No. 24A_____

IN THE SUPREME COURT OF THE UNITED STATES

OSCAR SILVA PEREZ, ET AL.,

APPLICANTS

v.

STATE OF TEXAS, ET AL.

AND

UNITED STATES DEPARTMENT OF HOMELAND SECURITY ET AL.,

RESPONDENTS

APPLICATION TO STAY "ADMINISTRATIVE STAY" INJUNCTION ENTERED BY UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, TYLER DIVISION

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PARTIES TO THE PROCEEDING

Applicants are Oscar Silva Perez, Natalie Taylor, Salvador Doe, Justin Doe, Carmen M. Miranda Zayas, Ricardo Ocampo Hernandez, Jessika Ocampo Hernandez, Foday Turay, Jaxhiel Turay, Genaro Vicencio Palomino, Cindy Siqueiros Maduena, and the Coalition for Humane Immigrant Rights ("CHIRLA").

Respondents are the State of Texas; State of Idaho; State of Alabama; State of Arkansas; State of Florida; State of Georgia; State of Iowa; State of Kansas; State of Louisiana; State of Missouri; State of North Dakota; State of Ohio; State of South Carolina; State of South Dakota; State of Tennessee; State of Wyoming; United States Department of Homeland Security; Alejandro Mayorkas, in his official capacity as Secretary of Homeland Security ("DHS"); Ur Jaddou, in her official capacity as Director of United States Citizenship and Immigration Services ("USCIS"); Troy Miller, in his official capacity as the Acting Commissioner of Customs and Border Enforcement ("CBP"); Patrick J. Lechleiter, in his official capacity as Acting Director of Immigration and Customs Enforcement ("ICE"); the Office of Management and Budget ("OMB"); and Shalanda Young, in her official capacity as the Director of OMB.

RELATED PROCEEDINGS

United States District Court (E.D. Tex.):

> *State of Texas et al. v. United States Department of Homeland Security et al.*, No. 6:24-cv-00306-JCB (Aug. 23, 2024)

United States Court of Appeals (5th Cir.):

> *State of Texas et al. v. United States Department of Homeland Security et al.*, No. 24-40571 (Sept. 5, 2024)
>
> *In Re Oscar Silva Perez et al.*, No. 24-40671 (Oct. 9, 2024)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutory Provisions

Other Authorities

Regulations

Rules

TO THE HONORABLE SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE OF THE SUPREME COURT AND CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT:

Pursuant to this Court's Rules 22 and 23 and the All Writs Act, 28 U.S.C. § 1651, Applicants Oscar de Silva Perez, Natalie Taylor, Justin Doe, Salvador Doe, Cindy Maduena, Jessika Ocampo Hernandez, Ricardo Ocampo Hernandez, Genaro Palomino, Foday Turay, Jaxhiel Turay, Carmen Zayas and the nonprofit organization Coalition for Human Immigrant Rights, on behalf its more than 50,000 members, respectfully apply for a stay of the preliminary injunction (in the guise of an "administrative stay") issued by the U.S. District Court for the Eastern District of Texas on October 4, 2024 (App., *infra*, 020-022), pending the Fifth Circuit's disposition of their petition for writ of mandamus and (if necessary) the filing and disposition of a petition for a writ of certiorari. Applicants respectfully request an administrative stay of the district court's order pending disposition of this Application.

The district court has exceeded its jurisdiction and proper role by enjoining the federal government from granting parole to noncitizens (including to noncitizen Applicants) applying under specific guidance without regard to the traditional four-factor test for injunctive relief, without considering the plaintiffs' lack of standing, and outside of established processes like Rule 65. The Fifth Circuit has thus far refused to put this case back on the ordinary course, and so Applicants ask this Court to do so, lest the district court's order further undermine the public's concerns about

the ability of the federal judiciary to apply the same law to all cases, regardless of the parties or the subject matter.

This case concerns guidance announced in June and finalized by the Secretary of Homeland Security in August regarding the permissible use of his statutory authority to grant parole when doing so would confer a significant public benefit. *See* 8 U.S.C. § 1182(d)(5); Implementation of Keeping Families Together, 89 Fed. Reg. 67459, 67473 (Aug. 20, 2024) (hereinafter "KFT FRN"). The Keeping Families Together ("KFT") guidance explains that, in the Secretary's judgment, agency adjudicators of requests for parole could permissibly conclude, in appropriate circumstances, that granting parole "in place" to certain noncitizens who have been in the country for at least a decade, who are married to or are the stepchildren of a U.S. citizen, and who meet other criteria would confer a significant public benefit.[1] With a grant of parole, the spouse or stepchild of the U.S. citizen would then no longer be needlessly required to return to their native country for consular officers to process their application for a green card for which they are already eligible under the Immigration and Nationality Act. Consular processing is a complex and arduous process that can unnecessarily require family separation while the noncitizen waits abroad for the immigrant visa. KFT FRN, 89 Fed. Reg. at 67460. Consular processing backlogs grew tremendously during the COVID-19 pandemic, injecting further delays

[1] On average, the noncitizen spouses of U.S. citizens eligible to apply for case-by-case consideration for parole through Keeping Families Together have been in the United States for approximately twenty-three years. *Id.* at 67478. Their children (the stepchildren of the U.S. citizens) are also eligible to apply for parole through KFT. *Id.* at 67460.

and uncertainty into a process that was already plagued by those features. *Id.* at 67469. The Keeping Families Together process thus highlights (but does not create) a statutorily authorized pathway for binational, mixed-status families to access the stability Congress has provided them, via green cards, while not contributing to the already-unprecedented consular processing backlog and unnecessarily forcing family separation.

