

IN THE
Supreme Court of the United States

No. 26A406

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

v.

D.V.D., ET AL.,
Respondents.

**On 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**

**BRIEF *AMICUS CURIAE* OF
AMERICA'S FUTURE
IN SUPPORT OF APPLICATION FOR STAY**

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INTEREST OF THE *AMICUS CURIAE*¹

Amicus curiae America's Future is a nonstock, nonprofit organization, exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code. It is dedicated, *inter alia*, to the correct construction, interpretation, and application of law. This *amicus* participates actively in the public policy process and has filed numerous *amicus curiae* briefs in federal and state courts, including many in this Court over the last two years supporting stays of district court injunctions relating to the Government's enforcement of immigration law.

This *amicus* filed an *amicus* brief in this case in this Court supporting an earlier application for stay. See Supreme Court of the United States, No. 24A1153, [Brief *Amicus Curiae* of America's Future, et al. In Support of Application for Stay](#) (June 5, 2026).

STATEMENT OF THE CASE

This *amicus* offers the following rather detailed Statement of the Case in an effort to demonstrate how extraordinary the actions of this one federal district court have been. A review of how this district court has attempted to control the enforcement of immigration policy and the conduct of our nation's foreign policy will speak as loudly as any argument that could be made as to why Congress denied to the district courts the very powers which this district court has exercised.

¹ It is hereby certified that no counsel for a party authored this brief in whole or in part; and that no person other than this *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

On January 20, 2025, President Trump issued Executive Order 14165, entitled “Securing Our Borders.” *See* 90 *Fed. Reg.* 8467. On or about February 18, 2025, the Department of Homeland Security (“DHS”) issued a Directive to the Enforcement and Removal Operations (“ERO”) division of Immigration and Customs Enforcement (“ICE”). That Directive instructed ERO officers to review the cases of aliens granted withholding of removal or protection under the Convention Against Torture (“CAT”) to determine the availability of removal to a third country. In the case of aliens under prior orders of removal who could not be removed because the countries designated in removal orders were unwilling to take them, ERO was directed to consider whether they could be removed instead to “third countries,” *i.e.*, countries not named on the initial removal order, but as permitted by law.

On March 23, 2025, four illegal aliens filed suit in the district court for the District of Massachusetts, seeking a temporary restraining order (“TRO”) and other injunctive relief against the Directive. *See D.V.D. v. United States Dep’t of Homeland Sec.*, 2025 U.S. Dist. LEXIS 59422 at *2 (D. Mass. 2025) (“*D.V.D. I*”). The district court considered two claims for relief — one under CAT and one under 8 U.S.C. § 1231(b)(3)(A) which states, “the Attorney General may not remove an alien to a country **if the Attorney General decides** that the alien’s life or freedom would be threatened in that country....” (emphasis added).

On March 28, 2025, the district court issued a TRO on statutory claims limited to the named plaintiffs, which was followed by issuance of a Memorandum

Opinion on March 29, 2025. However, **the TRO on CAT claims** was not limited to the named plaintiffs, but **was made applicable to “all similarly situated individuals.”** *D.V.D. I* at *9 (emphasis added).

The district court cursorily rejected the Government’s challenge to the court’s jurisdiction based on three statutes constraining the court’s involvement. *See id.* at *3.

- 8 U.S.C. § 1252(g) states: “Except as provided in this section ... **no court shall have jurisdiction** to hear any cause or claim by or on behalf of any alien....” (Emphasis added.)
- 8 U.S.C. § 1252(a)(5) states: “a petition for review filed with an appropriate **court of appeals** in accordance with this section shall be the **sole and exclusive means for judicial review** of an order of removal entered or issued under any provision of this Act.” (Emphasis added.)
- 8 U.S.C. § 1252(b)(9) states: “Except as otherwise provided in this section, **no court shall have jurisdiction**, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), **to review such an order....**” (Emphasis added.)

The district court declared that the threatened removals did not actually constitute “orders of removal” because some of the illegal aliens might not be sent to countries listed as destinations on their original removal orders, but to “third countries” instead — even though removal to third countries is authorized by law. *D.V.D. I* at *3, *5.

