No. 24A

In the Supreme Court of the United States

KRISTI NOEM, SECRETARY OF HOMELAND SECURITY, ET AL., APPLICANTS

v.

NATIONAL TPS ALLIANCE, ET AL.

APPLICATION TO STAY THE ORDER ISSUED
BY THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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PARTIES TO THE PROCEEDING

Applicants (defendants-appellants below) are Kristi Noem, in her official capacity as Secretary of Homeland Security, United States Department of Homeland Security, and the United States of America.

Respondents (plaintiffs-appellees below) are National TPS Alliance, Mariela Gonzalez, Freddy Arape Rivas, M.H., Cecilia Gonzalez Herrera, Alba Purica Hernandez, E.R., Hendrina Vivas Castillo, Viles Dorsainvil, A.C.A., and Sherika Blanc.

RELATED PROCEEDINGS

United States District Court (N.D. Cal.):

National TPS Alliance v. *Noem*, No. 25-cv-1766 (Mar. 31, 2025) (order postponing agency actions)

National TPS Alliance v. *Noem*, No. 25-cv-1766 (April 4, 2025) (order denying motion for stay pending appeal)

United States Court of Appeals (9th Cir.):

National TPS Alliance v. *Noem*, No. 25-2120 (April 18, 2025) (order denying motion for stay pending appeal)

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Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Solicitor General—on behalf of applicants Kristi Noem, et al.—respectfully files this application to stay the order granting a motion to postpone agency actions that was issued by the United States District Court for the Northern District of California (App., *infra*, 1a-77a), pending the consideration and disposition of the government's appeal to the United States Court of Appeals for the Ninth Circuit and, if the court of appeals affirms the order, pending the timely filing and disposition of a petition for a writ of certiorari and any further proceedings in this Court.

The Temporary Protected Status (TPS) program implicates particularly discretionary, sensitive, and foreign-policy-laden judgments of the Executive Branch regarding immigration policy. Congress has expressly authorized the Secretary to provide temporary relief to aliens who cannot safely return to their home nation due to a natural disaster, armed conflict, or other "extraordinary and temporary conditions in the foreign state." 8 U.S.C. 1254a(b)(1)(C). The statute commits to the Secretary's sole discretion such judgments as whether the conditions in a particular country are "ex-

traordinary," and whether allowing foreign nationals to temporarily remain in the United States would be "contrary to the national interest." 8 U.S.C. 1254a(b)(1)(C). When the Secretary determines that a country no longer meets the conditions for designation, the statute requires her to terminate the TPS designation, 8 U.S.C. 1254a(b)(3)(B)—as Secretaries have periodically done across administrations. To protect the Secretary's wide discretion in this fast-moving area of foreign affairs, Congress shielded those determinations from judicial review: "There is no judicial review of any determination of the [Secretary] with respect to the designation, or termination or extension of a designation, of a foreign state." 8 U.S.C. 1254a(b)(5)(A).

On February 1, 2025, Secretary Noem terminated one portion of the TPS designations relating to Venezuelan nationals. The prior administration had twice designated Venezuela for TPS—once in 2021 and again in 2023. The first designation extended to September 10, 2025; the latter, to April 2, 2025. In the final days of the last administration, however, Secretary Alejandro N. Mayorkas effectively extended both TPS designations until October 2026. But Secretary Mayorkas's notice was to become legally effective only on April 3, 2025. Shortly after Secretary Noem's confirmation on January 28, 2025, she vacated the noticed extension. Thereafter, and in consultation with appropriate U.S. government agencies, she reviewed relevant country conditions, evaluated public safety and other legitimate policy concerns, and terminated Venezuela's 2023 TPS designation as contrary to the "national interest." 8 U.S.C. 1254a(b)(1)(C). That termination was set to take effect on April 7, 2025. The 2021 designation remains in effect until September 10, 2025.

The Secretary's determination to vacate an extension that had not yet taken legal effect, and then to terminate one of the two TPS designations for Venezuela, are quintessentially unreviewable decisions under the statutory framework that Con-

gress enacted. Yet the district court issued sweeping preliminary relief that overrides the Secretary's determinations and stays her vacatur and termination decisions indefinitely as to hundreds of thousands of program beneficiaries nationwide. The court reasoned that respondents, a nonprofit organization and seven TPS beneficiaries from Venezuela, mounted supposedly reviewable collateral challenges under the Administrative Procedure Act (APA)—reasoning that would eviscerate the statute's bar on judicial review. See App., *infra*, 23a-27a, 55a-59a. The court also faulted the Secretary for vacating Secretary Mayorkas's not-yet-effective TPS extension determination—even though agencies have inherent authority to reconsider prior actions before they take effect. See *id.* at 44a-55a. The court further held that the Secretary's determinations to vacate the extension and terminate the 2023 TPS Designation likely rested on impermissible racial animus in violation of equal protection principles, citing a pastiche of out-of-context "evidence" that raises no plausible inference of racial animus. See *id.* at 59a-75a. That spurious theory, if upheld, could be applied to invalidate virtually any immigration-related initiative of the Trump administration, and it ignores the Secretary's reasoned policy determination justifying the decisions at issue here.

On top of all that, the district court entered nationwide relief supplanting Secretary Noem's assessment of the national interest—an area into which a district court is uniquely unqualified to intrude. See App., *infra*, 75a-77a. The court thus wrested control of the nation's immigration policy away from the Executive Branch and imposed the court's own perception as to whether the government's actions might "contradict U.S. foreign policies," "have adverse national security ramifications," or "weaken the standing of the United States in the international community." *Id.* at 41a-44a. The court's order contravenes fundamental Executive Branch prerogatives

and indefinitely delays sensitive policy decisions in an area of immigration policy that Congress recognized must be flexible, fast-paced, and discretionary.

A panel of the Ninth Circuit issued a one-page order summarily denying the government's request for a stay pending appeal. Indeed, the panel issued two other unreasoned denials of stays that same afternoon.[1] The panel's only explanation was that the government purportedly had "not demonstrated that they will suffer irreparable harm." App., *infra*, 85a. That explanation cannot withstand scrutiny. So long as the order is in effect, the Secretary must permit hundreds of thousands of Venezuelan nationals to remain in the country, notwithstanding her reasoned determination that doing so is "contrary to the national interest." 8 U.S.C. 1254a(b)(1). That finding alone suffices to establish the threat of irreparable harm. Moreover, the district court's decision undermines the Executive Branch's inherent powers as to immigration and foreign affairs. It also frustrates the statutory scheme, which specifies that TPS designations must be "temporary," 8 U.S.C. 1254a(a), and, when circumstances change, *requires* the Secretary to terminate TPS designations so that the ordinary Title 8 processes can resume, see 8 U.S.C. 1254a(b)(1)(B). The decision to delay the Secretary's actions effectively nullifies them, tying them up in the very judicial second-guessing that Congress prohibited. The district court's ill-considered preliminary injunction should be stayed.

STATEMENT

A. Legal Background

In 1990, Congress established a discretionary program for providing temporary shelter in the United States for aliens from countries experiencing armed conflict,

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[1] See *Shilling* v. *Trump*, 24A1030, (filed Apr. 19, 2025); Order, *Shilling* v. *Trump*, No. 25-2039 (Apr. 18, 2025); Order, *Community Legal Services of East Palo Alto* v. *Department of Health and Human Services*, No. 25-2038 (Apr. 18, 2025).

natural disaster, or other "extraordinary and temporary conditions" that prevent the aliens' safe return. 8 U.S.C. 1254a(b)(1)(C); see Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978. The program authorizes the Secretary of Homeland Security, "after consultation with appropriate agencies of the Government," to designate countries for "Temporary [P]rotected [S]tatus," if she finds:

> (A) * * * that there is an ongoing armed conflict within the state and, due to such conflict, requiring the return of aliens who are nationals of that state to that state (or to the part of the state) would pose a serious threat to their personal safety;
>
> (B) * * * that— (i) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected, (ii) the foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state, and (iii) the foreign state officially has requested designation under this subparagraph; or
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> (C) * * * that there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless the [Secretary] finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States

8 U.S.C. 1254a(b)(1).[2]

When the Secretary designates a country for TPS, eligible individuals from that country who are physically present in the United States on the effective date of the designation (and continuously thereafter) may not be removed from the United States and are authorized to work here for the duration of the country's TPS designation. 8 U.S.C. 1254a(a) and (c).

