No. _____

In the Supreme Court of the United States

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

v.

DAHLIA DOE, ET AL.

APPLICATION TO STAY THE ORDER ISSUED
BY THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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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, United States Citizenship and Immigration Services, and the United States of America.

Respondents (plaintiffs-appellees below) are Dahlia Doe, Sara Doe, Nesma Doe, Laila Doe, Waleed Doe, Mustafa Doe, and Ahmad Doe.

RELATED PROCEEDINGS

United States District Court (S.D.N.Y.):

Doe v. *Noem*, No. 25-cv-8686 (Nov. 19, 2025) (order granting motion to postpone agency action)

United States Court of Appeals (2d Cir.):

Doe v. *Noem*, No. 25-2995 (Feb. 17, 2026) (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 postponing agency action issued by the United States District Court for the Southern District of New York (App., *infra*, 1a-37a), pending the consideration and disposition of the government's appeal to the United States Court of Appeals for the Second 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. In addition to a stay, the Solicitor General also respectfully requests that this Court treat this application as a petition for a writ of certiorari before judgment and grant the petition.

This application marks the third time that the government has been compelled to seek a stay from this Court after lower courts have baselessly blocked the Secretary of Homeland Security's determinations regarding Temporary Protected Status (TPS) just before they took effect. Last March, a district court issued sweeping preliminary relief overriding the Secretary's vacatur and termination of Venezuela's TPS desig-

nation, which the Ninth Circuit declined to stay. This Court stayed that decision. See *Noem* v. *NTPSA*, 145 S. Ct. 2728 (2025). In September, the same district court again halted the vacatur and termination of Venezuela's TPS designation, relying on the same theories; the Ninth Circuit again declined to stay that order; and this Court again issued a stay. See *Noem* v. *NTPSA*, 146 S. Ct. 23 (2025).

Both times, this Court's orders reflected that the government is likely to succeed on the merits of its purely legal arguments—including that 8 U.S.C. 1254a(b)(5)(A) expressly bars judicial review of direct or indirect challenges to the Secretary's TPS determinations. See 24A1059 Gov't Appl. 15-31; 25A326 Gov't Appl. 15-22. And both times, the Court's orders reflected that the government established irreparable harm and that the balance of the equities weighed in its favor. See *Nken* v. *Holder*, 556 U.S. 418, 434 (2009). The lower courts' arrogation of core Executive Branch prerogatives irreparably harms the government, and respondents' alleged harms were inherent in the temporary nature of the program that Congress designed. See 24A1059 Gov't Appl. 36-38; 25A326 Gov't Appl. 23-26.

Since then, two circuits have hewed to the Court's guidance in similar circumstances involving other TPS termination decisions. The Ninth Circuit granted the government's motion to stay a district court's partial final judgment vacating the Secretary's termination of TPS designations for Nepal, Honduras, and Nicaragua, recognizing that it was "not writing on a blank slate" and that, because "the stay applications involved similar assertions of harm by both parties," this Court's stay orders "must inform" the lower courts' "exercise [of] 'equitable discretion in like cases.'" *NTPSA* v. *Noem*, 26-199 C.A. Doc. 11, at 1 (9th Cir. Feb. 9, 2026) (quoting *Trump* v. *Boyle*, 145 S. Ct. 2653, 2654 (2025)); see *NTPSA* v. *Noem*, 25-4901 C.A. Doc. 19 (9th Cir. Aug. 20, 2025) (staying district court's order granting motion to postpone). And

the Fourth Circuit allowed the Secretary's termination of TPS designations as to Afghanistan and Cameroon to proceed, declining to postpone the effective date of the Secretary's decision pending review. *CASA, Inc.* v. *Noem*, No. 25-1792, 2025 WL 2028397, at *1 (4th Cir. July 21, 2025). Those decisions cover terminations large and small, from Honduras (72,000 TPS holders), *Termination of the Designation of Honduras for Temporary Protected Status*, 90 Fed. Reg. 30,089, 30,091 (July 8, 2025), to Nicaragua (4000 TPS holders), *Termination of the Designation of Nicaragua for Temporary Protected Status*, 90 Fed. Reg. 30,086, 30,088 (July 8, 2025).

Yet the Second Circuit below has charted a sharply different course at odds with this Court and those circuits. At issue here is the Secretary's termination of TPS for Syria, which was to take effect November 21, 2025. *Termination of the Designation of Syria for Temporary Protected Status*, 90 Fed. Reg. 45,398 (Sept. 22, 2025). As with other terminations, the Secretary determined that Syria no longer met the statutory criteria for its TPS designation, including because Syria's continued designation is "contrary to the national interest." See *id.* at 45,400. The Secretary added that maintaining Syria's TPS designation "complicate[s] the administration's broader diplomatic engagement with Syria's transitional government" by undermining transnational efforts to encourage peacebuilding and the return of Syrian nationals to their communities. See *id.* at 45,402.

Two days before the termination was to take effect, the district court indefinitely postponed it, deeming the Secretary's decision judicially reviewable and concluding that the termination likely violated the Administrative Procedure Act (APA) by reasoning that, *inter alia*, the Secretary purportedly failed to adequately consult other agencies, App., *infra*, 18a, 21a, wrongly relied on the "national interest," *id.* at 18a-19a, and supposedly rested her decision on "political influence," *id.* at 24a.

Though the government requested a ruling by January 5, 2026, the Second Circuit waited more than six weeks beyond that date to issue a summary, three-page order denying a stay. See App., *infra*, 38a-40a. The court said that it "considered the Supreme Court's stay orders," but found them "not dispositive" because they "contained no explanation" and involved "a TPS designation of a different country, with different factual circumstances, and different grounds for resolution by the district court." *Id.* at 39a. The court devoted a single sentence to Section 1254a(b)(5)(A)'s judicial-review bar, cursorily deeming that bar inapplicable to claims challenging "the Secretary's compliance with [the TPS] statute's procedural requirements" because of the presumption favoring review and this Court's decision in *McNary* v. *Haitian Refugee Center, Inc.*, 498 U.S. 479 (1991). App., *infra*, 39a. The court endorsed just one APA claim—that the Secretary purportedly did not "engage[] in the required interagency consultation under 8 U.S.C. 1254a(b)(3)(A)"—without further explanation. App., *infra*, 39a. And the court held that the government failed to demonstrate irreparable harm and that the balance of the equities favored respondents. *Id.* at 40a.

The Second Circuit's ruling is indefensible. It flouts this Court's two prior stays of materially similar orders in materially similar postures, and it creates a split with the Fourth and Ninth Circuits. Meanwhile, district courts have uniformly persisted with similar rulings halting TPS terminations based on variations of the same reasoning as to the merits and equities that this Court already twice rejected:

- The day before Secretary Noem's termination of Haiti's TPS designation was to take effect, the United States District Court for the District of Columbia postponed it, requiring the government to continue to provide TPS status to 350,000 Haitian nationals. See *Miot* v. *Trump*, No. 25-cv-2471, 2026 WL 266413, at *1-*2 (D.D.C. Feb. 2, 2026) (stay motion currently pending before the D.C. Circuit, No. 26-5050). That court "decline[d] the invitation to try its hand at divination" from the Supreme Court's stay orders, *id.* at *20, disagreed with the Secretary's view of conditions in Haiti, *id.* at *24-*27, found that the

Secretary failed to consult with other agencies, *id.* at *20-*23, and challenged the Secretary's evaluation of whether the TPS designation was in the national interest, *id.* at *27-*30; see *Miot* v. *Trump*, No. 25-cv-2471, 2026 WL 493946 (D.D.C. Feb. 23, 2026) (district court opinion and order denying stay pending appeal).

