No. 26A124

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., APPLICANTS

v.

STATE OF CALIFORNIA, ET AL.

REPLY IN SUPPORT OF APPLICATION FOR STAY

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This Court should swiftly stay the district court's extraordinary and unwarranted injunction barring federal agencies from implementing an Executive Order before those agencies have even decided whether and how the Order can be implemented consistent with federal law, as the Order itself requires. Every day that the district court's injunction remains in place, it blocks the government's ability to finalize and implement the President's proposed policies to promote election integrity for the upcoming federal elections in November. And every day that it remains in place irreparably harms the government, as the start of mail-in and absentee voting in some States is now just one month away.

After the government filed its stay application, the United States Court of Appeals for the District of Columbia Circuit, in a per curiam opinion joined by Judges Millett, Wilkins, and Katsas, affirmed the denial of a preliminary injunction in a parallel challenge to Executive Order 14,399. *DSCC* v. *Trump*, No. 26-5193, 2026 WL 2168617 (July 28, 2026) (per curiam). The court explained the contingency that bars such challenges: The plaintiffs' "request for preliminary relief 'is premised on the threatened impact' of the Executive Order *after* it is implemented and *if* in violation of federal law." *Id.* at *1 (quoting *Trump* v. *New York*, 592 U.S. 125, 131 (2020) (per curiam)). That is particularly problematic because the Executive Order "is not self-executing" and "directs the agencies to act only to 'the extent feasible and consistent with applicable law,'" which means that it "requires compliance with the very legal limitations about which Plaintiffs are concerned." *Ibid.*

The same analysis applies here. Like the *DSCC* plaintiffs, the respondent States rest their challenge on speculation about what impact the Executive Order would have if it were ultimately implemented in violation of federal law. The here-and-now injuries they assert stem from actions they have elected to take in preparation for agency actions that may or may not occur. As the D.C. Circuit explained, the Order by its very terms requires the relevant agencies to comply with all legal requirements in forming their plans, contrary to respondents' repeated suggestion that the contours of future agency action are irrelevant or preordained.

Respondents nonetheless assert that this dispute is justiciable, and that the Executive Order was unlawful. But their arguments mischaracterize the Order and misread the law. The Executive Order is an internal directive from the President to his subordinates, and it does not direct the States to do (or refrain from doing) anything. Instead, it identifies proposed policies and directs executive agencies to implement those policies *if* implementation would be appropriate and lawful. Because significant "'legal and practical constraints'" impede judicial review in those circumstances, Article III justiciability principles "prevent[] courts from 'entangling themselves in abstract disagreements over administrative policies' by delaying review 'until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.'" *DSCC*, 2026 WL 2168617, at *3, *5 (quoting *Abbott Labs.* v. *Gardner*, 387 U.S. 136, 148-149 (1967), and *New York*, 592 U.S. at 133).

The federal government is considering taking modest and commonsense steps, consistent with federal law, to help States ensure that only U.S. citizens vote in federal elections and to facilitate the enforcement of federal law, including laws involving election fraud. Respondents suffer no imminent concrete injury from hypothetical future actions that federal agencies may or may not take, and so Article III bars jurisdiction. This Court should stay the injunction, and it should do so as soon as possible given preparations for the upcoming election.

A. The Government Is Likely To Succeed On The Merits Because This Suit Is Premature

In contending that this dispute is ripe for resolution, Respondents' opposition mischaracterizes the Executive Order and misreads the governing law. When correctly read, the Executive Order is not subject to this pre-enforcement challenge to an as-yet-unimplemented directive from the President to his subordinates to formulate and execute certain policies consistent with law. Nor does respondents' desire to forestall potential future litigation over the agencies' implementation of that directive move the needle. The government is likely to succeed in demonstrating that the district court lacked Article III jurisdiction to enter the preliminary injunction.

1. Respondents repeatedly suggest that the Executive Order "intrudes on [their] sovereign interests by interfering with their ability to administer elections pursuant to their own state laws regarding mail voting and voter eligibility." Opp. 25. The Order does no such thing. To start, the Order does not independently require the States to do anything; instead, it directs executive branch agencies to engage in policymaking that may, at some future date, affect respondents. Equally important, the Order respects States' role in administering elections and verifying voter eligibility and registration. It simply directs executive branch agencies to take a modest,

commonsense approach to election integrity by providing States and the federal government with tools to combat fraud in federal elections.