As the program's name suggests, the statute instructs that designations will be "temporary." 8 U.S.C. 1254a(a). Initial designations and extensions thereof may

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[2] While the provisions at issue refer to the Attorney General, Congress has transferred the authority to the Secretary of Homeland Security. See 6 U.S.C. 552(d), 557.

not exceed eighteen months. 8 U.S.C. 1254a(b)(2) and (3)(C). The Secretary, in consultation with appropriate agencies, must review each designation at least 60 days before the designation period ends to determine whether the conditions for the country's designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). If the Secretary finds that the foreign state "no longer continues to meet the conditions for designation," she "shall terminate the designation" by publishing notice in the Federal Register of the determination and the basis for the termination. 8 U.S.C. 1254a(b)(3)(B). If the Secretary "does not determine" that the foreign state "no longer meets the conditions for designation," then "the period of designation of the foreign state is extended for an additional period of 6 months (or, in the discretion of the [Secretary], a period of 12 or 18 months)." 8 U.S.C. 1254a(b)(3)(C).

The TPS statute leaves to the Secretary the sensitive judgment calls about the government's national interest. The statute categorically bars judicial review of her TPS determinations: "There is no judicial review of any determination of the [Secretary] with respect to the designation, or termination or extension of a designation, of a foreign state under this subsection." 8 U.S.C. 1254a(b)(5)(A).

B. Factual Background

Since the statute was enacted, every administration has designated countries for TPS or extended those designations in extraordinary circumstances.[3] But Secretaries across administrations—including that of President Bill Clinton,[4] President

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[3] See Gov't Accountability Office, *Temporary Protected Status: Steps Taken to Inform and Communicate Secretary of Homeland Security's Decisions* 11 fig. 2 (Apr. 2020), http://gao.gov/assets/gao-20-134.pdf (charting TPS designations).

[4] See, *e.g.*, *Termination of Designation of Lebanon Under Temporary Protected Status Program*, 58 Fed. Reg. 7582 (Feb. 8, 1993); *Termination of Designation of Rwanda Under Temporary Protected Status Program After Final 6-Month Extension*, 62 Fed. Reg. 33,442 (June 19, 1997).

George W. Bush,[5] and President Barack Obama[6]—have also terminated designations when the conditions were no longer met. This case involves Secretary Noem's determination to terminate the TPS designation of a particular country (Venezuela) for a particular subset of its nationals (those who became beneficiaries in October 2023).

1. On January 19, 2021, President Trump announced that he would defer for 18 months the removal of certain Venezuelan nationals who were present in the United States. See *Deferred Enforced Departure for Certain Venezuelans*, 86 Fed. Reg. 6845 (Jan. 25, 2021). The President announced the program in connection with sanctions that the administration had imposed against the Venezuelan regime, led by Nicolás Maduro. See *ibid.* Following a change in administration, Secretary Mayorkas then designated Venezuela for TPS, citing extraordinary and temporary conditions that he determined prevented Venezuelans from safely returning. *Designation of Venezuela for Temporary Protected Status and Implementation of Employment Authorization for Venezuelans Covered by Deferred Enforced Departure,* 86 Fed. Reg. 13,574 (Mar. 9, 2021) (2021 Designation).

On October 3, 2023, Secretary Mayorkas extended the 2021 Designation through September 10, 2025, while simultaneously redesignating Venezuela for TPS until April 2, 2025. *Extension and Redesignation of Venezuela for Temporary Protected Status*, 88 Fed. Reg. 68,130 (2023 Designation). This redesignation allowed Venezuelan nationals who were initially ineligible for TPS—primarily because they

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[5] See, *e.g.*, *Termination of the Designation of Montserrat Under the Temporary Protected Status Program*, 69 Fed. Reg. 40,642 (July 6, 2004); *Termination of the Designation of Burundi for Temporary Protected Status*, 72 Fed. Reg. 61,172 (Oct. 29, 2007).

[6] See, *e.g.*, *Six-Month Extension of Temporary Protected Status Benefits for Orderly Transition Before Termination of Guinea's Designation for Temporary Protected Status*, 81 Fed. Reg. 66,064 (Sept. 26, 2016); *Six-Month Extension of Temporary Protected Status Benefits for Orderly Transition Before Termination of Sierra Leone's Designation for Temporary Protected Status*, 81 Fed. Reg. 66,054 (Sept. 26, 2016).

had arrived to the United States after the 2021 Designation—to apply for TPS for the first time. See *id.* at 68,130, 68,132.

On January 17, 2025, the last Friday of the prior administration, Secretary Mayorkas published a notification that the Department would extend the 2023 Designation for 18 months. *Extension of the 2023 Designation of Venezuela for Temporary Protected Status*, 90 Fed. Reg. 5961, 5961 (Jan. 17, 2025). Critically, the extension would become effective only on April 3, 2025. See *ibid.* Secretary Mayorkas also announced a consolidated process for individuals who had been granted TPS under either the 2021 or 2023 Designations to register under that extension. *Id.* at 5962-5963.

That approach was "novel." See *Vacatur of 2025 Temporary Protected Status Decision for Venezuela*, 90 Fed. Reg. 8805, 8806-8807 (Feb. 3, 2025). The 2021 and 2023 Designations had previously been subject to different registration processes. Further, before the January 2025 notification, these designations would have expired on different dates: The 2023 Designation on April 2, 2025, and the 2021 Designation on September 10, 2025. See *ibid.* The Secretary was accordingly under no obligation to act on the 2021 Designation until July 12, 2025, the date by which the statute requires the Secretary to assess whether the "conditions for such designations * * * continue to be met." 8 U.S.C. 1254a(b)(1)(B). Yet Secretary Mayorkas preempted that determination: His actions had the effect of extending the 2021 Designation by allowing *all* eligible Venezuela TPS beneficiaries to re-register under the 2023 Designation and thus obtain TPS through the same extension date of October 2, 2026. See 90 Fed. Reg. 5961, 5963.

2. On January 28, 2025, following the change in administration, Secretary Noem vacated the extension, two months before it was set to take legal effect. The

extension, she explained, attempted to extend two different designations, which expired on different dates, at a time when both were still in effect, and long before the 2021 Designation was set to expire. 90 Fed. Reg. at 8807. The Secretary determined that the basis for such an extension was "thin and inadequately developed," and that vacatur was warranted so that the new administration could have its own "opportunity for informed determinations regarding the TPS designations." *Id.* at 8807. The Secretary reasoned that because an "exceedingly brief period" had elapsed since Secretary Mayorkas first noticed his extension, it was appropriate to restore the status quo, and that the concerns justifying vacatur outweighed any highly attenuated reliance interests.[7] *Ibid.* The Secretary therefore announced that the 2023 and 2021 Designations would remain in effect until their end dates of April 2, 2025, and September 10, 2025, respectively, and promised separate determinations as to whether to terminate each designation in accordance with statutory deadlines. *Ibid.*

3. On February 1, 2025, after consultation with relevant agencies, Secretary Noem terminated the 2023 Designation. *Termination of the October 3, 2023 Designation of Venezuela for Temporary Protected Status*, 90 Fed. Reg. 9040, 9041 (Feb. 5, 2025). She determined that "permitting the aliens to remain temporarily in the United States [would be] contrary to the national interest of the United States," 8 U.S.C. 1254a(b)(1)(C), such that the statutory conditions for designation were no longer met, 90 Fed. Reg. at 9042. The Secretary cited several factors that informed her "discretionary judgment." *Ibid.* The TPS program, she explained, had allowed "a

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[7] DHS immediately stopped accepting Venezuela TPS re-registration applications filed under the Mayorkas Notice, and the agency will refund any fees paid by TPS beneficiaries who had already filed applications pursuant to that Notice. 90 Fed. Reg. at 8807. The Secretary also recognized that some beneficiaries of the 2021 Designation might have re-registered for the 2023 Designation after the Mayorkas Notice issued. *Ibid.* The Secretary restored status under the 2021 Designation for any such individuals, such that they will retain TPS benefits until at least September 10, 2025. *Ibid.*

significant population of inadmissible or illegal aliens without a path to lawful immigration status to settle in the interior of the United States." *Ibid.* The sheer number of individuals had stretched local resources, including "city shelters, police stations, and aid services," to their "maximum capacity." *Id.* at 9043. The Secretary also found that the TPS program had a potential "magnet effect," attracting additional Venezuelan nationals even beyond the current TPS beneficiaries. See *id.* at 9043 & n.18 (quoting *Extension of Designation and Redesignation of Liberia Under Temporary Protected Status Program,* 62 Fed. Reg. 16,608, 16,609 (Apr. 7, 1997)). "Among the[] Venezuelan nationals who have crossed into the United States are members of the Venezuela gang known as Tren de Aragua," and the Secretary therefore considered the "potential nexus to criminal gang membership" and "public safety" concerns as part of her determination. *Id.* at 9042.

