

**In The  
Supreme Court of the United States**

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

*Applicants,*

*v.*

DAHLIA DOE, ET AL.,

*Respondents.*

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**OPPOSITION TO APPLICATION TO STAY THE ORDER ISSUED  
BY THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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## INTRODUCTION

The government seeks “emergency” relief from an order that preserves the immigration status of 6,132 people who have lived here lawfully for years—in many cases more than a decade. These Temporary Protected Status (“TPS”) recipients are highly sought-after doctors and medical professionals, reporters, students, teachers, business owners, caretakers, and others who have been repeatedly vetted and by definition have virtually no criminal history. The government apparently needs urgent authority to send them to a country in the middle of an active war.

Remarkably, the government also seeks certiorari before judgment, even though the brief decision below is unpublished, rests on no administrative record, and is far less developed than other decisions recently issued by courts of appeals and district courts in distinct TPS cases.

This Court should deny both requests and allow this case to proceed through the normal course of litigation. As to the stay: First, the government’s reliance on this Court’s prior emergency stays in a distinct TPS case involving hundreds of thousands of Venezuelans does not control here. As this Court has explained, such emergency orders can only inform consideration of equitable factors in similar cases. Here those cases and factors are meaningfully distinct, as the Second Circuit found in denying the government’s stay application even before the U.S. strikes on Iran and regional war began. In addition, the government makes no serious attempt to show it will suffer harm in the short time between now and when full appellate review of the decision below would conclude. It previously represented to this Court that “a few additional months” of TPS for 350,000 Haitian TPS holders did not warrant a stay.

Surely the same is true for the far smaller population here, and the government's actions in this case show it. It moved for an emergency stay at the Second Circuit nearly two weeks after the district court order issued and never moved to expedite its appeal, even after invitation from the appellate court.

Second, federal courts have consistently rejected the government's extreme jurisdictional position in TPS cases across the country. Plaintiffs' Administrative Procedure Act ("APA") claims allege the Secretary disregarded several distinct statutory mandates—the obligation to consult with other agencies, review country conditions, and consider only those decision-making criteria set forth in the statute. The government's claim that the statute bars review over those claims contravenes the statute's text, this Court's precedent construing the statute's key term, and logic. Indeed, under its view a future administration could sell TPS designations to the highest bidders, and courts would be powerless to stop these lawless actions.

Third, on the merits, the government acted contrary to law and arbitrarily and capriciously by defying Section 1254a's requirements and relying on an extra-statutory factor instead. The government cannot show the district court's factual findings were clearly erroneous at this stage, when it has not even produced the administrative record. Based on the evidence before it, the district court correctly concluded the Secretary's decisions were based on a predetermined plan to end TPS for every country—which is precisely what the Secretary has done to date.

As to certiorari before judgment: The government's request is bizarre and indefensible. This case does not involve the kind of emergency that justifies the use

of that extraordinary procedural tool. Even if the administration of the TPS statute in general warranted intervention, there are already published decisions based on full administrative records from multiple lower courts—including a decision affirming a *final judgment* from the Ninth Circuit—involving the same jurisdictional provision that the government asks this Court to construe. Nor is there a circuit split. All published decisions have rejected the government’s extreme jurisdictional position. If this Court is to consider a TPS case, it should do so on a full record after considered decisions by multiple courts of appeals.

## BACKGROUND

### *Congress’s Statutory Scheme for TPS*

Congress created TPS in 1990 to constrain executive discretion in pre-existing humanitarian relief programs, particularly “extended voluntary departure” (“EVD”). See Lynda J. Oswald, Note, *Extended Voluntary Departure: Limiting the Attorney General’s Discretion in Immigration Matters*, 85 Mich. L. Rev. 152, 157-60 (1986). Because EVD lacked “any specific ... criteria,” *id.* at 178 n.153 (citation omitted), it had resulted in arbitrary, overtly political decisions, see *Hotel & Rest. Emps. Union v. Smith*, 846 F.2d 1499, 1510-11 (D.C. Cir. 1988) (per curiam) (separate opinion by Mikva, J.).

Congress responded by designing TPS to ensure future decisions would be based on “identifiable conditions” rather than “the vagaries of our domestic politics,” *Nat’l TPS All. (“NTPSA”) v. Noem*, 150 F.4th 1000, 1009-11 (9th Cir. 2025); replace EVD’s “ad hoc, haphazard ... procedures,” *id.* at 1010; and provide beneficiaries with certainty about “what [their] rights are, how the Justice Department determines

what countries merit EVD status [and] how long they will be able to stay,” 135 Cong. Rec. H25811, 25837 (daily ed. Oct. 25, 1989) (debating precursor to TPS statute).

The TPS statute gives the Secretary of Homeland Security authority to provide humanitarian relief to certain citizens of countries stricken by armed conflict, natural disaster, or other catastrophe, if they are already in the United States. 8 U.S.C. § 1254a. While a country is designated for TPS, beneficiaries receive employment authorization and protection from immigration detention and removal. *Id.* § 1254a(a)(1), (d)(4).

When a country is designated, the statute requires DHS to make individualized determinations about applicants’ eligibility. Applicants are ineligible, *inter alia*, if they have been “convicted of any felony or 2 or more misdemeanors” or could reasonably be regarded as a danger to the security of the United States. 8 U.S.C. § 1254a(c)(1)-(c)(2). The Secretary “shall withdraw” the status of any recipient who becomes ineligible after approval. *Id.* § 1254a(c)(3).

Congress also established rules to govern the *process* of TPS designation decision making. The Secretary must consult with “appropriate agencies,” after which she “may designate” a country based on armed conflict, environmental disaster, or other extraordinary conditions. *Id.* § 1254a(b)(1). The Secretary’s designation requires consideration of conditions in the country and whether the country can safely receive its nationals. *Id.* The statute also requires the Secretary to consider “national interest,” if, and only if, a designation is made on the ground of extraordinary conditions. *Id.* § 1254a(b)(1)(C). Designations can last 6, 12, or 18 months. *Id.*

§ 1254a(b)(2). The Secretary has the discretion to choose to designate a country for TPS so long as she determines the requisite country conditions exist.

*After* a country is designated, the TPS statute strictly limits discretion, specifying the process and precise criteria the Secretary must use in deciding whether to extend or instead terminate TPS protection. *See* GAO, *Temporary Protected Status: Steps Taken to Inform and Communicate Secretary of Homeland Security’s Decisions* (Apr. 2020), at 16-18, 27 (reproduced at Supp. App. 151a-153a, 162a). “[A]fter 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.” 8 U.S.C. § 1254a(b)(3)(A).

If the Secretary does not “determine ... that a foreign state ... no longer meets the conditions for designation,” its designation “is extended.” *Id.* § 1254a(b)(3)(C). And if the Secretary determines the country conditions for designation are no longer met, she “shall terminate the designation.” *Id.* § 1254a(b)(3)(B). The statute provides for some delay before TPS terminations take effect. 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.* The Secretary can provide an additional “orderly transition” period before the termination goes into effect. *Id.* § 1254a(d)(3).

### ***The TPS Designation for Syria***

The Department of Homeland Security (“DHS”) first designated Syria for TPS in 2012 based on brutal government repression of Syrian citizens, armed conflict, and large-scale internal displacement. 77 Fed. Reg. 19026, 19027 (Mar. 29, 2012). In 2013, DHS extended the designation based on “extraordinary and temporary conditions”;

in that same Federal Register notice, DHS redesignated Syria for TPS based on worsening “extraordinary and temporary conditions” and “ongoing armed conflict.” 78 Fed. Reg. 36223 (June 17, 2013). DHS extended and redesignated Syria for TPS numerous times as the country fell into a civil war. 89 Fed. Reg. 5562, 5565 (Jan. 29, 2024).<sup>1</sup> Throughout this period, Syrians suffered from a severe humanitarian crisis, compounded by a major earthquake in February 2023. *Id.*

In January 2024, then-Secretary Alejandro Mayorkas issued the latest extension and redesignation of TPS for Syria. The extension and redesignation was based on both “ongoing armed conflict” and “extraordinary and temporary conditions.” *Id.* Secretary Mayorkas noted the continuing civil war in Syria, then in its thirteenth year, which had displaced 61 percent of Syria’s pre-war population. *Id.* He also considered (1) widespread human rights abuses and civilian deaths; (2) the fact that 85% of the population could not meet their basic needs; (3) dire economic conditions; (4) the continued effects of the February 2023 earthquake; (5) lack of access to healthcare; and (6) lack of access to clean water for more than half the population. *Id.* at 5562-5567.

