No. 25A326

IN THE

Supreme Court of the United States

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

Applicants,

v.

NATIONAL TPS ALLIANCE, ET AL.,

Respondents.

OPPOSITION TO APPLICATION TO STAY THE JUDGMENT ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT CALIFORNIA

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CORPORATE DISCLOSURE STATEMENT

In accordance with United States Supreme Court rule 29.6, respondent National TPS alliance ("NTPSA") states that it is a member-led organization. NTPSA is a project of the Central American Resource Center ("CARECEN") of California, a non-profit organization. NTPSA has no parent corporation, nor has it issued any stock owned by a publicly held company.

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INTRODUCTION

This case is about whether a federal agency acted outside the scope of its delegated authority and contrary to the procedures Congress required it to follow. Defendants' position is that the agency has vast *implicit* power not set forth in the statute's text, and that courts have no jurisdiction to enforce the procedural constraints on agency authority that Congress enacted.

That position should be hard to defend in this Court, which has repeatedly rejected claims that agencies have broad powers not clearly set forth in statute, and consistently held that federal courts retain final authority to ensure that agencies comply with the law—including in immigration cases. Yet Defendants again seek "emergency" relief, this time after losing on summary judgment. They even claim the lower courts "disregarded" this Court's stay of a preliminary relief order in this case.

This Court should deny the stay application. *First*, contrary to Defendants' baseless and dangerous accusation against the lower courts, the summary judgment order does not disregard this Court's previous stay order. The district court awarded a final "set-aside" of agency action under Section 706(2) of the Administrative Procedure Act, whereas Defendants' arguments on the scope of relief in their previous stay application focused on interim relief under Section 705. The district court also correctly rejected Defendants' rehashed jurisdictional arguments because they contravene the statute's text. This Court also implicitly rejected Defendants' jurisdictional position in its order on the prior stay application. And the district court's summary judgment ruling rests on an entirely new procedural claim and a more fully-developed factual record, neither of which were before

this Court previously. Defendants' assertion that the legal grounds here are "the same" as before misrepresents the district court's summary judgment ruling.

Second, to win emergency relief Defendants must advance a coherent interpretation of the jurisdictional provision on which they so heavily rely. They have failed to do so. Defendants initially argued that *all* TPS decisions are unreviewable under 8 U.S.C. 1254a(b)(5)(A), while Plaintiffs countered that the provision's text bars review only of "determinations" under one subsection of the statute. On the extreme view Defendants previously advanced, the statute precludes judicial review even of blatantly unlawful agency actions—like a TPS designation for 50 years, or a decision invalidating already-issued documents. Defendants no longer press that view, but they offer no alternative interpretation that would permit review of such clearly unlawful actions while still foreclosing Plaintiffs' claims. And even now they assert that federal courts lack power to set aside a TPS decision made without conducting *any* country conditions review. That position, if true, would permit future Secretaries to grant TPS to countries that plainly do not satisfy conditions requirements—like Mexico—without any judicial check. It is telling that Defendants do not seek certiorari before judgment, as that might require them to explain how they read the jurisdictional provision that is central to their argument.

In contrast, the district court adopted a sound, plain-text interpretation of Section 1254a(b)(5)(A), reading its key term "determination" consistently with other instances in the very same subsection and this Court's precedent construing it in analogous contexts. On that view, the statute bars judicial review of the Secretary's assessments of country conditions but does not prevent courts from ensuring compliance with statutory

procedures and the constraints on agency power Congress enacted.

Third, Defendants have failed to show likelihood of success on the merits as to any claim, let alone all three at issue here. The district court correctly found Defendants' actions unlawful on summary judgment with the benefit of a fully-developed record and a new procedural claim based on that evidence.

On Plaintiffs' first claim—that the Secretary lacked vacatur authority—Defendants have abandoned the argument they made in district court, which was that the statute implicitly permits the Secretary to vacate a prior extension at any time, even though the statute never mentions vacatur, while providing detailed processes for designation, extension, and termination. Now they argue that implicit vacatur authority lasts until an extension "takes effect," which they say occurs not when the extension is announced, but instead on the date the prior TPS grant otherwise would have ended. This new theory is more byzantine than the old one, but still contravenes the plain text of the statute and Congress's tightly constrained timing and review rules for TPS decisions. The statute specifically provides for delayed effective dates for initial designations and terminations, but not extensions. Instead, an extension operates immediately to change the expiration date of an active designation: a designation "is extended" when the Secretary either determines that conditions continue to support it or fails to make any decision by the statutory deadline. 8 U.S.C. 1254a(b)(3)(C). Extensions have immediate practical effects as well, because the agency and various stakeholders must take immediate steps to implement and benefit from them. In contrast, a termination "shall not be effective [until] the expiration of the most recent previous extension." *Id.*

1254a(b)(3)(B). These provisions leave no room for an "implicit" do-over period during which the agency can change its decision even after the statutory decision deadline has passed, based on a discretionary vacatur power that Congress never mentioned.

Defendants do not dispute Plaintiffs' two other APA claims on the merits. As the district court found, the Secretary's sham review process ignored the consultation and review rules Congress established by deciding to terminate before engaging in them. Defendants' only answer to those claims is that federal courts have no power to address them—a position yet again at war with the statute's text.

Finally, Defendants cannot show irreparable harm from proceeding on the normal review schedule. Defendants' primary assertion of harm is that the summary judgment order intrudes on the Secretary's authority to terminate TPS for Venezuela. But a temporary pause in implementing a policy change—even an important one—cannot by itself constitute irreparable harm. If it did, this Court would have granted stays of the lower court orders that halted pro-immigrant federal policies promulgated during the Biden Administration. *See Biden v. Texas*, 142 S. Ct. 926 (2022) (mem.) (denying government's application to stay injunction on policy for processing asylum cases at the border); *U.S. v. Texas*, 143 S. Ct. 51 (2022) (mem.) (denying government's application to stay injunction on prosecutorial discretion guidelines for immigration detention and removal authority). The same rules must apply now.

As for the balance of equities, a stay would cause far more harm than it would prevent. The factual record now shows that when this Court's stay order allowed Defendants' TPS decisions to take effect, many thousands of families were torn apart.

People lost their jobs, were jailed, and ultimately deported to a country that remains extremely unsafe. D. Ct. Dkt. 259. The summary judgment order below has provided respite from that harm by restoring the status quo. Disturbing it now will cause massive injuries to Plaintiffs and their loved ones, including many American children.

Ultimately, Defendants' accusation that the lower courts substituted their judgment for the Secretary's falls apart upon scrutiny. In fact, they applied the plain language of the relevant statutes and hornbook administrative law to unrebutted evidence. This Court should deny the application.

STATEMENT

I. FACTUAL BACKGROUND

A. Congress's Statutory Scheme for TPS

"In enacting the TPS statute [in 1990], Congress designed a system of temporary status that was predictable, dependable, and insulated from electoral politics." App. 100a–01a. Congress enacted TPS to address the problem of inconsistent, ad hoc protections for certain groups of noncitizens, *id.* at 101a, which led to arbitrary, overtly political results and demands for congressional reform. *Id.* at 32a–33a, 102a–03a. President George H.W. Bush signed the TPS statute into law, "largely replac[ing] the Executive's prior ad hoc framework." *Id.* at 103a.

The statute authorizes the Secretary of Homeland Security to provide humanitarian relief to certain citizens of countries stricken by war, natural disaster, or other catastrophe, and prescribes "explicit guidelines, specific procedural steps, and time limitations" governing such relief. *Id.*; 8 U.S.C. 1254a. While a country is designated for

TPS, qualified beneficiaries receive work authorization and protection from detention and removal, 8 U.S.C. 1254a(a)(1), (d)(4), regardless of whether they meet the requirements for asylum or other immigration relief. *Id.* 1254a(b)(1).

To qualify for TPS, applicants must be "admissible" under certain provisions of U.S. immigration law and not "convicted of any felony or 2 or more misdemeanors," or a danger to U.S. security. *Id.* 1254a(c)(1)(iii), (c)(2)(B). The statute requires withdrawal of status if a noncitizen becomes ineligible. *Id.* 1254a(c)(3)(A). All beneficiaries must register "to the extent and in a manner which the [Secretary] establishes." *Id.* 1254a(c)(1)(A)(iv). "TPS does not provide beneficiaries with a pathway to permanent . . . status" or the right to petition on behalf of others. App. 104a.