The President's instruction for DHS to provide State Citizenship Lists would simply give States a valuable tool that can help in vetting their own lists of registered voters if they wish to use it. Respondent New Jersey, for example, recently admitted that, due to a "software error," roughly 6600 aliens were registered to vote in the State, including at least 400 who had already voted. See Governor Mikie Sherrill @GovSherrillNJ, *X* (July 21, 2026, 4:22 p.m.), https://x.com/GovSherrillNJ/status/2079602942722662725?s=20. Yet New Jersey and the other respondents inexplicably object that it would be an affront to their sovereignty for DHS to provide them with a list of individuals who meet the criteria for voting in federal elections (a list they admit they are not required to use, see Opp. 21). They similarly object to the proposed terms for a Postal Service rule that would deliver every properly prepared ballot to the voters the States themselves identify, thus providing the States with an additional tool to ensure that their mail ballots are received and used only by State-authorized voters.

With respect to Section 2, while respondents describe the State Citizenship Lists contemplated by Section 2(a) as authoritative "lists of eligible voters" or "voter rolls," see Opp. 20, that cannot be squared with the Order, which specifies that "[a]n individual's identification on the State Citizenship List does not indicate that the individual has been properly registered to vote in the State." Order § 2(a), 91 Fed. Reg. at 17,125. And critically, respondents themselves concede that "Section 2(a) does not mandate that the States take any particular action to use the State Citizenship Lists," Opp. 21 (brackets and quotation marks omitted), and thus do not identify any cognizable injury from transmission of the Lists alone.

Respondents therefore focus on Section 2(b), which they erroneously suggest "threaten[s] prosecution of officials who do not use the DHS lists to verify citizenship"—precisely what they admit Section 2(a) does not require—when it is "[r]ead together" with Section 2(a). Opp. 10. But such a threat is completely absent from Section 2(b), which merely directs the Attorney General to "prioritize the investigation and, as appropriate, the prosecution of State and local officials or any others involved in the administration of Federal elections who issue Federal ballots to individuals not eligible to vote in a Federal election" under specified federal statutes, or who engage in or assist with "the printing, production, shipment, or distribution of ballots to individuals who are not eligible to vote in a Federal election." Order § 2(b), 91 Fed. Reg. at 17,126. What role, if any, a State's future decision to disregard its Citizenship List may play in a future investigation and prosecution is wholly unknown and unknowable at this time.

Respondents thus resort to fearmongering, hypothesizing that Section 2(b) constitutes an implicit threat of criminal prosecution for elections officials who do not "carry out their elections-administration responsibilities in the way that federal officials prefer." Opp. 22. But that speculation—which rests on assumptions about both how DHS will implement any State Citizenship Lists and how the Attorney General will enforce federal law—does not create a ripe dispute. The same is true of respondents' contrived controversy regarding 17-year-olds validly voting in primary elections. Opp. 29-30. The Order does not expressly address primary elections at all, much less direct the Attorney General to prosecute election officials for allowing 17-year-olds who will be 18 before the general election to vote in primary elections in States allowing that practice. To the contrary, such prosecutions would not be "appropriate," Order § 2(b), 91 Fed. Reg. at 17,126, and thus would be *inconsistent* with Section 2(b).

Respondents also mischaracterize Section 3 of the Order. They assert, for example, that Section 3 "requires States to seek permission from USPS to maintain their mail and absentee voting laws" and to "furnish USPS with a list of voters" to whom they wish to send mail-in or absentee ballots, and that it compels the Postal Service to "require each ballot envelope to" meet certain "design requirements" and to use the state-provided information "to create lists of individuals 'enrolled' with USPS for mail voting." Opp. 11 (quotation marks omitted). But Section 3 does none of those things. As the government explained in its application, Section 3 merely directs the Postal Service "to initiate a *proposed* rulemaking" regarding certain standards for transmission of election mail. Order § 3(b), 91 Fed. Reg. at 17,126 (emphasis added); see Appl. 14-15, 20. It neither dictates the contents of any final rule nor even requires that one issue at all. See Order § 3(b) and (d), 91 Fed. Reg. at 17,126. Indeed, when respondents quote the government's application on this point, suggesting that Section 3 "'directs . . . USPS [to] include certain terms,'" Opp. 21 (quoting Appl. 14) (brackets and ellipsis in original), they notably omit the critical point: though the Order directs USPS to include certain terms in the *proposed* rule, it contains no such directive with respect to any *final* rule. See Appl. 14-15.