The Government sought a stay from the First Circuit, which was denied for the curious reason that the circuit court simply did not know whether it had

jurisdiction to stay the district court's TRO. *See D.V.D. v. United States Dep't of Homeland Sec.*, 2025 U.S. App. LEXIS 8338 (1st Cir. 2025) ("*D.V.D. II*").

On April 18, 2025, the district court entered a preliminary injunction against the Directive on the assumption that the statutes barring judicial review would not apply if the removals were unlawful on the merits. The court stated that "this Court will not construe section 1252(g) to immunize an unlawful practice from judicial review.... What Plaintiffs challenge is Defendants' authority to effectively depart from the removal orders by designating new countries for removal...."

D.V.D. v. United States Dep't of Homeland Sec., 778 F. Supp. 3d 355, 377 (D. Mass. 2025) ("*D.V.D. III*"). The Court's theory to evade limitations on its power was that if the removals were viewed as illegal by the court, that would deprive DHS of their authority to act, and "section 1252(g) shields only discretionary decisions concerning ... the deportation process." *Id.* The district court granted a sweeping preliminary injunction to institute and implement **what the court believed to be better** than the procedures established by Congress and the Department of Homeland Security.

The district court ordered the Government:

[P]rior to removing any alien to a third country, *i.e.*, any country not explicitly provided for on the alien's order of removal, Defendants must: (1) provide written notice to the alien — and the alien's immigration counsel, if any — of the third country to which the alien may be removed...; (2) provide meaningful opportunity for the alien to raise a fear of return for eligibility for CAT protections; (3) move to reopen the proceedings if the alien demonstrates "reasonable fear"; and (4) if the alien is not found to have demonstrated "reasonable fear," provide meaningful opportunity, and a minimum of 15 days, for that

alien to seek to move to reopen immigration proceedings. [*Id.* at 392-93.]

The district court then went even further and **certified a class** of all persons subject to a final removal order who DHS proposed to transfer to a “third country” not listed on their original removal order. *Id.* at 378, 386. Through this device, the district court apparently believed it was authorized to issue what was effectively a nationwide injunction — a power which was denied to district courts by this Court’s June 27, 2025 decision in *Trump v. CASA, Inc.*, 606 U.S. 831 (2025).

On April 30, 2025, the district court extended its April 18, 2025 Preliminary Injunction to apply to all federal agencies, and on May 7, 2025, the district court entered another order, styled by the court as a “clarification,” prohibiting DHS from allowing other agencies to perform the removals the court had enjoined DHS from effectuating. *D.V.D. v. United States Dep’t of Homeland Sec.*, 2025 U.S. Dist. LEXIS 88472 (D. Mass. 2025).

On May 16, 2025, the First Circuit denied the Government’s emergency motion for a stay of the April 18, 2025 preliminary injunction.²

On May 20, 2025, the district court entered another order with respect to several individuals who had been transported to South Sudan. The order directed DHS to “maintain custody and control of class members currently being removed to South Sudan or to any other third country, to ensure the practical feasibility of

² *D.V.D. v. United States Dep’t of Homeland Sec.*, No. 25-1393, “[Order of Court](#),” Dkt. 00108286763 (May 16, 2025).

return if the Court finds that such removals were unlawful.” *D.V.D. v. United States Dep’t of Homeland Sec.*, 2025 U.S. Dist. LEXIS 98733, *4 (D. Mass. 2025).

On May 21, 2025, the district court acted again to “clarify” its *D.V.D. III* order for “meaningful opportunity” for an alien to raise fear of return for CAT purposes. The court ruled that “**a minimum of ten days**” was required as “meaningful opportunity” as a matter of due process. *D.V.D. v. United States Dep’t of Homeland Sec.*, 2025 U.S. Dist. LEXIS 98774 at *3 (D. Mass. 2025).

On May 23, 2025, the district court ordered DHS to **return one plaintiff**, O.C.G., who had already been transferred to Mexico, and thence home to Guatemala. *D.V.D. v. United States Dep’t of Homeland Sec.*, 2025 U.S. Dist. LEXIS 99236 (D. Mass. 2025).