Consistent with Congress's goal of replacing the old, ad hoc system for humanitarian immigration protection, a clear statutory framework governs TPS decision-making. The first part concerns which countries initially qualify for relief. On this front, the statute vests the Secretary with substantial discretion over designations. By law, the Secretary "may designate" a country for TPS based on armed conflict, environmental disaster, or other extraordinary conditions. 8 U.S.C. 1254a(b)(1). So long as she determines certain country conditions exist, she may choose whether and when to designate a country, and may redesignate countries so later-arriving nationals may apply.

In contrast to the Secretary's substantial discretion as to initial designation, the statute strictly limits her discretion after designation through rules governing their length, the timing of periodic review, the process for conducting that review, and

mandatory criteria for deciding whether to extend or terminate.[1] App. 28a–33a. Designations can last from 6 to 18 months, effective upon notice in the Federal Register or "such later date as [the Secretary] may specify." 8 U.S.C. 1254a(b)(2).

"[A]t least 60 days before [the] end" of any "period of designation," the Secretary "shall" conduct a "periodic review" to determine whether designation remains warranted. *Id.* 1254a(b)(3). Specifically, "after consultation with appropriate agencies," the Secretary "shall review the conditions in the foreign state" and "determine whether the conditions for such designation . . . continue to be met." *Id.* 1254a(b)(3)(A); App. 25a. The review process has historically taken months and involved preparation of country conditions memoranda and recommendations by both USCIS and the State Department. App. 29a–32a; GAO Report 16–18, 20–21.

If the Secretary makes an "affirmative determination" that "conditions for [] designation . . . continue to be met," *id.* 1254a(b)(3)(A), *or* fails to make any decision by the statutory deadline—*i.e.* 60 days before expiration of the prior designation period—then the designation "is extended" for 6 months or "in [her] discretion . . . a period of 12 or 18 months." 8 U.S.C. 1254a(b)(3)(C). If the Secretary determines the statutory conditions are no longer met, she "shall terminate the designation." *Id.* 1254a(b)(3)(B). An extension is effective "immediate[ly]." App. 202a. But for terminations, the statute "builds in some delay," *id.* Termination "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." 8 U.S.C. 1254a(b)(3)(B).

[1] GAO, *Temporary Protected Status: Steps Taken to Inform and Communicate Secretary of Homeland Security's Decisions*, 16–18, 27 (Apr. 2020) ("GAO Report").

The statute never mentions authority to vacate or rescind an extension. No TPS extension had ever been vacated before this year. App. 25a.

B. TPS for Venezuela

On the last day of his first term, President Trump designated Venezuela for Deferred Enforced Departure—a form of nationality-based, discretionary relief from deportation—because Venezuela was experiencing "the worst humanitarian crisis in the Western Hemisphere in recent memory." 86 Fed. Reg. 6,845, 6,845 (Jan. 19, 2021). President Trump's action permitted approximately 300,000 Venezuelan refugees to live and work here for 18 months. *See* App. 128a n.9.

Shortly afterwards, on March 9, 2021, then-DHS Secretary Mayorkas designated Venezuela for TPS. 86 Fed. Reg. 13,574 (Mar. 9, 2021). He did so again on October 3, 2023, allowing more recently arrived Venezuelans to apply. 88 Fed. Reg. 68,130 (Oct. 3, 2023); App. 106a–07a. Each designation granted TPS for an 18-month period, renewable so long as country conditions warranted.

Because Secretary Mayorkas designated Venezuela for TPS at two different times, DHS operated two registration tracks. *Id.* However, as beneficiaries of the 2021 designation were also here in 2023, "a TPS beneficiary under the 2021 Designation was necessarily a TPS beneficiary under the 2023 Designation." *Id.* at 205a.

Secretary Mayorkas twice extended the 2021 designation of TPS for Venezuela, providing protections through September 10, 2025 to TPS holders who initially registered in 2021. 87 Fed. Reg. 55,024 (Sept. 8, 2022); 88 Fed. Reg. at 68,130. The 2023 designation was set to expire on April 2, 2025. 88 Fed. Reg. 68,130.

Secretary Mayorkas announced a further extension of Venezuela's 2023 designation 75 days before the 2023 designation was set to expire, consistent with the statutory requirement that such decisions be made "*[a]t least* 60 days before" the expiration date, 8 U.S.C. 1254a(b)(3)(A) (emphasis added), and the regular agency practice of announcing decisions ahead of the 60-day deadline, GAO Report 33, 90 Fed. Reg. 5,961 (Jan. 17, 2025).[2] Secretary Mayorkas cited Venezuela's ongoing "complex, serious and multidimensional humanitarian crisis," which has "disrupted every aspect of life," and concluded that the "extraordinary and temporary conditions supporting Venezuela's TPS designation remain." *Id.* at 5,963 (citation omitted).

In the extension order, Secretary Mayorkas also streamlined the registration process for TPS holders by consolidating them into a single track, "allow[ing] existing beneficiaries of either the 2021 or 2023 TPS designation to seek an 18-month extension of status through October 2, 2026." App. 107a. He did so based on an evaluation of "the operational feasibility and resulting impact on stakeholders of having two separate filing processes," which had resulted in "confusion among stakeholders" such as TPS holders, employers and government actors. 90 Fed. Reg. at 5,963.

The extension took effect immediately. 8 U.S.C. 1254a(b)(3)(C). TPS holders began re-registering for protection on January 17. App. 202a. Program applicants, including Plaintiff Freddy Jose Arape Rivas, received a Notice of Action confirming extension of their work authorization. D. Ct. Dkt. 18 ¶ 12. The Federal Register notice of the extension decision also "automatically extend[ed] [certain work permits] . . . without any further

[2] *See, e.g.,* 73 Fed. Reg. 57,128 (Oct. 1, 2008) (extension published 159 days before expiration); 78 Fed. Reg. 32,418 (May 30, 2013) (102 days).

action," advising employers to "accept" the combination of the notice and affected TPS holders' permits with April 2, 2025 or September 10, 2025 "Card Expires" dates as valid proof of work authorization through the following year. 90 Fed. Reg. at 5,967–71. Approximately 607,000 Venezuelans qualified under the January 17 extension. *Id.* at 5,966.

C. The Venezuela Vacatur and Termination

On January 28, three days after she took office, Secretary Noem vacated Secretary Mayorkas's January 17 extension. App. 35a. Her decision was published February 3. 90 Fed. Reg. 8,805 (Feb. 3, 2025). The vacatur order directed USCIS to undo the extension's immediate effects, by "invalidat[ing]" TPS-related documents "issued with October 2, 2026 expiration dates" as well as employment authorization documents that had been extended. 90 Fed. Reg. at 8,807.

The vacatur notice did not mention national interests, national security, foreign policy, or conditions in Venezuela; rather, it justified the vacatur based solely on concerns about the TPS registration process. *Id.* Secretary Noem described the "consolidated" registration process established by the January 17 extension as "novel," "confus[ing]," and possibly not "consistent with the TPS statute." *Id.*

On February 1, three days after signing the vacatur, Secretary Noem terminated the 2023 designation, finding that "even assuming" conditions in Venezuela warranted it, extension was "contrary to the national interest." 90 Fed. Reg. 9,040, 9,042 (Feb. 5, 2025). The termination decision was published February 5. *Id.*

II. PROCEDURAL BACKGROUND

A. Plaintiffs Sue and Win Preliminary Relief.

Plaintiffs filed suit challenging Secretary Noem's vacatur of the January 17 extension of TPS for Venezuela and subsequent termination order. App. 44a. As relevant here, they claimed the Secretary lacked statutory authority to vacate a prior extension decision, *id.* at 193a–204a, and that even if she had such authority, both the vacatur and termination violated the Administrative Procedure Act ("APA").

