

No. 26A____ (25-1311)

IN THE
Supreme Court of the United States

APPLE INC.,

Applicant,

v.

EPIC GAMES, INC.,

Respondent.

OPPOSITION TO REQUEST FOR ADMINISTRATIVE STAY

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IDENTITY OF PARTIES

Applicant is Apple Inc. (AAPL) (“Apple”). Respondent is Epic Games, Inc. (“Epic”).

RULE 29.6 STATEMENT

Pursuant to Supreme Court Rule 29.6, Epic states that it has no parent corporation and that each of Tencent Holdings Limited (SEHK: 700) and the Walt Disney Company (DIS) own more than 10% of Epic stock.

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TO THE HONORABLE ELENA KAGAN, AS CIRCUIT JUSTICE FOR THE NINTH CIRCUIT:

INTRODUCTION

More than six weeks ago, this Court granted certiorari in this case to decide a limited question regarding the standard for holding parties in civil contempt for violating an injunction. Today, Apple has filed an emergency motion demanding the Court act within hours to issue a stay to excuse Apple from filing an evidentiary proffer in remand proceedings that will need to take place even if this Court vacates the contempt finding, because whether Apple frustrated the Injunction by violating its text or only its spirit, frustrate it it did—an issue the district court would need to address, with or without contempt.

Apple buries in a footnote that the supposed “emergency” is entirely of Apple’s own making; Apple negotiated and agreed to the schedule it now claims creates exigent circumstances, *i.e.*, its obligation to file a stay motion in the district court and, if the motion was denied, to file its proffer within 24 hours of that denial. *See* App. 12-13 n.3. And Apple’s principal reasons for a stay—its desire to avoid the burdens of litigation while this Court considers the case, including disclosing information it would rather not disclose—are no different from those asserted in Apple’s prior stay application, which Justice Kagan denied within days of its filing. No. 25A1213.

The request for an administrative stay and stay pending the Court’s decision in this case should be denied. As the district court explained, even if this Court finds fault with the contempt finding, “as the Ninth Circuit has confirmed, and

as Apple has repeatedly conceded, the Court has the authority to modify the injunction.” Appx. 1, at 1. Contrary to Apple’s mischaracterization, this language pertains to a modification of the original injunction, *not* the contempt order, in light of Apple’s efforts to frustrate that injunction (whether contemptuous or not). Indeed, in its prior stay application to this Court, Apple emphasized that “[o]f course, nothing prohibits a district court from modifying and enlarging an injunction if new circumstances arise or it becomes clear that an existing order is insufficient to remedy a violation.” Apple First Stay Application 24. And it admitted that the “Ninth Circuit suggested that, on remand, the district court could either make the contempt sanction purgeable or modify *the injunction* instead of imposing a civil contempt sanction.” *Id.* 35 (emphasis added). Because the district court has made clear it intends to exercise that modification authority regardless of the fate of its contempt finding, the “factfinding mandated by the Ninth Circuit will need to be done irrespective of the Supreme Court’s ruling.” Appx. 1, at 2.

None of this is new. Apple founded its prior stay application precisely on the supposed irreparable harm it would suffer from the proceedings that are now taking place. *See* Apple First Stay Application 34-39. Epic explained why avoiding those litigation burdens would not constitute irreparable harm warranting a stay even if this Court granted Apple’s petition, including because the district court retained the authority to modify the injunction even if Apple were not held in contempt. Epic Opposition to Apple First Stay Application 12-20. This Court

nonetheless denied the stay shortly before granting the petition. There is no basis for an emergency stay now.

STATEMENT

I. Factual Background

The factual and procedural background of the case to this point was described in Epic’s prior stay opposition and brief in opposition. We recite here the subsequent events relevant to the application for an emergency administration stay.

1. On May 4, 2026, Apple applied to this Court for a stay pending the disposition of its forthcoming certiorari petition. *See* No. 25A1213. In addition to arguing that its petition was likely to be granted, Apple argued that absent a stay, it would be subject to the “the harm of having to litigate the allowable commission under the highly prejudicial taint of an improper contempt finding.” Apple First Stay Application 34. It further speculated that the remand proceedings could affect the decision of “[r]egulators around the world.” *Id.* 35-36. And it hypothesized that it “may also be forced to divulge valuable information that could harm its business and strengthen its competitors” if the remand proceedings went forward. *Id.* 37.