The Secretary set the termination of the 2023 Designation to take effect on April 7, 2025—60 days after publication in the Federal Register. 90 Fed. Reg. at 9043 (citing 8 U.S.C. 1254a(b)(3)(B)). The Secretary did not terminate the 2021 Designation, which will remain effective until at least September 10, 2025. See *id*. at 9044.

C. Procedural Background

1. On February 18, 2025, respondents brought APA challenges to the Secretary's determinations to vacate Secretary Mayorkas's extension of the 2023 Designation and to terminate that designation, seeking to postpone the effective date of both determinations. Respondents include individuals who hold beneficiary status under the 2021 and 2023 Designations, plus an organizational plaintiff—the National TPS Alliance (NTPSA)—whose members include beneficiaries under both designa-

tions. See Am. Compl. ¶¶ 15-24; see also D. Ct. Dkt. 34 ¶¶ 35-39 (Feb. 20, 2025).[8]

2. On March 31, 2025, the district court granted respondents' motion and postponed the Secretary's vacatur and termination determinations from taking effect nationwide. In other words, the district court indefinitely prevented the rescission of a TPS designation covering more than 300,000 Venezuelan nationals.

a. The district court held that Section 1254a(b)(5)(A) did not bar judicial review of respondents' claims, including their APA challenges to the Secretary's vacatur determination.[9] App., *infra*, 25a-27a. The court explained that it had previously addressed the scope of Section 1254(a)(b)(5)(A) in *Ramos* v. *Nielson*, 321 F. Supp. 3d 1083 (N.D. Cal. 2018)—"another case that involved TPS terminations but during the first Trump administration." App., *infra*, 23a. The court recognized that, on appeal, the Ninth Circuit had reversed its holding. See *Ramos* v. *Wolf*, 975 F.3d 872 (9th Cir. 2020). That panel decision, however, was later vacated so that the case could be heard en banc, see 59 F.4th 1010 (9th Cir. 2023), and became moot when "the government, [now under] the Biden administration, made new decisions regarding the TPS and terminations at issue," App., *infra*, 24a. The district court therefore decided to "adhere[] to its prior views on the scope of § 1254a(b)(5)(A)," *i.e.*, that respondents' arbitrary-and-capricious claims could be treated as "collateral challenges" on the Secretary's actions and were therefore outside the scope of the judicial review bar. *Id*. at 24a & n.7 (citation omitted).

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[8] On February 20, 2025, respondents amended their complaint to include three Haitian nationals as additional plaintiffs. Am. Compl. ¶¶ 25-27. Those plaintiffs have challenged a separate TPS action that is not at issue in this application.

[9] Respondents also challenged the Secretary's termination determination as arbitrary and capricious. See App., *infra*, 13a. The district court did not suggest that judicial review of that argument would be proper. Cf. App., *infra*, 27a (holding only that Section 1254a(b)(5)(A) "does not bar judicial review of Plaintiffs' challenge to the Secretary's decision to *vacate*") (emphasis added).

b. On the merits, the district court held that respondents were likely to succeed on their challenge to the vacatur for two independent reasons. First, the court held that the Secretary lacked authority to vacate the recently noticed extension. Though Secretary Mayorkas's extension had not yet taken effect—and had been noticed only for days—the court held that the statute forbade Secretary Noem from reconsidering or revoking the extension, such that it would remain in effect until October 2, 2026. App., *infra*, 50a-51a. Second, the court held that, even if the Secretary could vacate the extension, her rationale was arbitrary and capricious in violation of the APA. *Id.* at 55a. The court disagreed with the Secretary's determination that the consolidated process was "'novel'" or would create "confusion," instead deciding that a streamlined process "would tend to eliminate, not create, confusion," and it faulted the Secretary for failing to consider alternatives short of vacatur. *Id.* at 57a-59a.

The district court separately held that both the Secretary's vacatur and termination decisions were likely motivated by racial animus in violation of the equal protection component of the Due Process Clause. See App., *infra*, 59a-75a. The court relied on its own seven-year-old decision in *Ramos* holding that the last Trump administration had violated equal protection principles when it terminated TPS for different countries, even though a panel of the Ninth Circuit had overturned that decision. See *id.* at 70a-72a. The district court cited a handful of statements from Secretary Noem over the course of a year that, in the court's view, supposedly evinced racial animus, alongside statements from President Trump dating back to 2018. See *id.* at 64a-68a. The court also faulted the Secretary for purportedly acting too hastily in terminating the 2023 Designation; giving a rationale lacking reasoned support; and taking part in a historical pattern of discrimination, namely, the President's previous issuance of "adverse TPS decision[s] directed at non-whites." *Id.* at 75a; see *id.* at

72a-75a.

c. The district court found that the remaining equitable factors weighed in respondents' favor. See App., *infra*, 30a-44a. The court recognized that Congress intended for respondents' protected status to be temporary, but then determined that termination of TPS would impose irreparable harm on otherwise eligible aliens. *Id.* at 31a-38a. The court discounted the government's interests in advancing its foreign and immigration policy. See *id.* at 38a-44a. Though Secretary Noem had determined that immediate termination was necessary to relieve strained local communities, 90 Fed. Reg. at 9042, the court disagreed based on respondents' own declarations and two amicus briefs, see App., *infra*, 38a-40a. The court likewise rejected the Secretary's findings as to public safety and national security, stating that terminating TPS protection would "threaten public safety" and "could actually have adverse ramifications to national security." *Id.* at 43a. The court speculated that any cooperation with the Maduro regime to effectuate removals might "contradict U.S. foreign policies" and "weaken the standing of the United States in the international community." *Id.* at 43a-44a.

d. Finally, the district court determined that universal relief was appropriate and postponed the Secretary's actions pursuant to Section 705 of the APA. App., *infra*, 75a-77a. The court reasoned that universal relief was justified because "the agency actions have had a uniform and nationwide impact on all Venezuelan TPS holders located across the United States," and because NTPSA had "more than 84,000 members who are Venezuelan TPS holders in all fifty states plus the District of Columbia." *Id.* at 76a (emphasis omitted). The court also perceived "an interest in uniformity in the immigration system." *Ibid.* The court "acknowledge[d] that there are at least three other recent TPS cases that have been filed against the Trump admin-

istration, with at least two related to Venezuela specifically." *Ibid*; see *Casa, Inc.* v. *Noem*, No. 25-cv-525 (D. Md.) (filed Feb. 20, 2025); *Haitian Ams. United Inc.* v. *Trump*, No. 25-cv-10498 (D. Mass.) (filed Mar. 3, 2025); *Haitian Evangelical Clergy Assn.* v. *Trump*, No. 25-cv-1464 BMC (E.D.N.Y.) (filed Mar. 14, 2025).[10]

3. On April 1, 2025, the government appealed the district court's decision and sought a stay pending appeal in both the district court and the court of appeals. See D. Ct. Doc. 95. On April 4, 2025, the district court denied the government's request for a stay. App., *infra*, 79a-83a.

4. On April 18, the Ninth Circuit issued a one-page denial of the government's request for a stay pending appeal, summarily stating that the government had not shown that it "will suffer irreparable harm absent a stay." App., *infra*, at 85a.

ARGUMENT

Under Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Court may stay preliminary relief entered by a federal district court. See, *e.g.*, *Trump* v. *International Refugee Assistance Project*, 582 U.S. 571 (2017) (per curiam); *Brewer* v. *Landrigan*, 562 U.S. 996 (2010); *Brunner* v. *Ohio Republican Party*, 555 U.S. 5 (2008) (per curiam).[11] To obtain such relief, an applicant must show a likelihood of success on the merits, a reasonable probability of obtaining certiorari, and a

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[10] The court rejected the government's argument that 8 U.S.C. 1252(f)(1) prohibited the requested relief by precluding courts (except this Court) from "enjoin[ing] or restrain[ing] the operation of" provisions including Section 1254a. App., *infra*, 15a-22a (citation omitted). The court viewed that language as referring only to preliminary injunctions and temporary restraining orders, not the vacatur or postponement respondents sought. *Ibid.* The government is not pressing its Section 1252(f)(1) argument for purposes of this application, but the provision is an independent bar to the relief the district court granted, and the government intends to continue to assert it in the lower courts.