Plaintiffs moved for preliminary relief under 5 U.S.C. 705, which permits district courts to "issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings." The district court granted relief under Section 705, ordering postponement of Secretary Noem's actions. App. 150a–227a. The district court held it had jurisdiction and that Plaintiffs were likely to succeed on the two APA claims then at issue: (i) that the Secretary lacked vacatur authority, *id.* at 193a–204a, and (ii) that, even if she had authority, her action was arbitrary and capricious. *Id.* at 204a–08a.[3]

B. This Court Stays the Preliminary Relief Order.

Defendants appealed the Section 705 postponement order to the Ninth Circuit and also unsuccessfully sought a stay from the lower courts. App. 144a–49a. This Court then granted Defendants' stay application "pending the disposition of the appeal . . . and disposition of a petition for a writ of certiorari, if such a writ is timely sought." *Noem v. Nat'l TPS All.*, 145 S. Ct. 2728 (2025) (mem.). The stay order was "without prejudice to

[3] The district court also found a likely constitutional violation, which is not at issue. App. 208a–24a.

any challenge to Secretary Noem's February 3, 2025 vacatur notice insofar as it purports to invalidate" TPS-related documentation issued pursuant to the extension. *Id.* at 2729.

Relying on this Court's suggestion that the Secretary's actions may have been unlawful as to individuals who already received documents under the January 17 extension, Plaintiffs moved to preserve TPS status for those individuals. App. 45a. The district court granted that request in part, holding the Secretary had exceeded her authority when she cancelled TPS-related documentation issued under the extension. D. Ct. Dkt. 162. *See also* App. 64a–65a (granting summary judgment on that claim). Defendants did not appeal that order, and do not seek to stay it here. Application ("Appl.") 21 n.12. The Ninth Circuit subsequently affirmed the district court's postponement order based on Plaintiffs' first APA claim. As to jurisdiction, it held "[t]extually, Plaintiffs' first APA claim—challenging the Secretary's authority to vacate a prior TPS extension—falls outside the scope of this jurisdiction-stripping provision." App. 117a. On the merits it held the vacatur order violated the APA because "Congress has displaced any inherent revocation authority by explicitly providing the procedure by which a TPS designation is terminated." *Id.* at 125a (citing 8 U.S.C. 1254a(b)(3)(B)). Defendants have not sought review of that decision.

C. The District Court Issues Partial Summary Judgment.

Shortly after the Ninth Circuit affirmed the district court's postponement order, and following a hearing on a fully-developed record, the district court granted partial summary judgment on three of Plaintiffs' APA claims, and set aside the vacatur and

termination orders. App. 23a–91a.[4]

The district court first held 8 U.S.C. 1254a(b)(5)(A) does not bar Plaintiffs' claims, based on the statute's text and this Court's precedents construing similar provisions. *Id.* at 46a–52a. On the merits, the district court ruled for Plaintiffs on three distinct bases. First, it held the Secretary lacked vacatur authority because the statute never mentions it and its structure forecloses it. *Id.* at 61a–64a.

Second, it held the vacatur was arbitrary and capricious for several reasons. It found Secretary Noem's stated concerns about the extension's registration process rested on legal and factual errors: the process "was not novel, did not engender confusion, and was not 'thin' in explanation." *Id.* at 67a. "[A]s a factual matter," consolidating re-registration was standard agency practice. *Id.* (describing "similar streamlining" for Sudan and Haiti). The agency was also well-aware that "streamlining [registration] . . . would tend to eliminate, not create, confusion." *Id.* Officials searched for evidence that consolidation caused confusion, but found the opposite.[5] And the Certified Administrative Record (CAR) for the vacatur contains nothing about the extension's registration process at all. D. Ct. Dkt. 103. The court found the stated reasons for vacatur were a sham; the true reason was to pave the way for termination. App. 70a. Strengthening that conclusion, the court found the agency drafted the TPS vacatur notice over just four days, even though

[4] The Court also set aside the partial vacatur of TPS for Haiti, as Plaintiffs had amended and supplemented their complaint to challenge that decision as well. D. Ct. Dkt. 74, 250. Defendants do not seek to stay that portion of the district court's order here. Appl. 7 n.6.

[5] *See, e.g.*, App. 67a–68a; D. Ct. Dkt. 258 at 19 (USCIS Director-Nominee Joseph Edlow requested evidence that the registration process "presented operational challenges" so he could describe those challenges in the vacatur federal register notice); *id.* at 25 (USCIS operational personnel reported that the *lack* of consolidation *prior* to the extension had resulted in "confusion."); D. Ct. Dkt. 199-2 (USCIS 2023 analysis concluding the same).

TPS decisions usually take months, *id.* at 34a–35a, and "even before the decision to vacate was finalized, DHS was preparing to terminate Venezuela's TPS." *Id.* at 34a, 72a. Independently, the court found Secretary Noem "failed to consider alternatives short of vacatur," and "failed to consider reliance interests." *Id.* at 66a–71a.

Finally, the court granted relief on an argument Plaintiffs did not raise in their preliminary relief motion, holding the termination unlawful because the Secretary did not consult with the State Department or review country conditions *before* deciding to terminate. *Id.* at 71a–75a. This, it concluded, violated the statute's requirement that the termination decision be made only "after" consultation and review. *Id.* at 71a–75a (citing 8 U.S.C. 1254a(b)(3)(A)). *See also id.* at 10a ("effectively none of DHS's normal procedures was followed" in the termination).

D. Defendants Seek a Stay of the Summary Judgment Order.

Defendants sought an emergency stay from the district court. D. Ct. Dkt. 281. Meanwhile, they did not comply with the district court's order; they failed to update their website to reflect the order and continued to detain TPS holders covered by it.[6] Plaintiffs moved to enforce the order. D. Ct. Dkt. 286. Defendants then asserted for the first time that the order was not in effect because it was subject to an "automatic stay." D. Ct. Dkt. 295, 302. The district court denied Defendants' emergency stay application. App. 16a–22a. Defendants updated their website only after the district court rejected their automatic

[6] *See, e.g.*, D. Ct. Dkt. 302 (Defendants asserting no obligation to update the TPS website); Veronica Egui Brito & Syra Ortiz Blanes, *Trump Administration Detains Hundreds of Venezuelans with TPS Despite Court Order*, Miami Herald (Sep. 27, 2025), https://perma.cc/S82S-74GN (Defendants continue to detain TPS holders contrary to the text of 8 U.S.C. 1254a(d)(4), which provides TPS holders "shall not be detained").

stay argument and granted Plaintiffs' motion to enforce. D. Ct. Dkt. 304. It noted Defendants' total failure to contest harm, "provid[ing] zero evidence—or argument—on irreparable injury." App. at 18a. The district court also held Defendants could not demonstrate likely success on the merits in light of "full briefing on cross-motions for summary judgment and review of a complete factual record." App. at 18a, 21a.

Defendants then sought a stay from the Ninth Circuit, 9th Cir. Dkt. 7.1, which also denied it. App. 1a–15a. The court held this Court's prior stay order was not controlling because it was "textually limited" to the district court's postponement order and did not account for the fully developed factual record at the summary judgment stage, *id.* at 4a–7a; Defendants had failed to demonstrate likely success on the APA claims, *id.* at 8a–14a; and the balance of equities did not favor emergency relief. *Id.* at 14a–15a.

ARGUMENT

Defendants' path to obtaining another stay is narrow. Their threshold argument—that the prior stay order requires another stay here—is obviously wrong. It should go without saying that this Court's prior, limited stay order did not foreclose further litigation to a final judgment. *Infra* Section I. As to the merits, Defendants have to show likely success on all three of Plaintiffs' APA claims. They do not contest jurisdiction over Plaintiffs' first claim, so can only win by showing the Secretary has vast "implicit" vacatur authority set forth nowhere in the statute. That claim is contrary to the statute's text and structure. *Infra* Section III.A. Conversely, on Plaintiffs' second and third claims they do not contest the merits. *Infra* Section II.B. They only dispute jurisdiction, so to prevail they must explain how Section 1254a(b)(5)(A) covers both claims *not* arising under subsection

(b) and purely procedural claims alleging the Secretary failed to comply with the rules Congress enacted. *Infra* Section II. Finally, on the equities, Defendants' assertion that any court-imposed restriction on the Executive Branch's immigration policy by itself constitutes irreparable harm ignores this Court's recent orders declining to stay injunctions on this basis. This Court has not issued comparable stay orders in the final judgment context, and should not do so here, particularly given the massive harms that Plaintiffs would suffer. *Infra* Section IV.

