

19-1002-cv

Moya v. United States Department of Homeland Security

1 **United States Court of Appeals**
2 **for the Second Circuit**

3
4 August Term, 2019

5
6 (Argued: December 6, 2019 Decided: September 15, 2020)

7
8 Docket No. 19-1002-cv
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11 DAYSI MOYA, OBDULIA RUIZ, YOUTH MINISTRIES FOR PEACE AND
12 JUSTICE, INC.,

13 *Plaintiffs-Appellants,*

14
15 SOYA FRANCES DE DANDRADE, MARIA VASQUEZ, MARISOL OJEDA DE
16 NUNEZ, JUANA JIMENEZ, EDUVIGIS A. DEL ROSARIO, CHOU HANG,
17 MIGUELINA DE LA CRUZ, PROJECT CITIZENSHIP, INC.,

18 *Plaintiffs,*

19 v.

20
21 UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED
22 STATES CITIZENSHIP AND IMMIGRATION SERVICES, CHAD WOLF, AS
23 ACTING SECRETARY OF THE UNITED STATES DEPARTMENT OF
24 HOMELAND SECURITY, KENNETH T. CUCCINELLI, AS ACTING DIRECTOR
25 OF THE UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES,

26 *Defendants-Appellees.**

27
28 Before:

29 JACOBS, CARNEY, and PARK, *Circuit Judges.*
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* Under Fed. R. App. P. 43(c)(2), Chad Wolf is automatically substituted for Kevin McAleenan in his official capacity as Acting Secretary of the Department of Homeland Security. The Clerk is respectfully directed to amend the caption of this matter accordingly.

Daysi Moya, Obdulia Ruiz, and Youth Ministries for Peace and Justice, Inc. (“YMPJ”) appeal an order of the United States District Court for the Southern District of New York (Castel, J.) dismissing their claims against the United States Department of Homeland Security, the United States Citizenship and Immigration Services, and their respective agency heads under the Immigration and Nationality Act (“INA”), the Administrative Procedure Act, the Rehabilitation Act, and the Fifth Amendment Due Process Clause. The district court held that: (1) Moya and Ruiz failed to exhaust their administrative remedies, (2) the Rehabilitation Act does not provide a cause of action against executive agencies acting as regulators, and (3) although YMPJ had Article III standing to bring suit, (4) YMPJ did not fall within the zone of interests of the INA or the Due Process Clause. Plaintiffs appeal from the district court’s holdings on exhaustion, the Rehabilitation Act, and zone of interests, and Defendants challenge the district court’s determination on Article III standing. We find that the district court correctly decided each of these issues and **AFFIRM**.

Judge Jacobs concurs in part and concurs in the judgment in a separate opinion.

Judge Carney concurs in part and dissents in part in a separate opinion.

CHRISTOPHER LAMB, Bronx Legal Services,
Bronx, NY *for Plaintiffs-Appellants*.

ANTHONY J. SUN (Christopher Connolly, *on the brief*), *for* Geoffrey S. Berman, United States Attorney for the Southern District of New York, New York, NY.

PARK, *Circuit Judge*:

Plaintiffs Daysi Moya and Obdulia Ruiz applied to become naturalized citizens of the United States. The government denied their requests for disability exemptions from the civics and English testing requirements, and Moya and Ruiz

sued in federal court claiming that the naturalization process is unlawful. The Immigration and Nationality Act (“INA”), however, does not allow Moya and Ruiz to seek judicial review of the denial of their applications until “after completion of the available administrative review procedures.” *Escaler v. U.S. Citizenship & Immigration Servs.*, 582 F.3d 288, 291 (2d Cir. 2009) (citing 8 U.S.C. § 1421(c)). Because Moya and Ruiz did not exhaust their administrative remedies, the district court properly dismissed their claims. The other plaintiff in this appeal is Youth Ministries for Peace and Justice, Inc. (“YMPJ”), a non-profit organization that assists applicants for naturalization. The district court correctly found that although YMPJ had Article III standing to sue, it did not fall within the zone of interests of the INA, the Administrative Procedure Act (“APA”), or the Due Process Clause and thus could not bring a cause of action on its own behalf. For these reasons, we affirm.

I. BACKGROUND

A. Naturalization Process

Under the INA, a lawful permanent resident (“LPR”) who wishes to become a naturalized citizen must pass English and civics tests. 8 U.S.C. § 1423(a). The INA grants an exemption to “any person who is unable because of physical or

1 developmental disability or mental impairment” to comply with these testing
2 requirements. *Id.* § 1423(b)(1). An applicant seeking this exemption “must submit
3 Form N-648, Medical Certification for Disability Exceptions” (the “N-648 waiver”),
4 to be completed by a licensed doctor or psychologist. 8 C.F.R. § 312.2(b)(2). If the
5 applicant’s N-648 waiver request is denied, she has two chances to pass the English
6 and civics tests, and if she cannot do so, her naturalization application is denied.
7 *Id.* §§ 312.2(c), 312.5(a), 336.1.

8 When “an application for naturalization is denied, the applicant may
9 request a hearing before [a different] immigration officer.” 8 U.S.C. § 1447(a). If
10 that immigration officer affirms the denial, the applicant “may seek review of such
11 denial before the United States district court for the district in which such person
12 resides.” *Id.* § 1421(c). The district court “shall make its own findings of fact and
13 conclusions of law and shall, at the request of the petitioner, conduct a hearing de
14 novo on the application.” *Id.* Section 1421(c) provides the “[s]ole procedure” for
15 applicants to challenge the denial of a naturalization application, and applicants
16 must raise any such challenges “in the manner and under the conditions
17 prescribed [by the INA] and not otherwise.” *Id.* § 1421(d).

B. The Parties

Plaintiffs Daysi Moya and Obdulia Ruiz (the “Individual Plaintiffs”) are LPRs who applied to become naturalized citizens. They suffer from “major depressive disorder” and submitted N-648 waiver forms, but were denied exemptions from the testing requirements. Their naturalization applications were denied or withdrawn after they failed to satisfy the English and civics requirements twice.

