

In the Supreme Court of the United States

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

v.

ALISHEA SOPHIA KINGDOM, ET AL.

REPLY IN SUPPORT OF THE APPLICATION

D. JOHN SAUER
*Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217*

TABLE OF CONTENTS

I.	The government is likely to succeed on the merits.....	2
A.	The 2026 policy is not arbitrary or capricious under the APA.....	3
1.	BOP reasonably considered its experience under its prior policies	3
2.	The 2026 policy is substantively reasonable	7
3.	The 2026 policy is not pretextual or improperly reverse-engineered.....	12
B.	The district court’s order violates the PLRA.....	12
II.	The other factors support staying the district court’s order	15
A.	The issues raised by the district court’s order plainly warrant this Court’s review	15
B.	The district court’s order causes irreparable harm to the government and to the public.....	16
C.	The balance of equities favors staying the district court’s order	17

In the Supreme Court of the United States

No. 26A416

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

v.

ALISHEA SOPHIA KINGDOM, ET AL.

REPLY IN SUPPORT OF APPLICATION FOR STAY

The reasoning behind the 2026 policy of the Federal Bureau of Prisons (BOP) is simple and straightforward: All agree that gender dysphoria is a mental-health disorder, so BOP will address it through mental-health treatment. BOP will no longer address it instead through physical, sex-rejecting interventions (such as sex-trait-modification surgeries, hormone interventions in general, and social accommodations), which rest on clinical standards that have been widely discredited and which raise serious security and prison-administration concerns.

The district court nevertheless blocked the entirety of the 2026 policy on a universal and classwide basis, prohibiting BOP from implementing a policy that federal prison administrators had determined would best “deliver medically necessary health care to inmates * * * without compromising public safety concerns inherent to BOP’s overall mission.” Appl. App. 27a. In opposing a stay of the district court’s order, respondents simply repeat the court’s many errors—substituting their own policy judgments and empirical assessments for the agency’s, relying on extra-record evidence, and baselessly accusing the agency of acting pretextually.

Those errors would be intolerable in any case under the Administrative Procedure Act (APA). And they are indefensible in a case involving what *federal prison administrators* must do “in the day-to-day operation of a corrections facility.” *Bell v. Wolfish*, 441 U.S. 520, 547 (1979). The court’s order not only contravenes bedrock principles governing APA review, but also exceeds the limits on injunctive relief under the Prison Litigation Reform Act (PLRA) and disregards the heightened deference due prison administrators on matters of “internal order and discipline” and “institutional security.” *Ibid.*

When the district court found that BOP’s 2025 memoranda were insufficiently reasoned, the agency in an abundance of caution issued a new policy, based on seven months of assessment, a 3200-page administrative record, and a 43-page decision memorandum. Appl. 6-7. The district court and the court of appeals have dismissed all of that based on conclusory reasoning that cannot withstand scrutiny, and respondents seek to avoid this Court’s intervention in a transparent effort to run out the clock on this Administration’s ability to ever implement BOP’s lawful policy. Because all of the factors weigh decisively in favor of interim relief pending further review, the Court should stay this egregious intrusion into federal prison administration.

I. THE GOVERNMENT IS LIKELY TO SUCCEED ON THE MERITS

In enjoining the entirety of the 2026 policy on a universal and classwide basis, the district court violated bedrock principles of deference and APA review, Appl. 15-29, and flouted the PLRA’s limits on injunctive relief, Appl. 29-33. Respondents’ attempts to defend the court’s order lack merit.

A. The 2026 Policy Is Not Arbitrary Or Capricious Under The APA

1. BOP reasonably considered its experience under its prior policies

Respondents fail to support their primary contention (Opp. 15) that BOP ignored its own experience in issuing the 2026 policy. The 2026 policy rests on two independent justifications: (1) the latest scientific information does not support providing sex-trait-modification surgeries, hormone interventions in general, and social accommodations as treatment for inmates with gender dysphoria; and (2) those interventions raise security and prison-administration concerns that outweigh whatever limited benefits they might have. Appl. 8-10. Respondents cannot show that BOP ignored its own experience in developing either justification, let alone both.

a. As to BOP's first justification, respondents assert (Opp. 16) that the agency did not consider its "own clinical experience" under its prior policies, which endorsed sex-trait-modification surgeries, hormone interventions, and social accommodations as ways of addressing gender dysphoria. That assertion is incorrect. Appl. 20. As BOP explained, its own clinical experience reflected standards developed by the World Professional Association for Transgender Health (WPATH) and similar organizations; those standards have recently been called into serious question by medical professionals in the United States and other countries; and further reliance on those standards would be unreasonable, in light of those developments. See Appl. App. 29a-33a. BOP thus explained why its own experience did not support maintaining its prior policies: Its own experience reflected "unreliable" and "unpersuasive" standards. *Id.* at 32a-33a.

