No. 25A319

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., APPLICANTS

v.

ASHTON ORR, ET AL.

REPLY IN SUPPORT OF APPLICATION FOR STAY

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TABLE OF CONTENTS

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The President issued an Executive Order requiring all agencies to revert to the longstanding, scientifically founded definition of "sex" to mean one's immutable, biological sex: male or female. That Executive Order forecloses agencies from instead relying on "self-assessed gender identity." Appl. App. 1a. The Order thus required the State Department to resume using "M" or "F" designations on passports that reflect holders' biological sex, as essentially all passports had done for 45 years until the prior Administration let anyone self-select "M," "F," or "X." That presidential policy choice for passports stands squarely within the President's powers. Passports are official government documents that communicate with foreign sovereigns; their contents thus implicate the President's broad foreign-affairs powers under Article II. Further, Congress in the Passport Act expressly delegated to the President control over the contents of passports. The President's choice to revert to prior policy and rely on biological sex—a choice that bound the State Department—should be the last place for novel equal-protection claims or Administrative Procedure Act objections.

The district court nonetheless enjoined the President's policy and compelled the State Department to allow any passport applicant in America to attest to class

membership and self-select their own sex designation on a passport using "M," "F," or "X." The court thus dictated foreign-affairs communications reserved to the President and upended a national policy based on precedent-defying equal-protection and Administrative Procedure Act (APA) objections, as well as a Paperwork Reduction Act claim that respondents do not press here. Opp. 24 n.9. The First Circuit then refused to stay that injunction, relying solely on APA grounds after declining to pass upon how *United States* v. *Skrmetti*, 145 S. Ct. 1816 (2025), affects respondents' claim that classifying by biological sex is sex discrimination. Appl. App. 145a-146a & n.1.

Those rulings are untenable. As for equal protection, there is no sex discrimination when the government relies on biological sex to make permissible sex classifications (like M/F designations on passports), just as there is no national-origin discrimination in requiring people to identify the country of their birth, not the country with which they self-identify. Appl. 15-18. Nor does embracing biological sex as biological reality reflect unconstitutional animus. Appl. 21-25. And black-letter administrative-law principles foreclose APA review when the President makes the dispositive policy choices—here, to use biological sex in passport designations—and leaves the agency with no discretion to choose differently. Appl. 26-28.

Now, respondents defend the merits largely by misconstruing the government's arguments. The government is not invoking foreign affairs to "sweep[] aside statutory and constitutional constraints," or defeat review, Opp. 13-14; rather, this Court's precedents foreclose respondents' equal-protection claims and confirm that APA review is unavailable. The government has never "all but admitted" an "intent to harm transgender people," Opp. 3; its policy applies even-handedly to all Americans and requires everyone's passport identification to reflect biological sex, not self-selection. That reflects no animus whatsoever. Nor does this case require the Court

to hold that "agencies automatically meet the APA's procedural requirements when they implement the President's policy views," contra Opp. 24. The government's more limited point flows directly from *Franklin* v. *Massachusetts*, 505 U.S. 788 (1992): because the President is not an "agency" for APA purposes, plaintiffs have no APA claim when they challenge a policy that the President dictated and that agencies cannot countermand. Finally, the government strenuously rejects the baseless suggestion that its policy aims to endanger trans-identifying people when they travel, Opp. 4.

Those red herrings should not distract from what this case ultimately concerns: whether a single district court can commandeer U.S. foreign policy and allow everyone to self-select their preferred gender (or "X") on passports, no matter that the President—the officer charged with conducting foreign affairs and deciding the contents of passports—disagrees with asserting gender identity as if it were the United States' official view. This Court should grant a stay of an injunction that inflicts irreparable harm based on clearly incorrect legal theories.

I. THE GOVERNMENT IS LIKELY TO SUCCEED ON THE MERITS

A. The Challenged Policy Comports With Equal-Protection Principles

Similar to prior passport policies for some 45 years until 2021, the President's policy requires passports to list the holders' sex and prohibits self-selecting a sex of their choice or opting for "X." That policy rests on common sense and tradition, not sex discrimination or animus, and "clearly meets th[e] standard" of deferential rational-basis review applicable to policies that do not discriminate based on suspect characteristics.[1] See *United States* v. *Skrmetti*, 145 S. Ct. 1816, 1835 (2025); Appl. 20-25. Indeed, "the law has long" employed objective, immutable biological sex to

[1] Respondents (Opp. 26 n.10) abandon the argument that trans-identifying status could be a suspect class and press sex-discrimination and animus arguments.

define sex designations across myriad contexts, confirming the policy's constitutionality. *Heller* v. *Doe*, 509 U.S. 312, 326 (1993).