- Less than a week before Secretary Noem's termination of South Sudan's TPS designation was to take effect, the United States District Court for the District of Massachusetts put it on hold indefinitely. *African Communities Together* v. *Noem*, No. 25-cv-13939, 2026 WL 395732, at *3-*4 (D. Mass. Feb. 12, 2026); see *African Communities Together* v. *Noem*, 25-cv-13939 Docket entry No. 37 (D. Mass. Dec. 30, 2025) (entering administrative stay). That court found it "difficult to read the tea leaves of the Supreme Court's stay orders" and determined that they were "not necessarily at odds" with the court's "construction of the TPS statute's judicial review bar" as allowing APA challenges to the Secretary's decision-making process. *African Communities Together*, 2026 WL 395732, at *8. It then deemed the termination unlawful based on the Secretary's purported "fail[ure] to disclose the true basis for her termination determination and fail[ure] to consult with appropriate agencies." *Id.* at *4.

- Three days before Secretary Noem's termination of Burma's TPS designation was set to take effect, the United States District Court for the Northern District of Illinois indefinitely halted it. *Doe* v. *Noem*, 25-cv-15483 D. Ct. Doc. 51, at 1 (Jan. 23, 2026). That court found that this Court's "two recent orders" "do not provide any way to ascertain the Court's underlying reasoning." *Id.* at 20. It then held (*inter alia*) that the Secretary impermissibly "reli[ed] on [the] national interest," *id.* at 41, and based her decision "on pretext," *id.* at 47.

As in the two prior TPS applications, this Court should again stay a materially similar order with materially similar flaws. Moreover, given the lower courts' persistent disregard for this Court's stay orders, this Court should also grant certiorari before judgment. Otherwise, lower courts will continue to impermissibly bypass an unambiguous judicial-review bar and displace the Secretary's judgment on matters committed to her unreviewable discretion by law; continue to twist APA review to substitute their own judgment for the Secretary's; and continue to impede the termination of temporary protection that the Secretary has deemed contrary to the national interest, tying those decisions up in protracted litigation with no end in sight.

STATEMENT

A. Legal Background

As the government has previously recounted, various statutory provisions govern temporary protected status. See 25A326 Gov't Appl. 5-7; 24A1059 Gov't Appl. 4-6. In 1990, Congress established a discretionary program for providing temporary shelter in the United States for aliens from countries experiencing armed conflict, natural disaster, or "extraordinary and temporary conditions" that prevent the aliens' safe return. 8 U.S.C. 1254a(b)(1); 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 "[T]emporary [P]rotected [S]tatus," if she finds that certain conditions for designation are met:

> (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
>
> (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).[1]

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[1] 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.

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) generally 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, designations shall be "temporary." 8 U.S.C. 1254a(a). Initial designations and extensions thereof may 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 also categorically bars judicial review of the Secretary's 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 TPS statute was enacted, every administration has designated coun-

tries for TPS or extended those designations in extraordinary circumstances.[2] And Secretaries across administrations have also terminated designations when the conditions were no longer met.[3] This case involves Secretary Noem's determination to terminate the TPS designation of Syria.

In 2012, the Secretary designated Syria for TPS due to "extraordinary and temporary conditions in Syria" resulting from "a brutal crackdown" by former Syrian President Bashar al-Assad. *Designation of Syrian Arab Republic for Temporary Protected Status*, 77 Fed. Reg. 19,026, 19,027 (Mar. 29, 2012). At that time, the Secretary found that it would not be "contrary to the national interest of the United States to permit Syrian nationals * * * who meet the eligibility requirements of TPS to remain in the United States temporarily." *Id.* at 19,028. The initial designation was later extended based on those conditions, as well as a second condition: the existence of an "ongoing armed conflict." 90 Fed. Reg. at 45,399 (listing extensions).

On September 22, 2025, Secretary Noem announced that Syria's TPS designation would be terminated. 90 Fed. Reg. at 45,398-45,399. "[A]fter consulting with appropriate U.S. Government agencies, the Secretary reviewed country conditions in Syria and considered whether Syria continues to meet the conditions for the designation" under the statute. *Id.* at 45,399. She explained that the Assad regime fell in December 2024 and that, since then, interim President Ahmed al-Sharaa had taken

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[2] See United States Government Accountability Office, *GAO, Report to Congressional Requesters, 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).

[3] See, *e.g.*, *Termination of Designation of Lebanon Under Temporary Protected Status Program*, 58 Fed. Reg. 7582 (Feb. 8, 1993); *Termination of the Designation of Montserrat Under the Temporary Protected Status Program*, 69 Fed. Reg. 40,642 (July 6, 2004); *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).

steps to establish a governing infrastructure for the country and a legal framework for the post-Assad era. *Id.* at 45,400. The Secretary also noted that in May 2025, President Trump met with interim President al-Sharaa and announced that the United States "would be lifting sanctions and normalizing relations with Syria." *Ibid.*

As to the "ongoing armed conflict" condition, the Secretary found that "the situation [in Syria] no longer meets the criteria for an ongoing armed conflict that poses a serious threat to the personal safety of returning Syrian nationals." 90 Fed. Reg. at 45,400. Since the Assad regime fell, the nature of violence had changed: a "national-level war" shifted to "localized clashes" and then lessened to "sporadic, isolated episodes of violence." *Ibid.* While Syria presents "continuing security challenges," conditions do not reflect "full-scale conflict." *Ibid.* The Secretary underscored improvements undertaken by the interim President, including establishing a caretaker cabinet and initiating mechanisms such as the National Dialogue Conference. *Ibid.* Such efforts demonstrated the Syrian government's effort to "move the country to a stable institutional governance, not a perpetuation of armed conflict." *Ibid.*

As to "extraordinary and temporary conditions," the Secretary found that, while most Syrians required some humanitarian assistance, the U.N. estimated that over 1.2 million Syrians had returned to the country since 2024. 90 Fed. Reg. at 45,400. And "even assuming" that conditions in Syria remained "'extraordinary'" and "'temporary,'" the Secretary determined that termination would be required because Syria's TPS designation "is contrary to the national interest." *Ibid.* She highlighted "significant public safety and national security risks," including that the government lacks access to information to reliably vet Syrians applying to enter the United States given the lack of a U.S. embassy in Syria. *Id.* at 45,401. She also found "compelling foreign policy reasons" for termination, including that extending Syria's TPS desig-

nation would "complicate the administration's broader diplomatic engagement with Syria's transitional government," *id.* at 45,401-45,402—for example, the administration has committed to assist Syria "in the post-Assad era" by encouraging the return of Syrian nationals to their communities, *id.* at 45,401; see *id.* at 45,401-45,402.

The Secretary thus determined that "Syria no longer meets the statutory basis" for TPS and that termination was required. See 90 Fed. Reg. at 45,402. She set the termination to take effect on November 21, 2025—60 days after publication in the Federal Register. *Ibid.* (citing 8 U.S.C. 1254a(b)(3)(B)). The notice stated that there were 6132 beneficiaries under Syria's TPS designation. *Ibid.*

C. Procedural Background

1. On October 20, 2025, respondents—seven Syrian nationals who have TPS or pending applications for TPS—challenged the Secretary's termination of Syria's TPS designation under the APA and the Fifth Amendment. See Compl. 1, 57-60. Plaintiffs moved to postpone the termination under 5 U.S.C. 705. See D. Ct. Doc. 21 (Oct. 21, 2025).

