No. 26A406

In the Supreme Court of the United States

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

v.

D.V.D., ET AL.

REPLY IN SUPPORT OF THE APPLICATION

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This Court has already twice issued interim stay relief in this case challenging the government's policy for conducting "third-country removals"—an essential tool to remove certain aliens, including some of the worst criminal aliens. 145 S. Ct. 2153 (No. 24A1153); 145 S. Ct. 2627 (No. 24A1153). The merits have not materially changed, and the equities have tilted even farther in the government's favor, as the policy has been in effect for the last 15 months. "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); 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.").

Respondents try to evade that inescapable conclusion by emphasizing (Opp. 1, 32-33) the only two differences between the order that this Court previously stayed and the one now under review: first, this Court's earlier stay was of a preliminary injunction, while the final judgment now consists of a series of declaratory judgments and a vacatur of the challenged policy documents; and second, the preliminary injunction rested solely on the ground that due process required additional procedures for the class to raise CAT claims, while the final judgment now rests on the ground that there is a statutory right to additional procedures for the class to raise both withholding and CAT claims. Neither of these minor distinctions makes a difference.

The change to the form of relief does not undermine the government's argument that classwide relief is barred by 8 U.S.C. 1252(f)(1), which strips lower courts of "jurisdiction or authority to enjoin or restrain the operation of" certain provisions of the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, including the provision addressing third-country removals, 8 U.S.C. 1231(b). Respondents stress (Opp. 13-16) that Section 1252(f)(1) does not mention declaratory judgments or vacatur, but the statute encompasses any form of relief that would "restrain" the government from acting—as the type of *coercive* declarations and vacaturs issued here undoubtedly do. Indeed, underscoring the coercive nature of this final judgment, respondents' own brief repeatedly insists (*e.g.*, Opp. 2, 9, 34) that the government must immediately cease operating the challenged policy now that the First Circuit has dissolved its stay pending appeal—which explains why they rushed to that court to obtain that relief in the dead of night before the government could respond. Yet respondents cannot explain why Congress, which plainly sought to bar classwide relief interfering with the government's enforcement of critical immigration provisions, see *Garland* v. *Aleman Gonzalez*, 596 U.S. 543, 550-551 (2022), would have viewed formal differences among types of coercive relief as substantively relevant.

Moreover, the change to the form of relief does not affect in any way the government's argument from the preliminary-injunction stage that, wholly apart from whether classwide relief is permissible, a stay of relief is warranted because respondents' claims are jurisdictionally barred even as to the named plaintiffs. The INA provides that, "notwithstanding any other provision of law (statutory or nonstatutory), * * * no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action * * * [to] execute removal orders against any alien." 8 U.S.C. 1252(g). The claims here indisputably challenge the government's actions to execute removal orders against class members—specifically, actions to remove them to third countries without following the additional procedures that respondents and the district court deem necessary. Respondents double down on the theory (Opp. 17-18) that Section 1252(g) encompasses only *discretionary* decisions and actions, and thus does not bar the claims here because the government purportedly exceeded its lawful discretion. But that discretionary-action limitation appears nowhere in the text, would improperly make jurisdiction depend on the merits claim, and would effectively nullify Section 1252(g) (as plaintiffs will almost always be claiming that the government violated some legal constraint on its discretion).

Turning to the merits, the new rationale adopted by the lower courts is, if anything, even weaker than the one supporting the preliminary injunction that this Court previously stayed. Rather than vesting respondents' right to additional procedures in the Due Process Clause—which at least speaks to procedure—they now claim that the INA itself imposes those procedures, notwithstanding that the provisions they invoke are substantive rather than procedural. Like the lower courts, respondents fail to identify any actual text in 8 U.S.C. 1231(b)—or any other statute or regulation—prohibiting the government's chosen procedures, because none exists. Nor do respondents have any answer to the basic administrative-law principle that, where a statute imposes substantive obligations without specifying particular procedures, courts may not override the agency's discretion to fashion its own procedures to satisfy those obligations. See *Vermont Yankee Nuclear Power Corp.* v. *NRDC, Inc.*, 435 U.S. 519, 543-544 (1978). That principle is especially apt here, because the INA expressly states that "[n]othing in" Section 1231 "shall be construed to create any substantive or procedural right or benefit that is legally enforceable." 8 U.S.C. 1231(h). Respondents' reading of Section 1231(h) (Opp. 21) as denying only a "cause of action" is once again irreconcilable with the text, which forecloses construing the provision to create *any* "right or benefit that is legally enforceable" outside of a petition for review of a final removal order under Section 1252.