1. **No sex-based discrimination.** The passport policy undisputedly prohibits *everyone* from self-selecting a sex (M or F) or other marker (X) on their passports, and thus discriminates against no one. See *Skrmetti*, 145 S. Ct. at 1829-1835; Appl. 15-18. Members of each sex—men and women—are equally required to identify their biological sex, not a self-selected identity. Though respondents devote much of their brief to claiming sex discrimination (Opp. 25-31), the district court and First Circuit rightly did not embrace that argument after *Skrmetti*. Appl. App. 143a, 146a n.1.

Respondents (Opp. 25-26) misunderstand sex discrimination and thus wrongly invoke heightened scrutiny. They would treat any policy that requires people to indicate their "sex assigned at birth" as a suspect sex-based classification and per se sex stereotyping. But while the challenged policy undisputedly *classifies* based on sex by including a sex designation on passports (as U.S. policy has done since 1976), respondents do not challenge the bare existence of sex designations. See Appl. 2-3. It is perfectly constitutional for classifications to treat men and women differently where the two sexes "are not similarly situated," such as measures that "take[] into account a biological difference." *Nguyen* v. *INS*, 533 U.S. 53, 63-64 (2001); see *Michael M.* v. *Superior Court*, 450 U.S. 464, 469 (1981) (plurality opinion); Appl. 13-14.

Respondents instead challenge *how* the sex designation is made (based on biological sex) and seek to force the government to use their preferred definition of sex (*i.e.*, self-identified M/F/X).[2] But the definitional choice to rely on biological sex, not

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[2] Respondents' assertion in this Court that they "do not challenge the government's definition of sex," Opp. 28, directly contradicts their arguments in the district court challenging the government's "policy imposing a definition of 'sex,'" based on "sex as this Administration defines it," Appl. 9, 16 (quoting D. Ct. Doc. 78, at 6 (Apr. 30, 2025)); see, *e.g.*, D. Ct. Doc. 78, at 7, 12, 24 (similar).

self-identification, applies even-handedly to all passport applicants and thus does not discriminate based on sex. As *Skrmetti* confirms, a policy referencing sex does not "trigger heightened scrutiny" where, as here, it "does not prohibit conduct for one sex that it permits for the other." 145 S. Ct. at 1831; see *ibid.* (under the challenged Tennessee law, "*no* minor may be administered puberty blockers or hormones to treat gender dysphoria, gender identity disorder, or gender incongruence; minors of *any* sex may be administered puberty blockers or hormones for other purposes").

Respondents (Opp. 27-28) would limit *Skrmetti* to the "medical" context. But Tennessee's law banned medical treatments "inconsistent with [a person's] sex," 145 S. Ct. at 1831 (citation omitted), just as the passport policy bans selecting a sex designation inconsistent with a person's sex, Appl. 11. *Skrmetti* also addressed and distinguished the same inapt precedents that respondents cite (Opp. 26-27). See 145 S. Ct. at 1828 (citing *Sessions* v. *Morales-Santana*, 582 U.S. 47 (2017)); *id.* at 1831 (citing *Loving* v. *Virginia*, 388 U.S. 1 (1967)); *id.* at 1832 (citing *J.E.B.* v. *Alabama*, 511 U.S. 127 (1994)). *Skrmetti* is fatal to respondents' sex-discrimination claim.

2. **Rational basis.** Because the policy does not discriminate based on sex or any other characteristic triggering heightened scrutiny, rational-basis review applies, and the policy easily clears that low bar. Appl. 20-21. As the President's Executive Order explains, gender identity "does not provide a meaningful basis for identification" and so "cannot be recognized as a replacement for sex" on "passports" or otherwise. Appl. App. 2a. Relying on biological sex—which is immutable—as opposed to self-identified sex (or X), which is an "internal, fluid, and subjective" descriptor, offers a more objective, reliable metric for the longstanding M/F portion of the passport. *Id.* at 1a. Contrary to respondents' assertions (Opp. 30), the Executive Order not only expresses that rationale on its face, but the government also defended

the policy on that basis below. See, *e.g.*, Appl. 23, 25 (citing Resp. App. 170a-171a).