Congress has explicitly authorized the use of parole "in place" to facilitate adjustment of status to lawful permanent resident ("LPR") of noncitizens married to U.S. citizens, and in the exact manner set out by the Keeping Families Together guidance. DHS has long understood parole "in place" to be a statutorily authorized way to facilitate adjustment of status without consular processing, and in 2013 issued guidance (updated in 2016) concerning the use of parole "in place" for certain noncitizens closely related to members of the armed services or veterans thereof.[2] In 2019, and in response to threats to this heretofore discretionary use of the parole authority, Congress mandated that this parole "in place" process continue, as a matter of statutory law. National Defense Authorization Act for Fiscal Year 2020 ("NDAA"), Pub. L. No. 116-92, § 1758 (2019) (*codified at* 8 U.S.C. § 1182 note)). At the same time, Congress "reaffirmed" the "importance" of the Secretary's general authority to grant parole "in place." *Id.* § 1758(b)(3) ("[T]he importance of the parole

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[2] USCIS Policy Memorandum, *PM-602-0114, Discretionary Options for Designated Spouses, Parents, and Sons and Daughters of Certain Military Personnel, Veterans, and Enlistees* (Nov. 23, 2016), *available at* https://bit.ly/4ha9d4H; USCIS Policy Memorandum, PM-602-0091, *Parole of Spouses, Children and Parents of Active Duty Members of the U.S. Armed Forces,* (Nov. 15, 2013), *available at* https://bit.ly/48iYpxc.

in place authority of the Secretary of Homeland Security is reaffirmed"); *see also* Northern Mariana Islands Long-Term Legal Residents Relief Act, Pub. L. No. 116-24, § 2 (2019) (*codified at* 48 U.S.C. § 1806(e)(6)) (approving the use of parole in place to facilitate adjustment of status of certain Northern Mariana Island residents).

Texas filed this suit in late August to challenge the Keeping Families Together parole guidance that is materially indistinguishable from what Congress has approved.[3] The next business day after Texas filed suit in the two-judge Tyler Division of the Eastern District of Texas,[4] the district court issued a nine-page opinion that imposed an injunction that the district court called an "administrative stay." App. 001. It was explicitly not based on Rule 65 or other established procedures, and instead was justified as a matter of docket management. App. 002. Although the first such injunction was for fourteen days, it was the first of several; the most recent such "administrative stay" was issued on October 4 and, by its terms, will last at least 35 days, until November 8, which will be the seventy-fourth (74th) continuous day that Keeping Families Together has been enjoined by an "administrative stay." App. 022.

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[3] Although other states are listed as plaintiffs, the parties have stipulated that only Texas will seek to prove standing or irreparable injury. *Texas v. Dep't of Homeland Security*, No. 6:24-cv-00306-JCB (E.D. Tex. Aug. 26, 2024), ECF No. 36.

[4] Prior to being nominated to the bench in 2019, the district judge worked for the Texas Attorney General's Office representing the State of Texas—the Plaintiff here—litigating against the federal governments—the same official-capacity Defendants here—over immigration policy. *See* Andrew Kreighbaum & Suzanne Monyak, *Judge's Past Red-State Advocacy Shadows Big Immigration Case*, Bloomberg Law, Sept. 6, 2024, https://news.bloomberglaw.com/daily-labor-report/judges-past-red-state-advocacy-shadows-big-immigration-case.

All the "administrative stay" orders have been *sua sponte*. Texas did move for preliminary relief under Rule 65 the day it filed suit, but that motion remains pending today, as the district court has declined to rule on it.

Neither the district court nor Texas has identified a single instance of a district court using an "administrative stay" in remotely comparable circumstances. Nor would it make sense for a district court to do so, given the availability of Rule 65 and the reality that district court cases have but one district judge, and thus the practical considerations that can sometimes justify a *brief* administrative stay at the appellate level are absent here.

Making matters worse, Texas plainly lacks standing even to bring suit, and thus the district court lacks jurisdiction, which Applicants and the Federal Defendants have repeatedly highlighted. Texas cannot explain how it could be injured when some of its longtime residents receive parole. Texas cannot (and thus does not) even allege that a grant of parole would increase their costs at all; it instead posits speculative policy arguments more appropriate for a press release.

The district court, for its part, has claimed that its injunction is necessary because there could be "risks of irreversibility" with a grant of parole; due to that potential risk, the district court justified prohibiting all parole grants nationwide, lest grants issued before the district court could rule would prevent it from awarding "full relief" to Texas. App. 005, This argument was not made by Texas—which actually told the Fifth Circuit in opposition to Applicants' motion to stay that it *disagrees*—and is one of many instances in which the district court has declined to adhere to the

party presentation rule. Regardless, even assuming grants of parole would be irreversible, as the district court suggested, that cannot and does not justify the district court issuing the extraordinary relief of an injunction without first assessing its own jurisdiction or the plaintiff's entitlement to relief.

Unfortunately, the district court and the Fifth Circuit have thus far rebuffed efforts to return this lawsuit to the ordinary course and the generally applicable rules governing even politically charged lawsuits like this one. *See Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024). Applicants have sought to intervene at the district court and supported Federal Respondents' motion to vacate its injunction; appealed to the Fifth Circuit when intervention was unsuccessful; and then petitioned the Fifth Circuit for a writ of mandamus when it resolved the intervention appeal without addressing the district court's unlawful injunction, which the district court almost immediately reimposed. Applicants also filed an emergency motion with the Fifth Circuit for a stay of the district court's "administrative stay" pending its resolution of the mandamus petition, respectfully requesting that the Fifth Circuit act on that motion by October 17. Texas and the United States timely filed responses—the last on October 15—to which Applicants replied the same day. The Fifth Circuit has still not acted, and so Applicants are here respectfully requesting that this Court stay the district court's "administrative stay" of October 4, 2024, lest it continue to unnecessarily undermine public confidence in the willingness or ability of the federal judiciary to resolve cases like this through

application of the same rules that apply to all litigants, and regardless of subject matter.

To the extent this Court believes appropriate or necessary, Applicants respectfully request that the Court additionally construe their application as a petition for a writ of certiorari before judgment, 28 U.S.C. § 2101(e), or a petition for a writ of mandamus.

STATEMENT

A. BACKGROUND

On June 17, 2024, the Biden administration announced Keeping Families Together ("KFT"), a new process by which certain qualifying spouses and stepchildren of U.S. citizens can apply to be considered on a case-by-case basis for a discretionary grant of parole for a period of up to three years. KFT FRN, 89 Fed. Reg. at 67473. If granted parole, the noncitizen will be considered to have been "inspected and . . . paroled," and will not be required to leave the United States for consular processing to receive the green card for which he or she is already eligible under federal law. Consular processing is a complex and arduous process that can require weeks, months, or even years of family separation while the noncitizen waits abroad for an immigrant visa, the eventual grant of which is not guaranteed. KFT FRN, 89 Fed. Reg. at 67460. Keeping Families Together, implemented under the federal government's statutory parole authority, 8 U.S.C. § 1182(d)(5), will allow parolees to adjust status without taking that risk. Additionally, under longstanding regulations not challenged here, parolees may apply for employment authorization via separate application and agency action. 8 C.F.R. § 274a.12(c)(11). "Family unity is a bedrock

objective of the U.S. immigration system," KFT FRN, 89 Fed. Reg. at 67459, and KFT offers family unity, stability, and security for mixed-status families who have been living in fear of separation for years: on average, the KFT-eligible spouses of U.S. citizens have been in the United States for approximately twenty-three years. *Id.* at 67478.