Moreover, even if the Postal Service *were* required to adopt the precise terms of the proposal laid out in Section 3—which it is not—many of respondents' descriptions still miss the mark. They suggest that under Section 3's "new ballot-verification program," Opp. 18, States must "seek permission from USPS to maintain their mail and absentee voting laws," Opp. 10, and the Postal Service is empowered to "intercept ballots," Opp. 18. But the Order does not contemplate a "ballot-verification program," a permission process, or interception of ballots. The only "verification" that could possibly occur is matching data provided by the States through the portal against data provided by the States on ballot envelopes, see Order § 3(b), 91 Fed. Reg. at 17,126—far from the comprehensive verification of voter eligibility that respondents posit. Nor would States be required to seek "permission" from the Postal Service to allow voting by mail; to the contrary, the Order contemplates only "notification" that a State plans to transmit ballots via U.S. Mail. See *id.* § 3(b)(ii), 91 Fed. Reg. at 17,126. And the Order would not "facilitate USPS' ability to intercept ballots." Opp. 11. Rather, the text of the Order contemplates only the use of the Postal Service's authority to place commonsense restrictions on the labeling of sensitive types of mail as a condition of mailing those items.

Further, the facts on the ground belie respondents' suggestion that there is no need to wait for a final rule because the Postal Service is blindly carrying out every provision in Section 3. See Opp. 21 (suggesting that "the steps that the federal government is taking to finalize the EO * * * do not differ from the EO's text in any material way"). While respondents note that "'[a]ny final rule' adopted pursuant to Section 3 'shall be issued no later than 120 days from the date of'" the Order, Opp. 12, they fail to mention that the 120-day mark passed last Wednesday, on July 29, 2026, without issuance of any rule, much less a carbon copy of the Order's proposed rule. As they themselves elsewhere acknowledge, "federal rulemakings often are" "delayed," Opp. 3, as agencies work through how to lawfully craft proposed policies in light of the comments received. That illustrates the impropriety of prejudging a final rule before it has issued.

2. A proper understanding of the Order's operation demonstrates that this challenge simply is not ripe. As explained above, the Order does not mandate that DHS or the Postal Service take any particular action. Instead, the manner in which they may implement the Order is, as the district court itself conceded, subject to

"many uncertainties." Appl. App. 74a; see *DSCC*, 2026 WL 2168617, at *5. That is doubly true because the Order specifically and repeatedly directs that any action taken must be appropriate and consistent with all applicable law. In those circumstances, this Court has been clear that Article III renders the suit nonjusticiable. See *New York*, 592 U.S. at 131.

Respondents nonetheless attempt to distinguish *New York* on the theory that, there, only partial implementation appeared feasible at the time the case was decided, while here, full implementation is still possible. Opp. 33. But that purported distinction makes no sense, because the Order leaves to the agencies' discretion in the first instance what the actual policies will be, if any. As explained, the Executive Order tasks DHS and the Postal Service with exercising their policymaking judgment as to the best ways to implement the Order's instructions consistent with both "legal and practical constraints." *New York*, 592 U.S. at 133. Until the agencies exercise that judgment "in a concrete manner that will predictably" cause respondents some injury, their challenge is not ripe. *Id.* at 132. Accordingly, just as in *New York*, Article III requires that the courts "[l]et[] the Executive Branch's decisionmaking process run its course." *Id.* at 134.

Respondents would also set aside *New York* because it "did not involve the extraordinary pressures and legal responsibilities that States face in preparing for rapidly approaching elections," noting that the *New York* challengers would only have suffered concrete harm if "executive officials took future actions not specified in the memorandum." Opp. 33-34. But the same is true here. As in *New York*, "the plaintiffs suffer no concrete harm from the challenged policy itself, which does not require them to do anything or to refrain from doing anything." 592 U.S. at 134 (quotation marks omitted). Respondents cannot seriously contend that the federal government has imposed *any* obligation on them "unless and until" DHS or USPS take further action. Opp. 34.

