

In the Supreme Court of the United States

U.S. DEPARTMENT OF HOMELAND SECURITY, ET AL., APPLICANTS

v.

D.V.D., ET AL.

**APPLICATION FOR A STAY OF THE ORDER
ISSUED BY THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY**

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PARTIES TO THE PROCEEDING

Applicants (defendants-appellants below) are the United States Department of Homeland Security; Markwayne Mullin, Secretary of Homeland Security; Todd Blanche, Attorney General; and Antone Moniz, in his official capacity as Superintendent of the Plymouth County Correctional Facility.*

Respondents (plaintiffs-appellees below), proceeding pseudonymously, are D.V.D.; M.M.; E.F.D.; O.C.G.; on behalf of themselves and absent class members.

RELATED PROCEEDINGS

United States District Court (D. Mass.):

D.V.D. v. DHS, No. 25-cv-10676 (Feb. 25, 2026) (final judgment)

United States Court of Appeals (1st Cir.):

D.V.D. v. DHS, No. 25-1311 (June 30, 2025) (dismissing appeal from temporary restraining order)

D.V.D. v. DHS, No. 25-1393 (Feb. 20, 2026) (remanding for dissolution of preliminary injunction)

D.V.D. v. DHS, No. 25-1631 (Feb. 20, 2026) (remanding for dissolution of preliminary injunction)

D.V.D. v. DHS, No. 26-1212 (Sept. 18, 2026) (affirming final judgment)

Supreme Court of the United States:

DHS v. D.V.D., No. 24A1153 (June 23, 2025, and July 3, 2025) (granting stay of preliminary injunction and motion to clarify stay)

* Individual petitioners were sued in their official capacities and have been automatically substituted for their predecessors in office, if any. See Sup. Ct. R. 35.3.

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Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Solicitor General, on behalf of applicants United States Department of Homeland Security (DHS), et al., respectfully files this application for a stay of the February 25, 2026, order issued by the United States District Court for the District of Massachusetts (App., *infra*, 1a-81a), pending the timely filing and disposition of a petition for a writ of certiorari and any further proceedings in this Court. We also respectfully request an immediate administrative stay.

This is the third time the government has been forced to seek emergency relief from the district court’s orders in this case about “third-country removals”—an essential tool to remove certain aliens, including some of the worst criminal aliens. This Court granted relief on both previous occasions. The latest order rests on the same fundamentally flawed legal premises as the previous rulings, and the nominal new grounds that the lower courts added to try to buttress those prior decisions are even weaker than those that failed to sustain the originals. Meanwhile, the equities that

supported this Court’s intervention (twice) have, if anything, only grown stronger in favor of the government’s continued enforcement of the challenged policy. A stay is thus once again warranted. Cf. *Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025) (“Although our interim orders are not conclusive as to the merits, they inform how a court should exercise its equitable discretion in like cases.”). “Although the posture of the case has changed, the parties’ legal arguments and relative harms generally have not. The same result that [this Court] reached in [June 2025] is appropriate here.” *Noem v. National TPS Alliance*, 146 S. Ct. 23, 24 (2025).

An immediate administrative stay is particularly critical. The First Circuit had previously stayed this latest order pending appeal; the government thus has been conducting third-country removals under the challenged policy for the last 15 months. But at 11:36 p.m. last night—without even allowing the government to respond to respondents’ motion (itself filed at 8:20 p.m.)—the First Circuit abruptly dissolved the stay. The unexpected springing-back of district court’s order has, this Office is informed, created substantial logistical problems with ongoing removal operations—including the cancellation of flights—and led to added expense, potential diplomatic issues, and the inability to remove dangerous criminals. For example, DHS informs us that it has already canceled a flight to three separate countries carrying 70 aliens with criminal convictions (including aggravated assault and serious drug offenses), and that the cancellation has required a new round of diplomatic engagement with each of the three countries. Those disruptions will only get worse. To halt that chaos, an immediate administrative stay should be entered while the Court considers this application. In light of the ongoing disruption caused by the First Circuit as well as the prior stays granted by the full Court, if the Circuit Justice enters a briefing schedule without also entering an immediate administrative stay, the government respect-

fully requests that its request for the immediate administrative stay be referred to the full Court. Cf. *Rollins v. Rhode Island State Council of Churches*, 146 S. Ct. 402 (2025) (No. 25A539); *A.A.R.P. v. Trump*, 145 S. Ct. 1034 (2025) (No. 24A1007).

This case arises from a DHS policy explaining how the agency executes a final order of removal of an alien who cannot be returned to the country (or countries) listed in the removal order. Everyone agrees that DHS may remove such an alien to a country not listed in the order (*i.e.*, a “third country”) if that country is willing to accept the alien and certain other conditions are met. Everyone likewise agrees that the alien may not be removed to a country where he will be persecuted or tortured. The DHS policy therefore states that, when an alien is to be removed to a third country, if that country has credibly assured the Secretary of State that it will not persecute or torture *anyone*, the agency may promptly remove the alien; absent such assurances, the alien will be given notice of his removal to that country and an opportunity to raise any fears of potential persecution or torture there.

Last year, the district court preliminarily enjoined that policy and substituted one of its own making, holding that before an alien is removed to a third country (regardless of the country’s assurances), DHS must provide written notice of the third country of removal, at least ten days to claim a fear of torture, and at least fifteen days to move to reopen immigration proceedings. This Court stayed that injunction. 145 S. Ct. 2153 (No. 24A1153). The district court then announced that its orders enforcing the same injunction remained in effect notwithstanding this Court’s stay, D. Ct. Docket Entry 176, thus forcing this Court to intervene again, 145 S. Ct. 2627.

Yet the district court has now tripled down, entering final judgment in favor of respondents and awarding substantially the same relief on substantially the same grounds. See App., *infra*, 1a-81a. The First Circuit largely affirmed. *Id.* at 99a-153a.

With considerable understatement, the district court acknowledged that, in light of this Court’s prior stays, it “could be missing something in the final analysis.” *Id.* at 78a. And so, in a transparent attempt to avoid the same fate yet again, the court swapped remedies, tacked on some additional theories, and emphasized the “different relief” and “different claims.” *Ibid.* But the new grounds for the order are just as improper as the earlier ones.

At the earlier stage, the district court held that it could enter a classwide injunction notwithstanding an express statutory prohibition on lower-court orders that “enjoin or restrain the operation” of certain provisions of the immigration laws on a classwide basis. 8 U.S.C. 1252(f)(1). This time, the court replaced its injunction with a materially identical series of classwide declaratory judgments and a universal vacatur of the DHS policy. But the court did not merely declare that *respondents* have the authority to take (or not take) certain actions; instead, it declared that *the government* must comply with alternative procedures along the lines it imposed at the preliminary-injunction stage—backed by a threat of follow-on injunctions to enforce the declaration. That is no mere declaration, but a coercive injunction by another name, which no less “check[s], hold[s] back, or prevent[s]” the government from following different procedures. See *Garland v. Aleman Gonzalez*, 596 U.S. 543, 549 (2022). Congress’s jurisdictional bar on classwide immigration relief cannot be so easily evaded.

In addition, the lower courts held that 8 U.S.C. 1231(b) implicitly entitles respondents to the same alternative procedures to claim a fear of removal that the district court previously devised under the guise of due process. The courts identified no text to support that holding; they candidly acknowledged that they were reading the statute “to mean more than what [it] plainly say[s].” App., *infra*, 137a. Even

worse, Congress expressly directed that the provision on which the courts relied should *not* “be construed to create any substantive or procedural right or benefit that is legally enforceable by any party” against the government. 8 U.S.C. 1231(h).

Otherwise, the lower courts simply relied on the same meritless grounds on which the preliminary injunction was based. The courts again disregarded multiple jurisdictional bars that preclude judicial review of aliens’ claims of persecution or torture except in a petition for review from a removal order. And they again rejected the government’s reliance on countrywide assurances that particular nations will not torture or persecute *anyone*, holding that due process (or the statute, under an equivalent constitutional-avoidance rationale) requires the government to provide each alien with an individual hearing at which the alien and (eventually) the judiciary can repeatedly and improperly second-guess those foreign-policy determinations. Moreover, DHS’s policy is similar in timing to the expedited-removal process that this Court has upheld against a due-process challenge, and it amply guards against the removal of aliens to countries where they may face persecution or torture.

Just like the preliminary injunction before it, the district court’s latest order will cause severe, irreparable harm to the government and the public interest. The government has been able to remove thousands of aliens to third countries in recent months, and thousands more are eligible for such removal. App., *infra*, 94a, 96a ¶¶ 9, 13. These include some of the worst of the worst criminal aliens—whose home countries refuse to take them back. See 24A1153 Appl. 2 & n.1. The order below would again obstruct DHS from efficiently removing aliens—this time under a policy that has been in force for 15 months pursuant to this Court’s stay and the First Circuit’s previously entered stay—by inordinately delaying third-country removal for any alien who voices a fear of persecution or torture in that country, no matter how frivolous

or belated the claim. Given practical realities, the consequence of such delays is that the government will often need to restart the entire removal process afresh, freezing things as the government attempts to rework arrangements with foreign countries. See *id.* at 96a-97a ¶ 14. Meanwhile, the very aliens whose removal is most urgent, including those who have committed serious crimes like murder, attempted murder, rape, child rape, kidnapping, and aggravated assault, will be allowed to remain—and often will be released (given practical and legal constraints on detention), to the peril of law-abiding Americans. *Id.* at 98a ¶ 15.