Epic responded two days later, and Justice Kagan denied the application without referring it to the full court the same day. No. 25A1213 (Kagan, J., in chambers).

On June 30, 2026, this Court granted certiorari to consider the appropriate standard for civil contempt.

2. By then, the remand proceedings the Ninth Circuit ordered were already underway. Following issuance of the mandate, the district court set a schedule for Apple to submit an evidentiary proffer justifying its proposed commission. After certiorari was granted, the parties agreed to a modification of that schedule. Under the parties' stipulation, Apple would file a motion to stay proceedings pending this Court's decision, but agreed that if the stay was denied, Apple would file its proffer within 24 hours of the district court's decision. D. Ct. Dkt. No. 1696, at 2. The district court accepted the stipulation and Apple filed its motion for a stay. D. Ct. Dkt. 1697.

On August 11, 2026, after briefing and argument, the district court denied the stay motion "in its entirety." Appx. 1, at 1. The court explained that, "[n]otwithstanding the issue of contempt, as the Ninth Circuit has confirmed, and as Apple has repeatedly conceded, the Court has the authority to modify the injunction." *Id.* (citing C.A. Dkt. 59.1, at 37 (Apple's Ninth Circuit brief stating that "[o]n remand, the district court can hold a proceeding to consider whether the injunction should be modified to prohibit Apple's existing commission")). Given that authority, the court's "current charge from the Ninth Circuit" was to determine the commission Apple may charge "based on the costs that are genuinely and reasonably necessary for its coordination of external links for linked-out purchases, but no more," *id.* 2 (citation omitted), an inquiry "[t]he Supreme Court did not agree to revisit," and one the "limited review" does not bar the district court from conducting, *id.* Accordingly, this Court's "grant of a narrow review of the contempt proceedings does not substantially

impact the factual issues that must be resolved to ensure compliance with the injunction.” *Id.* 1.

Turning to the equities, the court found that a stay “prejudices plaintiff and others, while allowing Apple to continue to frustrate the injunction.” *Id.* 2. In contrast, denying a stay would impose “relatively little harm to Apple,” particularly given that it had “agreed to file its evidentiary proffer within 24 hours of this Court’s decision,” revealing that “Apple is prepared to proceed.” *Id.* Moreover, the “factfinding mandated by the Ninth Circuit will need to be done irrespective of the Supreme Court’s ruling,” so a stay “will not result in significant conservation of judicial resources.” *Id.* 2. “Given Apple’s propensity to delay,” the court concluded, and with the case “approaching the five-year anniversary” of the liability decision, “[f]urther delay is unwarranted.” *Id.*

Instead of seeking relief from the Ninth Circuit, Apple proceeded to file its present application directly with this Court. In addition to seeking a general stay pending this Court’s decision, Apple requested an emergency administrative stay by 6:20pm to avoid having to submit the evidentiary proffer it agreed to file by that time if the district court denied its stay request. App. 5.

ARGUMENT

Epic will file its opposition to Apple’s general stay request in due course. For present purposes, it addresses only Apple’s request for an emergency stay, which should be denied.

Although the Court has the power to issue an administrative stay in appropriate circumstances to “permit time for briefing and deliberation,” a stay is nonetheless an equitable remedy that takes into account the applicant’s role in the need for emergent relief. *See United States v. Texas*, 144 S. Ct. 797, 798 (2024) (mem.) (Barrett, J., concurring); *cf. Bucklew v. Precythe*, 587 U.S. 119, 150 (2019) (the “last-minute nature of an application that could have been brought earlier, or an applicant’s attempt at manipulation, may be grounds for denial of a stay”) (cleaned up). Here, the only reason Apple gives for needing an immediate response from the Court is that “Apple agreed to file its evidentiary proffer within 24 hours” of the district court’s denial of its stay request. Appx. 1, at 2; *see* App. 27. Apple should not be able to force this Court to issue an administrative stay through its own strategic litigation decisions.

