

In the Supreme Court of the United States

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

v.

DAHLIA DOE, ET AL.

REPLY IN SUPPORT OF APPLICATION
TO STAY THE ORDER ISSUED
BY THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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Twice, this Court has stayed lower-court decisions blocking the Secretary of Homeland Security’s determinations regarding Temporary Protected Status (TPS) from going into effect. See *Noem v. NTPSA*, 145 S. Ct. 2728 (2025); *Noem v. NTPSA*, 146 S. Ct. 23 (2025). Twice, this Court has thus necessarily determined that the government is likely to succeed on the merits based on its arguments that 8 U.S.C. 1254a(b)(5)(A) “unambiguously bars judicial review of [Administrative Procedure Act] claims that attempt to challenge the substantive considerations underlying’ the Secretary’s ‘determination[s] * * * with respect to [a] designation, or termination.’” 25A326 Gov’t Reply Br. 6 (quoting 24A1059 Gov’t Reply Br. 3). And twice, this Court has likewise necessarily determined that the balance of the equities weighs in the government’s favor, *inter alia* because lower-court injunctions have precluded the government “from effectuating statutes enacted” by the people’s representatives, 25A326 Gov’t Reply Br. 14; 24A1059 Gov’t Reply Br. 15, and because these orders force the extension of immigration protections whose continuation the Secretary de-

terminated would undermine “national security,” “public safety,” and “foreign policy” interests, 25A326 Gov’t Appl. 24; 24A1059 Gov’t Appl. 37. Those cross-cutting principles are as true for the Syria designation at issue here as they were for the Venezuela designation at issue before—and for the TPS terminations for Afghanistan, Cameroon, Nepal, Honduras, and Nicaragua that the Fourth and Ninth Circuits allowed to take effect. Lower courts have repeated the same playbook to thwart the terminations, this Court has rejected those earlier attempts, and this foray should yield the same result.

Respondents disagree by rehashing meritless arguments that prior, unsuccessful respondents pressed in the very applications that respondents now say were materially different. Here, as before, respondents’ challenges—including the familiar failure-to-consult-other-agencies-enough claim—ask courts to review the substance of the Secretary’s determinations. Opp. 25-39; 25A326 Br. in Opp. 36. Here, as before, respondents fail to grapple with the common-sense reading of Section 1254a(b)(5)(A): that its bar on judicial review of “any determination” of the Secretary “with respect to * * * termination” at a minimum covers respondents’ (and prior respondents’) APA claims, which directly challenge the Secretary’s specific TPS determinations and process of decision-making. Opp. 21-29; 25A326 Br. in Opp. 18-29; 24A1059 Br. in Opp. 18-27. Here, as before, respondents would effectively negate that bar by implausibly limiting it to determinations regarding country conditions (and then allowing challenges to how country conditions get weighed). See, *e.g.*, Opp. 22, 24-26; 25A326 Br. in Opp. 26-27; 24A1059 Br. in Opp. 21-23.

Likewise, here, as before, respondents incorrectly reject the government’s irreparable harm by discounting the foreign-policy interests, asserting that the government may avoid harms to national security by withdrawing TPS from ineligible indi-

viduals, and claiming that allowing TPS to be retained for only a few more months is unproblematic. See Opp. 13-16; 24A1059 Br. in Opp. 15-17; 25A326 Gov't Appl. 37-40. Those arguments rest on the untenable premise that the government is never irreparably harmed when courts block it from changing a prior administration's approach and that courts should always continue the prior policy until all challenges are resolved. That this case involves 6100 Syrian TPS holders, whereas this Court's prior stays governed more than 300,000 Venezuelan TPS holders, makes no difference—just as it made no difference when district courts attempted to evade this Court's stays of reinstatement of removed agency heads by fixating on irrelevant distinctions between the MSPB, NLRB, CPSC, and then the FTC.¹ Otherwise, this Court's stay orders would settle nothing—not even materially similar cases with materially similar legal issues in materially similar postures. But, as this Court has already explained, interim orders “inform how a court should exercise its equitable discretion in like cases.” *Trump v. Boyle*, 145 S. Ct. 2653 (2025).

