10.[1]

Courts have rejected the exact argument that USDA makes here. For example, in *Koi Nation of N. Cal. v. Dep't of Interior*, 361 F. Supp. 3d 14, 38-42 (D.D.C. 2019), an Indian tribe challenged a recent agency decision affecting the tribe's ability to engage in gaming. The Koi argued that the rule the agency applied in reaching that decision—promulgated more than six years earlier—was contrary to statute. *Id.* at 32. Presenting the same argument it advances here, the government asserted that "a significant portion of Plaintiff's argument is a facial challenge" to the underlying rule (because the Koi argued that the rule "is invalid") and insisted that those parts of the Koi's claims were untimely because the Koi could have challenged the rule when it was originally promulgated. Defendants' Mem. in Opp'n to Pltfs. Mot. for Summ. J. at 12, *Koi Nat. of N. Cal. v. Dep't of Interior*, 2018 WL 8333725 (D.D.C. May 31, 2018).

---

[1] *See Am. Stewards of Liberty v. Dep't of Interior*, 960 F.3d at 229 ("An agency applies a regulation to a party when it, for example, issues an order requiring a plaintiff to comply with the regulation, imposes a fine or other sanction against the plaintiff for violating the regulation, or denies a plaintiff's petition to rescind the regulation.").

The court squarely rejected that argument. It first explained that the tribe could press its "facial" claims to invalidate the rule because: "even after the six-year limitation period lapses from the adoption of a rule, a plaintiff may challenge regulations directly on the grounds that the issuing agency acted in excess of its statutory authority in promulgating them where the agency has applied the regulation to the plaintiff." *Koi Nat.*, 361 F. Supp. 3d at 38 (quotation omitted). And the Koi could bring their challenge to the rule even though they could have challenged the rule directly upon its promulgation. *See id.* at 39-40 (citing *Indep. Cmty. Bankers v. Bd. of Governors of Fed. Rsrv. Sys.*, 195 F.3d 28, 34 (D.C. Cir. 1999)); *see also Peri & Sons Farms, Inc. v. Acosta*, 374 F. Supp. 3d 63, 76 n.7 (D.D.C. 2019) (collecting cases permitting "facial claims" against an agency rule in the context of a challenge to a decision applying it, even where a direct challenge to its promulgation was time-barred).

In contrast, USDA does not cite a single case—from any circuit—holding that, when a regulated entity challenges a rule in the context of a specific agency decision applying that rule, there is somehow a separate statute of limitations analysis that can bar the plaintiff's request to have the rule declared invalid, vacated, or enjoined. They point to *Gen. Land Off. of Tex. v. Dep't of Interior*, 947 F.3d 309, 318 (5th Cir. 2020), Opp. 11, but the court in that case merely found that the refusal by the Fish and Wildlife Service to deny a petition asking it to delist the Golden-Cheeked Warbler as an endangered species did not allow the plaintiff to challenge the agency's original decision to list the Warbler. *Id.* at 318. Unlike here, that case did not involve any final agency action applying the challenged rule to the plaintiff.

USDA also points to *Herr v. U.S. Forest Serv.*, 803 F.3d 809, 820 (6th Cir. 2015) for the proposition that "[d]ifferent legal wrongs give rise to different rights of action." Opp. 11. But *Herr* supports Plaintiffs. The Sixth Circuit explained that, "[a] federal regulation that makes it six years without being contested does not enter a promised land free from legal challenge," because "[r]egulated parties may always assail a regulation as exceeding the agency's statutory authority in enforcement proceedings against them." *Herr*, 803 F.3d at 821. Similarly, Plaintiffs here are "assail[ing] a regulation as exceeding the agency's statutory authority" following its application to them in an adjudication.

B. The No-Showback Rule Is Unlawful.

As Plaintiffs have explained, the No-Showback Rule is both contrary to statute and arbitrary and capricious. USDA's arguments to the contrary are meritless. To start, USDA claims that the malleable limits on the length of a disqualification set by the Rule are permissible because "[n]either the Agency nor show management can know how long a horse found sore will remain sore." Opp. 14. But that makes Plaintiffs' point: The No-Showback Rule prevents a horse from showing even when the Agency does not know, and cannot know, that the horse "is sore." Indeed, it prevents a horse from showing even though an inspection could show that the horse is *not* sore. That is precisely why the Rule conflicts with the statute, which permits USDA to disqualify a horse only if the horse "is sore"—present tense. *See* Br. 12-13. Accepting USDA's rationale would ignore the limiting language in the Act and permit the Agency to disqualify a horse for *any* amount of time. In this twist on the principle that "ignorance is bliss," USDA apparently thinks that—as long as the Agency does not know how long soreness will last—there is no limiting principle and it can disqualify a horse for as long as it wants, even for six months. Nothing in the Act gives USDA such unfettered power.

