No. _____

In the Supreme Court of the United States

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

v.

NATIONAL TPS ALLIANCE, ET AL.

APPLICATION TO STAY THE JUDGMENT ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA AND REQUEST FOR AN ADMINISTRATIVE STAY

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PARTIES TO THE PROCEEDING

Applicants (defendants-appellants below) are Kristi Noem, in her official capacity as Secretary of Homeland Security, United States Department of Homeland Security, and the United States of America.

Respondents (plaintiffs-appellees below) are National TPS Alliance, Mariela Gonzalez, Freddy Arape Rivas, M.H., Cecilia Gonzalez Herrera, Alba Purica Hernandez, E.R., Hendrina Vivas Castillo, Viles Dorsainvil, A.C.A., and Sherika Blanc.

RELATED PROCEEDINGS

United States District Court (N.D. Cal.):

National TPS Alliance v. *Noem*, No. 25-cv-1766 (Sept. 10, 2025) (order denying motion for stay pending appeal)

National TPS Alliance v. *Noem*, No. 25-cv-1766 (Sept. 5, 2025) (order granting summary judgment)

National TPS Alliance v. *Noem*, No. 25-cv-1766 (April 4, 2025) (order denying motion for stay pending appeal)

National TPS Alliance v. *Noem*, No. 25-cv-1766 (Mar. 31, 2025) (order postponing agency actions)

United States Court of Appeals (9th Cir.):

National TPS Alliance v. *Noem*, No. 25-5724 (Sept. 17, 2025) (order denying motion for stay pending appeal)

National TPS Alliance v. *Noem*, No. 25-2120 (Aug. 29, 2025) (order affirming grant of postponement)

National TPS Alliance v. *Noem*, No. 25-2120 (April 18, 2025) (order denying motion for stay pending appeal)

Supreme Court of the United States:

Noem v. *National TPS Alliance*, No. 24A1059 (May 19, 2025) (order granting stay application)

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Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Solicitor General—on behalf of applicants Kristi Noem, et al.—respectfully files this application to stay the order granting summary judgment issued by the United States District Court for the Northern District of California (App., *infra*, 23a-91a), pending the consideration and disposition of the government's appeal to the United States Court of Appeals for the Ninth Circuit and, if the court of appeals affirms the judgment, pending the timely filing and disposition of a petition for a writ of certiorari and any further proceedings in this Court. Given the government's ongoing irreparable injury, the Solicitor General also respectfully requests an administrative stay of the district court's judgment pending the resolution of this application.

This case is familiar to the Court and involves the increasingly familiar and untenable phenomenon of lower courts disregarding this Court's orders on the emergency docket. Just four months ago, this Court (with only one Justice noting dissent) stayed the district court's order granting preliminary relief that indefinitely post-

poned the Secretary of Homeland Security's determinations regarding the temporary protected status (TPS) designation of Venezuela. 145 S. Ct. 2728. Specifically, the district court's order had blocked the Secretary's vacatur of then-Secretary Alejandro Mayorkas's eleventh-hour extension of TPS status and blocked Secretary Noem's later termination of TPS designation for Venezuela. Before this Court, the government advanced purely legal arguments, including that the relevant statute (8 U.S.C. 1254a(b)(5)(A)) expressly bars judicial review of the substantive considerations underlying the TPS termination and vacatur decisions, and that the Secretary had inherent authority to vacate Secretary Mayorkas's attempted extension.

By staying that order, this Court necessarily determined that the government was likely to succeed on the merits and that the equities weighed in its favor. See *Nken* v. *Holder*, 556 U.S. 418, 534 (2009). And by staying that order pending the disposition of appeal and any further review in this Court, this Court allowed the Secretary's actions to take effect, consistent with authority that Secretaries across administrations have exercised for decades under the TPS statute. See 8 U.S.C. 1254a(b)(1)(C) and (3)(B).

On September 5, 2025, however, the district court mooted that appeal—and this Court's accompanying stay—by entering a new order granting final judgment to respondents. The district court's new order expressly rests on the same flawed legal grounds as its predecessor—the one this Court stayed. The district court again deemed the Secretary's actions reviewable, again rejected her statutory authority to vacate the TPS extension, and again held that the Secretary's vacatur and termination decisions were arbitrary and capricious under the Administrative Procedure Act (APA). The result: This new order, just like the old one, halted the vacatur and termination of TPS affecting over 300,000 aliens based on meritless legal theories.

When the government sought a stay of that new order, this should have been an easy case. The threshold legal arguments remain the same and continue to bar review of the merits. Likewise, the balance of harms remains the same and continues to strongly favor the government. The new order again displaces the Secretary's judgment on a matter committed to her unreviewable discretion by law, again impedes important immigration enforcement policies, and again ties up the Secretary's actions in protracted litigation that will effectively nullify them absent relief from this Court. So long as the district court's order is in effect, the Secretary must permit over 300,000 Venezuelan nationals to remain in the country, notwithstanding her reasoned determination that doing so even temporarily is "contrary to the national interest." 8 U.S.C. 1254a(b)(1). Even viewing the merits and equities de novo, the stay calculus remains straightforward.

But this Court's prior order makes the lower courts' denial of a stay indefensible. This Court weighed the same threshold merits arguments and equities and found that the calculus favored a stay, so that the Secretary's actions should take effect. Those threshold legal arguments still control here. And the district court made no new factual findings as to the equities. This Court's determination about the propriety of a stay of a preliminary order thus "squarely controlled" the calculus regarding the propriety of a stay pending appeal of the final judgment. See *Trump* v. *Boyle*, 145 S. Ct. 2653, 2654 (2025). Indeed, lower courts have routinely concluded that if this Court stays preliminary relief, that determination necessitates granting a stay of later-stage, permanent relief in the same case under circumstances like these.[1]

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[1] See, *e.g.*, *Cook County* v. *Wolf*, 20-3150 C.A. Doc. 21 (7th Cir. Nov. 19, 2020) (granting stay pending appeal of district court's final judgment where this Court had previously stayed preliminary injunction); *California* v. *Trump*, 407 F. Supp. 3d 869, 907 (N.D. Cal. 2019) (staying final judgment pending appeal because "the Supreme Court's stay of this Court's prior [preliminary] injunction order appears to reflect the conclusion of a majority of