I. THE PRIOR STAY IN THIS CASE DOES NOT JUSTIFY A STAY NOW.

This Court's stay of a different order from a different phase of this case does not entitle Defendants to the same relief here. And it certainly does not substantiate their suggestion that the courts below violated vertical *stare decisis*. *Compare* Appl. 1 *with* App. 18a–19a & 91 n.23 (citing this Court's prior order). The summary judgment order before the Court now is distinguishable from the preliminary order it stayed earlier in several material respects, all of which cut against granting Defendants' current request for extraordinary relief.

First, the district court's order grants relief in a different posture and under a different statutory authority. Here, Defendants seek to stay a final judgment on the merits: the district court's partial grant of summary judgment for Plaintiffs and "set aside" of agency actions under Section 706(2) of the APA. Previously, in contrast, Defendants sought to stay a preliminary relief order Plaintiffs won at the outset: the district court's "postpone[ment]" of the same agency actions under Section 705 of the APA.

That distinction matters. When Defendants last sought emergency relief before this Court, they argued the district court had improperly issued a "universal" remedy

contravening limits imposed by the text of Section 705. Appl. 15, 31–34, No. 24A1059 (May 1, 2025) ("24A1059 Appl."). In their telling, when Congress authorized courts to issue "all necessary and appropriate process" to freeze the status quo in that provision, it "incorporate[d] traditional equitable principles." *Id.* at 32 (citation modified). Those principles, they argued, included restrictions on equitable relief that reaches beyond non-parties. *Id.*; *cf. Trump v. CASA, Inc.*, 606 U.S. 831 (2025).

None of those arguments apply now. The text of Section 706(2), which forms the basis for the decision below, speaks in mandatory terms (unlike Section 705's "may"), directing that courts "shall" "hold unlawful and set aside" unlawful agency action. 5 U.S.C. 706(2). With this text, Congress consciously "depart[ed] from" the "baseline" remedies available at equity, authorizing relief that sweeps beyond the parties themselves. *Corner Post, Inc. v. Bd. of Governors*, 603 U.S. 799, 838 (2024) (Kavanaugh, J., concurring). Thus, any concerns this Court may have had about the scope of the district court's remedy at the preliminary relief stage do not apply here.

Moreover, because relief under Section 705 is preliminary, Defendants previously urged the Court to adopt the "same standard" it applies in the preliminary injunction context. 24A1059 Appl. 14 n.11. That included, on their view, an affirmative obligation for Plaintiffs to demonstrate they faced "irreparable harm that warrants extraordinary relief." *Id.* at 37. But relief awarded under Section 706(2) incorporates no such obligation. Winning is all it takes. Again, this meaningfully alters the stay calculus. The relief the district court ordered below was not discretionary or unusual; it is what Congress requires in response to unlawful agency action.

Second, the district court's order here rests in part on a new claim presented on summary judgment—one that only became apparent during discovery conducted after the preliminary relief phase—namely, that DHS failed to comply with the statutory obligation to "consult[] with appropriate agencies" and review country conditions *before* deciding to terminate. 8 U.S.C. 1254a(b)(3)(A); App. 72a–75a. This Court did not consider that claim when it stayed the district court's preliminary relief order.

Third, even as to the claims asserted before, the summary judgment record is much more developed than the record on which Plaintiffs sought preliminary relief. App. 19a–21a (describing extensive development of record and influence of new facts on judgment). For example, the district court's factual finding that Secretary Noem's reasoning in support of the vacatur decision was pretextual is based in significant part on facts uncovered *after* this Court issued its stay. *Id.* at 67a–68a, 76a–80a. Those facts matter for APA claims. *Dep't of Com. v. New York*, 588 U.S. 752, 785 (2019).

In short, this district court order arises at the end of the APA litigation rather than the beginning, and is based on a different form of relief, different claims, and different evidence. This Court's prior stay order does not justify a stay now.

II. THE DISTRICT COURT PROPERLY EXERCISED JURISDICTION OVER PLAINTIFFS' CLAIMS.

The district court adopted a straightforward interpretation of Section 1254a(b)(5)(A), paying careful attention to the statute's use of the word "determination" and this Court's caselaw construing it in analogous jurisdictional provisions enacted shortly before this one. App. 46a–52a. On that interpretation, the statute bars review of the Secretary's country conditions assessments, but permits review of whether the

Secretary acted consistently with her authority and the procedural rules Congress enacted.

In contrast, Defendants never explain how they read the statute's text. They no longer appear to advance their prior view that the decisions to vacate and terminate a TPS extension are *themselves* "determinations," and therefore that courts have "no authority to set aside" a vacatur or termination decision regardless of how lawless it is. *Compare* 24A1059 Appl. 20, 16–18 *and* Reply 6, No. 24A1059 (May 9, 2025) ("24A1059 Reply") *with* 24A1059 Appl. 18 n.11. Under the extreme view, any conceivable TPS-related decision—even one to extend a TPS designation for fifty years—would be unreviewable. They also no longer ask the Court to address whether Plaintiffs' first APA claim—that the statute contains no "implicit" vacatur authority—is reviewable. And they do not contest jurisdiction over the claim mentioned in this Court's stay order—that the statute bars the invalidation of already-issued TPS documents.

But Defendants never explain how they read the statute to permit review of these claims but not of Plaintiffs' other APA claims. They suggest that stripping provisions bar review of all arbitrary-and-capricious challenges do not say why this statute's text gives rise to that conclusion, or whether their argument is entirely unmoored from the statutory text. In short, Defendants have not shown entitlement to emergency relief because they offer no coherent interpretation of the provision on which they so heavily rely.

1. Section 1254a(b)(5)(A) provides:

> 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 [*i.e.*, subsection (b)].

This provision does not use the term "determination" in a vacuum. As *the rest of Section 1254a(b)* makes clear, "determination" in Section 1254a(b)(5)(B) refers to the Secretary's assessment of whether a country satisfies the conditions requirements for a TPS designation, extension, or termination. Tellingly, Defendants have failed even to mention subsection 1254a(b)'s other uses of "determination" or "determine" in any of the prior briefs they have filed in this Court or below. Those provisions conclusively show Defendants' interpretation is meritless. As the district court explained:

> [t]he government's position gives short shrift to how the word 'determination' or 'determine' is used in the TPS statute. When 'determination' or 'determine' is used in connection with periodic review, the term describes the *substantive assessment of country conditions in reaching a decision on whether to extend or terminate TPS.*

App. 50a–52a. Because the stripping provision only bars review of "determinations," it does not bar review of claims challenging predicate legal conclusions or decisionmaking processes that violated statutory requirements, as every court considering these issues in the TPS context has held. *See id.* at 47a–48a (citing *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479 (1991)).[7]

The district court correctly read the text and context of Section 1254a(b)(5)(A). Subsection 1254a(b) contains eight uses of the words "determine" or "determination," and every one of them refers unambiguously to the Secretary's assessment of whether *country conditions* meet the requirements for designation, extension, or termination. For example,

[7] *See also Saget v. Trump*, 375 F. Supp. 3d 280, 330–33 (E.D.N.Y. 2019); *Centro Presente v. DHS*, 332 F. Supp. 3d 393, 405–09 (D. Mass. 2018); *CASA de Maryland, Inc. v. Trump*, 355 F. Supp. 3d 307, 319–22 (D. Md. 2018); *Ramos v. Nielsen*, 321 F. Supp. 3d 1083, 1101–08 (N.D. Cal. 2018); *Nat'l TPS All. v. Noem*, No. 25-cv-5687, 2025 WL 2233985, at *9–11 (N.D. Cal. July 31, 2025); *CASA, Inc. v. Noem*, No. 25-1484, 2025 WL 1907378, at *10 (D. Md. July 10, 2025); *Haitian Evangelical Clergy Assn. v. Trump*, No. 25-cv-1464, 2025 WL 1808743, at *5 (E.D.N.Y. July 1, 2025).