On August 19, 2024, the administration posted for public inspection a Federal Register Notice implementing Keeping Families Together and began accepting applications, then officially published the notice the following day. Applicants Oscar Silva Perez, Natalie Taylor, Justin Doe, Salvador Doe, Cindy Maduena, Jessika Ocampo Hernandez, Ricardo Ocampo Hernandez, Genaro Palomino, Foday Turay, Jaxhiel Turay, and Carmen Zayas are individuals who stand to benefit from KFT parole and whose lives and family unity are directly impacted by challenges and pauses to the process. *Texas v. Dep't of Homeland Security*, No. 6:24-cv-00306-JCB (E.D. Tex. Aug. 26, 2024), ECF No. 15. Applicant Coalition for Humane Immigrant Rights ("CHIRLA") is a membership organization with members who are eligible for and similarly impacted by KFT. Noncitizen Applicants and CHIRLA members applied for Keeping Families Together as soon as the process opened. *Id.*

B. PROCEEDINGS BELOW

On August 23, 2024, four days after applications opened, Texas filed suit in the Eastern District of Texas, Tyler Division, challenging the lawfulness of KFT and requesting a temporary restraining order, preliminary injunction, and stay of agency action under 5 U.S.C. § 705. *Texas v. Dep't of Homeland Security*, No. 6:24-cv-00306-JCB (E.D. Tex. Aug. 23, 2024), ECF Nos. 1, 3. The next business day, August 26—

before a response from Federal Respondents or any conference with the parties—the district court *sua sponte* granted a form of relief not sought by Texas: a renewable "administrative stay" enjoining the federal government from granting KFT parole for fourteen days, which the court characterized as "[t]emporary, injunctive relief based significantly on case administration needs." App. 001-006. The district court acknowledged "the traditional four factors governing preliminary relief," App. 002, but it claimed it was not bound by them in providing functionally identical relief via an "administrative stay," App. 001-003; *sua sponte* consolidated Texas's motion for preliminary relief with summary judgment briefing and a potential bench trial; ordered briefing to conclude by October 10, 2024; and expressed its expectation "that good cause may exist to extend this administrative stay for additional periods through mid-October." App. 006.

Seeking an opportunity to be heard on the procedural and substantive errors in the district court's "administrative stay," Federal Respondents moved on September 3 to vacate it. *Texas v. Dep't of Homeland Security*, No. 6:24-cv-00306-JCB (E.D. Tex. Sep. 3, 2024), ECF No. 47. The next day, again without waiting for a response, the district court denied Federal Respondents' motion and *sua sponte* extended its administrative stay until at least September 23. App. 010-016. *It also further* expedited its briefing and hearing schedule, given what it cited as the "rigor" of Federal Respondents' motion. App. 015-016. The court set a summary judgment hearing and possible bench trial for September 18, 2024—less than one month after the States filed their complaint. App. 016.

In the interim, on August 26, 2024, hours before the district court entered its initial fourteen-day "administrative stay" of KFT grants, Applicants moved to intervene in the lawsuit to protect their personal and concrete interests in KFT as direct beneficiaries of the process. *Texas v. Dep't of Homeland Security*, No. 6:24-cv-00306-JCB (E.D. Tex. Aug. 26, 2024), ECF No. 15. The district court denied intervention on September 3, 2024—one day after the motion was fully briefed—and Applicants appealed to the Fifth Circuit Court of Appeals the same day, moving to expedite the appeal to resolve the question of their intervention before the rapidly approaching district court hearing on September 23. *Texas v. Dep't of Homeland Security*, No. 6:24-cv-00306-JCB (E.D. Tex. Sep. 3, 2024), ECF Nos. 49, 50. The following day, September 4, Applicants timely filed in the district court an amicus brief in support of Federal Respondents' motion to vacate the administrative stay. *Texas v. Dep't of Homeland Security*, No. 6:24-cv-00306-JCB (E.D. Tex. Sep. 4, 2024), ECF No. 52. The Fifth Circuit granted Applicants' motion to expedite, but on September 11, midway through the parties' expedited briefing schedule, the Court *sua sponte* issued an unpublished order staying the district court proceedings pending resolution of the appeal "or other order of this court" and extending indefinitely the "administrative stay" of Keeping Families Together grants issued by the district court, "pending further order of this court." App. 019 (per curiam). The Court also set oral argument on the motion to intervene for October 10. App. 019.

On September 19, Applicants and Federal Respondents each filed motions to vacate the Fifth Circuit's extension of the district court's "administrative stay,"

requesting that the stay be allowed to expire by its own terms on September 23. The same day that the motions were fully briefed—October 4—the Fifth Circuit issued a one-page unpublished *per curiam* opinion affirming without analysis the district court's denial of intervention to Applicants; canceled oral argument; and lifted its September 11 stay order. *Texas v. Dep't of Homeland Sec.*, No. 24-40571 (5th Cir. Oct. 4, 2024) (per curiam), ECF No. 111. It made no mention of the motions to vacate. *Id.* Less than ninety minutes later, at 9:15 pm on a Friday night—and again acting *sua sponte*—the district court reinstated the "administrative stay" of Keeping Families Together for thirty-five more days (until November 8) and set a hearing for November 5, 2024 (Election Day). App. 020-022.

On October 9, Applicants filed a Petition for Writ of Mandamus and shortly thereafter an emergency motion for a stay of the district court's "administrative stay" of KFT with the Fifth Circuit. *In Re Oscar Silva Perez*, No. 24-40671 (5th Cir. Oct. 11, 2024), ECF No. 13. Applicants challenged the lawfulness of the lengthy, ongoing pause of KFT grants that has continued without a reasoned judicial analysis of any factors required for injunctive relief or even the exercise of jurisdiction, including the foundational question of State Respondents' standing to file suit. If the district court order is permitted to remain in place as is, Keeping Families Together, a nationwide process affecting hundreds of thousands of people, will be halted for at least seventy-four days. In their petition to the Fifth Circuit, Applicants requested that the Court adjudicate the motion no later than October 17. State Respondents filed their opposition on October 14, in which they claimed that the current 35-day

"administrative stay" is actually a temporary restraining order under Rule 65, contrary to the district court's own characterizations. Applicants submitted their reply later that same day. On October 15, Federal Respondents filed a response, agreeing that the district court's injunction is unlawful but asserting, without support, that Applicants cannot seek to have it stayed; Applicants replied the same day. As of the filing of the instant application, the Fifth Circuit has not acted on the motion for a stay or the petition for mandamus.