Yet the courts below refused to stay the new order, remarkably suggesting that this Court's earlier stay order in this case was too thinly reasoned to still have binding force. The district court objected that this Court's stay order "did not provide any specific analysis on the merits of [respondents'] case (including whether judicial review of [respondents'] case is permissible)." App., *infra*, at 18a (footnote omitted). And the Ninth Circuit felt free to disregard this Court's "unreasoned" stay order because it "provide[d] no analysis to inform [the court's] view of the equities in this posture," leaving the Ninth Circuit to "only guess" at its basis. *Id.* at 6a. "[W]ithout more," the Ninth Circuit could not say that this "Court's May 19, 2025 order 'squarely control[s]' our decision on a later, distinct emergency stay motion." *Ibid.* (brackets in original). The panel then cited "a more developed record" that purportedly bolstered respondents' arbitrary-and-capricious claims—claims and developments that are irrelevant if those claims are unreviewable in the first place. *Id.* at 7a, 14a. On that basis, the panel held that respondents are likely to succeed on the merits and that the equities tip "heavily" in their favor, *id.* at 8a-15a—directly contradicting this Court's weighing of the same equities just four months ago.

This needless affront to *stare decisis* calls out for this Court's swift intervention. All of the reasons why the original application warranted review, why the government was likely to succeed on the merits, and why the equities favored the government still apply. Moreover, the decision below is the latest addition to an ongoing parade of lower-court decisions that have threatened "the hierarchy of the federal court system created by the Constitution and Congress" by disregarding or defying this Court's stay orders. *NIH* v. *American Pub. Health Ass'n*, 145 S. Ct. 2658, 2663

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that Court that the challenged construction should be permitted to proceed pending resolution of the merits").

(2025) (Gorsuch, J., concurring) (quoting *Hutto* v. *Davis*, 454 U.S. 370, 375 (1982) (per curiam)).[2] Lower courts cannot treat this Court's orders as good for only one stage of only one case by gesturing at irrelevant distinctions, subjectively grading the persuasiveness of the Court's perceived reasoning, or faulting the Court's terseness. See *Boyle*, 145 S. Ct. at 2654. This Court should not have to reiterate, yet again, that "[l]ower court judges may sometimes disagree with this Court's decisions, but they are never free to defy them." *Ibid.* This Court should stay the district court's order, issue an administrative stay while it considers the application, and reaffirm the obvious: This Court's orders are binding on litigants and lower courts. Whether those orders span one sentence or many pages, disregarding them—as the lower courts did here—is unacceptable.

STATEMENT

A. Legal Background

As the government previously recounted, various statutory provisions govern temporary protected status. 24A1059 Gov't Appl. 4-6. In 1990, Congress established a discretionary program for providing temporary shelter in the United States for aliens from countries experiencing armed conflict, natural disaster, or other "extraordinary and temporary conditions" that prevent the aliens' safe return. 8 U.S.C. 1254a(b)(1); see Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978. The program authorizes the Secretary of Homeland Security, "after consultation with appropriate agencies of the Government," to designate countries for "Temporary [P]rotected [S]tatus," if she finds:

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[2] See, *e.g.*, *New York* v. *Kennedy*, No. 25-1780 (1st Cir. Sept. 17, 2025) (refusing to grant a stay and declining to treat this Court's stay order in *McMahon* v. *New York*, 145 S. Ct. 2643 (2025), as controlling because the order did "not identify the specific grounds for the Court's ruling"); see also *Trump* v. *Slaughter*, 25A264 Gov't Appl. (Sept. 4, 2025); *Boyle*, 145 S. Ct. 2653; *Department of Homeland Security* v. *D.V.D.*, 145 S. Ct. 2627 (2025).

> (A) * * * that there is an ongoing armed conflict within the state and, due to such conflict, requiring the return of aliens who are nationals of that state to that state (or to the part of the state) would pose a serious threat to their personal safety;
>
> (B) * * * that— (i) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected, (ii) the foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state, and (iii) the foreign state officially has requested designation under this subparagraph; or
>
> (C) * * * that there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless the [Secretary] finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States

8 U.S.C. 1254a(b)(1).[3]

When the Secretary designates a country for TPS, eligible individuals from that country who are physically present in the United States on the effective date of the designation (and continuously thereafter) may not be removed from the United States and are authorized to work here for the duration of the country's TPS designation. 8 U.S.C. 1254a(a) and (c).

As the program's name suggests, designations shall be "temporary." 8 U.S.C. 1254a(a). Initial designations and extensions thereof may not exceed eighteen months. 8 U.S.C. 1254a(b)(2) and (3)(C). The Secretary, in consultation with appropriate agencies, must review each designation at least 60 days before the designation period ends to determine whether the conditions for the country's designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). If the Secretary finds that the foreign state

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[3] While the provisions at issue refer to the Attorney General, Congress has transferred the authority to the Secretary of Homeland Security. See 6 U.S.C. 552(d), 557.

"no longer continues to meet the conditions for designation," she "shall terminate the designation" by publishing notice in the Federal Register of the determination and the basis for the termination. 8 U.S.C. 1254a(b)(3)(B). If the Secretary "does not determine" that the foreign state "no longer meets the conditions for designation," then "the period of designation of the foreign state is extended for an additional period of 6 months (or, in the discretion of the [Secretary], a period of 12 or 18 months)." 8 U.S.C. 1254a(b)(3)(C).

The TPS statute also categorically bars judicial review of her TPS determinations: "There is no judicial review of any determination of the [Secretary] with respect to the designation, or termination or extension of a designation, of a foreign state under this subsection." 8 U.S.C. 1254a(b)(5)(A).