Finally, the equitable factors weigh even more heavily in the government's favor than they did at the preliminary-injunction stage. The government has been applying the challenged policy to conduct third-country removals, including of some of the worst criminal aliens, for more than 15 months, by virtue of the stays issued by this Court in June 2025 and the First Circuit in March 2026. The First Circuit's unexpected middle-of-the-night dissolution of its stay thus badly disrupts the status quo: the additional procedures required would impose logistical burdens and diplomatic harms on the operation of this critical immigration policy, as has already occurred over the past few days and will only grow over time. Respondents argue (Opp. 37) that the prior stay decisions have no bearing on the equitable calculus here because they were unreasoned, but in *granting* a stay, this Court (and the First Circuit) necessarily concluded that the government satisfied *all* of the requirements, including the equitable factors. See *National TPS Alliance*, 146 S. Ct. at 24.

The same result is warranted now. The Court should again grant a stay—and it should grant an immediate administrative stay if the preparation of any opinions on the stay will delay its issuance.

A. The Government Is Likely To Succeed On The Merits

1. Section 1252(f)(1) prohibits classwide orders that "enjoin or restrain" the covered INA provisions, and thus covers coercive declaratory judgments and vacaturs of the type at issue here. See Appl. 17-22. Respondents observe (Opp. 13) that "Congress expressly barred declaratory relief in the preceding subsection, § 1252(e)(1)(A), but chose not to [expressly] bar classwide declaratory relief in § 1252(f)(1)." But the language of the two provisions is different: Section 1252(e) prohibits entering "declaratory, injunctive, or *other equitable* relief," while Section 1252(f) precludes "jurisdiction or authority to enjoin *or restrain*." 8 U.S.C. 1252(e)(1)(A) and (f)(1) (emphases added). Section 1252(e) presumably enumerated "declaratory" relief because that modern remedial innovation, see *MedImmune, Inc.* v. *Genentech, Inc.*, 549 U.S. 118, 126-127 (2007), is not necessarily encompassed within the phrase "equitable" relief; by contrast, Section 1252(f)'s "or restrain" language necessarily sweeps more broadly than just injunctions and covers any coercive relief that "check[s], hold[s] back, or prevent[s]" the government from enforcing one of the covered provisions, see *Aleman Gonzalez*, 596 U.S. at 549.

Respondents argue (Opp. 14) that "enjoin or restrain" is just a "common doublet" referring only to injunctions and restraining orders, but if that were true, this Court would not have twice left the issue open. See *Aleman Gonzalez*, 596 U.S. at 551 n.2; *Biden* v. *Texas*, 597 U.S. 785, 801 n.4 (2022). Also, the very next paragraph provides that "no court shall enjoin the removal of any alien" except in specific circumstances, without using the word "restrain." 8 U.S.C. 1252(f)(2). Although that provision's "exact role" is unclear following this Court's decision in *Nken* v. *Holder*, 556 U.S. 418, 431 (2009), Congress's choice of language in Section 1252(f)(2) indicates that (1) Congress was not using the phrase "enjoin or restrain" as a doublet in Section

1252(f)(1), and (2) Congress must have meant "enjoin" to include TROs and "restrain" to encompass other forms of coercive relief, given the implausibility that Congress would have prohibited only injunctions and not TROs.

In any event, the government's argument is that Section 1252(f)(1) prohibits not *all* classwide declarations and vacaturs, but *only coercive* ones. Respondents argue (Opp. 15) that the statutory text provides no "basis to permit some declaratory judgments and not others," but that once again ignores the "or restrain" language as construed in *Aleman Gonzalez*, which is what distinguishes between coercive orders (however styled) and noncoercive ones. Indeed, the very case respondents cite (*ibid.*) makes clear that declaratory judgments with a coercive effect should be treated like injunctions. See *Steffel* v. *Thompson*, 415 U.S. 452, 461 & n.11 (1974).