Respondents contend (Opp. 16) that BOP could not reasonably abandon those standards without consulting its own medical professionals' "clinical notes, impressions, and medical charts." But once those standards had been discredited by the

broader medical community, BOP was justified in abandoning them; BOP did not have to develop its *own* evidence corroborating what the broader medical community had already concluded. Appl. 20.

Moreover, BOP's central concern with the standards developed by WPATH and similar organizations was that they were "insufficiently proven by appropriate evidence." Appl. App. 31a; see *id.* at 28a, 32a. The clinical notes, impressions, and medical charts of BOP's own medical professionals could not possibly address that concern. At most, they could supply "anecdotal evidence" regarding the efficacy of sex-rejecting interventions. *Id.* at 82a. But such evidence is the least reliable type of evidence for "evaluating treatments," because it "lack[s] the rigorous methodology needed for strong clinical recommendations" and its interpretation is susceptible to "bias" and other "confounding factors." *Ibid.* After all, a *retrospective* assessment of patient records could at most show how inmates actually fared in the short term under physical, sex-rejecting interventions; it cannot systematically answer the counterfactual question whether they *would have fared better* with psychotherapy alone. There is thus no support for respondents' assertion (Opp. 16) that BOP's "clinical notes, impressions, and medical charts" are "highly relevant." And as previously explained (Appl. 22), BOP had no "obligation" to "conduct or commission" the type of randomized-controlled trial or other high-quality study that could help to establish the appropriate standard. *FCC v. Prometheus Radio Project*, 592 U.S. 414, 427 (2021).

Respondents challenge (Opp. 17) the government's reliance on a declaration by Dr. Elizabete Stahl, BOP's Medical Director. But respondents ignore the key part of her declaration, which states that she is not aware of any "critical, particularly relevant evidence" in BOP's possession. Appl. App. 154a. What that statement means is that BOP lacks any randomized-controlled trial or other high-quality study that could

justify retaining its prior policies. And in the absence of such high-quality evidence, the physical, sex-rejecting interventions that those policies endorsed for a mental-health disorder remain “insufficiently proven by appropriate evidence.” *Id.* at 31a.

Respondents also characterize (Opp. 17) Dr. Stahl’s declaration as “a ‘*post hoc* rationalization’ that is absent from the administrative record.” But as previously explained (Appl. 21), her declaration is “merely explanatory of the original record.” *Olivares v. TSA*, 819 F.3d 454, 464 (D.C. Cir. 2016), cert. denied, 580 U.S. 871 (2016). Even without Dr. Stahl’s declaration, the fact remains that BOP was not in possession of any randomized-controlled trial or other high-quality study that could justify adhering to WPATH’s discredited standards. Dr. Stahl’s declaration simply confirms that fact, which is already evident from the administrative record.

b. As to BOP’s second justification, respondent contends (Opp. 19) that the administrative record contains “no discussion” of whether the agency’s prior experience “substantiates” its security and prison-administration concerns. But as previously explained (Appl. 22-23), BOP repeatedly invoked its prior “experience and expertise” in discussing those concerns. Appl. App. 37a, 38a, 45a, 46a, 54a, 55a; see *id.* at 28a. Respondents largely ignore all of those references and nevertheless insist (Opp. 19) that “the administrative record does not mention a single incident in which providing hormone therapy or social transition accommodations resulted in a security problem.” To the contrary, BOP explained that its “staff spend a significant amount of time ensuring [that inmates who appear feminine] have appropriate cellmates and often use additional resources managing these inmates in protective custody”; that “providing certain items to one group of inmates and not another” has “[h]istorically” “create[d] conflict within BOP facilities”; and that “inmates have also threatened self-

harm and suicide to obtain sex trait modification interventions, such as hormones and social accommodations.” Appl. App. 28a.