B. Factual Background

Since the statute was enacted, every administration has designated countries for TPS or extended those designations in extraordinary circumstances.[4] But Secretaries across administrations have also terminated designations when the conditions were no longer met.[5] This case involves Secretary Noem's determination to terminate the TPS designation of a particular country (Venezuela) for a particular subset of its nationals (those who became beneficiaries in October 2023).[6]

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[4] See Gov't Accountability Office, *Temporary Protected Status: Steps Taken to Inform and Communicate Secretary of Homeland Security's Decisions* 11 fig. 2 (Apr. 2020), http://gao.gov/assets/gao-20-134.pdf (charting TPS designations).

[5] See, *e.g.*, *Termination of Designation of Lebanon Under Temporary Protected Status Program*, 58 Fed. Reg. 7582 (Feb. 8, 1993); *Termination of the Designation of Montserrat Under the Temporary Protected Status Program*, 69 Fed. Reg. 40,642 (July 6, 2004); *Six-Month Extension of Temporary Protected Status Benefits for Orderly Transition Before Termination of Guinea's Designation for Temporary Protected Status*, 81 Fed. Reg. 66,064 (Sept. 26, 2016).

[6] The district court also granted judgment against the Secretary's determination to vacate and then terminate the TPS designation for Haiti. See App., *infra*, 75a-80a. Because the Haiti extension at issue will expire—even without the Secretary's vacatur—in the next

1. On January 19, 2021, President Trump announced that he would defer for 18 months the removal of certain Venezuelan nationals who were present in the United States. See *Deferred Enforced Departure for Certain Venezuelans*, 86 Fed. Reg. 6845 (Jan. 25, 2021). The President announced the program in connection with sanctions that the administration had imposed against the Venezuelan regime, led by Nicolás Maduro. See *ibid.* Following a change in administration, Secretary Mayorkas then designated Venezuela for TPS, citing extraordinary and temporary conditions that he determined prevented Venezuelans from safely returning. *Designation of Venezuela for Temporary Protected Status and Implementation of Employment Authorization for Venezuelans Covered by Deferred Enforced Departure,* 86 Fed. Reg. 13,574 (Mar. 9, 2021) (2021 Designation).

On October 3, 2023, Secretary Mayorkas extended the 2021 Designation through September 10, 2025, while simultaneously redesignating Venezuela for TPS until April 2, 2025. *Extension and Redesignation of Venezuela for Temporary Protected Status*, 88 Fed. Reg. 68,130 (2023 Designation). This redesignation allowed Venezuelan nationals who were initially ineligible for TPS—primarily because they had arrived in the United States after the 2021 Designation—to apply for TPS for the first time. See *id.* at 68,130, 68,132.

On January 17, 2025, the last Friday of the prior administration, Secretary Mayorkas published a notification that the Department would extend the 2023 Designation for 18 months. *Extension of the 2023 Designation of Venezuela for Temporary Protected Status*, 90 Fed. Reg. 5961, 5961 (Jan. 17, 2025). Critically, the extension would become effective only on April 3, 2025. See *ibid.* Secretary Mayorkas also

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few months, the government does not currently seek to stay the portion of the district court's judgment related to Haiti.

announced a consolidated process for individuals who had been granted TPS under either the 2021 or 2023 Designations to register under that extension. *Id.* at 5962-5963. Before the January 2025 notification, those designations would have expired on different dates: The 2023 Designation on April 2, 2025, and the 2021 Designation on September 10, 2025. See *Vacatur of 2025 Temporary Protected Status Decision for Venezuela*, 90 Fed. Reg. 8805, 8806 (Feb. 3, 2025). Secretary Mayorkas's actions, however, had the effect of extending the 2021 Designation by allowing *all* eligible Venezuela TPS beneficiaries to re-register under the 2023 Designation and thus obtain TPS through the same date of October 2, 2026. See 90 Fed. Reg. at 5963.

2. On January 28, 2025, following the change in administration, Secretary Noem vacated the extension, two months before it was set to take legal effect. The extension, she explained, attempted to extend two different designations, which expired on different dates, at a time when both were still in effect, and long before the 2021 Designation was set to expire. 90 Fed. Reg. at 8807. The Secretary determined that the basis for such an extension was "thin and inadequately developed," and that vacatur was warranted so that the new administration could have its own "opportunity for informed determinations regarding the TPS designations." *Id.* at 8807. The Secretary reasoned that because an "exceedingly brief period" had elapsed since Secretary Mayorkas first noticed his extension, it was appropriate to restore the status quo, and that the concerns justifying vacatur outweighed any highly attenuated reliance interests. *Ibid.* The Secretary therefore announced that the 2023 and 2021 Designations would remain in effect until their end dates of April 2, 2025, and September 10, 2025, respectively, and promised separate determinations as to whether to terminate each designation in accordance with statutory deadlines. *Ibid.*

3. On February 1, 2025, after consultation with relevant agencies, Secre-

tary Noem terminated the 2023 Designation. *Termination of the October 3, 2023 Designation of Venezuela for Temporary Protected Status*, 90 Fed. Reg. 9040, 9041 (Feb. 5, 2025). She determined that "permitting the aliens to remain temporarily in the United States [would be] contrary to the national interest of the United States," 8 U.S.C. 1254a(b)(1)(C), and thus that the statutory conditions for designation were no longer met, 90 Fed. Reg. at 9042. The Secretary cited several factors that informed her "discretionary judgment." *Ibid.* The TPS program, she explained, had allowed "a significant population of inadmissible or illegal aliens without a path to lawful immigration status to settle in the interior of the United States." *Ibid.* The sheer number of individuals had stretched local resources, including "city shelters, police stations, and aid services," to their "maximum capacity." *Id.* at 9043. The Secretary also found that the TPS program had a potential "magnet effect," attracting additional Venezuelan nationals even beyond the current TPS beneficiaries, and cited public safety concerns" as part of her determination. See *id.* at 9042, 9043 & n.18 (quoting *Extension of Designation and Redesignation of Liberia Under Temporary Protected Status Program,* 62 Fed. Reg. 16,608, 16,609 (Apr. 7, 1997)).