Respondents call it "wholly irrational" (Opp. 31) to designate sex based on anything other than unrestricted self-selection. If so, American passport policy was apparently unconstitutional for 45 years, and only briefly became constitutional during a portion of the last administration. See Appl. 5, 15 (explaining that 2021 was the first time that any administration allowed "all people" to self-select a sex marker of "M," "F," or "X" based on putative gender identity). Commonplace biological-sex-based distinctions in countless public settings would also apparently be unconstitutional. But "legislatures have many valid reasons to make policy in these areas, and so long as a statute is a rational means of pursuing a legitimate end," equal protection "is satisfied." *Skrmetti*, 145 S. Ct. at 1853 (Barrett, J., concurring).

Nor can respondents seriously claim (Opp. 31) that the government's interest in "accurate," meaningful identification would be better served by an injunction requiring issuance of passports bearing any sex marker that applicants request—even "X," if applicants do not wish to identify as one sex or the other. It is hard to imagine a system less conducive to accurate identification than one in which anyone can refuse to identify his or her sex and withhold relevant identifying information for any reason, or can rely on a mutable sense of self-identification. Even the district court did not rely on the conclusory statement by plaintiffs' expert below that gender identity is the "most accurate and least problematic" means of identification, Opp. 31 (citation omitted), which contravenes undisputed record evidence that the United States and other nations have for decades used biological sex designations "to enable travel documents to be used more effectively to identify the holder," Appl. App. 7a.

3. **Animus.** Respondents alternatively claim (Opp. 32-36) that the policy reflects unconstitutional animus against trans-identifying people. The court of appeals

declined to adopt that argument, instead resting on a demonstrably incorrect forfeiture argument that respondents do not defend. Appl. App. 146a; Appl. 24. This is not one of the "few occasions" justifying the extreme measure of "strik[ing] down a policy as illegitimate" on animus grounds. *Trump* v. *Hawaii*, 585 U.S. 667, 705 (2018); see Appl. 21-25. This Court "will uphold [a] policy so long as it can reasonably be understood to result from a justification independent of unconstitutional grounds." *Hawaii*, 585 U.S. at 705. Those grounds are abundant given the longstanding use of biological sex to designate one's sex for identification purposes. Appl. 20-21.

Respondents attempt at length to distinguish *Hawaii* and its "unusually deferential standard," Opp. 34, to no avail. Respondents try to cabin *Hawaii* as an "Establishment Clause decision," *ibid.*; a case about "the entry of noncitizens into the United States," Opp. 35; a case that rested on the Court's disinclination to probe "extrinsic statements," *ibid.*; and a case where the challenged order rested on a "worldwide review process" and allowed for "significant exceptions," *ibid.* (citation omitted). *Hawaii* itself instead broadly cast its standard as applying the same "rational basis review" that applies "across different contexts and constitutional claims," 585 U.S. at 703, 705 n.5, citing garden-variety equal-protection cases, see *id.* at 705-706. *Hawaii* applied extra deference on top of that in part because of the sensitive national-security context of restricting the entry of aliens who cannot be adequately vetted. See *id.* at 702-704. But passports likewise implicate "sensitive issues in American foreign policy." See *Zivotofsky* v. *Kerry*, 576 U.S. 1, 5 (2015) (*Zivotofsky II*). This case thus equally warrants the "healthy deference" to policymakers that respondents concede applies to policies involving the President's Commander-in-Chief responsibilities. Opp. 34 (citation omitted); see *United States* v. *Shilling*, 145 S. Ct. 2695 (2025).

Regardless, respondents infer animus where none exists. They rely (Opp. 33)

on quotations from the Executive Order itself, but never explain why the Order's discussion of biological sex as scientifically accurate and criticisms of "gender ideology" as "internally inconsistent," "subjective," and damaging to women, Appl. App. 2a, rise to the level of reflecting a "bare . . . desire to harm" a particular group, *Hawaii*, 585 U.S. at 705 (citation omitted). Those animus accusations are particularly inexplicable given that this Court's own precedents refer to "men" and "women" in the same biological-sex-based sense as the Executive Order, see Appl. 22. And contrary to the district court's assertion that this Order "imposes a 'broad and undifferentiated disability' on a discrete group of people," Appl. App. 42a (cited at Opp. 33), respondents acknowledged below that it applies to "every person in the country in the same way." Appl. 22 (quoting D. Ct. Doc. 78, at 6 (Apr. 30, 2025)). Respondents also quote from other Executive Orders, yet acknowledge that "this Court granted a stay of an injunction of another of those Executive Orders." Opp. 34 (citing *Shilling*, 145 S. Ct. 2695). That stay order necessarily deemed the government likely to succeed in rebuffing similar objections that the Executive Order there was unconstitutionally "motivated by animus," Resp. in Opp. to Appl. for Stay at 20, *Shilling*, *supra* (No. 24A1030), and illustrates that none of the other executive actions that respondents identify reflects unconstitutional animus either, Appl. 23.