Respondents provide no rational explanation why Congress, which clearly wanted to foreclose coercive classwide relief in Section 1252(f)(1), would have deemed acceptable a coercive classwide order as long as it was not labeled an "injunction." Respondents invoke cases recognizing (Opp. 15-16) that declaratory judgments and vacaturs are "milder" or "less drastic" than injunctions, but that is in large part because they are often noncoercive. And while even coercive declarations and vacaturs are not enforceable through contempt, this Court has nevertheless recognized that such coercive orders are functionally similar to injunctions and should be treated as such in a variety of other contexts. See, *e.g.*, *Abbott* v. *Perez*, 585 U.S. 579, 594 (2018); *California* v. *Grace Brethren Church*, 457 U.S. 393, 408 (1982); *Steffel*, 415 U.S. at 461 & n.11; *Samuels* v. *Mackell*, 401 U.S. 66, 72 (1971). The same treatment is warranted here, since a violation of the declarations would presumably lead to follow-on injunctions. See Appl. 19-21. Tellingly, respondents do not contend that the declarations and vacatur here are *non*coercive; to the contrary, they evidently expect and will demand immediate compliance, on a classwide basis. That is precisely the harm to the government that Congress sought to avoid through Section 1252(f)(1).

2. Section 1252(g) bars respondents' claims in their entirety, which plainly challenge a "decision or action * * * [to] execute removal orders" against class members. 8 U.S.C. 1252(g). Like the court of appeals, respondents try to limit (Opp. 17) Section 1252(g)'s judicial-review bar to challenges to "discretionary" actions. But that argument fails for several reasons.

For starters, the statute's text contains no such limitation. It applies to *any* "decision or action" to "execute removal orders against any alien," 8 U.S.C. 1252(g), not just discretionary decisions and actions. Congress knows how to write judicial-review provisions addressing only acts of discretion, but chose to sweep more broadly in Section 1252(g). 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."); 8 U.S.C. 1252(a)(2)(B) and (2)(D) (barring review of certain "[d]enials of discretionary relief," except when raising "constitutional claims or questions of law").

Respondents quote (Opp. 17) isolated snippets from *Reno* v. *AADC*, 525 U.S. 471 (1999), and *INS* v. *St. Cyr*, 533 U.S. 289 (2001), using the word "discretion" or its cognates, but those cases were using the word to describe the nature of the decisions and actions listed in Section 1252(g) ("commence" proceedings, "adjudicate" cases, and "execute" removal orders). Those actions are discretionary in the sense that the government is not necessarily obligated to undertake them at any particular juncture. See *AADC*, 525 U.S. at 483-484. But nothing in those cases supports the view that, once the government *has* exercised its discretion to execute a removal order, a plaintiff can challenge that execution on the grounds that the government exceeded a legal constraint on its discretion. Indeed, the claim in *AADC* was precisely that the government had exceeded the bounds of its lawful discretion by commencing removal proceedings against the plaintiffs in violation of the First Amendment; yet the claim was still held to "fall[] squarely within § 1252(g)." *Id.* at 487.

Relatedly, respondents' contention that Section 1252(g)'s jurisdictional bar is inapplicable where the Executive has exceeded its lawful discretion in commencing proceedings, adjudicating cases, or executing removal orders would improperly make jurisdiction "dependent upon the merits of the claim." *Aleman Gonzalez*, 596 U.S. at 554; see Appl. 23. Respondents assert (without elaboration) that "[w]hether § 1252(g) applies depends on the nature of the challenged action, not on whether the challenged conduct is ultimately lawful." Opp. 18. But respondents' view of the "nature of the challenged action" itself turns on whether the government has exceeded the bounds of discretion, which is a merits question. At a minimum, respondents' view would create a massive loophole and render Section 1252(g) effectively a nullity, for virtually any claim challenging the execution of a removal order could easily be recharacterized as one asserting that the Executive violated a nondiscretionary duty (*i.e.*, a constitutional, statutory, or regulatory requirement) when executing the order.