ARGUMENT

An applicant for a stay pending certiorari must establish (1) "a reasonable probability that this Court would eventually grant review," (2) "a fair prospect that the Court would reverse," and (3) that the applicant "would likely suffer irreparable harm absent the stay" and "the equities" otherwise support relief. *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring). Those requirements are satisfied here.

I. THIS COURT WOULD LIKELY GRANT REVIEW IF THE COURT OF APPEALS PERMITS THE DISTRICT COURT'S USE OF "ADMINISTRATIVE STAYS" TO ENJOIN A FEDERAL PROCESS NATIONWIDE FOR OVER TWO MONTHS

The district court has issued a nationwide injunction and twice extended it while explicitly refusing to consider its own jurisdiction, the plaintiff's likelihood of success, the threat of irreparable injury, or the balance of the equities. The district court has justified its sweeping (and *sua sponte*) orders by calling them "administrative stays," claiming that applying that label somehow authorizes the court to grant the exact relief sought by the plaintiff without examining the source of

the court's own authority or the limits on its exercise. To Applicants' knowledge, no district court has ever issued a comparable injunction, yet the district court's actions in the politically-charged circumstances here would—if not corrected by this Court—serve as a model for future district courts, regardless of the political party in power, the policy at issue, or the identity of the plaintiff. Further supporting review is that the district court's nationwide injunction thwarts the Secretary of Homeland Security's attempt to provide guidance to agency adjudicators regarding the exercise of his statutory authority to grant parole, 8 U.S.C. § 1182(d)(5), and needlessly inflicts broad irreparable injury on families across the country who merely want to continue working toward the stability offered by the green cards for which their loved ones are already eligible. The Court's review would plainly be warranted if the Fifth Circuit does not immediately correct the district court.

II. APPLICANTS ARE LIKELY TO SUCCEED ON THE MERITS

For multiple independent reasons, there is more than a "fair prospect that the Court would reverse" if it granted review. *Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring). The district court lacks both jurisdiction and authority to enter its nationwide injunction, and it greatly exceeded its authority, jurisdiction, and proper role in our Constitutional design.

a. The District Court Lacked Authority Here to Enjoin Defendants Under the Guise of an "Administrative Stay"

In response to Plaintiffs' Motion for Temporary Restraining Order, Preliminary Injunction, and Stay of Agency Action (under Section 705 of the APA), *Texas v. Dep't of Homeland Security*, No. 6:24-cv-00306-JCB (E.D. Tex. Aug. 23,

2024), ECF No. 3, the district court granted a form of relief not sought by Plaintiffs—a "temporary administrative stay" of Keeping Families Together parole. App. 001-009. The district court based its ruling predominantly on Justice Barrett's two-Justice concurring opinion in *United States v. Texas*, 144 S. Ct. 797 (2024), which discussed appellate courts' use of administrative stays for brief periods pending appeal; on the All Writs Act; and on the court's "inherent authority to manage its docket." App. 001-004. Together, this and two other similar *sua sponte* orders from the district court provide all the relief of a preliminary injunction, but without consideration of the court's jurisdiction, Plaintiffs' standing, or equitable factors. And critically, although though the stay is contemplated to remain in place for at least seventy-four days—through Election Day—it is unappealable. The district court exceeded its authority and misapplied the law.

First, there is neither precedent nor cause to justify the use of an "administrative stay" to skirt well-established requirements for equitable relief. This Court has made clear that to grant drastic injunctive relief like the district court has awarded here, a district court must consider each of the factors of the legal standard. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (setting out four-factor test for awarding injunctive relief); *see also* Fed. R. Civ. Pro. 65. While short-term temporary relief may be granted *ex parte* in the form of a temporary restraining order, such relief—which is substantively governed by same the four-factor test—is limited to an initial period of fourteen days and a single fourteen-day extension for good cause or with the adverse party's consent. Fed. R.

Civ. Pro. 65(b)(2). Any "temporary restraining order continued beyond the time permissible under Rule 65 must be treated as a preliminary injunction, and must conform to the standards applicable to preliminary injunctions." *Sampson v. Murray*, 415 U.S. 61, 86 (1974). The district court's "administrative stay" already far outstrips the limited time temporary relief can be issued without consideration of the *Winter* factors.

The All Writs Act ("AWA") likewise does not free a court from the restraints of Rule 65. The AWA "is a residual source of authority to issue writs that are not otherwise covered by statute. Where a statute specifically addresses the particular issue at hand, it is that authority, and not the [AWA], that is controlling." *Pennsylvania Bureau of Corr. v. U.S. Marshals Serv.*, 474 U.S. 34, 43 (1985); *accord Clinton v. Goldsmith*, 526 U.S. 529, 537 (1999) (holding that injunction under the AWA is an extraordinary remedy that "invests a court with a power that is essentially equitable and, as such, not generally available to provide alternatives to other, adequate remedies at law"). As the Fifth Circuit below has noted, "[w]hile the All Writs Act empowers a district court to fashion extraordinary remedies when the need arises, it does not authorize a district court to promulgate an Ad hoc procedural code whenever compliance with the Rules [of Civil Procedure] proves inconvenient." *Fla. Med. Ass'n, Inc. v. U.S. Dep't of Health, Ed. & Welfare*, 601 F.2d 199, 202 (5th Cir. 1979).[5]

[5] Multiple other Circuits have held Rule 65 governs the issuance of temporary restraining orders and preliminary injunction orders, "and thus [is] controlling" even

In any event, the district court's relief does not function as a proper "stay" at all. This Court in *Nken* clearly distinguished between injunctions and stays: an injunction "is a means by which a court tells someone what to do or not to do," while a stay "operates upon the judicial proceeding itself" by "halting or postponing some portion of the proceeding, or by temporarily divesting an order of enforceability." *Nken v. Holder*, 556 U.S. 418, 428 (2009). The district court did not enter its "administrative stay" to pause some part of the proceeding; quite to the contrary, the district court has set schedules barreling toward final judgment. App. 006-009, 015-016, 020-025. Rather, the district court used its "administrative stay" to issue unprecedented and unreasoned injunctive relief preventing hundreds of thousands of individuals around the country—in scores of states that do not take issue with the KFT process—from accessing Keeping Families Together parole. The district court's action is in everything other than name an injunction, issued without adherence to Rule 65 or *Winter*. Semantic sophistry cannot provide authority where it does not exist.