### ***Defendants’ Project to End TPS***

The second Trump administration arrived in office with explicit plans to end TPS wholesale. At her confirmation hearing, DHS Secretary Kristi Noem asserted, “[TPS] has been abused and manipulated by the Biden Administration and that will

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<sup>1</sup> See 80 Fed. Reg. 245 (Jan. 5, 2015); 81 Fed. Reg. 50533 (Aug. 1, 2016); 83 Fed. Reg. 9329 (Mar. 5, 2018); 84 Fed. Reg. 49751 (Sept. 23, 2019); 86 Fed. Reg. 14946 (Mar. 19, 2021); 87 Fed. Reg. 46982 (Aug. 1, 2022); 89 Fed. Reg. 5562 (Jan. 29, 2024).

no longer be allowed.” Supp. App. 222a, 213a-215a. This echoed campaign statements by President Trump and Vice President Vance. *See* Supp. App. 288a-290a, 292a-305a. Indeed, in an October 2024 interview, then-candidate Trump stated that he intended to “revoke” TPS if elected because—notwithstanding TPS’s clear statutory basis—“it’s not legal.” Supp. App. 307a-309a.

On the day he took office, President Trump issued an Executive Order directing the DHS Secretary to “promptly take all appropriate action,” to rescind prior administrations’ decisions that allegedly “increased or continued [the] presence of illegal aliens in the United States,” including by reviewing “designations of Temporary Protected Status.” Protecting the American People Against Invasion, Exec. Order No. 14159 § 16(b), 90 Fed. Reg. 8443, 8446 (Jan. 20, 2025). TPS holders are by definition lawfully present, but the Order mandated that TPS designations be “limited in scope” to ameliorate the “continued presence of illegal aliens.” *Id.*

Secretary Noem began the process of ending TPS immediately upon arriving in office. Within a month of her confirmation, she issued unprecedented decisions vacating the prior administration’s extensions of TPS for Venezuela and Haiti. *NTPSA v. Noem*, 166 F.4th 739, 751-52 (9th Cir. 2026). And over the next year, Secretary Noem terminated TPS for every single country whose designation came up for periodic review—Venezuela, Haiti, Afghanistan, Cameroon, Nicaragua, Honduras, Nepal, Syria, South Sudan, Burma (Myanmar), Somalia, Ethiopia, and

Yemen.<sup>2</sup> Discovery in challenges to these vacatur and terminations demonstrates a pattern of irregularities, omissions, contradictions, and unexplained departures from past practice, including failure to consult with the U.S. State Department as to conditions in the foreign state. *See Miot v. Trump*, No. 25-CV-02471, 2026 WL 266413, at \*20-24 (D.D.C. Feb. 2, 2026); *Aung Doe v. Noem*, 2026 WL 184544, at \*13-17 (N.D. Ill. Jan. 23, 2026); *NTPSA v. Noem*, 163 F.4th 1152, 1160 (9th Cir. 2025); *NTPSA v. Noem*, No. 25-CV-05687, 2025 WL 4058572, at \*24 (N.D. Cal. Dec. 31, 2025); *Afr. Cmty. Together v. Noem*, No. 25-CV-13939, 2026 WL 395732, at \*10-12 (D. Mass. Feb. 12, 2026); *CASA, Inc. v. Noem*, 792 F. Supp. 3d 576, 606 (D. Md. 2025).

### ***The Secretary's Termination of TPS for Syria***

On September 19, 2025, Secretary Noem announced the termination of TPS for Syria. To justify termination, the Secretary concluded first that an armed conflict no longer exists in Syria, and second, that although “most Syrians require some form of humanitarian assistance,” nothing prevents the safe return of Syrian nationals. 90 Fed. Reg. 45398, 45400 (Sept. 22, 2025).

As the district court found, in reaching these conclusions the Secretary omitted contradictory evidence from other U.S. government agencies and mischaracterized the sources cited to minimize the scope of continuing violence in Syria. App. 18a. Notably, the Secretary's assessment that no armed conflict existed directly

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<sup>2</sup> 90 Fed. Reg. 8805 (Feb. 3, 2025) (Venezuela TPS Vacatur); 90 Fed. Reg. 9040 (Feb. 5, 2025) (Venezuela TPS Termination); 90 Fed. Reg. 54733 (Nov. 28, 2025) (Haiti); 90 Fed. Reg. 20309 (May 13, 2025) (Afghanistan); 90 Fed. Reg. 23697 (June 4, 2025) (Cameroon); 90 Fed. Reg. 30086 (July 8, 2025) (Nicaragua); 90 Fed. Reg. 30089 (July 8, 2025) (Honduras); 90 Fed. Reg. 24151 (June 6, 2025) (Nepal); 90 Fed. Reg. 45398 (Sept. 22, 2025) (Syria); 90 Fed. Reg. 50484 (Nov. 6, 2025) (South Sudan); 90 Fed. Reg. 53378 (Nov. 25, 2025) (Burma (Myanmar)); 91 Fed. Reg. 1547 (Jan. 14, 2026) (Somalia); 90 Fed. Reg. 58028 (Dec. 15, 2025) (Ethiopia); 91 Fed. Reg. 10402 (Mar. 3, 2026) (Yemen).

contradicted the State Department’s Level 4 “Do Not Travel” advisory, issued in July 2025, which warns that “No part of Syria is safe from violence” due to “terrorism, civil unrest, kidnapping, hostage taking, and armed conflict.” Supp. App. 322a. The termination notice also departed, without explanation, from the humanitarian considerations addressed in the January 29, 2024 redesignation. *Compare* 89 Fed. Reg. 5562, *with* 90 Fed. Reg. 45398. The Secretary instead cursorily dismissed the continuing humanitarian crisis in Syria by citing to a single source—a U.N. press release on the return of refugees—that post-dated the deadline on which the Secretary had to make her termination decision. *See* 90 Fed. Reg. at 45400 n.22. Finally, the Secretary asserted that country conditions were irrelevant, because “even assuming the relevant conditions remain both ‘extraordinary’ and ‘temporary,’” termination of TPS is “required because it is contrary to the national interest” to allow Syrian nationals to remain in the United States. *Id.* at 45400. To support this finding, the notice cited purported difficulties vetting Syrian nationals and the prosecutions of two Syrian nationals in the United States, neither of whom is identified as a TPS recipient. *Id.* Further, the termination pointed to “foreign policy reasons” for ending TPS and otherwise citing to a directive instructing the Department of State to “put American citizens first.” *Id.* at 45401-02.

### ***Procedural History***

Plaintiffs filed suit challenging Syria’s termination and moved for an order postponing the termination under 5 U.S.C. § 705. They also sought the administrative record. Supp. App. 348a-350a. Defendants refused to provide the administrative

record, Supp. App. 351a-354a, and the district court did not compel its production, Supp. App. 355a-358a.

The district court ruled for Plaintiffs in a detailed oral decision. App. 1a-35a. It held that the jurisdiction-stripping provision of 8 U.S.C. § 1254a(b)(5)(A) is narrow, App. 9a-11a, and does not preclude review of “collateral agency patterns and practices” that impact TPS determinations, App. 11a.