This case perfectly exemplifies the problem. In executing a removal order, DHS unquestionably has discretion not just as to whether and when to remove the alien, but also *where* to do so. While the removal order must "identify" one or more countries, if removal there is not possible, the identification "does not limit the authority of the [DHS] to remove the alien to any other country as permitted by [Section 1231(b)]." 8 C.F.R. 1240.12(d). And Section 1231(b) provides broad discretion in selecting such third countries for removal. See 8 U.S.C. 1231(b)(2)(C)-(E); 8 C.F.R. 208.16(f), 1208.16(f). So allowing respondents to bring this district-court suit challenging the Executive's exercise of that discretion would eviscerate Section 1252(g).

And for the same reasons, respondents are simply wrong in insisting (Opp. 17) that they "do not challenge their removal orders or DHS's discretionary decisions to execute those orders" because "no class member has a removal order *to* a third country." Properly construed in light of 8 C.F.R. 1240.12(d), *every* removal order implicitly authorizes removal to *any* third country permissible under Section 1231(b), despite not being explicitly identified in the order itself.

3. Respondents' claim that the INA guarantees them additional procedures to raise statutory-withholding claims before a third-country removal is independently barred by 8 U.S.C. 1231(h), which is best read to provide that statutory-withholding claims are reviewable only in a petition for review and not legally enforceable in any other type of suit (like this one). See Appl. 28-29. Like the lower courts, respondents invoke (Opp. 21) *Zadvydas* v. *Davis*, 533 U.S. 678 (2001), but that reliance is misplaced. As previously explained (Appl. 29), the alien in *Zadvydas* did not attempt to invoke any "right or benefit" allegedly created by Section 1231, 8 U.S.C. 1231(h), in challenging his detention under the habeas statute and the Due Process Clause; instead, the government raised Section 1231 as a *defense* justifying continued confinement. Here, in contrast, respondents' core submission is that Section 1231 itself creates "procedural right[s]" that the government is violating. *Ibid.* That is plainly contrary to Section 1231(h). Respondents have no answer to that point.

Respondents also attempt (Opp. 21) to minimize Section 1231(h) as merely providing that Section 1231 should not be construed to create a "cause of action." But the statute actually states that nothing in Section 1231 should be construed "to create any substantive or procedural right or benefit that is legally enforceable." 8 U.S.C. 1231(h). That text sweeps far more broadly than denying a cause of action.

4. Even if respondents' claims were reviewable, they would fail on the merits. Appl. 30-37. The First Circuit's ruling that Section 1231(b) itself requires the government to follow additional procedures to evaluate statutory-withholding claims has no basis in the statutory text, which contains no such requirements, and contravenes Section 1231(h), which could not be clearer that Section 1231 does *not* create any "procedural right or benefit that is legally enforceable," 8 U.S.C. 1231(h). See Appl. 30-31. Respondents never directly respond to those points. And while the First Circuit further held that, because Section 1231(b) purportedly creates a right to additional procedures for statutory-withholding claims, FARRA must be read to create a similar right to those procedures for CAT claims, that too lacks any basis in the statutory text. See Appl. 37. Respondents never address that point either. Indeed, the First Circuit's atextual interpretation of the INA and FARRA as silently imposing the court's favored procedures repeats the same error this Court corrected in *Jennings* v. *Rodriguez*, 583 U.S. 281 (2018), where the Ninth Circuit had adopted similarly text-free interpretations of the INA to impose its favored procedures. See *id.* at 297-305.

Respondents assert (Opp. 22) that an alien's right not to be removed to a country where his life or freedom would be threatened because of a protected trait, or where he is more likely than not to be tortured, would be "illusory" unless the alien is "provided meaningful notice of the country" and "an opportunity to seek protection." As the government explained (Appl. 30-31, 36-37), however, where a statute imposes a substantive decisionmaking obligation on an agency—here, not to remove an alien to a country where the agency has determined the alien likely will be persecuted or tortured—but does not specify particular procedures for making that decision, courts cannot override the agency's discretion to fashion its own procedures. See *Vermont*

Yankee, 435 U.S. at 543-544. Neither Section 1231 nor FARRA sets forth any procedures for evaluating statutory withholding or CAT claims in the context of third-country removals; the government thus has discretion to fashion streamlined procedures, which it exercised in the challenged policy. Respondents never address that fundamental point.