Contrary to respondents' view, Opp. 34-35, the D.C. Circuit's decisions in *DSCC*, *supra*, and *NAACP* v. *USPS*, No. 26-5257, 2026 WL 2168004 (D.C. Cir. July 17, 2026) (per curiam), demonstrate why this dispute, like those parallel challenges to the Executive Order and the USPS proposed rule, are not justiciable. The *DSCC* panel applied *New York* in holding that the plaintiffs' challenge to the Executive Order was not justiciable, emphasizing that "legal and practical constraints" like those in *New York* would impede judicial review and that the Order directs action that is consistent with applicable law. 2026 WL 2168617, at *5. It explained that critical "uncertainty" regarding "which databases DHS might tap to compile State Citizenship Lists or whether DHS would even do so at all" hindered judicial review of Section 2, while "[t]he completed rulemaking process—not the 'proposed provisions' for a notice of proposed rulemaking—will determine" what the Postal Service may require before carrying mail ballots. *Ibid.* (brackets omitted); see also *NAACP*, 2026 WL 2168004, at *1 (the "proposed rule is likely neither constitutionally nor prudentially ripe for review"). It is immaterial to that legal analysis in this case that the plaintiffs are States, rather than political or non-profit organizations.

Next, respondents dismiss this Court's decision in *Trump* v. *American Federation of Government Employees*, 145 S. Ct. 2635 (2025) (*AFGE*), suggesting that it is irrelevant because the Court held that the "government was 'likely to succeed on its argument that the [challenged] Executive Order [was] lawful.'" Opp. 35 (quoting *AFGE*, 145 S. Ct. at 2635) (brackets in original). But that only underscores the problem with respondents' suit—they challenge an Executive Order that merely directs the President's subordinates to take lawful action. Just as in *AFGE*, the Executive

Order *is* necessarily lawful because it operates only as an intra-Executive Branch directive to adopt lawful policies. A challenge aimed at the agencies' actions *implementing* that directive is not properly presented and is not ripe for resolution. See *AFGE*, 145 S. Ct. at 2635 (Sotomayor, J., concurring in grant of application for stay) (implementing actions "[we]re not before this Court, at this stage, and we thus have no occasion to consider whether they can and will be carried out consistent with the constraints of law").

Indeed, *AFGE* is particularly relevant given the position that respondents have taken in their brief. To circumvent the wall of precedent holding that it is improper to challenge a "proposed rule," they claim that they "do not challenge" USPS's future action, but "instead" only "challenge the EO as exceeding the President's authority under the Constitution." Opp. 34 n.7. As *AFGE* demonstrates, however, the President cannot exceed his authority merely by directing executive agencies to take actions consistent with law, regardless of challengers' speculative predictions that the implementation will inevitably be unlawful. Moreover, respondents' proposed distinction is incoherent even on its own terms: if a challenge to a proposed rule that USPS had unilaterally promulgated would be unripe due to the fatal uncertainty about the contents of any final rule, that uncertainty is no less present and no less fatal where USPS proposed the rule at the President's behest.

The same flaws undermine respondents' analogy to a hypothetical Executive Order by President Truman directing the Secretary of Commerce to undertake a rulemaking to seize the Nation's steel mills during the Korean war. They suggest that this Court surely would have invalidated such an Executive Order, even before the rulemaking was complete, because it "would have sown tremendous uncertainty for the Nation's steel industry, disrupting investment decisions and making it impossible to plan for the future." Opp. 23-24. But most major rulemakings have similar effects on regulated parties, and yet it is black-letter law that proposed rules cannot be challenged until finalized, no matter how facially invalid regulated parties claim the final rule will inevitably be. See *In re Murray Energy Corp.*, 788 F.3d 330, 335 (D.C. Cir. 2015) (Kavanaugh, J.) ("courts have never reviewed *proposed* rules"); see also *Long Island Care at Home, Ltd.* v. *Coke*, 551 U.S. 158, 175 (2007) (a "proposed rule [i]s simply a proposal"). Indeed, respondents' own hypothetical proves the wisdom of that rule, given that the Secretary of Commerce may well not have adopted any rule at all, if that Executive Order likewise required compliance with applicable law and the Secretary interpreted the Constitution the same way this Court did in *Youngstown*. In addition, whether this Court could have reviewed that hypothetical proposed rule under Article III surely would not have turned on whether it was issued at the President's direction or unilaterally by the Secretary, as respondents contend.