The court found Plaintiffs would be irreparably harmed absent an order preserving the status quo, finding Syrian TPS holders will lose lawful status and work authorization and be exposed to arrest, detention, family separation and deportation to a country that the State Department deems extremely dangerous. App. 29a-30a. The district court also found that the public interest and balance of equities favored Plaintiffs because there is a public interest in upholding humanitarian principles and the government’s compliance with federal laws and because TPS holders make positive contributions to their communities. App. 30a-31a. Further, the district court found that the government had not established how allowing fewer than 7,000 people to remain in lawful status during litigation would adversely impact national security or foreign relations. App. 31a.

On the merits, the district court held that Plaintiffs were likely to succeed on their claims that the government’s decision to terminate Syria’s TPS violated the TPS statute, as the termination resulted not from the requisite objective country-conditions review and consultation with appropriate agencies, but from an impermissible political and predetermined decision to end TPS altogether. App. 15a-

18a. The district court also found that the government violated the TPS statute by justifying termination based on the “national interest, divorced from an analysis of country conditions [in the foreign state].” App. 19a-21a.

The government sought a stay from the Second Circuit on December 5, 2025, more than two weeks after the district court issued its postponement order. The Second Circuit denied the stay request on February 17, 2026. App. 38a-40a. In a three-page order, the Second Circuit concluded that the government had not shown a likelihood of success on the merits because Section 1254a(b)(5)(A) did not bar judicial review over the claims presented and that the government is unlikely to succeed in arguing that the Secretary engaged in required inter-agency consultation before termination. *Id.* The Second Circuit also held that the government had not shown actual and imminent irreparable harm to justify a stay, and the balance of equities and public interests favored Plaintiffs. App. 40a. The government filed its Application on February 26, 2026.

## ARGUMENT

This case presents no emergency. Where both courts below have “denied a motion for a stay,” a party seeking emergency relief from this Court faces an “especially heavy” burden. *Edwards v. Hope Med. Grp. for Women*, 512 U.S. 1301, 1302 (1994) (Scalia, J., in chambers). And because the purpose of a stay is “to minimize harm while an appellate court deliberates,” *United States v. Texas*, 144 S. Ct. 797, 798 (2024) (mem.) (Barrett, J., concurring), establishing irreparable injury is paramount, *cf. Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam).

Here, the government has not carried its “heavy burden” to demonstrate that allowing 6,132 TPS holders from Syria to maintain the lawful status they have had for years while this litigation proceeds through its normal course would suddenly cause irreparable harm. Rather, it is Plaintiffs who would face irreparable injuries through lost employment, the risk of imminent detention and possible deportation to a country in crisis, and blocked access to viable alternative forms of immigration relief due to the government’s own policies—all harms that would be irreversible if the district court’s decision is later upheld. The government is also unlikely to succeed on its jurisdictional arguments or on the merits—both of which will be fully briefed before the Second Circuit imminently and, presumably, adjudicated shortly thereafter. Given that timeline, this Court should not intervene on “a short fuse without benefit of full briefing and oral argument.” *Does 1-3 v. Mills*, 142 S. Ct. 17 (2021) (mem.) (Barrett, J., concurring). Nor should this Court grant certiorari where, as here, the case is in a preliminary posture, and the government has not even produced an administrative record, let alone discovery, and more fully developed TPS cases that have or will sooner reach final judgment wait in the wings.

**I. The Equities Do Not Support A Stay.**

To be afforded the extraordinary relief it seeks, it is “critical” that the government show that it “will be irreparably injured absent a stay.” *Nken v. Holder*, 556 U.S. 418, 434 (2009) (citation omitted); *see also Labrador v. Poe by & through Poe*, 144 S. Ct. 921, 929 (2024) (Kavanaugh, J., concurring). “[T]he Government must prove that irreparable harm is ‘likel[y],’” *Murthy v. Missouri*, 144 S. Ct. 7, 8 (2023)

(Alito, J., dissenting) (quoting *Hollingsworth*, 558 U.S. at 190). A mere “possibility” standard is too lenient.” *Nken*, 556 U.S. at 435 (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)).

On the scant record available at this preliminary stage and offering only conjectural statements about hypothetical harm and general complaints about being “intru[ded]” upon, Appl. 19; *see also* Appl. 27-32—not “concrete proof”—the government has not carried its burden of showing “likely” irreparable harm, *Murthy*, 144 S. Ct. at 9 (rejecting government’s hypothetical and speculative claims of harm).

The government’s failure to establish irreparable harm is sufficient to deny its request. But in any event, the balance of equities tips sharply in Plaintiffs’ favor, and the deficiencies of the government’s position contrast starkly with the significant and irreversible injuries Plaintiffs would suffer from a stay. *See A.A.R.P. v. Trump*, 605 U.S. 91, 95 (2025) (describing interest in not being removed as “particularly weighty”). Accordingly, the government is not entitled to a stay.

**A. The government has not shown likely irreparable harm.**

To justify a stay, the government must show it will “likely” suffer irreparable harm from allowing a few thousand Syrian TPS holders who have lived here for years to retain that status until appellate review concludes. *See Nken*, 556 U.S. at 426.

The evidence pointed to by the government confirms that it has not met its burden to show it is likely to suffer irreparable harm absent a stay. It notes that Syria “remains a state sponsor of terrorism,” Appl. 29—a status Syria has held since 1979. 90 Fed. Reg. at 45401. The government’s alleged “lack of access to reliable Syrian records,” Appl. 29, similarly establishes no “likely” irreparable harm. Every Syrian

TPS holder has lived here for more than two years—many since before 2012, when Syria was first designated. By definition, TPS holders have been vetted by the government at least once, and many multiple times, in connection with their TPS applications. 8 U.S.C. § 1254a(c); 8 C.F.R. §§ 244.2, 244.6, 244.9. And the government has not alleged that Syrian TPS holders have ever been found to have committed *any* crimes, let alone that any of them are “likely” to commit serious acts of violence before the merits of this case are decided. *See* 90 Fed. Reg. at 45401. This is unsurprising, because a noncitizen with more than a single misdemeanor is statutorily ineligible for TPS. 8 U.S.C. § 1254a(c)(2)(B). And the government ignores that it may withdraw TPS from individuals who are found ineligible for *any* reason—including criminal or security-related reasons. 8 U.S.C. § 1254a(c)(3).

The government similarly claims that “extending Syria’s TPS designation *would* ‘complicate the administration’s broader diplomatic engagement’ with Syria,” Appl. 9-10 (emphasis added, partly quoting 90 Fed. Reg. at 45402), and “foreign policy,” *id.* at 29 (quoting 90 Fed. Reg. at 45401). But the evidence it cites rests on speculation that “extending [TPS] *could* complicate the administration’s broader diplomatic engagement.” 90 Fed. Reg. at 45402 (emphasis added). Thus, in finding lack of irreparable harm, the Second Circuit did not “substitute [its] own foreign-policy views for the Secretary’s expertise,” Appl. 30, but correctly held that the government did not allege or substantiate any specific, likely harms, App. 40a. Moreover, the government’s assertions here also do not meet the “concrete proof” requirement. *See Murthy*, 144 S. Ct. at 9.

The government's conduct in other TPS cases confirms that its claim of urgency is meritless here. It did *not* seek a stay of the July 1, 2025 district court decision setting aside its partial vacatur of Haiti's TPS. *HECA v. Trump*, 789 F. Supp. 3d 255 (E.D.N.Y. 2025). Nor did it seek a stay of the Haiti portion of the October 3, 2025 district court decision doing the same. *NTPSA v. Noem*, 798 F. Supp. 3d 1108 (N.D. Cal. 2025). Consequently, the government's termination of Haiti's TPS was postponed for five months until February 3, 2026. The government represented to this Court that an additional "few months" of TPS for 350,000 Haitian TPS holders was not significant enough to warrant seeking the extraordinary remedy of a stay. *See* Defs' Stay Appl. at 7-8 n.6, *Noem v. NTPSA*, No. 25A326 (U.S. Sept. 19, 2025). By the government's own logic, an additional few months of TPS for far fewer people (6,132 Syrians) cannot warrant a stay either.