The Secretary set the termination of the 2023 Designation to take effect on April 7, 2025—60 days after publication in the Federal Register. 90 Fed. Reg. at 9043 (citing 8 U.S.C. 1254a(b)(3)(B)).[7]

C. Procedural Background

1. On February 18, 2025, respondents brought APA challenges to the Secretary's determinations to vacate Secretary Mayorkas's extension of the 2023 Desig-

[7] On September 8, 2025, the Secretary announced her decision to terminate the 2021 Designation. *Termination of the 2021 Designation of Venezuela for Temporary Protected Status*, 90 Fed. Reg. 43,226 (Sept. 8, 2025). The termination will take effect on November 7, 2025, and it is not at issue in this application. See *id.* at 43,226.

nation and to terminate that designation. Respondents include individuals who hold beneficiary status under the 2021 and 2023 Designations, plus an organizational plaintiff, the National TPS Alliance, whose members include beneficiaries under both designations. Am. Compl. ¶¶ 15-24; see also D. Ct. Dkt. 34 ¶¶ 35-39 (Feb. 20, 2025).

2. On March 31, 2025, the district court granted respondents' motion to postpone the effective date of the Secretary's vacatur and termination determinations, preventing them from taking effect nationwide. App., *infra*, 150a-227a. The court held that Section 1254a(b)(5)(A) did not bar judicial review of respondents' claims, including their arbitrary-and-capricious challenges. *Id*. at 174a-176a. On the merits, the court concluded that respondents were likely to succeed on their challenge to the vacatur because the Secretary lacked authority to vacate the extension and her rationale for doing so was arbitrary and capricious in violation of the APA. *Id*. at 199a-208a. The court separately held that both the Secretary's vacatur and termination decisions were likely motivated by racial animus in violation of the Equal Protection component of the Due Process Clause. *Id*. at 208a-224a. The court further found that the equitable factors weighed in respondents' favor and that universal relief was appropriate. *Id*. at 179a-193a, 224a-226a. The court therefore postponed the Secretary's actions pursuant to Section 705 of the APA. *Id*. at 224a-226a.

The district court thereafter denied the government's motion to stay the postponement order pending appeal, App., *infra*, 145a-149a, and the Ninth Circuit issued a one-page denial of the government's request for a stay pending appeal because the government had not shown it "will suffer irreparable harm absent a stay," *id.* at 144a.

3. On May 19, this Court granted the government's application for a stay of the postponement order pending appeal and any petition for a writ of certiorari. 145 S. Ct. 2728. The order noted that it is "without prejudice to any challenge to

Secretary Noem's February 3, 2025 vacatur notice insofar as it purports to invalidate EADs, Forms I-797, Notices of Action, and Forms I-94 issued with October 2, 2026 expiration dates." *Id.* at 2729. Only one Justice noted a dissent. *Ibid.*

4. On August 29, the court of appeals affirmed the district court's order granting postponement of the agency actions. App., *infra*, 92a-143a. The court held that respondents' challenge to the Secretary's authority to vacate a prior TPS extension "falls outside the scope" of Section 1254a(b)(5)(A)'s bar on judicial review. *Id.* at 117a. The court also held that respondents are likely to succeed on the merits of their claim that the Secretary lacked authority to vacate Secretary Mayorkas's extension. *Id.* at 122a-131a. Viewing that issue as dispositive, the court declined to address respondents' other challenges. *Id.* at 131a-132a. The court then held that the remaining equitable factors weighed in favor of postponing the agency actions, *id.* at 133a-138a, and that nationwide relief was necessary to provide complete relief to the parties, *id.* at 138a-142a.

5. One week later—before the court of appeals' mandate had issued and before the government could petition for rehearing or certiorari—the district court granted respondents' motion for summary judgment. App., *infra*, 23a-91a.

As relevant here, the court held that Section 1254a(b)(5)(A) did not bar its review of the Secretary's vacatur and termination determinations. App., *infra*, 46a-52a. The court explained that it had "addressed this issue in its postponement order" and that its "views remain the same." *Id.* at 46a-47a. On the merits, the court held that the Secretary lacked authority to vacate Secretary Mayorkas's extension of TPS for Venezuela. *Id.* at 61a-64a. Once again, the court "reaffirm[ed] its reasoning in its postponement order." *Id.* at 61a. The court also addressed the substance of respondents' APA claims and held that the Secretary's vacatur and termination deci-

sions were arbitrary and capricious. *Id.* at 66a-75a. The court then concluded that nationwide relief was warranted under Section 706(2) of the APA. *Id.* at 85a-90a. The court included a footnote "acknowledg[ing]" this Court's "order staying enforcement of the postponement order." *Id.* at 91a n.23. The court distinguished that order as "only concern[ing] the preliminary relief," and concluded that it "did not bar" the court from "adjudicating the case on the merits and entering a final judgment issuing relief." *Ibid.*[8]

The district court also declined to stay its judgment pending appeal. App., *infra*, 16a-22a. The court rejected the government's reliance on this Court's prior stay order, noting that the "order did not provide any specific analysis on the merits of [respondents'] case (including whether judicial review of [respondents'] case is permissible)." *Id.* at 18a (footnote omitted). The court further stated that this Court's order was "based on a preliminary assessment of the case" and that the record—particularly as to respondents' arbitrary-and-capricious claims—"has been further developed" since that time. *Id.* at 19a. And the court noted that its judgment was based on Section 706 of the APA rather than Section 705. *Id.* at 21a. The court viewed those as "significant material differences" that "may render assessment of postponement inapposite to the final judgment." *Ibid.*

6. On September 17, the court of appeals denied the government's request to stay the judgment pending appeal. App., *infra*, 1a-15a. Like the district court, the court of appeals concluded that this Court's stay order neither controlled nor informed its analysis of the government's stay motion. *Id.* at 4a-7a. First, the court reasoned that this Court's stay order was "textually limited to '[t]he March 31, 2025 order en-

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[8] The court temporarily stayed litigation on the claims on which it had not granted summary judgment, including respondents' equal protection claim. App., *infra*, 91a.

tered by the' district court," and thus did not address the final judgment the district court later ordered. *Id*. at 5a (quoting 145 S. Ct. at 2728-2729) (brackets in original). Second, the court of appeals noted that this Court granted the stay "without explanation." *Ibid.* The court concluded that an "unreasoned stay order" could not inform its analysis because the court could "only guess" as to the rationale of that stay order. *Id*. at 6a. Third, the court deemed this a "materially different case" from the earlier iteration, because it involves an order to set aside agency action under Section 706 of the APA, not an order to postpone agency action under Section 705, and because the district court "had the benefit of discovery" in granting summary judgment as to respondents' arbitrary-and-capricious claims. *Ibid*.

