No. 24A1079

In the Supreme Court of the United States

KRISTI NOEM, SECRETARY OF HOMELAND SECURITY, ET AL., APPLICANTS

v.

SVITLANA DOE, ET AL.

REPLY IN SUPPORT OF THE APPLICATION TO STAY THE ORDER ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

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Respondents repeatedly acknowledge (Opp. 1-3, 15-19) the significance of the parole-revocation decision that they seek to stop in its tracks. Yet they barely address the significant flaws in the district court's nationwide order, let alone the irreparable harm to the government of a year-plus delay in implementing a decision that the Secretary of Homeland Security deemed time-sensitive and critically important to the Nation's immigration policy. Respondents dismiss those harms as only "abstract" and "generic injuries." Opp. 18. But there is nothing abstract or generic about artificially extending the continued presence in this country of up to 532,000 aliens who have not demonstrated admissibility, when the Executive Branch—which is constitutionally and statutorily charged with managing the immigration system and foreign affairs—has determined that their remaining here is against the national interest. This Court often intervenes when lower courts usurp the Executive's control over immigration policy. See Appl. 27. A stay is warranted here.

Beginning with the merits, the Immigration and Nationality Act (INA), ch.

477, 66 Stat. 163 (8 U.S.C. 1101 *et seq.*), could not be clearer: "no court shall have jurisdiction" to review "any" decision "the authority for which" the INA specifies is "in the discretion of * * * the Secretary of Homeland Security." 8 U.S.C. 1252(a)(2)(B)(ii). The granting and terminating of parole are precisely such discretionary authorities: the INA specifies that the Secretary may grant parole to an alien applying for admission "in h[er] discretion" and terminate that parole when, "in [her] opinion," its purposes have been served. 8 U.S.C. 1182(d)(5)(A).

Nevertheless, the district court purported to exercise jurisdiction over respondents' challenge to Secretary Noem's termination of parole for certain aliens from Cuba, Haiti, Nicaragua, and Venezuela (CHNV), on the theory—echoed by respondents (Opp. 24)—that the review bar is inapplicable if the court finds that the Secretary exercised her parole authority in an unlawful manner. Under that rationale, a court would exercise jurisdiction whenever it finds the challenged action to be unlawful, which defeats the whole point of a review bar. Respondents have no answer.

In addition, respondents' entire case—both on reviewability and on the merits—hinges on their contention that the Secretary may terminate parole only on a case-by-case basis. But the plain text of Section 1182(d)(5)(A) imposes a case-by-case limitation only on the *granting* of parole, not the *termination* of it. 8 U.S.C. 1182(d)(5)(A); see Appl. 18-21. Respondents all but ignore the statutory text other than to observe that the statute does not use the terms "grant" or "terminate"—a *non sequitur*. Respondents also suggest (Opp. 33) that the Secretary did not terminate respondents' parole, but modified a "condition" of it—namely, the termination date. That is textually untenable and at odds with their own references elsewhere to "mass revocation of parole." Opp. 1. Regardless, even when statutes call for individualized determinations, agencies may use categorical criteria, as the Secretary did here to

terminate parole. Respondents have no answer to that point either.

Instead, respondents' principal argument is that they will suffer irreparable harm if the Court stays the district court's order because parole recipients who have not acquired some other lawful immigration status must either leave the country or risk being placed in removal proceedings. Opp. 1-3, 16-20. But the prior administration granted respondents two-year terms of parole with the explicit caveat that parole was temporary, discretionary, and revocable at any time, foreclosing respondents' claims of cognizable harm. Appl. 8. Indeed, respondents underscore their own lack of irreparable harm by asserting (*e.g.*, Opp. 1, 18-19, 22) that the district court's order does not prohibit the government from terminating any class member's parole and initiating removal proceedings. That concession underscores that the district court's order does not actually protect any substantive entitlement that respondents have to remain here. That order instead serves only to throw a wrench into the government's efforts to enforce the immigration laws by confining the government to the gargantuan task of proceeding against up to 532,000 aliens individually.

I. THE GOVERNMENT IS LIKELY TO SUCCEED ON THE MERITS

A. Parole Terminations Are Not Judicially Reviewable

1. The INA deprives the district court of jurisdiction

The INA's review bar states that, with exceptions not relevant here, "no court shall have jurisdiction to review * * * any other decision or action of the * * * Secretary of Homeland Security the authority for which is specified * * * to be in the discretion of the" Secretary. 8 U.S.C. 1252(a)(2)(B)(ii). The exercise of parole authority under Section 1182(d)(5)(A) plainly qualifies as discretionary and thus is unreviewable. That provision authorizes the Secretary to terminate parole grants "when the purposes of such parole shall, *in the opinion of the Secretary of Homeland Secu-*

rity, have been served." 8 U.S.C. 1182(d)(5)(A) (emphasis added).