Section 1254a(b)(3)(A) requires the Secretary to "*determine* whether the conditions for [] designation . . . continue to be met" and publish "*such determination* (including the basis for *the determination*, and, in the case of *an affirmative determination*, the period of extension of designation . . . ." (emphases added). Section 1254a(b)(3)(B) also refers to country conditions "determinations," providing:

> If the Attorney General *determines* under subparagraph (A) that a foreign state (or part of such foreign state) no longer continues to meet the conditions for designation under paragraph (1), the Attorney General shall terminate the designation by publishing notice in the Federal Register of the *determination* under this subparagraph (including the basis for the *determination*).

(emphases added). Subsection 1254a(b)(3)(C) uses the word "determine" the same way, mandating extension if the Secretary "does not *determine*" a country no longer satisfies the conditions for designation (emphasis added). *See also* 8 U.S.C. 1254a(d)(3) (referring to "the *determination*" that country conditions require termination). Thus, Section 1254a(b)(5)(A) bars challenges to any of the Secretary's "determinations" regarding whether a particular country satisfies applicable conditions requirements.

In contrast, nowhere does this statute use "determination" to refer to the ultimate decision to designate, extend, or terminate TPS as to any particular country, let alone to issue a "vacatur"—a term that appears nowhere in the statute. The statute refers to any "determination" regarding country conditions as distinct from the designation, termination, or extension that follows from that determination, making clear that the determination regarding country conditions is a distinct act. While designation, extension, and termination decisions must rest on country conditions determinations, they are not *themselves* "determinations" as Congress used the term here. *E.g.*, 8 U.S.C. 1254a(b)(3)(A)

(the Secretary shall "*determine* whether the conditions for such *designation* . . . continue to be met") (emphases added); 1254a(b)(3)(B) (if the Secretary "*determines* . . . that a foreign state . . . no longer continues to meet the conditions for *designation* . . . [she] shall *terminate* the designation") (emphases added). Nor are any of the many other decisions, actions, and judgments the Secretary can take with respect to TPS described as "determinations" in the statute; if Congress thought they were determinations, it would have called them that. Thus, while "determination" theoretically could, in other contexts, refer broadly to virtually any decision or judgment, in Section 1254a(b) it refers to country conditions determinations. *See Richards v. United States*, 369 U.S. 1, 11 (1962) ("We believe it fundamental that a section of a statute should not be read in isolation from the context of the whole Act . . . .").

2. Because the statute only bars review of "determination[s]" under subsection (b)—*i.e.*, the country conditions assessments the Secretary makes prior to designating, extending, or terminating TPS—Plaintiffs' claims remain reviewable.

Plaintiffs' first claim challenges the agency's legal conclusion that the statute contains implicit vacatur authority. The agency's predicate legal judgments about the scope of the Secretary's statutory authority—like the (flawed) legal conclusion that the statute implicitly authorizes vacatur—are not "determinations." If review of predicate legal judgments were foreclosed, then "under the government's position, there could be no judicial review even if the government were to blatantly violate the statute, *e.g.*, by granting an extension that exceeds 18 months or failing to provide the minimum 60 days' notice of a termination decision." App. 52a. Although Defendants repeatedly pressed this

extreme view below, they have all but abandoned it here. They do not contend in this application that the first claim is barred. *See* Appl. 18 n.11. And it is not.

Plaintiffs' second claim challenges the Secretary's reasons for issuing the vacatur—which rested on alleged concerns about TPS *registration* processes. The Secretary justified her decision to vacate an extension of TPS for 600,000 Venezuelans on the ground that the prior TPS extension had employed a "confusing" registration process. *See* App. 48a (explaining that the vacatur order was "based purely on procedural concerns" that the prior decision's "novel" approach to registration "caus[ed] confusion"). Review of those conclusions is not barred by Section 1254a(b)(5)(A) because it bars review only over determinations under "*this* subsection," *i.e.*, subsection 1254a(b) (emphasis added). TPS registration authority is addressed in subsection (c), not subsection (b). *See* 8 U.S.C. 1254a(c)(1)(A)(iv), (B).

In their reply brief in this Court on their prior stay motion, Defendants offered a response to this point, contending "[t]he relevant 'determination' is the Secretary's vacatur of her predecessor's extension—a determination that necessarily involves whether 'the conditions for the designation continued to be met.'" 24A1059 Reply 5–6. That argument is meritless for the reasons explained previously. The vacatur order *itself* is not a "determination" as the statute uses the term. And if it were, then no part of the legal rationale or process by which it came about could be challenged under Defendants' most extreme view, which they no longer defend. In addition, Defendants' view renders the jurisdictional bar's limitation to determinations "under *this* subsection [*i.e.* subsection (b)]" meaningless. Virtually every aspect of TPS decisionmaking "relates," 24A1059 Reply 5, in

some way to designation, extension, or termination; if the bar left untouched only those actions that "relate only" to other subjects, it would cover decisions made pursuant to all the other subsections of the statute, despite its limitation to determinations "under [subsection (b)]."

Plaintiffs' third claim, which was not before this Court at the preliminary phase of the litigation, challenges the Secretary's noncompliance with two procedural requirements Congress established for TPS decisionmaking. As the district court found, the Secretary failed to consult with the State Department and actually review country conditions *before* making the termination decision. Challenges to the failure to comply with the statute's procedural obligations are not challenges to country conditions determinations. So this claim, too, is not jurisdictionally barred.

Defendants respond by grossly mischaracterizing the nature of Plaintiffs' claim and what the district court held. Appl. 17–18. Plaintiffs did not seek review of the Secretary's national interest assessment, and the district court did not purport to review it in its summary judgment order. *Cf.* App. 75a (declining to reach Plaintiffs' statutory argument that an assessment of national interest is not part of the periodic review process). Nor did the district court's analysis turn on the substantive correctness of the Secretary's country conditions determination. Rather, the district court found the Secretary "failed to comply with the statutory directive to" make her decision "*after* consultation with appropriate agencies of the Government." App. 72a (emphasis added) (citing 8 U.S.C. 1254a(b)(3)(A)). The district court made a factual "find[ing]" that the Secretary "made the decision to terminate *before* consultation with any government agency." *Id.* (emphasis in original).

Whether or not that finding was clear error—a point Defendants do not argue here—it concerns a procedural error violating the statute, and did not turn on any substantive analysis of the Secretary's determination regarding country conditions. The same goes for the district court's finding that Defendants entirely bypassed the statutory requirement that they review country conditions before termination. *Id.* at 73a.

Challenges to such procedural defects are not challenges to determinations as the statute uses that term. If this Court were to hold otherwise, then future Secretaries could grant TPS to countries that plainly do not satisfy country conditions requirements without fear of judicial review. The Secretary could designate any country—like Mexico, for example—without conducting any country conditions review at all, even where current conditions clearly do not warrant TPS designation. On Defendants' view, such action would be unreviewable even though it plainly violates the statute's procedural rules.

3. Defendants never offer a coherent alternative interpretation of Section 1254(b)(5)(A). Wholly aside from their failure to grapple with the repeated uses of "determination" in subsection (b), they never explain how to reconcile their position with this Court's express preservation of Plaintiffs' right to challenge the agency's cancellation of TPS-related documentation that had already been issued, *see supra* at 12, not to mention their view that the prior stay order had broadly preclusive effect on any further litigation of the merits of Plaintiffs' entire case. If, as they argued before, Section 1254a(b)(5)(A) bars all review of TPS "determinations 'of whatever kind,'" 24A1059 Appl. 16 (citation modified), then the decision to cancel already-issued TPS documents is unreviewable, because it is unquestionably a "determination" related to a TPS

termination.[8]

Similarly, Defendants no longer press the extreme view that Section 1254a(b)(5)(A) bars Plaintiffs' first claim—that the agency has no authority to vacate a TPS extension. But, again, they never explain how to square this shift with their reading of the statute. Presumably Defendants now believe the statute bars review of some but not all TPS-related decisions, but they never say which are which.