B. Respondents' Arbitrary-Or-Capricious Claim Fails

1. Respondents' arbitrary-or-capricious claim rests on a faulty premise: that courts, under the APA, can second-guess passport determinations that Article II and the Passport Act commit to the President's exclusive discretion. Appl. 26-28; 22 U.S. 211a. Respondents blow past the President's constitutional and statutory discretion to make such rules for passports as he sees fit, claiming that the APA allows arbitrary-or-capricious challenges to how the State Department implements the Pres-

ident's policies. Opp. 17-22. But the President dictated the contours of the policy that respondents challenge; he, not the State Department, required rescinding the self-selected-sex system and removing the "X" marker. Appl. 26. Respondents thus challenge his policy decision—but the APA renders such challenges unreviewable.

Plaintiffs cannot bring APA claims directed against the President's decisions because the President is not an "agency" under the APA, 5 U.S.C. 701(b)(1), and his policy decisions are "not subject to [the APA's] requirements" and "not reviewable" under that Act, *Franklin* v. *Massachusetts*, 505 U.S. 788, 800-801 (1992); see Appl. 26-28. Here, the Passport Act expressly vests "the President," not the agency, with exclusive authority to "designate and prescribe" rules for granting and issuing passports. 22 U.S.C. 211a. That delegation puts the President's "authority * * * at its maximum," encompassing "all that he possesses in his own right" based on his considerable Article II foreign-affairs authorities "plus all that Congress can delegate." *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 635 (Jackson, J., concurring); contra Opp. 24 (implausibly asserting that the Passport Act "merely confirms" the authority that the President "virtually always" enjoys over agencies).

The President exercised that discretion to dictate the policy challenged here, declaring it "the policy of the United States to recognize two sexes, male and female"; instructing that "'[g]ender identity'" "does not provide a meaningful basis for identification"; providing that "[a]gency forms that require an individual's sex shall list male or female, and shall not request gender identity"; and directing the Secretary of State to "require that government-issued identification documents, including passports * * * , accurately reflect the holder's sex, as defined under" the Executive Order. Appl. App. 1a-2a. This is a policy decision entrusted to the President's discretion that is "not reviewable * * * under the APA." *Franklin*, 505 U.S. at 801.

Respondents' attempts to distinguish *Franklin* (Opp. 19) fail. It is irrelevant that the President was the last-in-time executive actor in *Franklin* but left nuts-and-bolts implementation to the State Department here. The dispositive point is that presidential actions are unreviewable when the President's "duties [we]re not merely ceremonial or ministerial," *Franklin*, 505 U.S. at 800, but dictated the substance of the challenged agency action. Here, the President set the challenged policy to use biological sex; the State Department cannot disagree. *Franklin* also forecloses respondents' reliance (Opp. 18) on the "presumption" of reviewability. A separate opinion in *Franklin* made the same point, 505 U.S. at 816 (Stevens, J., concurring in part and concurring in the judgment), but the Court explained that courts "must presume" that the President's actions are "not subject to [the APA's] requirements," *id.* at 801.

Respondents point (Opp. 6, 21-22, 24 n.8) to the State Department's determination of ancillary details regarding implementation, such as defining "biological sex" to mean at "birth," not "conception." But they do not challenge that distinction; their challenge is that it is unconstitutional and arbitrary to use biological sex, not unrestricted self-selection of "M," "F," or "X" designations. The "EO's definition of sex," not the State Department's implementation of it, compels that choice. See Opp. 6 & n.2. Their complaint thus sought relief barring enforcement of "the Executive Order" as distinct from State Department action. Resp. App. 56a-57a. Reinforcing the point, the Executive Order plainly bars using any distinctions besides biological sex by emphasizing the need to rely on "the ordinary and longstanding use and understanding of biological and scientific terms," Appl. App. 1a; requiring "policies that recognize women are biologically female, and men are biologically male," *ibid.*; and defining "sex" as "an individual's immutable biological classification as either male or female," *ibid.* Put simply, respondents challenge a "discretionary action the President himself

decided to take"—to rely on biological sex, not gender identity—an action that is unreviewable under the APA. *Franklin*, 505 U.S. at 799. This case thus starkly contrasts with cases respondents cite (Opp. 23) where statutes vested an agency with the relevant decisionmaking authority. *Motor Vehicle Manufacturers Ass'n of United States, Inc.* v. *State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 33 (1983), involved a statute "direct[ing] the Secretary of Transportation" to take action, as did *Citizens to Preserve Overton Park, Inc.* v. *Volpe*, 401 U.S. 402, 405 (1971).