On May 26, 2025, the district court denied the Government’s motion for reconsideration and to stay its preliminary injunction. *D.V.D. v. United States Dep’t of Homeland Sec.*, 2025 U.S. Dist. LEXIS 99230 (D. Mass. 2025). The following day, the Government filed in this Court their first Application for Stay (“App. Stay I”)³

At no time, in any of its orders and opinions, did the district court feel the need to give consideration to the Government’s interest in removing persons illegally in the United States, and discouraging others from similarly violating the law with the knowledge that, if they arrived, they would be removed. Moreover, at

³ U.S. Supreme Court, No. 24A1153, “[Application for a Stay of the Injunction Issued by the United States District Court For the District of Massachusetts and Request for an Immediate Administrative Stay](#)” (May 27, 2025).

no time did the district court feel the need to give consideration to the importance of protecting the American People from those who had committed crimes in the United States, and were likely to commit further crimes, including sex offenses and murder. *See* App. Stay I at 16-17. The district court believed that, despite congressional limitations on its power, it simply had to act to take over the enforcement of our nation’s immigration policies.

After his preliminary injunction was stayed by this Court,⁴ Judge Murphy appeared to disregard this Court’s stay of his injunction, thereby requiring DHS to file a “Motion to Clarify the Court’s June 23, 2025 Order,”⁵ and this Court issued a rare “clarifying” ruling.

On June 23, we stayed the April 18 preliminary injunction pending disposition of any appeal and petition for writ of certiorari. **Later that day, however, the District Court issued a minute order stating that the May 21 remedial order “remain[ed] in full force and effect,” “notwithstanding” our stay** of the preliminary injunction.... The only authority it cited was the dissent from the stay order. The Government has moved for “an order clarifying” our stay.... The motion for clarification is granted. Our June 23 order stayed the April 18 preliminary injunction in full. The May 21 remedial order cannot now be used to enforce an injunction that our stay rendered unenforceable.... **[A] claim that a lower court has failed to give effect to an order of this Court is properly addressed here....** “Assuming as we do” that the District Court will now conform its order to our previous stay and cease enforcing the April 18 injunction

⁴ *Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (June 23, 2025).

⁵ U.S. Supreme Court, No. 24A1153, “[Motion for an Order Clarifying this Court’s June 23, 2025, Order Granting a Stay of the Injunction Issued by the United States District Court for the District of Massachusetts and Request for an Immediate Administrative Stay of the District Court’s May 21, 2025, and June 23, 2025, Orders](#)” (June 24, 2025).

through the May 21 remedial order, **we have no occasion to reach the Government’s other requests for relief...** If the Government wishes to seek additional relief in aid of the execution of our mandate, it may do so through mandamus. [*Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2627, 2629-30 (July 3, 2025) (emphasis added).]

Between the two previous decisions of this Court last summer, the First Circuit dismissed an appeal from the TRO.⁶

On February 3, 2026, the circuit court held oral argument on DHS’s appeal of the preliminary injunction, then on February 20, 2026, remanded for dissolution of the preliminary injunction.⁷ On February 25, 2026, the district court issued its final judgment, granting Plaintiffs’ Motion for Summary Judgement on Counts I and IV by imposing four procedural requirements on the department’s removal of class members, and declaring the “Third Country Removal” policy “unlawful and SET[TING] ASIDE that policy.” *D.V.D. v. United States Dep’t of Homeland Sec.*, 821 F. Supp. 3d 102, 167-68 (D. Mass. February 25, 2026) (“*DVD IV*”).

After oral argument on May 13, 2026, the First Circuit issued its opinion on September 18, 2026, stating: “we **vacate** on standing grounds the two declarations pertaining to DHS’s statutory obligation to seek to remove class members to countries they have designated, or of which they are subjects, nationals, or citizens, prior to removing them to third countries. We otherwise **affirm** the final

⁶ *D.V.D. v. United States Dep’t of Homeland Sec.*, 2025 U.S. App. LEXIS 25000 (1st Cir. June 30, 2025).

⁷ *D.V.D. v. United States Dep’t of Homeland Sec.*, 2026 U.S. App. LEXIS 11895 (1st Cir. Feb. 20, 2026).

judgment.” *D.V.D. v. United States Dep’t of Homeland Sec.*, 2026 U.S. App. LEXIS 28742 at *51 (1st Cir. Sep. 18, 2026) (“*D.V.D. V*”) (all emphasis original).