Respondents do not dispute that the INA specifies that parole termination decisions are in the Secretary's discretion. Instead, like the district court, respondents deem the review bar inapplicable because the Secretary "fail[ed] to abide by the non-discretionary legal limits on her authority"—namely, a supposed requirement to revoke parole only on a case-by-case basis. Opp. 24 (citation omitted). Setting aside that no such case-by-case limitation on parole *termination* exists, see Part B.1, *infra*, respondents' reasoning would eviscerate the bar. Under that view, courts would always review the merits of the Secretary's exercise of discretion to determine whether the jurisdictional bar applied in the first place. The jurisdictional bar would apply only where the court determines that the action was lawful. See Appl. 18-21.[1] A bar that precludes review only if a court finds the challenged action to be lawful is no bar at all. Cf. *Garland* v. *Aleman Gonzalez*, 596 U.S. 543, 554 & n.5 (2022). And the proposition that jurisdiction should depend on a court's view of the merits is akin to an exercise of "hypothetical jurisdiction" that this Court has long rejected. Cf. *Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83, 101 (1998). Respondents provide no answer to those flaws in their rationale.

Respondents invoke (Opp. 25) the presumption of judicial review, but that presumption can be overcome by "specific language" in the statute and by "inferences * * * drawn from the statutory scheme as a whole," *Block* v. *Community Nutrition Inst.*, 467 U.S. 340, 349 (1984); see *Guerrero-Lasprilla* v. *Barr*, 589 U.S. 221, 229 (2020). Here, "no court shall have jurisdiction to review" is about as specific as language gets, and the INA makes clear that review is precluded where the statute

[1] Even assuming that the statutory bar does not preclude review of constitutional claims, see *Webster* v. *Doe*, 486 U.S. 592, 603 (1988), no constitutional claims are at issue here.

makes a determination discretionary, *regardless* of whether that discretion is exercised appropriately. Cf. *Kucana* v. *Holder*, 558 U.S. 233, 247-248 (2010). Respondents appear to agree that where the Secretary makes an *individual* parole-revocation decision, that decision would not be judicially reviewable. Opp. 24-25. Left unexplained is why such a decision would become reviewable if made alongside 531,999 others. Under respondents' logic, had the Secretary issued 532,000 separate notices terminating each alien's parole—with no explanation whatsoever—that would be unreviewable.[2] Yet those same determinations somehow become reviewable under respondents' view when all decisions are combined in a single Federal Register notice containing a detailed explanation of the Secretary's reasons and explicit consideration of reliance interests. Nothing in the statutory text remotely suggests that Congress enacted such a senseless scheme.

Respondents' reliance (Opp. 25) on *Kucana*, *supra*, and *Biden* v. *Texas*, 597 U.S. 785 (2022), likewise is misplaced. *Kucana* held that the INA's review bar precludes review of decisions made discretionary by the INA itself, not decisions made discretionary *by regulation*. 558 U.S. at 247. But here, the INA itself is what makes parole determinations discretionary, so *Kucana* only confirms that the judicial-review bar applies. See 8 U.S.C. 1252(a)(2)(B)(ii). *Biden* v. *Texas* stated that DHS's authority to grant parole "is not unbounded" and "must be reasonable and reasonably explained." 597 U.S. at 806-807. That the authority to *grant* parole is bounded says nothing about whether the authority to *terminate* parole is judicially reviewable. The Court had no occasion to opine on termination decisions, for which the only statutory limitation is that the Secretary have "the opinion" that the purposes of parole have

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[2] As it happens, the Secretary *did* send each CHNV parolee an "individual notice through the [alien's] USCIS online account." 90 Fed. Reg. at 13,620. So respondents' claims would be unreviewable even on their own misguided logic.

been served. As Justice Kavanaugh explained, where parole determinations are concerned, "[n]othing in the relevant immigration statutes at issue here suggests that Congress wanted the Federal Judiciary to improperly second-guess the President's Article II judgment with respect to American foreign policy and foreign relations." *Id.* at 816 (Kavanaugh, J. concurring).