The government instead claims this Court has "repeatedly intervened in similar circumstances" so the "same result is warranted here." Appl. 27-28. However, these "circumstances" are not "similar." Most notably, the Venezuela portion of the *NTPSA* cases, Appl. 28, is both factually and legally distinct. There, the government argued "acute" harm that stemmed from the several hundred thousand Venezuelan TPS holders at issue, specifically, the "strain [caused to] police stations, city shelters, and aid services in local communities that had reached a breaking point." *See, e.g.*, Gov't Reply at 16, No. 24A1059, *Noem v. NTPSA* (U.S. May 9, 2025). The government references no such strain here. *See* Appl. 30. What remains is the government's alleged irreparable harm from being temporarily slowed in implementing its policies

in precisely the manner it would prefer. *See id.* But this Court is supposed to grant stay relief only in “unusual,” *N. Cal. Power Agency v. Grace Geothermal Corp.*, 469 U.S. 1306, 1308 (1984) (Rehnquist, J., in chambers), or “extraordinary” circumstances, *Graves v. Barnes*, 405 U.S. 1201, 1203 (1972) (Powell, J., in chambers). And the government would suffer this “harm” in *every* case in which a policy’s enactment date has been postponed.

The other cases the government cites do not establish entitlement to a stay. There are no “contempt sanctions” threatened here, as there were in *Noem v. Vasquez Perdomo*, that threaten to “inevitably chill lawful immigration enforcement efforts.” *See* 146 S. Ct. 1, 4 (2025) (Kavanaugh, J., concurring). The district court’s order would not require any affirmative action on the part of the Secretary, as it did in *Heckler v. Lopez*, 463 U.S. 1328 (1983), and *I.N.S. v. Legalization Assistance Project of the Los Angeles County Federation of Labor*, 510 U.S. 1301, 1302-03 (1993). Nor does the district court’s order intrude on the executive branch’s ability to make determinations as to individual immigrants, as in *Department of Homeland Security v. D.V.D.*, 145 S. Ct. 2153, 2159 (2025) (Sotomayor, J., dissenting), and *Noem v. Doe*, 145 S. Ct. 1524, 1527 (2025) (Jackson, J., dissenting). To the extent that *individual* TPS holders pose a risk of harm or a security threat, the government may withdraw their TPS status. 8 U.S.C. § 1254a(c)(3).

Likewise, the temporary relief currently afforded to Plaintiffs runs no risk of “operat[ing], in effect, as a final judgment.” *Trump v. Sierra Club*, 588 U.S. 930, 931-32 (2019) (Breyer, J., concurring in part and dissenting in part). The relief is only

preliminary, and the litigation is ongoing. Nor did the district court enjoin any actions that federal courts have otherwise upheld on the merits, as in *Maryland v. King*, 567 U.S. 1301, 1304 (2012). To the contrary, here “district courts have uniformly” rejected the government’s arguments, *see* Appl. 4-5 (collecting cases). In this case affecting fewer than 7,000 individuals, where the government can muster only hypothetical harms, this Court should not grant the government this extraordinary form of relief.

Finally, the district court did not err in “granting universal relief” that extends nationwide. Appl. 34 n.8. The district court simply granted standard preliminary “postponement” relief under the APA, not an injunction. *See Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 549, 562 (D.C. Cir. 2015) (Kavanaugh, J., dissenting on other grounds) (“Section 705 of the APA authorizes courts to stay agency rules *pending judicial review*”). As courts have long held, “the APA’s § 705 must be read to authorize relief from agency action for any person otherwise subject to the action, not just as to plaintiffs.” *District of Columbia v. U.S. Dep’t of Agric.*, 444 F. Supp. 3d 1, 48 (D.D.C. 2020); App. 18a-22a. Because the government has disclaimed any challenge to the district court’s holding that its relief was not injunctive, *cf.* Appl. 14 n.10, and because a decision on the broader question whether equitable limits on injunctive relief should apply in APA cases has been reserved, *cf. Biden v. Texas*, 597 U.S. 785, 824 n.4 (2022) (Alito, J., dissenting), the government cannot prevail on this theory on the emergency docket.

**B. Plaintiffs will face irreparable harm should this Court issue a stay.**

As the Second Circuit correctly recognized, Plaintiffs “have demonstrated that upon termination of their TPS they will be stripped of their authorization to work in the United States and face immediate removability to Syria.” App. 40a. There can be no question that those imminent and concrete harms weigh against a stay here.

The government’s response is that Plaintiffs’ “alleged harms are inherent in the scheme that *Congress* designed.” Appl. 31. But that assumes the government is right on the merits. The harms to Plaintiffs stem directly from the government flouting the very scheme Congress designed and resurrecting the ad hoc and arbitrary processes that TPS was established to replace. *See supra*, at 3-4. Equally unavailing is the government’s conjecture that finding irreparable harm to Plaintiffs here would mean “irreparable harm would result every time the Secretary terminates a country’s TPS designation.” Appl. 31. That simply is not true. Not every termination will involve a country as to which the State Department still advises against all travel. Nor does every termination come with only two months’ notice. In the past, the government has typically given TPS holders at least six months, and more commonly, twelve or eighteen months to apply for alternative status or to relocate by providing for a longer “orderly transition.” *See* 8 U.S.C. § 1254a(d)(3); Supp. App. 42a.

The government’s reliance on this Court’s stay orders in the Venezuela litigation fares no better. *See* Appl. 31-32 (citing *Noem v. NTPSA*, 146 S. Ct. 23 (2025) (“*NTPSA II*”); *Noem v. NTPSA*, 145 S. Ct. 2728 (2025) (“*NTPSA I*”). The Second Circuit did not “brush aside those stay orders,” Appl. 32, but rather recognized they

were “not dispositive” for two reasons. Those stay orders contained “no explanation of their grounds for granting emergency relief.” App. 39a. And the stay orders “involved a TPS designation of a different country, with different factual circumstances, and different grounds for resolution.” App. 39a.

Plaintiffs indisputably could soon face loss of work authorization, and possible detention, family separation, and deportation to a country where violence still threatens every aspect of daily life. That risk is not hypothetical. Plaintiff Laila “faces return to her sister’s home in Damascus, in a neighborhood that was hit by airstrikes” shortly before Secretary Noem announced termination of TPS for Syria. Supp. App. 124a-125a (citing Supp. App. 345a). More broadly, the State Department’s December 2025 “Do Not Travel” advisory for Syria confirms the ongoing “risk of terrorism, unrest, kidnapping, hostage taking, crime, and armed conflict.”<sup>3</sup> In northern Syria, clashes between Syrian transitional-government forces and regional Kurdish-led forces have escalated, putting civilians at great risk of harm.<sup>4</sup> And in the last several days Syria has been caught in the crossfire as the military conflict in Iran has threatened to unleash a full-scale regional war.<sup>5</sup>

The government nonetheless suggests Plaintiffs will not suffer irreparable harm because they might pursue other avenues to immigration status, such as “appl[ying] for asylum or similar protection.” Appl. 31. But the government effectively

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<sup>3</sup> U.S. State Dep’t, *Syria Travel Advisory* (Dec. 11, 2025), <https://travel.state.gov/en/international-travel/travel-advisories/syria.html>.

<sup>4</sup> See Human Rights Watch, *Syria: Civilian Protection Lacking in Northeast Escalation* (Jan. 25, 2026), <https://www.hrw.org/news/2026/01/25/syria-civilian-protection-lacking-in-northeast-escalation>.