[11] The cited cases arise in the context of preliminary injunctions. The district court's order is styled as an order postponing the effective date of agency actions under 5 U.S.C. 705, but the practical effect of preventing the agency from taking certain actions is the same. The same standard should therefore apply.

likelihood of irreparable harm. See *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam). In "close cases," "the Court will balance the equities and weigh the relative harms." *Ibid.* Those factors overwhelmingly support a stay here.

A. The Government Is Likely To Succeed On The Merits

The Secretary's decision whether to designate, extend, or terminate TPS implicates sensitive judgments as to foreign policy and, in this case, the "national interest"—a discretionary determination that Congress expressly committed to her judgment. 8 U.S.C. 1254a(b)(1)(C), (b)(3), and (b)(5)(A). On his last Friday in office, the outgoing Secretary purported to extend Venezuela's 2023 TPS Designation until October 2026. Days later, Secretary Noem vacated that extension, and then she terminated the 2023 Designation after conducting her own assessment of the "national interest," 8 U.S.C. 1254a(b)(1)(C), in keeping with a "change in administration brought about by the people casting their votes," *Motor Vehicle Mfrs. Ass'n of the U.S., Inc.* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 59 (1983) (Rehnquist, J., concurring in part). The district court has now postponed the effective date of those agency actions.

The district court's reasoning is untenable. The court contravened an express bar on judicial review, sidestepped black-letter law authorizing agencies to reverse as-yet-inoperative actions, and embraced a baseless equal-protection theory on the road to issuing impermissible universal relief that intrudes on central Executive Branch operations. Its order upsets the judgments of the political branches, prohibiting the Executive Branch from enforcing a time-sensitive immigration policy and indefinitely extending an immigration status that Congress intended to be "temporary," 8 U.S.C. 1254a(a).

1. The statute precludes judicial review of the Secretary's determination with respect to vacating the extension

The TPS statute is unambiguous: "There is no judicial review of any determination of the [Secretary] with respect to the designation, or termination or extension of a designation, of a foreign state" for TPS. 8 U.S.C. 1254a(b)(5)(A). The statute commits to the Secretary's unreviewable authority any and all determinations concerning TPS designation, extension, and termination. *Ibid.* The Secretary's vacatur of the extension represents such a determination. The district court exceeded its authority by ignoring Congress's commands and engaging in APA review of the Secretary's unreviewable decision. See App., *infra*, 23a-27a, 55a-59a.

a. The district court held that the Secretary's determination to vacate an extension was, "literally and textually," App., *infra*, 25a, not a determination "with respect to the designation, or termination, or extension of a designation, of a foreign state," 8 U.S.C. 1254a(b)(5)(A). That is wrong. The Secretary's action was plainly a determination "*with respect to*" an extension—*i.e.,* a determination that Secretary Mayorkas's extension was improper and should be vacated. 8 U.S.C. 1254a(b)(5)(A) (emphasis added). Put simply, the Secretary determined that no extension should exist and vacated it months before it was set to take effect.

The text of Section 1254a(b)(5)(A) is broad. First, Congress prefaced "determination" with the term "any." 8 U.S.C. 1254a(b)(5)(A). "As this Court has repeatedly explained, the word 'any' has an expansive meaning." *Patel* v. *Garland*, 596 U.S. 328, 338 (2022) (internal quotation marks omitted). The provision thus captures determinations "of whatever kind." *Ibid.* (quoting Webster's Third New International Dictionary 97 (1993)). Likewise, the use of the phrase "with respect to," has "a broadening effect," as it "ensur[es] that the scope of [the] provision covers not only its subject

but also matters relating to that subject." *Id.* at 339 (quoting *Lamar, Archer & Cofrin, LLP* v. *Appling*, 584 U.S. 709, 717 (2018)). When Congress has stripped a court of jurisdiction "in respect to" particular claims, this Court has accordingly construed it as a "broad prohibition." *United States* v. *Tohono O'odham Nation*, 563 U.S. 307, 312 (2011); see *Patel*, 596 U.S. at 338.

Reinforcing this interpretation, "the Government's political departments [are] largely immune from judicial control" in the immigration context, *Fiallo* v. *Bell*, 430 U.S. 787, 792 (1977) (citation omitted), particularly when making the sensitive foreign-policy judgments at issue here. The Executive Branch had long exercised inherent authority to afford temporary immigration status based on its assessment of conditions in foreign states, even before there was any "specific statutory authority" for such relief. See *Hotel & Rest. Emps. Union, Loc. 25* v. *Smith*, 846 F.2d 1499, 1510 (D.C. Cir. 1988) (per curiam). That authority included the discretion "*not* to extend [protected] status" to a particular class of aliens, and the D.C. Circuit had recognized that such decisions were "unreviewable" by courts. *Ibid.* Congress legislated against that backdrop when it enacted the TPS program and codified in Section 1254a(b)(5)(A) the understanding that "[t]here is no judicial review" of such determinations. 8 U.S.C. 1254a(b)(5)(A).

The Secretary's determination to vacate an extension—*i.e.*, a determination that an extension was improper and should have no legal effect—is a determination "with respect to" an extension. 8 U.S.C. 1254a(b)(5)(A). No other reading of the text is plausible. Moreover, to hold otherwise would create an unusual disparity: "[D]esignations" are unreviewable, as are "terminations" of those designations. *Ibid.* But under the district court's reading, "extensions" are unreviewable, while rescissions of extensions would not be. See *ibid.* That loophole is even less plausible given that the

point of the statute was to "limit[] unwarranted * * * extensions of TPS." *Ramos* v. *Wolf*, 975 F.3d 872, 891 (9th Cir. 2020), reh'g en banc granted, opinion vacated, 59 F.4th 1010 (9th Cir. 2023); see pp. 21-22, *infra*.[12]

b. The district court alternatively held that that respondents could evade the statutory bar by characterizing their APA claims as "collateral" challenges to the "process" by which Secretary Noem reached her termination decision. See App., *infra*, 26a. That reasoning is meritless and would create an end-run around the judicial-review bar.

"If a no-review provision shields particular types of administrative action, a court may not inquire whether a challenged agency decision is arbitrary, capricious, or procedurally defective." *Amgen Inc.* v. *Smith*, 357 F.3d 103, 113 (D.C. Cir. 2004); see *Delgado* v. *Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011) (per curiam) (preclusion provision barred review of APA claim "indirectly challenging" underlying order); *Skagit County Pub. Hosp. Dist. No. 2* v. *Shalala*, 80 F.3d 379, 386 (9th Cir. 1996) (preclusion provision applies when "procedure is challenged only in order to reverse the individual [unreviewable] decision"). To hold otherwise "would eviscerate the statutory bar, for almost any challenge to [a determination] could be recast as a challenge to its underlying methodology." *DCH Reg'l Med. Ctr.* v. *Azar*, 925 F.3d 503,

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[12] Plaintiffs also brought an arbitrary-and-capricious challenge to the Secretary's termination of the 2023 Designation. See p. 11 & n.9, *supra*. The district court did not suggest that it could review that challenge, see App., *infra*, 27a, and Section 1254a(b)(5)(A) would plainly preclude review of a "determination * * * with respect to a termination," 8 U.S.C. 1254b(5)(A). The court's review of the vacatur decision, however, would effectively open the Secretary's "termination" determination to judicial review, too. The Secretary's vacatur was an essential prerequisite of her determination to terminate, rather than extend, the 2023 Designation. See 90 Fed. Reg. at 9044 (explaining that her "notice supersede[d] the January 17, 2025" notice). The Secretary's decision to "supersede[]" prior agency action in her termination determination was unreviewable under Section 1254a(b)(5)(A), and the fact that the Secretary announced the rationale for that determination in a separate notice does not remove it from Section 1254a(b)(5)(A)'s scope.

505-507 (D.C. Cir. 2019).