2. The APA also forecloses judicial review here

Respondents' claims are also unreviewable under the APA. The APA does not authorize judicial review when "statutes preclude judicial review" or when "agency action is committed to agency discretion by law." 5 U.S.C. 701(a)(1) and (2). Both apply here: Section 1252(a)(2)(B)(ii) is a statute that precludes judicial review, and Section 1182(d)(5)(A) commits parole termination to agency discretion by law because it authorizes the Secretary to terminate an alien's parole "when the purposes of such parole shall, *in the opinion of the Secretary of Homeland Security*, have been served," 8 U.S.C. 1182(d)(5)(A) (emphasis added).

Respondents say little in response. Cf. Opp. 26-27. They seem to agree (Opp. 27) that *individual* parole terminations are committed to agency discretion by law. Instead, they argue that the question *whether* the Secretary may terminate parole on a categorical basis is not committed to agency discretion by law. *Ibid.* But the answer to that abstract legal question makes no difference to respondents' legal rights unless respondents can further demonstrate that the decision to terminate parole is substantively unlawful. That is precisely the decision committed to the Secretary's discretion by law. What matters is the underlying termination decision, not whether it is published in a single notice or in 532,000 separate notices.[3]

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[3] The district court relied heavily on *DHS* v. *Regents of the University of California*, 591 U.S. 1 (2020), but unlike the program at issue in that case, the INA here expressly commits parole determinations to the Secretary's discretion by law.

B. The Parole Termination Is Lawful

Even if the Secretary's decision were reviewable, the government is likely to prevail on the merits because the statute does not require parole terminations to be made on a case-by-case basis, and the Secretary appropriately considered the availability of expedited removal.

1. The parole termination does not violate the INA

Respondents' arguments on reviewability and the merits ultimately rest on their contention that the parole statute imposes a "case-by-case" requirement on parole terminations. Opp. 25-28, 32-35. That contention is incorrect. While the statute explicitly requires case-by-case determinations for *granting* parole, it contains no parallel requirement for the *termination* of parole. 8 U.S.C. 1182(d)(5)(A); see Appl. 18-21. Respondents never address that distinction, but that difference in statutory language should be given effect. See *Russello* v. *United States*, 464 U.S. 16, 23 (1983).

Respondents observe (Opp. 33) that "the statute uses neither the word 'grant' nor 'terminate.'" That is a *non sequitur*. The INA provides that the Secretary may "in h[er] discretion *parole* into the United States temporarily under such conditions as [s]he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission." 8 U.S.C. 1182(d)(5)(A) (emphasis added). The italicized "parole" is an active verb that everyone (including both lower courts here) understands to mean "*grant* parole." Likewise, the statute provides that "when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled." *Ibid.* Again, everyone (including

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See Appl. 17. Respondents call (Opp. 26 n.16) that distinction "faulty"—but do so in a conclusory footnote without any explanation or argument.

the lower courts) understands a "return" to "custody" as the "termination" of parole. And as the quotation above indicates, the Secretary's authority to order previously paroled aliens to be returned to custody lacks any "case-by-case" limitation.

Respondents next argue (Opp. 33) that the Secretary's action here does not *terminate* parole, but merely changes the "conditions" of parole (namely, the parole expiration date), and thus falls under the statutory language stating that the Secretary may parole aliens "temporarily under such conditions as [s]he may prescribe only on a case-by-case basis," 8 U.S.C. 1182(d)(5)(A). But no reasonable speaker of English would view the *elimination* of parole as a "condition[]" of parole. Even respondents elsewhere refer to "mass revocation of parole" (Opp 1). Anyway, the Secretary's authority to impose "conditions" on parole is in a separate clause from her authority to determine that the purposes of parole have been served and the alien should be returned to custody. That distinction illustrates that, whatever the general term "conditions" might encompass, it cannot include the specific decision to return an alien to custody, which is what the Secretary decided here. Cf. *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 566 U.S. 639, 645 (2012) (specific governs the general).

Like the district court, respondents rely (Opp. 34) on the statute's use of the singular rather than the plural to refer, *e.g.*, to "such parole of such alien." But the mere fact that a statute is phrased in the singular does not preclude the application of categorical rules, as the Dictionary Act confirms. See Appl. 19-20. Respondents observe (Opp. 34) that "context is key"—but here, the context cuts the government's way. As longstanding regulations confirm, the Secretary may employ categorical criteria in making parole determinations. See 8 C.F.R. 212.5. Nor do respondents address the problem that their incorrect reading of the statute would render Congress's insertion of the "case-by-case basis" language in 1996 entirely superfluous, given that

the statute has always been phrased in the singular. And courts ordinarily should "requir[e] a change in language to be read, if possible, to have some effect." *American Nat'l Red Cross* v. *S.G.*, 505 U.S. 247, 263 (1992).