The order below also undermines our standing abroad. Finding third countries willing and able to accept aliens is a delicate diplomatic endeavor. *Id.* at 94a-96a ¶¶ 7-13. By interjecting itself in that process, and potentially disrupting those carefully negotiated arrangements, the lower courts’ actions “will cause significant and irreparable harm to U.S. foreign policy.” *Id.* at 88a ¶ 3 (Secretary Rubio). The order’s open-ended terms also allow the district court to continually move the goalposts as to what compliance entails, as illustrated by its actions when enforcing similarly open-ended terms in the preliminary injunction. See 24A1153 Appl. 16-17.

By contrast, and unchanged since the preliminary-injunction stage, respondents cannot establish offsetting irreparable harm. All members of the class have already been ordered removed, and all have already had the opportunity to raise fears of persecution or torture. The district court’s order adds new hurdles to the meaningful process DHS has offered, potentially thwarting DHS’s ability to remove many aliens at all, and does so in circumstances where valid concerns about persecution or torture are notably unlikely to arise: in third countries where the aliens lack prior ties. The district court’s order thus encourages the filing of meritless claims and generates needless delay. While certain aliens may benefit from stalling their removal,

the Nation does not.

STATEMENT

A. Legal Background

1. The Immigration and Nationality Act (INA), ch. 477, 66 Stat. 163, as amended (8 U.S.C. 1101 *et seq.*), authorizes the removal of classes of aliens from the United States. 8 U.S.C. 1182, 1227. The removal process can include a hearing before an immigration judge, an appeal to the Board of Immigration Appeals, and review in a court of appeals. 8 U.S.C. 1229a, 1252. Many aliens facing removal have an opportunity to apply for relief or protection from removal. See, *e.g.*, 8 U.S.C. 1158 (asylum); 8 U.S.C. 1229b(a) (cancellation of removal); 8 U.S.C. 1229b(b) (adjustment of status).

Congress also has established a streamlined process for removing aliens who, having previously been removed from the United States under a final order of removal, have reentered the country unlawfully. If DHS “finds that an alien has reentered the United States illegally after having been removed * * * under an order of removal, the prior order of removal is reinstated from its original date.” 8 U.S.C. 1231(a)(5); see *Nielsen v. Preap*, 586 U.S. 392, 397 n.2 (2019) (explaining Congress transferred enforcement of certain provisions from Attorney General to DHS Secretary). DHS may “at any time” effectuate removal “under the prior order.” 8 U.S.C. 1231(a)(5). The reinstated order “is not subject to being reopened or reviewed,” and the alien “is not eligible and may not apply for any relief” from that order. *Ibid.*

The INA establishes criteria for determining the country to which an alien will be removed. See *Jama v. ICE*, 543 U.S. 335, 338-341 (2005). Specifically, Section 1231(b) provides sequences of countries to which the alien shall be removed, subject to certain disqualifying conditions. See 8 U.S.C. 1231(b)(1) and (2). Possible destinations include a country designated by the alien, the alien’s country of citizenship,

and the alien’s previous country of residence. *Jama*, 543 U.S. at 341. Importantly, Section 1231(b) offers a fail-safe option in the event the others do not work: any other “country whose government will accept the alien into that country.” 8 U.S.C. 1231(b)(2)(E)(vii); see 8 U.S.C. 1231(b)(1)(C)(iv). Such countries may be selected even if not originally listed in an alien’s removal order. See 8 C.F.R. 1240.12(d).

Congress also has provided two means for an alien to challenge removal to a particular country where he may face persecution or torture. First, an alien may seek withholding of removal under Section 1231(b)(3). Statutory withholding generally prohibits removing an alien to a country where he would face persecution because of his “race, religion, nationality, membership in a particular social group, or political opinion.” 8 U.S.C. 1231(b)(3)(A); see 8 U.S.C. 1231(b)(3)(B) (listing certain aliens ineligible for statutory withholding). “[P]ersecution is an extreme concept involving a severe level of harm that includes actions so severe that they constitute an exigent threat,” and requires (among other things) the “infliction” of such harm “by the government of a country or by persons or an organization that the government was unable or unwilling to control.” 8 C.F.R. 1208.1(e); see, e.g., *Medina v. U.S. Att’y Gen.*, 800 Fed. Appx. 851, 856 (11th Cir. 2020) (alien seeking withholding must clear a “high bar”). Second, the alien may seek relief under regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), *adopted* Dec. 10, 1984, S. Treaty Doc. No. 20, 100th Cong., 2d Sess. (1988), 1465 U.N.T.S. 85—a non-self-executing treaty that addresses the removal of aliens to countries where they would face torture. See Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), Pub. L. No. 105-277, Div. G, § 2242(b), 112 Stat. 2681-822; 8 C.F.R. 208.31, 241.8(e). “Torture” is defined as an “extreme form of cruel and inhuman treatment,” which intentionally inflicts “severe pain or

suffering” on another for an improper purpose, and is performed “at the instigation of or with the consent or acquiescence of a public official acting in an official capacity or other person acting in an official capacity.” 8 C.F.R. 208.18(a)(1) and (a)(2); see, e.g., *Del Carmen Amaya-De Sicaran v. Barr*, 979 F.3d 210, 218-219 (4th Cir. 2020) (“torture” is a “high bar”).

Statutory withholding and CAT protection affect only *where*, not *whether*, an alien may be removed. A grant of statutory withholding means the alien is “presently protected” from removal to the particular country covered by the grant, though it “would not prevent” that alien’s removal to “any other hospitable country.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 428 n.6 (1987). Likewise, a grant of CAT protection “means only that, notwithstanding the order of removal, the noncitizen may not be removed to the designated country of removal, at least until conditions change in that country.” *Nasrallah v. Barr*, 590 U.S. 573, 582 (2020). The United States remains free to remove the alien “at any time to another country where he or she is not likely to be tortured.” *Ibid.* (citation omitted).

Ordinarily, an alien raises a withholding or CAT claim during removal proceedings under 8 U.S.C. 1229a, where the immigration court decides both the alien’s removability and claims for relief from removal. See, e.g., 8 C.F.R. 1240.1(a)(1)(iii), 1240.12(c); *Matter of I-S- & C-S-*, 24 I. & N. Dec. 432, 433-434 (B.I.A. 2008). But withholding and CAT claims can arise outside of those proceedings. For instance, an alien subject to a reinstated order of removal may still seek relief in “withholding-only” proceedings, where the “only issue” is whether he may be removed to the country at issue. *Riley v. Bondi*, 606 U.S. 259, 265 (2025).

2. On President Trump’s first day in office, he determined that the millions of aliens who have illegally crossed the border pose a serious threat to national secu-

rity. Exec. Order No. 14,165, 90 Fed. Reg. 8467 (Jan. 30, 2025). To combat that threat, the President directed DHS to take “all appropriate actions” to detain and remove aliens who have been ordered removed, but who nevertheless have been “released into the United States.” *Id.* at 8468. In February 2025, DHS issued guidance directing the Enforcement and Removal Operations directorate (ERO) of U.S. Immigration and Customs Enforcement (ICE) to review cases of aliens who had been ordered removed, but for whom withholding or CAT had impeded removal. D. Ct. Doc. 1-4, at 2 (Mar. 23, 2025). DHS directed ERO to, *inter alia*, “determine the viability of removal to a third country” for such aliens, especially “in light of the Administration’s significant gains with regard to previously recalcitrant countries.” *Ibid.*

Such “third country removals”—*i.e.* removals to countries other than the ones designated in removal orders—are not uncommon. Sometimes the countries specified in a removal order are no longer viable by the time DHS is prepared to remove the alien. In other cases, an alien may obtain withholding or CAT relief from the only country listed in his removal order, either in his original proceedings or later ones (as with reinstated orders). In those cases, third-country removal is the only way for DHS to execute a lawful removal order. And as a practical matter, that third country often falls within Section 1231(b)’s catch-all provisions allowing removal to any country willing to accept the alien. See 8 U.S.C. 1231(b)(2)(E)(vii) and (1)(C)(iv).

On March 30, 2025, DHS clarified its “policy regarding the removal of aliens with final orders of removal pursuant to sections 240, 241(a)(5), or 238(b) of the [INA] to countries other than those designated for removal in those removal orders.” App., *infra*, 84a.¹ On July 9, 2025, DHS issued a substantially similar document affirming

¹ Section 240 is 8 U.S.C. 1229a (“Removal proceedings”); Section 241(a)(5) is 8 U.S.C. 1231(a)(5) (“Reinstatement of removal orders against aliens illegally reen-

that policy. *Id.* at 86a-87a (together with the March memo, the Guidance). The Guidance distinguishes between removals to countries that have provided credible assurances that any aliens removed there will not be persecuted or tortured, and removals to those countries that have not.