Respondents also invoke (Opp. 22-23) references to a "trier of fact" in the applicable regulations addressing statutory withholding and CAT claims to claim that the challenged policy is unlawful because its streamlined procedures do not involve immigration judges or other adjudicators (absent a sufficient threshold showing). But those same regulations make clear that "[n]othing in [the regulations] shall prevent the [government] from removing an alien to a third country other than the country to which removal has been withheld or deferred." 8 C.F.R. 208.16(f), 1208.16(f). Contrary to that directive, respondents' reading would read the regulatory provisions referring to triers of fact to prevent the government from removing an alien to a third country pursuant to streamlined procedures that the government had discretion to fashion under *Vermont Yankee*.

5. Respondents claim a due-process right to notice of, and an opportunity to contest, a third-country removal. Opp. 25-29. But that was precisely the theory the district court relied on in issuing its preliminary injunction, see 778 F. Supp. 3d 355, 387-390, which this Court stayed. That theory has not improved with age, see Appl. 32-37, and thus does not counsel against a stay here. Cf. *National TPS Alliance*, 146 S. Ct. at 24; *Boyle*, 145 S. Ct. at 2654.

With respect to countries that have provided adequate assurances, the Constitution does not require any further process because the Executive's determination that a country will not persecute or torture a removed person is conclusive. *Munaf* v.

Geren, 553 U.S. 674, 702-703 (2008); see Appl. 32-34. Respondents contend (Opp. 30-31) that *Munaf* and the other cases the government has cited involved "individualized assurances." But nothing in *Munaf* turned on the scope of the decision; it turned on the substance. The federal courts are ill-equipped to "pass judgment on foreign justice systems" and consider for themselves the "sensitive foreign policy issues" bound up in this space. *Munaf*, 553 U.S. at 702. That is the constitutional responsibility of the Executive. The federal courts thus do not have a freestanding power, at least absent specific statutory authorization, to "question the Government's determination that a potential recipient country is not likely to torture a detainee." *Kiyemba* v. *Obama*, 561 F.3d 509, 514 (D.C. Cir. 2009), cert. denied, 559 U.S. 1005 (2010). And here, nothing in the Due Process Clause or any statute gives the federal district courts the power to dictate to the Executive *how* it makes such a determination, any more than it gives them the power to second-guess *what* the Executive decides. Respondents' skepticism (Opp. 30) that a receiving country could provide an assurance that *they* would find credible is thus entirely beside the point; the Constitution and the INA entrust such judgments to the Executive.

With respect to countries that have not provided assurances, the challenged policy's procedures provide notice, an opportunity to raise a fear claim, and additional screening if necessary; those procedures satisfy constitutional due process. See Appl. 34-36. That is particularly true for class members who have never been admitted, for whom "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 *DHS* v. *Thuraissigiam*, 591 U.S. 103, 138-140 (2020). Respondents state (Opp. 27) that the class "*excludes* individuals detained at ports of entry or immediately upon entry," but that is nonresponsive to the point that many class members have never been admitted and are thus (under the "entry fiction") treated as arriving aliens with diminished due-process rights. See Appl. 35-36. And while admitted aliens may claim additional due-process protection, this Court has not held that aliens who have "entered the country clandestinely" are entitled to such additional protection, cf. *The Japanese Immigrant Case*, 189 U.S. 86, 100 (1903).