To the extent respondents suggest that BOP had to provide additional factual support for its security and prison-administration concerns, that suggestion cannot be squared with either the APA’s “deferential” standard or review, *Prometheus Radio Project*, 592 U.S. at 423, or the “wide-ranging deference” that prison administrators are due on matters of “institutional security,” *Wolfish*, 441 U.S. at 547. Respondents assert (Opp. 21) that “no such deference is due” because “BOP ignored its own experience in formulating the [2026 policy].” But BOP expressly stated that it considered its own “experience,” Appl. App. 37a, 38a, 45a, 46a, 54a, 55a, and the whole point of deference is that courts should respect such statements, not disregard them. Only by engaging in the second-guessing that the APA and this Court’s precedents forbid can respondents assert (Opp. 21) that BOP “ignored” the very thing that it said it considered.

Respondents’ remaining arguments (Opp. 20-21) are not about BOP’s purported failure to consider its own experience at all; rather, they challenge the substance of what BOP drew from its own experience. For example, respondents do not dispute that BOP’s own experience shows that “inmates who appear feminine, including due to hormones or social accommodations,” are at risk of victimization by other inmates. Appl. App. 28a. Respondents merely question (Opp. 20) whether providing hormones and social accommodations “exacerbate[s]” such “targeting,” and whether BOP could establish other “procedures to ensure individuals’ safety.” But such matters, relating to the “day-to-day operation of a corrections facility,” fall “peculiarly within the province and professional expertise of corrections officials.” *Wolfish*, 441 U.S. at 547-548. Second-guessing BOP’s judgment on those matters makes a mockery

of the double deference that the agency is due under the APA in the prison-administration context.

c. Respondents do not dispute that each of BOP’s two justifications for the 2026 policy is independent of the other. Appl. 22, 24. Thus, to establish “prejudicial error,” 5 U.S.C. 706, respondents would need to show that BOP did not adequately consider its prior experience as to *both* justifications. Because respondents cannot make that showing as to *either* justification, let alone both, the district court erred in blocking the 2026 policy based on BOP’s alleged failure to consider relevant evidence.

2. The 2026 policy is substantively reasonable

The 2026 policy is also substantively reasonable: After concluding that sex-rejecting interventions could no longer be justified, BOP decided that it would prioritize psychotherapy—a “widely recognized” approach to treating the mental-health condition of gender dysphoria. Appl. App. 30a, 60a. In challenging the reasonableness of the 2026 policy, respondents commit the same mistakes as the district court.

a. First, respondents double down (Opp. 27-28) on the district court’s reliance on evidence outside the administrative record. Respondents do not dispute that the APA generally limits judicial review to the administrative record. Appl. 25-26. But they contend (Opp. 28) that the court’s reliance on extra-record evidence falls within two exceptions to that principle: one that applies when “the agency failed to consider factors which are relevant to its final decision,” and another that applies “when a case is so complex that a court needs more evidence to enable it to understand the issues clearly.” Even setting aside the question whether those exceptions are valid, they do not apply here. The point in dispute is not whether BOP “failed to consider factors which are relevant to its final decision,” but rather “the substantive soundness of the agency’s decision,” where the principle that judicial review is limited

to the administrative record “exerts its maximum force.” *Esch v. Yeutter*, 876 F.2d 976, 991 (D.C. Cir. 1989). And contrary to respondents’ suggestion (Opp. 28), the court did not rely on extra-record evidence merely to “explain . . . complex subject matter,” but rather to question the substantive reasonableness of the agency’s decision-making. Thus, no exception to the rule applies here; indeed, the court did not even attempt to invoke an exception. See Appl. App. 191a-193a.

Respondents assert (Opp. 27) that “the district court did not discuss this rule given that the government did not raise it below.” Neither part of that assertion is true. The government did raise the rule in the district court, emphasizing “the limited role of a court in reviewing the administrative record.” D. Ct. Doc. 186, at 21 (May 13, 2026); see *ibid.* (explaining that, “in actions under the APA, summary judgment is the mechanism for ‘deciding, as a matter of law, whether the agency action is supported by the administrative record’”). And the court itself discussed the rule, stating that “[t]he APA generally limits judicial review to the administrative record.” Appl. App. 183a. The court simply ignored that rule in addressing the substantive reasonableness of the 2026 policy, without ever trying to justify doing so under any purported exception, and respondents cannot excuse that error.

b. Second, in deeming the 2026 policy objectively unreasonable, respondents repeat the district court’s error of “substitut[ing] [their] own policy judgment for that of the agency.” *Prometheus Radio Project*, 592 U.S. at 423. Respondents contend that “[t]he government’s claim that psychotherapy is a ‘widely recognized’ approach to treating gender dysphoria is baseless.” Opp. 22 (citation omitted). But even under BOP’s pre-2025 policy, “psychotherapy” and “psychiatry services” are, unsurprisingly, recognized as appropriate forms of treatment for the mental-health condition of gender dysphoria. A.R. 639 (capitalization omitted); D. Ct. Doc. 7-3, at 51 (Mar.