For countries that have provided such assurances, “the alien may be removed without the need for further procedures.” App., *infra*, 86a. For countries that have not, DHS must first inform the alien of removal to the country and give him an opportunity to “affirmatively express a fear of persecution or torture” there. *Id.* at 85a. DHS “will generally wait at least 24 hours following service of a Notice of Removal before effectuating removal.” *Id.* at 86a. If an alien does express such a fear, an immigration officer will conduct a prompt screening to determine whether he “would more likely than not be” persecuted or tortured in the country of removal. *Id.* at 87a. If the alien fails to satisfy that standard, he “will be removed.” *Ibid.* If he does satisfy it, he will be put into additional administrative procedures, consistent with how withholding and CAT claims typically are handled. See *ibid.* “Alternatively, ICE may choose to designate another country for removal” and start the process afresh. *Ibid.*

B. Proceedings Below

1. a. Respondents are four illegal aliens subject to final orders of removal. 778 F. Supp. 3d 355, 368-369. In March 2025, they filed this putative class action, alleging that there are “valid reasons to fear removal to specific countries that were not included in their removal orders.” *Id.* at 369. Each respondent claims, among other things, that the government would violate due process if it does not provide sufficient “notice and an opportunity to be heard prior to removal to a country

tering”); and Section 238(b) is 8 U.S.C. 1228(b) (“Removal of aliens who are not permanent residents”).

that was not designated in their removal orders.” *Ibid.*

On April 18, 2025, the district court granted respondents’ motion for class certification and issued a classwide preliminary injunction. 778 F. Supp. 3d 355.² The court rejected the government’s reliance on 8 U.S.C. 1252(f)(1), which strips lower federal courts of “jurisdiction or authority to enjoin or restrain the operation,” on a classwide basis, of the INA provisions governing the removal of aliens. 778 F. Supp. 3d at 378-380. The court also held (*id.* at 370-378) that it had jurisdiction to review respondents’ claims notwithstanding Congress’s channeling of all challenges to the country of removal—and CAT claims in particular—into a petition for review in the courts of appeals, see 8 U.S.C. 1252(a)(4), (a)(5), (b)(9), and (g); FARRA § 2242(d), 112 Stat. 2681-822. The court then held that the Guidance likely violated due process because it did not provide “notice and a meaningful opportunity to present fear-based claims” under CAT. 778 F. Supp. 3d at 387; see *id.* at 387-390, 393 n.51. The court ordered DHS to (i) provide written notice to aliens and counsel of the third country to which they might be removed; (ii) provide aliens with a “meaningful opportunity” to assert a fear of removal; (iii) use a “reasonable fear” rather than a “more likely than not” standard to assess the credibility of those assertions; and (iv) provide dissatisfied aliens at least 15 days to “move to reopen immigration proceedings.” *Id.* at 392-393.

b. The government appealed and sought a stay, but in the meantime developed an interim procedure to comply with the district court’s injunction, which

² The class definition is:

All individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) whom DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed.

778 F. Supp. 3d at 378.

would (among other things) provide aliens with “written notice of the country of removal in a language they understood,” have an ICE ERO officer “explain[] [that] written notice to [the alien],” and then generally give the alien at least twenty-four hours to proactively “raise[] a fear” of being removed to that country. D. Ct. Doc. 130-2, at 3 ¶ 8 (Ripa Decl.).

In May 2025, employing that procedure, the government initiated removal of a group of aliens on a military flight destined for South Sudan. All of those aliens were provided notice that they would be removed to South Sudan. Ripa Decl. ¶ 10. None expressed a fear of being removed there. *Ibid.* All had committed serious crimes in the United States—including murder, arson, armed robbery, kidnapping, sexual assault of a mentally handicapped woman, and child rape, including while on release after already having been ordered removed—but had proven unremovable, in no small part because countries are typically unwilling to accept felons. D. Ct. Doc. 129-1, at 2-9 ¶¶ 4-53 (Charles Decl.); see Ripa Decl. ¶¶ 18-21.

The district court issued a series of orders to impede those removal efforts. 2025 WL 1449032; 2025 WL 1453640; 2025 WL 1453604. On May 21, 2025, the court “clarif[ied]” that the injunction’s reference to a “meaningful opportunity” to “raise a fear-based claim” meant “a minimum of ten days.” 2025 WL 1453640, at *1 (emphasis omitted). The court ordered various remedial measures, including that each alien “be given a reasonable fear interview in private”; that “counsel of their choosing [be] present”; that the alien and his counsel “be given no fewer than 72-hours’ notice of the scheduled time for each reasonable fear interview”; and that the government provide periodic status reports to the court. 2025 WL 1453604, at *1.

2. On June 23, 2025, this Court stayed the preliminary injunction in full. 145 S. Ct. 2153 (No. 24A1153). Later that same evening, the district court issued an

order asserting that its May 21 remedial order “remains in full force and effect, notwithstanding today’s stay of the Preliminary Injunction.” D. Ct. Docket Entry 176.

On July 3, 2025, this Court granted the government’s motion to clarify that the June 23 stay of the preliminary injunction necessarily barred the district court from enforcing that injunction. 145 S. Ct. 2627. As the Court explained, the “June 23 order stayed the April 18 preliminary injunction in full.” *Id.* at 2629. Accordingly, the “May 21 remedial order cannot now be used to enforce an injunction that our stay rendered unenforceable.” *Ibid.* Or in Justice Kagan’s words: “I do not see how a district court can compel compliance with an order that this Court has stayed.” *Id.* at 2630 (concurring op.).

The district court granted respondents’ motion for an indicative ruling that the court would “dissolve the preliminary injunction if the First Circuit remanded [the] appeal for that purpose.” D. Ct. Doc. 212 (Aug. 28, 2025). The court of appeals remanded the case on February 20, 2026, D. Ct. Doc. 239, and the district court dissolved the preliminary injunction, App., *infra*, 16a.

3. On February 25, 2026, the district court issued a final judgment granting summary judgment to respondents on their claims that the Guidance violates the Due Process Clause and 8 U.S.C. 1231(b), while dismissing the remaining counts. App., *infra*, 1a-81a. As in its preliminary-injunction decision, the court held that Section 1252(f)(1) did not prohibit classwide relief, *id.* at 75a-77a; that the court had jurisdiction to review respondents’ claims, *id.* at 18a-34a; and that the Guidance does not provide class members constitutionally adequate notice or opportunity to raise CAT (or withholding) claims before being removed to a third country, *id.* at 50a-75a. The court additionally held that Section 1231(b) itself requires notice and an opportunity to raise statutory withholding claims, *id.* at 48a-50a, and that the Guidance

did not provide adequate process to challenge compliance with the country-sequencing provisions of Section 1231(b)(2), *id.* at 42a-46a.

The district court declared DHS’s “third-country removal policy, as embodied in” the Guidance, to be “unlawful,” and universally vacated that policy. App., *infra*, 81a. Echoing the preliminary injunction, the court declared that “class members have the right to meaningful notice before removal to any third country” and that “class members have the right to a meaningful opportunity to raise a country-specific claim against removal before removal to any third country.” *Ibid.* The court further declared that before the government may remove a class member to a third country, 8 C.F.R. 1240.12(d) requires the government to “first seek removal to [a] class member’s designated country of removal or specified alternative country or countries of removal, as provided in [the] final order of removal,” and that 8 U.S.C. 1231(b) requires the government to “first seek removal to [a] class member’s designated country of removal or country or countries of citizenship, if any.” App., *infra*, 80a.

5. The First Circuit granted a stay pending appeal on March 16, 2026, 26-1212 C.A. Doc. 118417272, but on September 18, 2026, it largely affirmed the district court’s judgment, App., *infra*, 99a-153a. The First Circuit held that respondents lacked Article III standing to raise their claim regarding the sequencing of countries of removal, *id.* at 130a-133a, but otherwise affirmed the order. The court adopted the district court’s reasoning as to the propriety of classwide relief under Section 1252(f)(1), *id.* at 147a-152a; jurisdiction to review respondents’ claims, *id.* at 115a-129a; and that Section 1231(b) requires notice and an opportunity to raise statutory withholding claims before a third-country removal, *id.* at 133a-141a. The court further held that under constitutional avoidance, FARRA itself imposes the same procedural requirements for CAT claims. *Id.* at 141a-147a.

6. At 11:36 p.m. on September 23, 2026, the First Circuit granted respondents’ motion to dissolve the stay pending appeal just three hours after respondents filed that motion—and without allowing the government to file a response. App., *infra*, 154a. The court did not provide any reasoning. Accordingly, although the mandate is not due to be issued until at least November 9, 2026, see Fed. R. App. P. 40(d)(1), 41(b), the district court’s order has immediately sprung back into effect.