<sup>5</sup> See, e.g., Reuters, *Four People Killed in Syria After an Iranian Missile Falls on Building, State Media Reports* (Feb. 28, 2026), <https://www.reuters.com/world/middle-east/four-people-killed-syria-after-an-iranian-missile-falls-building-state-media-2026-02-28>.

shut off any alternative avenues for Plaintiffs on January 1, 2026, when it paused adjudication of requests for affirmative immigration relief—including asylum applications—filed by Syrian nationals.<sup>6</sup>

Even if the government were to lift the hold, asylum is not a practical possibility for the vast majority of TPS holders. The asylum statute provides fewer protections than TPS, Supp. App. 340 ¶ 16, as asylum is a discretionary benefit, with a strict application deadline, and the statutory criteria for asylum eligibility are far narrower than for TPS, *see, e.g.*, 8 U.S.C. § 1158(b)(1)(B)(i). And applying for asylum is time-consuming, complex, and nearly impossible without costly legal assistance. Supp. App. 340a ¶¶ 16-18. Filed applications may then remain pending for many years, and the government asserts authority to detain and seek to remove anyone with a pending affirmative asylum application. *See* Supp. App. 340a ¶ 18. Other options beyond asylum—such as family-based or employment-based requests—have even narrower eligibility criteria. Supp. App. 341a ¶¶ 21-22.<sup>7</sup> And if TPS holders fall out of lawful status due to the termination, they will not be eligible to pursue many of these other options. Supp. App. 341a ¶¶ 21-22.

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<sup>6</sup> *See* USCIS, *Policy Memorandum: Hold and Review of USCIS Benefit Applications Filed by Aliens from Additional High Risk Countries* (Jan. 1, 2026); Presidential Proclamation No. 10998, *Restricting and Limiting the Entry of Foreign Nationals to Protect the Security of the United States*, 90 Fed. Reg. 59717 (Dec. 16, 2025); *see also* USCIS, *Policy Memorandum: Hold and Review of All Pending Asylum Applications and All USCIS Benefit Applications Filed by Aliens from High-Risk Countries* (Dec. 2, 2025).

<sup>7</sup> When the adjudication pause on Syrian immigration applications is lifted, Syrians face a new hurdle to receiving other immigration benefits, as the government has announced that it will consider country-specific vetting and screening issues as “significant negative factors” in adjudicating discretionary benefit requests for nationals of countries subject to entry bans, including Syria. USCIS, *Policy Alert: Impact of INA 212(f) on USCIS’ Adjudication of Discretionary Benefits* (Nov. 27, 2025).

## II. Plaintiffs' APA Claims Are Subject To Judicial Review.

The government seeks a stay on the ground that all of Plaintiffs' claims are barred by Section 1254a(b)(5)(A). But *every* published decision to consider the extreme jurisdictional position the government advances here has rejected it. *See, e.g., NTPSA*, 166 F.4th at 757-58 (finding jurisdiction over APA challenge to TPS decision); *NTPSA*, 150 F.4th at 1017-18 (same).<sup>8</sup> And the TPS cases the government cites for its jurisdictional argument do not support its position. *See CASA, Inc. v. Noem*, No. 25-1792, 2025 WL 2028397, at \*1 (4th Cir. July 21, 2025) (holding plaintiffs "stated a plausible claim for relief" but finding "insufficient evidence to warrant the extraordinary remedy of a postponement of agency action pending appeal"); *Ramos v. Wolf*, 975 F.3d 872, 895 (9th Cir. 2020), *vacated upon reh'g en banc*, 59 F.4th 1010 (9th Cir. 2023) ("In general, a claim that an agency has adopted an erroneous interpretation of [the TPS] statute would be reviewable").<sup>9</sup>

This Court should reject the government's reading of Section 1254a(b)(5)(A) because it would foreclose judicial review over a wide range of lawless agency

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<sup>8</sup> *See also Afr. Cmty. Together*, 2026 WL 395732, at \*5-7 (same); *Miot*, 2026 WL 266413, at \*10 (same); *NTPSA*, 798 F. Supp. 3d at 1132-36 (same); *CASA*, 792 F. Supp. 3d at 593 (same); *NTPSA v. Noem*, 798 F. Supp. 3d 1008, 1024 (N.D. Cal. 2025); *HECA*, 789 F. Supp. 3d at 269 (same); *Centro Presente v. DHS*, 332 F. Supp. 3d 393, 406-09 (D. Mass. 2018) (same); *Saget v. Trump*, 345 F. Supp. 3d 287, 294-69 (E.D.N.Y. 2018) (same); *CASA de Maryland, Inc. v. Trump*, 355 F. Supp. 3d 307, 320-21 (D. Md. 2018) (same); *Ramos v. Nielsen*, 321 F. Supp. 3d 1083, 1104 (N.D. Cal. 2018) (same). Two unpublished district court decisions (including the one at issue here) came to the same conclusion; no unpublished district court decisions hold otherwise. *See Aung Doe*, 2026 WL 184544.

<sup>9</sup> The only decision arguably endorsing the government's view despite the overwhelming weight of contrary authority is a brief, unpublished recent stay order regarding Honduras, Nicaragua, and Nepal in *NTPSA v. Noem*, 26-199 C.A. Doc. 11, at 3-4 ("NTPSA Order") (9th Cir. Feb. 9, 2026). That order contravenes the prior published Ninth Circuit decisions cited above, but in any event the government cannot show likely success on an argument it has lost 16 times, including in every published decision considering it.

behavior. *See Jennings v. Rodriguez*, 583 U.S. 281, 293-94 (2018) (plurality) (rejecting interpretation that would yield results that were clearly unintended). For example, a decision granting TPS to India, China, and Mexico for fifty years would be an unreviewable “determination” on the government’s reading, even though it would violate clear statutory mandates. *NTPSA*, 166 F.4th at 757 (rejecting government’s argument that “the review bar would cover’ a challenge to a thirty-year TPS designation”). Similarly, a Secretary’s decision “to sell TPS designations” to the highest bidders would be unreviewable under the government’s interpretation. *Id.* No rational Congress, let alone one enacting a statute to *constrain* executive discretion, *supra*, at 3-5, could have intended to shield such actions from judicial review. When faced with results “no sensible person could have intended,” this Court has eschewed “uncritical literalism” and instead read jurisdiction-limiting statutes narrowly, both in the immigration code and elsewhere. *Jennings*, 583 U.S. at 293-94 (construing “arising from” narrowly, citing cases construing “affecting,” “related to,” and “in connection with” narrowly in jurisdictional statutes) (citation omitted).

The Court should reject the government’s jurisdictional argument for textual reasons as well. The government’s view that Section 1254a(b)(5)(A) bars all of Plaintiffs’ claims because any challenge to a termination is necessarily a challenge to a Secretary’s “determination,” Appl. 16-17, ignores how Congress used the word “determination” in the TPS statute.

Section 1254a(b)(5)(A) precludes review of “any determination ... with respect to the ... termination ... of a foreign state under [subsection (b) of Section 1254a].” A review of the text and the structure makes clear that “determination” refers to the Secretary’s conclusion about whether a nation satisfies certain *country conditions* requirements relevant to TPS decision making. *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”). For example, during the periodic-review process, the Secretary must “*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 ...).” 8 U.S.C. § 1254a(b)(3)(A) (emphases added); *see also* 8 U.S.C. § 1254a(b)(3)(B) (referring to “the determination” that a country no longer meets conditions for designation); *see also id.* § 1254a(d)(3) (referring to “the determination” that country conditions require termination). Thus, any “fairly discernable” intent to preclude judicial review, Appl. 20 (quotation modified), pertains only to these country conditions determinations. Even if the language pointed in both directions—which it does not—this Court should not “*guess*” whether this statute was designed to “divest district courts of jurisdiction.” *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 207 (2023) (Gorsuch, J., concurring).