2. On November 19, 2025—two days before the termination was set to take effect—the district court granted respondents' motion in a bench ruling. See App., *infra*, 1a-35a; see also *id.* at 36a-37a (written order). The court acknowledged the "two Supreme Court stays" in similar cases but concluded that drawing any inferences from those orders would be "speculation." *Id.* at 4a-5a. The court then held that Section 1254a(b)(5)(A) did not bar judicial review of respondents' claims. *Id.* at 9a-11a. In the court's view, while that provision barred "jurisdiction to review the Secretary's substantive (and discretionary) analysis of specific TPS determinations," the court "retain[ed] jurisdiction to consider collateral agency patterns and practices that impact those determinations," including all of respondents' claims here. *Id.* at

10a-11a. Those claims challenge the Secretary's termination as "contrary to law," "arbitrary and capricious," and as violating the equal protection component of the Fifth Amendment's Due Process Clause. *Id.* at 13a.

On the APA claims, the district court faulted the Secretary for purportedly failing to "engage[] in the requisite interagency consultation." App., *infra*, 18a; see *id.* at 21a (same). Though the court appeared to acknowledge the "Federal Register notice" stating that the Secretary consulted with other agencies, *id.* at 21a, and though there were no contrary indications, see *id.* at 36a, the court declined to "find that the Secretary * * * engaged in the requisite interagency consultation" based on a purported "extensive record of *post hoc* justifications," including other TPS terminations, *id.* at 18a.

The district court also questioned the Secretary's evaluation of country conditions in Syria because "armed conflict," including "Israeli incursions," "remains widespread." App., *infra*, 18a. And the court determined the Secretary improperly relied on the "national interest," which the court considered "contrary to the statute," "heavy-handed," and "divorced from country conditions" in Syria. *Id.* at 18a-21a. The court further deemed the termination motivated by "undue political influence," *id.* at 24a, citing (for instance) prior statements by the President, Vice President, and Secretary criticizing the TPS program, and an executive order that directed the Secretary and others to ensure TPS designations continue "only so long as may be necessary to fulfill the textual requirements" of the TPS statute, *id* at 16a; see *id.* at 15a-18a, 24-25a (referencing *Protecting the American People Against Invasion*, Exec. Order No. 14,159, 90 Fed. Reg. 8443 (Jan. 29, 2025)). The court also cited the President's purported "anti-immigrant agenda" and the Secretary's "endeavor[ing] to terminate TPS status whenever presented with an opportunity to do so." *Id.* at 25a.

The district court rejected respondents' other arbitrary-and-capricious theories (including respondents' claims that the Secretary's actions were pretextual and reflected an impermissible change in position). See App., *infra*, 22a-26a. The court likewise rejected respondents' Fifth Amendment claim. See *id.* at 26a-29a.

Finally, the district court found that the equitable factors weighed in respondents' favor. The court reasoned that "Syrian TPS holders will lose their lawful status to reside and to work" in the United States, that there were risks to respondents' "lives and safety upon their return to Syria," and that the "short time frame afforded by the termination" was insufficient to allow respondents to pursue "other avenues of immigration relief." App., *infra*, 29a-30a. The court also determined that universal relief was appropriate. *Id.* at 31a-33a. The court therefore postponed the Secretary's actions pursuant to Section 705 of the APA. *Id.* at 33a. The court then denied the government's motion to stay the postponement order pending appeal. *Id.* at 34a-35a.

3. The government sought a stay from the Second Circuit on December 4, 2025 and asked for relief by January 5, 2026**.** See C.A. Doc. 12, at 3 (Dec. 4, 2025). On February 17, 2026, the Second Circuit issued a three-page per curiam order summarily denying the government's motion to stay the postponement order pending appeal. App., *infra*, 38a-40a.[4] The court of appeals acknowledged "the Supreme Court's stay orders" but dismissed them as "involv[ing] a TPS designation of a different country, with different factual circumstances, and different grounds for resolution by the district court," and as "not dispositive" because of those differences and because they "contained no explanation." *Id.* at 39a.

The court of appeals then addressed the judicial-review bar in 8 U.S.C.

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[4] The court of appeals had also requested letter briefing from the parties on appellate jurisdiction and determined that it had such jurisdiction under 28 U.S.C. 1292(a)(1). App., *infra*, 38a-39a.

1254a(b)(5)(A) in one sentence, concluding that it "does not bar judicial review of the Secretary's compliance with that statute's procedural requirements" because of the presumption favoring judicial review and this Court's decision in *McNary* v. *Haitian Refugee Center, Inc.*, 498 U.S. 479 (1991). App., *infra*, 39a. The court also devoted one sentence to respondents' APA claims. The court stated that the government was unlikely to succeed on its position that "the Secretary engaged in the required inter-agency consultation * * * before terminating Syria's TPS designation," *id.* at 39a-40a (citing 8 U.S.C. 1254a(b)(3)(A)), but it did not endorse any other APA ground on which the district court granted relief. Regarding the equities, the court rejected the government's assertion of irreparable harm, citing the number of Syrian TPS holders and questioning the Secretary's determinations that allowing them to remain in the country could threaten negotiations with Syria or harm public safety and the national interest. *Id.* at 40a. The court finally held that the balance of the equities and the public interest both favored respondents. *Ibid.*[5]

ARGUMENT

Under Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, to obtain a stay of preliminary relief pending review in the court of appeals and in this Court, an applicant must show a likelihood of success on the merits, a reasonable probability of obtaining certiorari, and a likelihood of irreparable harm. See *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam). In "close cases," "the Court will balance the equities and weigh the relative harms." *Ibid.*

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[5] The lower courts also rejected the government's argument that 8 U.S.C. 1252(f)(1) prohibited the requested relief by precluding lower courts from "enjoin[ing] or restrain[ing] the operation of" provisions including Section 1254a. See App., *infra*, 32a-33a, 39a. As in its previous stay applications, the government is not pressing its Section 1252(f)(1) argument here. See 25A326 Gov't Appl. 14 n.9; 24A1059 Gov't Appl. 14 n.10. The government intends to continue to assert that argument in the lower courts as an independent bar to the relief the district court granted.

On two prior occasions, this Court concluded under materially similar circumstances that the government was entitled to stays permitting the Secretary's Venezuela TPS determinations to take effect. See *Noem* v. *NTPSA*, 146 S. Ct. 23 (2025) (*NTPSA II*); *Noem* v. *NTPSA*, 145 S. Ct. 2728 (2025) (*NTPSA I*). Those decisions reflect this Court's assessment that the merits and the equitable factors there favored the government. See *Trump* v. *Boyle*, 145 S. Ct. 2653, 2654 (2025). This is an even easier case. Unlike in the prior decisions, the Secretary here had no need to use her inherent authority to vacate prior extensions of TPS; she simply terminated TPS on the ordinary schedule provided by statute. The Second Circuit nonetheless disregarded this Court's orders on spurious grounds, even as two other courts of appeals have concluded that materially similar TPS terminations should proceed. The government remains likely to succeed on the merits, and the equities continue to weigh in its favor. This Court should grant the same relief a third time. The Court should also consider granting certiorari before judgment to resolve cross-cutting challenges to TPS terminations so this cycle does not repeat a fourth, fifth, or sixth time.

A. The Government Is Likely To Succeed On The Merits

The lower courts' deeply flawed analysis reflects the same legal errors that recur throughout stayed lower-court opinions. First, the TPS statute precludes judicial review of respondents' claims that the Secretary's termination decision violated the APA. See 25A326 Gov't Appl. 16-19; 24A1059 Gov't Appl. 16-20. Section 1254a(b)(5)(A)'s broadly worded text precludes review of "any determination" of the Secretary "with respect to * * * termination" and at the very least bars respondents' APA claims here. 8 U.S.C. 1254a(b)(5)(A). Second, even if any of respondents' claims were reviewable, they are meritless. The court of appeals apparently endorsed only one claim—that the Secretary failed to consult other agencies—but the Secretary

stated that she *did* consult those agencies, and the statute contains no requirement as to the degree of consultation required. The other grounds on which the district court granted relief are equally erroneous and involve the district court impermissibly usurping the Secretary's authority and judgment on national-security issues.