17, 2025) (same). “Psychotherapy” is recognized as an approach to treating the disorder by BOP’s expert, Dr. Kristopher E. Kaliebe, who regards it as the “preferred” treatment, “particularly within correctional environments.” Appl. App. 88a. And psychotherapy is also recognized as a “recommended treatment[] for gender dysphoria” by other experts, whose article on the topic appears in the administrative record. A.R. 1547 (Danyon Anderson et al., *Gender Dysphoria and Its Non-Surgical and Surgical Treatments*, 10 Health Psychological Research 1, 4 (2022)); see Appl. App. 30a, 60a (citing *K.C. v. Individual Members of the Med. Licensing Bd. of Ind.*, 121 F.4th 604, 610 (7th Cir. 2024), which in turn cites the same article).

Respondents contend (Opp. 22 n.6) that the article on which BOP relied “does not suggest that psychotherapy can be a substitute for gender-affirming care.” To the contrary, the article says just that, explaining that even “WPATH recognizes that psychotherapy successfully helps individuals with their gender identity without needing hormone based medical therapy or gender affirmation surgery.” A.R. 1547. If deference to prison administrators means anything, it means that courts cannot second-guess their eminently reasonable choice to treat the mental-health condition of gender dysphoria with psychotherapy rather than physical, sex-rejecting interventions. The rest of respondents’ counterintuitive attempts to undermine psychotherapy as an approach to treating this mental-health condition rely on evidence outside the administrative record, which may not be considered in evaluating their challenge to “the substantive soundness of the agency’s decision.” *Esch*, 876 F.2d at 991; see, e.g., Opp. 22 (citing Appl. App. 192a, which in turn cites Dr. Kaliebe’s deposition in a different case, as well as Supp. App. 171a-172a, which is a declaration of one of respondents’ experts produced after BOP issued the 2026 policy).

Respondents also challenge BOP’s determination that sex-rejecting interventions are “highly controversial, medically disputed, and unproven by appropriate evidence.” Appl. App. 35a, 42a, 50a. But once again, respondents impermissibly rely on extra-record evidence in making that challenge. See Opp. 23-24 (citing Supp. App. 163a-164a, 258a-259a, 359a-360a). The only evidence in the administrative record that respondents cite (Opp. 23) is a declaration by their own expert expressing the view that “the research and studies supporting the necessity, safety, and effectiveness of medical care for gender dysphoria are the same type of evidence that the medical community routinely relies upon when treating other medical conditions.” Supp. App. 112a. But BOP pointed to other experts who found “insufficient evidence to determine the safety or efficacy” of certain sex-rejecting interventions. Appl. App. 30a. And as previously explained (Appl. 26-27), a court’s role under the APA is limited to “ask[ing] whether a ‘reasonable mind might accept’ a particular evidentiary record as ‘adequate to support a conclusion.’” *Dickinson v. Zurko*, 527 U.S. 150, 162 (1999). Especially on a factual matter such as this one—implicating “medical and scientific matters” within the prison context, *West Virginia v. B.P.J.*, 146 S. Ct. 2356, 2379 (2026)—there is no room for a court to second-guess BOP’s reliance on the opinions of certain experts over others.

Respondents’ attempts to rehabilitate BOP’s prior reliance on WPATH’s standards also lack merit. Respondents suggest (Opp. 25) that the controversy surrounding WPATH’s standards was limited to WPATH’s standards for the treatment of children with gender dysphoria. To the contrary, the same problems that infected WPATH’s standards for children also infected WPATH’s standards for adults, including in the prison setting. See Appl. App. 32a (“WPATH’s standards are particularly unreliable when it comes to prisoners.”); *Edmo v. Corizon, Inc.*, 949 F.3d 489, 497 (9th