ARGUMENT

Under Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, to obtain a stay pending appellate proceedings, an applicant must show a likelihood of success on the merits, a reasonable probability of obtaining certiorari, and a likelihood of irreparable harm. See *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). In “close cases,” the Court will balance the equities and weigh the relative harms. *Ibid.* Those factors are easily met here—just as they were met last year, when this Court stayed the preliminary injunction in this very case. See 145 S. Ct. 2153 (No. 24A1153). A stay is thus plainly warranted here, as the lower courts flouted both this Court’s earlier stay and its repeated admonition that its interim orders must be followed in like cases (let alone the same case). See *Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025); *Noem v. National TPS Alliance*, 146 S. Ct. 23, 24 (2025).

I. THE GOVERNMENT IS LIKELY TO SUCCEED ON THE MERITS

The judgment below rests on the same flawed legal grounds that undergirded the earlier preliminary-injunction ruling. In staying that preliminary ruling, this Court necessarily concluded that the government was likely to succeed on the merits. That conclusion applies equally here insofar as the First Circuit and district court largely echoed the district court’s prior reasoning at the preliminary stage. The courts below offered only two new points to support the final judgment, as affirmed

by the First Circuit: (1) even if Section 1252(f)(1) bars a classwide injunction in this case, it permits classwide declaratory relief and vacatur; and (2) the Guidance violates an implicit notice-and-opportunity entitlement supposedly contained in Section 1231(b) itself. If anything, those points are even weaker than the district court’s failed due-process justification for its preliminary injunction.

A. The District Court Lacked Authority To Review Respondents’ Claims Or Enter The Classwide Relief Here

The First Circuit affirmed a classwide order that effectively awards respondents the same relief that the district court tried to provide in its (stayed) preliminary injunction. As before, that relief is jurisdictionally barred. Under 8 U.S.C. 1252(f)(1), lower courts lack jurisdiction to issue classwide orders that “enjoin or restrain” the operation of third-country removals pursuant to 8 U.S.C. 1231(b). The district court’s attempt to evade that stricture by relabeling its injunction as a series of declarations and a vacatur fails. In purpose and effect, the order restrains DHS from following its own policy and invites every class member to obtain an injunction to enforce the declaratory judgments if DHS persists—thus accomplishing in two steps what is forbidden in one. Moreover, the order suffers from the same additional jurisdictional flaws as the preliminary injunction: Under 8 U.S.C. 1252(a)(5), (b)(9), and (g), district courts lack jurisdiction to adjudicate suits (like this one) arising from actions taken to execute removal orders; and under 8 U.S.C. 1252(a)(4) and FARRA § 2242(d), district courts lack jurisdiction to review claims (like these) challenging the government’s implementation and application of CAT. Finally, 8 U.S.C. 1231(h) expressly precludes review of respondents’ claims based on 8 U.S.C. 1231(b).

1. Section 1252(f)(1) precludes the new classwide relief

The INA makes clear that lower federal courts lack “jurisdiction or authority

to enjoin or restrain the operation” of certain INA provisions—including the removal provisions in 8 U.S.C. 1231—“other than with respect to the application of such provisions to an individual alien” in removal proceedings. 8 U.S.C. 1252(f)(1).³ By its terms, Section 1252(f)(1) prohibits lower federal courts from issuing classwide relief that “order[s] federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out the specified statutory provisions.” *Garland v. Aleman Gonzalez*, 596 U.S. 543, 550-551 (2022).

As at the preliminary-relief stage, when this Court issued a stay, the final order here violates Section 1252(f)(1). As before, it runs to “an entire class of aliens,” *Aleman Gonzalez*, 596 U.S. at 550-551, rather than an “individual alien,” 8 U.S.C. 1252(f)(1). As before, it concerns one of the covered statutory provisions, Section 1231(b)—which authorizes the Executive to remove aliens to third countries when appropriate. See *Aleman Gonzalez*, 596 U.S. at 551. And as before, the court’s order inescapably “restrain[s] the operation” of Section 1231(b), regardless of whether it does so on the theory that the government is violating Section 1231(b), CAT, FARRA, or the Constitution. See *id.* at 552-554.

The district court attempted to evade Section 1252(f)(1)’s strictures by recharacterizing the relief as a series of classwide declarations and a universal vacatur, rather than an injunction. But like the Constitution, the INA “deals with substance,

³ The full provision as it appears in the INA reads:

Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of chapter 4 of title II, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.

Pub. L. No. 104-208, Div. C, sec. 306(a)(2), § 242(f)(1), 110 Stat. 3009-611 to 3009-612.

not shadows.” *SFFA v. President and Fellows of Harvard College*, 600 U.S. 181, 230 (2023); cf. *The Emily*, 9 Wheat. 381, 390 (1824) (statutes should not be read to facilitate “evasion of the law”). Here, the declarations and vacatur effectively “enjoin or restrain the operation” of third-country removals under Section 1231(b) because, in substance, they require “federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out” such removals, *Aleman Gonzalez*, 596 U.S. at 550-551. Indeed, that is the *whole point* of the order below.

The lower courts insisted that Section 1252(f)(1) does not apply to declaratory judgments, which they viewed as “milder” and noncoercive. App., *infra*, 148a; see *id.* at 75a n.101; cf. *Biden v. Texas*, 597 U.S. 785, 801 n.4 (2022) (reserving the question whether Section 1252(f)(1) applies to declaratory relief or vacatur of agency action). But that wrongly treats all declaratory judgments, which may be issued “whether or not further relief is or could be sought,” 28 U.S.C. 2201(a), the same. *Some* declaratory judgments are not coercive, such as those that clarify whether the *plaintiff* may act (or not act) in a certain way, e.g., *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 130 (patent licensee may seek declaration on patent’s invalidity), or those which declare a policy unlawful but “in [their] agreed substance d[o] not contemplate injunctive relief,” *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 155 (1963) (plaintiffs cannot automatically be stripped of citizenship for draft evasion). Such declarations do not “check, hold back, or prevent” the defendant, *Aleman Gonzalez*, 596 U.S. at 549, who remains “free to continue to” act as he likes pending appellate review, *Mendoza-Martinez*, 372 U.S. at 155. But a declaration that the *defendant* must act (or not act) in a certain way *and* that contemplates a follow-on injunction if the defendant fails to comply *does* check, hold back, and prevent the defendant, and thus has the practical effect of an injunction.

That is the case here. The First Circuit affirmed a declaration that all class members have an enforceable “right” to “meaningful notice” and “a meaningful opportunity” to be heard before they could be removed to a third country. App., *infra*, 81a. That declaration invites “every single member of the class” to “immediately seek an injunction grounded on the authority of the declaratory judgment,” even before appellate proceedings have concluded, if the government does not immediately comply. *Alli v. Decker*, 650 F.3d 1007, 1020 n.2 (3d Cir. 2011) (Fuentes, J., dissenting). Indeed, that is presumably why, in response to an “emergency” motion by respondents, the First Circuit dissolved its stay in the middle of the night and weeks ahead of when the mandate would ordinarily issue—the court of appeals, like respondents and the district court, expect immediate compliance with the declaratory judgment. That judgment thus “check[s], hold[s] back, [and] prevent[s]” the challenged policy, *Aleman Gonzalez*, 596 U.S. at 549, because it has the “practical effect” of a “class-wide injunction,” *Hamama v. Adducci*, 912 F.3d 869, 880 n.8 (6th Cir. 2018), cert. denied, 141 S. Ct. 188 (2020); cf. *Abbott v. Perez*, 585 U.S. 579, 594 (2018) (“[W]here an order has the ‘practical effect’ of granting or denying an injunction, it should be treated as such for purposes of appellate jurisdiction.”). Indeed, the Tax Injunction Act, which provides that district courts may “not enjoin, suspend[,] or restrain” the collection of state taxes in certain circumstances, 28 U.S.C. 1341, covers “declaratory judgments holding state tax laws unconstitutional,” which “may in every practical sense operate to suspend collection of the state taxes until the litigation is ended.” *California v. Grace Brethren*, 457 U.S. 393, 408 (1982); cf. *Samuels v. Mackell*, 401 U.S. 66, 72 (1971) (instructing that, because declaratory relief frequently would have “virtually the same practical impact as a formal injunction would”—especially when it “might serve as the basis for a subsequent injunction”—“where an injunction would

be impermissible” on other grounds, “declaratory relief should ordinarily be denied as well”). The First Circuit viewed *Grace Brethren* as having “limited relevance because it involved federalism concerns.” App., *infra*, 149a. That is a *non sequitur*. Whether a declaratory judgment acts like an injunction does not logically depend on whether the case implicates vertical (rather than horizontal) separation of powers.

Exempting a coercive declaration from Section 1252(f)(1) would invite just the sort of evasion that the courts below committed here. By prohibiting orders that “restrain” as well as “enjoin,” Congress did not forbid classwide injunctions, yet welcome classwide declaratory judgments that invite each and every class member to obtain a follow-on injunction. Cf. *The Emily*, 9 Wheat. at 390. Put differently, a court may not accomplish in two steps (classwide declaration plus follow-on injunctions) what Congress has forbidden it to do in one (classwide injunction). Cf. *NRA v. Vullo*, 602 U.S. 175, 190 (2024) (government generally “cannot do indirectly what [it] is barred from doing directly”).