4. Defendants also ignore the district court's reliance on this Court's cases construing "determination" in other jurisdictional provisions. Those cases strongly support Plaintiffs' interpretation of Section 1254a(b)(5)(A). For example, in *McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479 (1991), plaintiffs brought a constitutional challenge to the INS's practices for processing applications for adjustment of status. The government argued the claim was barred by a statute providing "[t]here shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section . . . ." *Id.* at 491–92 (citing 8 U.S.C. 1160(e)). This Court held the claim was not barred because "the reference to 'a determination' describes a single act rather than a group of decisions or a practice or procedure employed in making decisions[,]" and because the phrase "respecting an application" refers to "an individual application." *Id.* Congress "could easily have used broader statutory language" had it wanted to bar review of "all causes . . . arising under" the statute, or "all questions of law and fact" in such suits, rather than merely review of a "determination." *Id.* at 492–94. But it did not do so. Two years later, *Reno v. Catholic Social Services, Inc.,* 509 U.S. 43, 56 (1993) ("*CSS*"), applied *McNary*

[8] The district court has since exercised jurisdiction on that claim and ruled for Plaintiffs on the merits of it; Defendants have not sought review of that ruling. Appl. 21 n.12.

to find a similar provision did not bar review of a claim challenging the agency's interpretation of a statutory phrase—like the first APA claim here. As in *McNary*, Plaintiffs here "do not seek a substantive declaration that they are entitled to [TPS] status," 498 U.S. at 495, but rather challenge the agency's predicate legal conclusion about its vacatur authority and the process by which it made these decisions.

A review of other jurisdiction-limiting provisions in the immigration laws confirms Plaintiffs' view. The statutes construed in *McNary* and *CSS* were enacted just four years before the TPS statute. Congress has since enacted various jurisdictional provisions in the immigration context, sometimes using broader language like that suggested in *McNary*. *See* 8 U.S.C. 1252(a)(2)(A)(i) (barring review of "any individual determination" *or* "any other cause or claim"); 1252(a)(2)(B) ("any judgment . . . [or] any other decision or action"); 1252(b)(9) (channeling review of "all questions of law or fact"). But it has not altered Section 1254a(b)(5)(A). The later statutes barring review over broader swaths of agency decisionmaking confirm Congress meant for Section 1254a(b)(5)(A) to remain narrow in scope. To accept Defendants' jurisdictional position, this Court would have to overrule or at least substantially limit *McNary* and *CSS*. It should not do so in this "emergency" posture. *See, e.g.*, *Noem v. Vasquez Perdomo*, No. 25A169, 2025 WL 2585637, at *3 (S. Ct. Sep. 8, 2025) (Kavanaugh, J., concurring). (opining that the Court should not "overrule or narrow" precedent permitting use of race in immigration enforcement in emergency posture).

The district court was in good company. No court has accepted Defendants' unreasonably broad reading of the statute. Defendants cite the 2-1 Ninth Circuit panel

majority decision that was later vacated by the en banc court, but all three judges there agreed that Section 1254a(b)(5)(A) does not bar review of statutory claims under *McNary*, and that court had no occasion to address a registration claim. *Ramos v. Wolf*, 975 F.3d 872, 895 (9th Cir. 2020), *vacated upon reh'g en banc*, 59 F.4th 1010 (9th Cir. 2023) (citing *McNary*) ("a claim that an agency has adopted an erroneous interpretation of a governing statute would be reviewable . . . ."); *id.* at 907 (Christen, J., dissenting).

Defendants also rely on lower court cases concerning other statutes that do not even use the word "determination." None of those cases support reading a jurisdiction-stripping provision to bar review of *legal* claims like Plaintiffs' first and third claims here. *Amgen, Inc. v. Smith*, 357 F.3d 103, 112–13 (D.C. Cir. 2004), held the opposite, reading the statute to preserve review of agency authority claims. *DCH Reg'l Med. Ctr. v. Azar*, 925 F.3d 503, 506 (D.C. Cir. 2019), barred review of a claim about the methodology for estimating costs, but only because it "unavoidably" encompassed a "challenge to the estimates themselves", which the statute explicitly barred. Here, in contrast, the questions whether the agency has free-standing vacatur authority and complied with the statute's procedural requirements are conceptually distinct from whether country conditions support a particular decision to designate, extend, or terminate. *See also Skagit Cnty. Pub. Hosp. Dist. No. 2 v. Shalala,* 80 F.3d 379, 386 (9th Cir. 1996) (finding challenge to classification decision barred, but not challenge to agency "regulations or procedures"); *Delgado v. Quarantillo*, 643 F.3d 52, 54 (2d Cir. 2011) (per curiam) (no jurisdiction where claim was previously reviewed in challenge to removal order).[9]

[9] Plaintiffs explained previously why *Patel v. Garland*, 596 U.S. 328 (2022), offers Defendants no support. Opp. 24–25, No. 24A1059 (May 8, 2025).

Any further doubt is resolved by the presumption that agency actions are reviewable. Courts need not "guess" whether a statute was designed to "divest district courts of jurisdiction." *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 207 (2023) (Gorsuch, J., concurring). Where Congress "holds that view," it "simply tells us" through an unequivocal plain-text command. *Id.* at 208. This Court has applied that presumption in immigration cases. *Biden v. Texas*, 597 U.S. 785, 806–07 (2022) ("under the APA, DHS's exercise of discretion within that statutory framework must be reasonable and reasonably explained."); *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19–20 (2020) (finding APA claim reviewable).

III. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR APA CLAIMS.

A. The Secretary Lacked Authority to Vacate the Extension of Venezuela's TPS Designation.

The Secretary has asserted—and exercised—unprecedented authority to vacate a TPS extension at any time, for any reason. App. 37a (quoting Secretary Noem's explanation that vacatur of Venezuela's extension was warranted by operational concerns about the registration process). *See also* 90 Fed. Reg. 10,511 (Feb. 24, 2025) (vacating Haiti's TPS extension *seven months* after it was issued, and purporting to retroactively alter the expiration dates of all documents issued under it)).[10] In the district court, Defendants defended vacatur authority without limit. *See, e.g.*, D. Ct. Dkt. 199 at 12 ("No statutory time limits bar the Secretary from correcting her predecessor's error."). Two

[10] While Defendants do not seek relief from the Haiti decision here, they have appealed the district court orders in this case holding it was unlawful, 9th Cir. Dkt. 1, and another, Notice of Appeal, *Haitian Evangelical Clergy Ass'n v. Trump*, No. 25-cv-1464 (E.D.N.Y. Sept. 25, 2025), Dkt. No. 72.

district courts and the court of appeals rejected Defendants' extreme view because "agencies lack the authority to undo their actions where, as here, Congress has spoken and said otherwise." App. 122a–31a.

Defendants offer a modified argument here, contending the Secretary may vacate an extension if it has "not yet taken effect," by which they apparently mean that the additional six-, twelve-, or eighteen-month period it grants has not started to run. Appl. 19–22 (emphasis omitted). This Court should not reward Defendants' sandbagging; it should require Defendants to present their arguments for a stay to the courts below before ruling on them here. *Cf.* Sup. Ct. R. 23.3.

Even if this Court considers Defendants' revised position, it should reject it as meritless for three reasons. First, Defendants' definition of when an extension takes effect contradicts the statute's plain text, which treats extensions as effective immediately because they change the expiration date of the underlying TPS designation. Second, Defendants' assertion of vacatur authority—even if cabined to the time period they now propose—contravenes Congress's instructions about how and when TPS decisions must be made. *See Ivy Sports Med., LLC v. Burwell*, 767 F.3d 81, 86 (D.C. Cir. 2014) (Kavanaugh, J.) ("[A]ny inherent reconsideration authority does not apply in cases where Congress has spoken"). Third, Defendants' position ignores how extensions operate in the real world and necessarily take effect immediately in important practical respects.