Then, five days after the First Circuit’s decision, on September 23, 2026, at 8:20 pm, the Plaintiff-Appellees filed an Emergency Motion in the circuit court,⁸ which a panel granted three hours later, at 11:36 pm, ordering that “the March 16, 2026, stay pending appeal is dissolved.”⁹ The Government filed this Application for a Stay II (“App. Stay II”) on September 24, 2026.¹⁰ The circuit court’s September 23 order was issued without providing time for the Government to respond (*see* App. Stay II at 2) and short-circuited the timeline for issuing a mandate under F.R.App.P. 40(d)(1), 41(b). *See* App. Stay II at 16, 20, 38-39.

STATEMENT

The district court judge has issued a truly remarkable set of injunctions, class certifications, clarifications, threats of contempt, orders to nonparty Government entities, and other rulings and statements, seeking to rewrite the nation’s immigration laws from a district court bench in Boston. The district court judge responsible was nominated by President Biden in March 2024, reported from

⁸ U.S. Court of Appeals for the First Circuit, No. 26-1212, “[Emergency Motion to Clarify the Effectiveness of this Court’s Decision or, In the Alternative, Confirm the Stay is Lifted or Issue the Mandate](#)” (Sept. 23, 2026).

⁹ U.S. Court of Appeals for the First Circuit, No. 26-1212, “[Order of the Court](#)” (Sept. 23, 2026).

¹⁰ The Government’s second filing in this Court was captioned not as an application for stay, but rather as a Motion to Clarify. *See* n.5, *supra*.

committee on a party line vote, and confirmed without a single Republican Senator voting aye. He received his judicial commission on December 6, 2024, not long before he was assigned this case in March 2025. Northeastern University Law School constitutional law professor Jeremy R. Paul explained the reality of President Biden's appointment of district judges (termed "Biden judges"), including this particular district court judge:

The Democratic president's federal court nominees will "make a huge difference in a variety of cases during the Trump Administration...." "There will be a tremendous amount of litigation during the [incoming] administration...." **"Because of Biden judges, there will be a lot of initial victories [at the district court level]."** [John Micek, "[Biden tapped a former Worcester public defender as a federal judge. Why it matters](#)," *MassLive* (Dec. 10, 2024) (emphasis added).]

The Chief Justice has stated correctly: "We do not have Obama judges or Trump judges, Bush judges or Clinton judges."¹¹ However it appears that not all judges have received that memo. It is becoming apparent to the American People that there are certain judges who believe that their office gives them the authority to defy both the President and the Congress, as they act even though Congress expressly has denied them authority, to prevent the policy changes which the People elected the current Administration to put into effect. This is a matter that, again, requires corrective action by this Court.

¹¹ Mark Sherman, "[Roberts, Trump spar in extraordinary scrap over judges](#)," *AP* (Nov. 21, 2018).

SUMMARY OF ARGUMENT

The Statement of the Case, *supra*, demonstrates why Congress denied to district courts the power to micromanage our nation's immigration policies, particularly as it affects foreign policy — restrictions on district court authority which were violated by this district court. Sections I and II, *infra*, explain how the district court's TRO and preliminary injunction violate congressional limitations on the powers of all district courts, regardless of how district judges feel about the rights that illegal aliens should have been given. Section III, *infra*, addresses the particular problems caused by allowing federal courts to meddle in the areas of our nation's foreign policy and national security involving removals of illegal aliens to foreign countries. Of all of the injunctions that have been issued since January 20, 2025 by district courts in an effort to prevent the Trump Administration from enforcing the nation's immigration laws, those orders issued by this court most flagrantly abuse the judicial powers, calling out for yet another correction by this Court.

ARGUMENT

I. THE DISTRICT COURT ACTED *ULTRA VIRES* IN VIOLATING THE CONGRESSIONAL LIMITATIONS ON THE JURISDICTION OF DISTRICT COURTS, TO GIVE ILLEGAL ALIENS NEW RIGHTS.