The First Circuit also reasoned that Section 1252(f)(1) does not preclude universal vacatur, which the court viewed as a “less drastic” remedy that “neither compels nor restrains further agency decision-making.” App., *infra*, 151a; see *id.* at 75a-77a & nn.101-102. That reasoning similarly lacks merit. As noted, Congress precluded not only classwide orders that “enjoin,” but also those that “restrain.” 8 U.S.C. 1252(f)(1). This Court has explained that “restrain” is broad, reaching *all* judicial orders that “check, hold back, or prevent” governmental action. *Aleman Gonzalez*, 596 U.S. at 549. Vacatur plainly can have such “inhibit[ing]” effect. *Ibid.* If a rule provides the legal authority for officials to act, vacating the rule obviously “prevents” officials from acting. And even where (as here) a rule simply directs officials how to exercise their statutory and regulatory authority, vacatur “checks” and “holds back”

officials from acting in accordance with the rule, because it leaves officials without instructions about how to act—and thereby practically leave them with little choice but to act in compliance with the court’s rationale for the vacatur.

2. As at the preliminary-injunction stage, Section 1252 and FARRA preclude review of respondents’ claims

Independent of the form of relief, respondents’ claims are also not judicially reviewable because district courts lack jurisdiction to adjudicate suits arising from actions to execute removal orders or to review claims challenging the government’s implementation and application of CAT. The contrary reasoning of the First Circuit (App., *infra*, 115a-129a) and district court (*id.* at 18a-34a) echoes the reasoning at the preliminary-injunction stage (778 F. Supp. 3d at 370-378) and lacks merit for reasons explained in the government’s earlier stay application (24A1153 Appl. 22-28).

a. The INA generally prohibits district courts from exercising jurisdiction over suits challenging actions to execute removal orders. Congress has stripped those courts of jurisdiction over “any cause or claim by or on behalf of any alien arising from the decision or action * * * to commence proceedings, adjudicate cases, or execute removal orders.” 8 U.S.C. 1252(g). Instead, those claims—along with “all questions of law and fact * * * arising from any action taken or proceeding brought to remove an alien”—must be brought, if anywhere, as part of a petition for review of a “final order” of removal. 8 U.S.C. 1252(b)(9). That petition is the “sole and exclusive means for judicial review” of such claims. 8 U.S.C. 1252(a)(5).

Here, respondents challenge where they are to be removed on the ground that the government’s procedures are supposedly deficient. But a claim about where an alien will be removed is, *ipso facto*, a “claim” “arising from the decision or action” to “execute [a] removal order[].” 8 U.S.C. 1252(g); see 8 C.F.R. 1240.12(d) (removal order

“does not limit” DHS’s authority to remove alien to third country not listed). Indeed, if the government were not “execut[ing a] removal order[]” against an alien, the alien would not even be a member of the class here, much less have standing to challenge the Guidance. See 778 F. Supp. 3d at 378 (defining class to include only aliens who, *inter alia*, DHS “has deported or will deport” to a third country on or after February 18, 2025). By definition, then, each and every class member necessarily is raising a claim arising out of the government’s actions to execute his removal order.

The lower courts brushed aside Section 1252(g) on the theory that it reaches only “discretionary decisions.” App., *infra*, 119a, 122a; see *id.* at 19a-21a. As the district court elaborated, “it is not within the ‘discretion’ of the Executive to exceed the scope of its authority or otherwise violate the law.” *Id.* at 19a; see *id.* at 122a. That is the precise misreading of Section 1252(g) that tainted the district court’s previous decision (which this Court stayed), see 778 F. Supp. 3d at 376-377, and it remains doubly wrong.

First, it improperly makes jurisdiction “dependent upon the merits of the claim.” *Aleman Gonzalez*, 596 U.S. at 554. Under the lower courts’ logic, whether an act is discretionary—and thus whether review is precluded—depends on whether the act is lawful. Put differently, a court must rule on the merits in order to determine whether it has jurisdiction to rule on the merits. This Court has repeatedly rejected that logically circular approach to jurisdictional statutes. *E.g.*, *ibid.*; *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 92 (1998).

Second, nothing in Section 1252(g)’s text is limited to acts of “discretion”—which Congress knows how to do. See, *e.g.*, 8 U.S.C. 1226(e) (“The [DHS Secretary’s] discretionary judgment regarding the application of this section shall not be subject to review.”). Rather, the text reaches “*any* cause or claim * * * arising from the

decision *or* action by the [DHS Secretary] to commence proceedings, adjudicate cases, or execute removal orders.” 8 U.S.C. 1252(g) (emphases added). Of course, such actions often involve discretion on the Executive Branch’s part, akin to the exercise of prosecutorial discretion. *Reno v. AADC*, 525 U.S. 471, 486 (1999). But Section 1252(g) is not limited to only the discretionary aspects of the specified actions; its text reaches “any” “action” taken to “execute removal orders.” See *E.F.L. v. Prim*, 986 F.3d 959, 965 (7th Cir. 2021) (rejecting view that Section 1252(g) is limited to “discretionary decisions”); see also *Rauda v. Jennings*, 55 F.4th 773, 777-778 (9th Cir. 2022) (endorsing *E.F.L.* and cases from Third, Sixth, and Eleventh Circuits holding the same). The district court attempted to distinguish *AADC* on the ground that the claims there challenged the defendants’ subjective motives in choosing to deport the aliens, whereas the claims here do not require subjective inquiries. See App., *infra*, 20a-21a. But *AADC* did not rely on that rationale; instead, the Court found review precluded because the claims challenged the “decision to ‘commence proceedings’ against” the plaintiffs—full stop. 525 U.S. at 487.

The First Circuit also reasoned that because a removal order “must ‘identify a country, or countries in the alternative, to which the alien’s removal may in the first instance be made,’” respondents’ claim against third-country removals “does not arise from the decision or action to ‘execute’ that order,” but instead “from the decision or action *not* to execute the country-designation aspect of the removal order.” App., *infra*, 116a, 118a. But that is incorrect; an alien may be removed *either* to a country designated in the removal order *or* a third country permissible under Section 1231(b). 8 C.F.R. 1240.12(d). The latter is no less an execution of the removal order than the former. The court’s theory also is nonsensical: executing a *portion* of a removal order still qualifies as executing the removal order. At a minimum, a claim that the gov-

ernment is not fully executing the removal order’s terms “aris[es] from” the decision to execute the removal order, 8 U.S.C. 1252(g), which is all that is needed to trigger the jurisdictional bar.

The First Circuit’s reliance (App., *infra*, 119a) on *DHS v. Regents*, 591 U.S. 1 (2020), was misplaced. There, this Court held that Section 1252(g) did not preclude a challenge to the rescission of a program that offered certain substantive immigration benefits to certain deferred-action recipients. *Id.* at 19. The Court explained that the “rescission, which revokes a deferred action program with associated benefits, is not a decision to ‘commence proceedings,’ much less to ‘adjudicate’ a case or ‘execute’ a removal order.” *Ibid.* Unlike *Regents*, this case challenges not some antecedent programmatic determination that could have a downstream effect on class members’ immigration status, but instead a policy that directs only the execution of removal orders.

The lower courts compounded their error by ignoring the plain text of Section 1252(a)(5) and (b)(9). Whether an alien may be removed to a particular country, and under what procedures, self-evidently are questions of law or fact “arising from any action taken or proceeding brought to remove an alien from the United States.” 8 U.S.C. 1252(b)(9). And review of “all” such questions must occur—if anywhere—“only in judicial review of a final order under this section.” *Ibid.* If that were not clear enough, the INA removes all doubt by confirming that “[n]otwithstanding any other provision of law * * * a petition for review filed with an appropriate court of appeals * * * shall be the sole and exclusive means for judicial review of an order of removal.” 8 U.S.C. 1252(a)(5).

The First Circuit deemed those provisions inapplicable because “this is not a case that seeks review of an order of removal, the decision to seek removal, or the

process by which removability is determined.” App., *infra*, 129a. But the INA requires only that the claim “aris[e] from any action” taken to remove an alien, 8 U.S.C. 1252(b)(9); and respondents’ claims obviously “arise from” such an action—namely, the designation of, and removal to, a third country. That basic point distinguishes this case from cases involving claims only tangentially related to removal orders and thus not unreviewable under Section 1252(a)(5) and (b)(9). See *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018) (plurality opinion) (claims regarding detention); *Re-gents*, 591 U.S. at 19 (claims regarding rescission of deferred action).

b. Independently, the INA and FARRA preclude review of respondents’ CAT-related claims. The INA provides that “[n]otwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision,” “a petition for review filed with an appropriate court of appeals * * * shall be the sole and exclusive means for judicial review of any cause or claim under [CAT].” 8 U.S.C. 1252(a)(4). And FARRA confirms that “no court shall have jurisdiction to review * * * any * * * determination made with respect to the application of [CAT] * * * except as part of the review of a final order of removal.” § 2242(d), 112 Stat. 2681-822; see 8 C.F.R. 208.18(e). The order here runs afoul of those limits. As the district court itself previously recognized, respondents’ suit both concerns the “application” of CAT, and is a “cause or claim under [CAT].” See 778 F. Supp. 3d. at 379 (recognizing that the “class-wide injunctive relief [respondents] seek” is “based on” FARRA). Thus, the claims raised here can only be reviewed—if at all—in a court of appeals via a petition for review.