Moya alleges that the immigration officer who considered her waiver request “did not review [her] N-648 disability waiver forms” prior to meeting with her, failed to “provide [her] with a detailed explanation or meaningful guidance,” and otherwise failed to consider her application properly. Ruiz similarly claims that her N-648 waiver and naturalization application were rejected for arbitrary and improper reasons. Moya and Ruiz do not dispute that they failed to satisfy the INA’s exhaustion requirement by seeking a hearing before a new immigration officer after their naturalization applications were denied. *See* 8 U.S.C. § 1421(c).

YMPJ is a non-profit organization that provides assistance to communities in the South Bronx, including “immigration services, specifically helping their eligible constituents become United States Citizens.” YMPJ employs a United

1 States Department of Justice (“DOJ”) “accredited representative” to help
2 immigrants apply for citizenship. Between 2015 and 2017, when this lawsuit was
3 filed, YMPJ’s representative assisted with 118 naturalization applications. Eleven
4 of these applications requested N-648 waivers, ten of which were denied after the
5 first interview with an immigration officer.

6 Plaintiffs allege that “YMPJ’s DOJ accredited representative expends
7 additional resources in serving clients who require N-648 waivers . . . and, at
8 minimum, spends twice as much time servicing naturalization clients who require
9 N-648 waiver requests [as] those who do not.” They further allege that rejection
10 of an N-648 waiver imposes burdens on the DOJ-accredited representative, who
11 must “work with physicians to supplement and revise N-648 disability waiver
12 forms.” Because Defendants’ allegedly “unlawful policies and practices” lead to
13 the rejection of more N-648 waivers, Plaintiffs claim that these policies force the
14 representative to spend more time with disabled clients and less time with
15 everyone else. As a result, YMPJ had to “divert substantial resources away from
16 [its] primary mission in order to address, respond to, and alleviate the unlawful
17 disability discrimination their clients face at the hands of the Defendants.” This
18 prevented YMPJ “from conducting [its] primary mission of assisting eligible

1 individuals to naturalize, requiring [YMPJ] to spend substantial time and
2 resources overcoming unlawful discriminatory barriers to the naturalization of
3 their clients.”

4 Defendants-Appellees are the United States Department of Homeland
5 Security, the United States Citizenship and Immigration Services, and the directors
6 of those agencies (collectively, “Defendants” or the “government”). Plaintiffs
7 allege that Defendants “routinely violate their own policies with regard to” N-648
8 waivers. They claim that Defendants subject disabled naturalization applicants
9 seeking N-648 waivers “to arbitrary decision-making, discriminate against them
10 on the basis of their disabilities,” and otherwise “fail to provide them with
11 reasonable accommodations” as required by law.

12 **C. Procedural History**

13 In 2017 a group of LPRs and immigration-related non-profit organizations
14 (including Moya, Ruiz, and YMPJ) sued Defendants for failing “to implement a
15 fair and effective system for approving [N-648] waivers in violation of [their]
16 obligations under the” INA, the APA, the Rehabilitation Act, and the Fifth

1 Amendment Due Process Clause.¹ Plaintiffs sought declaratory and injunctive
2 relief to change the N-648 waiver process in various ways.

3 Defendants moved to dismiss the complaint for lack of subject-matter
4 jurisdiction and failure to state a claim under Federal Rules of Civil Procedure
5 12(b)(1) and 12(b)(6). The district court granted the motion in full and dismissed
6 all of Moya's, Ruiz's, and YMPJ's claims.

7 First, the court held that the Individual Plaintiffs could not bring their INA,
8 APA, or Due Process Clause claims in federal court because they had not
9 exhausted their administrative remedies as required by 8 U.S.C. § 1421(c). Second,
10 the court held that Plaintiffs could not sue under the Rehabilitation Act because
11 the statute does not imply a private right of action against executive agencies in
12 their regulatory capacity. Third, the court held that YMPJ had Article III standing
13 to sue Defendants for their N-648 waiver practices because YMPJ alleged that
14 Defendants' conduct impaired its mission of assisting immigrants. Fourth, the
15 district court held that YMPJ could not bring suit under the INA, the APA, or the

¹ Originally, this suit included seven other individual plaintiffs and one other organizational plaintiff. The district court found that these individuals' claims were moot because Defendants approved their N-648 waivers, and the other organizational plaintiff did not join this appeal.

1 Due Process Clause because, unlike individual applicants for naturalization, the
2 organization was not within the zone of interests of these laws.

3 Plaintiffs now appeal the district court's dismissal of their claims.

4 II. DISCUSSION

5 When reviewing the dismissal of a complaint for lack of subject-matter
6 jurisdiction or failure to state a claim, "we review factual findings for clear error
7 and legal conclusions *de novo*, accepting all material facts alleged in the complaint
8 as true and drawing all reasonable inferences in the plaintiff's favor." *Liranzo v.*
9 *United States*, 690 F.3d 78, 84 (2d Cir. 2012); *Faulkner v. Beer*, 463 F.3d 130, 133 (2d
10 Cir. 2006).

11 A. Exhaustion of Administrative Remedies

12 The district court properly dismissed the Individual Plaintiffs' claims under
13 the INA, the APA, and the Due Process Clause because they failed to exhaust their
14 administrative remedies. The INA provides that "[a] person whose application
15 for naturalization under this subchapter is denied, *after a hearing before [a second]*
16 *immigration officer under section 1447(a) of this title*, may seek review of such denial
17 before the United States district court" 8 U.S.C. § 1421(c) (emphasis added);
18 *see also id.* § 1447(a) (request for hearing before immigration officer). The

1 Individual Plaintiffs failed to satisfy this statutory requirement, so they could not
2 pursue their claims under the INA in district court.