USDA fares no better by pointing to the statutory definition of sore. It asserts that the Horse Protection Act (HPA)'s definition does not require a horse to be "presently suffering," so long as it "can reasonably be expected" to suffer physical pain or distress. Opp. 13 (citing 15 U.S.C. § 1821(3)(D)). But that also undermines USDA's position. As Plaintiffs explained, the statutory language permits USDA to disqualify a horse only if it "is sore" (present) or can be "expected" to be sore (future). *See* Br. 13 (noting that the USDA may not presume a horse "is sore" if it is no longer suffering *or reasonably expected to suffer* pain or distress). Nothing in that language permits the Agency to keep a horse out of a show simply because the horse *was* sore—in the past—on day one of the show, especially if it could be shown through inspection that the horse is not presently sore.

USDA does not dispute that the No-Showback Rule would prevent horses that are not sore under the statutory definition from competing. Instead, it remarkably asserts that there are ***no*** limitations on how long they are permitted to disqualify a horse, because the Act "leaves the issue of the length of the disqualification to the agency." Opp. 14. USDA's interpretation completely rewrites

the statute to omit *any* temporal limitation on the length of a disqualification and is directly at odds with Congress's command that only a horse that is *presently* sore may be disqualified from competition.

Significantly, USDA admits that the real purpose for the No-Showback Rule is "to deter individuals from showing horses that are sore." Opp. 14; *see also id.* at 21 (invoking "diminished deterrence" to explain need for Rule). In other words, the Rule is not about simply keeping a horse that "is sore" from showing, it is about *punishment*. But nothing in the statutory provisions permitting USDA to prevent sore horses from showing extends to keeping horses that are not sore out of horse shows as a form of punishment. To the contrary, the Act's provisions expressly provide due process *before* imposing penalties. *See* 15 U.S.C. § 1825(b)(1) ("No [civil] penalty shall be assessed unless such person is given notice and opportunity for a hearing before the Secretary with respect to such violation."). And the Agency is especially prohibited from imposing any form of punishment to "deter" behavior when it simultaneously fails to provide any semblance of due process.

Finally, USDA does not dispute that its inspectors routinely disqualify a horse on one night while permitting the same horse to show the next night, so long as the horse is competing in a different show. *See* Br. 15. As Plaintiffs explained, there is no logical way to reconcile this approach with the No-Showback Rule, and such "'unexplained' and 'inconsistent' positions are likely arbitrary and capricious." *Id.* (quoting *R.J. Reynolds Vapor Co. v. FDA*, 65 F.4th 182, 191 (5th Cir. 2023)).

C. USDA's Rules Fail To Provide Any Pre-Deprivation Process.

USDA "acknowledge[s] that the Court's prior reasoning [in the *TWHNCA* case] suggests a likelihood of success on the merits as to Plaintiffs' due process claims here." Opp. 15. Because USDA has conceded the point, Plaintiffs rely on their opening brief's due process arguments. *See* Br. 15-17. Plaintiffs add that, at a minimum, due process would require that (i) horse owners and trainers be permitted enough time to challenge a disqualification, which would require that horses be inspected at least four classes ahead of showing, (ii) inspections be performed by an impartial and disinterested team of inspectors that includes a senior, highly-trained equine veterinarian, (iii) horse owners and trainers be permitted at least two mandatory re-inspections, with one re-inspection performed by the senior veterinarian; and (iv) sufficient documentation of the process be provided to the owner and

trainer in the event of a disqualification (including video footage, photographs, and a detailed explanation of the reason for the disqualification).

D. The Scar Rule Is Unlawful.

Plaintiffs have shown that the Scar Rule (i) exceeds USDA's authority under the HPA, (ii) is arbitrary and capricious, and (iii) is void as unconstitutionally vague. Br. 17-23. While acknowledging that it has made efforts to "modernize" the antiquated Scar Rule, Opp. 16, USDA responds that the Scar Rule "does not exceed statutory authority," *id.*, and that "Plaintiffs have not made a sufficient showing that the Scar Rule applies to wounds that are not reasonably expected to cause a horse to suffer in accordance with the statutory definition," *id.* at 16-17. But, as Plaintiffs explained, the Scar Rule contains criteria that have no relation to soring, such as "excessive loss of hair," a condition that has many potential causes. *See* Br. 17-18. USDA never explains how this criterion relates to soring. Its closest attempt is the conclusory claim that "the criteria USDA assesses in the existing Scar Rule . . . relate to signs of inflammation contemplated by the statute as presumptive of soring." Opp. 17. But this explanation fails to show why *hair loss* (which may or may not accompany inflammation) is a fair litmus test for soring. At the same time, the Act does not state that *any* inflammation is sufficient to meet the definition of "sore," only inflammation that is caused "by a person." 15 U.S.C. § 1821(3). As Plaintiffs noted, hair loss may result from non-human causes, such as pastern dermatitis. Br. 18.