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under the AWA. *In re Est. of Ferdinand Marcos Hum. Rts. Litig.*, 94 F.3d 539, 546 (9th Cir. 1996); *accord In re Jimmy John's Overtime Litig.*, 877 F.3d 756, 770 n.11 (7th Cir. 2017) (rejecting argument that "Rule 65 and the traditional injunction factors do not apply to injunctions issued under the [AWA]"); *Scardelletti v. Debarr*, 265 F.3d 195, 212 (4th Cir. 2001) (finding "no reason to distinguish between [AWA] injunctions and other injunctions that must comply with Rule 65"), *rev'd on other grounds*, *Devlin v. Scardelletti*, 536 U.S. 1 (2002); *Ben David v. Travisono*, 495 F.2d 562, 563 (1st Cir. 1974) ("[w]hether proceeding under the [AWA] or not, a district court has no license to ignore [Rule 65]"); *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1229 (11th Cir. 2005) ("[W]here the relief sought is in essence a preliminary injunction, the All Writs Act is not available because other, adequate remedies at law exist, namely [Rule] 65, which provides for temporary restraining orders and preliminary injunctions.").

Justice Barrett's concurring opinion likewise does not provide authority for the district court's "stay." Both the language of her opinion as well as its cited case law deal strictly with administrative stays issued by *appellate courts* as a stop gap before a stay pending appeal can be considered. *Texas*, 144 S. Ct. at 798 (Barrett, J., concurring); *see generally id.* at 798-800. As Justice Barrett explained, an administrative stay "freeze[s] legal proceedings until the court can rule on a party's request for expedited relief." *Id.* at 798. "Their point is to minimize harm *while an appellate court* deliberates, so the choice to issue an administrative stay reflects a first-blush judgment about the relative consequences of staying the lower court judgment versus allowing it to go into effect." *Id.* (emphasis added). Above all, "when entered, an administrative stay is supposed to be a *short-lived prelude* to the main event: a ruling on the motion for a stay pending appeal." *Id.* at 799 (emphasis added); *accord id.* at 802 (Sotomayor, J., dissenting) (same).[6] The district court's "administrative stay" strays far from these guardrails. It does not freeze legal proceedings, it is set to remain in place for a minimum of seventy-four days, and it does not preface a ruling on a "stay pending appeal"—there is no judgment to consider for such a stay, and the district court, as a non-appellate court, has no need for such a procedural device anyway.

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[6] Professor Bayefsky—whom Justice Barrett cites in her concurring opinion in *Texas*, 144 S. Ct. at 798, and whom the district court likewise cites in support of its "administrative stay," Order, ECF No. 27 at 2, makes no mention of the notion that district courts have authority or reason to employ administrative stays at all, let alone when no appeal is pending. *See generally* Rachel Bayefsky, *Administrative Stays: Power and Procedure*, 97 Notre Dame L. Rev. 1941, 1942 (2022)).

The district court cites no law to the contrary. All but one of its cited cases in its original "administrative stay" order pertain only to Supreme Court and appellate court proceedings. App. 002-003. As for the lone district court case it cites, *Astrazeneca Pharms. LP v. Burwell*, 197 F. Supp. 3d 53, 59 (D.D.C. 2016), the term "administrative stay" appears nowhere in the opinion. There, the court did not temporarily enjoin or stay agency action, but rather, simply ordered the agency to provide the court with *twenty-four hours' notice* before issuing its decision on Astrazeneca's petition, enabling Astrazeneca to contest the decision at that time if it chose and enabling the court to rule on any TRO filed then. *Id.* This is poles apart from the relief the district court ordered below.

The district court can cite no law blessing its action because there is none—no other court, let alone a district court, has ever entered equitable relief of this magnitude under the guise of an "administrative stay." As this Court previously recognized, "[a] district court, if it were able to shield its orders from appellate review merely by designating them as temporary restraining orders, rather than as preliminary injunctions, would have virtually unlimited authority over the parties in an injunctive proceeding." *Sampson*, 415 U.S. at 86-87. Injunctive relief is an "extraordinary remedy never awarded as of right." *Winter*, 555 U.S. at 22. Yet this is precisely what the district court has done by maintaining long-lasting injunctive relief, entered a single business day after Texas filed suit and before any response by Defendants, and which to this day has not been legally justified by the court. The proper avenues to issuing such relief are clear and unavoidable, and

plainly, the district court has had ample time to conduct the necessary analysis under *Winter*. Applicants merely request this Court require the district court to follow the law.

b. The District Court Lacks Article III Jurisdiction Given Texas's Plain Lack of Standing, Which the District Court Has Repeatedly Refused to Consider

The district court's injunction of Keeping Families Together is likewise unlawful because Texas has not shown standing to bring its suit. The federal courts "do not exercise general legal oversight of the Legislative and Executive Branches." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423-24 (2021). Instead, the doctrine of standing "requires federal courts to satisfy themselves that 'the plaintiff has alleged such a personal stake in the outcome of the controversy as to warrant *his* invocation of federal court jurisdiction.'" *Summers v. Earth Island Institute*, 555 U.S. 488, 493 (2009) (quoting *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975)). This Court has "always insisted on strict compliance with this jurisdictional standing requirement," *Raines v. Byrd*, 521 U.S. 811, 819 (1997), because without it, "courts have no charter to review and revise legislative and executive action." *Summers*, 555 U.S. at 492.

The district court here, however, took no such care in assuring itself of its jurisdiction before issuing its *sua sponte* injunction of Keeping Families Together one business day after Texas filed its complaint. Moreover, despite multiple briefs bringing to the court's attention the infirmities in Texas's standing claims, and despite having multiple opportunities to address the validity of those claims, the district court has steadfastly declined to consider, much less acknowledge, any

obstacles to the exercise of its jurisdiction in this matter. The district court's seventy-four-day injunction of Keeping Families Together is unlawful for lack of jurisdiction, because Texas has failed to show that it can meet all the required elements of standing.