Even if the statute imposed a case-by-case requirement on parole terminations, the Secretary's termination here would satisfy any such requirement. Even when Congress "requires individualized determinations," agencies may apply categorical criteria in making such determinations. *American Hosp. Ass'n* v. *NLRB*, 499 U.S. 606, 612 (1991); see Appl. 20-21 (listing examples, including in the immigration context). The Secretary's application of categorical criteria here comfortably fits within those historical examples. Again, respondents have no response.

Indeed, it would be strange to fault Secretary Noem for *terminating* parole by applying categorical factors when Secretary Mayorkas *granted* parole by applying categorical factors. Appl. 5, 18-19. Respondents observe (Opp. 35) that Secretary Noem recognized that "potentially eligible beneficiaries were adjudicated on a case-by-case basis," 90 Fed. Reg. at 13,611. That misses the point. To receive parole, a CHNV parolee had to satisfy *both* Secretary Mayorkas's categorical criteria (such as countrywide considerations, see Appl. 7-8) *and* individualized criteria (such as public-safety vetting). A failure to satisfy *either* would have resulted in a denial of parole. Secretary Noem's determination that the categorical criteria no longer justify parole, and instead counsel in favor of termination, necessarily applies to *all* CHNV parolees.

Such situations may be common. For example, a lack of detention capacity may induce the Executive to parole a certain subset of aliens who, based on a case-by-case review, are deemed least likely to flee or endanger the community. Cf. *Biden* v. *Texas*, 597 U.S. at 815-816 (Kavanaugh, J., concurring). But once a new detention facility becomes available, the purposes of parole necessarily would have been served

for *all* such aliens who were paroled solely because of the lack of detention capacity. See Appl. 18-19. That example illustrates why Congress reasonably decided to require parole to be granted on a case-by-case basis, but to permit parole to be terminated on a categorical basis. It would be pointless and illogical to require the Secretary to additionally (and redundantly) make case-by-case determinations before terminating those individuals' respective terms of paroles.

In all events, given that the Secretary will continue to exercise her discretion to grant or deny parole to CHNV parolees on a case-by-case basis, see 90 Fed. Reg. at 13,612, her rejection of the categorical criteria under which parole was initially granted does not violate even respondents' incorrect understanding of the statute.

2. The parole termination is not arbitrary and capricious

Like the district court, respondents erroneously contend (Opp. 28-32) that the Secretary acted arbitrarily in terminating the two-year parole terms because she relied on a legally incorrect premise that, if parolees did not accumulate two years of continuous presence, they could be placed in expedited removal proceedings under Section 1225(b). Respondents observe that Section 1225(b) provides that "DHS may subject a noncitizen to expedited removal only if that person 'has *not* been admitted or *paroled* into the United States,'" and they interpret that language to mean that anyone who has ever been paroled in the past is categorically immune from being placed in expedited removal proceedings.[4] Opp. 29 (citation omitted). That interpretation is incorrect.

As a purely grammatical or linguistic matter, of course, the present perfect

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[4] Respondents contend (Opp. 29) that "[i]n their Application, Defendants never quote or acknowledge this part of the statute." That contention is incorrect: the government quoted that precise statutory language (Appl. 21) and explained why it does not preclude expedited removal. See Appl. 21-22.

tense could refer either to a single past event or to a continuing status—as respondents themselves seem to acknowledge, see Opp. 29 n.17. Context is the deciding factor. The context here indicates a continuing status, not a past event. If, as respondents contend, "has not been * * * paroled" means "has not ever been granted parole on a past occasion," an alien whose parole is terminated would *not* be "dealt with in the *same* manner as that of *any other* applicant for admission," as the INA requires, 8 U.S.C. 1182(d)(5)(A) (emphases added). Any "other" applicant—*i.e.*, one who was never paroled—who lacks two years of continuous presence would be subject to expedited removal. To treat aliens whose parole has been terminated in the same manner as other applicants, all such aliens must be subject to expedited removal. Respondents' only reply is the question-begging assertion that the government is making "a complaint about the decision that Congress itself made," Opp. 31, or "would essentially strike out of the statute an explicit limit that Congress placed," Opp. 30.