Thus, the Second Circuit's view that this Court's previous orders are “not dispositive” because they “contained no explanation” and involved “a TPS designation of a different country, with different factual circumstances and different grounds for resolution by the district court,” Appl. App. 39a, provides all the more reason to grant a stay here. And the Second Circuit's summary order clearly splits with the Ninth Circuit's recent stay order as to the termination of TPS for Nepal, Honduras, and Nicaragua, and the rationale underlying the Fourth Circuit's refusal to stay the termination of TPS for Afghanistan and Cameroon.

Absent this Court's intervention, district courts across the country are poised

¹ See *Trump v. Wilcox*, 145 S. Ct. 1415 (2025); *Trump v. Boyle*, 145 S. Ct. 2653 (2025); *Trump v. Slaughter*, 146 S. Ct. 18 (2025).

to continue this unsustainable cycle, halting the Secretary’s TPS determinations days before they would otherwise go into effect. Appl. 4-5, 33-34. The Court should once again stay an order that wrongly postpones the Secretary’s termination and wrongly attempts to vest foreign policy decision-making in inferior Article III courts. To avoid the need for this Court to consider yet another TPS application every few months, the Court should further grant certiorari before judgment to fully consider the merits of the important issues presented in this case.

A. The Government Is Likely To Succeed On The Merits

1. The statute precludes judicial review of respondents’ claims

As before, the government is likely to succeed on the merits because 8 U.S.C. 1254a(b)(5)(A) precludes review of respondents’ claims. See Appl. 15-21; 25A326 Gov’t Appl. 16-19; 25A326 Gov’t Reply Br. 6-10; 24A1059 Gov’t Appl. 16-20; 24A1059 Gov’t Reply Br. 3-6. That provision “unambiguously bars judicial review of APA claims that attempt to challenge the substantive considerations underlying” the Secretary’s “determination[s] * * * with respect to [a] designation, or termination or extension of a designation,” including her termination determination here. 25A326 Gov’t Reply Br. 6 (quoting 24A1059 Gov’t Reply Br. 3); 8 U.S.C. 1254a(b)(5)(A). Thus, considering these same arguments—and this Court’s prior orders—the Ninth Circuit held that “the government has shown a likelihood of prevailing in its argument that the Secretary’s action is unreviewable because it is a “determination . . . with respect to the . . . termination . . . of a designation[] of a foreign state.” *NTPSA v. Noem*, 26-199 C.A. Doc. 11, at 4 (9th Cir. Feb. 9, 2026) (*NTPSA Order*) (quoting 8 U.S.C. 1254a(b)(5)(A)).

Respondents repeat the same objections as in prior applications, to no avail. Respondents (Opp. 22) attack the same strawman, contending that the government’s

position would bar judicial review of decisions to designate Mexico for TPS for 50 years, see 25A326 Br. in Opp. 27-28 (raising same hypothetical); 24A1059 Br. in Opp. 26-27 (same), or to sell TPS designations to the highest bidder. But regardless of whether the statute authorizes judicial review in those circumstances, respondents here (as before) mount arguments that fall in the heartland of the judicial-review bar: They “attack * * * the substantive considerations underlying the Secretary’s specific TPS determinations over which the statute prohibits judicial review.” *Ramos v. Wolf*, 975 F.3d 872, 893 (9th Cir. 2020), reh’g en banc granted, opinion vacated, 59 F.4th 1010 (9th Cir. 2023). They question the Secretary’s assessment of country conditions (Opp. 30-31), the adequacy of her consultation (Opp. 31-32), and her consideration of the national interest (Opp. 33-35). In accepting those challenges, the district court considered the substance of the Secretary’s determinations and rejected them as “confound[ing] logic” and “not [grounded] in fact.” Appl. App. 17a, 25a. At a minimum, the judicial-review bar precludes those challenges, which ask a court to “inquire whether a challenged agency decision is arbitrary, capricious, or procedurally defective.” *Amgen, Inc. v. Smith*, 357 F.3d 103, 113 (D.C. Cir. 2004).