Cir. 2020) (O’Scannlain, J., respecting the denial of rehearing en banc) (“The pressure to be advocates appears to have won the day in the WPATH Standards’ recommendations regarding institutionalized persons.”). Respondents also attempt (Opp. 25) to diminish WPATH’s role in influencing BOP’s prior policies. But BOP’s prior policies expressly relied on WPATH’s standards, see Appl. 5, and in 2023, the Biden Administration made “[s]ignificant changes” to BOP’s guidance to “more closely align” it with WPATH’s new standards, A.R. 629; D. Ct. Doc. 7-3, at 41 (Mar. 17, 2025). In any event, BOP explained that “WPATH’s guidelines have also influenced other organization[s]’ guidelines, making those guidelines similarly unpersuasive.” Appl. App. 33a. In short, numerous judges have recognized the serious problems with WPATH’s ideologically motivated standards, see, *e.g.*, *United States v. Skrmetti*, 605 U.S. 495, 537-540, 543-546 (2025) (Thomas, J., concurring), and it was not arbitrary and capricious for BOP to do the same.

c. Third, like the district court, respondents largely ignore BOP’s determination that security and prison-administration concerns “independently” justified its decision not to provide greater access to sex-rejecting interventions. Appl. App. 37a, 44a, 54a. Beyond repeating their assertion that BOP’s prior experience does not substantiate those concerns—which is incorrect, for reasons explained above—respondents resort (once again) to evidence outside the administrative record to suggest that “providing hormone therapy and social transition accommodations to treat gender dysphoria *improves* prison security.” Opp. 26. Even if that extra-record evidence could be considered, it could not overcome the substantial deference due to BOP on matters of “internal order and discipline” and “institutional security,” *Wolfish*, 441 U.S. at 547—especially since BOP’s judgment on those matters aligns with the judgment of Dr. Kaliebe and other prison administrators, see Appl. 19-20, 23-24, 27; *Keo-*

hane v. Florida Dep't of Corr. Sec'y, 952 F.3d 1257, 1275 (11th Cir. 2020), reh'g en banc denied, 981 F.3d 994 (11th Cir. 2020), cert. denied, 142 S. Ct. 81 (2021); *Kosilek v. Spencer*, 774 F.3d 63, 94 (1st Cir. 2014) (en banc), cert. denied, 575 U.S. 998 (2015).

3. The 2026 policy is not pretextual or improperly reverse-engineered

Finally, respondents acknowledge (Opp. 30) that “the APA permits agency policymaking to be influenced by political officials’ ‘policy preferences’ or ‘prompted by an Administration’s priorities.’” And they recognize (*ibid.*) that the 2026 policy is “not arbitrary and capricious because it reflects” such “policy preferences” or “priorities,” or “because BOP reached the same outcome as the previously enjoined implementing memoranda.” Instead, respondents contend that the 2026 policy is “pretextual because BOP failed to ‘demonstrate that it considered the relevant evidence and drew a reasonable conclusion from that evidence.’” *Ibid.* (brackets omitted). But that is just a reprise of the two other objections refuted above, and thus respondent’s assertion that the 2026 policy is pretextual fails for the same reasons.

B. The District Court’s Order Violates The PLRA

Turning to the government’s independent argument that the district court’s order violates the PLRA both procedurally and substantively, respondents contend (Opp. 31) that the government “likely forfeited these arguments by failing to make them in the district court.” But respondents overlook the fact that the government raised the PLRA in opposing the order at issue here—*i.e.*, the order that the district court entered on August 26, 2026. See Appl. App. 204a-207a; D. Ct. Doc. 240, at 1 (Aug. 20, 2026) (quoting the government’s opposition). Respondents have no response to the government’s position (Appl. 32) that it preserved its PLRA arguments in that opposition.

Respondents fare no better on the merits. They contend (Opp. 31) that 18 U.S.C. 3626(a)(1) applies only to “permanent injunctions.” But Section 3626(a)(1) applies to “[p]rospective relief,” 18 U.S.C. 3626(a)(1), which the PLRA defines as “all relief other than compensatory monetary damages,” 18 U.S.C. 3626(g)(7). Section 3626(a)(1) thus applies to the relief at issue here, even though it is preliminary. Appl. 30. And contrary to respondents’ contention (Opp. 32), Section 3626(a)(1) requires “particularized findings” that its requirements have been met. *Hoffer v. Secretary, Fla. Dep’t of Corr.*, 973 F.3d 1263, 1278 (11th Cir. 2020). Respondents’ view—that a district court may satisfy Section 3626(a)(1) merely by reciting the language of the provision—would frustrate any ability to conduct meaningful appellate review.