1. The statute precludes judicial review of respondents' claims

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). That bar encompasses the types of APA claims at issue here. Indeed, this Court has twice granted the government's requests for stays raising the same reviewability bar applied to similar claims, when considering the Secretary's determinations to vacate her predecessor' extension of Venezuela's 2023 TPS designation or terminate Venezuela's 2023 TPS designation. See *NTPSA II*, 146 S. Ct. 23; *NTPSA I*, 145 S. Ct. 2728. *NTPSA I* involved the argument that the Secretary's vacatur of the extension of Venezuela's 2023 TPS designation "had not provided a 'reasoned explanation.'" 24A1059 Gov't Appl. 19 (citation omitted). *NTPSA II* involved whether evidence supported the Secretary's vacatur determination; whether she had considered alternatives; and whether her termination of Venezuela's 2023 TPS designation was arbitrary and capricious for failure to meaningfully consult. See 25A326 Gov't Appl. 17-18. The government's only argument that it would succeed on those particular claims was that Section 1254a(b)(5)(A) barred review. The Court thus determined that the government had made a "strong showing that [it] is likely to succeed on the merits" of its argument involving the judicial-review bar when it granted the government's stay request—twice. *Nken* v. *Holder*, 556 U.S. 418, 434 (2009) (citation omitted). Here, too, the government is entitled to relief, as the Ninth Circuit recognized under

similar circumstances. *NTPSA* v. *Noem*, 26-199 C.A. Doc. 11, at 3-4 (*NTPSA* Order) (9th Cir. Feb. 9, 2026).

a. The text of Section 1254a(b)(5)(A) is broad. 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) (citation and 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) (citation omitted); see *Patel*, 596 U.S. at 338-339. As the Ninth Circuit recognized when granting the government's motion to stay, where a case "involves a *termination* of TPS, an action expressly authorized by statute," the "Secretary's action is unreviewable" under the judicial-review bar's clear terms. *NTPSA* Order at 3-4.

Reinforcing that interpretation, this Court has long recognized that immigration policy is "vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations" that are "exclusively entrusted to the political branches of government." *Harisiades* v. *Shaughnessy*, 342 U.S. 580, 588-589 (1952). 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, 1501, 1510 (D.C. Cir. 1988) (opinion of Mikva, J.). That authority included the discretion "*not* to extend [protected] status" to a particular class of aliens, and the exercise of such discretion was "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).

At minimum, "[i]f 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 a 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, 506 (D.C. Cir. 2019); see *id.* at 505-507. A Ninth Circuit panel thus recognized that the TPS statute "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* v. *Wolf*, 975 F.3d 872, 891 (2020), reh'g en banc granted, opinion vacated, 59 F.4th 1010 (9th Cir. 2023).

Below, the only APA ground that the Second Circuit endorsed was that the Secretary purportedly failed to "engage[] in the required inter-agency consultation." App., *infra*, 39a (citing 8 U.S.C. 1254a(b)(3)(A)). The district court acknowledged the Secretary's statements in the termination notice affirming that she had "consult[ed]

with appropriate U.S. Government agencies." *Termination of the Designation of Syria for Temporary Protected Status*, 90 Fed. Reg. 45,398, 45,399 (Sept. 22, 2025); see *id.* at 45,401, 45,402. But the court declined to credit those statements because it found "nothing but the Federal Register notice from which [the court] can conclude that the Secretary undertook * * * an interagency consultation." App., *infra*, 21a. The court instead viewed the record as indicating that the Secretary failed to engage in sufficient consultation because "it confounds logic" that termination of TPS for "a group of disparate countries, with disparate bases of designation, in different parts of the world" could be appropriate. See *id.* at 17a.

In other words, the court questioned whether an appropriate consultation *process* occurred based on the *substance* of this and other TPS termination decisions. That is precisely the kind of "indirect challenge" to the ultimate determination that is precluded by the judicial review bar. *Delgado*, 643 F.3d at 55. Indeed, in *NTPSA II*, the government successfully argued that the judicial-review bar precluded review of claims "that the Secretary had failed to 'meaningfully' consult about country conditions." 25A326 Gov't Appl. 18. Similarly, the Ninth Circuit found that the government was likely to succeed in arguing that the judicial-review bar precluded review of the challengers' APA claims, including whether "the Secretary consulted with appropriate agencies." *NTPSA* Order at 3-4.

The district court's other grounds are also clearly barred under Section 1254a(b)(5)(A) because they, too, challenge the substance of the Secretary's determinations. For example, respondents argued—and the district court agreed—that the Secretary erroneously "found no 'ongoing armed conflict' in Syria." App., *infra*, 18a. Respondents also asserted—and the district court accepted—that the Secretary allowed "political direction" to influence her decision, insisting that it is "otherwise un-

justifiable" and "deeply implausible." *Id.* at 17a-18a. And respondents claimed—and the district court concluded—that the Secretary could not rely on "the national interest divorced from an analysis of country conditions." *Id.* at 19a. Regardless of how respondents attempt to frame such arguments, they are "essentially an attack on the substantive considerations underlying the Secretary's specific TPS determinations, over which the statute prohibits judicial review." *Ramos*, 975 F.3d at 893.

If Section 1254a(b)(5)(A) did not bar respondents' claims here, it would be rendered meaningless. Under the lower courts' and respondents' view of the judicial-review bar, litigants may evade it simply by recasting claims challenging the Secretary's determinations as "collateral agency patterns and practices," App., *infra*, 11a, or as purported non-compliance with the "statute's procedural requirements," *id.* at 39a. That result would invite exactly the kind of judicial second-guessing of national-security judgments and decision-making processes that Congress explicitly foreclosed. See *Ramos*, 975 F.3d at 893-894.

b. The court of appeals' holding that respondents could evade Section 1254a's judicial-review bar consists of a single sentence: "[W]hile the TPS statute bars judicial review of 'any determination of the [Secretary] with respect to the . . . termination . . . of a [TPS] designation,' 8 U.S.C § 1254a(b)(5)(A), it does not bar judicial review of the Secretary's compliance with that statute's procedural requirements—the contrary interpretation runs headlong into both *McNary* v. *Haitian Refugee Center, Inc.*, 498 U.S. 479 (1991), and the 'presumption favoring judicial review of administrative action,' *Kucana* v. *Holder*, 558 U.S. 233, 251 (2010)." App., *infra*, 39a (brackets in original). The district court likewise invoked the presumption of judicial review and asserted jurisdiction to review "collateral agency patterns and practices that impact [the Secretary's] determinations." *Id.* at 11a. That meager

reasoning lacks merit.

To start, the general presumption in favor of judicial review has no purchase where, as here, "the congressional intent to preclude review is 'fairly discernible in the statutory scheme.'" *AFGE* v. *FLRA*, 99 F.4th 585, 595 (D.C. Cir. 2024) (citation omitted); see *Patel*, 596 U.S. at 347 (observing that the presumption "may be overcome by specific language in a provision or evidence drawn from the statutory scheme as a whole"). When Congress directly negates the availability of judicial review in as many words, providing that "*[t]here is no judicial review*" of "any" determination related to a TPS termination, that readily suffices to overcome the presumption. 8 U.S.C. 1254a(b)(5)(A) (emphasis added).