The First Circuit nevertheless affirmed the district court’s holding that respondents’ claims did not arise “under” CAT because CAT did not provide their “cause of action.” App., *infra*, 32a (quoting *American Well Works Co. v. Layne & Bowler Co.*,

241 U.S. 257, 260 (1916)); see *id.* at 124a-126a. But CAT, a non-self-executing treaty, does not itself create *any* cause of action. So under the lower courts’ reasoning, Section 1252(a)(4) would never apply to any claim, and would effectively be a dead letter. That cannot be right. Instead, “any cause or claim under [CAT]” in Section 1252(a)(4) is better read to include any claim that depends on CAT or FARRA for relief. Cf. *Ardestani v. INS*, 502 U.S. 129, 135 (1991) (reading “under” as meaning “subject to” or “governed by”). Indeed, this Court described this case as one involving aliens “seek[ing] relief under [CAT],” 145 S. Ct. at 2629—a description that the lower courts disregarded entirely. The First Circuit reasoned that Section 1252(a)(4) could still do work because it would preclude “CAT claims in habeas corpus petitions under 28 U.S.C. § 2241.” App., *infra*, 124a. But Section 1252(a)(4)’s scope “*includ[es]*” “section 2241” and “any other habeas corpus provision”—making clear that it must also encompass more than just those provisions. See Scalia & Garner, *Reading Law* 132 (2012) (presumption of nonexclusive “include”). The First Circuit’s reasoning thus contravenes the plain text of the INA.

In addition, FARRA provides that “nothing in this section shall be construed as providing any court jurisdiction to consider or review claims raised under [CAT] or this section, or any other determination made with respect to the application of [CAT], except as part of the review of a final order of removal.” § 2242(d), 112 Stat. 2681-822. The lower courts reasoned that the “literal terms” of FARRA say only that it “does not provide jurisdiction, not that it repeals jurisdiction.” App., *infra*, 33a; see *id.* at 125a. But that myopic reading overlooks that Section 2242(d) states that “nothing” in FARRA supplies jurisdiction to review CAT claims “*except*” as part of a final order of removal. That language is best read to mean that CAT claims may be reviewed only via a petition for review. The lower courts’ contrary reading is incon-

sistent with the INA’s command that a petition for review is the “sole and exclusive means” to review CAT claims “[n]otwithstanding any other provision of law.” 8 U.S.C. 1252(a)(4). Cf. *Shapiro v. McManus*, 577 U.S. 39, 43 (2015) (rejecting an interpretation that “needlessly produces a contradiction in the statutory text” where the alternative does not).

3. Section 1231(h) precludes review of respondents’ claims based on Section 1231(b)

Finally, Section 1231(h) independently precludes review of respondents’ claims based on Section 1231(b). That provision states: “Nothing in [Section 1231] shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against” the government. 8 U.S.C. 1231(h). Here, the lower courts held that Section 1231(b)(2) implicitly entitles respondents to additional procedures in order to raise withholding claims and challenge the selection of the country of removal. See App., *infra*, 42a-46a, 48a-50a, 133a-141a. But Section 1231(h)’s plain text makes clear that (1) Section 1231(b)(2) does not create such procedural rights, see Part B.1, *infra*; and (2) any such rights are not “legally enforceable” in this type of suit filed in district court. 8 U.S.C. 1231(h).

The First Circuit expressed confusion (App., *infra*, 139a) over why, under the government’s reading of Section 1231(h), claims that an alien is entitled to withholding of removal are reviewable in a petition for review. The answer is because of specific language in Section 1252 itself. As noted, Congress authorized judicial review of a removal order exclusively in a petition for review “[n]otwithstanding any other provision of law.” 8 U.S.C. 1252(a)(5). And in specifying the scope of that review, Congress limited the ability of courts to reverse certain “determination[s] * * * described in section * * * 1231(b)(3)(C).” 8 U.S.C. 1252(b)(4). That language implies

that courts may review *other* determinations described in Section 1231(b)(3)(C), which addresses the alien’s burden of proof to demonstrate an entitlement to withholding, in a petition for review. Sections 1231(h), 1252(a)(5), and 1252(b)(4) are thus best harmonized to mean that statutory withholding claims are reviewable *only* in a petition for review, but are not legally enforceable in any *other* type of suit (like this one). Cf. *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (“It is a commonplace of statutory construction that the specific governs the general.”) (brackets omitted).

The First Circuit’s reliance (App., *infra*, 139a) on *Zadvydas v. Davis*, 533 U.S. 678 (2001), is misplaced. There, aliens detained under Section 1231(a) brought habeas claims seeking release. This Court held that Section 1231(h) “does not deprive an alien of the right to rely on [the habeas statute] to challenge detention that is without statutory authority.” *Id.* at 688. That holding is inapposite because the aliens in *Zadvydas* did not seek to enforce any “right or benefit” created by Section 1231; instead, they challenged their detention on the ground that the government had no authority to detain them, and that the government’s defense under Section 1231(a) failed. Here, in contrast, the government undoubtedly has the authority to remove respondents to third countries, and respondents assert a procedural right supposedly grounded in Section 1231(b)(2) in order to constrain that authority. Nothing in *Zadvydas* suggests that such purported rights may be enforced in a suit like this one, contrary to the unambiguous text of Section 1231(h).

B. Respondents’ Claims Lack Merit

Even if respondents’ claims were reviewable, the lower courts erred in holding that respondents have a constitutional or statutory right to additional procedures beyond those in the Guidance before being removed to a third country. The lower

courts’ reasoning that the Guidance provides insufficient notice and opportunity to raise a withholding or CAT claim (App., *infra*, 50a-75a, 133a-147a) echoes the reasoning at the preliminary-injunction stage (778 F. Supp. 3d at 387-390), and it lacks merit for reasons explained in the government’s earlier stay application (24A1153 Appl. 28-36). New this time, the district court reasoned that Section 1231(b) itself requires greater notice and opportunity to contest third-country removals. We address that new rationale first.

1. Section 1231(b) does not require additional procedures

a. The lower courts held that the Guidance violates Section 1231(b) because “the Court construes section 1231(b)(2) to require notice and an opportunity to present claims for statutory withholding of removal under section 1231(b)(3).” App., *infra*, 48a; see *id.* at 48a-50a, 133a-141a. But the courts did not identify *any* text in Section 1231(b)(2) or 1231(b)(3) creating such an entitlement. And Section 1231(h) affirmatively prohibits “constru[ing] [Section 1231] to create any substantive or procedural right or benefit.” 8 U.S.C. 1231(h). The lower courts’ conclusion that Section 1231(b) creates the asserted procedural rights thus has no basis in the statutory text. That likewise dooms reliance (App., *infra*, 50a, 134a, 137a), on the constitutional-avoidance canon, see *Jennings*, 583 U.S. at 298 (avoidance is not a “license to graft” additional limits “onto the text”). The analysis of this theory could thus stop here.

The First Circuit nevertheless reasoned that Section 1231(b) must “mean more than what [it] plainly say[s]” and must therefore implicitly create procedural rights because, as the district court put it, the government cannot evaluate a risk of persecution “absent the noncitizen’s involvement, or at least his meaningful abstention.” App., *infra*, 49a, 137a (quotation marks omitted). But withholding applies only “*if the [government] decides* that the alien’s life or freedom would be threatened.”

8 U.S.C. 1231(b)(3)(A) (emphasis added). The government thus has discretion to fashion procedures to make that decision. See *Vermont Yankee Nuclear Power Corp. v. NRDC, Inc.*, 435 U.S. 519, 543-544 (1978). And while the government has provided a robust process in connection with issuance of removal orders, *e.g.*, 8 C.F.R. 1240.11(c), 1240.17, 1240.33, 1240.49(c), it has opted for a more streamlined process for covered third-country removals, and nothing in Section 1231(b) is to the contrary.

Further, the lower courts’ rationale makes no sense even on its own terms. Under the Guidance, the Executive Branch “must determine whether [a] country has provided diplomatic assurances that aliens removed from the United States will not be persecuted or tortured,” and must find those assurances “credible.” App., *infra*, 84a. A credible assurance that a foreign country will not persecute or torture anyone logically and necessarily means that the country will not persecute or torture one of the class members. An alien’s “involvement” is unnecessary either to reach that inevitable conclusion or to evaluate the credibility of such assurances from foreign nations, which is a task entrusted to the Executive Branch, see Part B.2, *infra*.

Where the third country has not provided credible assurances, the Guidance directs that aliens be provided written notice of the country (read aloud to the alien in a language he understands) and a reasonable opportunity to claim a fear of persecution (generally 24 hours, or after he has had a reasonable means and opportunity to speak with an attorney). See App., *infra*, 85a, 87a. The lower courts’ preference for more elaborate and lengthy procedures cannot overcome the lack of statutory support for imposing such procedures, much less the sort of requirements the district court imposed by fiat when enforcing the preliminary injunction (*e.g.*, the 10-day minimum to claim fear, and the 15-day minimum to reopen immigration proceedings).