The government never defines “determination” nor grapples with Congress’s use of that word. Rather, it focuses on the statute’s use of the terms “any” and “with respect to” and relies on the use of those qualifiers in *Patel v. Garland*, 596 U.S. 328

(2022) to argue in favor of “a broadening effect,” Appl. 16-17 (quotation modified). But *Patel* is inapposite. The statute at issue in *Patel* did not define or even use “determination”; rather, *Patel* defined the term “judgment.” See *Patel*, 596 U.S. at 336-40. Moreover, within the TPS statute’s context, but not the statutory context in *Patel*, the terms “any” and “with respect to” have clear meanings. “[A]ny” refers to the various determinations within its scope—including country conditions assessments required for the three possible bases for a TPS designation and corresponding determinations supporting extension or termination. See generally 8 U.S.C. § 1254a(b)(1) (describing bases for designation); *id.* § 1254a(b)(3)(A), (B), (C) (setting forth detailed criteria and procedures for TPS status review for each discrete decision). And “with respect to” distinguishes determinations pertaining to designation, extension, and termination under subsection (b) from determinations that concern eligibility for benefits and physical presence, which are addressed under different subsections—and therefore beyond the scope of Section 1254a(b)(5)(A)’s bar. See 8 U.S.C. §§ 1254a(a)(4)(B), 1254a(c)(2)(A), 1254a(e) (all referring to other “determinations”). The government’s reliance on *Patel* is misplaced.

Careful attention to the TPS statute’s use of the term “determination” is particularly appropriate because this Court has twice read that same term narrowly in jurisdiction-limiting provisions involving immigration statutes enacted in the same era. *McNary v. Haitian Refugee Center, Inc.* evaluated a statute barring “review of a determination respecting an application for adjustment of status.” 498 U.S. 479, 491 (1991) (quoting 8 U.S.C. § 1160(e)(1)). The Court held that “the reference to ‘a

determination’ describes a single act ... ”—that is, “the denial of an individual application”—and that the statute therefore did not bar “general collateral challenges” to agency practices and procedures. *Id.* at 491-92. *McNary* also noted 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. And this Court reiterated *McNary*’s holding in *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43, 54-56 (1993) (“CSS”), a case the government does not even mention.

The government suggests that Plaintiffs’ claims are barred under *McNary* because they attack “substantive considerations” underlying TPS determinations and the Secretary’s “discretionary analysis in reaching” the decision to terminate. Appl. 17, 19. But Congress used “determinations” to refer to findings concerning country conditions. *Supra*, at 22-23. Regardless, the government errs in describing Plaintiffs’ challenges as substantive. Plaintiffs claim the Secretary failed to consult with the State Department; failed to base her decision on an objective review of country conditions, as required by Section 1254a(b)(3); and relied on impermissible extra-statutory factors. Those are plainly collateral claims.

Similarly, the government attacks the district court’s factual findings of clear irregularities, omissions, and contradictions in the Federal Register Notice, along with the court’s reliance on other unlawful terminations issued by this Administration, as impermissible “attack[s] on the [Secretary’s] substantive

considerations.” Appl. 17-19. They are not. The district court decision does not direct any particular substantive outcome or finding concerning Syria’s country conditions. Syria’s TPS may ultimately be terminated; the district court decision merely requires that any such decision result from the process Congress required. Rather, the district court found the government has decided simply to end the TPS program altogether, instead of engaging in the statutorily mandated consultation with appropriate agencies and country-conditions review. That finding describes unlawful errors collateral to the substantive determination. *Accord Aung Doe*, 2026 WL 184544, at \*13-14 (finding lack of consultation on Burma (Myanmar) because the only evidence inter-agency communication was a two-sentence email that “addressed the TPS terminations of four different countries [including Syria], but [where] the State Department’s response did not individually consider the circumstances in those nations”); Ex. 21, *NTPSA v. Noem*, No. 3:25-cv-05687, Dkt. No. 176-22 at NTPSA2\_00001504\_0001 (N.D. Cal. Nov. 4, 2025) (confirming, as of April 8, 2025, that “[the Department of State] will not provide country conditions [for TPS decisions] anymore”). Because Plaintiffs challenge the Secretary’s “broader practices or procedures employed in making” Syria’s termination decision, Appl. 21 (citation modified), the lower courts rightly relied on *McNary*.<sup>10</sup>

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<sup>10</sup> The government also claims the relief sought here differs from *McNary* because any challenge to terminations is somehow inherently substantive. But the *McNary* “injunction requir[ed] the INS to vacate large categories of denials.” *McNary*, 498 U.S. at 489. Similarly, *CSS* required INS to accept thousands of applications it had previously rejected. *CSS*, 509 U.S. at 48-49, 52. Thus, the relevant test is not whether orders set aside agency decisions. That happens in almost every case where an agency adopted unlawful practices. Rather, the question is whether the relief sought would compel an agency to reach a particular result, even if acting under lawful policies and procedures. The relief

A review of other jurisdiction-limiting provisions in the immigration laws further confirms Plaintiffs' reading. The statutes construed in *McNary* and *CSS* were enacted just four years before the TPS statute. Congress has since enacted and amended various jurisdictional provisions, 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"); *id.* § 1252(a)(2)(B) ("any judgment ... [or] any other decision or action"); *id.* § 1252(b)(9) (channeling review of "all questions of law and fact"). But it has left Section 1254a(b)(5)(A) untouched.

That this case involves an immigration statute does not "[r]einforc[e]," Appl. 16, the government's implausible interpretation of Section 1254a(b)(5)(A). In *Biden v. Texas*, this Court rejected the government's sweeping justiciability arguments, reaching both statutory interpretation claims and other APA claims brought against the executive branch's border policies. 597 U.S. at 806-07. Despite obvious "foreign affairs consequences" that arise in that context, this Court held DHS's exercise of discretion still "must be reasonable and reasonably explained." *Id.* at 805-07; see also *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 9, 19-20 (2020) (finding jurisdiction to consider APA claim challenging another agency decision affecting several hundred thousand immigrants).

None of the other cases the government cites use the word "determination" or read a jurisdiction-stripping provision to bar review of claims like Plaintiffs' legal

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Plaintiffs seek would not do so. And contrary to the government's contention, Appl. 21, Plaintiffs do seek declaratory relief concerning *the unlawful nature* of the Secretary's termination, based on its failure to follow statutorily mandated process and reliance on impermissible extra-statutory factors.

claims. *See Amgen, Inc. v. Smith*, 357 F.3d 103, 112-13 (D.C. Cir. 2004) (reading Medicare statute to preserve review of some statutory claims); *DCH Reg'l Med. Ctr. v. Azar*, 925 F.3d 503, 506 (D.C. Cir. 2019) (barring review of a claim about the methodology for estimating costs where “[i]n th[at particular] statutory scheme, a challenge to the methodology for estimating uncompensated care [wa]s unavoidably a challenge to the estimates themselves,” which was barred). Again, the questions here—whether the Secretary can and did terminate a country’s TPS status without consultation or a review of country conditions, or whether a Secretary can terminate TPS based on a national-interest assessment—are conceptually distinct from whether specific country conditions support designation, extension, or termination in any given instance. *Cf. United States v. Tohono O’odham Nation*, 563 U.S. 307, 316 (2011) (relief available in either of two courts, just not both); *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).

Finally, the government’s reliance on this Court’s unreasoned emergency stays in the challenge to the vacatur and termination of Venezuela’s TPS should not control here. *See* Appl. 15 (citing *NTPSA I*, 145 S. Ct. 2728; *NTPSA II*, 146 S. Ct. 23). This Court has made clear that emergency stays are not dispositive on the merits. *See Merrill v. Milligan*, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J., concurring) (“The Court’s [emergency] stay order is not a decision on the merits.”). And this Court

should reject the government’s extreme jurisdictional argument even if the prior TPS-related stay orders *did* function as precedent, because those orders directly imply that at least some statutory claims are cognizable under the TPS statute. Reading Section 1254a(b)(5)(A) to eliminate jurisdiction of any TPS-related claim cannot be reconciled with this Court’s stay of the postponement order related to Venezuela that included specific carveouts for Venezuelans who had already obtained updated TPS documentation. *NTPSA I*, 145 S. Ct. at 2729 (carving out for possible relief Venezuelans who had already obtained updated TPS documentation).

