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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

YOLANDA PEREZ de LEMUS et al.,

Plaintiffs and Appellants,

v.

JOHN A. WAGNER, as Director, etc.,  
et al.,

Defendants and Respondents.

B233234

(Los Angeles County  
Super. Ct. No. BS126265)

APPEAL from a judgment of the Superior Court of Los Angeles County.  
James C. Chalfant, Judge. Affirmed.

Western Center on Law and Poverty, Richard A. Rothschild; Legal Aid  
Foundation of Los Angeles, Yolanda Arias, Marjorie Shelvy and Joshua D. Taylor for  
Plaintiffs and Appellants.

Kamala D. Harris, Attorney General, Julie Weng-Gutierrez, Assistant Attorney  
General, Jennifer M. Kim, and Kenneth K. Wang, Deputy Attorney General, for  
Defendants and Respondents.

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Yolanda Perez de Lemus (mother) and Jose Lemus (father) appeal the denial of their petition for writ of mandate challenging the termination of benefits for their disabled son, Jose Luis Lemus (Lemus), under our state’s Cash Assistance Program for Immigrants (CAPI).<sup>1</sup>

We find no error and affirm.

### FACTS

In 1996, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Act of 1996). (*Megrabian v. Saenz* (2005) 130 Cal.App.4th 468, 474 (*Megrabian*)). The new law “severely restricted the eligibility of legal immigrants for federally funded benefits otherwise provided to needy persons, including benefits under the federal [Supplemental Security Income/State Supplementary Payment (SSI/SSP) program] for the aged, blind, and disabled.” (*Ibid.*) Soon after, California enacted CAPI to provide benefits to qualifying legal immigrants who were no longer eligible for SSI/SSP benefits. (*Ibid.*)

Mother and father are legal permanent residents. Lemus, who is also a legal permanent resident, first entered the United States in 1999 when he was approximately two years old. Father sponsored Lemus pursuant to a New Affidavit of Support.<sup>2</sup> At some point, father was seriously injured and qualified for Supplemental Security Income (SSI). He began receiving benefits of \$846.75 a month. As well, Lemus began receiving

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<sup>1</sup> CAPI is set forth in Welfare and Institutions Code section 18937 et seq. All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

<sup>2</sup> The California Department of Social Services Manual of Policies & Procedure (MPP) explains that a New Affidavit of Support refers to INS Form I-864, an affidavit of support under section 213A of the Immigration and Nationality Act. “The New Affidavit is required for all applications for immigrant visas or for adjustment of status filed on or after December 19, 1997.” (MPP § 49-005(a)(1).) Prior to the formulation and implementation of the New Affidavit of Support, a sponsor was required to complete an INS Form I-134. That form is referred to in the MPP as an Old Affidavit of Support. (MPP § 49-005(a)(2).)

CAPI benefits because he was SSI ineligible and had been diagnosed with aplastic anemia.

Acting as the agent of the California Department of Social Services (Department), the County of Los Angeles (county) determined that father's SSI benefits should be attributed to Lemus as income under federal deeming rules. It notified mother and father in December 2008 that Lemus's CAPI benefits would be discontinued due to an excess of income. Subsequently, the county sent notice that Lemus had been overpaid \$1,009.44 in November and December 2008.

Mother and father filed a claim with the Department and argued that father's SSI income was not subject to deeming.

An administrative law judge issued a final decision that reduced the overpayment amount to \$565. In all other respects, the final decision upheld the Department's action. Mother and father filed a petition for writ of mandate. The trial court denied the petition.

This timely appeal followed.

### **STANDARD OF REVIEW**

Mother and father filed their petition for writ of mandate under Code of Civil Procedure sections 1085 (traditional mandate) and 1094.5 (administrative mandate). Because the material facts in this case are undisputed and the issues are purely legal, we exercise independent judgment regardless of the type of mandate requested. (*Conlan v. Bonta* (2002) 102 Cal.App.4th 745, 753.) The question we must resolve is whether the Department's decision "was so arbitrary and capricious as to amount to an abuse of discretion. [Citation.]" (*Intercommunity Medical Center v. Belshé* (1995) 32 Cal.App.4th 1708, 1711.)