Finally, respondents attack a strawman (Opp. 13-16) by insisting that cases involving passports do not give the Executive Branch a free pass to "sweep[] aside statutory and constitutional constraints." No one contends otherwise. The government's argument is not that the passport policy is unreviewable because it implicates foreign affairs, contra Opp. 14, but that the *President's* role in dictating this particular policy takes APA review off the table. That distinguishes this case from *Zivotofsky* v. *Clinton*, 566 U.S. 189 (2012) (*Zivotofsky I*), a political-question case, and *Zivotofsky II*, 576 U.S. 1, which invalidated a statute purporting to interfere with the President's recognition decisions as expressed in passports, *id.* at 28-32. Likewise far afield is *Kent* v. *Dulles*, 357 U.S. 116 (1958), which held that the State Department lacked statutory authority to withhold passports based on citizens' beliefs or associations. None of those cases involves the APA, and none resembles the key aspect of this case: the President, not the State Department, dictated the policy to use biological sex for passport designations, pursuant to a statute conferring just that authority on "the President," and the President's actions are not subject to APA review.

Regardless, even if reviewable under the APA, the challenged policy is plainly not "arbitrary, capricious, [or] an abuse of discretion." 5 U.S.C. 706(2)(A); see Appl. 28-30. The State Department's decision to follow "such rules as the President shall

designate and prescribe for and on behalf of the United States," 22 U.S.C. 211a, was not just reasonable, but was expressly required by statute. Respondents never explain how the State Department could have followed the Passport Act's instruction to follow the President's rules (here, to use biological sex) without violating the statute and acting "not in accordance with law" under the APA, 5 U.S.C. 706(2)(A).

II. THE OTHER FACTORS SUPPORT GRANTING A STAY

A. If the First Circuit were to uphold the district court's classwide injunction, certiorari would plainly be warranted. Appl. 32-33. The injunction upends an Executive Order by ordering the State Department to allow anyone in the country to self-select their own sex designation on their passports, no matter that the Executive Branch wishes to define sex designations differently on its own property and in its own communications to foreign sovereigns. That affront to the separation of powers is particularly acute because the Constitution and Congress have entrusted passport decisions such as these to the Executive Branch, and such decisions raise diplomatic and foreign-policy concerns. This Court has repeatedly confirmed that such issues warrant review by granting interim relief in other cases involving discretion-laden national-security and foreign-affairs determinations. *E.g.*, *Noem* v. *National TPS All.*, No. 25A326, 2025 WL 2812732 (U.S. Oct. 3, 2025); *Noem* v. *National TPS All.*, 145 S. Ct. 2728 (2025); *Department of State* v. *AIDS Vaccine Advoc. Coal.*, No. 25A269, 2025 WL 2740571 (U.S. Sept. 26, 2025); *Shilling*, 145 S. Ct. 2695.

Respondents cast the unprecedented injunction below as "based on well-established legal principles," Opp. 40—but well-established legal principles cut entirely the government's way and repudiate respondents' equal-protection and APA theories. And respondents' invocation (Opp. 2) of the Court's pending merits cases in *Little* v. *Hecox*, No. 24-38, and *West Virginia* v. *B.P.J.*, No. 24-43, is no basis to deny

this application. Those cases concern whether and how heightened scrutiny applies to claims that sex-separated athletics discriminate based on sex and trans-identifying status—not anything to do with the APA or animus-inflected rational-basis claims. See Br. for the United States as Amicus Curiae, Nos. 24-38 & 24-43 (Sept. 18, 2025). Especially since the stay rulings below addressed distinct claims and declined to rely on respondents' sex-discrimination equal-protection claim, granting a stay here would not imply anything about the pending merits cases. See p. 4, *supra*.