1. This Court's recent decision in *United States v. Texas*, 599 U.S. 670 (2023) (hereinafter "*Priorities*"), controls and confirms the district court's lack of jurisdiction: this Court rejected Texas's claims of standing in that case, and Texas's claims here are materially indistinguishable. As it did in *Priorities*, Texas challenges a policy that concerns the Executive's exercise of discretion in the immigration context, and the regulated parties are third parties, not the states. Because the challenged policy does not involve the exercise of the federal government's coercive power over the states, this Court observed that a plaintiff state must show "much more" to establish a cognizable injury than in cases where the challenged policy directly regulates a state. *Id.* at 678. But Texas has not done that here. As in *Priorities*, Texas complains exclusively of harms allegedly arising from "indirect effects on state revenues or state spending"—harms that this Court held make a state's claim to standing "more attenuated." *Id.* at 679, 680 n.3. And as this Court recognized, challenges to policies governing the Executive's exercise of discretion have historically not been cognizable in the immigration context. *Id.* at 679-80 (citing *Reno v. Am.-Arab Anti-Discrimination Comm.,* 525 U.S. 471, 490-91 (1999)). Texas has done nothing to show "much more" in this case or to otherwise distinguish its standing claims here from the claims it raised in Priorities, which

this court found were insufficient to "overcome[] the fundamental Article III problem with [that] lawsuit." *Priorities*, 599 U.S. at 678, 680 n.3.

2. Texas fares no better under this Court's traditional standing analysis. To satisfy the "irreducible constitutional minimum" of standing, 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 jurisdiction." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (internal quotation marks omitted)). Texas has not carried its burden to establish these elements, s*ee Lujan*, 504 U.S. at 555, because it has failed to show how any of its claimed harms result from Keeping Families Together.

Texas has not shown injury in fact. In an attempt to show injury, Texas alleges three sources of financial harm: increased expenditures on education, healthcare, and public safety due to grants of Keeping Families Together parole. These alleged costs are all indirect costs, which this Court has held are too "attenuated" to support standing. *Priorities*, 599 U.S. at 680 n.3. But even if such costs were cognizable, Texas does not postulate that Keeping Families Together will *increase* these costs. Rather, Texas's theory of harm is that its preexisting costs will *decrease* if individuals eligible for KFT become so discouraged in its absence that they decide to uproot their lives, leave behind friends and family, and leave the country they have called home for an average of a quarter-century. This is sheer and unsupported speculation, which does not suffice to establish the kind of

"concrete" and "de facto" injury necessary to establish standing. *Spokeo*, 578 U.S. at 340; *see also Clapper v. Amnesty Intern'l USA*, 568 U.S. 398, 410 (2013) ("[A] theory of standing, which relies on a highly attenuated chain of possibilities, does not satisfy the requirement" of actual or impending injury.").

Texas has not shown that its alleged injuries are traceable to Keeping Families Together. To support its claims that its expenditures will *decrease* but for KFT, Texas provides declarations outlining the costs it incurs to provide education to unaccompanied children, as well as the costs it incurs to provide health care to undocumented individuals and to incarcerate undocumented individuals. But Texas has offered no argument or explanation for why such populations are representative of the population eligible for KFT parole, or how such asserted injuries have been caused by Keeping Families Together. Unaccompanied minor children are categorically ineligible for Keeping Families Together. Texas also conveniently ignores that individuals eligible for KFT parole must undergo background checks and security vetting, have been in the United States for a minimum of ten years as of June 17, 2024 (and on average have been present here for *twenty-three* years), and have *no* pending criminal charges or disqualifying criminal history. In other words, the population eligible for Keeping Families together is far smaller than the general undocumented population of which Texas complains—and Texas has offered no basis to conclude that undocumented immigrants and unaccompanied minors are reasonable proxies to assess the costs associated with KFT parolees. Texas's arguments about increased education,

healthcare, and public safety costs are inapt, based on unrepresentative populations, and wholly untethered to any assertion of actual costs that the state may incur in connection with KFT beneficiaries.

Texas's allegations of harm show that its alleged injury cannot be redressed by an order enjoining the operation of Keeping Families Together. Texas's complaints of harm revolve solely round alleged costs incurred from continued undocumented immigration. But an order blocking Keeping Families Together would not curtail undocumented immigration. Parole through Keeping Families Together is only available to individuals who meet strict eligibility requirements, including *being present in the United States for at least a decade as of June 17, 2024* and *being the spouse or stepchild of a United States citizen*. An order eliminating KFT parole would therefore provide neither incentive nor disincentive to individuals with no ties to the United States who are contemplating migration to the U.S. after that date. Texas has not otherwise shown why preventing the federal government from granting parole to some of its currently undocumented, longtime residents who are married to or stepchildren of U.S. citizens will alleviate the costs it allegedly incurs due to providing certain services to undocumented immigrants.

3. The district court made no mention of these fatal flaws in Texas's standing claims when it issued its *sua sponte* "administrative stays" of Keeping Families Together. Rather, it issued its successive stays without having held a single status conference between the parties, and without having entertained any argument from Texas apart from the initial allegations in its opening complaint

and motion—despite having been advised multiple times by both the federal government and Applicants of the infirmities in Texas's claims of standing. Indeed, the district court has seen fit to issue an "administrative stay" of Keeping Families Together not once, not twice, but three times, each time declining to consider its own jurisdiction or the equitable factors laid out in *Winter*, or to comport with the requirements of Federal Rule of Civil Procedure 65.

As a result, if the district court's current "administrative stay" remains in place, Keeping Families Together will have been enjoined for a total of seventy-four continuous days by November 8, 2024, the date the district court's current stay is set to expire, without any consideration of its own jurisdiction to enjoin Keeping Families Together in such a fashion (and certainly without setting out any such consideration in an order that could have been appealed to a higher court). The district court's repeated refusal to examine the flaws in Texas's standing claims (and thus the likely lack of Article III jurisdiction) evince a disregard for this Court's admonishment that the federal courts assure themselves of a party's standing "to prevent the judicial process from being used to usurp the powers of the political branches." *Clapper*, 568 U.S. at 408; *see also Priorities*, 599 U.S. at 676.