Nor may respondents evade the judicial-review bar by framing their arguments as "procedural" and "collateral." As the government previously explained, such opportunistic reframing in litigation "would create an end-around around the judicial-review bar in virtually every case." 25A326 Gov't Appl. 16; see 24A1059 Gov't Appl. 18-20. In any event, respondents' claims fail because they "fundamentally attack the Secretary's specific TPS terminations, as well as the substance of her discretionary analysis in reaching those determinations." *Ramos*, 975 F.3d at 891. Respondents do not challenge any guidance document, regulation, or policy distinct from the Secretary's termination of Syria's TPS designation. Cf. *National Insts. of Health* v. *American Pub. Health Ass'n*, 145 S. Ct. 2658, 2661 (2025) (Barrett, J., concurring) (distinguishing between challenges to grant terminations and challenges to guidance documents). That respondents seek vacatur of the Secretary's TPS determination confirms that they are directly attacking *that* determination. D. Ct. Doc. 1 at 61 (Oct. 20, 2025). Claims that "seek direct relief from the challenged decisions" are not collateral. *Ramos*, 975 F.3d at 893.

Thus, the lower courts' reliance on *McNary* v. *Haitian Refugee Center, Inc.*, 498 U.S. 479 (1991), see App., *infra*, 10a, 39a, is just as misplaced here as it was when other respondents pressed the same point, see 25A326 Br. in Opp'n 26-28; 24A1059 Br. in Opp'n 21-24. *McNary* considered a statute that barred judicial review "of a determination respecting an application for adjustment of status" under 8 U.S.C. 1160(e). 498 U.S. at 491-492. Each plaintiff had unsuccessfully sought amnesty under Section 1160, but none "contest[ed] the denial of their * * * applications" for relief. *Id.* at 488; see *id.* at 487-488. Instead, the plaintiffs brought a "general collateral challenge[] to unconstitutional practices and policies used by the agency in processing applications." *Id.* at 492. This Court held that such a challenge was reviewable, notwithstanding the statute's judicial-review bar. Section 1160(e)'s "reference to 'a determination,'" the Court explained, "describes a single act"—there, the denial of a particular "application" for relief—and not broader "practice[s] or procedure[s] employed in making decisions." *Ibid.*

Here, the "single act" contemplated by Section 1254a(b)(5)(A) is the Secretary's determination with respect to whether to designate a country for TPS or to extend or terminate a particular country's TPS designation. Respondents do not bring a "collateral" attack on such a determination—they attack the Secretary's termination decision itself. See *McNary*, 498 U.S. at 492. The "nature of respondents' requested relief" confirms the point. *Id.* at 484. Unlike the plaintiffs in *McNary*, respondents do not seek a declaration or injunction invalidating a collateral agency policy or practice. Rather, respondents seek an order barring implementation of the termination decision. Under Section 1254a(b)(5)(A), that type of direct attack on the Secretary's termination is unreviewable.

2. Regardless, respondents' APA claims lack merit

Even if reviewable, respondents' APA claims plainly fail. Start with the lone ground the court of appeals addressed: that the Secretary purportedly failed to "engage[] in the required inter-agency consultation." App., *infra*, 39a (citing 8 U.S.C. 1254a(b)(3)(A)); see *id.* at 18a (district court determination that the Secretary did not engage "in the requisite interagency consultation"). As explained, the Secretary *did* engage in inter-agency consultation, as the termination notice repeatedly states. See p. 8, *supra*; 90 Fed. Reg. at 45,400-45,401. The lower courts' assertions that such consultation did not occur lack evidentiary support and contradict the "presumption of legitimacy" of agency action. *National Archives & Records Admin.* v. *Favish*, 541 U.S. 157, 174 (2004).

The district court concluded that the Secretary must not have engaged in the requisite consultation because the court viewed the termination of TPS designations for various countries across the world as implausible. App., *infra*, 17a-18a. The court therefore concluded that the Secretary had offered "*post hoc* justifications" rather than "engag[ing] in the requisite interagency consultation." *Id.* at 18a. But the requirement to consult with appropriate agencies is a procedural requirement; it does not "dictate any substantive guidelines or restrictions on the manner by which the Secretary may reach her TPS determinations" and does not "set forth or define the 'conditions in the foreign state' that the Secretary must consider * * * or how she should weigh th[o]se conditions." *Ramos*, 975 F.3d at 891. The statute instead authorizes the Secretary to reach her own conclusion after engaging in consultations. Similarly, to the extent that the lower courts' holdings reflect a concern that an insufficient degree of consultation occurred, the statute likewise contains no such requirements—it requires only "consultation with appropriate agencies of the Govern-

ment." 8 U.S.C. 1254a(b)(3)(A).

A judicial determination that the Secretary should have engaged in more consultation contravenes the principles that courts undertaking APA review may not substitute their own discretionary judgments for that of the agency, see *FCC* v. *Prometheus Radio Project*, 592 U.S. 414, 423 (2021), and that courts are "'generally not free to impose' additional judge-made procedural requirements on agencies that Congress has not prescribed and the Constitution does not compel," *Garland* v. *Ming Dai*, 593 U.S. 357, 365 (2021) (citation omitted). The Ninth Circuit recognized those principles when it alternatively determined that the government was likely to succeed in showing that the Secretary "consulted with appropriate agencies" with respect to the Nepal, Honduras, and Nicaragua TPS determinations, *NTPSA* Order at 4—a holding that contradicts the district court's view here that "the requisite interagency consultation did not occur" as to TPS determinations with respect to "Nicaragua" and "Nepal," App., *infra*, 17a-18a.

The court of appeals did not endorse the district court's other grounds of decision, and for good reason: They, too, lack merit. *First*, the district court faulted the Secretary's conclusion that the "ongoing armed conflict" criterion for TPS designation was no longer satisfied, reasoning that State Department advisories warn against travel to Syria and that the Secretary ignored "intervening events," such as "Israeli incursions." App., *infra*, 18a. But whether "there is an ongoing armed conflict" in a foreign country, see 8 U.S.C. 1254a(b)(1)(A), is a quintessential discretionary determination that federal courts are not equipped to second-guess. "[I]t is for the political branches, not the judiciary, to assess practices in foreign countries and to determine national policy in light of those assessments." *Munaf* v. *Geren*, 553 U.S. 674, 700-701 (2008). As to intervening events in particular, courts have recognized that the "Sec-

retary possesses full and unreviewable discretion as to whether to consider intervening events." *Ramos*, 975 F.3d at 899; accord *NTPSA* Order at 4 ("the government can likely show * * * that the TPS statute does not require the Secretary to consider intervening country conditions arising after the events that led to the initial TPS designation"). Regardless, State Department advisories are merely an "assessment of threats only insofar as they may impact U.S. citizens, nationals, and legal residents." U.S. Dep't of State, *Travel Advisories* (last updated Aug. 11, 2025), https://perma.cc/K5GK-NNWV. And the Secretary never denied the persistence of violence in Syria. Instead, she found the "nature of the violence" had changed from a "national-level war" to "localized clashes and then lessened to sporadic, isolated episodes of violence" that do not prevent Syrians from returning home, as millions have done. 90 Fed. Reg. at 45,400, 45,402.[6]

Second, the district court erroneously chastised the Secretary for considering the "national interest" in terminating the TPS designation, reasoning that her reliance on the national interest was "divorced from an analysis of country conditions" in Syria and therefore "contrary to the statute." App., *infra*, 19a, 21a. That objection is spurious. Section 1254a(b)(3)(B) provides that the Secretary "shall terminate" a designation if she determines that the country "no longer continues to meet the con-

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[6] The district court faulted the Secretary for citing a September 2025 U.N. report about the return of displaced Syrians, because the report "postdated the deadline for her to make a final decision." App., *infra*, 18a. But the return of displaced Syrians had been documented months earlier. See, *e.g.*, UNHCR, *In Syria, UNHCR's Grandi urges more support for refugees returning home* (June 20, 2025), https://www.unhcr.org/us/news/stories/syria-unhcr-s-grandiurges-more-support-refugees-returning-home ("More than 2 million Syrians have returned home since December"); USA for UNHCR, *Repatriation explained: why Syrian refugees are voluntarily returning* (Mar. 12, 2025), https://www.unrefugees.org/news/repatriation-explainedwhy-syrian-refugees-are-voluntarily-returning/ ("UNHCR estimates that more than 302,000 Syrian refugees have crossed the border back into Syria between December 2024 and March 2025, with many more arriving daily.").

ditions for designation under paragraph 1," *i.e.*, Section 1254a(b)(1). 8 U.S.C. 1254a(b)(3)(B). And Section 1254a(b)(1) elaborates three alternative conditions for designation: (1) when there is an "ongoing armed conflict," 8 U.S.C. 1254a(b)(1)(A); (2) when there is an "environmental disaster," 8 U.S.C. 1254a(b)(1)(B)(i); and (3) when "there exist extraordinary and temporary conditions in the foreign state" and the Secretary "finds that permitting the aliens to remain temporarily in the United States is [not] contrary to the national interest of the United States," 8 U.S.C. 1254a(b)(1)(C).