### **DISCUSSION**

This is a streamlined case because the parties agree that Lemus is entitled to CAPI benefits under section 18937 et seq. but for father's SSI benefits being deemed as income to Lemus. Further, the parties agree that SSI/SSP deeming rules govern the deeming of income under CAPI. (§ 18940, subd. (b).) This appeal focuses on whether SSI benefits qualify as income for deeming purposes, and on the selection of the proper federal

deeming rules. According to mother and father, father's SSI benefits do not qualify as income and, further, that they cannot be deemed because he is Lemus's SSI eligible parent. The Department contends SSI benefits qualify as income, and that those benefits must be deemed to Lemus.

We turn to these issues. But, as a preliminary matter, we examine the pertinent federal and state law.

## **I. Old Affidavit of Support cases.**

### *A. Statutes.*

The definition of income and deeming rules applicable to SSI are found in the Social Security Act and related regulations.

Title XVI of the Social Security Act is entitled Supplemental Security Income For The Aged, Blind and Disabled. (42 U.S.C. § 1381 et seq.) To determine eligibility and benefits under that title, "the income and resources of any person who (as a sponsor of such individual's entry into the United States) executed an affidavit of support . . . with respect to such individual, and the income and resources of the sponsor's spouse, shall be deemed to be the income and resources of such individual . . . for a period of 3 years after the individual's entry into the United States." (42 U.S.C. § 1382j(a).) Title 42 United States Code section 1382j was last amended in 1994 and was necessarily applicable to an Old Affidavit of Support.

For purposes of SSI, income means both earned and unearned income. (42 U.S.C. § 1382(a).) Earned income means wages, net earnings from self-employment, remuneration for certain services, and any royalty earned in connection with the publication of an individual's work. (42 U.S.C. § 1382(a)(1).) Unearned income means all other income, including "any payments received as an annuity, pension, retirement, or disability benefit, including veterans' compensation and pensions, workmen's compensation payments, old-age, survivors, and disability insurance benefits, railroad retirement annuities and pensions, and unemployment insurance benefits." (42 U.S.C. § 1382(a)(2)(B).)

## B. Regulations.

The regulations set forth in title 20 Code of Federal Regulations part 416 “relate to the provisions of title XVI of the Social Security Act.” (20 C.F.R. § 416.101.) In a title XVI case, there are four categories of individuals whose income may be deemed to an alien: an ineligible spouse, an ineligible parent, the sponsor of an alien or an essential person. (20 C.F.R. § 416.1160(a)(1)-(a)(4).) An ineligible parent means a parent who lives with an alien child and “is not eligible for SSI benefits.” (*Id.* at § 416.1160(d)(iii).) An eligible individual “means an aged, blind, or disabled individual who meets all the requirements for eligibility for benefits under the [SSI] program.” (*Id.* at § 416.120(c)(13).) The regulations further provide that if “two deeming rules could apply to you because your sponsor is also your ineligible spouse or parent who lives with you, we use the appropriate spouse-to-spouse or parent-to-child deeming rules instead of the sponsor-to-alien rules.” (*Id.* at § 416.1160(a)(3).)<sup>3</sup>

The regulations define income as “anything you receive in cash or in kind that you can use to meet your needs for food and shelter.” (20 C.F.R. § 416.1102.) Unearned income is all income that is not earned income and “includes . . . social security benefits[.]” (20 C.F.R. §§ 416.1120 & 416.1121.)

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<sup>3</sup> The selection of parent-to-child deeming rules instead of sponsor deeming rules is significant. Under the regulations, various sources of a parent’s income are excluded from deeming. (20 C.F.R. § 416.1161(a).) As a consequence, in many instances, far less income will be deemed to a child under parent-to-child deeming rules than would be deemed to the child under sponsor deeming rules. Thus, with parent-to-child deeming rules, an alien child may qualify for social security benefits even if he or she would not qualify with sponsor deeming.