Despite the best efforts of the district court to create the impression that the posture of this case is different than it was when it came to this court twice before, that is no more than an illusion. *See* App. Stay II at 4. The Trump

Administration's authority to remove illegal aliens is precisely the same as it was when Respondents first sought to stop their removal.

The Government refutes both of the district court's attempts to evade the statute's jurisdictional limitations. First, the Government explains: "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." App. Stay II at 18. But the statute is abundantly clear:

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.¹²

The district court's actions to stop removals were clearly an effort "to enjoin or restrain" the operation of third-country removals under Section 1231(b). App. Stay II at 18-19.

Second, the district court sought to read an ephemeral "due process" requirement into section 1231(b). In its summary judgment order, the court stated, "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)." *D.V.D. IV* at 146-47. The circuit court agreed, stating that the Government would need to have information which it admits that the statute does not require (*id.* at

¹² Pub. L. No. 104-208, Div. C, sec. 306(a)(2), § 242(f)(1), 110 Stat. 3009-611 to 3009-612 (emphasis added)..

147), allowing it to invent a “notice and hearing” requirement that appears nowhere in the text, with a bald assertion:

[T]he statute need not state the particulars of these procedural rights for their existence to be evident in the structure of § 1231(b) and in the specific guarantees provided by § 1231(b)(3). Indeed, immigration **statutes are often construed to mean more than what they plainly say.** [*D.V.D. V* at *35-36 (emphasis added).]

Thus, the First Circuit empowered the district court to read new procedural requirements into a statute. This constitutes judicial legislation, not judicial construction.

By now it is abundantly clear that the lower courts object to the Trump Administration sending removable illegal aliens to “third countries” even though that removal is clearly authorized by law, under 8 U.S.C. § 1231(b)(2)(E):

(vii) If **impracticable, inadvisable, or impossible** to remove the alien to each country described in a previous clause of this subparagraph, **another country** whose government will accept the alien into the country. [Emphasis added.]

The district court would prefer that the illegal aliens remain in the United States rather than being removed to a third country. The district court demonstrates no appreciation for the fact that some illegal aliens are so problematic that the countries to which they otherwise would have been removed (*e.g.*, the country from which the alien was admitted; prior residence; place of birth) will not accept them. The operative assumption of the district court appears to be that it would be better for murderers, convicted sex offenders, or others to stay in the United States than to be removed to a country which will accept them. *See App. Stay I* at 2, 8, 16-17, 39.

The matter of returning illegal aliens is complex and fraught with nuance, which is why the process is entrusted to the executive, and federal courts such as the Massachusetts district court are expressly excluded from participating in the process. 8 U.S.C. § 1252(f)(1). The district courts are also prohibited from revising the statutory process as implemented by DHS, but the result, not the law, appears to be at the core of this district court's decisionmaking.

The district court judge elevates his personal view over the view of the one official elected by all the People of the United States when he flatly stated he: **“does not share the same disregard for probable due process violations” as the Trump Administration.** *D.V.D. I* at *6 (emphasis added). In acting more like a public defender searching for any plausible argument to use, the court expressed no respect for the congressionally devised immigration scheme he sought to alter. Here, the district court invents new due process violations and then invents due process rights.

II. THE COURTS BELOW DEFIED THE AUTHORITY OF CONGRESS TO LIMIT THE JURISDICTION OF THE LOWER FEDERAL COURTS.

The district court also rebels against Congress's decision to place **review** of administrative alien removal decisions **only** in the federal Courts of Appeals, and the **injunctive** remedy **only** in the hands of the Supreme Court. The court made its disapproval of the law clear, by quoting a First Circuit case for the proposition that the actual physical removal of an alien is “‘wholly collateral to, the removal process,’ not ‘arising from’ it.” *D.V.D. III* at *16. In the district court's view, once a

removal order is entered, anything else relating to the actual removal is reviewable. However, although the court is entitled to disagree with Congress's decision, it is not entitled to ignore it or evade it.