USDA also takes issue with Plaintiffs' reliance on a report conducted by NAS, which found that the Scar Rule required horse inspectors to identify granulomas using a gross examination when granulomas cannot be identified on a gross examination. Opp. 17; *see also* Br. 19-20. The Agency asserts that "Plaintiffs have not shown that USDA is calling Scar Rule violations for conditions that are *not* assessed by a gross examination." Opp. 17. But Plaintiffs do not *know* the reasons for any Scar Rule disqualification, because they are not provided with any documentation or explanation providing that information. *See* Compl. ¶ 14. That is part of the whole problem with the Scar Rule. It contains directives that are patently illogical and unenforceable and concededly "antiquated," Opp. 1, and when inspectors invoke it no one has any idea on what particular basis they are proceeding. USDA cannot defend that Rule on the grounds that Plaintiffs lack evidence showing that inspectors have expressly

invoked the most egregiously unlawful phrases in the Rule.

USDA fares no better defending against the charge that the Scar Rule is unconstitutionally vague. It makes the conclusory assertion that "the Rule is highly specific," Opp. 18, but it fails to show how the Rule "provide[s] those targeted by the [law] a reasonable opportunity to know what conduct is prohibited," *TWHNCA*, 765 F. Supp. 3d at 544. The language of the Rule provides no clear guidance as to what will lead to a disqualification. Instead, it either (i) requires the presence of "bilateral granulomas" (which cannot be seen with the naked eye, Br. 19), or (ii) ultimately leaves it to an inspector's discretion to identify "other bilateral pathological evidence of inflammation, and, other bilateral evidence of abuse indicative of soring," 9 C.F.R. § 11.3. The former category is what led NAS to declare that the Rule "as written is not enforceable." *See* NAS Report at 83. As to the latter category, the Scar Rule (much like the now-vacated DCIS Rule) "relies solely on the personal discretion of each inspector to identify" what is or is not a violation, which means the Rule is "deficient in providing notice to owners and trainers as to what conduct is 'forbidden or required.'" *TWHNCA*, 765 F. Supp. 3d at 544. *See also id.* at 544 ("Due process requires more than what the eye of each individual beholder deems sufficient."). The constitutional deprivation is further exacerbated because trainers and owners typically do not receive any written decision explaining the basis for the disqualification, Compl. ¶ 14, and have no ability to appeal. Due process demands more.

II. Plaintiffs Will Suffer Irreparable Harm.

USDA also fails in arguing that Plaintiffs will not suffer irreparable harm absent an injunction. As for Plaintiffs Gould and Mills, USDA claims that it is only "speculation" whether their horses will be disqualified at future events. Opp. 20. That misses the point. As explained, each Plaintiff has "a constitutionally protected right to show their horses without undue government interference." Br. 23 (citing *TWHNCA*, 765 F. Supp. 3d at 545). Because each of the unlawful rules and regulations will be applied to them, the harm is not "speculative." Nor can these Plaintiffs wait to see whether they will be disqualified to *then* bring a challenge, because part of the whole point of this lawsuit is that, once they are disqualified, there is no mechanism to appeal before they are finally deprived of the right to compete. It takes some chutzpah for an agency to (i) argue that the future disqualifications are too

speculative for preliminary relief now and (ii) simultaneously refuse to provide any review mechanism when those disqualifications actually occur.