Indeed, the Ninth Circuit had previously rejected the district court's theory of judicial review. The "TPS statute," it held, "precludes review of non-constitutional claims that fundamentally attack the Secretary's specific TPS determinations, as well as the substance of her discretionary analysis in reaching those determinations." *Ramos*, 975 F.3d at 891. It was not enough, the Ninth Circuit explained, for respondents to "insist that their APA claim does not challenge the specific TPS determination" or to "simply couch[] their claim as a collateral 'pattern or practice' challenge." *Id.* at 893. An APA challenge claiming that a Secretary failed to "adequately explain" her decision or had "depart[ed] from past practice" is "essentially an attack on the substantive considerations underlying the Secretary's specific TPS determinations, over which the statute prohibits review." *Ibid.*

Respondents pressed that type of APA challenge below. Secretary Noem vacated the extension because it employed a "novel" approach by consolidating registrations for two different designations—a maneuver she determined would create confusion and deny the new administration its own "opportunity for informed determinations regarding the TPS designations." 90 Fed. Reg. at 8807. But respondents argued—and the district court accepted—that the Secretary's decision contained *substantive* flaws: that she was wrong to view Secretary Mayorkas's approach as novel; that she erred in finding his two-track system confusing; and that she failed to consider alternatives short of vacatur of the extension. See App., *infra*, 54a-59a. In short, the district court found that the Secretary had not provided a "reasoned explanation for the change." *Id.* at 58a (quoting *Encino Motorcars, LLC* v. *Navarro*, 579 U.S, 211, 221 (2016)).

The district court's reasoning involves exactly the second-guessing that Section

1254a(b)(5)(A) forbids. The district court thought it enough that its decision did not "dictate how the Secretary should *ultimately* rule on a TPS designation, termination, or extension." App., *infra*, 26a (emphasis added). That misses the point: Because Section 1254a(b)(5)(A) "precludes [courts] from reviewing the Secretary's TPS determinations and her underlying considerations," *Ramos*, 975 F.3d at 894, the court had no authority to set aside the Secretary's determinations. Yet the Ninth Circuit panel did not even engage with that basic legal problem, let alone weigh in on any other aspect of the merits.

2. The Secretary had authority to vacate the outgoing administration's extension of Venezuela's TPS designation

The district court's alternative basis for postponing the Secretary's vacatur was equally flawed. The Secretary has inherent authority to vacate an extension that her predecessor had issued days previously, and the district court erred in holding that Section 1254a(b)(1) precludes that action. See App., *infra*, 44a-55a.

"[A]dministrative agencies are assumed to possess at least some inherent authority to revisit their prior decisions, at least if done in a timely fashion." *Ivy Sports Med., LLC* v. *Burwell,* 767 F.3d 81, 86 (D.C. Cir. 2014) (Kavanaugh, J.). That is because the "power to reconsider is inherent in the power to decide." *Ibid.* (quoting *Albertson* v. *FCC*, 182 F.2d 397, 399 (D.C. Cir. 1950)); *Macktal* v. *Chao,* 286 F.3d 822, 825-826 (5th Cir. 2002) ("[I]t is generally accepted that in the absence of a specific statutory limitation, an administrative agency has the inherent authority to reconsider its decisions.") (collecting cases); *Mazaleski* v. *Treusdell,* 562 F.2d 701, 720 (D.C. Cir. 1977) ("We have many times held that an agency has the inherent power to reconsider and change a decision if it does so within a reasonable period of time.").

Here, Secretary Noem acted within days to reconsider and vacate Secretary

Mayorkas's eleventh-hour decision to extend TPS, and she did so months before the extension's effective date of April 3, 2025. This was a classic exercise of an agency's inherent power to reconsider past decisions. Underscoring the point, the Executive Branch—including Secretary Mayorkas—has long understood the Secretary's power to implement the TPS program to include the power to reconsider decisions. See *Reconsideration and Rescission of Termination of the Designation of El Salvador for Temporary Protected Status; Extension of the Temporary Protected Status Designation for El Salvador*, 88 Fed. Reg. 40,282, 40,285 & n.16 (June 21, 2023). In revisiting the Trump administration's previous termination decisions, Secretary Mayorkas likewise invoked the agency's "inherent (that is, statutorily implicit) authority to revisit its prior decisions unless Congress has expressly limited that authority," and explained that "[t]he TPS statute does not limit the Secretary's inherent authority to reconsider any TPS-related determination, and upon reconsideration, to change the determination." *Id.* at 40,285 (footnote omitted); see *id*. at 40,285 n.16.

Far from curbing the Secretary's inherent power to reconsider past decisions, Section 1254a(b)(1) codifies the Executive Branch's "undoubtedly broad and unique" discretion to administer TPS. *Ramos*, 975 F.3d 890; see p. 17, *supra.* Section 1254a(b)(1) vests in the Secretary the sole authority to designate a foreign country, and it provides that she "may" do so when certain "extraordinary and temporary conditions" exist in the foreign state. 8 U.S.C. 1254a(b)(1)(C). "The word 'may' indicates that, even if the Secretary finds one of [the] requisite criteria is met, she retains the discretion *not* to designate a country for TPS." *Ramos*, 975 F.3d at 890. By contrast, the statute specifies that the "Secretary 'shall' periodically review the country conditions and 'shall' terminate TPS if she finds the requisite criteria are no longer met." *Id.* at 890-891. Taken together, those provisions afford the Secretary broad discretion

and, "to the extent the TPS statute places constraints on [that] discretion, it does so in favor of limiting unwarranted designations or extensions of TPS." *Id.* at 891.

The district court instead read Section 1254a(b) to curb the Secretary's discretion such that once one Secretary approves a TPS extension, no one else—not that Secretary or a successor—can vacate it, apparently no matter the foreign policy, national security, or national interests at stake or the seriousness of the error in the prior decision. App., *infra*, 51a (citing 8 U.S.C. 1254a(b)(3)(B)). That reasoning is unsupportable—especially because Secretary Mayorkas's extension here was not yet effective when Secretary Noem terminated it. The statute provides a mechanism for "terminat[ing] [a] designation" once in effect, 8 U.S.C. 1254a(b)(3)(B), but it provides no "mechanism capable of rectifying [a] mistaken" announcement that the Secretary *will* extend the designation on a future date. *Ivy Sports Med.*, 767 F.3d at 86 (citation omitted). The Secretary therefore acted well within her inherent authority in vacating an unwarranted extension before it took effect. Cf. *Kennecott Utah Copper Corp.* v. *U.S. Dep't of Interior*, 88 F.3d 1191, 1206 (D.C. Cir. 1996) (recognizing the benefits of allowing agencies to "correct mistakes and even * * * withdraw regulations until virtually the last minute before public release"); *Chen* v. *INS*, 95 F.3d 801, 805 (9th Cir. 1996) (holding that rule that was withdrawn before it became effective was not enforceable and "ha[d] no legal effect").

The alternative construction is implausible. It would entail that, in a statute meant to "limit[] unwarranted designations or extensions of TPS," *Ramos*, 975 F.3d at 891, Congress stripped the Secretary of her inherent authority to vacate an extension issued days previously, even though that extension had not taken yet effect (either on its own terms or by operation of the statutory deadline in Section 1254a(b)(3)(C)). The district court's reasoning would allow an outgoing administra-

tion to bind its successors on sensitive questions of foreign and immigration policy for more than 20 months—nearly half a Presidential term. Indeed, Secretary Mayorkas extended the 2023 Designation before the statute required action and for a term of 18 months—the outer bound of the statutory limit. See 8 U.S.C. 1254a(b)(3)(C). Further, he effectively extended the 2021 Designation nearly *six months* before the statute required him to act, purportedly preempting Secretary Noem's discretion and leaving her no authority to consider for herself whether the country conditions and "national interest" would favor the extension. 8 U.S.C. 1254a(b)(1)(C).

Section 1254a does not mandate such an unworkable limitation of the Secretary's ability to fulfill her responsibility to administer and enforce the immigration laws. See, *e.g.*, 6 U.S.C. 202(1)-(5), 8 U.S.C. 103(a)(1) and (a)(3). Indeed, the district court's construction would pose serious concerns under Article II, as it would represent a significant incursion on the Executive Branch's authority to oversee foreign affairs and immigration policy, and it should be rejected on that basis alone. See *United States* v. *Hansen*, 599 U.S. 762, 781 (2023) ("When legislation and the Constitution brush up against each other, our task is to seek harmony, not to manufacture conflict."); *Jones* v. *Hendrix*, 599 U.S. 465, 492 (2023) (explaining that "clear-statement rules [are] appropriate when a statute implicates historically or constitutionally grounded norms that we would not expect Congress to unsettle lightly").