Here, Syria was designated for TPS in part because then-Secretary Janet Napolitano determined that Syria met the third condition, *i.e.*, that there were "extraordinary and temporary conditions" in Syria *and* the designation was in the "national interest." 8 U.S.C. 1254a(b)(1)(C); see 77 Fed. Reg. at 19,028; 90 Fed. Reg. at 45,399 (reviewing history of designations). Secretary Noem's determination that the Syria designation had become "contrary to the national interest," 8 U.S.C. 1254a(b)(1)(C), is exactly the kind of determination the statute asks her to make: She found that a "condition[] for designation under [Section 1254a(b)(1)]" "no longer continue[d] to [be] me[t]," necessitating termination absent some other qualifying statutory condition. 8 U.S.C. 1254a(b), (3)(B).

As for the district court's quibbles with what the "national interest" entails, district courts are uniquely unqualified to second-guess the national interest in this foreign-policy-laden context of immigration policy. As the Secretary recognized, "[d]etermining whether permitting a class of aliens to remain temporarily in the United States is contrary to the U.S. national interest * * * calls upon the Secretary's expertise and discretionary judgment, informed by her consultations with appropriate U.S. Government agencies and her review of various considerations." 90 Fed.

Reg. at 45,400-45,401. Here, those considerations included whether the government has access to adequate information to vet foreign nationals and whether a lack of vetting "pos[es] an ongoing threat to public safety and national security." *Id.* at 45,401. Because of the sensitive nature of such judgment calls, the question of what serves the national interest offers "no meaningful standard against which to judge the agency's exercise of discretion." *Lincoln* v. *Vigil*, 508 U.S. 182, 191 (1993); see *Trump* v. *Hawaii*, 585 U.S. 667, 685-686 (2018) (where President has discretion to determine if alien's entry "would be detrimental to the interests of the United States," courts should not inquire "into the persuasiveness of the President's justifications"); *Webster* v. *Doe*, 486 U.S. 592, 600 (1988) ("'[I]n the interests of the United States' * * * exudes deference" and lacks "meaningful judicial standard of review"). Besides, the Secretary's notice *did* consider conditions in Syria when assessing the United States' national interest, including Syria's strengthening relations with the United States and Europe, which the State Department and intergovernmental organizations reported could contribute to improving conditions in Syria. 90 Fed. Reg. at 45,401-45,402.

Finally, the district court plainly erred in concluding that the Secretary's termination of Syria's TPS designation violated the APA because it was "predetermined" and resulted from undue "political influence" based on members of the administration previously criticizing the TPS program and the President ordering that TPS designations should continue only if permitted by statute, after which several TPS designations were terminated. App., *infra*, 13a, 15a-16a, 22a, 25a. "[A] court may not set aside an agency's policymaking decision solely because it might have been * * * prompted by an Administration's priorities." *Department of Commerce* v. *New York*, 588 U.S. 752, 781 (2019). That a new administration may pursue its policy priorities is a feature of our constitutional system, not a basis to invalidate agency decisions.

See *ibid.*; see also *Motor Vehicle Manufacturers Ass'n* v. *State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 59 (1983) (Rehnquist, J., concurring in part). And the relevant executive order simply instructed officials to comply with the TPS statute and to act "appropriately" and as "necessary," which does not preordain termination for any country's TPS designation. *Protecting the American People Against Invasion*, Exec. Order No. 14,159, 90 Fed. Reg. 8443, 8446 (Jan. 29, 2025). Nor is it unlawful to "implement the President's policy directives to the extent permitted by law." *Sherley* v. *Sebelius*, 689 F.3d 776, 784 (D.C. Cir. 2012).

B. As Before, The Other Factors Overwhelmingly Support Relief

In deciding whether to grant a stay, this Court also considers whether the underlying issues warrant review; whether the applicants likely face irreparable harm; and in close cases, the balance of equities. See *Hollingsworth*, 558 U.S. at 190. Those factors heavily favor a stay here. As in prior cases, the district court's order interferes with the federal government's determinations regarding foreign policy and the national interest in enforcing immigration laws—an area in which the Executive Branch has wide latitude. Respondents, by contrast, have asserted only the harms that are the result of the temporary nature of the program Congress designed. This Court has twice weighed materially identical equities and twice concluded that the government is entitled to a stay allowing the Secretary's TPS terminations to take effect. See *NTPSA II*, 146 S. Ct. 23, 24; *NTPSA I*, 145 S. Ct. 2728. A stay is warranted here as well.

1. As this Court determined when granting stays in the previous TPS cases involving Venezuela, the issues raised by this case are certworthy. As the government has previously argued: "The district court's order impermissibly intrudes on an area of operations that Congress left to the Executive Branch's discretion, in a manner that effectively precludes the Secretary's determinations in a time-sensitive pro-

gram from ever taking effect." 25A326 Gov't Appl. 22; see 24A1059 Gov't Appl. 35-36. The President has deemed it "critically important to the national security and public safety of the United States" that the Secretary 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." Exec. Order No. 14,159, 90 Fed. Reg. at 8446. While Secretaries across administrations have terminated TPS designations in the past largely without judicial intervention, see 24A1059 Gov't Appl. 6-7 & nn.4-6, 35, the district court's order here blocked the Secretary's implementation of a core administration policy, effectively prohibiting enforcement of that policy in perpetuity.

This Court has repeatedly intervened in similar circumstances. See, *e.g.*, *NTPSA II*, 146 S. Ct. 23; *Noem* v. *Vasquez Perdomo*, 146 S. Ct. 1 (2025); *NTPSA I*, 145 S. Ct. 2728; *Department of Homeland Security* v. *D.V.D.*, 145 S. Ct. 2153 (2025); *Noem* v. *Doe*, 145 S. Ct. 1524 (2025); *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"). The same result is warranted here.

2. The equities also favor a stay. The district court's universal relief "'improper[ly] intru[des]' on 'a coordinate branch of the Government' and prevents the

Government from enforcing its policies against nonparties." *Trump* v. *CASA, Inc.*, 606 U.S. 831, 859 (2025) (citation omitted; brackets in original); 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* v. *Bell*, 430 U.S. 787, 792 (1977) (citation omitted). Where the government is making "efforts to prioritize stricter enforcement of the immigration laws enacted by Congress," the courts should "decline to step outside [their] constitutionally assigned role to improperly *restrict* reasonable Executive Branch enforcement of the immigration laws." *Vasquez Perdomo*, 146 S. Ct. at 4, 5 (Kavanaugh, J., concurring).