Respondents claim that the government’s position on Section 1254a(b)(5)(A) has been rejected by “every published decision to consider” it. Opp. 21 (emphasis omitted). That supposed consensus omits that many of those decisions were stayed on further review—including two by this Court. See *Noem v. NTPSA*, 146 S. Ct. 23 (2025) (Venezuela); *Noem v. NTPSA*, 145 S. Ct. 2728 (2025) (Venezuela); *NTPSA Order 3-5* (Honduras, Nepal, and Nicaragua); see also *CASA, Inc. v. Noem*, No. 25-1792, 2025 WL 2028397 (4th Cir. July 21, 2025) (Afghanistan and Cameroon). And contrary to respondents’ contention (Opp. 21), the Ninth Circuit in *Ramos* previously rejected as unreviewable claims like the ones at issue. *Ramos*, 975 F.3d at 892-895

(declining to review a claim that the Secretary erred by failing to consider intervening events, despite plaintiffs' characterization of the claim as challenging agency practice and involving statutory interpretation).

Meanwhile, respondents' contrary interpretation of the judicial-review bar would render it virtually meaningless. They contend (Opp. 22-25) that Section 1254a(b)(5)(A) prohibits review only of the Secretary's country-conditions findings, but otherwise allows courts to second-guess the Secretary's decision to designate a country for TPS, or to extend or terminate a country's TPS designation. See 25A326 Br. in Opp. 20-22; 24A1059 Br. in Opp. 19-21. They justify that parsimonious reading of the judicial-review bar by interpreting (Opp. 23) the broad term "determination" to refer exclusively to Section 1254a(b)(3)'s instruction to the Secretary to "*determine* whether the conditions" for designation are still met when considering whether to extend or terminate a designation, 8 U.S.C. 1254a(b)(3)(A) (emphasis added). They then turn around and contend that even claims that implicate country conditions (like the asserted "active armed conflict" and "destruction of critical infrastructure" in Syria) are not barred, and that courts can and should consider litigants' views of such country conditions to infer that the Secretary must have erred in terminating TPS. See Opp. 30. That interpretation remains incorrect.

To start, respondents provide no basis to reduce Section 1254a(b)(5)(A)'s reference to "any determination with respect to" TPS designation or termination to one specific "determinat[ion]" that is part of that process. This Court has rejected such a "term of art" construction of "determination"—which is "hardly a rarely used word"—when "nothing in the [statute's] context suggests that Congress meant for its use * * * to reach only [statutory] provisions that happen to use some variant of that word." *EPA v. Calumet Shreveport Refining, LLC*, 605 U.S. 627, 648-649 (2025) (ci-

tation omitted). Here, respondents' reading of "determin[ation]" makes no sense even on its own terms. While Section 1254a(b)(3) refers to a "determination" regarding country conditions, that is just referring back to an evaluation of whether the "findings" about country conditions and other statutory conditions under Section 1254a(b)(1) remain valid. Whether described as "findings" or "determinations," those decisions—along with other subsidiary determinations and the ultimate decision whether to designate the country, extend the designation, or terminate it—are unreviewable; they all fall within the ambit of "any determination with respect to" a TPS designation, extension, or termination. Had Congress shared respondents' position on reviewability, it presumably could have zeroed in on specific "findings" instead of determinations. But Congress did not take that course. Under the statute Congress enacted, just as a court cannot review the Secretary's decision whether to designate a particular country in the first instance, it cannot review the substance of the Secretary's decision whether to terminate that designation.