Respondents observe (Opp. 30 n.18) that "parole" is "paired with admission" in Section 1225(b)(1)(A)(iii)(II), and contend (Opp. 31 n.19) that under the government's interpretation, "DHS could also subject to expedited removal noncitizens who had been admitted on visas * * * if it merely revokes that visa first." That is incorrect. The INA elsewhere provides that "[a]ny alien * * * *in and admitted* to the United States" shall be "removed" if he is found to be deportable, 8 U.S.C. 1227(a) (emphasis added). That provision omits the "without further hearing or review" language contained in the expedited-removal statute, 8 U.S.C. 1225(b)(1)(A)(i). Given the general rule that ordinary (non-expedited) removal proceedings "shall be the sole and exclusive procedure for determining whether" an alien who "has been * * * admitted" may be "removed," 8 U.S.C. 1229a(a)(3), it follows that an alien who is "in and admitted" may not be placed in expedited removal proceedings.

But the INA lacks any similar provision regarding "any alien in or paroled"; nor does the INA specify that ordinary removal proceedings are the sole and exclusive procedure for determining whether an alien who "has been paroled" may be removed. Respondents also are incorrect to contend (Opp. 30 n.18) that the government's interpretation is "contradicted by DHS's own regulations." Those regulations instead expressly provide that after parole is terminated, "further inspection or hearing shall be conducted *under section 235* [*i.e.*, the expedited-removal provision] or 240 of the Act," 8 C.F.R. 212.5(e)(2)(i) (emphasis added).

C. The Court Likely Would Grant Certiorari

If the court of appeals were to affirm the district court's order, this Court likely would grant certiorari. Such a decision would create a circuit conflict with the Seventh and Ninth Circuits on an issue of profound national importance. Appl. 23; see *Samirah* v. *O'Connell*, 335 F.3d 545, 549 (7th Cir. 2003), cert. denied, 541 U.S. 1085 (2004); *Hassan* v. *Chertoff*, 593 F.3d 785, 789 (9th Cir.) (per curiam), cert. denied, 561 U.S. 1007 (2010). Respondents dispute (Opp. 20-22) the circuit conflict on the ground that *Samirah* and *Hassan* involved individual parolees. But the Seventh and Ninth Circuits interpreted the judicial-review bar directly contrary to the reasoning here.

Samirah, for instance, expressly rejected the argument that parole revocation must be judicially reviewable because it supposedly has the effect of "short-circuit[ing] the rights of an alien who has long lived in the United States," 335 F.3d at 548 (citation omitted)—analogous to respondents' argument that the Secretary's termination must be judicially reviewable because it terminates parole *en masse*. And *Hassan* "disagree[d]" with the alien's argument that "the district court had jurisdiction to review the [parole] revocation" on the theory that "the government lacked any discretion to revoke his advanced parole because no statute or regulation expressly

authorizes revocation," 593 F.3d at 789—analogous to respondents' argument that the Secretary's termination is reviewable because she lacks discretion to terminate parole on a categorical basis. Nothing in those decisions suggests that the outcomes would have been different had the cases involved many parolees instead of just one.

Respondents assert (Opp. 22-23) that this case is too insignificant to warrant certiorari, even as they portray the case as of surpassing importance when alleging irreparable harm (*e.g.*, Opp. 1-3, 15-19). They cannot have it both ways. The district court's sweeping order here is obviously important: the order thwarts the Executive Branch's constitutional and statutory responsibility for immigration and foreign affairs on an issue affecting over a half-million aliens, while also ignoring Congress's direction to preclude judicial review. Respondents contend (Opp. 22) that the order does not "prevent the federal government from terminating the parole of any individual CHNV parole beneficiary," but that is disingenuous: there is no feasible way to conduct the sort of case-by-case analysis that the district court appeared to demand in any reasonable timeframe. Respondents do not argue otherwise. The order thus prevents the removal of up to 532,000 CHNV parolees for up to a year and a half, notwithstanding the Secretary's determination that the purposes of their parole have been served. That is textbook judicial interference in Executive Branch affairs that warrants this Court's review. See *Haig* v. *Agee*, 453 U.S. 280, 292 (1981) ("Matters intimately related to foreign policy and national security are rarely proper subjects for judicial intervention.").