3. The district court's equal protection analysis is flawed

The district court likewise erred in holding that the decisions to vacate the extension and terminate the 2023 TPS Designation likely rested on impermissible racial animus on the part of the Secretary and President Trump. That holding applies the wrong legal standard, egregiously misconstrues the factual basis for the Secretary's actions as well as the Secretary's and President Trump's statements, and

would effectively brand any immigration policy of this administration as unconstitutional.

a. The district court's application of heightened scrutiny contravenes *Trump* v. *Hawaii*, 585 U.S. 667 (2018), which prescribes that rational-basis review governs constitutional challenges to Executive Branch immigration policies and that such policies pass constitutional muster so long as they are "plausibly related" to the government's policy objective. *Id*. at 704. That deferential review reflects that "decisions in these matters may implicate 'relations with foreign powers,' or involve 'classifications . . . defined in the light of changing political and economic circumstances,'" which are judgments "'frequently of a character more appropriate to either the Legislature or the Executive.'" *Id*. at 702 (citation omitted); see *Galvan* v. *Press*, 347 U.S. 522, 531 (1954) ("Policies pertaining to the entry of aliens and their right to remain here are peculiarly concerned with the political conduct of government."). That reasoning certainly holds for TPS-related actions, which involve unique country-specific determinations that both "implicate 'relations with foreign powers'" and "involve 'classifications defined in the light of changing political and economic circumstances.'" 585 U.S. at 702 (citation and ellipsis omitted).

Yet the district court refused to follow *Hawaii* and apply rational-basis review to Secretary Noem's decision on the theory that TPS concerns aliens who are already in the United States. App., *infra*, 60a. That conclusion defies this Court's reasoning in *Hawaii* that rational-basis review applies "across different contexts and constitutional claims." 585 U.S. at 703. Underscoring the point, *Hawaii* approvingly cited *Rajah* v. *Mukasey*, 544 F.3d 427, 438 (2d Cir. 2008), a case which, like this one, involved an equal protection challenge to an Executive Branch action brought by aliens within the United States, see *Hawaii*, 585 U.S. at 704.

The district court also dismissed foreign-policy concerns because the Secretary did not expressly "cite an interest in effecting foreign relations" in the vacatur action and supposedly did not sufficiently invoke national security and foreign relations in the termination action. App., *infra*, 61a. But foreign-policy concerns do not disappear from a program inherently laden with foreign-policy considerations simply because the Secretary did not state the obvious in the particular action. The government is engaged in complex negotiations with Venezuela that involve the use of multiple policy tools at multiple levels. See *id*. at 43a (noting that the government "has made an agreement with the Maduro government to resume deportations to Venezuela"); see also D. Ct. Doc. 104-9, at 57-58 (Apr. 7, 2025) (Secretary of State Rubio explaining that "[o]ur diplomatic relations with other countries, particularly in the Western Hemisphere, will prioritize securing America's borders, stopping illegal and destabilizing migration, and negotiating the repatriation of illegal immigrants"). TPS actions inherently involve determinations regarding the current state of emergencies within particular foreign countries, their nationals, and the effect of the TPS program on this country's national interests—all sensitive foreign policy judgments that the Constitution entrusts to the Executive, not courts.

b. Even if heightened scrutiny were appropriate, respondents' equal protection claim fails. The district court applied *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), which requires respondents to establish that "a discriminatory purpose has been a motivating factor in the [government's] decision." *Id*. at 265-266.

The decision here, however, lacks any plausible discriminatory purpose, not least because Secretary Noem took the measured step of terminating TPS for 2023 beneficiaries while leaving it in place for those Venezuelans who are covered under

the 2021 Designation. On top of that, the Secretary provided reasoned explanations for her decision to vacate the extension and terminate Venezuela's designation. She consulted with the appropriate governmental agencies, including the Department of State, and determined that prolonging Venezuela's TPS designation was contrary to the national interest. A fair reading of her explanation for that determination indicates that it was based, among other factors, on the Secretary's concerns with the "sheer numbers" of "inadmissible or illegal aliens" that had entered the United States due to the prior administration's border policies, 90 Fed. Reg. at 9042; the "magnet effect" of a TPS extension, which had been a "pull factor[] driving Venezuelan nationals to the United States" at a time when the Secretary was concerned about members of Tren de Aragua who were "[a]mong the[] Venezuelan nationals who have crossed into the United States," *id.* at 9042-9043; the burdening of "city shelters, police stations, and aid services" that had reached "maximum capacity" due to the influx of immigration, *id.* at 9043; and the President's policy of promoting the national interest, including U.S. foreign policy interests, by discouraging "illegal and destabilizing migration," *ibid.* The Secretary's reasoning does not permit any inference of impermissible discriminatory intent.

Instead of focusing on the Secretary's stated justifications, the district court cherry-picked statements the Secretary made in social media posts and public appearances, where she advocated for and promoted policies that curb immigration and decrease crime, and wrongly portrayed those comments as racially tinged. App., *infra*, 64a-66a. But forceful condemnations of gang violence and broad questioning of the integrity of the prior administration's immigration practices, including potential abuses of the TPS program, do not evince discriminatory intent. See *ibid.*; see also D. Ct. Doc. 37-15, at 7 (Feb. 21, 2025) (Secretary Noem discussing "abuse[]" and lack

of "integrity" in TPS program). Worse, the district court mischaracterized those statements as supposedly portraying all Venezuelan TPS beneficiaries as engaging in criminal activity or belonging to gangs, when the Secretary never said any such thing. The court drew that inference because the Secretary "decided to take *en masse* actions against all Venezuelan TPS beneficiaries, who number in the hundreds of thousands." App., *infra*, 66a. But the Secretary did not terminate TPS for all Venezuelan beneficiaries—in fact, she expressly left in place the 2021 Venezuela TPS designation. See 90 Fed. Reg. at 9044.

Moreover, although the Secretary linked her concerns with Tren de Aragua and criminal activity with the TPS program, the Secretary's statements and her published explanation for the termination do not indicate that she viewed TPS beneficiaries in general as criminals and gang members. For example, the district court highlighted the Secretary's statement that the Department planned to "evaluate all of these individuals that are in our country, including the Venezuelans that are here and members of [Tred de Aragua]," after which the Secretary explained that she had been in "New York City yesterday and the people of this country want these dirt bags out." App., *infra*, 65a. The district court misinterpreted the Secretary's statement as calling all Venezuelans "dirt bags," *ibid.*, when her statement plainly refers to members of Tren de Aragua—a group that the President designated a foreign terrorist organization. See *Designating Cartels and Other Foreign Organizations as Foreign Terrorist Organizations and Specially Designated Global Terrorists*, Exec. Order No. 14157, 90 Fed. Reg. 8439 (Jan. 29, 2025); see also 90 Fed. Reg. 10,030 (Feb. 20, 2025) (State Department designation). That context was all the clearer because the Secretary had just discussed her visit to New York City to help arrest a ringleader of Tren de Aragua. See D. Ct. Doc. 37-14, at 3 (Feb. 21, 2025).

The court refused to accept that common-sense understanding absent a "declaration under oath" from the Secretary, and it likewise refused to accept an objective understanding of the remaining statements. App., *infra*, 65a n.26; see *id*. at 66a. The court's insistence on implausibly reading the Secretary's statements out of context and construing them in the worst possible light is inconsistent with the presumption of regularity afforded to the Executive Branch. *United States* v. *Chemical Found., Inc.*, 272 U.S. 1, 14 (1926). Likewise, the court's suggestion that the government could defend its actions only through the Secretary's personal testimony defies this Court's admonitions that compelling the testimony of a high-ranking government official—especially a Cabinet Secretary—is rarely if ever justified. See *United States* v. *Morgan*, 313 U.S. 409, 422 (1941) (holding district court erred in ordering deposition of Secretary of Agriculture); *In re Department of Commerce*, 586 U.S. 956, 956 (2018) (granting emergency relief when district court compelled deposition of Secretary of Commerce).

Compounding its errors, the district court found animus by imputing statements of President Trump to the Secretary on a so-called "cat's paw" theory. App., *infra*, 66a-71a. That theory is untenable. Even if it were appropriate to consider President Trump's statements, they do not show racial animus. President Trump's statements observe that lax border policies of the previous administration led to the unlawful entry of millions of aliens, including disproportionate numbers of aliens with criminal records. *Id*. at 67a-69a. His statements call for the government to immediately secure the border, vigorously enforce our immigration laws, and promptly remove criminal aliens from our country—policy views shared by many millions of Americans. See *ibid*. These statements do not raise any plausible inference of racial animus.