### **III. The Government Is Unlikely To Prevail On The Merits Of Plaintiffs’ APA Claims.**

Defendants’ termination decision was likely contrary to law and arbitrary and capricious for two reasons. First, the termination of TPS for Syria was carried out in violation of statutory mandates requiring consultation with other agencies and an objective review of country conditions. *See* App. 14a-18a (district court); App. 38a-39a (Second Circuit). Second, the Secretary improperly justified the termination based on an extra-statutory factor—the national interest. *See* App. 18a-21a (district court). And the government’s revisionist history collapses against the district court’s well-supported factual findings, which are not clearly erroneous.

#### **A. The termination process failed to comply with the requirements of Section 1254a.**

All agree that before terminating, the TPS statute requires the Secretary to (a) engage in interagency consultation and (b) undertake an objective and good faith review of conditions in the foreign state—and then to base her decision on that consultation and review. *See* 8 U.S.C. § 1254a(b)(3)(A)-(B); App. 15a; Appl. 7. In this

case, the Secretary did neither, and the government’s response amounts to a factual dispute.

First, the district court’s factual findings are well-supported and not clearly erroneous. The court reviewed the factual record and found the Secretary’s decision to terminate Syria’s TPS was based on a political agenda to end the TPS program, not the required interagency consultation and country-conditions review. App. 15a-18a. As the district court found, significant irregularities and omissions in the Syria termination notice itself reflected the Secretary’s failure to comply with the statute’s mandates. For instance, the district court noted that the Secretary failed to mention or consider contemporaneous and relevant conditions evidence from other agencies—like the State Department “Do Not Travel” advisory, which warned that “[n]o part of Syria is safe,” Supp. App. 322a, due to dangers that are not “citizenship-specific,” App. 18a, including active armed conflict and the destruction of critical infrastructure, Supp. App. 322a.

Second, the government does not challenge the district court’s factual findings of improper influence, making no mention of the President’s “sweeping and erroneous statements concerning ... the legality of the TPS program,” App. 25a, or the widespread evidence that the President and Vice President “campaign[ed] on revoking TPS,” App. 15a-16a. And the Presidential directive instructing the Secretary to reconsider TPS designations, 90 Fed. Reg. 8443, 8446, was not neutral guidance; it was predicated on a legally erroneous view of TPS holders as illegally present and “paid lip service to the TPS statute while *sub silentio* calling for its demise,” App. 25a.

Indeed, the Secretary has expressly stated that she was following the President’s “directive” as to TPS, Supp. App. 329a, and would not extend TPS designations, *see* Supp. App. 196a-232a; App. 16a. She has followed through on that promise, terminating *every single TPS designation that has come up for review*, “in a coordinated effort to end TPS status.” App. 12a-13a. The irregular termination of Syria’s TPS was the eighth of now thirteen terminations carried out under this predetermined political directive.

Nor does the government provide any evidence that inter-agency consultation or country-conditions review occurred prior to the decision to terminate. The notice does not discuss or acknowledge any of the categories of humanitarian conditions addressed in the prior extension notice. *See supra*, at 8-9. The only source cited for the Secretary’s cursory dismissal of the ongoing humanitarian crisis in Syria is a press release that post-dated her deadline to make a final decision, 90 Fed. Reg. at 45400 n.22, evidencing the post hoc nature of this otherwise unsupported conclusion. The government’s eleventh-hour explanation for this discrepancy—a generalized assertion that the facts underlying the press release “had been documented months earlier,” Appl. 24 n.6—does not demonstrate that the Secretary consulted the sources of such documentation prior to making her determination and thus provides no explanation at all. Of course, if she had done so, the administrative record would show as much, but the government has refused to produce that record.

Instead of providing evidence of prior consultation, Defendants cite only a conclusory statement in the termination notice that consultation occurred. Appl. 17-

18. The contradiction between the termination notice and the State Department’s contemporaneous positions, as well as significant evidence that consultations did not occur in precursor terminations, provided ample support to displace the presumption of agency regularity. *See* App. 18a. Indeed, documents produced in other TPS cases show that the Secretary’s alleged “consultation” as to Syria consisted of a single email to State—with no question or request for input—that lumped Syria in with TPS designations for three other countries, and the blanket response that “State has no foreign policy concerns with ending these TPS designations[.]” *Aung Doe*, 2026 WL 184544, at \*13.

The statute’s consultation requirement requires more than a cursory sign-off on a predetermined decision. It requires “a meaningful exchange of information.” *Cal. Wilderness Coal. v. U.S. Dep’t of Energy*, 631 F.3d 1072, 1086 (9th Cir. 2011). The ordinary meaning of the term “consult” is to “seek information or advice from (someone with expertise in a particular area)” or to “have discussions or confer with (someone), typically *before* undertaking a course of action.” *Id.* at 1087 (internal quotation omitted); *see also Roe v. Flores-Ortega*, 528 U.S. 470, 478 (2000) (defining “consult”). Defendants present nothing to suggest that Congress had a different meaning of “consultation” in mind when it employed that term in the TPS statute. Indeed, the statute’s legislative intent to formalize previous, ad hoc designations of temporary immigration relief by the executive supports using the ordinary meaning of “consultation,” *see* 135 Cong. Rec. H25858 (daily ed. Oct. 25, 1989), which requires reciprocal communication of some substance.

**B. The termination process was contrary to law because the secretary based her decision on an extra-statutory factor.**

The government violated the TPS statute by terminating Syria's TPS designation based on an overarching national-interest justification, divorced from country conditions. As the district court held, the statute does not authorize invoking the "national interest" as a standalone, let alone dispositive, justification for termination, because terminations must be based on agency review and consultations as to "conditions in the foreign state." App. 19a-21a; 8 U.S.C. §1254a(b)(3)(A)-(B). Thirty-four years of agency practice support this interpretation of the statutory text. See App. 20a. In terminating Syria's TPS designation based largely on the "national interest," the government acted outside the bounds of the statute.

Rather than second guess the Secretary's national-interest assessment, Appl. 25-26, the district court simply fulfilled its "duty ... to say what the law is." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024) (quotation omitted). The statute mentions "national interest" only once: in authorizing the Secretary to consider the national interest when designating a country based on "extraordinary and temporary conditions." 8 U.S.C. § 1254a(b)(1)(C). Even at the designation stage, the statute precludes consideration of the national interest where the designation is based on armed conflict or environmental disaster. *Id.* § 1254a(b)(1)(A)-(B). Similarly, the statute does not mention or authorize periodic review of the national interest; rather, Congress specified that extension and termination decisions must be based on review of "the conditions *in the foreign state*." *Id.* § 1254a(b)(3)(A) (emphasis added); see also *id.* § 1254a(b)(3)(B) (when terminating TPS, the Secretary can consider only whether

the “*foreign state* continues to meet the conditions for designation.” (emphasis added)). “[W]hen Congress includes particular language in one section of a statute but omits it in another section ..., it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” *Collins v. Yellen*, 594 U.S. 220, 248 (2021). Just as the statute never mentions, and therefore precludes, consideration of the national interest at the initial designation stage where designation is based on armed conflict or environmental disaster, 8 U.S.C. §1254a(b)(1)(A)-(B), the statute does not permit terminations in the name of what any given administration believes is the “national interest.” Rather, the agency may consider the national interest *only* at designation and *only* where the designation is based on “extraordinary and temporary conditions.” *Id.* § 1254a(b)(1)(C).