1. The statute's text forecloses Defendants' position that an extension is not effective until the additional time it grants begins to run. Congress explicitly defined the effective date of all the relevant decisions. *See* 8 U.S.C. 1254a(b)(2) (titled, "Effective Period

of Designation for Foreign States"). A designation "take[s] effect upon the date of publication," unless the Secretary specifies a later date. *Id.* 1254a(b)(2)(A). A termination "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." *Id.* 1254a(b)(3)(B). Between the bookends of designation and termination are extensions, which implement the statutory directive that a designation, once published, "shall remain in effect," until terminated. *Id.* 1254a(b)(2)(B). During a designation's "[e]ffective [p]eriod," *id.* 1254a(b)(2), its expiration date is extended via either affirmative or default extension decisions that add on six-, twelve-, or eighteen-month "period[s]," *id.* 1254a(b)(3)(C), each capped by a "[p]eriodic review" to assess whether designation remains warranted. *Id.* 1254a(b)(3)(A).

If a periodic review results in a finding that designation remains warranted, or concludes without a decision, the designation "*is* extended." *Id.* 1254a(b)(3)(C) (emphasis added). "Congress' use of [the present] tense" to describe an extension's effect on a designation "is significant . . . ." *United States v. Wilson*, 503 U.S. 329, 333 (1992). It shows an extension operates on a designation right away. *See Robertson v. Bradbury*, 132 U.S. 491, 493 (1889) (where act used present tense to repeal prior act, "[w]e do not see how there can be any doubt that this repealing section went into immediate effect"). That the statute says nothing about an extension's effective date confirms its immediacy. When Congress wanted to delay an action's effective date, it made that explicit, as with both designations and terminations. *See Russello v. United States*, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in

another section of the same Act, it is generally presumed that Congress acts intentionally and purposely[.]").

2. Defendants' assertion of vacatur authority also contravenes the carefully structured TPS system Congress created. Within that system, an extension plays two important temporal roles: (1) it establishes the timing of the next periodic review, which must conclude "[a]t least 60 days before" the expiration date set by the extension, 8 U.S.C. 1254a(b)(3)(A); and (2) it constrains the timing of a termination, which can take effect no "earlier than . . . the expiration of the most recent previous extension," *id.* 1254a(b)(3)(B). The vacatur authority Defendants assert would create an end run around both timing rules, thereby "writ[ing] the [periodic review] time limit out of the statute." *Am. Methyl Corp. v. EPA*, 749 F.2d 826, 836–37 (1984).

Consider, for example, Congress's 60-day rule, which requires the Secretary to decide whether a designation remains warranted "[a]t least 60 days *before* [the] end" of each designation period, 8 U.S.C. 1254a(b)(3)(A) (emphasis added), and provides that a designation "is extended" *by default* "for an additional period of 6 months" if the Secretary does not meet that deadline. *Id.* 1254a(b)(3)(C). In Defendants' view, the Secretary need not live with the statute's default extension. Instead, she has "[a]t least 60 days," 8 U.S.C. 1254a(b)(3)(A), *after* her inaction results in a default extension to vacate it and replace it with a termination. According to Defendants, Appl. 20, the default extension is subject to vacatur during that time period because it is not "effective" until the end of the prior period of designation. This is plainly contrary to the statutory text, which expresses Congress's intent that if the agency does not act by 60 days prior to an expiration, there will be a six-

month default extension, which avoids chaotic changes and gives the agency, TPS holders, and the public a predictable and administrable system. Defendants' reading would render the periodic review deadline, and the default extension that enforces it, meaningless. *See Am. Methyl Corp.*, 749 F.2d. at 836–37 (holding implied revocation authority inconsistent with statutory scheme in which applications not acted on within a certain time were granted by default).

Defendants' asserted vacatur authority also renders the statute's termination-timing constraints meaningless. As described above, each time a designation "is extended," 8 U.S.C. 1254a(b)(3)(C), its expiration date is pushed back. The new expiration date constrains the timing of any future termination: A termination "shall not be effective earlier than . . . the expiration of the most recent previous extension." *Id.* 1254a(b)(3)(B). But on Defendants' view that expiration date, like the 60-day rule, is meaningless: Because the Secretary has unwritten authority to "vacate" an extension, she can retroactively shorten any designation period, moving *up* its expiration date, contrary to Subsection (b)(3)(B)'s timing rule. She did that here, turning what had been an 18-month extension into a termination effective just two months later—long before "the expiration of the most recent previous extension." *Id.*

As that decision illustrates, a statutory "fixed term" is "affirmatively inconsistent with positing an implied power to revoke" agency action, like the extension at issue here. *China Unicom (Ams.) Operations Ltd. v. FCC*, 124 F.4th 1128, 1148 (9th Cir. 2024). Defendants' only response to Section (b)(3)(B)'s clear termination-timing constraint is to argue that it "speaks only to 'termination of [a] designation' that is *in effect*." Appl. 20

(emphasis added) (quoting 8 U.S.C. 1254a(b)(3)(B)). This makes no sense. A designation is always "in effect" at the time the Secretary publishes notice of its future termination. As the statute explicitly states, once a designation is published it "shall remain in effect until the effective date of the termination," which occurs only *after* the Secretary publishes notice of the termination. 8 U.S.C. 1254a(b)(2)(B), (b)(3)(B). Defendants' confusion underscores the disconnect between their position and the explicit language of the statute.

Finally, Defendants' suggestion that vacatur was justified because Secretary Mayorkas somehow acted improperly when he "announced [Venezuela's] extension months in advance," Appl. 21, while the designation was still "in effect," Appl. 9, is utterly meritless. The TPS statute *required* a decision about Venezuela's designation "*[a]t least* 60 days before" its expiration, 8 U.S.C. 1254a(b)(3)(A) (emphasis added), *i.e.*, no later than February 1, 2025. *See* 90 Fed. Reg. at 8,807. Because the decision deadline falls before the expiration of the prior designation period, a designation is always "in effect" at the time the Secretary makes an extension decision. Further, it is typical agency practice to provide more than 60 days' notice before making TPS decisions that affect the lives of thousands of people. TPS decisions have been published with more than 60 days' notice 49 times between 1990 and 2019, during both Democratic and Republican administrations. GAO Report 33. Some decisions were published over 100 days before expiration. *See, e.g.,* 73 Fed. Reg. 57,128 (Oct. 1, 2008) (extension published 159 days before expiration); 78 Fed.

Reg. 32,418 (May 30, 2013) (102 days). The timing of Secretary Mayorkas's decision, 75 days before the designation was set to expire, was normal.[11]

3. The court of appeals rejected Defendants' assertion that the Venezuela extension was not in effect for an additional reason: It is "factually incorrect." App. 130a. The extension had immediate real-world consequences. The agency recognized as much; the vacatur acknowledged the extension "has been in effect," changed the "status quo," and induced reliance interests, though the agency discounted them as "negligible." *See* 90 Fed. Reg. at 8,807. The extension also immediately changed the expiration date of Venezuela's designation, thereby setting the deadline for the next periodic review and restricting the timing of any termination. This is why people began registering (and the agency began accepting new registrations) under the extension. Reliance on these effects was not limited to TPS holders who obtained documents under the extension. Employers accepted the extension notice itself "[a]s proof of continued employment authorization through April 2, 2026," 90 Fed. Reg. 5,962; state and local agencies decided to issue driver's licenses on the basis of the designation's updated expiration date; and TPS holders made life decisions based on its promise that they could maintain lawful status and work authorization until at least October 2, 2026.

Finally, to the extent Defendants argue the Secretary has "inherent power to reconsider past decisions" before their effective date, *id.* at 20, that argument has no basis

[11] In contrast, there is *no* prior agency practice of vacating TPS extensions. Defendants point to *one* prior occasion when the agency rescinded TPS *terminations*, Appl. 20, but the Ninth Circuit found it inapposite because those terminations had been enjoined by court order for years. App. 127a. Terminations are also inherently different because they do not create comparable reliance interests. In any event, "a prior violation of statutory authority does not excuse subsequent violations." *Id.*

in administrative law. Authority to reconsider, like any other form of agency authority, derives from statute. *See, e.g., NRDC v. Regan*, 67 F.4th 397, 401 (D.C. Cir. 2023) ("[I]t is axiomatic that administrative agencies may act only pursuant to authority delegated to them by Congress.") (internal quotation marks and citation omitted); *United States v. Seatrain Lines, Inc.,* 329 U.S. 424, 429 (1947) (addressing agency reconsideration authority by asking "whether the Act authorizes" reconsideration). As described above, the TPS statute does not authorize vacatur, either explicitly or impliedly. That ends the inquiry.