4. To be sure, courts have jurisdiction to determine whether they indeed have jurisdiction over a given matter. But by their own terms, nothing in the district court's "administrative stays" of Keeping Families Together has been aimed at determining the district court's jurisdiction or preserving it (to the extent that the court ever had jurisdiction to begin with). To the contrary, the district court

justified its original stay based on a "first-blush review of the claims" (App. 004) and specifically highlighted certain *merits* issues that "warrant closer consideration than the court has been able to afford to date." The district court's second order extending its original "stay" of Keeping Families Together similarly declined to offer "any opinion on whether plaintiffs are more likely than not to prevail in a final judgment," App. 014, instead focusing on the professed "need to preserve the status quo ante for a short period," *id.* And its third order, issued less than ninety minutes after the Fifth Circuit vacated its order staying proceedings at the district court, simply "reimposed" the court's original stay "with the same terms." App. 022. Although the district court did express reservations about "how to practicably unwind parole once issued to an [individual]," which led it to claim that its administrative stay was necessary for "preserving its jurisdiction to enter complete relief for plaintiffs should their lawsuit ultimately prove meritorious," App. 004, this puts the cart before the horse. Concerns about the scope and impact of any remedy the court might wish to award are not relevant to the jurisdictional inquiry of standing, which "focuses on whether the plaintiff is the proper party to bring this suit" and whether the plaintiff has established a "'personal stake' in the alleged dispute," with a "legally and judicially cognizable" injury." *Raines*, 521 U.S. at 819. Such concerns about remedy, moreover, do not justify the district court's decision to skip over "an indispensable part of the plaintiff's case," *Lujan*, 504 U.S. at 561, and they certainly do not supply jurisdiction when none is present.

At every opportunity, the district court has declined to engage with the bedrock jurisdictional requirement of standing. But "Article III standing is 'not merely a troublesome hurdle to overcome if possible so as to reach the 'merits' of a lawsuit which a party desires to be adjudicated." *Priorities*, 599 U.S. at 675 (quoting *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 476 (1982)). The fact that the district court may grapple with standing at the summary judgment hearing scheduled for November 5 does not cure the fact that by that date, Keeping Families Together will have been enjoined on a nationwide basis for 71 days without any court assuring itself of the jurisdiction to order such drastic relief. It also does not obviate the need for immediate and relief from this Court.

III. THE EQUITIES OVERWHELMINGLY FAVOR A STAY

The balance of equities unquestionably support a stay of the district court's injunctive relief. Hundreds of thousands of individuals and their families across the United States are significantly and irreparably harmed by the pause to adjudications of KFT parole, while there is no basis to find that a stay of the injunction would impose any harm on Texas. The public interest in procedurally sound and substantively consistent court decisions also favors relief for Applicants.

a. Applicants and Thousands of Families Across the Country Are Harmed by the District Court's Injunction.

The district court's order directly and irreversibly harms noncitizens, their U.S. citizen spouses and stepchildren, and their children who would be benefitting from the KFT parole process, including Applicants and countless others who have

made the United States their home. The financial harm alone of each additional day without this pathway to stability in the Unites States is massive. The inability to obtain work authorization and permanent status is extremely costly. It limits Applicants' ability to secure stable employment to support their family and lowers household income, *see Texas v. Dep't of Homeland Security*, No. 6:24-cv-00306-JCB (E.D. Tex. Aug. 26, 2024), ECF No. 15-1 (hereinafter "Silva Decl.") ¶ 11; *Texas v. Dep't of Homeland Security*, No. 6:24-cv-00306-JCB (E.D. Tex. Aug. 26, 2024), ECF No. 15-5 (hereinafter "Zayas Decl.") ¶ 15, and thwarts the ability to plan and save for the future. *Texas v. Dep't of Homeland Security*, No. 6:24-cv-00306-JCB (E.D. Tex. Aug. 26, 2024), ECF No. 15-3 (hereinafter "Salvador Doe Decl.") ¶ 19; *Texas v. Dep't of Homeland Security*, No. 6:24-cv-00306-JCB (E.D. Tex. Aug. 26, 2024), ECF No. 15-2 (hereinafter "Taylor Decl.") ¶ 8. Lack of immigration status also leads to greater exploitation by employers, *Texas v. Dep't of Homeland Security*, No. 6:24-cv-00306-JCB (E.D. Tex. Aug. 26, 2024), ECF No. 15-12 (hereinafter "CHIRLA Decl.") ¶ 8, and restricts the growth of small businesses. *Texas v. Dep't of Homeland Security*, No. 6:24-cv-00306-JCB (E.D. Tex. Aug. 26, 2024), ECF No. 15-10 (hereinafter "Vicencio Decl.") ¶¶ 7, 11. It also prevents Applicants from obtaining health insurance, which could lead to physical harm and financial crisis at any moment. Silva Decl. ¶ 12; Zayas Decl. ¶ 15. Existing alternatives to KFT, moreover, are not only complex, limited in eligibility, and dangerous, but also expensive. *Texas v. Dep't of Homeland Security*, No. 6:24-cv-00306-JCB (E.D. Tex. Aug. 26, 2024), ECF No. 15-6 (hereinafter "R. Ocampo Decl.") ¶¶ 14-15 (estimating that their family

has spent $15,000 pursuing consular processing). These concrete costs continue to add up with each day that the district court's stay remains in place.

In addition to the financial hardship, the emotional toll on KFT-eligible individuals and their families is grave. Despite having lived in the United States for a decade or more, Applicants live in constant fear of being torn from their home and loved ones. *Texas v. Dep't of Homeland Security*, No. 6:24-cv-00306-JCB (E.D. Tex. Aug. 26, 2024), ECF No. 15-8 (hereinafter "F. Turay Decl.") ¶ 15; *Texas v. Dep't of Homeland Security*, No. 6:24-cv-00306-JCB (E.D. Tex. Aug. 26, 2024), ECF No. 15-7 (hereinafter "J. Ocampo Decl.") ¶ 10. They find it impossible to plan for the future or think long-term because of the lack of stability and security. Silva Decl. ¶ 11. With each day that passes with the district court's unlawful stay needlessly delaying Applicants' access to the green cards for which they are already eligible, this fear and uncertainty grows. It exacerbates existing stress and trauma that affects every member of their family, including their children. R. Ocampo Decl. ¶ 12 (describing the mental health breakdowns his fifteen-year-old son has experienced because of the unpredictability in their lives). It extends to every part of Applicants' lives, from career and education, to buying a home, to deciding to have children. Silva Decl. ¶ 11; F. Turay Decl. ¶ 23; R. Ocampo Decl. ¶ 19. These monetary and emotional harms that Applicants are suffering, and which are mounting each day, are incontrovertible and cannot be remedied. *See Philip Morris USA Inc. v. Scott*, 561 U.S. 1301, 1304 (2010) (holding that even purely monetary expenditures, if they "cannot be recouped," "the resulting loss may be irreparable.").