As we shall discuss, father is an eligible parent/sponsor and the selection rule only applies to an ineligible parent/sponsor. Thus, even if this was an Old Affidavit of Support case (which it is not), the selection rule in title 20 Code of Federal Regulations section 416.1160(a)(3) would be inapplicable to Lemus and sponsor deeming rules would apply. Nonetheless, we have set forth this selection rule to provide context for mother and father’s attempt to utilize this selection rule as support for negating sponsor deeming if a parent/sponsor is eligible.

C. POMS.<sup>4</sup>

POMS section SI 00502.200(A)(1) explains that the Welfare Reform Act of 1996 “changed sponsor-to-alien deeming policy for aliens whose sponsors sign” a New Affidavit of Support. There “are two sets of sponsor deeming rules in the [SSI] program. One set of rules applies to aliens whose sponsors signed [an Old Affidavit of Support]. . . . A different set of deeming rules applies to aliens whose sponsors sign [a New Affidavit of Support].” (*Id.* at § SI 00502.200(A)(2).) Old Affidavit of Support sponsor deeming cases are governed by SI 01320.900 to SI 01320.950 and also SI 00502.220. New Affidavit of Support sponsor deeming cases are governed by SI 00502.240. (*Id.* at § SI 00502.200(B).)

“The policies in SI 01320.900-SI 001320.950 continue to apply for [Old Affidavits of Support] cases. The Welfare Reform Act of 1996 did **not** change the deeming rules for aliens sponsored under the [Old Affidavits of Support]. [¶] An alien sponsored under an [Old Affidavits of Support] who is lawfully admitted to the United States for permanent residence is subject to sponsor-to-alien deeming unless an exclusion in SI 01320.910 applies.” (POMS § SI 00502.220.) Aliens will be excluded from sponsor-to-alien deeming if he is living in the same household as a sponsor who is an ineligible parent. In that situation, the regular “parent-to-child deeming rules apply.” (POMS § SI 01320.910(C).)<sup>5</sup>

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<sup>4</sup> POMS refers to the Social Security Administration’s Program Operations Manual System. According to the Social Security Administration’s home page for POMS, it “is a primary source of information used by Social Security employees to process claims for Social Security benefits.” (<<http://www.ssa.gov/poms>> (as of Sept. 25, 2012).)

<sup>5</sup> To reiterate, we reference the selection rule to provide a context for mother and father’s arguments on appeal. But the selection rule has no application to this case because it only applies to Old Affidavit of Support cases and this is a New Affidavit of Support case, and because father is eligible.

## **II. New Affidavit of Support cases.**

### *A. Statutes.*

Once again the definition of income and deeming rules applicable to SSI are found in the Social Security Act and related regulations. However, in connection with an alien who was sponsored pursuant to a New Affidavit of Support, the SSI rules are modified as provided in the Welfare Reform Act of 1996.

The Welfare Reform Act of 1996 provides that in determining the eligibility and the amount of benefits of a qualified alien for any federal means-tested public benefits program, the income and resources of the alien shall be deemed to include the “income and resources of any person who executed [a New Affidavit of Support] on behalf of such alien.” (8 U.S.C. § 1631(a)(1).) Deeming applies until the alien obtains citizenship or if the alien works 40 qualifying quarters of coverage or can be credited with such qualifying quarters. (8 U.S.C. § 1631(b)(1).) Income is not deemed if deeming would render an alien indigent or if the alien was battered or subjected to extreme cruelty. (8 U.S.C. § 1631(e) & (f).)<sup>6</sup>

Nothing in the Welfare Reform Act of 1996 purports to change income definitions for SSI or any other federal means-tested public benefits programs.