Moreover, most of the statements cited by the district court did not relate to Venezuela at all, and many were "remote in time and made in unrelated contexts" and therefore "do not qualify as 'contemporary statements' probative of the decision at issue." *DHS* v. *Regents of the Univ. of Cal.*, 591 U.S. 1, 35 (2020) (opinion of Roberts, C.J.) (quoting *Arlington Heights*, 429 U.S. at 268); see *Ramos*, 975 F.3d at 898 (noting that President Trump's statements "occurred primarily in contexts removed from and unrelated to TPS policy or decisions").

The district court nevertheless faulted the administration writ large—and the Secretary's decisions here—as supposedly "continu[ing] a pattern of the Trump administration's targeting of non-white, non-European TPS holders." App., *infra*, 72a.[13] This charge is baseless. The court treated the President's statements as "discriminatory"—then attributed that supposed animus to Secretary Noem's ensuing actions on TPS—by pointing to 2018 statements about immigrants from other countries, campaign comments about Haitian immigrants in Springfield, Ohio and about the Biden administration's policies that allowed in "drug dealers" and other dangerous criminals that other countries, including Venezuela, refuse to allow back. *Id*. at 66a-69a. The district court even stretched to asserting that the President's statement that "[t]he American people deserve a Federal Government that puts their interests first" supposedly reflected covert racism. *Id*. at 68a.

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[13] The district court correctly discounted the relevance of disparate impact. App., *infra*, 74a-75a. "[V]irtually every country that has been designated for TPS since its inception has been 'non-European' (with the exception of Bosnia and the Province of Kosovo) and most have majority 'non-white' populations." *Ramos*, 975 F.3d at 898. Accepting a disparate-impact claim here would mean that "almost any TPS termination in the history of the program" would "give rise to a potential equal protection claim." *Ibid*.; see *Regents of the Univ. of Cal.*, 591 U.S. at 34 (opinion of Roberts, C.J.) (noting that "because Latinos make up a large share of the unauthorized alien population, one would expect them to make up an outsized share of recipients of any cross-cutting immigration relief program," thereby refuting an equal protection claim).

But the President's well-founded view that the prior administration's border policies encouraged a mass illegal influx of aliens, and particularly attracted criminals, gang members, and drug dealers, underscores the President's national-security concerns. As the President, the Secretary, and others have repeatedly explained, the administration has been confronting a crisis at the border; the illegal influx of millions of aliens has created an unsustainable situation; the dangers of that influx have been heightened by the infiltration of groups like Tren de Aragua that seek to destabilize the country; and reforming programs that have been previously abused is a critical need. Yet, under the district court's reasoning, those concerns are irrelevant, and its indefensible misinterpretation of the President's statements going back to 2018 would vitiate every ensuing immigration policy on equal-protection grounds.

The Trump administration's handling of other TPS-related decisions further belies the district court's reasoning. During the first administration, for example, the administration extended TPS designations for four other "non-white, non-European" countries. *Ramos*, 975 F.3d at 898; see *id.* at 880 (describing the extension of TPS designations of Somalia, South Sudan, Syria, and Yemen). Also during the first administration, the President deferred removal of certain Venezuelans—an action that is inexplicable under the district court's assumption that the President has consistently harbored discriminatory animus. See 86 Fed. Reg. at 6845.

On the law, the district court's recitation of President Trump's prior statements could not show animus by *the Secretary* regardless. See, e.g., *Staub* v. *Proctor Hospital*, 562 U.S. 411, 418 (2011); *Ramos*, 975 F.3d at 897 ("We doubt that the 'cat's paw' doctrine of employer liability in discrimination cases can be transposed to th[e] particular context" of TPS terminations). Such an approach would invite judicial second-guessing of an agency official's actions based on mere allegations that a different gov-

ernment official harbored some discriminatory motive. Such second-guessing would in turn open the door to impermissible intrusion on privileged Executive Branch deliberations, see *United States* v. *Nixon*, 418 U.S. 683, 708 (1974), and potential litigant-driven discovery that would disrupt the President's execution of the laws, see *Nixon* v. *Fitzgerald*, 457 U.S. 731, 749-750 (1982).

Finally, the district court viewed the reasoning within the termination decision as "further indicat[ion] that the termination was motivated at least in part by animus." App., *infra*, 73a. The court faulted a "lack of evidentiary support" for the Secretary's rationale. *Ibid*. But, for this conclusion, the court relied on amicus briefs in support of respondents, not on the administrative record, which had not yet been produced. *Id*. at 73a-74a. The court erred in substituting its own judgment regarding the benefits of permitting Venezuelan TPS holders to maintain their status for the Secretary's view of the costs of the TPS program and her "predictive judgment (which merits deference)," *FCC* v. *Fox Television Stations, Inc.*, 556 U.S. 502, 521 (2009), regarding the benefits of terminating the designation. Because the Secretary's actions were plainly based on her view of the national interest, and not on any discriminatory animus, respondents' equal protection challenge fails.

B. At Minimum, The District Court Erred In Granting Universal Relief

The district court compounded its errors by "postpon[ing] the effective date[s]" of the termination and vacatur nationwide, 5 U.S.C. 705, thereby granting universal relief that prohibits the Secretary from terminating TPS for 2023 beneficaries whether or not they are parties to the case. Such relief violates longstanding equitable principles that are incorporated into the APA and that require limiting any available relief to that which is necessary to address the harm to the plaintiff.

As Members of this Court have recognized, universal remedies are "incon-

sistent with longstanding limits on equitable relief and the power of Article III courts" and impose a severe "toll on the federal court system." *Hawaii*, 585 U.S. at 713 (Thomas, J., concurring); see *DHS* v. *New York*, 140 S. Ct. 599, 599-601 (2020) (Gorsuch, J., concurring in the grant of stay). The government has explained those problems at length in recent emergency applications, on which this Court is scheduled to hear oral argument on May 15. See Appl. at 15-28, *Trump* v. *CASA, Inc.*, No. 24A884 (Mar. 13, 2025); Appl. at 15-28, *Trump* v. *Washington*, No. 24A885 (Mar. 13, 2025); Appl. at 15-28, *Trump* v. *New Jersey*, No. 24A886 (Mar. 13, 2025).

Here, the district court sought to justify its universal remedy by pointing to the APA—specifically, to 5 U.S.C. 705. That provision states that, "to the extent necessary to prevent irreparable injury," a reviewing court may "issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings." 5 U.S.C. 705. The statutory reference to "necessary and appropriate process" incorporates traditional equitable principles. Cf. *Starbucks Corp.* v. *McKinney*, 602 U.S. 339, 347 (2024) (holding that statutory phrase "just and proper" invokes traditional equitable standards). In addition, the final clause of Section 705 provides that a reviewing court "may issue all necessary and appropriate process to postpone the effective date of an agency action *or* to preserve status or rights pending conclusion of the review proceedings." *Ibid.* (emphasis added). The statute's use of the disjunctive "or" provides courts with two options that may be appropriate during judicial review. But including postponement as one possible form of relief does not mean that it will be "necessary to prevent irreparable injury" or "necessary and appropriate" in every case. *Ibid.*

In the suit here, brought by only a subset of the individuals to which the actions apply, postponing the effective date of the actions on a universal basis was neither

consistent with traditional equitable principles nor "necessary and appropriate." 5 U.S.C. 705. Universal relief running to all TPS beneficiaries is contrary to Section 705's focus on "prevent[ing] irreparable injury" to the challenging party and to general principles of equity, and is therefore improper. 5 U.S.C. 705. A preliminary injunction for the benefit of the named plaintiffs, if otherwise warranted and available, would be sufficient to "prevent irreparable injury" to those plaintiffs and to preserve any "status or right" they may have. *Ibid.* That is the type of tailored relief Congress intended under Section 705. As the House Report explained, the authority granted by what is now Section 705 "is equitable" and "would normally, if not always, be limited to the parties complainant." H.R. Rep. No. 1980, 79th Cong., 2d Sess. 43 (1946).

In nonetheless holding that universal relief was warranted, the district court focused on NTPSA, the organizational plaintiff purportedly representing some 84,000 Venezuelan TPS holders living in all 50 States and the District of Columbia. App., *infra*, 76a. As an initial matter, the court should have focused on the members named in the complaint and should not have granted relief to absent members.[14] Article III confines courts to adjudicating the rights of "the litigants brought before the Court." *Broadrick* v. *Oklahoma*, 413 U.S. 601, 611 (1973). Courts may not grant relief to members who were not identified in the complaint and who did not agree to be bound by the judgment. See *FDA* v. *Alliance for Hippocratic Med.*, 602 U.S. 367, 399 (2024)

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[14] The amended complaint lists only five members who are beneficiaries under the 2023 Designation. See Am. Compl. ¶¶ 19-20, 22-24. NTPSA also filed a declaration listing two additional members who are beneficiaries under the 2023 Designation, and one additional member who has a pending application for TPS under the 2023 Designation. See D. Ct. Doc. 34, at 6-8 (Feb. 20, 2025). The other listed Venezuelan members in the amended complaint and declaration are beneficiaries under the 2021 designation, which is not affected by the termination action at issue here. See 90 Fed. Reg. at 9044 ("The 2021 Venezuela TPS designation remains in effect until September 10, 2025.").