3 It is true, as Plaintiffs argue, that Moya and Ruiz seek to challenge the N-648
4 wavier process generally and not merely the denials of their own naturalization
5 applications. But this does not exempt them from the INA's exhaustion
6 requirement. *See Bastek v. Fed. Crop Ins. Corp.*, 145 F.3d 90, 94 (2d Cir. 1998)
7 ("Statutory exhaustion requirements are mandatory, and courts are not free to
8 dispense with them.").

9 The Supreme Court's decision in *McNary v. Haitian Refugee Center*, 498 U.S.
10 479 (1991), is not to the contrary. There, the Supreme Court held that an
11 administrative exhaustion requirement for Special Agricultural Workers
12 ("SAWs") did not bar "general collateral challenges to unconstitutional practices
13 and policies." *Id.* at 492. The Court reasoned that under "the limited judicial
14 review procedures" available to SAWs, "meaningful judicial review of their
15 statutory and constitutional claims would be foreclosed." *Id.* at 484; *see also id.* at
16 486 ("[T]he statute plainly foreclosed any review in the district courts of individual
17 denials of SAW status applications. Moreover, absent initiation of a deportation

1 proceeding against an unsuccessful applicant, judicial review of such individual
2 determinations was completely foreclosed.”).

3 *McNary* is not applicable here because Section 1421(c) offers an expansive
4 form of judicial review through which Plaintiffs could raise systemic challenges,
5 including the ones they seek to bring in this lawsuit. Indeed, we have noted that
6 Section 1421(c)’s “grant of authority is unusual in its scope—rarely does a district
7 court review an agency decision de novo and make its own findings of fact.” *Chan*
8 *v. Gantner*, 464 F.3d 289, 291 (2d Cir. 2006) (citation omitted). If an applicant wishes
9 to raise systemic constitutional or statutory challenges to the naturalization
10 process as part of her appeal, the district court has the “factfinding and record-
11 developing capabilities” to create “an adequate record as to the pattern” of
12 systemic violations. *See McNary*, 498 U.S. at 497; *see also Elgin v. Dep’t of Treasury*,
13 567 U.S. 1, 19 (2012) (holding that plaintiffs could not circumvent an administrative
14 review scheme that “fully accommodates [their] potential need to establish facts
15 relevant to [their] constitutional challenge”); *Aparicio v. Blakeway*, 302 F.3d 437, 447
16 (5th Cir. 2002) (holding that *McNary* does not allow plaintiffs to circumvent
17 Section 1421(c)).

Nor are the Individual Plaintiffs' APA and constitutional claims exempt from the INA's exhaustion requirement. Although there is a "strong presumption that Congress intends judicial review of administrative action," *Sharkey v. Quarantillo*, 541 F.3d 75, 84 (2d Cir. 2008) (citation omitted), APA suits are subject to "statutes preclud[ing] judicial review," including exhaustion requirements, 5 U.S.C. § 701(a)(1). See *Darby v. Cisneros*, 509 U.S. 137, 153 (1993) (noting that the APA did not eliminate general "limitation[s] on judicial review," including "exhaustion doctrine[s]").² There is no general exception to statutory exhaustion requirements for constitutional claims, particularly when the statute at issue expressly provides for judicial review. See, e.g., *Theodoropoulos v. INS*, 358 F.3d 162, 172 (2d Cir. 2004) (applying an exhaustion requirement to a constitutional claim).

In short, Section 1421(c)'s exhaustion requirement is "mandatory," and the Individual Plaintiffs may not sue until they have satisfied it. *Bastek*, 145 F.3d at 94.

B. Implied Right of Action under the Rehabilitation Act

The district court also correctly held that Plaintiffs cannot assert a claim against the government under the Rehabilitation Act. The Rehabilitation Act

² *Sharkey v. Quarantillo*, on which Plaintiffs rely, did not involve an exhaustion requirement, but rather a statute barring *any* judicial review of agency decisions, and we held that this complete bar did not apply to plaintiffs' APA claims. 541 F.3d at 90.

1 states that no “qualified individual with a disability . . . shall, solely by reason of
2 her or his disability, be [discriminated against] . . . under any program or activity
3 receiving Federal financial assistance or under any program or activity conducted
4 by any Executive agency.” 29 U.S.C. § 794(a). The statute does not, however,
5 create an express right of action allowing private parties to sue agencies for
6 discriminatory regulations, as Plaintiffs wish to do here. *Id.* Nor does the statute
7 reflect Congress’s intent to imply a private right of action against executive
8 agencies as regulators.

9 When analyzing whether a statute implies a private right of action, our
10 “interpretive inquiry begins with the text and structure of the statute and ends
11 once it has become clear that Congress did not provide a cause of action.”
12 *Alexander v. Sandoval*, 532 U.S. 275, 288 n.7 (2001) (citation omitted); *see also Lopez*
13 *v. Jet Blue Airways*, 662 F.3d 593, 596 (2d Cir. 2011). “[I]mplied rights of action are
14 disfavored, and will not be found in the absence of clear evidence of legislative
15 intent.” *Prousalis v. Moore*, 751 F.3d 272, 278 (4th Cir. 2014) (citation omitted); *see*
16 *also Alexander*, 532 U.S. at 286 (“statutory intent . . . is determinative”).

17 The text of the Rehabilitation Act does not evince a “clear manifestation of
18 congressional intent” to create a private right of action against executive agencies

1 acting in their regulatory capacity. *Jet Blue Airways*, 662 F.3d at 596. Although the
2 Rehabilitation Act prohibits discrimination by executive agencies acting as both
3 grant providers and regulators, it authorizes an express private right of action to
4 enforce only the grant-making provision. *See* 29 U.S.C. § 794a (providing a cause
5 of action to “any person aggrieved by any act or failure to act by any recipient of
6 Federal assistance or Federal provider of such assistance”). From this, we
7 conclude that Congress did not imply a private right of action against agencies as
8 regulators. *Brennan-Centrella v. Ritz-Craft Corp. of Penn.*, 942 F.3d 106, 111 (2d Cir.
9 2019) (“As a matter of statutory construction, we presume that the legislature
10 follows the principle of *expressio unius est exclusio alterius*—that is, ‘mention of one
11 impliedly excludes others.’” (citation omitted)).