The court of appeals then held that the government was not likely to succeed on respondents' APA claims. The court rejected the government's argument that the Secretary's TPS determinations are unreviewable, relying on the panel decision affirming the postponement order. App., *infra*, 7a-8a. The court further held the Secretary lacked authority to vacate Secretary Mayorkas's noticed extension and that the vacatur and termination actions were arbitrary and capricious. *Id.* at 9a-14a. The court also concluded that the equities favor respondents and that nationwide relief is appropriate, again citing its prior decision at the postponement stage. *Id*. at 14a-15a.[9]

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[9] The lower courts also rejected the government's argument that 8 U.S.C. 1252(f)(1) prohibited the requested relief by precluding courts (except this Court) from "enjoin[ing] or restrain[ing] the operation of" provisions including Section 1254a. See, *e.g.*, App., *infra*, 8a, 52a-56a, 119a-122a, 164a-171a. The courts viewed that language as referring only to preliminary injunctions and temporary restraining orders, not the vacatur or postponement respondents sought. *Ibid*. As in its previous stay application, the government is not pressing its Section 1252(f)(1) argument here. See 24A1059 Gov't Appl. 14 n.10. The government intends to continue to assert that argument in the lower courts as an independent bar to the relief the district court granted.

ARGUMENT

Under Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Court may stay a district court's judgment pending review in the court of appeals and in this Court. See, *e.g.*, *McHenry* v. *Texas Top Cop Shop, Inc.*, 145 S. Ct. 1 (2025). To obtain such relief, an applicant must show a likelihood of success on the merits, a reasonable probability of obtaining certiorari, and a likelihood of irreparable harm. See *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam). In "close cases," "the Court will balance the equities and weigh the relative harms." *Ibid*.

Here, the government's success on all scores should be self-evident. This Court has already concluded that the Secretary's actions with respect to Venezuela's TPS designation should be in effect while litigation in this case unfolds. 145 S. Ct. 2728. That decision reflected this Court's assessment that the merits and the equitable factors favor the government. See *Trump* v. *Boyle*, 145 S. Ct. 2653, 2654 (2025). None of those factors has changed, so this Court should restore a stay pending resolution on the merits.

A. The Government Is Likely To Succeed On The Merits

For the reasons the government previously advanced—and that this Court evidently accepted in finding a likelihood of success on the merits before—the district court's merits analysis is fatally flawed. First, the TPS statute plainly precludes judicial review of the claims that the Secretary acted arbitrarily and capriciously in vacating the noticed extension and then terminating the 2023 Designation. See 24A1059 Gov't Appl. 16-20; 24A1059 Gov't Reply 3-6. Second, the Secretary had inherent authority to reconsider the Mayorkas extension before it took effect. See 24A1059 Gov't Appl. 20-23; 24A1059 Gov't Reply 6-8. This Court's prior analysis of those dispositive legal questions should govern here.

1. The statute precludes judicial review of respondents' arbitrary-and-capricious claims

The courts below set aside the Secretary's vacatur and termination determinations on the ground that those actions were arbitrary and capricious. See App., *infra*, 9a-14a; *id.* at 66a-75a. But the TPS statute is unambiguous: "There is no judicial review of any determination of the [Secretary] with respect to the designation, or termination or extension of a designation, of a foreign state" for TPS. 8 U.S.C. 1254a(b)(5)(A).

a. In deciding once again to bypass this judicial bar, the district court reprised "the same" reviewability analysis underlying its postponement order: It held that respondents could evade Section 1254a(b)(5)(A) by characterizing their arbitrary-and-capricious claims as "collateral" challenges to the "procedur[es]" by which Secretary Noem reached her vacatur and termination determinations. App., *infra*, 47a, 48a. As explained, that reasoning is meritless and would create an end-run around the judicial-review bar in virtually every case. See 24A1059 Gov't Appl. 18-20.

"If a no-review provision shields particular types of administrative action, a court may not inquire whether a challenged agency decision is arbitrary, capricious, or procedurally defective." *Amgen Inc.* v. *Smith*, 357 F.3d 103, 113 (D.C. Cir. 2004); see *Delgado* v. *Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011) (per curiam) (preclusion provision barred review of APA claim "indirectly challenging" underlying order); *Skagit County Pub. Hosp. Dist. No. 2* v. *Shalala*, 80 F.3d 379, 386 (9th Cir. 1996) (preclusion provision applies when "procedure is challenged only in order to reverse the individual [unreviewable] decision"). To hold otherwise "would eviscerate the statutory bar, for almost any challenge to [a determination] could be recast as a challenge to its underlying methodology." *DCH Reg'l Med. Ctr.* v. *Azar*, 925 F.3d 503,

505-507 (D.C. Cir. 2019). Indeed, the Ninth Circuit had previously rejected the district court's theory of judicial review. The "TPS statute," it held, "precludes review of non-constitutional claims that fundamentally attack the Secretary's specific TPS determinations, as well as the substance of her discretionary analysis in reaching those determinations." *Ramos* v. *Wolf*, 975 F.3d 872, 891 (2020), reh'g en banc granted, 59 F.4th 1010 (9th Cir. 2023).