Respondents' reliance (Opp. 27-28, 31) on the Court's grant of an injunction pending appeal in *A.A.R.P.* v. *Trump*, 605 U.S. 91 (2025) (per curiam), is misplaced. The Court there found it likely that due process requires providing "sufficient time and information" to an alien detained under the Alien Enemies Act (AEA), 50 U.S.C. 21, to "reasonably be able to contact counsel, file a [habeas] petition, and pursue appropriate relief." *A.A.R.P.*, 605 U.S. at 95. But due process is fact-intensive and only "requires notice that is 'reasonably calculated, under all the circumstances, to apprise interested parties.'" *Id.* at 94; see *Zadvydas*, 533 U.S. at 693-694 ("[T]he Due Process Clause protects an alien subject to a final order of deportation, though the nature of that protection may vary depending upon status and circumstance.") (citation omitted). The amount of notice required for a detainee to file a habeas petition before summary removal under the AEA—including to contest whether the AEA applies in the first place—is not the same as the notice required for an alien who is already under a (previously adjudicated) final order of removal, where removability is uncontested, the only remaining question is the country of removal, and the alien had an opportunity when the removal order was initially entered to raise concerns about removal to particular countries authorized by the removal order. Moreover, where the country has provided the requisite assurances, the government has necessarily made the substantive determination that the alien will *not* be persecuted or tortured in that country, which eliminates the need to provide any further process. "Process is not an end in itself," and a plaintiff has no "right to demand needless formality." *Olim* v. *Wakinekona*, 461 U.S. 238, 250 (1983).

Finally, respondents invoke (Opp. 4-5, 34-35) statements made by the government during two oral arguments in this Court in the last several years. But neither of those cases involved third-country removals to countries that had provided adequate assurances to the Secretary of State; that is a new feature of the challenged policy here and did not exist at the time those other cases were litigated. And where a country has *not* provided such assurances, the challenged policy offers notice and an opportunity to contest the country of removal—just as the government indicated in those oral arguments.

B. 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 challenged policy has governed third-country removals since that time and thus is even more firmly grounded as the status quo. See Appl. 38-39; cf. *National TPS Alliance*, 146 S. Ct. at 24; *Boyle*, 145 S. Ct. at 2654.

1. Respondents do not dispute that this Court is likely to grant certiorari, as confirmed by this Court's prior order granting a stay. Nor could they: The district court's order obstructs the implementation of an important immigration policy, in an area that Congress and the Constitution have entrusted to the Executive Branch, under circumstances that raise sensitive diplomatic and foreign-policy concerns. That is precisely the sort of circumstance that warrants this Court's review.

2. The equities also favor a stay. As a threshold matter, whenever a court issues broad relief against an Executive Branch policy, the United States suffers a

form of irreparable harm. Appl. 39 (citing *Trump* v. *CASA, Inc.*, 606 U.S. 831, 860-861 (2025); *Trump* v. *IRAP*, 582 U.S. 571, 578-579 (2017) (per curiam); and *Trump* v. *California*, No. 26A124, 2026 WL 2473573 (Aug. 24, 2026)). Respondents attempt (Opp. 36-37 & n.22) to distinguish each of those cited cases on various irrelevant grounds: *CASA* involved a universal injunction; *IRAP* left in place a partial injunction pending review; and *California* involved an election. None of that is responsive to the point that the government, and thus the public (whose interests merge), suffer irreparable harm whenever lower courts interfere with the implementation of Executive Branch policies.

Those harms are particularly acute here. Third-country removal is a critical tool for removing aliens who are difficult to remove, including some of the worst criminals (such as murderers). See Appl. App. 95a-96a. But countries are rarely enthusiastic about receiving such individuals, and so removals require careful negotiation and diplomatic engagement. See *id.* at 88a-90a. The district court's order threatens to upset those delicate agreements—as it has already done in the few short days since it unexpectedly sprang back to life by virtue of the First Circuit's dead-of-night stay dissolution. See Appl. 2, 40. The order also imposes tremendous operational and costs on the agency, not least because the district court's vague order requiring "meaningful" notice and opportunity (Appl. App. 83a) portends the follow-on creation of a detailed removal policy of the court's choosing, such as the ten-day window for raising fear-based claims and fifteen-day window for moving to reopen immigration proceedings that the court imposed under similarly vague language in the preliminary injunction, regardless of how meritless or even frivolous the alien's claim might be. See 2025 WL 1453640, at *1. Contrary to respondents' suggestion (Opp. 35), the resulting harm is not just the needless and obstructive delay. A district court's superintendence of the Executive Branch's massively complex removal operations is an irreparable harm in its own right. And in the case of third-country removals, those delays and superintendence threaten to upend delicate foreign agreements and diplomatic negotiations, which could have the (no doubt intended) effect of stymieing third-country removals altogether, notwithstanding Congress's approval of such removals in the INA.