### *B. Regulations.*

The Social Security Administration did not promulgate new regulations for defining income or deeming income in New Affidavit of Support cases. As a result, the regulations set forth in title 20 Code of Federal Regulations part 416 still apply except insofar as the Welfare Reform Act of 1996 dictates a different result. For example, title 20 Code of Federal Regulations section 416.1160(a)(3) is inoperable to the degree that it requires the application of parent-to-child deeming rules instead of sponsor deeming rules if an ineligible parent is also his or her child’s sponsor. In other words, in a New

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<sup>6</sup> As we shall discuss, this is a New Affidavit of Support case and sponsor deeming applies unless one of the four exceptions applies. It does not matter whether father is an eligible or ineligible parent/sponsor. The eligibility of a parent/sponsor is not one of the four exceptions.

Affidavit of Support case, if an ineligible parent is also his or her child's sponsor, the sponsor deeming rules will apply instead of the parent-to-child deeming rules. This is because an ineligible parent also being a child's sponsor is not recognized by the Welfare Reform Act of 1996 as one of the four exceptions to sponsor deeming.

### C. POMS.

“The Welfare Reform Act of 1996 (as amended by the Immigration Reform Act of 1996 and the Balanced Budget Act of 1997) created new sponsor deeming rules that apply to aliens whose sponsors sign new, legally enforceable affidavits of support. As [POMS discusses], there are different rules under the Social Security Act and the Welfare Reform Act of 1996.” (POMS § SI 00502.240(A).) Except as provided in POMS SI 00502.240(D), “the income and resources of aliens whose sponsors signed [New Affidavits of Support] are deemed to include the income and resources of their sponsors.” (POMS § SI 00502.240(C).)

There are four exceptions to sponsor deeming under a New Affidavit of Support: (1) aliens who do not have sponsors; (2) aliens who have been battered or subjected to extreme cruelty; (3) aliens for whom nonreceipt of or reduction in SSI would cause indigence; and (4) aliens who have 40 qualifying quarters. (POMS § SI 00502.240(D).) “No other exceptions to sponsor deeming apply. The list of sponsor-to-alien deeming exclusions in SI 01320.910 does **not apply** to [New Affidavit of Support] cases.” (POMS § SI 00502.240(D)(4).)<sup>7</sup>

## III. CAPI.

### A. Statutes.

Except as otherwise provided, an individual is eligible for CAPI “if his or her immigration status meets the eligibility criteria of [SSI/SSP] . . . in effect on August 21, 1996, but he or she is not eligible for SSI/SSP benefits solely due to his or her

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<sup>7</sup> Under POMS SI 1320.910, aliens may be excluded from sponsor deeming by any of the following: (1) statute; (2) because they are not lawfully admitted to the United States for permanent residence; (3) because they do not have a sponsor; or (4) because the sponsor is the alien's ineligible parent whose income is otherwise considered in determining the alien's SSI eligibility or payment amount.

immigration status under [the Welfare Reform Act of 1996].” (§ 18938, subd. (a)(1).) In general, “the federal and state laws and regulations governing the SSI/SSP program shall also govern” CAPI. (§ 18940, subd. (a).) This includes federal deeming rules and exemptions. (§ 18938, subd. (b).)

The Department “may implement the applicable provisions of [CAPI] through all county letter or similar instructions from the director.” (§ 18943, subd. (a).)

*B. The All-County Letter.*

The Department issued All-County Letter No. 02-63 (All-County Letter) on August 29, 2002. It stated: The regulations in “20 CFR reflect the sponsor-deeming provisions that were in effect for SSI/SSP prior to the enactment of [the Welfare Reform Act of 1996]. [The Welfare Reform Act of 1996] changed the rules for sponsor deeming when it created the New Affidavit [of Support].” The “instructions found in 20 CFR still apply to persons whose sponsor signed [an Old Affidavit of Support].” In cases where a sponsor signed a New Affidavit of Support, there are new requirements. “The new deeming rules (that apply only in conjunction with [a New Affidavit of Support]) have recently appeared in the [POMS], which reflects the Social Security Administration’s . . . interpretation of 8 U.S.[C.] [s]ection 1631. The [Social Security Administration] uses POMS to provide operational instructions to its field offices for administration of the SSI/SSP program. The new deeming rules are not reflected in 20 CFR as of the date of this letter. Therefore, the instructions found in POMS will be used, in lieu of 20 CFR, as the basis for the instructions in this [All-County Letter] that affect sponsor-deeming in CAPI for immigrants whose sponsor(s) signed [a New Affidavit of Support].”