12 This conclusion is buttressed by the fact that Congress expressly provided
13 two alternative mechanisms to enforce the prohibition against discriminatory
14 agency action. *See Alexander*, 532 U.S. at 290 (“The express provision of one
15 method of enforcing a substantive rule suggests that Congress intended to
16 preclude others.”); *accord Bellikoff v. Eaton Vance Corp.*, 481 F.3d 110, 116 (2d Cir.
17 2007). First, Section 794(a) directs agency heads to “promulgate such regulations
18 as may be necessary to carry out the” prohibition against discrimination. Second,

the APA provides an express cause of action for plaintiffs who wish to sue an executive agency for violating the Rehabilitation Act, as the First and Fourth Circuits have noted. *See Cousins v. Sec’y of the U.S. Dep’t of Transp.*, 880 F.2d 603, 605–06 (1st Cir. 1989) (en banc) (Breyer, J.) (holding that the Rehabilitation Act does not imply a private right of action against agencies as regulators because the APA already allows for such suits); *Clark v. Skinner*, 937 F.2d 123, 125–26 (4th Cir. 1991) (same). The availability of these alternative mechanisms to enforce the Rehabilitation Act strongly suggests that Congress did not intend to imply a superfluous private right of action.

C. Article III Standing

Having found that the district court properly dismissed the Individual Plaintiffs’ claims, we turn next to whether YMPJ can “independently satisfy” the requirements of Article III and bring suit by itself. *Nnebe v. Daus*, 644 F.3d 147, 156 (2d Cir. 2011). The district court correctly found that YMPJ alleged sufficient injury to demonstrate standing at the pleading stage.

Article III standing requires that a plaintiff “must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v.*

1 *Robins*, 136 S. Ct. 1540, 1547 (2016). “To establish injury in fact, a plaintiff must
 2 show that he or she suffered ‘an invasion of a legally protected interest’ that is
 3 ‘concrete and particularized’ and ‘actual or imminent, not conjectural or
 4 hypothetical.’” *Id.* at 1548 (citation omitted). The issue here is whether YMPJ
 5 adequately pled an injury in fact by alleging that Defendants’ conduct caused it to
 6 spend “substantial time and resources” on N-648 waiver applications, which has
 7 “frustrated” its organizational mission of helping disabled naturalization
 8 applicants.³

9 “We have recognized that only a ‘perceptible impairment’ of an
 10 organization’s activities is necessary for there to be an ‘injury in fact.’” *Nnebe*, 644
 11 F.3d at 157 (citation omitted). As with any injury in fact, however, that impairment
 12 must be “concrete and particularized.” *Spokeo*, 136 S. Ct. at 1548. In *Centro de la*
 13 *Comunidad Hispana de Locust Valley v. Town of Oyster Bay* (“*Centro*”), 868 F.3d 104
 14 (2d Cir. 2017), we reiterated that “where an organization diverts its resources away
 15 from its current activities, it has suffered an injury that has been repeatedly held
 16 to be independently sufficient to confer organizational standing.” *Id.* at 111 (citing

³ YMPJ does not claim standing on behalf of its members or clients but is “su[ing] to vindicate its own rights as an organization with goals and projects of its own.” *N.Y. Civil Liberties Union v. N.Y.C. Transit Auth.*, 684 F.3d 286, 295 (2d Cir. 2012).

1 *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982)). The plaintiff in *Centro*, an
2 organization that worked with day laborers, alleged injury from a town ordinance
3 that prevented laborers from congregating and soliciting work at certain locations
4 because the plaintiff would “inevitably face increased difficulty in meeting with
5 and organizing those laborers.” 868 F.3d at 110. We held that these allegations
6 were adequate because the plaintiff had “to divert money from its other current
7 activities to advance its established organizational interests” of finding and
8 organizing day laborers.⁴ *Id.*

9 Here, YMPJ repeatedly alleges that Defendants’ conduct has “frustrated” its
10 “organizational mission . . . of assisting eligible individuals to naturalize” by
11 requiring it “to spend substantial time and resources overcoming unlawful
12 discriminatory barriers to the naturalization of [its] clients.” Specifically, YMPJ
13 alleges a diversion of its resources because its sole DOJ-accredited representative
14 must “work with physicians to supplement and revise N-648 disability waiver
15 forms,” and “attend[] the naturalization interviews for clients who require an N-
16 648 disability waiver request.” This additional work requires the DOJ-accredited

⁴ The *Centro* court also relied on the fact that the plaintiff “offered evidence that those responsible for enforcing the [new law] are likely to confuse the conduct of [plaintiff’s] activists with that of the day laborers,” creating “a risk of erroneous arrest.” *Id.* at 111.

1 representative “at a minimum, [to spend] twice as much time servicing” clients
2 who require N-648 waiver requests, leaving less time for YMPJ’s other clients. *See*
3 *supra* at 6–7. These alleged obstacles “constitute far more than simply a setback to
4 [YMPJ’s] abstract social interests”—they represent a real “drain on the
5 organization’s resources.” *Havens Realty Corp.*, 455 U.S. at 379; *see also New York v.*
6 *U.S. Dep’t of Homeland Sec.*, 969 F.3d 42, 61 (2d Cir. 2020) (finding standing based
7 on nonprofit organizations’ “diverted resources that would otherwise have been
8 available for other programming”). We thus agree with the district court that
9 YMPJ has alleged a “perceptible impairment” of its ability to help immigrants that
10 is sufficiently “concrete and particularized” to survive a motion to dismiss. *Nnebe*,
11 644 F.3d at 157; *Spokeo*, 136 S. Ct. at 1548.⁵

12 Judge Jacobs would hold that YMPJ’s alleged diversion of resources does
13 not suffice for standing because “navigating the immigration laws is not a
14 diversion from [YMPJ’s] current activity; it is the current activity itself,” and
15 because YMPJ has been able to continue performing that activity, albeit with less

⁵ Although these pleadings suffice for standing here, YMPJ would need to produce evidence of its injury if the litigation were to proceed. *See Lerman v. Bd. of Elections*, 232 F.3d 135, 142 (2d Cir. 2000) (“The determination of whether Article III standing exists [] must comport with the ‘manner and degree of evidence required at the successive stages of the litigation.’” (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992))).