Respondents also err in asserting that the district court’s order can be squared with the PLRA’s substantive limits. They contend (Opp. 33) that “the scope of the preliminary injunction is properly tailored to the evidence in the record demonstrating that the *entire* Program Statement likely is arbitrary and capricious.” But 18 U.S.C. 3626(a)(2)—which applies specifically to “[p]reliminary injunctive relief”—specifies that such relief must “extend no further than necessary to correct *the harm* the court finds requires preliminary relief.” *Ibid.* (emphasis added). In that respect, Section 3626(a)(2) differs from Section 3626(a)(1), which specifies that such relief must “extend no further than necessary to correct *the violation* of the Federal right.” 18 U.S.C. 3626(a)(1) (emphasis added). Respondents overlook that Section 3626(a)(2) refers to “the harm,” not “the violation.” And because they do not allege (and the court did not find) any harm, let alone irreparable harm, from anything other than the denial of hormone interventions and social accommodations, see Appl. 31, the court’s injunction extends “further than necessary” in enjoining any other aspect of

the 2026 policy, including its prohibition on sex-trait-modification surgeries, 18 U.S.C. 3626(a)(2).

The district court's stay under 5 U.S.C. 705 is overbroad for the same reason. Section 705 authorizes a stay only "to the extent necessary to prevent irreparable injury." 5 U.S.C. 705. As a form of "[p]reliminary injunctive relief," the court's stay in this case is also subject to Section 3626(a)(2). 18 U.S.C. 3626(a)(2). Because respondents have alleged (and the court found) irreparable harm only from the denial of hormone interventions and social accommodations, both Section 705 and Section 3626(a)(2) prohibit a stay of any other aspect of the 2026 policy.

As previously explained (Appl. 32-33), the district court's order is also overbroad because it enjoins the 2026 policy on a universal and classwide basis, prohibiting enforcement of the policy as to every inmate in BOP custody who is or will be diagnosed with gender dysphoria. Respondents contend (Opp. 35) that the order's universal and classwide scope is necessary to ensure that "hormone therapy and social transition accommodations are *considered* as potential treatments if clinically indicated." But that contention simply highlights the order's overbreadth: Because not every inmate who is or will be diagnosed with gender dysphoria will require such interventions, the order enjoins the 2026 policy even where the policy's implementation will cause no harm. See Appl. 32. Moreover, respondents cannot evade this overbreadth problem by characterizing it (Opp. 34) as an untimely objection to class certification; whether or not the class was properly certified, the relief entered may not be overbroad.

II. THE OTHER FACTORS SUPPORT STAYING THE DISTRICT COURT’S ORDER

A. The Issues Raised By The District Court’s Order Plainly Warrant This Court’s Review

Respondents deny (Opp. 40) that certiorari would be warranted if the D.C. Circuit were to uphold the district court’s order. But as this Court recently reaffirmed in issuing another interim stay, it has “often granted certiorari where a lower court has set aside an important federal program.” *DHS v. League of Women Voters*, No. 26A308, slip op. 5 (Sept. 25, 2026) (per curiam). That is precisely what the district court did here: It blocked federal prison administrators from executing a significant policy that they adopted, after extensive deliberation, in exercise of their statutorily conferred authority to “provide for the safekeeping, care, and subsistence of all persons” in their custody. 18 U.S.C. 4042(a)(2).

Respondents attempt (Opp. 40) to diminish the certworthiness of this case by characterizing it as “fact-bound” and “interlocutory.” But in issuing the order here, the district court defied bedrock principles of deference and APA review, and the questions raised by its order are no more fact-bound than other questions that this Court has addressed under the APA. See, e.g., *FDA v. Wages & White Lion Investments, L.L.C.*, 604 U.S. 542 (2025); *FCC v. Prometheus Radio Project*, *supra*. Moreover, this Court frequently grants certiorari in the same posture, to review decisions affirming the grant of preliminary relief against important government policies. See, e.g., *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 377-378 (2024); *DHS v. New York*, 141 S. Ct. 1370 (2021); *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 673-674 (2020).