Respondents invoke (Opp. 24-25) *McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479 (1991)—just like prior, unsuccessful respondents, see 25A326 Br. in Opp. 26-28; 24A1059 Br. in Opp. 21-24—but *McNary* is no help. *McNary* involved a judicial-review bar "of a determination respecting an application for adjustment of status" under 8 U.S.C. 1160(e). 498 U.S. at 491-492. The Court there treated the relevant determination as the resolution of the application—just as the government focuses on the resolution of the termination decision here—and only allowed for review of claims that challenged a collateral agency action, not the denial of the application. See *Reno v. Catholic Soc. Servs.*, 509 U.S. 43, 56 (1993) (interpreting *McNary* as permitting a challenge that could be reviewed "without referring to * * * the denial of any individual application"); *City of Rialto v. West Coast Landing Corp.*, 581 F.3d 865,

876 (9th Cir. 2009) (explaining that *McNary*-style challenges “do not depend on the facts of any given individual agency action”); *Ramos*, 975 F.3d at 893 (holding that claims that “depend[] on a review and comparison of the substantive merits of the Secretary’s specific TPS terminations” and “seek direct relief from the challenged decisions” are not collateral under *McNary*).

Respondents’ claims are in no sense collateral to the Secretary’s determination to terminate Syria’s TPS designation. They identify no distinct agency policy or practice they are challenging—not least because the APA provides for review only of final agency actions, and there is no freestanding policy or practice amounting to an agency action they could challenge. See *Biden v. Texas*, 597 U.S. 785, 809 (2022) (rejecting attempt to “postulat[e] the existence of an agency decision wholly apart from any ‘agency statement of general or particular applicability * * * designed to implement’ that decision”) (quoting 5 U.S.C. 551(4)). And the relief that respondents seek—to set aside a specific termination—belies the suggestion that they are challenging some unnamed, unidentified collateral policy. See *DCH Reg’l Med. Ctr. v. Azar*, 925 F.3d 503, 508 (D.C. Cir. 2019) (rejecting *McNary*-style challenge that sought “to attack the very [decisions] that the preclusion provision insulates from review”).

Respondents relatedly attempt (Opp. 25) to evade Section 1254a(b)(5)(A) by characterizing their claims as challenges to noncompliance with procedural strictures of the TPS statute. Prior respondents tried the same gambit. 25A326 Br. in Opp. 36 (alleging that “the termination failed to comply with the statute’s procedural requirements for interagency consultation and country conditions review”). But as the government has explained (Appl. 17-19; 25A326 Gov’t Appl. 17-18; 24A1059 Gov’t Appl. 18-20), litigants cannot plead around the judicial-review bar just by calling the Secretary’s actions “procedurally defective,” *Amgen*, 357 F.3d at 113, as “almost any chal-

lenge to [a determination] could be recast as a challenge to its underlying methodology,” *DCH Reg’l Med. Ctr.*, 925 F.3d at 506. And here, as in the Venezuela TPS litigation, respondents continue to mislabel the same kinds of arguments second-guessing the Secretary’s specific decisions as broader collateral challenges, to no avail. There, as here, the challengers raised claims regarding the Secretary’s consultation process. See Appl. 18. There, as here, the challengers have attempted to dress that claim in statutory or “procedural” garb. 25A326 Br. in Opp. 36. Regardless of respondents’ characterization, allowing challenges to the substantive considerations underlying the Secretary’s decisions, including how well she purportedly discharges the relevant statutory inquiries, would end-run the judicial-review bar and would require courts to superintend how the Secretary makes determinations suffused with sensitive national-security and foreign-policy judgments and coordinates within the Executive Branch. See 25A326 Gov’t Reply Br. 7; 24A1059 Gov’t Reply Br. 3.

Respondents’ arguments underscore that their position would render the judicial-review bar a near nullity. Under their view, virtually any claim challenging the Secretary’s determinations may be recharacterized as “procedural” or “collateral” to the underlying action, despite the fact that it asks courts to assess country conditions, second-guess the Secretary’s judgments, and set aside the very determination Congress made unreviewable. That is not the statute that Congress enacted.