2. Due process does not require additional procedures to raise fear-based claims, even under constitutional avoidance

The district court repeated its errors from the preliminary-injunction stage in concluding that the Guidance does not provide constitutionally sufficient process for class members to raise fear of torture (or persecution). All class members here have final orders of removal. All have had the opportunity to raise CAT (and withholding) claims in prior proceedings, express fears as to any potential countries of removal, and move to reopen past proceedings as new fears have arisen. The Guidance ensures that an alien will either be sent to a country where the United States has received adequate assurance the alien will not be tortured or persecuted, or that the alien will be given notice and an opportunity to be heard regarding any fear as to his country of removal. See App., *infra*, 84a-87a. The lower courts erred in second-guessing the details of those procedures under the guise of constitutional due-process or avoidance, especially for a class that includes many illegal aliens who lack any due-process rights to contest their removals beyond what the political branches have provided. And the First Circuit compounded those errors by relying on constitutional avoidance to read FARRA itself to impose additional procedural requirements.

a. For countries that have provided adequate assurances, the Constitution requires no further process. When the Executive determines a country will not torture or persecute a person on his removal, that is conclusive. *Munaf v. Geren*, 553 U.S. 674, 702-703 (2008); see *id.* at 689 (explaining the need for judicial “circumspection” when “adjudicating issues inevitably entangled in the conduct of our international relations”); *Kiyemba v. Obama*, 561 F.3d 509, 514 (D.C. Cir. 2009) (federal courts “may not question the Government’s determination that a potential recipient country is not likely to torture a detainee”), cert. denied, 559 U.S. 1005 (2010). The

“*Munaf* decision applies here a fortiori: That case involved transfer of *American citizens*, whereas this case involves transfer of alien detainees with no constitutional or statutory right to enter the United States.” *Kiyemba*, 561 F.3d at 517-518 (Kavanaugh, J., concurring). When the Executive decides an alien will not be tortured or persecuted abroad, courts may not “second-guess [that] assessment,” at least unless Congress has specifically authorized judicial review of that decision. *Id.* at 517 (citation omitted); see *Munaf*, 553 U.S. at 703 n.6.

The district court opined (App., *infra*, 63a-68a) that due process requires the Executive Branch to make “an ‘individualized determination’ that the foreign assurances are sufficient” in each alien’s case, *id.* at 65a, and that aliens are entitled to challenge “the Government’s reasons for crediting the assurances” of any given country, *id.* at 67a. But courts may not “second-guess” the scope of the Executive’s conclusion any more than its substance. See *Kiyemba*, 561 F.3d at 517-518 (Kavanaugh, J., concurring). The decision that a foreign government’s categorical assurance against torture or persecution is sufficient for all aliens is *itself* a “foreign policy” judgment the Judiciary “is not suited” to question. *Munaf*, 553 U.S. at 702.

Indeed, the district court’s objections do not sound in *procedural* due process at all. They instead reflect the court’s *substantive* view that a blanket assurance provides an insufficient basis for the government to find that a particular alien is not likely to be tortured. This Court has rightly rejected attempts to “recast in ‘procedural due process’ terms” what is really a challenge to the “‘substantive’” criteria that the government has adopted. *Reno v. Flores*, 507 U.S. 292, 308 (1993) (rejecting similar argument for “individual[ized]” procedure). It makes no sense to require the government to provide additional process with respect to potential evidence that is *immaterial* under the relevant substantive standard. When the government is satisfied

based on foreign assurances that *no* alien will be tortured in the receiving country, a further “individualized determination” serves no rational purpose. Cf. *Olim v. Wakinekona*, 461 U.S. 238, 250 (1983) (“Process is not an end in itself.”).

b. Where the third country has not provided an adequate assurance, the Guidance’s procedures (notice, opportunity to raise fear, and additional screening if necessary, see App., *infra*, 84a-87a) likewise satisfy constitutional due process. The district court asserted in a conclusory footnote that those procedures are “facially inadequate” and not “appropriate to the nature of the case.” *Id.* at 62a n.86. Although the court did not elaborate, presumably it would require, in future proceedings alleging non-compliance with the declaratory judgment, something akin to what it imposed in its preliminary-injunction ruling, where the court ultimately required the government to give each class member a “minimum of ten days” to assert a fear of torture, 2025 WL 1453640, at *1 (emphasis omitted); “no fewer than 72-hours’ notice of the scheduled time for each reasonable fear interview” (at least for the aliens removed to South Sudan), 2025 WL 1453604, at *1; and a “minimum of 15 days” to reopen immigration proceedings in the event the alien did not demonstrate a reasonable fear, 778 F. Supp. 3d at 393. Although the court did not expressly reimpose those specific requirements here, it did not disavow them either. And it used the same open-ended term (“meaningful opportunity”) in the final judgment that it previously relied on to impose those specific timing requirements. App., *infra*, 81a. Yet the court offered no basis in law for imposing such procedures, much less for finding the procedures the Guidance does offer to be inadequate. See 24A1153 Appl. 28-36 (explaining why the Guidance’s procedures are adequate, especially as they come after removal proceedings and are analogous to those provided in expedited removal).

c. The district court’s creation of novel due-process requirements is partic-

ularly misguided because, for many class members, due process requires no more process than what the political branches provide. This Court has long held that “the due process rights of an alien seeking initial entry” are no greater than “[w]hatever the procedure[s] authorized by Congress.” *DHS v. Thuraissigiam*, 591 U.S. 103, 139 (2020). The class here plainly includes aliens who have not been admitted, see p. 12 n.2, *supra* (class definition)—and for aliens who have not been admitted, “the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.” *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) (emphasis added); accord *Thuraissigiam*, 591 U.S. at 138-140. At a minimum, that renders the classwide relief (indeed, the class definition) improper.

This Court has long applied the so-called “entry fiction” that all “aliens who arrive at ports of entry * * * are treated for due process purposes as if stopped at the border.” *Thuraissigiam*, 591 U.S. at 139. That is true “even [for] those paroled elsewhere in the country for years pending removal.” *Ibid.*; see, e.g., *Kaplan v. Tod*, 267 U.S. 228, 230 (1925); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 214-215 (1953). *A fortiori*, aliens who evade detection in crossing the border likewise are treated the same as those stopped at the border in the first place. See *Thuraissigiam*, 591 U.S. at 138-140. While aliens who have been *admitted* may claim due-process protections beyond what Congress has provided when the government seeks to remove them, cf. *Landon v. Plasencia*, 459 U.S. 21, 32 (1982); *Wong Yang Sung v. McGrath*, 339 U.S. 33, 49-50 (1950), this Court has not held that aliens who have “entered the country clandestinely” are entitled to such additional rights, cf. *The Japanese Immigrant Case*, 189 U.S. 86, 100 (1903); *Thuraissigiam*, 591 U.S. at 138-140. As *Zadvydas* recognized, “[a]liens who have not yet gained initial admission to this country * * * present a very different question” for due-process purposes than “aliens

who were admitted to the United States.” 533 U.S. at 682.

The district court dismissed the entry fiction on the ground that it pertains to “the determination of a noncitizen’s *admissibility*,” whereas respondents’ claims relate to statutory withholding and CAT protection, which do not come into play “until *after* the order of removal has been entered and thus *after* any question of admissibility has been resolved.” App., *infra*, 55a-56a. But the alien in *Thuraissigiam* challenged the constitutionality of expedited-removal procedures not just with respect to admissibility, but also with respect to the opportunity to file claims for asylum, withholding, and CAT protection. 591 U.S. at 118. Yet this Court did not rule for the alien as to withholding and CAT—or even conduct a balancing under *Mathews v. Eldridge*, 424 U.S. 319, 334-335 (1976), with respect to those claims. Instead, the Court rejected the due-process claim in toto. *Thuraissigiam*, 591 U.S. at 138-140.

d. Although the First Circuit did not “doubt” the district court’s due-process holding, it invoked constitutional avoidance only to “bolster[]” its view (which even the district court did not adopt) that FARRA itself implicitly imposes additional procedural requirements on third-country removals. App., *infra*, 143a-147a. In so ruling, the First Circuit inverted ordinary statutory analysis: instead of asking whether FARRA’s text can fairly be read to include those requirements, it reasoned that “there is no explicit language in the FARRA/CAT or related regulations that precludes” the court’s invention of those requirements. *Id.* at 143a. That is an inappropriate way to read any statute—and especially in the immigration context, where Congress’s enactment of a slew of detailed procedural provisions should make courts particularly hesitant to impose additional ones of their own creation. *Jennings*, 583 U.S. at 298 (constitutional avoidance is not a “license to graft” additional limits “onto the text”); see *Vermont Yankee*, 435 U.S. at 543-544; cf., e.g., *Hughes Aircraft Co. v.*

Jacobson, 525 U.S. 432, 447 (1999) (“comprehensive and reticulated statute[s]” “should not be supplemented by extratextual remedies”).