1 “efficiency and success.” Concurrence at 2–3. But we have previously held that a
2 plaintiff needs to allege only “some perceptible opportunity cost” from the
3 “expenditure of resources that could be spent on other activities.” *Nnebe*, 644 F.3d
4 at 157; *accord Havens Realty Corp.*, 455 U.S. at 379 (finding injury in fact because of
5 a “concrete and demonstrable injury to [an] organization’s activities—with the
6 consequent drain on the organization’s resources”). As explained above,
7 substantial expenditure of resources and frustration of an organization’s mission
8 are sufficient under our precedents to establish injury in fact. Judge Jacobs’s
9 quarrel thus appears to be with the cases we are bound to follow.

10 **D. Zone of Interests**

11 Even though YMPJ adequately pled Article III standing, the district court
12 correctly dismissed its claims because they did not fall within the zone of interests
13 of the APA, the INA, and the Due Process Clause. “Whether a plaintiff comes
14 within the ‘zone of interests’ is an issue that requires us to determine, using
15 traditional tools of statutory interpretation, whether a legislatively conferred cause
16 of action encompasses a particular plaintiff’s claim.” *Lexmark Int’l, Inc. v. Static*
17 *Control Components, Inc.*, 572 U.S. 118, 127 (2014) (cleaned up). The zone-of-
18 interests test “was formerly called ‘statutory standing,’” but the Supreme Court

has since clarified that it “in fact is not a standing issue, but simply a question of whether the particular plaintiff ‘has a cause of action under the statute.’” *Am. Psychiatric Ass’n v. Anthem Health Plans, Inc.*, 821 F.3d 352, 359 (2d Cir. 2016) (quoting *Lexmark*, 572 U.S. at 128); see also *Fed. Defs. of N.Y., Inc. v. Fed. Bureau of Prisons*, 954 F.3d 118, 129 (2d Cir. 2020).

Although the Supreme Court “announced the modern zone-of-interests test in 1971, its roots lie in the common-law rule that a plaintiff may not recover under the law of negligence for injuries caused by violation of a statute unless the statute ‘is interpreted as designed to protect the class of persons in which the plaintiff is included, against the risk of the type of harm which has in fact occurred as a result of its violation.’” *Lexmark*, 572 U.S. at 130 n.5 (quoting W. Keeton, D. Dobbs, R. Keeton, & D. Owen, *Prosser & Keeton on Law of Torts* § 36, pp. 229–230 (5th ed. 1984)).

We analyze the zone of interests for two causes of action—the APA claim based on the INA and the Due Process Clause claim.⁶ See *Lexmark*, 572 U.S. at 130

⁶ Other than the Rehabilitation Act claim, which is meritless for the reasons stated above, Plaintiffs articulate only two distinct legal causes of action: (1) an APA claim based on violations of the INA and (2) a Due Process claim. As to the former, although the complaint lists separate causes of action under the INA and the APA, the APA claim is based on Defendants’ alleged substantive violations of the INA. See *infra* at 21–22.

1 (“the breadth of the zone of interests varies according to the provisions of law at
2 issue” (internal quotation marks omitted)).

3 1. INA-Based APA Claim

4 YMPJ does not fall within the class of persons specified in the INA’s
5 naturalization provisions as having the right to sue—namely, naturalization
6 applicants. It nevertheless wishes to sue under the INA because “Defendants’
7 unlawful policies and practices . . . [have] frustrate[d] [its] mission of helping
8 eligible constituents become United States Citizens.” But YMPJ must have more
9 than a derivative interest in someone else’s rights to satisfy the zone-of-interests
10 test. It would be “inconsistent with the purposes implicit” in the INA’s
11 naturalization scheme to find that YMPJ can bring suit here, particularly because
12 YMPJ would then be able to evade the statute’s exhaustion requirements. *Lexmark*,
13 572 U.S. at 130 (citation omitted).

14 a. *The APA Zone-of-Interests Test*

15 “The relevant zone of interests for an APA claim is defined by ‘the statute
16 that the plaintiff says was violated,’ rather than by the APA itself.” *Fed. Defs.*, 954
17 F.3d at 128 (internal alterations omitted) (quoting *Match-E-Be-Nash-She-Wish Band*
18 *of Pottawatomí Indians v. Patchak*, 567 U.S. 209, 224 (2012)). Here, YMPJ alleges that

1 Defendants violated 8 U.S.C. § 1423(b)(1), which states that the naturalization
 2 testing requirements “shall not apply to any person who is unable because of
 3 physical or developmental disability or mental impairment to comply therewith.”
 4 While we must consider Section 1423(b)(1) in the “overall context” of the INA and
 5 its naturalization scheme, “the zone-of-interests test is to be determined not by
 6 reference to the overall purpose of the Act in question . . . but by reference to the
 7 particular provision of law upon which [YMPJ] relies.” *Bennett v. Spear*, 520 U.S.
 8 154, 175–76 (1997); *Clarke v. Secs. Indus. Ass’n*, 479 U.S. 388, 401 (1987).⁷

9 The zone-of-interests “test denies a right of review if [YMPJ]’s interests are
 10 so marginally related to or inconsistent with the purposes implicit in
 11 [Section 1423(b)(1)] that it cannot reasonably be assumed that Congress intended
 12 to permit the suit.” *Clarke*, 479 U.S. at 399. While this test is “lenient,” *Lexmark*,
 13 572 U.S. at 130, it is not toothless, as YMPJ “must show less than an intent to benefit

⁷ It is appropriate to draw on the “overall context” of a statute only when doing so is helpful to understand the meaning of the specific provisions at issue. See Dissent at 6–7 (discussing the need to consider “overall context”). In *Clarke*, the Supreme Court stated that “we are not limited to considering the statute under which respondents sued, but may consider any provision that helps us to understand Congress’ overall purposes in [enacting] the [predicate statute].” *Clarke*, 479 U.S. at 401. The Court later cautioned, however, that *Clarke* “must be taken in the context in which it was made.” *Air Courier Conference of Am. v. Am. Postal Workers Union AFL-CIO*, 498 U.S. 517, 529 (1991). Specifically, *Clarke* interpreted the provision at issue by reference to another provision in the statute only because the former was “a limited exception to the otherwise applicable requirement of” the latter. *Id.* (quoting *Clarke*, 479 U.S. at 401).