Respondents pressed that type of arbitrary-and-capricious challenge below. Secretary Noem vacated Secretary Mayorkas's extension because she determined that his "novel" maneuver would create confusion and deny the new administration its own "opportunity for informed determinations regarding the TPS designations." 90 Fed. Reg. at 8807. But respondents argued—and the courts below accepted—that the Secretary's vacatur decision was *substantively* flawed: that the record evidence contradicted the "primary rationale" for her vacatur, App., *infra*, 10a; *id.* at 68a; that the Secretary's decision must have been pretextual because the "evidence" did not "substantiat[e]" her position, *id.* at 12a (citation omitted), *id.* at 71a; and that she had failed to properly consider alternatives short of vacatur or reliance interests, *id.* at 68a-69a. While the district court cast those challenges as "collateral," each is "essentially an attack on the substantive considerations underlying the Secretary's specific TPS determinations, over which the statute prohibits review." *Ramos*, 975 F.3d at 893.[10]

Likewise, there was no basis to review the Secretary's determination that the

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[10] The district court previously held that Section 1254a(b)(5)(A) did not preclude review as to whether the Secretary's vacatur was arbitrary and capricious because that vacatur was not a "determination" with respect to an "extension" or "termination" within the meaning of the statute. See App., *infra*, at 122a. The Ninth Circuit did not rely on that theory in its postponement order, see App., *infra*, at 117a-119a, and to the extent the district court reaffirmed that holding as an independent ground for reviewability, see App., *infra*, 50a-52a, the government has explained why that argument, too, is incorrect, 24A1059 Gov't Appl. 16-18; 24A1059 Gov't Reply 3-6.

2023 Designation should be terminated because it was "contrary to the national interest." 8 U.S.C. 1254a(b)(1)(C). The district court concluded that the Secretary had failed to "meaningfully" consult about country conditions—it viewed her consultations as "belated[]" and based on reports (from the Secretary of State and U.S. Citizenship and Immigration Services) that were insufficiently detailed. App., *infra*, 49a, 72a-73a; see *id.* at 11a. The results, the court held, were substantive flaws: The Secretary supposedly "fail[ed] to consider an important aspect of the problem," *id.* at 73a (citation omitted), and failed to "provide a reasoned explanation for the change" to the agency's normal consultation process, *id.* at 74a (quoting *Encino Motorcars, LLC* v. *Navarro*, 579 U.S, 211, 221 (2016)).

But just as with their challenge to the vacatur determination, respondents' APA challenges claiming that the Secretary failed to "adequately explain" her decision or had "depart[ed] from past practice" are challenges to the substance of the Secretary's decisions. See *Ramos*, 975 F.3d at 893. The district court's reasoning thus involves exactly the judicial second-guessing that Section 1254a(b)(5)(A) forbids.

b. For its part, the court of appeals has never explained why the district court could review whether the Secretary's determinations were arbitrary-and-capricious.[11] Instead, the court of appeals jumped straight to assessing the claims on the merits. App., *infra*, 9a-14a. But, as the government argued before, Section 1254a(b)(5)(A) precludes judicial review of those claims—so the government is likely to succeed on the merits of the claims. 24A1059 Gov't Appl. 18-20; pp.16-18, *supra*.

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[11] The court of appeals held only that Section 1254a(b)(5)(A) does not preclude review as to whether the Secretary's vacatur exceeded her statutory authority. App., *infra*, 9a; see *id.* at 115a-119a (holding only that judicial review was proper as to the "scope of agency authority"). As the government previously explained, "[t]his Court need not reach the question" whether "this particular type of APA claim is reviewable," because respondents' claim fails on the merits. 24A1059 Gov't Reply 6; see pp. 19-22, *infra*.

It is accordingly irrelevant whether, as the court of appeals noted, the "record" on those unreviewable claims is "different," or whether "discovery has revealed" purported flaws in the Secretary's "process" in reaching those unreviewable determinations. App., *infra*, 7a. Those alleged changed circumstances could affect only the *merits* of the underlying challenges that respondents raised. Left untouched is the threshold problem—those challenges are not reviewable at all. The court of appeals stated that it could "only guess" at the reasons for this Court's May 19, 2025 stay order, *id.* at 6a, but there was no need for speculation: The government based its prior stay application as to respondents' arbitrary-and-capricious challenges *only* on reviewability. See 24A1059 Gov't Appl. 16-20. This Court evidently concluded that the government was likely to succeed on the merits on that threshold basis—and that same basis still applies now.

2. The Secretary had authority to vacate the outgoing administration's extension of Venezuela's TPS designation

The district court's alternative basis for postponing the Secretary's vacatur was equally flawed. The government explained in its previous application that the Secretary has inherent authority to vacate an extension that her predecessor had issued days previously. 24A1059 Gov't Appl. 20-23. This Court necessarily found a likelihood of success on that argument when it issued its May 19, 2025 order, and it should reach the same result as to the district court's decision to "reaffirm [the] reasoning in its postponement order." App., *infra*, 61a.

"[A]dministrative agencies are assumed to possess at least some inherent authority to revisit their prior decisions, at least if done in a timely fashion." *Ivy Sports Med., LLC* v. *Burwell,* 767 F.3d 81, 86 (D.C. Cir. 2014) (Kavanaugh, J.); see *Macktal* v. *Chao,* 286 F.3d 822, 825-826 (5th Cir. 2002) ("[I]t is generally accepted that in the

absence of a specific statutory limitation, an administrative agency has the inherent authority to reconsider its decisions.") (collecting cases). Here, Secretary Noem acted within days to reconsider and vacate Secretary Mayorkas's decision to extend TPS, and she did so months before the extension's effective date of April 3, 2025. This was a classic exercise of an agency's inherent power to reconsider past decisions, and one consistent with the longstanding practice of the Executive Branch—including Secretary Mayorkas. See *Reconsideration and Rescission of Termination of the Designation of El Salvador for Temporary Protected Status; Extension of the Temporary Protected Status Designation for El Salvador*, 88 Fed. Reg. 40,282, 40,285 & n.16 (June 21, 2023) ("The TPS statute does not limit the Secretary's inherent authority to reconsider any TPS-related determination, and upon reconsideration, to change the determination.").