The harm to the government and the public interest is particularly acute here. The Secretary determined that terminating Syria's TPS designation "is required because it is contrary to the national interest" for numerous reasons. 90 Fed. Reg. at 45,400. Syria remains a state sponsor of terrorism, and the U.S. government's lack of access to reliable Syrian records "mak[es] meaningful vetting" of Syrian nationals "virtually impossible." *Id.* at 45,401. That inability to "vet Syrian nationals for identity, criminal history, or potential terrorist affiliations" thus "pos[es] an ongoing threat to public safety and national security of the United States." *Ibid.* At the same time, the Secretary found that extending Syria's TPS designation would harm "broader diplomatic engagement" with Syria during Syria's transition to a new government. *Id.* at 45,402. The district court's order threatens United States foreign policy at a time when the United States and other countries are lifting sanctions on Syria to "open[] new possibilities for recovery, return, and regional peacebuilding af-

ter more than a decade of conflict." *Id.* at 45,401. The Second Circuit's assertion that the district court's order would not "imminently threaten 'complex and *ongoing* negotiations' with Syria" entirely disregards those harms and substitutes the Second Circuit's own foreign-policy views for the Secretary's expertise. App., *infra*, 40a.

The Second Circuit likewise suggested the government could not show irreparable harm in part because there are only "6,100 Syrian TPS holders." App., *infra*, 40a. But other courts have held that size cuts in the opposite direction. For those courts, a larger population of TPS holders means that the equities weigh against termination because those beneficiaries have provided alleged economic benefits to their communities. See, *e.g.*, *Miot* v. *Trump*, No. 25-cv-2471, 2026 WL 266413, at *37 (D.D.C. Feb. 2, 2026). Both sets of objections overlook the primary form of irreparable harm to the government—that the Executive Branch is being prevented from terminating temporary protection under a program that Congress has assigned it to administer and under circumstances in which it has determined such temporary protection is contrary to the national interest. In any event, other courts have at least implicitly rejected the Second Circuit's position for TPS beneficiary populations that are of a similar size to Syria's. The Fourth Circuit declined to order postponement of the Secretary's termination of TPS designations for Afghanistan (11,700 TPS holders) and Cameroon (5200 TPS holders). See *CASA, Inc.* v. *Noem*, No. 25-1792, 2025 WL 2028397 (4th Cir. July 21, 2025); *Termination of the Designation of Afghanistan for Temporary Protected Status*, 90 Fed. Reg. 20,309, 20,311 (May 13, 2025); *Termination of the Designation of Cameroon for Temporary Protected Status*, 90 Fed. Reg. 23,697, 23,698 (June 4, 2025). And the Ninth Circuit granted the government's motion to stay a partial final judgment both as to a designation covering a larger beneficiary group (Honduras, with 72,000 TPS holders), and two designations covering TPS ben-

eficiary populations comparable to or smaller than the size of Syria's—Nepal (7200 TPS holders) and Nicaragua (4000 TPS holders). See *NTPSA* Order at 1; p. 3, *supra*; *Termination of the Designation of Nepal for Temporary Protected Status*, 90 Fed. Reg. 24,151, 24,152 (June 6, 2025).

On the other side of the ledger, respondents have not established irreparable harm that warrants relief. Congress designed the TPS statute to provide "temporary" status, see 8 U.S.C. 1254a(b)(1)(B)(i)-(ii), (b)(1)(C), and (g), and the Secretary's termination decision provided the requisite 60-day notice that Syria's TPS designation would terminate, 90 Fed. Reg. at 45,402. Thus, respondents' alleged harms are inherent in the scheme that *Congress* designed. See 8 U.S.C. 1254a(b)(3)(B). The only irreparable harm endorsed by the court of appeals is that respondents "will be stripped of their authorization to work in the United States and face immediate removability to Syria." App., *infra*, 40a. But the Secretary's decision to terminate the TPS designation is not equivalent to a final removal order. See 8 U.S.C. 1101(a)(47). When a TPS designation terminates, beneficiaries generally maintain any other immigration status they held during the designation. TPS beneficiaries may have other immigrant or nonimmigrant status, 8 U.S.C. 1254a(a)(5), and those who fear persecution in their home country generally may apply for asylum or similar protection. In any event, under the court of appeals' theory, irreparable harm would result every time the Secretary terminates a country's TPS designation. Allowing that theory of irreparable harm to suffice to delay the Secretary's actions would effectively nullify them, tying them up in judicial-second guessing that could extend throughout an entire Presidential term. That result would wholly subvert the program of *temporary* protected status that Congress enacted.

This Court has already balanced the equities and determined a stay is war-

ranted in two materially identical cases. See *NTPSA II*, 146 S. Ct. 23; *NTPSA I*, 145 S. Ct. 2728. The lower courts brushed aside those stay orders because they "contained no explanation," App., *infra*, 39a, and following them would require "speculation," *id.* at 5a. But at a minimum, this Court's decisions in the stay posture "inform" like cases. *NIH* v. *American Pub. Health Ass'n*, 145 S. Ct. 2658, 2664 (2025) (Gorsuch, J., concurring) (quoting *Boyle*, 145 S. Ct. at 2654). As the Ninth Circuit recognized in staying the partial final judgment vacating a TPS termination, where "stay applications involve[] similar assertions of harm by both parties," this Court's stay orders "must inform" the lower courts' "exercise [of] 'equitable discretion in like cases.'" *NTPSA* Order at 5 (quoting *Boyle*, 145 S. Ct. at 2654); see *CASA*, 2025 WL 2028397, at *1 (finding "insufficient evidence to warrant the extraordinary remedy of a postponement of agency action pending appeal").

C. This Court Should Grant Certiorari Before Judgment

In addition to granting a stay, this Court should construe this application as a petition for a writ of certiorari before judgment and grant the petition. See *Trump* v. *Slaughter*, 146 S. Ct. 18 (2025) (granting similar request). Since this Court granted the government's stay applications in *NTPSA I* and *NTPSA II*, a clear division has developed among the lower courts considering stay requests involving materially similar issues in other TPS terminations. Meanwhile, district courts have repeatedly blocked TPS terminations in cases indistinguishable from the cases in which this Court granted stays. That division and the pervasiveness of the issues involved in this case warrant this Court's intervention now. If the Court grants certiorari before judgment, the Court should review the following questions: (1) whether the judicial-review bar in the TPS statute, 8 U.S.C. 1254a(b)(5)(A), precludes respondents' APA claims; and (2) if reviewable, whether respondents' APA claims nonetheless fail on the merits.

Unlike the Second Circuit below, both the Fourth and Ninth Circuits have allowed materially similar TPS terminations to go into effect. In *CASA, Inc.* v. *Noem*, *supra*, the Fourth Circuit denied an emergency motion for postponement of the Secretary's termination of TPS for Afghanistan and Cameroon pending appeal. 2025 WL 2028397, at *1. In that case, as here, the plaintiffs asserted that the Secretary's decision to terminate TPS was arbitrary and capricious because it was "preordained." *Ibid*. Despite finding that claim "plausible," the court of appeals determined that there was "insufficient evidence to warrant the extraordinary remedy of a postponement of agency action pending appeal," and therefore allowed the termination to go into effect. *Ibid*. The Ninth Circuit similarly permitted TPS terminations for Nepal, Honduras, and Nicaragua to go into effect. See *NTPSA* Order at 1 (staying partial final judgment); see *National TPS Alliance* v. *Noem*, No. 25-4901 (9th Cir. Aug. 20, 2025) (staying order granting motion to postpone). In that case, as here, the plaintiffs asserted that the Secretary's decision to terminate TPS was preordained and that the Secretary failed to consult with appropriate agencies. *NTPSA* Order at 4.