1 but more than a marginal relationship to the statutory purposes.” *Fed’n of Am.*
2 *Immigration Reform, Inc. v. Reno*, 93 F.3d 897, 900 (D.C. Cir. 1996) (cleaned up); *see*
3 *also Air Courier Conference of Am.*, 498 U.S. at 530 (rejecting an approach that “could
4 deprive the zone-of-interests test of virtually all meaning”).

5 *b. YMPJ’s Derivative Interests*

6 YMPJ’s interest in improving the naturalization process for the sake of its
7 clients does not satisfy the zone-of-interests test. Section 1423(b)(1) does not
8 provide a cause of action to advocacy organizations like YMPJ. Indeed, it would
9 not even affect YMPJ but for its “mission of helping [] eligible constituents”
10 comply with the statute and the resources it expends in pursuit of that mission.
11 Thus, YMPJ’s interest is entirely “derivative” of its clients’ interests, and “this is
12 precisely the sort of claim that the [zone-of-interests] doctrine is designed to
13 foreclose.” *Ctr. for Reprod. Law & Policy v. Bush* (“CRLP”), 304 F.3d 183, 196 (2d Cir.
14 2002) (Sotomayor, J.) (citation omitted); *see Haitian Refugee Ctr. v. Gracey*, 809 F.2d
15 794, 813 (D.C. Cir. 1987) (“If any person or organization interested in promoting
16 knowledge, enjoyment, and protection of the rights created by a statute . . . has an

1 interest that falls within the zone protected or regulated by the statute[,] . . . then
 2 the zone-of-interest test is not a test because it excludes nothing.”).⁸

3 “The core concern of the zone-of-interests doctrine is, after all, whether a
 4 plaintiff has a cause of action under the law invoked.” *Fed. Defs.*, 954 F.3d at 129.

5 This plainly requires more than an altruistic concern for somebody else’s rights.

6 For example, in *Patchak*, the Supreme Court held that the plaintiff landowner could

7 challenge the acquisition of neighboring land under the Indian Reorganization

8 Act, 25 U.S.C. § 5108, because the provision at issue was so “entwined with

9 considerations of land use” that “neighbors to the use (like [the plaintiff]) are

10 reasonable—indeed, predictable—challengers.” 567 U.S. at 227. The plaintiff

11 himself claimed “economic, environmental, and aesthetic harm as a nearby

12 property owner,” not just an indirect harm to someone else. *Id.* at 224. Similarly,

13 in *Federal Defenders*, this Court held that defense attorneys satisfied the zone-of-

14 interests test when they sued under regulations requiring attorney-inmate visits

15 and thus “sheltering [the defense attorneys’] . . . interests in having frequent and

⁸ The dissent suggests that we should not extend *CRLP*’s reasoning on derivative interests from the Due Process context to the APA analysis here. Dissent at 16 n.8. But nothing in *CRLP* cabins its reasoning in this way, and the court’s concerns that the plaintiffs sought to make their claims “actionable merely by attaching them to a third party’s . . . interests” are just as relevant in this context. 304 F.3d at 196.

1 predictable access to clients.” 954 F.3d at 128. We found that the attorneys sought
 2 “to protect their [own] interests in having adequate access to their clients” —they
 3 did not have to rely on a derivative interest in their clients’ access to counsel.⁹ *Id.*
 4 at 131.

5 Unlike the plaintiffs in *Patchak* and *Federal Defenders*, YMPJ is a crucial step
 6 removed from the challenged statute. The effect of Section 1423(b)(1)’s disability-
 7 waiver process on YMPJ is derived entirely from YMPJ’s efforts to assist the
 8 disabled naturalization applicants who are directly regulated by the statute.¹⁰

⁹ The dissent asserts that this case is “materially indistinguishable” from *Federal Defenders* because the plaintiff organization in both cases “would not have been injured by the government’s alleged misconduct *but for* its own efforts to fulfill its organizational mission by helping clients who were ‘directly regulated’ by the challenged law.” Dissent at 5 n.4, 16 (citation omitted). But *Federal Defenders* did not endorse such a broad, “but for” zone-of-interests test. Instead, it held that attorneys fell within the zone of interests of the challenged regulations because their own “interests mirror the interests that [the regulations at issue] . . . seek to protect.” 954 F.3d at 131. Here, YMPJ’s interests are indirect and derivative of the interests of the naturalization applicants they assist.