B. The equities strongly favor a stay. The district court's nationwide-class injunction inflicts "irreparable injury" by preventing the Executive from "effectuating statutes enacted by representatives of its people" and by "improper[ly] intru[ding] on" two "coordinate branch[es] of the Government." *Trump* v. *CASA, Inc.*, 606 U.S. 831, 859, 861 (2025) (first set of brackets in original; citations and internal quotation marks omitted); see Appl. 33-34. Those injuries are particularly acute because this injunction intrudes on the President's "unique role in communicating with foreign governments," especially given the "[u]nderstanding that passports will be construed as reflections of American policy." *Zivotofsky II*, 576 U.S. at 6, 21. Indeed, the Passport Act's express delegation of power directly to the President makes this an even stronger case for the President than *Zivotofsky*. Contra Opp. 15. Respondents profess to wonder how the President's passport policy could "possibly" affect foreign relations, Opp. 2, 16, but self-evident foreign-policy consequences flow from forcing the Executive to misrepresent biological facts to foreign states and to create the misimpression that the Executive endorses gender identity. Appl. 34.

By contrast, no evidence suggests that a stay will irreparably harm respondents or class members in cognizable ways. Appl. 34-37. Again, passports are government documents that reflect government speech. Appl. 36. Respondents' disagree-

ment with the content of the government's speech cannot create a cognizable harm or irreparable injury, lest any disagreement over designations on any government document or in any government building generate standing and irreparable injury. *Ibid.* (citing, *e.g.*, *Diamond* v. *Charles*, 476 U.S. 54, 62 (1986)). Respondents counter (Opp. 38) that no one could ever challenge anything about their passports absent concrete travel plans under this view. But here, respondents' broadest theory of irreparable injury is in being unable to force government documents to conform to their own views of self; that particular injury is not cognizable. Cf. *Bowen* v. *Roy*, 476 U.S. 693 (1986).[3]

Respondents focus on harms from "outing" individual plaintiffs and repeatedly mischaracterize the government as having stated below that "the 'outing of transgender, intersex, and nonbinary individuals' was 'core to the Policy,'" Opp. 3, 34, 37 (citations omitted). That out-of-context citation incorrectly makes it seem as though the policy's *purpose* was to "out[]" people when the government's actual point, in response to respondents' arbitrary-or-capricious argument, was that the Executive Order did not fail to "account for" this "purported problem[]" or several others and indeed rested on the conclusion that "gender identity" cannot "'provide a meaningful basis for identification.'" Resp. App. 171a (quoting Appl. App. 2a).

Moreover, the district court's injunction fatally fails to distinguish between those who might face harm because they have concrete plans to travel internationally using the passports at issue, and those class members who lack such plans. Cf. *Clapper* v. *Amnesty Int'l USA*, 568 U.S. 398, 401 (2013); *City of Los Angeles* v. *Lyons*, 461 U.S. 95, 102 (1983). There is nothing incongruous about requiring plaintiffs to

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[3] Respondents are incorrect (Opp. 39) that the government never argued below "that passports are government speech and property." The government has made that argument at every stage, *e.g.*, Resp. App. 160a, 326a, 352a-353a—hence, the district court acknowledged that this case will require deciding "whether passport sex designations are personal or government speech," Appl. App. 90a.

"ma[ke] plans" to travel before they may obtain injunctive relief (Opp. 38); this Court's precedents demand such "concrete plans" to show Article III standing (let alone irreparable harm). *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 564 (1992).

Finally, respondents cannot claim the mantle of the "status quo." Opp. 36. Contrary to respondents' selective historical account, the 2021 self-selection policy that the injunction resurrects was a sharp break from past practice. The government had never before allowed unrestricted self-selection and never allowed "X" markers. Appl. App. 15a-16a. At most, some prior administrations allowed individuals to depart from the rule of relying on biological sex only if individual applicants produced medical evidence of certain interventions, which is a far cry from universal self-selection. Respondents also emphasize that the lower courts have allowed the classwide injunction to remain in effect for "three months," Opp. 36, but two of those months involved the First Circuit deliberating before issuing a four-page stay denial. Appl. 12; Appl. App. 144a-147a. If lower courts' delays counted against applicants, that would perversely encourage applicants to bypass lower courts to avoid prejudicing their applications, further complicating the already "fast and furious business" of litigating on this Court's interim docket. See *Labrador* v. *Poe*, 144 S. Ct. 921, 927 (2024) (Gorsuch, J., concurring). This Court should discourage that result.

* * * * *

For the foregoing reasons and those stated in the government's application, this Court should stay the district court's June 17 preliminary injunction.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

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