2. Respondents’ APA claims fail on the merits

Even if respondents’ APA claims were reviewable, they fail on the merits. Respondents criticize the Secretary’s process based on their disagreement with its results. And respondents seek to impose atextual procedural requirements even as they ignore requirements that the statute imposes.

a. **Consultation.** Respondents first contend (Opp. 30-32) that the Secre-

tary did not “consult[] with appropriate agencies of the Government” before deciding to terminate Syria’s TPS designation. 8 U.S.C. 1254a(b)(3)(A). Respondents accuse (Opp. 30-32) the government of failing to substantiate inter-agency consultation and infer that none—or not enough—happened because the Secretary did not mention certain country conditions that respondents consider relevant. But the Secretary expressly stated that she engaged in the requisite consultation, see *Termination of the Designation of Syria for Temporary Protected States*, 90 Fed. Reg. 45,398, 45,399-45,402 (Sept. 22, 2025), and nothing in her discussion of country conditions suggests otherwise. The Secretary described the conditions in Syria in detail, acknowledging the displacement of much of the population during the country’s civil war, the “sporadic and episodic violence” that continues, and the “security challenges” that remain. *Id.* at 45,400. She nonetheless concluded that conditions in Syria align with “the post-conflict transitional phase of a nation rather than ongoing armed conflict,” noting that millions of displaced Syrians have returned. *Ibid.* That the Secretary did not cite a particular State Department document—which assesses threats to “U.S. citizens, nationals, and legal residents,” not Syrian citizens, Appl. 24 (citation omitted)—hardly suggests that the State Department was not consulted at all. Even respondents frame their claim as a lack of “meaningful” consultation (Opp. 32)—underscoring that they seek to second-guess the Secretary’s specific decision-making process because she reached a result they dislike. But the State Department here had the opportunity to weigh in, and did so. The statute requires nothing more.

b. **Political motives.** Respondents next press an argument that the Second Circuit did not endorse: that the termination reflected a predetermined political agenda. See Opp. 30-31. But, like many other statutes, the TPS statute does not make it unlawful “for an agency head to come into office with policy preferences and

ideas” and then “substantiate the legal basis for a preferred policy.” *Department of Commerce v. New York*, 588 U.S. 752, 783 (2019). In arguing otherwise, respondents mischaracterize their own purported evidence. They assert (Opp. 30-31) that the Secretary expressly stated that she was following the President’s directive as to TPS, implying that the President ordered the TPS program’s elimination. In fact, the Secretary discussed the need to “keep integrity” in the TPS program and ensure it is “used properly” and not “abused.” D. Ct. Doc. 20-30 at 4-6 (Oct. 21, 2025). Similarly, the President’s Executive Order simply directed officials to “ensur[e] that designations of [TPS] are consistent” with the statute, “appropriately limited in scope,” and “made for only so long as may be necessary to fulfill the textual requirements” of the statute. *Protecting the American People Against Invasion*, Exec. Order No. 14,159 of Jan. 20, 2025, § 16(b), 90 Fed. Reg. 8443, 8446 (Jan. 29, 2025). There is nothing unlawful about adhering to such an order. Appl. 26-27.

Respondents see (Opp. 31) something nefarious in the Secretary’s termination of multiple TPS designations. But consistency across multiple, related agency actions—for example, in the assessment of the national interest—is a hallmark of reasoned decisionmaking, not grounds for suspicion. See, e.g., *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944).

Nor does the termination of multiple TPS designations suggest disregard for procedural prerequisites. The South Sudan TPS termination proves the point. The Secretary extended the designation of South Sudan for six months because she “only had a non-current record from the Department of State” regarding the country conditions and that “record did not contain a meaningful national interest discussion.” *Extension of South Sudan Designation for Temporary Protected Status*, 90 Fed. Reg. 19,217, 19,218 (May 6, 2025). She stated that without a “current country conditions