3. Respondents are thus wrong to contend that the government refuses to defend the Executive Order's legality. See Opp. 2, 20, 35-36. To the contrary, the government has explained that although the government cannot provide a hypothetical legal defense for the *agencies*' still-undecided policies, it is "definitionally lawful for the President to direct his subordinates to pursue his policy priorities in a manner that is 'consistent with applicable law.'" Appl. 19. Broadly speaking, the Executive Order contemplates two possibilities. The first is that the agencies implement the Order's directives in a manner that is lawful; in that case, no injunction would be warranted, because the agencies' implementation is lawful. The second is that the agencies determine that the Order's policy objectives cannot be implemented "consistent with applicable law," in which case the Order itself directs the agencies *not* to implement its policies. There again, no injunction would be warranted, because the

agencies have taken no action at all.

Respondents' theory assumes a third path—one unsanctioned by the Order—in which implementing the Order is unlawful, but the agencies do it anyway. They thus seek to invalidate a Presidential directive based on speculation that the agencies to whom it was directed will not follow its express terms. That approach erroneously ignores the Order's repeated admonitions that the relevant agencies are to implement its directives only to the extent such implementation is "consistent with applicable law." Order § 7(b), 91 Fed. Reg. at 17,127; see *id.* §§ 2(a), 3(b), 91 Fed. Reg. at 17,125-17,126; Appl. 16.

Respondents' invocation of cases in which this Court reviewed Executive Orders that contained savings clauses is unavailing. In *Trump* v. *Barbara*, 146 S. Ct. 2438 (2026), the order itself instructed agencies about the President's interpretation of the Fourteenth Amendment and a related statute and directed agencies to implement that interpretation. See Exec. Order No. 14,160, §§ 1, 3, 90 Fed. Reg. 8449, 8449-8450 (Jan. 29, 2025). That the order also directed agencies to comply with applicable law in implementing that interpretation did not allow agencies to second-guess the interpretation and refuse to implement the order at all. *Learning Resources, Inc.* v. *Trump*, 607 U.S. 229 (2026), is even further afield—it was not a pre-enforcement challenge, but arose *after* tariffs had been imposed. The savings clause obviously could not defeat ripeness in challenging actions that had already occurred.

Even setting aside that the Order itself mandates only lawful implementation, respondents are wrong that the Order on its face necessarily directs unlawful conduct. The Order contemplates modest, commonsense actions by executive agencies aimed at securing federal elections within those agencies' spheres of authority; and it is thus both possible and quite likely that those agencies will be able to identify ways to implement the Order that are consistent with applicable legal requirements.

For example, the dissemination of State Citizenship Lists under Section 2(a) is authorized by a federal statute addressing the sharing of citizenship information between the federal government and the States, see 8 U.S.C. 1373, and the Privacy Act's restrictions on information sharing are subject to various limitations and exceptions, see, *e.g.*, 5 U.S.C. 552a(b); 8 U.S.C. 1373 (authorizing information sharing "[n]otwithstanding any other provision of Federal, State, or local law"). In addition, while a State's refusal to consider the List would not itself be a federal crime, it could conceivably, depending on the circumstances, be relevant evidence of an intent to violate, or to facilitate the violation of, the federal laws prohibiting non-citizen voting that the Attorney General is directed to prioritize for enforcement under Section 2(b).

As for Section 3, the Postal Service's general rulemaking powers plainly give it at least some authority to impose reasonable requirements for envelope addressing and labeling and require mailers to provide additional information regarding particularly sensitive items. See 39 U.S.C. 401-404. Respondents cannot seriously contend that the Postal Service is disabled from adopting any election-specific rules, since they themselves have long benefited from the use of Official Election Mail designations and the prioritization of such mail. See *NAACP* v. *USPS*, 2026 WL 1893762, at *1 (D.D.C. July 1, 2026); U.S. Postal Service, Kit 600: 2026-2027 Official Election Mail 4, https://about.usps.com/kits/kit600.pdf. Nor can they seriously contend that the Postal Service must turn a blind eye to the use of the mails to facilitate fraud. Consider a scenario in which retirement communities are targeted for elder-abuse mail scams: there is no evident reason why the Postal Service could not impose special design and registration rules for envelopes used to send solicitations to such locations. All that said, of course, whether whatever policies that the agencies ultimately adopt comply with legal requirements can only be adjudicated once the agencies have determined what their policies will actually be.

4. Finally, respondents suggest that this dispute must be ripe for resolution because review of any final rules or agency actions would occur too close to Election Day and because they would take various costly actions to prepare for the Order's ultimate implementation absent the injunction. See Opp. 24-32. But Article III's fundamental constraints do not disappear because an indeterminate future dispute may occur close to an election.