In clear terms, 8 U.S.C. § 1252(f)(1) states that “**no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin** or restrain the operation of the provisions” of 8 U.S.C. §§ 1221, *et seq.*, relating to alien removals (emphasis added). This Court has been clear that:

the “operation of the provisions” is a reference “not just to the statute itself but to **the way that [it is] being carried out.**” ... Putting these terms together, §1252(f)(1) generally **prohibits lower courts from entering injunctions** that order federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out [removals of classes of aliens]. [*Garland v. Gonzalez*, 596 U.S. 543, 550 (2022) (emphasis added).]

Thus, the actual physical removal of the alien is not, and cannot be viewed as, “collateral” to the removal proceeding, notwithstanding the district court’s linguistic gymnastics.

Because the district court does not feel that the “third country removal” process squares with its idea of “due process,” the court believes it has the right to override the procedures established by Congress, as executed by the Department of Homeland Security. The district court usurps authority denied to it by a constitutional act of Congress.

It is beyond question that Congress can limit the jurisdiction of a district court. Article III states, “The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to

time ordain and establish.” U.S. Const. Art. III. In 1789, Congress passed, and President Washington signed, the Judiciary Act of 1789, which created the first lower federal courts, including district courts, and outlined the limits of their jurisdiction.¹³ “[T]he Circuit Courts were created by an act of Congress, and they are not authorized to exercise jurisdiction in any case except where the jurisdiction was conferred by an act of Congress.” *United States v. Eckford*, 73 U.S. 484, 488 (1868).

The idea is not new, nor is it untested in this Court. In 1869, in *Ex Parte McCardle*, this Court recognized Congress’ power under Article III to strip it of appellate jurisdiction. William McCardle, a newspaper publisher, printed articles critical of the Reconstruction program and was jailed by the military. He applied for a writ of habeas corpus with a federal district court, and the case was appealed to this Court. Fearful that the Court would strike down the Reconstruction program, Congress passed a law stripping this Court of appellate jurisdiction over habeas appeals. In *McCardle*, this Court properly acknowledged Congress’s power to strip it of jurisdiction and conceded it had no jurisdiction to hear McCardle’s appeal. *Ex Parte McCardle*, 74 U.S. 506 (1869).

Nor is *McCardle* an outlier. This Court recognized the principle again a half-century later for the lower courts:

Only the jurisdiction of the Supreme Court is derived directly from the Constitution. **Every other court created by the general**

¹³ National Archives, “[Federal Judiciary Act \(1789\)](#).”

government derives its jurisdiction wholly from the authority of Congress. That body may give, withhold or restrict such jurisdiction at its discretion, provided it be not extended beyond the boundaries fixed by the Constitution.... The Constitution simply gives to the inferior courts the capacity to take jurisdiction in the enumerated cases, but it requires an act of Congress to confer it.... And the jurisdiction having been conferred **may, at the will of Congress, be taken away in whole or in part**.... [*Kline v. Burke Constr. Co.*, 260 U.S. 226, 234 (1922) (emphasis added).]

Later, this Court again stated: “There can be no question of the power of Congress thus to define and limit the jurisdiction of the inferior courts of the United States.” *Lauf v. E. G. Shinner & Co.*, 303 U.S. 323, 330 (1938). In 1943, this Court repeated the principle, this time citing an array of past cases for support:

The Congressional power to ordain and establish inferior courts includes the power “of investing them with jurisdiction either limited, concurrent, or exclusive, and of withholding jurisdiction from them **in the exact degrees and character which to Congress may seem proper for the public good**. [*Lockerty v. Phillips*, 319 U.S. 182, 187-88 (1943) (emphasis added) (citations omitted).]

This Court has recognized Congress’s authority to limit lower court jurisdiction as expressly stated in the Constitution.

To deny this position would be to elevate the judicial over the legislative branch of the government, and to give to the former powers limited by its own discretion merely. It follows, then, that the courts created by statute must look to the statute as the warrant for their authority; **certainly they cannot go beyond the statute, and assert an authority with which they may not be invested by it, or which may be clearly denied to them**.... The existence of the Judicial Act itself ... furnishes proof unanswerable on this point. The courts of the United States are all limited in their nature and constitution, and have not the powers inherent in courts existing by prescription or by the common law. [*Cary v. Curtis*, 44 U.S. 236, 245 (1845) (superseded by statute on other grounds) (emphasis added).]