analysis that would allow her to make an informed determination on South Sudan’s designation by” the statutory deadline, an extension was appropriate. *Ibid.* Only after receiving and considering the information that she deemed necessary did the Secretary act. See *Termination of the Designation of South Sudan for Temporary Protected Status*, 90 Fed. Reg. 50,484 (Nov. 6, 2025). Here too, she “consult[ed] with appropriate U.S. Government agencies”; “reviewed country conditions in Syria”; and “considered whether Syria continues to meet the conditions for designation.” 90 Fed. Reg. at 45,399. Based on her review, the Secretary determined that Syria’s TPS designation should be terminated. *Id.* at 45,400. The Secretary thus followed appropriate procedures and reached a conclusion that accounted for current conditions in Syria, *ibid.*, as well as the national interest, which includes support for “the administration’s broader diplomatic engagement with Syria’s transitional government,” *id.* at 45,402. The TPS statute directs the Secretary to make exactly those types of judgments, see 8 U.S.C. 1254a(b)(1) and (3), which are within the province of the Executive Branch, not the courts. See *Holder v. Humanitarian Law Project*, 561 U.S. 1, 33-34 (2010).

c. **National interest.** Respondents inexplicably fault (Opp. 33-35) the Secretary for considering the national interest in deciding whether to terminate TPS. But the statutory text *requires* considering the national interest here. When the Secretary finds that there are “extraordinary and temporary conditions in the foreign state,” she may not designate that country unless she also concludes that “permitting the aliens to remain temporarily in the United States is [not] contrary to the national interest of the United States.” 8 U.S.C. 1254a(b)(1)(C). When the Secretary then considers whether to extend or terminate that designation, the country necessarily “no longer continues to meet the conditions for designation” if the Secretary determines that the national interest factor is no longer satisfied. 8 U.S.C. 1254a(b)(3)(B).

Respondents' contrary view would bizarrely require the Secretary to consider the national interest in making an initial TPS designation, yet blind herself to the national interest in deciding whether to extend or terminate the designation. That position is untenable given that Section 1254a(b)(3) is designed to "limit[] unwarranted * * * extensions of TPS," not to lock the Secretary into indefinite extensions even as her assessment of the national interest changes. *Ramos*, 975 F.3d at 891.

Respondents protest (Opp. 34-35) that allowing terminations based on the national interest would leave TPS holders vulnerable to unexpected terminations based on the Secretary's subjective views. But Congress specifically designed the statutory scheme to give the Secretary broad discretion—including by rendering TPS designations entirely discretionary even when the statutory factors are met and by rendering the Secretary's determinations related to designations, extensions, or terminations entirely unreviewable. Further, it is a feature, not a bug, of the scheme that Congress wanted the Executive Branch to consider the national interest in this quintessentially national-security-laden area. Requiring the Secretary to assess the national interest when determining whether to extend a designation made under one of the three possible conditions for designation is in no way inconsistent with that regime.

B. The Equities Support A Stay

This Court has recognized that the government suffers irreparable injury "[a]ny time" it is "enjoined by a court from effectuating statutes enacted by representatives of [the] people." *Trump v. CASA, Inc.*, 606 U.S. 831, 860 (2025) (quoting *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)). Here, the harm to the government is especially serious: The Secretary determined that an extension of the Syria's TPS designation would harm "national security" and "public safety" and imperil the United States' foreign-policy interests. 90 Fed. Reg. at 45,401-

45,402. This Court necessarily recognized materially similar irreparable harms in granting the government’s prior stay applications in cases involving the termination of TPS for Venezuela. See 24A1059 Gov’t Appl. 36-38; 25A326 Gov’t Appl. 23-26; see also *Nken v. Holder*, 556 U.S. 418, 434 (2009).

Like respondents in the Venezuela TPS cases, respondents here dispute (Opp. 13-14) the foreign-policy interests, assert that the government may avoid national-security harms by withdrawing TPS from ineligible individuals, and see no problem in allowing courts to order retention of TPS for a few more months. See 24A1059 Br. in Opp. 15-17; 25A326 Gov’t Appl. 37-40. This Court has previously rejected virtually identical arguments, for good reason. Those arguments wrongly assume that the government could never face irreparable harm when it changed an approach from a prior administration because litigants could always assert that the status quo should remain in place just a little longer. That approach invites indefinite postponement of critical governmental policies—all the way until the end of an administration, when the issue may become moot, as happened with TPS terminations during the first Trump administration. See 24A1059 Gov’t Appl. 35-36.