Courts have never regarded parties' assertions that they have spent time and energy taking anticipatory steps to comply with possible future regulation as rendering otherwise-nonjusticiable controversies ripe. If those preparatory steps could support standing, then plaintiffs could challenge virtually any proposed rule (or even proposed legislation) they expected might cause them harm. That has never been the law. See *Clapper* v. *Amnesty Int'l USA*, 568 U.S. 398, 402, 410 (2013); *FDA* v. *Alliance for Hippocratic Med.*, 602 U.S. 367, 394 (2024). Accordingly, respondents' assertions that without an injunction, they "would need to warn voters about the" yet-unimplemented "USPS verification program," Opp. 28, or "act 'now' to ensure compliance" with unpromulgated rules, Opp. 30, do not render their challenge justiciable.

Further, respondents err in invoking the *Purcell* principle. See Opp. 38. That principle dictates that when changes are no longer "feasible before [an] election without significant cost, confusion, or hardship," *federal courts* should be reticent to interfere with the election process. *Merrill* v. *Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring in grant of stays); see *Purcell* v. *Gonzalez*, 549 U.S. 1 (2006) (per curiam). Because the political branches "enjoy far greater resources for research and factfinding," can "bring to bear the collective wisdom of the whole people," and are "accountable by the people for the rules they write or fail to write," *DNC* v. *Wisconsin State Legislature*, 141 S. Ct. 28, 29 (2020) (Gorsuch, J., concurring in denial of application to vacate stay), they are much better suited to the "host of difficult decisions" inherent in choosing "how best to structure and conduct [an] election," *id.* at 31 (Kavanaugh, J., concurring in denial of application to vacate stay); see also *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring in grant of applications for stays) (contrasting impermissible late-breaking action by a federal court with permissible actions by state legislature); *Allen* v. *Caster*, 146 S. Ct. 1196, 1196 (2026) (vacating district court judgment over objection that the State had violated the *Purcell* principle). Accordingly, action by the Executive Branch does not implicate *Purcell*.

B. The Equities Support Granting A Stay

The district court's injunction irreparably harms the federal government by precluding the President from directing his subordinates and by barring implementation of a federal policy aimed at securing election integrity. The government plainly has a strong interest in ensuring that ineligible voters do not vote in federal elections and that the U.S. Mail—a federal instrumentality—is not used to facilitate fraud of any kind, particularly election fraud.

Respondents suggest that the harm to the government is minimal, because "[t]he injunction prevents implementation of the EO only as to the fall elections and only in the plaintiff States." Opp. 40. But that is precisely the harm that the government invokes—an impaired ability to secure voting by mail or to investigate fraud in any State risks significant harms to election integrity, and "'there can be no do over' once the [November 2026] election occurs." *NAACP*, 2026 WL 2168004, at *1. Any additional harm resulting from practical difficulties in implementing a two-tiered system—an issue that USPS is considering as part of its ongoing rulemaking process—only exacerbates the problem.

To the extent that respondents assert real practical concerns about their ability to implement a potential Postal Service rule, if one issues and is effective for the November 2026 election, see Opp. 42-44, those questions must be adjudicated in the context of a justiciable dispute. Indeed, the way for courts to deal with this issue, if it arises in a justiciable controversy at all, is by determining in an appropriate suit whether the Postal Service's final rule adequately responded to the States' concerns in selecting an effective date—which, to repeat, USPS has not yet finally done. At bottom, respondents have not suffered concrete injuries from the Executive Order itself, and they can only speculate that the practical concerns they identify will come to pass if USPS or DHS implements the Order in the manner they anticipate. Such speculative harms are not entitled to weight in balancing the equities.

Finally, respondents ask that if this Court stays the district court's injunction, it should opine that "neither *Purcell* nor any other restriction on judicial review," such as an administrative-exhaustion requirement, "would preclude injunctive relief against" future agency action. Opp. 38. This Court should not grant that request for an improper advisory opinion. Just as Article III barred the district court from prejudging the legality of any future implementation on the merits, this Court should not prejudge certain non-merits issues that may be raised in future litigation.

* * * * *

For the foregoing reasons and those stated in the government's application, the Court should stay the injunction of the United States District Court for the District of Massachusetts pending the resolution of the government's appeal to the United States Court of Appeals for the First Circuit and any proceedings in this Court.

Respectfully submitted.

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