The government’s reliance on the fact that when Secretary Napolitano first designated Syria for TPS based on “extraordinary and temporary conditions,” she did so with a finding that such designation was not contrary to the national interest is no response. Appl. 25. Secretary Napolitano’s actions were entirely consistent with the statute’s text: It requires consideration of the “national interest” when *designating* a country based on “extraordinary and temporary circumstances,” but not when deciding whether to extend or instead terminate that designation.<sup>11</sup> This structure aligns with congressional intent to limit executive discretion *after* a country is

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<sup>11</sup> In any event, this is not a case where a TPS designation was based only on extraordinary and temporary conditions; Syria’s designation was also partly based on the “armed conflict” condition. *See, e.g.*, 77 Fed. Reg. at 19027; 89 Fed. Reg. 5562.

designated to insulate TPS holders from termination decisions based on the “vagaries of our domestic politics.” *NTPSA*, 150 F.4th at 1009-11.

Here, the Secretary made her perception of the “national interest” the keystone of her decision. She asserted that country conditions—the very thing Congress required her to consider—were simply not relevant because the national interest “required” termination. 90 Fed. Reg. at 45400. Her decision therefore violated the requirements of the TPS statute as well as Congress’s intent to create a process that was “predictable, dependable, and insulated from electoral politics.” *NTPSA*, 150 F.4th at 1008.

#### **IV. The Court Should Deny Certiorari Before Judgment.**

The government’s request that this Court treat its stay application as a petition for certiorari before judgment is bizarre and meritless. It makes no showing that the fact-bound issues here warrant certiorari, much less that any imperative public interest warrants skipping imminent appellate review. This case involves fewer than 7,000 people, all of whom have lived here for years and been vetted repeatedly by DHS. Whether this small law-abiding group should continue to hold immigration status cannot constitute a matter of “such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court,” Sup. Ct. R. 11. Certiorari before judgment has been granted in cases of “great constitutional significance” or that have “extraordinary national importance for other reasons.” Stephen M. Shapiro et al., *Supreme Court Practice* § 4.20 (11th ed. 2019, online) (collecting cases). Even then, “the public interest in a speedy determination” must be sufficiently “exceptional” to “warrant

skipping the court of appeals in this fashion.” *Id.* This case falls far short of that “very demanding standard.” *See also Mount Soledad Mem’l Ass’n v. Trunk*, 134 S. Ct. 2658, 2659 (2014) (Alito, J., statement respecting the denial of certiorari before judgment).

The government suggests the administration of the TPS statute as a whole presents issues of pressing importance, Appl. 32-33, but that is no reason to grant certiorari *in this case*, let alone to do so before judgment and at an extraordinarily preliminary stage of litigation. There is *no administrative record* here, because the government successfully opposed production, emphasizing that the preliminary injunction posture accommodated an “incomplete record.” Supp. App. 353a; *see* Supp. App. 355a-358a. This case is therefore a uniquely poor vehicle for considering the questions at issue. The government remains free to seek certiorari in any of several cases at more advanced stages of litigation that contain published decisions based on full administrative records, all of which involve many more thousands of TPS holders.

The Ninth Circuit has already affirmed a final judgment entered on a full administrative record in *NTPSA*, 166 F.4th 739 (setting aside vacatur and termination of TPS for Venezuela and vacatur for Haiti). Yet rather than seeking certiorari in that case, which would require the Court’s consideration of the jurisdiction-stripping question and other common issues, the government has sought en banc review, necessarily *delaying* this Court’s review. *See NTPSA v. Noem*, No. 25-5724, Dkt. No. 76 (9th Cir. Feb. 3, 2026) (seeking en banc review). That cannot be squared with the government’s claim that it seeks certiorari before judgment here to ensure this Court can “provide guidance to lower courts on pressing and recurring

issues at the core of important administration priorities.” Appl. 34. Other district courts have also issued lengthy published decisions on fulsome administrative records in other TPS cases. *See, e.g., Miot*, 2026 WL 266413 (granting postponement of Haiti termination in published decision after review of certified administrative record); *NTPSA*, 2025 WL 4058572 (final judgment setting aside termination of TPS for Honduras, Nepal, and Nicaragua). If TPS issues warrant this Court’s review, it should not come in a case as undeveloped as this one.

The Court has denied certiorari before judgment in recent cases involving far more significant impact. *See DHS v. Regents of the Univ. of Cal.*, 583 U.S. 1162 (2018) (challenge to rescission of Deferred Action for Childhood Arrivals program, impacting several hundred thousand people); *United States v. Trump*, 144 S. Ct. 539 (2023) (district court held that former President was not absolutely immune from prosecution). There are no exceptional circumstances that compel this Court to take the extraordinary step the government requests here.

The differing treatment of stay applications in TPS cases does not create a circuit split warranting certiorari, Sup. Ct. R. 10, let alone before judgment. The government points only to brief nonprecedential orders issued by the Fourth and Ninth Circuits addressing emergency applications about different countries designated for TPS, claiming that those circuits reached contrary conclusions on similar merits challenges as those presented here. *See* Appl. 33. But those brief orders involved distinct arguments bound up in country-specific facts, Order at 4, *NTPSA v. Noem*, No. 26-199, Dkt. No. 11 (9th Cir. Feb. 9, 2026) (“*NTPSA Order*”). And far from

conflicting with the Second Circuit’s order below, the Fourth Court’s preliminary decision pointed in the *same* direction, finding a plausible claim for relief that the termination of TPS for Afghanistan and Cameroon was preordained and that “the balance of the equities and the public interest weigh[ed] in favor of” the plaintiffs. *CASA*, 2025 WL 2028397, at \*1 (merely finding “insufficient evidence to warrant the extraordinary remedy” requested “pending appeal,” “[a]t this procedural posture”).

There is especially no conflict on the scope of Section 1254a’s jurisdictional bar, and the government does not attempt to argue otherwise. As described above, every single published decision considering the government’s extreme jurisdictional position rejects it. *See supra* Pt. II. And just like the Second Circuit, neither the Fourth Circuit nor the Ninth Circuit has applied the jurisdictional bar to reviewing violations of Section 1254a’s requirements. The Fourth Circuit held that Plaintiffs presented “a plausible claim for relief,” necessarily determining the *existence* of jurisdiction. *CASA*, 2025 WL 2028397, at \*1; *see Lance v. Coffman*, 549 U.S. 437, 439 (2007) (per curiam) (federal courts “must determine that they have jurisdiction before proceeding to the merits”). Meanwhile, the Ninth Circuit, in a published decision, explicitly rejected the government’s argument that federal courts lack jurisdiction to review procedural violations of, or decisions that exceed authority granted under, the TPS statute. *NTPSA*, 166 F.4th at 758-61. That is consistent with a long line of decisions holding that Section 1254a does not preclude judicial review of statutory and constitutional challenges to TPS terminations. Supp. App. 6a-7a (citing cases). The unpublished Ninth Circuit order staying relief in a different TPS case conflicts

with its own prior published decision, and in any event is nonprecedential, so necessarily cannot create a circuit split. *NTPSA Order, supra*, at 3-4.

Secretary Noem has chosen to terminate every single TPS designation that has come before her. Defense of those decisions, issued one after another irrespective of the unique circumstances of each country, does not create an emergency warranting certiorari before judgment. That so many district courts have found specific reasons to postpone or set aside TPS terminations in differing circumstances is a reason to allow these “complex” issues to “further percolat[e]” in the lower courts before the Supreme Court grants certiorari. *See, e.g., Calvert v. Texas*, 141 S. Ct. 1605, 1606 (2021) (Sotomayor, J., statement respecting the denial of certiorari). It is also affirmation that district courts are universally finding evidence of illegal practices in the agency’s TPS decision-making.

Far from seeking guidance on a case of imperative public interest or national significance, this petition is a transparent gambit to sidestep “normal appellate practice,” Sup. Ct. R. 11, simply because the government has lost at a preliminary stage below. The Court should deny the petition and allow this case to proceed before the Second Circuit, which has scheduled briefing to begin on March 11, 2026.

## CONCLUSION

The Court should deny the government's application for a stay as well as its petition for certiorari before judgment.

Respectfully submitted,

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