The court of appeals held (as the district court did in awarding preliminary relief, see App., *infra*, 199a-201a) that "Congress has displaced any inherent revocation authority by explicitly providing the procedure by which a TPS designation is terminated." *Id.* at 125a. In particular, the court concluded that once one Secretary approves a TPS extension, Section 1254a(b)(3)(B) precludes another Secretary from terminating it until the extension "expir[es]." *Ibid.* (quoting 8 U.S.C. 1254a(b)(3)(B)). That is wrong. See 24A1059 Gov't Appl. 22-23; 24A1059 Gov't Reply 7-8. Section 1254a(b)(3)(B) speaks only to "termination of [a] designation" that is in effect. 8 U.S.C. 1254a(b)(3)(B). When a Secretary terminates an *existing* designation, the statute specifies that her action "shall not be effective earlier than 60 days after the date the notice is published, or, if later, the expiration of the most recent previous extension." *Ibid.* (emphasis added). The statute says nothing about whether or how a Secretary can vacate an extension that *has not yet taken effect*. The Secretary therefore appropriately relied on her inherent authority to vacate Secretary Mayorkas's

extension before its effective date of April 3, 2025. See 90 Fed. Reg. at 8806.

The court of appeals countered (as respondents argued before, see 24A1059 Resp. 31), that Secretary Mayorkas's decision "*did* take effect" from the moment it issued. App., *infra*, 130a (emphasis added). The government previously explained why this theory, too, is incorrect. See 24A1059 Gov't Reply 8. By its terms, Secretary Mayorkas's extension took effect "beginning on April 3, 2025" and would then last for a period of "18 months," *i.e.*, to "October 2, 2026." 90 Fed. Reg. at 5961. Indeed, the Secretary's actions could not have taken effect sooner, as the original 2023 Designation "remain[ed] in effect" until "April 2, 2025," and was therefore the operative designation at the time that Secretary Noem acted. *Extension and Redesignation of Venezuela for Temporary Protected Status*, 88 Fed. Reg. 68,130, 68,130 (Oct. 3, 2023) (explaining that the designation was to "remain in effect for 18 months, ending on April 2, 2025"); see 8 U.S.C. 1254a(b)(3)(C) (authorizing extensions for an "additional," rather than superseding, period of 18 months after designation ends). Thus, while Secretary Mayorkas had announced the extension months in advance—and had begun accepting registrations for it during the last three days of the prior administration—the extension itself would not have been effective until April 3, 2025.[12] Nothing in the statute precluded Secretary Noem from vacating that not-yet-effective agency action. This Court necessarily recognized the government's likelihood of success as to

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[12] The district court separately held that, at minimum, the Secretary lacks authority to revoke any TPS documentation that the agency issued during the re-registration period before the Secretary vacated the noticed extension. See App., *infra*, 64a-65a. This Court need not reach that question, as it previously held that its stay would not prejudice the rights of individuals to challenge the Secretary's vacatur "insofar as it purports to invalidate EADS, Forms 1-797, Notices of Action, and Forms 1-94 issued with October 2, 2026 expiration dates." 145 S. Ct. at 2729. Consistent with that order, the government has not sought further review of the district court's subsequent order "grant[ing] relief to those Venezuelan TPS holders who received TPS-related documentation based on the Mayorkas extension up to and including February 5, 2025—when the Secretary published notice that the 2023 TPS Designation was being terminated." D. Ct. Doc. 162 at 10 (May 30, 2025).

the Secretary's authority in granting the stay application, and the lower courts provided no basis for reconsidering that conclusion.

B. The Other Factors Support Relief From The District Court's Order

Besides the merits, in deciding whether to grant a stay, this Court considers whether the underlying issues warrant review; whether the applicants likely face irreparable harm; and in close cases, the balance of equities. See *Hollingsworth*, 558 U.S. at 190. Just as before, those factors overwhelmingly support relief.

1. The issues raised by this case warrant this Court's review

As the Court's previous stay order indicates, the issues raised by this case warrant this Court's review. The district court's order impermissibly intrudes on an area of operations that Congress left to the Executive Branch's discretion, in a manner that effectively precludes the Secretary's determinations in a time-sensitive program from ever taking effect. See 24A1059 Gov't Appl. 35-36. This Court has repeatedly intervened in similar circumstances. See, *e.g.*, *Noem* v. *Vasquez Perdomo*, No. 25A169, 2025 WL 2585637 (Sept. 8, 2025); *Department of Homeland Security* v. *D.V.D.*, 145 S. Ct. 2153 (2025); *Noem* v. *Doe*, 145 S. Ct. 1524 (2025); cf. *Trump* v. *Sierra Club*, 140 S. Ct. 1 (2019) (granting stay of district court order enjoining the Department of Defense from undertaking any border-wall construction using funding the Acting Secretary transferred pursuant to statutory authority).

The same course is warranted here. President Trump has directed the Secretary to ensure that TPS designations "are appropriately limited in scope and made for only so long as may be necessary to fulfill the textual requirements of the statute" and has deemed such efforts "critically important to the national security and public safety of the United States." *Protecting the American People Against Invasion* § 16(b), Exec. Order No. 14,159 of Jan. 20, 2025, 90 Fed. Reg. 8443, 8446 (Jan. 29, 2025). The

district court's order blocked the Secretary's implementation of that critical policy, on a timeline that could effectively preclude enforcement of that policy.

Intervention is all the more warranted given the lower courts' disregard for this Court's prior stay order. While this Court's "decisions regarding interim relief are not necessarily 'conclusive on the merits,'" they must "inform" like cases. *NIH* v. *American Pub. Health Ass'n*, 145 S. Ct. 2658, 2663 (2025) (Gorsuch, J., concurring) (quoting *Boyle*, 145 S. Ct. at 2654). Obviously, they should carry particular force when the Court grants interim relief on the very same issues in the very same case and those issues have not changed. Permitting lower courts to brush aside this Court's stay orders based on the type of flimsy distinctions the courts drew here would reduce this Court's emergency rulings to orders that lower courts could dismiss as good for one stage of one case only. The lower courts here viewed themselves as free to disregard this Court's stay order because the case had proceeded to summary judgment—even though the determinative questions of law had not changed and neither those questions nor the equities were affected by any factual development. That is not how *stare decisis* works. That reasoning would require litigants to return to this Court at every new stage of litigation, rehashing the same legal arguments in hopes of obtaining a new stay order to govern the next phase. The Court should not countenance that destabilizing result.