(Thomas, J., concurring). Extending relief to NTPSA's absent members "subverts the class-action mechanism" by allowing the organization "to effectively bring a class action without satisfying any of the ordinary requirements" for class certification. *Id.* at 402. It also "creates the possibility of asymmetrical preclusion," enabling NTPSA's members to enjoy the benefits of a favorable judgment while escaping the burdens of an adverse one. *Ibid.* And even if the court could properly enjoin the enforcement of the actions against NTPSA's unnamed members, the court had no basis for granting relief to thousands more aliens who do not belong to that group.

The district court also deemed universal relief appropriate because the agency actions "have had a uniform and nationwide impact on all Venezuelan TPS holders located across the United States." App., *infra*, 76a. But Article III and principles of equity require courts to tailor relief to the scope of the plaintiff's injury, not to the scope of the defendant's policy. The court's contrary view "lacks a limiting principle and would make nationwide injunctions the rule rather than the exception with respect to all actions of federal agencies." *Arizona* v. *Biden*, 40 F.4th 375, 397 (6th Cir. 2022) (Sutton, C.J., concurring).

Nor can the district court's order of universal postponement be justified by its reference to the "interest in uniformity in the immigration system." App., *infra*, 76a. The way to achieve uniformity is for this Court to resolve circuit conflicts, not for district courts to issue universal relief.

C. The Other Factors Support Relief From The District Court's Order

In deciding whether to grant emergency relief, this Court also considers whether the underlying issues warrant its review, whether the applicant likely faces irreparable harm, and, in close cases, the balance of equities. See *Hollingsworth*, 558 U.S. at 190. Those factors overwhelmingly support relief here.

1. **The issues raised by this case warrant this Court's review**

The district court's order impermissibly intrudes on an area of Executive Branch operations that Congress left to the Executive Branch's discretion, in a manner that stymies the operation of a time-sensitive program. This Court has repeatedly intervened in similar circumstances. See, *e.g.*, *Heckler* v. *Lopez*, 463 U.S. 1328, 1329 (1983) (Rehnquist, J., in chambers) (granting stay of district court order requiring Secretary of Health and Human Services "immediately to reinstate benefits to the applicants" and mandating that the Secretary then make certain showings "before terminating benefits"); cf. *Trump* v. *Sierra Club*, 140 S. Ct. 1 (2019) (granting stay of district court order enjoining the Department of Defense from undertaking any border-wall construction using funding the Acting Secretary transferred pursuant to statutory authority); *INS* v. *Legalization Assistance Project*, 510 U.S. 1301, 1305-1306 (1993) (O'Connor, J., in chambers) (granting stay of district court order requiring INS to engage in certain immigration procedures, as "an improper intrusion by a federal court into the workings of a coordinate branch of the Government").

This Court's immediate attention is especially warranted because protracted litigation will effectively preclude the President from enforcing a critical component of the administration's immigration policy. For decades, Secretaries across administrations have terminated TPS designations without judicial intervention. See pp. 6-7 & n.4-6, *supra*. That changed in 2018, when the same district court invalidated several "TPS terminations * * * during the first Trump administration." App., *infra*, 23a (quoting *Ramos* v. *Nielson*, 321 F. Supp. 3d 1083 (N.D. Cal. 2018)). The Ninth Circuit reversed the district court, only to grant review en banc—review that remained pending until a change in administration mooted the appeal years later. *Ibid*. The pattern repeated in other district courts. See, *e.g.*, *Saget* v. *Trump*, 375 F. Supp.

3d 280, 379 (E.D.N.Y. 2019) (preliminarily enjoining on a nationwide basis TPS termination as to Haiti); *Saget* v. *Biden*, No. 19-1685, 2021 WL 12137584 (2d Cir. Oct. 5, 2021) (stipulated withdrawal of appeal).

President Trump has determined that these efforts are "critically important to the national security and public safety of the United States," and he has directed the Secretary to ensure that TPS designations "are appropriately limited in scope and made for only so long as may be necessary to fulfill the textual requirements of the statute." *Protecting the American People Against Invasion* § 16(b), Exec. Order No. 14,159, 90 Fed. Reg. 8443, 8446 (Jan. 20, 2025). The district court, however, has blocked those actions once more, and it has done so on a theory that could threaten the administration's ability to enforce *any* immigration laws. See p. 29-30, *supra*.

2. **The equities favor a stay**

Courts irreparably injure our democratic system when they forbid the government from effectuating those policies against anyone anywhere in the Nation. See *Doe #1* v. *Trump*, 957 F.3d 1050, 1084 (9th Cir. 2020) (Bress, J., dissenting). The district court's universal relief is "an improper intrusion by a federal court into the workings of a coordinate branch of the Government." *Legalization Assistance Project*, 510 U.S. at 1305-1306 (O'Connor, J., in chambers); see *Maryland* v. *King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) ("Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.") (brackets and citation omitted). And the harm here arises in an area that implicates "a fundamental sovereign attribute exercised by the Government's political departments[,] largely immune from judicial control." *Fiallo*, 430 U.S. at 792 (citation omitted).

The harm here is particularly pronounced because the Secretary determined

that an 18-month extension would harm the United States' "national security" and "public safety," while also straining police stations, city shelters, and aid services in local communities that had reached a breaking point. 90 Fed. Reg. at 9044. Delay of the Secretary's decisions threatens to undermine the United States' foreign policy just as the government is engaged in complex and ongoing negotiations with Venezuela, including with respect to "an agreement * * * to resume deportations" to that country, App., *infra*, 43a; see p. 25, *supra*. The district court discounted the Secretary's assessment of the national interest by substituting its own policy views for her expertise and deciding for itself whether "economic considerations," "public safety," and "national security" favored extending the 2023 TPS designation for Venezuela. App., *infra*, 38a-44a. The court formed its own views of "U.S. foreign policies," based on its own assessment as to what might "weaken the standing of the United States in the international community." *Id.* at 43a-44a. That is a classic case of judicial arrogation of core Executive Branch prerogatives and alone warrants correction.

On the other side of the ledger, respondents have not established irreparable harm that warrants extraordinary relief. Congress designed the TPS statute to provide "temporary" status, see 8 U.S.C. 1254a(b)(1)(B)(i), (ii), (C), and (g), and the Secretary's termination decision provided the requisite 60-day notice that the 2023 Designation would terminate. Thus, respondents' alleged harms are inherent in the scheme *Congress* designed. See 8 U.S.C. 1254a(b)(3)(B). Respondents maintain that preliminary relief is warranted primarily based on the possibility that they might be removed if Venezuela loses its TPS designation. As an initial matter, the Secretary has not yet terminated the 2021 Designation, which covers many Venezuelan TPS beneficiaries—including several of the individual respondents and identified members of the NTPSA. See Am. Compl. ¶¶ 18, 21; D. Ct. Doc. 34, at 6-7. In any event,

the Secretary's decision to terminate TPS is not equivalent to a final removal order. See 8 U.S.C. 1101(a)(47). When a TPS designation terminates, beneficiaries return to the immigration status they held before Venezuela's designation. TPS beneficiaries may have other immigrant or nonimmigrant status, 8 U.S.C. 1254a(a)(5), and those who have a credible fear of persecution in their home country may apply for asylum, as many of the respondents represent that they are now pursuing, see, *e.g.*, D. Ct. Doc. 18, at 6 (Feb. 20, 2025); D. Ct. Doc. 29, at 2 (Feb. 20, 2025); D. Ct. Doc. 32, at 5 (Feb. 20, 2025); D. Ct. Doc. 34, at 6-7; D. Ct. Doc. 36, at 5 (Feb. 21, 2025). Respondents' concerns at this stage are therefore insufficient to outweigh the concrete harms to the government.

This Court's immediate intervention is warranted.

CONCLUSION

This Court should stay the district court's order postponing the agency actions.

Respectfully submitted.

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Solicitor General

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