The First Circuit also reasoned that because it read procedural requirements into Section 1231(b) for withholding claims, it must read the same requirements into FARRA for CAT claims because both types of claims are governed by the same set of regulatory provisions, which must therefore carry the same meaning in both contexts. App., *infra*, 144a (citing *Clark v. Martinez*, 543 U.S. 371 (2005)). That tail-wags-the-dog reasoning—in which a *regulation* dictates the interpretation of a *statute*, but see *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024)—is question-begging because it assumes the correctness of the court’s holding that Section 1231(b) implicitly contains those procedural requirements in the first place. If anything, that the regulations should carry the same meaning for withholding and CAT claims is further proof of the *incorrectness* of the court’s reading of Section 1231(b).

II. THE OTHER FACTORS SUPPORT RELIEF

The remaining factors support a stay here; indeed, the equities favor the government even more heavily than when this Court previously granted a stay, given that the Guidance has governed third-country removals since that time. Cf. *National TPS Alliance*, 146 S. Ct. at 24; *Boyle*, 145 S. Ct. at 2654.

A. The Court Likely Would Grant Certiorari

In granting a stay of the district court’s preliminary injunction, 145 S. Ct. 2153 (No. 24A1153), this Court necessarily determined that the question presented in this case likely would warrant certiorari if the lower courts were to rule against the government on the merits. See *Hollingsworth*, 558 U.S. at 190; see also *Does 1-3 v. Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring). Nothing material has changed since then. Like its April 2025 order, the district court’s latest order “‘improperly intrudes’

on ‘a coordinate branch of the Government’” in an area—immigration—that Congress and the Constitution have entrusted to the Executive. *Trump v. CASA, Inc.*, 606 U.S. 831, 859 (2025) (quoting *INS v. Legalization Assistance Project*, 510 U.S. 1301, 1306 (1993) (O’Connor, J., in chambers)) (brackets omitted). The President has determined that aliens who already have a final order of removal should be removed—and by invoking the INA’s authorization to remove aliens to third countries, the DHS policy here appropriately strikes a balance between providing adequate process while ensuring that aliens who were ordered removed long ago are actually removed. As this Court already determined last year, the district court’s latest order blocking that critical policy, which the First Circuit has now affirmed, warrants this Court’s attention.

B. The Government Will Suffer Irreparable Harm Absent A Stay

The district court’s order imposes irreparable harm on the government and public, whose interests “merge” here, *Nken v. Holder*, 556 U.S. 418, 435 (2009). Those harms are the same in kind as the ones that the preliminary injunction imposed, and they warrant relief for the same reasons. If anything, the harms now are much worse. DHS has been operating under the Guidance for the past 15 months given this Court’s stay of the preliminary injunction and the First Circuit’s stay of the final judgment, and it has removed thousands of aliens to third countries by following procedures set forth in the Guidance. See App., *infra*, 95a-96a ¶¶ 11-13 (describing 7,257 third-country removals to Mexico since January 2025 and 103 third-country removals of aliens whose home countries refused repatriation or who presented public safety concerns, including 23 murderers). Allowing the district court’s order to take effect would upend international agreements and force the government to shift gears. And that disruption is all the worse in light of the First Circuit’s unexpected, unexplained, and abrupt dissolution of the stay pending appeal in the middle of the night, without

even allowing the government to respond, which has left the government scrambling to comply with an order that nobody anticipated would take effect until at least the mandate issued several weeks from now.

Whenever a court issues broad relief against an Executive Branch policy, the United States suffers a form of irreparable harm. See *CASA*, 606 U.S. at 860-861; *Trump v. IRAP*, 582 U.S. 571, 578-579 (2017) (per curiam); see also *Trump v. California*, No. 26A124, 2026 WL 2473573, at *4 (Aug. 24, 2026) (lower-court errors that “deal ‘a serious setback’ to the Executive’s ‘goals’” constitute “irreparable harm” warranting a stay). And that harm is even more pronounced where, as here, a judicial order undermines the Executive Branch’s constitutional and statutory authority over immigration and the removal of aliens, thus reflecting an “unwarranted judicial interference in the conduct of foreign policy.” *Kiobel v. Royal Dutch Petroleum*, 569 U.S. 108, 116 (2013); see, e.g., *National TPS Alliance*, *supra*. While the Constitution envisions that “the Government’s political departments [will be] largely immune from judicial control” in the immigration sphere, *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (citation omitted), the district court’s order portends the opposite: that court will generally superintend third-country removals—of all aliens, anywhere in the country—indeinitely. The order’s open-ended terms (“meaningful notice before removal,” “meaningful opportunity to raise a country-specific claim,” etc., App., *infra*, 81a) allow the district court to continually revise its invented removal policy. That is no mere hypothetical: at the preliminary-injunction stage, the court purported to “clarif[y]” that a “meaningful opportunity” means “a minimum of ten days” to “raise a fear-based claim,” 2025 WL 1453640, at *1 (emphasis omitted), despite the lack of any legal authority for such a rigid requirement.

This Court’s previous stay extricated DHS from that unworkable morass, but

the latest order threatens to plunge the agency back in—and on short notice, given the First Circuit’s unexpected dead-of-night dissolution of the stay pending appeal. Under the preliminary injunction, the district court effectively required at least 25 days’ worth of delay for every alien being removed to a third country who decides to voice a fear under CAT—regardless of how frivolous or dilatory his claim—thereby imposing massive operational burdens on an already strained immigration system. See Ripa Decl. ¶ 29. Secretary Rubio explained that the injunction would have harmed (and, during its short life, did harm) American foreign policy, given that arranging third-country removals is a delicate diplomatic endeavor and the product of careful negotiations. See D. Ct. Doc. 130-1, at 71a ¶¶ 3-7 (Rubio). None of those risks is different now. See App., *infra*, 88a-90a ¶¶ 3, 6-8 (Rubio); *id.* at 96a-97a ¶ 14 (Schultz). Third-country removals require careful negotiation with foreign governments, which are rarely enthusiastic about accepting foreign citizens (especially criminals), and often requires obtaining travel documents and devoting significant manpower to the staging of flights to protect government officers and flight crews. Disruption of those plans thus imposes massive costs on the government and invariably requires new rounds of diplomatic engagement with countries who may be all the more skeptical of our removal efforts given the disruption. DHS informs us that in addition to already cancelling a flight to three countries with 70 criminal aliens, it has had to pull nearly 150 aliens from removal flights to at least four different countries. DHS states that it has another flight to four countries carrying 58 aliens scheduled for later this week. Those administrative and foreign-relations harms are just the tip of the iceberg if the district court’s order is not immediately stayed.

Nor are those severe costs offset by any public benefit, especially given the extremely low likelihood that any alien has a viable protection claim to a third coun-

try. The United States relies on third countries in part to facilitate the removal of criminal aliens who are otherwise difficult to remove because their home countries and other countries refuse to take them. Absent an effective third-country removal policy, the United States is forced to retain (and often release into the interior) vicious criminals who have already harmed our communities. See App., *infra*, 94a, 98a ¶¶ 9, 15 (district court’s order could allow “1,432 convicted criminals” awaiting third-country removal to remain in the country, including 139 currently detained aliens with convictions for “serious offenses such as murder, rape, child sexual abuse, armed robbery, and aggravated assault”). The Guidance marked a long overdue solution that has been extremely successful over the past nine months, and the public would not be served by its belated suspension while the government’s appeal proceeds. See *Nken*, 556 U.S. at 436 (recognizing the “public interest in prompt execution of removal orders”).

C. The Balance Of Equities Favors A Stay

To the extent that a balancing of the equities is warranted, respondents have not established that a stay would result in meaningful cognizable harm on their side of the scales. The Secretary of State already has the authority to obtain “assurances” from a foreign country that an alien will not be tortured if removed there, and those assurances are already dispositive with regard to CAT protection. 8 C.F.R. 208.18(c). Neither the lower courts nor respondents have identified any sort of imminent or irreparable harm from the government’s ability to obtain those assurances categorically versus one-by-one, or with respect to withholding. Because either decision would rest on the same basis (*i.e.*, that *no* alien will be tortured or persecuted), any requirement for “individualized” determinations amounts to a paperwork demand.

Likewise, as for aliens set to be removed to non-assurance countries, the Guid-

ance already provides them notice and a reasonable opportunity to raise a fear claim. See Ripa Decl. ¶¶ 7-8, 11-13. And respondents have never justified why the district court's added measures—which, as noted, extend far beyond the typical timeframe in expedited removal—are necessary to forestall irreparable harm here. That is especially so given the lack of any realistic risk that they will be persecuted or tortured with the concurrence of foreign governments in third countries where they have little or no preexisting connection, particularly given that the Executive Branch has determined those countries are acceptable places of removal.

CONCLUSION

The Court should stay the district court's February 25, 2026, order. The Court also should enter an immediate administrative stay. If the Circuit Justice issues a briefing schedule without also entering an immediate administrative stay, we respectfully request that the request for the immediate administrative stay be referred to the full Court.

Respectfully submitted.

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