B. Defendants Do Not Dispute the Vacatur and Termination Violated the APA.

Defendants make no attempt to defend the Secretary's rationale for the vacatur order on the merits. Nor do they contest that her termination decision violated two of the statute's core procedural requirements. The district court's rigorous fact-bound conclusions that the vacatur order rested on factual and legal errors, was pretextual, and failed to consider obvious alternatives; *and* that the termination failed to comply with the statute's procedural requirements for interagency consultation and country conditions review are all undisputed. Appl. 19 (stay application based "only on reviewability," not merits of Plaintiffs' other APA claims). This Court must accept at this stage that "Secretary Noem failed to comply with the statutory directive to consult with appropriate agencies in deciding whether to terminate Venezuela's TPS." App. 72a. *See also* 8 U.S.C. 1254a(b)(3)(A) (requiring consultation). Thus, as to these APA claims, Defendants assert a likelihood of success only on their argument that the court lacked jurisdiction. As shown above, they have not come close to establishing that, and assuredly not with the certainty

needed to justify an "emergency" stay.

IV. THE EQUITIES DO NOT SUPPORT A STAY.

Defendants must also establish irreparable harm to obtain a stay, but they fail to do so, and indeed never even attempted to make that showing in district court. App 18a. Instead, Defendants have argued primarily that this Court's prior stay decision is dispositive as to harm. Not so. Since the postponement phase of the litigation, fact-finding has only further substantiated the significant risks to Plaintiffs posed by a second stay and highlighted the inadequacy of the Government's purported interests.

Defendants still have submitted no evidence that the lawful presence of Venezuelan TPS holders harms anyone, and a mountain of evidence shows the opposite. Contrary to Defendants' speculation, Appl. 26, the record here shows many Venezuelan TPS holders *have* lost jobs, been detained and deported, and been rendered homeless pursuant to Secretary Noem's vacatur and termination orders. *See, e.g.*, D. Ct. Dkt. 288 (detention of Venezuelan TPS holder at an immigration court hearing immediately after this Court's stay); D. Ct. Dkt. 259 (describing deportations, detentions, family separation, loss of employment and economic harm); D. Ct. Dkt. 286 at 5–6, (harms resulting from Defendants' noncompliance with the summary judgment order). *See also* n.6, *supra*.

This evidence—as well as expert testimony in the record—refutes Defendants' speculation that TPS holders could obtain other forms of status. Appl. 25.[12] In fact, a stay of the district court's final judgment would again place TPS holders at immediate risk of

[12] While Defendants suggest TPS holders could obtain another immigration status, Appl. 25, the undisputed evidence shows most do not have, and are unable to obtain, another status; and that even those with access to another status face harms like the immediate loss of employment authorization, driver's licenses, and the risk of detention or deportation. App. 134a, 181a; D. Ct. Dkt. 25 ¶ 19.

irreparable harm, including forced return to a country the U.S. government deems unsafe even to visit. App. 134a–35a, 182a–83a. The record also definitively rebuts Defendants' contention that their sudden unlawful vacatur was harmless because TPS is "inherent[ly]" temporary. Appl. 25. Congress enacted TPS precisely to prevent arbitrary and premature terminations of temporary protection, as happened here. *See supra* Section 1; App. 135a, 186a.

Nor do Defendants contest the district court's findings that a stay would harm the *public*, including through "billions" in economic losses, including Social Security and other tax revenue, as unrebutted expert and lay witness declarations and amicus briefs by state and local governments showed. App. 2a, 21a–22a, 81a, 133a–38a 180a–93a.

Against this further-developed record, Defendants offered no meaningful response below. As the district court noted, they "fail[ed] to assert and demonstrate irreparable injury," or even "address the last two *Nken* factors." App. 18a, 21a. Defendants did little more at the Ninth Circuit, where they presented "no evidence of irreparable harm and merely recycle[d] [their] argument that the Supreme Court's May 19 order [controlled]." App. 14a; 9th Cir. Dkt. 7 at 17–19 (Gov't Stay Mot.).

That leaves Defendants' amorphous suggestion that the order must be stayed because "the district court's universal relief 'improperly intrudes' on a 'coordinate branch of the Government' and prevents the Government from enforcing its policies against nonparties." Appl. 23 (citation modified) (quoting *Trump v. CASA, Inc.*, 145 S. Ct. 831, 859 (2025)). None of the points embedded in that sweeping assertion justify a stay. Defendants suggest any district court order halting an immigration policy—even in an APA case at

final judgment—reflects an impermissible intrusion on Executive Branch prerogatives. But if that were sufficient to warrant an extraordinary equitable remedy from this Court, then it would have granted stays *whenever* the government sought them in such cases, including when it sought to defend immigrant-friendly policies during the prior administration. *But see Biden v. Texas*, 142 S. Ct. 926 (2021) (mem.) (denying stay of order setting aside agency policy governing border processing); *United States v. Texas*, 143 S. Ct. 51 (2022) (mem.) (denying stay of order enjoining Secretary's enforcement priorities guidance); *cf. Biden v. Missouri*, 145 S. Ct. 109 (2024) (mem.) (student loan program); *Ala. Ass'n of Realtors v. HHS*, 594 U.S. 758, 759 (2021) (lifting stay for eviction moratorium).

Moreover, the cases Defendants cite for categorical stay authority pre-date the *Texas* cases from the prior administration, and therefore obviously do not stand for what Defendants assert. They suggest TPS decisions arise "in an area that implicates 'a fundamental sovereign attribute exercised by the Government's political departments.'" Appl. 24 (quoting *Fiallo v. Bell*, 430 U.S. 787, 792 (1997)). But that was equally true of the *Texas* cases, *supra*. It also ignores that TPS was created by Congress to *constrain* agency action. App. 100a–03a. *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers), is inapposite as it concerned "an ongoing and concrete harm to [] law enforcement and public safety interests," which Defendants do not allege here. And Defendants' reliance on Justice Kavanaugh's concurrence in *Vasquez Perdomo*, No. 25A169, at *3, ignores a threshold problem: Defendants have not disputed the Secretary violated the law as to Plaintiffs' second and third APA claims, as both the district court and court of appeals found, whereas Justice Kavanaugh believed the plaintiffs in *Vasquez*

Perdomo had not made that showing.

Beyond this, Defendants insinuate the district court substituted its policy judgments for those of the Executive Branch. *See* Appl. 24–25. But the court did no such thing. It evaluated the agency's actions against what the statute authorizes and relied on unrebutted evidence to find Defendants' actions unlawful. App. 137a–38a; *id.* at 14a.[13] The district court's equities analysis in this latest round of stay litigation is also supported by powerful, unrebutted evidence. D. Ct. Dkt. 259.

Finally, the Court should reject Defendants' suggestion that a stay is warranted because the district court did not limit its "set aside" of unlawful agency action to the parties. The scope of relief awarded here is standard in APA cases under the statute Congress enacted, 5 U.S.C. 706(2). Defendants' objections boil down to calling for a "revolution[]" in "long-settled administrative law." *Corner Post,* 603 U.S. at 827 (Kavanaugh, J., concurring). This Court should not repudiate "countless decisions that vacated agency actions" spanning "decades," *id.* at 830 (Kavanaugh, J., concurring), particularly in an emergency posture.

CONCLUSION

This Court should deny Defendants' application for a stay.

[13] During the preliminary relief litigation the courts below had rejected as unfounded Defendants' assertion that TPS for Venezuela will "strain[] police stations, city shelters, and aid services in local communities," as the evidence showed the reverse is true. App. 137a–38a. Defendants then abandoned any attempt to show harm. They now imply the district court's order might set back "complex negotiations with Venezuela," but they did not make that argument below and offer nothing to support it now. Appl. 24. There is no reason to believe this self-serving assertion.

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