Nor is Congress the only branch to recognize this authority. Indeed:

[w]hen Chief Justice John Roberts was Special Assistant to the Attorney General during the Reagan Administration, he wrote a 27-page document defending the constitutional power of Congress to limit federal court jurisdiction.... Roberts concluded that Congress's constitutional authority to make exceptions to federal court jurisdiction is so clear that only a new constitutional amendment could deny it.¹⁴

III. THE CASE BELOW ILLUSTRATES THE UNWORKABLE FOLLY OF “FOREIGN POLICY BY JUDGE.”

In most cases, the Statement of the Case section of an appellate brief is primarily useful to provide the posture that the case comes up to an appellate court. This case is the exception. In this case, this *amicus* has attempted to set out a detailed Statement of the Case which reveals the impossibility of the Department of Homeland Security enforcing our nation's immigration laws while being required to act at the direction of a federal district court judge who appears committed to revising those laws from his bench. The removal of illegal aliens requires that they be removed to a foreign country. Thus, every removal involves the nation's foreign policy. Although federal law provides guidance on where the illegal alien is sent, in the end, it entrusts the matter to the Department of Homeland Security — not a district court.

The course of proceedings below reveals the how severely the lower courts impeded the Executive Branch in carrying out its duties under immigration law.

¹⁴ Phyllis Schlafly, [“Can Congress Limit Federal Court Jurisdiction?”](#) *EagleForum.com* (Jan. 25, 2006).

The district court granted motion after motion filed by Plaintiffs to protect illegal aliens from the consequences of their illegal acts, while giving no deference to the branch of government entrusted with the duty to remove illegal aliens. If this type of judicial intervention is permitted, the work of DHS will be put on hold as the Justice Department will be required to respond on short notice to a bevy of motions and orders entered *ultra vires*.

On the immigration front, the human costs have already been incalculable. As immigration officials have scrambled to keep up with the orders of hostile judicial micro-managers, the worst-of-the-worst violent criminal aliens have gamed the system, escaping back into the general population, sometimes for years, to commit still more heinous crimes against Americans. *See App. Stay I at 2.*

Not surprisingly, as the Government points out, many of these criminal aliens' countries of origin were happy to unload their worst criminals on America and are usually unwilling to take them back. "As a result, criminal aliens are often allowed to stay in the United States for years on end, victimizing law-abiding Americans in the meantime." *Id.* As a result of the open borders policy pursued by prior Administrations which refused to follow federal law, now DHS has been given the task of finding a "third country" willing to take these hard cases at all — then hope that nation doesn't change its mind while a district court judge usurps Executive Branch authority, disrupting sensitive diplomatic, foreign-policy, and national-security efforts." *Id.* at 3

Congress recognized that “[s]uch delicate and difficult judgments about international relations fall beyond the judicial ken.” *Does v. Taliban*, 101 F.4th 1, 12 (D.C. Cir. 2024). Moreover, they defy a judicial timeline. Foreign policy judgments such as these cannot be subjected to briefing schedules imposed by any of 400 federal district judges serving in 94 district courts. That is why such “difficult and complex [questions] in international affairs ... are committed to the Legislature and the Executive, not the Judiciary.” *Zivotofsky v. Kerry*, 576 U.S. 1, 5 (2015). The judiciary is wholly unprepared to handle such matters. As a practical matter, decisions like the one below make conduct of foreign policy impossible. If not stopped by this Court, the problem will spread as other federal courts will believe themselves empowered to run our nation’s foreign policy whenever a suit is filed.

The public confidence in the federal judiciary is at an all-time low, in the wake of one of “the largest” drops in confidence “Gallup has ever measured.”¹⁵ When the public realizes that the policy changes they seek by the election of a President can be thwarted for years by a single federal district judge, they will realize they they have “ceased to be their own rulers,” that confidence will sink further. It is up to this Court to restore the rule of law by reining in this pattern of judicial excess.

¹⁵ Benedict Vigers and Lydia Saad, “[Americans Pass Judgment on Their Courts](#),” *Gallup.com* (Dec. 17, 2024).

CONCLUSION

For the foregoing reasons, this Court should grant an immediate Administrative Stay of the district court's injunction, and then grant the Application for a Stay.

Respectfully submitted,

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