“For immigrants whose sponsor signed [a New Affidavit of Support], if the sponsor is also the immigrant’s ineligible spouse or parent, sponsor deeming, not spousal or parental deeming, applies in the CAPI case. This is the reverse of the policy that applies for [Old Affidavit of Support] cases.”<sup>8</sup>

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<sup>8</sup> Because father is an eligible parent/sponsor, neither of these selection rules come into play in this case.

C. *MPP*.<sup>9</sup>

Without distinction between an Old Affidavit of Support and a New Affidavit of Support, the MPP provides: “The definition of income for CAPI purposes is the same as the one used for SSI/SSP and is found in 20 CFR 416.1102.” (MPP § 49-035.2.) The MPP quotes title 20 Code of Federal Regulations section 416.1102 as stating: “Income is anything you receive in cash or in kind that you can use to meet your needs for food, clothing, and shelter. . . .” (MPP § 49-035.21.)

Sponsor deeming rules apply. (MPP § 49-037.1.)

If a sponsor signed an Old Affidavit of Support, sponsor deeming applies unless the sponsor dies or the alien lived in the United States for three years after being admitted for permanent residence. (MPP § 49-037.31.) Sponsor deeming does not apply if the alien becomes blind or disabled after admission to the United States, the alien is not lawfully admitted for permanent residence, or the alien is a victim of abuse by his or her sponsor or the sponsor’s spouse. (MPP § 49-037.33.) When the sponsor has signed the Old Affidavit of Support and the sponsor is the alien’s ineligible spouse or parent, rules regarding deeming from an ineligible spouse or parent apply instead of sponsor-deeming rules. (MPP § 49-037.33.)

If, however, a sponsor signed a New Affidavit of Support, sponsor deeming applies unless the sponsor dies, the alien becomes a naturalized citizen or the alien is credited with 40 quarters of coverage as defined by the Social Security Act. (MPP § 49-037.21.) Sponsor deeming does not apply if the alien or minor alien’s parent is the victim of abuse or if the alien meets the indigence exception. (MPP § 49-037.23.) When a sponsor has signed a New Affidavit of Support and is the alien’s ineligible spouse or

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<sup>9</sup> To reiterate, MPP refers to the The California Department of Social Services Manual of Policies & Procedure.

parent, sponsor-deeming rules apply instead of rules regarding deeming from an ineligible parent.<sup>10</sup> (MPP § 49-037.24.)

#### **IV. SSI benefits qualify as income.**

The Welfare Reform Act of 1996 changed the deeming rules for aliens seeking benefits pursuant to “any federal means-tested public benefits program.” (8 U.S.C. § 1631(a)(1).) But the act did not purport to change income definitions that those programs might contain. Thus, the interaction between the Social Security Act and the Welfare Reform Act of 1996 is easy to state. All rules applicable to the Social Security Act apply when determining SSI benefits available to an alien who is sponsored by a New Affidavit of Support except that sponsor deeming is not capped at three years and there are different exceptions.

To determine income for SSI purposes in a New Affidavit of Support case we must turn to the Social Security Act and the implementing regulations.

Unearned income qualifies as income. (42 U.S.C. § 1382(a).) As defined, unearned income is all income that is not earned and includes “any . . . disability benefit.” (42 U.S.C. § 1382(a)(2)(B).) Father’s SSI benefits broadly fit within the category of income that is not earned because they were not given to him in consideration of employment, services, etc. Also, because of his disability, his SSI benefits specifically qualify as a disability benefit.

The regulations pertaining to SSI—title 20 Code of Federal Regulations part 416—define income as “anything you receive in cash or in kind that you can use to meet your needs for food and shelter.” (20 C.F.R. § 416.1102.) Father’s SSI benefits fit the regulatory definition of income because he can use his SSI benefits to meet his needs for food and shelter. Finally, it is noteworthy that the Social Security Administration promulgated a regulation providing that unearned income “includes . . . social security benefits.” (20 C.F.R. §§ 416.1120 & 416.1121.) The MPP uses the SSI regulations to determine what income is.