2. The equities favor a stay

The government will suffer irreparable harm absent prompt action by this Court. The district court's universal relief "'improper[ly] intru[des]' on 'a coordinate branch of the Government' and prevents the Government from enforcing its policies against nonparties." *Trump* v. *CASA, Inc.*, 145 S. Ct. 831, 859 (2025) (citation omitted); see *Maryland* v. *King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)

("Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.") (brackets and citation omitted). And the harm here arises in an area that implicates "a fundamental sovereign attribute exercised by the Government's political departments[,] largely immune from judicial control." *Fiallo* v. *Bell*, 430 U.S. 787, 792 (1977) (citation omitted). Where the government is making "efforts to prioritize stricter enforcement of the immigration laws enacted by Congress," the courts should "decline to step outside [their] constitutionally assigned role to improperly *restrict* reasonable Executive Branch enforcement of the immigration laws." *Vasquez Perdomo*, 2025 WL 2585637, at *4, *5 (Kavanaugh, J., concurring).

The harm here is particularly pronounced because the Secretary determined that even a six-month extension of TPS would harm the United States' "national security" and "public safety," while also straining police stations, city shelters, and aid services in local communities that had reached a breaking point. 90 Fed. Reg. at 9044. Moreover, delay of the Secretary's decisions threatens to undermine the United States' foreign policy, which involves complex negotiations with Venezuela. See, *e.g.*, App., *infra*, 192a (describing "an agreement with the Maduro government to resume deportations to Venezuela"). When considering the government's motion for a stay of the summary-judgment order, the district court simply relied on its irreparable-harm analysis from the postponement order and the court of appeals' affirmance of that order. *Id.* at 21a-22a. But in the postponement order, the district court discounted the Secretary's assessment of the national interest by substituting its own policy views for her expertise and deciding for itself whether "economic considerations," "public safety," and "national security" favored extending the 2023 Designation. *Id.* at 187a-193a. The court formed its own views of "U.S. foreign policies," based on its

own assessment as to what might "weaken the standing of the United States in the international community." *Id.* at 192a-193a. The court of appeals repeated those errors, citing the district court's consideration of "expert witness declarations and amici" regarding whether permitting the Venezuelan nationals to remain temporarily in the country is contrary to the national interest. *Id.* at 137a-138a; see *id.* at 14a-15a (stay order relying on postponement-stage holding regarding irreparable harm and the balance of the equities). That is a classic case of judicial arrogation of core executive-branch prerogatives, and it alone warrants correction.

On the other side of the ledger, respondents have not established irreparable harm that warrants relief. Congress designed the TPS statute to provide "temporary" status, see 8 U.S.C. 1254a(b)(1)(B)(i), (ii), (C), and (g), and the Secretary's termination decision provided the requisite 60-day notice that the 2023 Designation would terminate. Thus, respondents' alleged harms are inherent in the scheme *Congress* designed. See 8 U.S.C. 1254a(b)(3)(B). Respondents maintain that relief is warranted primarily based on the possibility that they might be removed if the 2023 Designation is terminated. See App., *infra*, 21a. But the Secretary's decision to terminate the TPS designation is not equivalent to a final removal order. See 8 U.S.C. 1101(a)(47). When a TPS designation terminates, beneficiaries maintain any other immigration status they held during the designation. TPS beneficiaries may have other immigrant or nonimmigrant status, 8 U.S.C. 1254a(a)(5), and those who fear persecution in their home country generally may apply for asylum, as many of the respondents represented that they are pursuing, see, *e.g.*, D. Ct. Doc. 18, at 6 (Feb. 20, 2025); D. Ct. Doc. 29, at 2 (Feb. 20, 2025); D. Ct. Doc. 32, at 5 (Feb. 20, 2025); D. Ct. Doc. 34, at 6-7; D. Ct. Doc. 36, at 5 (Feb. 21, 2025).

The court of appeals claimed that the "more developed record" had "strength-

ened" its conclusion that respondents faced irreparable harm. App., *infra*, 14a. But the court cited no new evidence in support of that conclusion, *id*. at 14a-15a, and the district court continued to rely on the irreparable-harm analysis from the postponement stage. *Id*. at 21a. The lack of any additional factual findings reinforces that the balance of equities favors the government. Neither court found that respondents or any of their members were removed during the months that this Court's stay order was in effect. Likewise, that stay did not prejudice respondents' ability to seek relief as to any "EADS, Forms 1-797, Notices of Action, and Forms 1-94 issued with October 2, 2026 expiration dates." 145 S. Ct. at 2729; see p. 21 n.12, *supra*. Respondents' concerns cannot outweigh the concrete, growing harms the government faces.[13]

CONCLUSION

This Court should stay the judgment of the U.S. District Court for the Northern District of California pending the resolution of the government's appeal to the U.S. Court of Appeals for the Ninth Circuit and any proceedings in this Court. The Court should also enter an administrative stay of the district court's judgment pending its consideration of this application

Respectfully submitted.

D. JOHN SAUER
Solicitor General

SEPTEMBER 2025

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[13] As in its postponement order, the district court erred in granting universal relief instead of tailoring the relief to the named parties. Universal relief is not warranted under Section 706(2) of the APA any more than it was warranted under Section 705. See, *e.g.*, *United States* v. *Texas*, 599 U.S. 670, 695-699 (2023) (Gorsuch, J., concurring in the judgment); Gov't Br. at 49-50, *Trump* v. *Pennsylvania*, 591 U.S. 657 (2020) (No. 19-954). In its stay application at the postponement stage, the government requested that, at minimum, the Court narrow the relief to the named parties. See 24A1059 Gov't Appl. 31-34. The Court instead stayed the postponement order in full. It should do the same here.