¹⁰ Our recent decision in *New York v. U.S. Department of Homeland Security*, which concerned the INA’s public-charge provision, does not change this analysis. 969 F.3d at 62. Here, Congress created a cause of action for naturalization applicants without creating a cause of action for advocacy organizations, whereas the public-charge statute did not explicitly create a cause of action for anybody. *Id.* The public-charge statute thus required a broader zone-of-interests inquiry to discern whether plaintiff organizations could assert an APA claim. In addition, it was necessary in that case to “consider the role of the public charge ground within the broader context of the INA” because the public-charge statute acted as an exception to other immigration statutes, and thus can be understood only in the context of those other statutes. *Id.* (noting that the public-charge statute acts as an exception to 8 U.S.C. § 1255, which permits adjustment of status for some immigrants). Thus, as in *Clarke*, we had to apply the zone-of-interests test “not merely in light of [the public-charge statute], which was the basis of the plaintiffs’ claim on the merits, but also in

1 Simply “assum[ing] that Congress intended to permit” suit from such an indirect
 2 beneficiary would render the zone-of-interests test essentially meaningless.
 3 *Patchak*, 567 U.S. at 225 (citation omitted); see *Haitian Refugee Ctr.*, 809 F.2d at 813
 4 (“If . . . the zone of interests to be protected or regulated by every statute
 5 necessarily includes an organization’s . . . interest in promoting the rights created
 6 by that statute, that . . . would render the entire concept of a zone of interest a
 7 nullity.” (emphasis omitted)).¹¹

8 Moreover, YMPJ’s alleged diversion of resources, although sufficient for
 9 Article III standing, does not bring a third party within the INA’s zone of interests.
 10 See *INS v. Legalization Assistance Project of L.A. Cty. Fed’n of Labor*, 510 U.S. 1301,
 11 1305 (O’Connor, J., in chambers) (“The fact that . . . [an immigration] regulation

the light of [other provisions of the INA], to which [the public-charge statute] was an exception.”
Id. (quoting *Air Courier Conference of Am.*, 498 U.S. at 529). That is not the case here, where the
 naturalization provision at issue, Section 1423, does not act as an exception to any other section
 that would suggest a broader zone of interests.

¹¹ The dissent contends that the practical consideration of having “a reliable private
 attorney general to litigate the issues of the public interest” favors YMPJ because “YMPJ is both
 well-positioned and highly incentivized to enforce” the INA’s statutory provisions. Dissent at 7
 (quoting *Clarke*, 479 U.S. at 397 n.12). But the issue of who might be a vigorous and well-resourced
 litigant is a policy concern that does not bear on the zone-of-interests analysis. In any event, the
 INA authorizes naturalization applicants themselves to sue, and may also permit organizations
 that employ applicants or have them as members to bring claims as well—a question we do not
 reach today. See, e.g., *Regents of the Univ. of Cal. v. U.S. Dep’t of Homeland Sec.*, 279 F. Supp. 3d 1011,
 1036 (N.D. Cal. 2018) (plaintiffs fell within the zone of interests because of “injuries resulting from
 their status as employers”); *Battalla Vidal v. Nielsen*, 291 F. Supp. 3d 260, 269 n.3 (E.D.N.Y. 2018).

1 may affect the way an organization allocates its resources . . . does not” bring that
2 organization “within the zone of interests the statute [was] meant to protect.”).
3 Whether a plaintiff is within the zone of interests protected by a statute is a
4 different inquiry from whether she has Article III standing. *See Clarke*, 479 U.S. at
5 395 (“Congress, in enacting § 702 [of the APA], had not intended to allow suit by
6 every person suffering injury in fact.”); *In re Peebles*, 880 F.3d 1207, 1215 (10th Cir.
7 2018) (“The very point of the zone-of-interests doctrine is that not every injury
8 traceable to the violation of a federal statute is remediable in the federal courts.”).

9 *c. Other Indications of Congressional Intent*

10 The fact that YMPJ expends resources in pursuit of its mission does not
11 mean that Congress intended to protect its interests through the naturalization
12 provisions of the INA. To the contrary, allowing YMPJ to bring suit would be
13 “inconsistent” with Congress’s purpose of streamlining the naturalization process.
14 *Lexmark*, 572 U.S. at 130 (citation omitted). In 1990, Congress amended the INA to
15 clarify the procedures under which a naturalization applicant can sue. *See*
16 Immigration Act of 1990, § 401(a), 8 U.S.C. § 1421. The bill’s sponsors sought to
17 “streamline” the process, which until then had required all applicants to file their
18 petitions in heavily backlogged district courts. *See* 135 Cong. Rec. H4543 (daily ed.

July 31, 1989) (statement of Rep. Smith). For example, to minimize the strain on judicial resources, Congress permitted applicants to petition the district court only “after the application has already been reviewed by the INS”; and even then, district courts retained “the option to remand the case back to” the INS for further fact-finding. *Id.* And although the bill initially allowed applicants to file petitions in the district court if the INS did not act on their application within 90 days, the drafters extended the deadline to 120 days to help ensure that the bill did “not take away any of the judicial review rights accorded applicants.” *Id.*; 135 Cong. Rec. H4542 (daily ed. July 31, 1989) (statement of Rep. Morrison).

Because Section 1421 reflects Congress’s efforts to balance the competing interests of efficiency and access to courts, it “cannot reasonably be assumed that Congress intended to permit” YMPJ to do derivatively what disabled naturalization applicants themselves cannot do directly—*i.e.*, to bring suit without first exhausting administrative remedies.¹² *Clarke*, 479 U.S. at 399.

¹² The dissent argues that we should not rely on the fact that Congress has already designated naturalization applicants as the proper plaintiffs to sue because this “implied preclusion” logic was “developed and exists separate from the zone-of-interests inquiry.” Dissent at 22. But we apply the zone-of-interests test “using traditional tools of statutory interpretation.” *Lexmark*, 572 U.S. at 127. And the commonsense “*expressio unius*” canon is one such tool. See *Brennan-Centrella*, 942 F.3d at 111; *supra* at 13–15; *accord Fed. Defs.*, 954 F.3d at 130 (“[C]anons [of statutory interpretation] can help courts apply the zone-of-interests doctrine, given that the related inquiry is, in most cases, simply an exercise in statutory interpretation.”).