Permitting the implementation of the government’s policies here is particularly important, given the Secretary’s specific assessment of the national interest and foreign policy with respect to Syria. The Secretary explained that it is “virtually impossible” for the government to “meaningful[ly] vet[.]” Syrian nationals, which puts public safety and national security at risk. 90 Fed. Reg. at 45,401. And the Secretary likewise explained the government’s new relationship with Syria, including the “broader diplomatic engagement” and hope for “regional peacebuilding after more than a decade of conflict.” *Id.* at 45,401-45,402 (citation omitted). Thwarting the Secretary’s termination of TPS thus undercuts the Secretary’s judgment as to how best to protect the public

and how best to further the government's foreign-policy goals.

On the other side of the ledger, respondents cite (Opp. 18-20) and the court of appeals relied on (Appl. App. 40a) the same types of harms to beneficiaries as were alleged regarding the Venezuela termination. See 24A1059 Br. in Opp. 15, 17-18 (discussing loss of work authorization, exposure to removal to an unsafe country, and economic losses); 25A326 Br. in Opp. 37-38 (same). Those harms inhere in any termination of temporary protected status, whereupon beneficiaries will lose work authorization and protected status under the program. See 8 U.S.C. 1254a(a)(2). Further, the termination of TPS is not equivalent to a final order of removal. Appl. 31. If individual TPS holders have alternative grounds for immigration status, they can maintain lawful status. If individual TPS holders lack that status, they can each challenge whether removal is proper and seek any available relief or protection in the appropriate removal proceedings.

In all events, Congress has already balanced the equities in these circumstances, and this Court already balanced them in assessing the prior applications and deciding that the interim status quo should be to allow terminations to take effect while the appellate process unfolds. Respondents attempt (Opp. 17) to distinguish this case from Venezuela based on the size of the TPS beneficiary population. But contrary to the court of appeals' conclusion, Appl. App. 39a, this is a "like case[]" that warrants like treatment, *Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025). The harms at issue exist regardless of the size of the TPS beneficiary population. Appl. 30-31. If this case involved a larger program, moreover, respondents would surely argue that the size of the program weighs *against* cancellation by increasing the scope of their alleged harms. Regardless of the size of the program, when the Secretary concludes that a TPS designation under 8 U.S.C. 1254a(b)(1)(C) is "contrary to the national

interest,” she *must* terminate it, 8 U.S.C. 1254a(b)(3)(B), and a court has no basis to second-guess that determination. This Court should again stay the district court’s decision and allow the statutory scheme to operate as Congress designed it.

C. This Court Should Grant Certiorari Before Judgment

This Court’s prior stay orders involving Venezuela TPS confirm the certworthiness of the issues involved in this case. As before, a decision affirming the district court’s order would nullify the Secretary’s time-sensitive judgments in an area that the President has deemed “critically important to the national security and public safety of the United States.” 90 Fed. Reg. at 8443. The case for certiorari is even stronger now that a division has developed among the lower courts considering stay requests involving materially similar issues in other TPS terminations. Appl. 33-34. And because of that existing division, recurrent questions involving application of the judicial-review bar, and common types of APA challenges across these cases, this Court should intervene now and grant certiorari before judgment.