Nor is an administrative stay necessary to preserve the status quo or “minimize harm” while this Court “deliberates” on Apple’s broader stay application. *Texas*, 144 S. Ct. at 798 & n.2 (Barrett, J., concurring). The status quo is the schedule to which Apple agreed and now seeks to upset. And a “first-blush judgment about the relative consequences of staying the lower court judgment versus allowing it to go into effect,” *id.*, reveals that Apple will not suffer any cognizable injury if the administrative stay is denied. Apple’s only claim of harm is the need to file an evidentiary proffer on a timeline it agreed to. Even if such a self-inflicted injury were cognizable, “courts applying” the traditional test for granting a stay “often do not consider litigation-related burdens . . . to constitute irreparable harm.” *Coinbase*,

Inc. v. Bielski, 599 U.S. 736, 746 (2023) (“Mere litigation expense, even substantial and unrecoverable cost, does not constitute irreparable injury.”); *see also, e.g., Bagley v. Byrd*, 534 U.S. 1301, 1302 (2001) (Stevens, J., in chambers) (denying stay where State failed “to demonstrate either that the hearing will cause any irreparable harm to the State of Ohio or that it will affect this Court’s jurisdiction to act on [a forthcoming] certiorari petition”); *Nat’l Broadcasting Co. v. Niemi*, 434 U.S. 1354, 1356-57 (1978) (Rehnquist, J., in chambers) (refusing to grant stay of civil trial pending certiorari because no irreparable injury arising from a “requirement to defend an action” and then “prosecute [the] constitutional claims through the normal appellate process to this Court”); *Finance Comm. to Re-Elect the President v. Waddy*, No. 01-461, 1972 WL 123128, at *1 (U.S. Oct. 31, 1972) (Burger, C.J., in chambers) (denying motion to “stay[] commencement of trial” in civil action because the “injury to the petitioners can arise only from an adverse judgment”).

Apple suggests that it may be required to “disclos[e] sensitive business information” in its proffer. App. 23. But it anticipated that possibility in its prior stay application, to no avail. *See* Apple First Stay Application 37. It also could have anticipated that when it stipulated to file its proffer within 24 hours of a stay denial. The district court has put in place protective orders designed to address precisely that concern. *See* Dist. Ct. Dkt. 274. And Apple remains free to ask for additional protections if needed. Apple notably did not ask for such protection in its stay application to the district court, even though it had agreed to file its proffer within 24 hours of any denial. Nor did Apple identify there, or in its application to this Court,

any specific information whose disclosure could cause irreparable harm, other than the commission it would propose to charge. *See* App. 27. But it provides no ground for asserting that its proposed commission is a form of sensitive business information protected from public disclosure and, if it thinks otherwise, can request that the information be sealed. Moreover, Apple provides no basis for its vague speculations about “global market reverberations.” *Id.* Such vague claims of harm cannot satisfy Apple’s burden.

Apple asserts a variety of other harms that it says could arise from remand proceedings or a decision down the road. But none provides a reason for granting a stay in the next several hours. Epic will respond to those arguments in due course. In the meantime, Epic notes that most are simply reprises of the same meritless arguments that failed to persuade the Court to grant its prior stay motion. For example, the district court rightly rejected Apple’s claim that the Ninth Circuit limited the district court to modifying its contempt remedy, and forbade it from modifying the original injunction. *Contra* App. 3; *see* Appx. 1, at 2. The court of appeals unambiguously provided that “rather than imposing a contempt sanction, the district court could restrict Apple from imposing a prohibitive commission by modifying the Injunction.” *Epic Games, Inc. v. Apple Inc.*, 162 F.4th 1162, 1187 (9th Cir. 2025). That flexibility makes perfect sense given that even Apple acknowledges that Epic would be free to file a new motion to modify the original Injunction regardless of the outcome in this Court. *See* Cert. Pet. 22 (“Of course, nothing prohibits a district court from modifying and enlarging an injunction if new

circumstances arise or it becomes clear that an existing order is insufficient to remedy a violation.”).

CONCLUSION

For the foregoing reasons, the administrative stay should be denied.

Dated: August 12, 2026

Respectfully submitted,

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