USDA is also wrong to suggest that the Association cannot show irreparable harm. It claims that it is already too late for an injunction to affect Celebration attendance and participation. Opp. 19. But that ignores that tickets are sold *during* the event and, as Plaintiffs explained, "[s]pectators who planned to buy tickets for later nights of the show will put their wallets away when they hear that a favorite horse has been disqualified." Br. 24 (citing July 2, 2025 Wells Decl. ¶ 32 (ECF No. 10-1)). USDA also suggests that "the Association has not shown that the drop in ticket sales and entries" at the Celebration—42% and 22%, respectively, since 2010—"are caused by the challenged rules rather than other societal or unknown factors." Opp. 20. This assertion ignores that Warren Wells, CEO of the Association, explained that "many horse owners have told me they will not bring their horses to the Celebration because they do not believe they will be treated fairly." July 2 Wells Decl. ¶ 31.[2]

III. The Balance Of Equities And Public Interest Strongly Favor Injunctive Relief.

Finally, the balance of equities and public interest strongly favor injunctive relief, given that there is "generally no public interest in the perpetuation of unlawful agency action." *Louisiana v. Biden*, 55 F.4th 1017, 1035 (5th Cir. 2022) (quotation omitted). USDA claims that the No-Showback Rule and Scar Rule are needed to help prevent soring and again invoke "diminished deterrence" without the No-Showback Rule. Opp. 21-22. But "our system does not permit agencies to act unlawfully even in the pursuit of desirable ends." *R.J. Reynolds Vapor Co.*, 65 F.4th at 195 (quotation omitted). All parties agree that soring is abhorrent, but that does not mean that USDA can do anything it wants in the name of deterring soring. This Court has already rejected similar "we can ban soring at all costs" arguments. "[P]revention transforms into unfettered discretion where a prohibition

[2] In addition, in response to demands from potential participants, the Association recently passed a resolution establishing that registration for the Celebration will be reopened for 24 hours following the entry of an injunction in this case to allow owners and trainers to obtain the benefit of the Court's ruling. *See* July 31, 2025 Wells Decl. ¶ 3.

encompasses all combinations of practices or items that display any tenuous connection to [soring]." *TWHNCA*, 765 F. Supp. 3d at 540.

USDA also argues that the scope of any injunction should be limited based on *Trump v. CASA, Inc.*, 145 S. Ct. 2540 (2025). *See* Opp. 22-24. That is also wrong. USDA ignores that the *CASA* Court expressly carved out from its ruling the type of relief Plaintiffs seek under the APA. The Court was clear: "Nothing we say today resolves the distinct question whether the Administrative Procedure Act authorizes federal courts to vacate federal agency action." *Id.* at 2554 n.10 (citing 5 U.S.C. § 706(2)); *see also id.* at 2567 (Kavanaugh, J., concurring) ("And in cases under the Administrative Procedure Act, plaintiffs may ask a court to preliminarily 'set aside' a new agency rule."). The preliminary relief Plaintiffs seek here is merely a preliminary version of what they will be entitled to under the APA if they prevail: vacatur of the challenged regulations and rules. *See Nat'l Ass'n of Priv. Fund Managers v. SEC*, 103 F.4th 1097, 1114 (5th Cir. 2024) ("Under section 706 of the APA, when a court holds that an agency rule violates the APA, it 'shall'—not may—'hold unlawful and set aside' [the] agency action."). Thus, contrary to USDA's assertion, Plaintiffs are not "rest[ing] [their] claim[s] to relief on the legal rights or interests of [other] parties." Opp. 23 (quotation omitted).

Even if the Court were to limit the scope of relief, complete relief for the Association would still require a broad remedy. The Association not only manages the annual Celebration, it also operates two other horse shows—the Fun Show and the Celebration Fall Classic. *See* July 2 Wells Decl. ¶ 3. And it owns a Horse Industry Organization named SHOW, Inc. that provides support to horse shows in Tennessee, Mississippi, Alabama, Kentucky, North Carolina, and South Carolina. *Id.* ¶ 5. To ensure "complete relief" to the Association, *CASA*, 145 S. Ct. at 2563, any injunction must cover all horse shows in which the Association or SHOW manages or provides support.

CONCLUSION

The Court should preliminarily enjoin USDA from enforcing the Scar Rule and the No-Showback Rule, and from disqualifying horses without providing meaningful pre-deprivation review.

August 6, 2025

Respectfully submitted.

/s/ Patrick F. Philbin

MARVIN W. JONES
Texas Bar No. 10929100
Sprouse Shrader Smith
701 S. Taylor Street, #500
Amarillo, TX 79101
(806) 468-3344
marty.jones@sprouselaw.com

PATRICK F. PHILBIN (*Pro Hac Vice*)
JOHN V. COGHLAN (*Pro Hac Vice*)
CHASE T. HARRINGTON (*Pro Hac Vice*)
Torridon Law PLLC
801 Seventeenth Street NW, Suite 1100
Washington, DC 20006
(202) 249-6900
pphilbin@torridonlaw.com
jcoghlan@torridonlaw.com
charrington@torridonlaw.com

Counsel for Tom Gould, Ann Mills, and The Tennessee Walking Horse National Celebration Association