Respondents also assert (Opp. 37) that the Court's prior entry of a stay is irrelevant to evaluating the equities now; but the Court's grant of a stay at the preliminary-injunction stage necessarily reflected a determination that the government had satisfied *all* of the requirements for that relief, including therefore the equitable requirements. The same result is thus warranted here. Cf. *National TPS Alliance*, 146 S. Ct. at 24; *Boyle*, 145 S. Ct. at 2654. As noted, the equitable balance has shifted even more in the government's favor. That is not just because of the passage of time during which the government has been conducting third-party removals under the challenged policy. It is also because of the First Circuit's unexpected and abrupt dead-of-night decision to dissolve the stay without warning and without even hearing from the government.

Respondents claim (Opp. 34) that the dissolution of the stay was predictable because "both parties had recently urged the First Circuit to rule" on the appeal. But that confuses issuance of the *opinion* with issuance of the *mandate*. While the opinion had immediate *precedential* effect when issued, the stay of the *final judgment* pending appeal should have remained in effect until the appeal concluded, which is when the mandate issues and the case returns to the district court. Under Federal Rule of Appellate Procedure 41, the mandate ordinarily would not have issued until, at the earliest, 52 days after the panel's judgment issued. That would have provided ample time for orderly litigation of a stay of the mandate pending certiorari in this Court, without engendering the chaos (and the need for this emergency application) that the First Circuit's abrupt dissolution has caused at respondents' behest.

Respondents object (Opp. 33-34) that the government's claims of harm are unfounded and based on "stale or no evidence." But the evidence the government submitted when seeking a stay of the preliminary injunction last year and again when seeking a stay of the final judgment earlier this year were evidently sufficient to establish irreparable harm in the view of this Court and the First Circuit, respectively. Those same harms from the same order and its predecessor obviously have not gone anyway; if anything, the status quo (*i.e.*, conducting third-country removals under the challenged policy) has simply become more entrenched.

Respondents also curiously claim (Opp. 33) that the "judgment does not cause the harms [the government] claim[s]" because it simply "declares the rights of class members and vacates the unlawful policy." But on the very next page, they assert that the government was "expected to treat [the judgment] as good law." Opp. 34; see Opp. 2 ("Defendants should have treated the [First Circuit's] decision as controlling when issued."). Respondents plainly expect immediate compliance with the district court's judgment, as affirmed by the First Circuit. Indeed, by their own account, they rushed to the First Circuit at night to dissolve the stay precisely to stop the government's third-country removal operations. See Opp. 9. The claim that the judgment does not cause the government any harm is thus not credible.

3. Finally, respondents recite (Opp. 37-40) various "human rights abuses" and other harms they say class members and others have incurred as a result of third-country removals. But that recital does not appear to include any example of a class member who was persecuted because of a protected characteristic or tortured in the

country to which he was removed. Likewise, respondents note instances of chain *refoulement*, but neither their merits claims nor the judgment below is based on that concern. Indeed, respondents do not identify any case in which the additional procedures they and the district court seek to impose would have prevented the harms they recite. For all it appears, therefore, imposing those procedures would cause needless expense and delay with no legitimate benefit.

In any event, given the government's strong likelihood of success on the merits and serious irreparable harms, this is not the type of "close case[]" in which respondents' competing "equities" can shift the "balance" against a stay. See *DHS* v. *League of Women Voters*, No. 26A308, slip op. 3 (Sept. 25, 2026) (per curiam); accord *id.* at 5-6 (granting stay based on merits and irreparable harm without even mentioning respondents' equities). Any purported harms respondents may suffer from the government's *lawful* policy cannot defeat a stay of the district court's *unlawful* judgment.

* * * * *

For the foregoing reasons and those stated in our application, the Court should stay the district court's February 25, 2026, order. The Court also should grant an immediate administrative stay if the preparation of any opinions on the stay will delay its issuance.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

SEPTEMBER 2026