Respondents briefly contest (Opp. 37) the existence of a split, contending that the differing treatment of stay applications reflects “distinct arguments bound up in country-specific facts.” But in each case, courts are considering application of the judicial-review bar. And in each case, litigants are raising similar arguments regarding the Secretary’s consultation with other agencies and the legitimacy of the Secretary’s reasons for terminating TPS. See Appl. 4-5, 33-34. Even respondents cannot dispute that the court of appeals below diverged from the Ninth Circuit’s stay order involving Honduras, Nepal, and Nicaragua, both with respect to reviewability and the merits of a challenge to agency consultation. See Opp. 38-39; see *NTPSA* Order 3-4. Respondents attempt (Opp. 39) to brush aside that order as inconsistent with Ninth Circuit precedent involving the Venezuela termination. But the order ex-

pressly distinguishes that case as involving the “vacatur of a TPS designation” that the court held was “in excess of the Secretary’s statutory authority,” rather than a “termination of TPS,” which is “expressly authorized by statute.” *NTPSA* Order 3 (emphases omitted). The circuits are plainly divided on the questions at issue here.

Respondents also object (Opp. 36) to certiorari before judgment because this case is only at the stage of preliminary relief. But this Court has granted review of preliminary lower-court orders when circumstances warrant. See, e.g., *Department of Education v. Career Colleges & Schools of Texas*, 145 S. Ct. 1039 (2025); *Starbucks v. McKinney*, 602 U.S. 339, 344-345 (2024); *FDA v. R.J. Reynolds Vapor Co.*, 606 U.S. 226, 231 n.2 (2025). That course is appropriate here. The issues presented are purely legal and there is no need for further record development or percolation.

Further, that lower courts continue to disregard the import of this Court’s stay orders in the TPS context, see Opp. 8 (citing six district-court orders preventing TPS terminations), warrants intervention now, not later. Respondents suggest (Opp. 36) that the Court should instead wait to review the Venezuela case, where the Ninth Circuit has entered final judgment. See *NTPSA v. Noem*, 166 F.4th 739 (9th Cir. 2026). But again, in that case, the Ninth Circuit rested its decision on its conclusion that the Secretary lacked authority to *vacate* a prior extension of TPS. *Id.* at 766.² While important, granting plenary review of that conclusion would not necessarily

² The Ninth Circuit reached the same conclusion with respect to the Secretary’s decision to vacate and then terminate the TPS designation for Haiti. *NTPSA*, 166 F.4th at 766-767. As the government previously explained, 25A326 Gov’t Appl. 7 n.6, it did not seek emergency relief with respect to Haiti because the extension the Secretary vacated would expire—and the case would be moot—before it could be finally resolved on the merits. Contrary to respondents’ contention (Opp. 15), that does not undermine the case for a stay here any more than it did with respect to Venezuela. The Secretary knew that regardless of the lower courts’ view of the lawfulness of her vacatur, she would soon have the opportunity to make a new determination with respect to TPS for Haiti. Here, by contrast, the lower courts’ orders indefinitely prevent the Secretary from acting and therefore give rise to much greater irreparable harm.

resolve the numerous challenges to other TPS *terminations*—like this one—that do not involve any vacatur. As for the other possible candidates respondents identify (Opp. 37), that pool just underscores the recurrent nature of the issues. The postponement of Haiti’s termination might well warrant this Court’s review—not least because the district court’s reasoning there materially overlaps with the lower courts’ reasoning here—but that decision is pending before the D.C. Circuit on a stay motion and may not reach this Court. See Appl. 34 n.7. And the final judgment setting aside the terminations of TPS for Honduras, Nepal, and Nicaragua has already been stayed by the Ninth Circuit, so the government has no need (or ability) to seek review in this Court. See *NTPSA* Order 3-5. Meanwhile, district courts persist in blocking terminations on the eve of their effective dates, and this cycle—now with an undeniable circuit split—appears likely to repeat again and again unless and until this Court steps in. Granting certiorari before judgment—in addition to a stay—is the best path to certainty on these recurrent issues affecting critical national policies.

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For the foregoing reasons and those stated in the government’s application, this Court should stay the order of the United States District Court for the Southern District of New York pending the resolution of the government’s appeal to the United States Court of Appeals for the Second Circuit and any proceedings in this Court. This Court should also construe the application as a petition for a writ of certiorari before judgment and grant the petition.

Respectfully submitted.

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Solicitor General

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