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<sup>10</sup> The MPP does not focus on eligible parent/sponsors because that scenario does not give rise to a selection rule.

Based on the definition of income in the Social Security Act, SSI regulations and the MPP, father's SSI benefits are income.

**V. The Department properly deemed father's SSI benefits to Lemus.**

Mother and father contend that we must reverse the Department's final decision because the SSI regulations prohibit the deeming of SSI benefits from a sponsor if he is also the alien's eligible parent. They rely on title 20 Code of Federal Regulations sections 416.120, 416.1160, 416.1161 and 416.1165.

We disagree.

In a New Affidavit of Support case, the Welfare Reform Act of 1996 creates only four exceptions to sponsor deeming. (8 U.S.C. § 1631.) The SSI eligibility of a sponsor/parent is not one of those exceptions. Even if the statute was ambiguous, we would defer to the interpretation given to it in POMS. In POMS, the Social Security Administration states that there are no other exceptions. An agency's construction of a statute will be upheld "if not clearly erroneous." (*Los Angeles v. Superior Court* (1941) 17 Cal.2d 707, 712.) "[A]mbiguities in statutes within an agency's jurisdiction to administer are delegations of authority to the agency to fill the statutory gap in reasonable fashion. Filling these gaps . . . involves difficult policy choices that agencies are better equipped to make than courts. [Citation.] If a statute is ambiguous, and if the implementing agency's construction is reasonable, [case law] requires a federal court to accept the agency's construction of the statute, even if the agency's reading differs from what the court believes is the best statutory interpretation. [Citation.]" (*National Cable & Telecommunication Assn. v. Brand X Internat. Services* (2005) 545 U.S. 967, 980.) The POMS interpretation is not clearly erroneous because it merely tracks title 8 United States Code section 1631.

Regardless of the controlling effect of the Welfare Reform Act of 1996, mother and father focus on interpreting the SSI regulations to their benefit.

When interpreting an agency regulation, the rules of statutory construction apply. (*Roberto v. Department of Navy* (Fed. Cir. 2006) 440 F.3d 1341, 1350.) “When construing a regulation or statute, it is appropriate first to examine the regulatory language itself to determine its plain meaning. [Citation.] We may also consider the language of related regulations. [Citation.] If the regulatory language is clear and unambiguous, the inquiry ends with the plain meaning. [Citation.] However, if the regulation is silent or ambiguous, the court then gives deference to the agency’s own interpretations. [Citations.]” (*Ibid.*)

The income of an ineligible parent and the income of a sponsor are subject to deeming. Thus, as relevant to this opinion, there are two sets of deeming rules: one for parents, one for sponsors. If two sets of deeming rules could apply because a sponsor is an ineligible parent, then the Social Security Administration will apply the parent-to-child deeming rules. (20 C.F.R. §§ 416.1160(a)(2) & (3), 416.1161(a) & (b), 416.1165(a)-(e), 416.1166a(a)-(e).) The plain language of the regulations requires sponsor deeming unless a sponsor is also an ineligible parent. (Here, the parent/sponsor is eligible, so there is no need to employ this selection rule.) The Social Security Administration interprets the Welfare Reform Act of 1996 in a manner that reverses the rule in cases involving a New Affidavit of Support. In other words, in a New Affidavit of Support case, sponsor deeming rules will always prevail.

Mother and father suggest that the sponsor deeming rules are always canceled out by the following regulations.