B. The District Court's Order Causes Irreparable Harm To The Government And To The Public

Respondents also err in asserting (Opp. 35-37) that the government will not suffer irreparable harm absent a stay. They contend (Opp. 36) that the government will not suffer irreparable harm because the court's order is not "improper." But that contention is entirely derivative of their erroneous view of the merits. Respondents also contend (*ibid.*) that "the government suffers no injury by being required to continue to provide care" under its prior policies. But BOP determined that those prior policies did not adequately account for either "the latest scientific information" or "the complex security and administration concerns in the correctional environment." Appl. App. 33a. The government is "likely to suffer irreparable harm" whenever a court "prevents the Federal Government from using the [policy] it believes is best suited to the task" at issue. *League of Women Voters*, slip op. 5; see Appl. 35. And that injury is particularly acute where, as here, the court's order blocks the implementation of a policy in an area (prison administration) that falls "peculiarly" within "the province of the Legislative and Executive Branches of our Government, not the Judicial." *Wolfish*, 441 U.S. at 548.

Respondents contend (Opp. 35-36) that the government's claim of irreparable harm is undermined by the fact that "it did not appeal or seek a stay of the [district] court's preliminary injunction issued over a year ago." But that injunction was an injunction against BOP's 2025 implementing memoranda—not the 2026 policy at issue here. Appl. 11. Instead of appealing that injunction, BOP reasonably decided, in an abundance of caution, to undertake an extensive administrative process to address the purported APA deficiencies that the court had identified. Appl. 12. That process produced the 2026 policy. And since BOP promulgated the 2026 policy, the govern-

ment has appealed, and sought a stay of, every injunction that the court has issued against it. Appl. 12-14. The fact that BOP engaged in a comprehensive response to the district court’s professed concerns, only for that response to be conclusorily dismissed, *exacerbates* the harm suffered by the agency, rather than negating it.

Respondents also contend (Opp. 36) that “the government failed to raise any claim of irreparable injury before the district court.” That is incorrect. In opposing respondents’ April 2026 motion for an injunction against the 2026 policy, the government argued that “[i]njunctions that ‘improperly intrude’ on the Executive Branch often inflict irreparable injury.” D. Ct. Doc. 186, at 55. The government incorporated that argument into its motion to stay the court’s June 17 order. See D. Ct. Doc. 222, at 1 (June 22, 2026) (incorporating “the reasons discussed” in the government’s opposition to respondents’ April 2026 motion). And it repeated the argument in opposing the August 26 order at issue here. See D. Ct. Doc. 240, at 1 (“Defendants oppose the relief sought * * * because the other preliminary injunction factors (irreparable harm and balance of the equities) also weigh in the government’s favor.”).

C. The Balance Of Equities Favors Staying The District Court’s Order

Because the government has shown a high likelihood of success on the merits and serious irreparable harm—the “most critical” factors, *Nken v. Holder*, 556 U.S. 418, 434 (2009)—this is not a “close case[]” where respondents’ equities can tilt the balance against a stay, *NRCC v. Brown*, No. 26A274, slip op. 2 (Sept. 4, 2026) (per curiam). Regardless, those equities do not justify withholding a stay because implementation of the 2026 policy would not cause respondents any irreparable harm.

The three named plaintiffs assert (Opp. 37) that they “experienced negative physical and mental health consequences when BOP previously withdrew their hormone therapy temporarily in response to the [Executive Order].” But under the 2026

policy, each of the three named plaintiffs would be subject to an individualized tapering plan that would discontinue their hormone interventions at an appropriate pace, taking into account such factors as “the duration the inmate has been receiving hormones to address [gender dysphoria], the initial rationale for receiving the hormone intervention, the response by the inmate to the intervention, and whether the inmate has undergone sex trait modification surgery.” Appl. App. 14a-15a; see D. Ct. Doc. 186, at 52-56. Indeed, the 2026 policy recognizes that “[f]or inmates who * * * have been receiving hormones to address [gender dysphoria] for an extended period of time and develop severe physiological and psychological withdrawal effects from tapering, it may not be appropriate in all cases for the initial tapering plan to include cessation of hormones.” Appl. App. 15a. Moreover, inmates diagnosed with gender dysphoria, including the three named plaintiffs, will “receive timely, appropriate mental health services,” “target[ing] psychological distress/dysphoria as well as any co-occurring mental health disorders.” *Id.* at 8a. Because the 2026 policy would provide appropriate, individualized treatment for gender dysphoria, any suggestion that the policy would cause any inmate irreparable harm is unfounded and speculative.

* * * * *

For the foregoing reasons and those stated in the government’s application, this Court should stay the district court’s order pending further proceedings in the D.C. Circuit and this Court.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

OCTOBER 2026