The district court's injunction also injures Federal Respondents, who implemented KFT in an attempt to uplift immigrant families and are now being forced to comply with a court order that they agree is unlawful. *See Texas v. Dep't of Homeland Security*, No. 6:24-cv-00306-JCB (E.D. Tex. Sep. 4, 2024), ECF No. 47 at 56-57. In the same way that a regulated entity is irreparably injured when it bears unrecoverable costs to comply with an invalid regulation, so too is the federal government in this case. *See Rest. L. Ctr. v. U.S. Dep't of Lab.*, 66 F.4th 593, 597 (5th Cir. 2023) ("Under our precedent, the nonrecoverable costs of complying with a putatively invalid regulation typically constitute irreparable harm."); *accord Thunder Basin Coal Co. v. Reich,* 510 U.S. 200, 220-21 (1994) (Scalia, J., concurring in part and in the judgment) *("*"[C]omplying with a regulation later held invalid almost *always* produces the irreparable harm of nonrecoverable compliance costs."). Nor can Applicants get back or be compensated for the additional months of delay and uncertainty caused by the district court's orders.

Finally, the district court's disregard for the Rules of Civil Procedure, Article III, and its "properly limited" role in our constitutional system, *All. for Hippocratic Med.*, 602 U.S. at 380, has inflicted, and continues to inflict, irreparable injury to the public's faith in the legitimacy of the federal judiciary and its ability to fairly resolve all manner of legal disputes.

b. Texas Will Not Be Harmed by a Stay.

Unlike the clear harm caused to Applicants and other KFT-eligible families, a stay of the district court's order will impose no harm to Texas, either substantively or procedurally. Substantively, Texas has not established any threat

of injury resulting from some of its longtime undocumented residents receiving KFT parole, let alone injury that is imminent or irreparable. Texas attempts to argue that the state will face financial harm from KFT due to costs related to education, healthcare, and crime, but as described *supra* and as this Court has held, these costs are too "attenuated" to support a standing inquiry into injury, *Priorities,* 599 U.S. at 680 n.3. Additionally, Texas's theory that its *preexisting* costs will *decrease* because KFT-eligible individuals will voluntarily decide to completely uproot their lives and leave the United States simply because a new parole process is blocked is entirely speculative and illogical given the make-up of the KFT-eligible population, who have built lives with their families and communities in the U.S. for decades and have not until this time had access to a process like KFT. Additionally, Texas is already providing the identified services to these same noncitizens, and its theory of decreased costs related to "self-deportations" is not supported by its own declarations that it has submitted in the district court case, as discussed above. Procedurally, Texas also suffers no harm, as the current "stay" of KFT grants is separate from the on-going district court proceedings, in which summary judgment briefs were submitted last week and a hearing is set for Election Day (November 5). That will not, and should not, change if this Court stays the pause on the parole process.

To the contrary, Texas has already unjustly benefited from an "administrative stay" that it never even requested, receiving the ultimate relief it seeks without having to prove its entitlement to bring suit in the first place, let

alone to the relief itself. Staying the district court's order and allowing KFT adjudications to resume will not harm Texas in any way, let alone irreparably.

c. The Public Interest Affirms the Need for a Stay.

Finally, the public interest in this case strongly argues in favor of a stay of the district court order for the reasons Applicants have outlined at length at the district court, *e.g.*, *Texas v. Dep't of Homeland Security*, No. 6:24-cv-00306-JCB (E.D. Tex. Sep. 4, 2024), ECF No. 52 at 16-20, and before the Fifth Circuit Court of Appeals, *Texas v. Dep't of Homeland Sec.*, No. 24-40571 (5th Cir. Sep. 19, 2024), ECF No. 91 at 27-31. *See also Weinberger v. Romero-Barcelo,* 456 U.S. 305, 312 (1982) ("In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction.")

First, the public has an interest in courts scrupulously and fairly conducting the threshold inquiry of whether movants have established standing to sue before issuing injunctive relief, an interest that is only heightened when the policy or process at stake is agency action that directly impacts the "rights of individuals" and has been relied upon for months. *Morton v. Ruiz,* 415 U.S. 199, 235 (1974). This is particularly key when, as here, Applicants, some of those very individuals with legally protectable interests in the process being enjoined, have been denied the ability to enter the case and formally contribute their unique perspectives and defenses as a party. Beyond the standing analysis, the public interest is undermined where courts do not rigorously follow other well-established procedures and requirements for granting the kind of widespread equitable relief the district court issued here. *See Daniels Health Scis., LLC v. Vascular Health Scis., LLC*, 710 F.3d 579, 585 (5th Cir. 2013)

("[T]he public is served when the law is followed.").

Second, the stay of KFT parole grants frustrates Congress's intent in making immigrant visas for the spouses of U.S. citizens immediately available and providing DHS with broad parole authority. *See Texas v. Dep't of Homeland Security*, No. 6:24-cv-00306-JCB (E.D. Tex. Sep. 4, 2024), ECF No. 52 at 18-19. "Family unity is a bedrock objective of the U.S. immigration system," KFT FRN, 89 Fed. Reg. at 67459, that is protected and facilitated through federal immigration law. *See Dep't of State v. Munoz,* 144 S. Ct. 1812, 1825 (2024) (Congress has frequently "use[d] its authority over immigration to prioritize the unity of the immigrant family"). Preventing noncitizen spouses of U.S. citizens from accessing the benefits of KFT only further erects barriers to the benefits Congress provided to immediate relatives.

Finally, only fifteen of the fifty states have sued to challenge KFT—fourteen of which have explicitly stated that they will make no effort to demonstrate their standing. *Texas v. Dep't of Homeland Security*, No. 6:24-cv-00306-JCB (E.D. Tex. Aug. 29, 2024), ECF No. 36 at 1. Seven others have filed an amicus brief in support of Texas, *Texas v. Dep't of Homeland Security*, No. 6:24-cv-00306-JCB (E.D. Tex. Oct. 15, 2024), ECF No. 74, but they have likewise made no effort to demonstrate standing that would give the district court jurisdiction for its "administrative stay." Meanwhile, twenty-seven states have *not* filed suit and seemingly have no concerns about the KFT process. Allowing an illegal "administrative stay" to continue blocking access to a critical parole process to eligible residents of those states, as well as to the economic benefits to the states themselves, harms the public interest. *See, e.g.*, *Texas*

v. Dep't of Homeland Security, No. 6:24-cv-00306-JCB (E.D. Tex. Sep. 2, 2024), ECF No. 44 at 5.

CONCLUSION

For the reasons above, Applicants respectfully request that the Court stay the district court's "administrative stay."

Dated: October 21, 2024

Respectfully submitted,

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