

No.

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IN THE  
**Supreme Court of the United States**

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

*Applicants,*

*v.*

NATIONAL TPS ALLIANCE, ET AL.,

*Respondents.*

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**OPPOSITION TO REQUEST FOR IMMEDIATE STAY**

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September 19, 2025

Defendants have requested a stay pending appeal of the district court's decision granting partial summary judgment to Plaintiffs, and have also requested "an administrative stay of the district court's judgment pending the resolution of this application." Application for Stay at 1 ("Stay Appl"). Plaintiffs file this opposition now specifically to address Defendants' request for an immediate stay, and will file a response to the rest of Defendants' stay application in the ordinary course as directed by this Court.

The Court should deny the request for an immediate stay for three reasons. *First*, Defendants' request does not meet the standard for an administrative stay, but rather appears designed to deny Plaintiffs the opportunity to be heard in advance of the entry of a stay. An administrative stay serves to briefly "suspend[] judicial alteration of the status quo," *Nken v. Holder*, 556 U.S. 418, 429 (2009) (citation omitted), "while the court deliberates" on the full stay application, *United States v. Texas*, 144 S. Ct. 797, 799 (2024) (Barrett, J., concurring). *See also* Rachel Bayefsky, *Administrative Stays: Power and Procedure*, 97 NOTRE DAME L. REV. 1941, 1957-58 (2022) (noting view of some courts that "an administrative stay is a device that courts can use to preserve the status quo without taking any position on the merits of an appeal"); *Nat'l Urban League v. Ross*, 977 F.3d 698, 702 (9th Cir. 2020) ("When considering the request for an administrative stay, our touchstone is the need to preserve the status quo. We defer weighing the *Nken* factors until the motion for stay pending appeal is considered").

The district court's order has now been in effect for ten days, during which Venezuelan TPS holders have returned to their jobs, maintained their driver's licenses, won release from immigration detention, and otherwise lived with the benefits of TPS status. Indeed, Defendants have updated their website to reflect the district court's order.<sup>1</sup> Those changes happened in part due to Defendants' own litigation decisions; they represented to the Ninth Circuit that they needed a decision regarding their requested stay of the district court's September 5 order by September 22.<sup>2</sup>

Moreover, for purposes of litigation concerning stays and other forms of preliminary relief, "the status quo ante litem refers ... to 'the last uncontested status which preceded the pending controversy,'" *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000) (quoting *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th Cir.1963)). Here, the last uncontested status between the parties was the situation prior to the vacatur and termination decisions that Plaintiffs challenge in this case—i.e., the state of affairs when the January 17, 2025 extension of TPS for Venezuela was in effect. The district court's order had the effect of restoring the January 17 extension—i.e., the status quo ante litem.

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<sup>1</sup> See USCIS, Temporary Protected Status Designated Country: Venezuela, at <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-venezuela> (last visited Sept. 19, 2025).

<sup>2</sup> See Emergency Motion Pursuant to Circuit Rule 27-3, *Nat'l TPS Alliance v. Noem*, Case No. 25-5724 (9th Cir. Sept. 12, 2025), ECF 7.1 (cover page stating: "Relief requested by September 22, 2025").

Therefore, any stay reversing the effect of the district court's decision would not be an administrative stay, however labeled. Rather, granting Defendants' request would disrupt the status quo in a very real and practical sense.

*Second*, Defendants' justification for immediate relief is plainly insufficient. The only justification they advance is a single sentence referring to "the government's on-going irreparable injury." Stay Appl. 1. As Plaintiffs will address more fully in their stay opposition, and as both courts below found, any hardship Defendants may suffer is heavily outweighed by the severe irreparable injury—including unlawful incarceration under the immigration laws and deportation to a country deemed unsafe by the State Department—that Plaintiffs would suffer.

In contrast, Defendants never explain why there is any urgency sufficient to justify an immediate stay pending adjudication of their stay application. Defendants have never disputed that they can withdraw TPS protection from anyone who presents an immediate threat. *See* 8 U.S.C. 1254a(c)(3). Indeed, the order they seek to stay would still be in effect under the schedule Defendants suggested to the Court below. *See supra* n.2.

Furthermore, even if Defendants had shown the existence of a true emergency, a stay based on irreparable harm would not be "administrative," as it would rest on an adjudication of one of the factors relevant to the ultimate stay analysis. It also would be grossly unfair to enter it without permitting Plaintiffs to contest the degree to which Defendants are suffering irreparable injury. Particularly where Plaintiffs won twice in the courts below that the balance of

hardships tips in their favor, they are entitled to be heard before the entry of any stay based on irreparable harm.

*Finally*, Defendants’ application for stay rests on the false assertion that the district court order rests on “the same flawed legal grounds” as did its prior preliminary relief order in this case, which this Court stayed. Stay Appl. at 2.<sup>3</sup> In fact, the district court order rests on an entirely new claim (in addition to claims raised previously) as well as on substantial new evidence in support of the earlier claims. It also involves a fundamentally different form of relief.

Moreover, this Court’s previous order staying the district court’s preliminary relief ruling was specifically “without prejudice” to a statutory claim on which Plaintiffs have now prevailed—a claim over which there would be no jurisdiction on Defendants’ reading of the statute. *See* Stay Appl. at 21 n.12. And even as Defendants recycle their sweeping jurisdictional theory, they say this Court need not decide whether the district court had jurisdiction over Plaintiffs’ statutory-authority APA claim, apparently recognizing that this Court’s prior stay order cannot be reconciled with their reading of the statute’s jurisdictional bar. *Id.* at 18 n.11.

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<sup>3</sup> Plaintiffs informed Defendants that this statement was objectively false when responding to it in the Ninth Circuit. *See* Response in Opposition to Defendants-Appellants’ Motion for a Stay Pending Appeal and Motion for an Immediate Administrative Stay at 2 (citing Fed. R. Civ. P. 11(b)(2)), *Nat’l TPS All. v. Noem*, Case No. 25-5724 (9th Circuit. Sept. 15, 2025), ECF 20.1.

For these reasons, the Court should reject Defendants' request for an immediate stay. Plaintiffs will respond separately to Defendants' stay application in due course, pursuant to this Court's order.

Respectfully submitted,

Dated: September 19, 2025

/s/ Ahilan Arulanatham

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