1 YMPJ relies on the Ninth Circuit’s decision in *East Bay Sanctuary Covenant v.*
2 *Trump*, which held that plaintiff advocacy organizations fell within the zone of
3 interests of the INA’s refugee and asylum provisions. 932 F.3d 742, 768 (9th Cir.
4 2018). But even if we found that decision persuasive, the INA provisions at issue
5 there explicitly acknowledge the role of advocacy organizations in providing legal
6 aid, which suggests that Congress may have intended to protect their interests as
7 participants in the asylum-seeking process. *See* 8 U.S.C. § 1158(d)(4)(B) (directing
8 the Attorney General to “provide [asylum seekers] a list of persons . . . who have
9 indicated their availability to represent aliens in asylum proceedings on a pro bono
10 basis”); *East Bay*, 932 F.3d at 768–69. In contrast, the naturalization provisions at
11 issue here contain no such language. *See* 8 U.S.C. § 1421.

12 The Ninth Circuit in *East Bay* also pointed to other sections of the INA
13 outside the asylum and refugee provisions that referenced advocacy
14 organizations. *See, e.g.*, 932 F.3d at 769 (citing 8 U.S.C. §§ 1101(i)(1), 1184(p)(3)(A),
15 1228(a)(2), 1228(b)(4)(B)); *see also* Dissent at 6–8.¹³ But the Supreme Court has

¹³ Unlike these sections of the INA, which explicitly recognize a role for advocacy organizations in providing legal-aid services to immigrants, the naturalization provisions mention civic groups only as a conduit for disseminating information to the community. *Compare* 8 U.S.C. § 1101(i)(1) (“[The government], where appropriate, shall provide [T-visa applicants] with a referral to a nongovernmental organization that would advise [them] regarding [their]

1 explicitly warned against using the “overall purpose of the Act in question,”
 2 particularly a broad and multifaceted act such as the INA, to identify the purpose
 3 of “the particular provision of law upon which [YMPJ] relies.” *Bennett*, 520 U.S. at
 4 175–76. “[T]o accept this level of generality in defining the ‘relevant statute’ could
 5 deprive the zone-of-interests test of virtually all meaning.” *Air Courier Conference*
 6 *of Am.*, 498 U.S. at 529–30.

7 The dissent questions our reliance on “legal principles that are customarily
 8 treated as separate from the zone-of-interests inquiry.” Dissent at 19. But as
 9 explained above, the Supreme Court has instructed that the zone-of-interests test
 10 requires “using traditional tools of statutory interpretation,” which is just what we
 11 have done. *Lexmark*, 572 U.S. at 127. To the extent that “[c]ommon sense, reflected
 12 in the canon *expressio unius est exclusio alterius*” is found elsewhere in our caselaw,
 13 that is a feature, not a bug, of doctrinal development. *Arizona v. United States*, 567
 14 U.S. 387, 432 (2012) (Scalia, *J.*, concurring in part). Ironically, it is the dissent that

options while in the United States and the resources available to [them]”); *id.* § 1184(p)(3)(A) (similar for U-visa applicants), *with id.* § 1443(h) (“[T]he Attorney General shall broadly distribute information concerning the benefits which persons may receive under [the naturalization] subchapter and the requirements to obtain such benefits . . . [and] shall seek the assistance of appropriate community groups, private voluntary agencies, and other relevant organizations.”). Congress could have articulated a legal-aid role for advocacy organizations in the naturalization subchapter as it did in other parts of the INA. The fact that it did not do so cautions against inferring from Section 1443(h) that YMPJ has an interest that is greater than what Congress stated. *See* Dissent at 6–7.

1 imports incompatible Article III standing caselaw into its zone-of-interests
2 analysis, even though these are “separate and distinct” inquiries. *Citizens for*
3 *Responsibility & Ethics in Washington v. Trump*, 953 F.3d 178, 200 (2d Cir. 2019)
4 (citing *Lexmark*, 572 U.S. at 125–28); Dissent at 13–14 (citing, among other cases,
5 *Centro*, 868 F.3d at 110–11; *Nnebe*, 644 F.3d at 157).

6 In short, we hold that YMPJ does not fall within the zone of interests of
7 Section 1423(b)(1), which provides a cause of action to naturalization applicants,
8 not to advocacy organizations. If an organization could satisfy the zone-of-
9 interests test simply by asserting a derivative interest in helping naturalization
10 applicants to vindicate their rights under a statute—particularly when the statute
11 specifically designates those applicants as the proper plaintiffs to bring suit—the
12 test would be meaningless because it “excludes nothing.” *Haitian Refugee Ctr.*, 809
13 F.2d at 813. The zone-of-interests test retains more vitality than that, even in the
14 APA context.

15 2. Due Process Claim

16 Nor do YMPJ’s claims fall within the Due Process Clause’s zone of interests.
17 The district court correctly found that this issue is governed by *Center for*
18 *Reproductive Law and Policy v. Bush*, 304 F.3d 183 (2d Cir. 2002). There, American

1 individuals and an American “nonprofit advocacy organization devoted to the
2 promotion of reproductive rights” sued the government over restrictions on aid to
3 foreign organizations related to abortion. *Id.* at 187. Plaintiffs brought a Due
4 Process claim against the government for failing to give clear notice to foreign
5 nonprofits on what this restriction covered. *Id.* at 188. We held that plaintiffs’
6 claims were not within the zone of interests of the Due Process Clause because the
7 only “due process-type harm” the American plaintiffs suffered was “derivative”
8 of the harm suffered by third-party, foreign nonprofits. *Id.* at 196. Because
9 “plaintiffs do not assert a harm to their own interest in receiving due process of
10 law, this is precisely the sort of claim that the [zone of interests] doctrine is
11 designed to foreclose.” *Id.*

12 YMPJ is in the same position as the plaintiffs in *CRLP* because it alleges only
13 indirect, derivative harm. YMPJ seeks to piggyback on the due process claims of
14 naturalization applicants like Moya and Ruiz; it does not claim that YMPJ itself
15 has been denied due process. Any harm YMPJ suffered is therefore derivative of
16 the harm suffered by its clients, and under *CRLP*, such harm does not fall within
17 the zone of interests of the Due Process Clause.

1

III. CONCLUSION

2

For the reasons set forth above, the district court's judgment is affirmed.