II. THE EQUITABLE FACTORS SUPPORT A STAY

A. The Government Will Suffer Irreparable Harm Absent A Stay

The district court's order imposes irreparable harm on the government and public, whose interests "merge" here, *Nken* v. *Holder*, 556 U.S. 418, 435 (2009). The

Constitution and INA grant the Secretary and the political Branches—not the courts—the task of deciding whether it is in the public interest to allow up to 532,000 aliens who were never admitted or inspected to remain in the country. And the Secretary discharged that responsibility at length, explaining why the CHNV parole programs, and the specific foreign policy approach that justified the creation of those programs, are antithetical to the Administration's foreign policy and immigration objectives. See 90 Fed. Reg. at 13,612, 13,615-13,616.

Respondents call those harms are "abstract" and "generic," but ignore the concrete, specific harms that result from forcing the Executive Branch to tolerate the presence of up to 532,000 aliens whom the Secretary has determined should not remain in the country. As the Secretary explained, any delay in terminating the CHNV parole programs "would undermine the U.S. Government's ability to conduct foreign policy, including the ability to shift governmental policies and engage in delicate and time-sensitive negotiations following a change in Administration." 90 Fed. Reg. at 13,621. Beyond that, the Executive Branch suffers harm when district courts intrude on core Executive functions, such as managing the immigration system. See *Arizona* v. *United States*, 567 U.S. 387, 394-396 (2012); *INS* v. *Legalization Assistance Project*, 510 U.S. 1301, 1305-1306 (1993) (O'Connor, J., in chambers).

Respondents alternatively try to portray the district court's order as narrow, contending that it "does not prohibit the Secretary from terminating or truncating class members' parole," Opp. 1, or "prevent the federal government from terminating the parole of any individual CHNV parole beneficiary," Opp. 22; see Opp. 18-19. But there is no practical way for the government to proceed individually against up to 532,000 aliens in any reasonable timeframe—least of all because the effect of such delays might well require "a greater proportion of this population" to be placed in

ordinary rather than expedited removal proceedings, "further straining the already over-burdened immigration court system." 90 Fed. Reg. at 13,619. Put simply, the district court's order is inimical to the government's and the public's strong interest in expeditiously removing aliens who lack a lawful basis to remain in the United States. See *id.* at 13,619-13,620.[5]

B. A Stay Would Not Impose Cognizable Harm On Respondents

On the flip side, a stay of the district court's order will not cognizably harm respondents or absent class members. As Secretary Mayorkas repeated when establishing these very parole programs, parole is a discretionary benefit that can be terminated at any time. See, *e.g.*, 88 Fed. Reg. 1266, 1272 (Jan. 9, 2023) ("DHS may terminate parole in its discretion at any time."); Appl. 3-4 & n.3.

Respondents contend that a stay of the district court's order "would put many CHNV parole beneficiaries immediately at risk of deportation without normal due process protections." Opp. 16. That is incorrect. As the government has explained, CHNV parolees who lack two years of continuous presence and cannot establish admissibility likely would be placed in expedited removal proceedings, which comport with the Constitution, including the Due Process Clause. See *DHS* v. *Thuraissigiam*, 591 U.S. 103, 138-140 (2020). Respondents assert that they may be removed to countries where they "will face serious risks of danger, persecution, and even death." Opp. 17. But any alien placed in expedited removal proceedings could raise claims under the Convention Against Torture or statutory withholding of removal. See 8 C.F.R. 208.30(b) and (e)(2)-(3); cf. *Johnson* v. *Guzman Chavez*, 594 U.S. 523, 530 (2021).

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[5] Respondents fault the government (*e.g.*, Opp. 1, 14-15, 19) for seeking a stay in this Court instead of expedited briefing in the First Circuit. The government does not oppose expedited briefing, but can still seek immediate relief from this Court when, as here, its harms are immediate and continuing. Cf. Sup. Ct. R. 23.3.

More fundamentally, respondents' repeated assertion (*e.g.*, Opp. 1, 18-19, 22) that the order does not prevent the government from terminating the parole of any individual respondent and initiating removal proceedings against him only underscores that the district court's order does not actually protect any *substantive* entitlement that respondents may have. Instead, the order simply serves to stymie the government's efforts to enforce the immigration laws against respondents. That is not a cognizable harm at all, much less one that outweighs the government's strong foreign policy interests in implementing the discretionary judgments that Congress entrusted to the Secretary of Homeland Security.

* * * * *

This Court should stay the district court's order.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

MAY 2025