An eligible individual means an aged, blind or disabled individual who meets all the requirements for eligibility for benefits under the SSI program. (20 C.F.R. § 416.120(c)(3).) An ineligible parent is a parent who lives with the applicant or recipient who is not eligible for SSI benefits. (20 C.F.R. § 416.1160(d)(iii).) If an ineligible parent becomes eligible for SSI benefits, there will be no income to deem from that parent. (20 C.F.R. § 416.1165(g)(1).) Conversely, if an eligible parent becomes

ineligible, that parent's income is deemed to the applicant or recipient in the first month of the parent's eligibility. (20 C.F.R. § 416.1165(d)(2).)<sup>11</sup>

In addition, title 20 Code of Federal Regulations section 416.1161 sets forth rules for determining the amount of income for, inter alia, ineligible parents and sponsors. Under these rules, the Social Security Administration includes "all the income (as defined in § 416.1102) of . . . a sponsor of an alien." (20 C.F.R. § 416.1161(b).) The rules also provide: "For an eligible alien. Although we do not deem any income to you from an eligible alien, if your ineligible spouse or ineligible parent is also a sponsor of an eligible alien, we reduce the alien's allocation if he or she has income." (20 C.F.R. § 416.1161(d).) This last provision refers to a regulation providing that if a SSI recipient has an ineligible parent who is sponsoring an eligible alien, a formula driven allocation will be deducted from the ineligible parent's income for purposes of deeming income to the SSI recipient. However, that allocation will be reduced if the alien is earning income. (20 C.F.R. § 416.1163(c).) As applied here, title 20 Code of Federal Regulations sections 416.1161(d) and 416.1163(c) would work this way: If father was sponsoring John Doe rather than Lemus, then an allocation for the support of John Doe would be deducted from father's income and not considered as income deemed to Lemus. However, if John Doe was earning income from a job, his wages would be subtracted from the allocation. The result would be that the amount of income deemed to Lemus would increase.

In our view, none of these regulations cancel sponsor deeming because they do not state any exceptions to sponsor deeming rules. Instead, they are merely an aspect of the parent deeming rules. More importantly, the plain language of the sponsor deeming rules requires that they be applied without reference to whether the sponsor also happens to be

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<sup>11</sup> The rationale for distinguishing between eligible and ineligible parents is fairly easy to deduce. SSI benefits are designed to meet a single person's basic needs. Thus, if a parent is eligible, that parent's income is presumably used to meet his or her basic needs and therefore will not be deemed. The income of an ineligible parent, however, comes from wages or some nonexcluded source and is presumably used to meet the basic needs of the parent's entire family.

an eligible parent.<sup>12</sup> The plain language must govern our interpretation. But even if these regulations canceled sponsor deeming, they would be in direct conflict with title 8 United States Code section 1631 and therefore invalid. (*Ragsdale v. Wolverine World Wide, Inc.* (2002) 535 U.S. 81, 90.) Because father is a sponsor, his income must be deemed to Lemus. Because father is an eligible parent/sponsor and there is no selection rule in the SSI regulations for an eligible parent/sponsor, the fact that he is eligible does not factor into our analysis. Even if he was ineligible (which he is not), he signed a New Affidavit of Support. Sponsor deeming rules would still apply because in a New Affidavit of Support case, the selection rule requires that sponsor deeming rules control over parent-to-child deeming rules.

Based on the foregoing analysis, we conclude that the Department did not abuse its discretion when it deemed father's SSI benefits to Lemus.

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<sup>12</sup> Different policies are at play for an eligible sponsor than for an eligible parent. A sponsor who has signed a New Affidavit of Support, for example, has signed a binding contract with the government to support the alien so that the alien does not become a public charge. An eligible parent, in contrast, does not have any such contractual obligation. And, in general, the SSI regulations recognize that a parent's income will be used to support not only himself or herself, but also a spouse and children. A sponsor's contractual obligation is not lessened because the sponsor may have other financial commitments, and it does not depend upon whether the sponsor is eligible or ineligible. As a result, the law deems all of a sponsor's income to an alien whether that income is available to the alien or not.

**DISPOSITION**

The judgment is affirmed. In the interests of justice, the parties shall bear their own costs on appeal. (Cal. Rules of Courts, rule 8.278(a)(5).)

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
ASHMANN-GERST

We concur:

\_\_\_\_\_, P. J.  
BOREN

\_\_\_\_\_, J.  
CHAVEZ