By preventing the Secretary's termination of TPS for Syria from going into effect, the Second Circuit departed from those decisions. Nor is the Second Circuit alone. District courts across the country have likewise disregarded the import of this Court's stay decisions and postponed the effective date of TPS terminations based in part on allegations that the Secretary's terminations were preordained and that the Secretary failed to consult with appropriate agencies. See *Miot*, 2026 WL 266413, at *20-*23, *29-*30 (postponing termination of Haiti's TPS designation based on holding that the Secretary failed to consult appropriate agencies and "preordained" the re-

sult);[7] *African Communities Together* v. *Noem*, No. 25-cv-13939, 2026 WL 395732, at *4, *9 (D. Mass. Feb. 12, 2026) (postponing termination of South Sudan's TPS designation based on holding that the Secretary "failed to consult with appropriate agencies" and "engaged in a preordained practice of terminating all TPS designations"); *Doe* v. *Noem*, 25-cv-15483 D. Ct. Doc. 51, at 28-32, 41-47 (N.D. Ill. Jan. 23, 2026) (postponing termination of Burma's TPS designation based on holding that the Secretary failed to consult and that termination was predetermined).

The issues that this application presents are thus common among the numerous challenges to the Secretary's TPS terminations. Given the pattern of lower-court rulings and the division of courts of appeals when considering TPS terminations in the stay posture, this Court should grant review and provide guidance to lower courts on pressing and recurring issues at the core of important administration priorities. This case provides a suitable vehicle for resolving those cross-cutting questions. Whether the TPS statute's judicial-review bar precludes APA challenges to TPS determinations is a threshold issue that arises in every suit challenging a TPS termination. And the specific APA challenges respondents have raised—in particular, that the Secretary failed to consult and that her termination determination was preordained—are issues that continue to arise in other TPS litigation as well. This Court should thus grant certiorari before judgment in addition to granting a stay.[8]

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[7] The D.C. Circuit is currently considering the government's motion to stay. See Gov't Mot. to Stay, No. 26-5050 (D.C. Cir. Feb. 6, 2026).

[8] The district court erred in granting universal relief under Section 705 instead of tailoring relief to the named parties. See C.A. Doc. 12 at 26-28; see also, *e.g.*, 24A1059 Gov't Appl. 31-34; *United States* v. *Texas*, 599 U.S. 670, 695-699 (2023) (Gorsuch, J., concurring in the judgment); Gov't Br. at 49-50, *Trump* v. *Pennsylvania*, 591 U.S. 657 (2020) (No. 19-954). Regardless, in its previous orders, this Court stayed the district court's orders at issue in full, and should do the same here. See *NTPSA II*, 146 S. Ct. 23; *NTPSA I*, 145 S. Ct. 2728.

CONCLUSION

This Court should at a minimum stay the order of the United States District Court for the Southern District of New York pending the resolution of the government's appeal to the United States Court of Appeals for the Second Circuit and any proceedings in this Court. This Court should also construe this application as a petition for a writ of certiorari before judgment and grant the petition.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

FEBRUARY 2026

APPENDIX

PBJKDOEC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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DAHLIA DOE, *et al*,

Plaintiffs,

v. 25 Civ. 8686 (KPF)

KRISTI NOEM, Secretary, United States Department of Homeland Security, in her official capacity, *et al*,

Defendants.

Oral Argument
----------x

New York, N.Y.
November 18, 2025
12:00 p.m.

Before:

HON. KATHERINE POLK FAILLA,

District Judge

APPEARANCES

INTERNATIONAL REFUGEE ASSISTANT PROJECT
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(Case called; the Court and all parties appearing by videoconference)

MS. AGUIRRE: Good afternoon, your Honor. Guadalupe Aguirre, International Refugee Assistance Project, for the plaintiffs.

THE COURT: Good afternoon. And thank you.

And I see several of your colleagues on the screen, as well. I see Ms. Hauptman, and I see Ms. Schwarz. And I understand Mr. Van Der Hout is also appearing. Thank you very much. Again, thank you for appearing on short notice.

Representing the defendants this afternoon?

MR. OSMOND: Mark Osmond, from the U.S. Attorney's Office.

THE COURT: Mr. Osmond, thank you very much.

And I see Ms. Tinio, as well. Thank you.

So, counsel, as was suggested by the ECF alert that went out yesterday, after I saw you on Monday, I spent the rest of the time trying to put together a decision as quickly as I could, recognizing the time sensitivities we have here. So I want to begin by thanking you, once again, for your preparation and for your flexibility and for participating on this terribly foreshortened schedule.

I also want to give a special thanks to my oralists from Monday, because three hours of oral argument is intense. I know it. I was on the giving end of it, but it was still

intense.

So, I have this oral decision. It is lengthy — that's all I can say — and I've done my best with it. I will appreciate your attention as I give it. I might not be looking up to you, so take no offense at my inability to maintain eye contact. I just think it's more important that I read what I have written.

I am expecting one or both sides to order the transcript on an expedited basis, and I'm just going to -- ah, thank you, the government has volunteered. Many thanks.

I'm going to ask, and I see that you've all muted yourselves, so I will begin now.

The parties are familiar with the facts and procedural history of this matter, and, at a high-level, plaintiffs are seven Syrian nationals with family ties to the United States, who argue that they will face harms of many types if they are forced to return to Syria. They further argue that the conduct of defendants — the Secretary of the Department of Homeland Security, that department, United States Citizenship and Immigration Services, and the United States — in terminating temporary protected status, or TPS, for Syria, effective November 21st, 2025, is contrary to law, arbitrary and capricious, and unconstitutional, and, for these reasons, they move for its postponement while their challenges to the termination can be litigated.

For the reasons I'm about to describe, I agree with certain of plaintiffs' arguments, and I am granting the motion to postpone. I do want to pause and note here that my decision is based on the record before me at this time, at this stage in the litigation. It might be different on a more complete record. The fact remains that plaintiffs have presented a wealth of evidence supporting their claims of impropriety as to this and other TPS termination decisions this year, and defendants have limited their evidence to the Secretary's Federal Register notice regarding the termination and assertions that I either lack jurisdiction to consider these claims or assertions that I'm not permitted to consider large swathes of the plaintiffs' evidence.

I want to also underscore that I have reviewed — and I know the parties have, as well — the limited number of federal court decisions concerning TPS designations that have been issued over the past eight or so years. I think I only referred to a few of them specifically in my decision, but I have read and considered each of them carefully.

I also do want to recognize that I am issuing this decision in the shadow of two Supreme Court stays of similar relief granted in what I've called, perhaps incorrectly, the NTPSA cases. I'm not sure how people pronounce that particular acronym. The defendants asked me to read into those stays the conclusion that the Court "necessarily determined that the

government was likely to succeed on the merits and that the balance of harms favored giving effect to the termination during litigation."

Defendants' counsel may ultimately be right, but I don't feel comfortable doing that on this record, although I do note that it would seem that if that's correct, then at least I have jurisdiction to consider these issues.

In the first stay, the Supreme Court did not address the merits, but simply noted that the particular order was stayed pending the disposition of the appeal in the United States Court of Appeals for the Ninth Circuit and disposition of a petition for writ of certiorari, if such a writ is timely sought.

That particular case, Noem *v. National TPS Alliance*, is at 145 S. Ct. 2728 (2025). From my perspective, any decisions or any conclusions or inferences I might draw from that case would really be in the vein of speculation.

In the second stay, the Court noted that the stay was granted, and they said although the posture of the case has changed, the parties' legal arguments and relative harms generally have not. The same result that we reached in May is appropriate here. And that case is *Noem v. National TPS Alliance*, 2025 WL 2812732. In dissent, Justice Jackson provided a hint at the majority's reasoning when she commented that "the Court plainly misjudges the irreparable harm and

balance-of-the-equities factors by privileging the bald assertion of unconstrained executive power over countless families' pleas for the stability our government has promised them." Once again, however, I'm not privy to the specifics of the Court's stay decision, and I therefore must wait, along with the rest of you, to see how the Court resolves this specific jurisdictional and merits issues, some of which are being repeated in my case.

The relief sought is a stay pursuant to Section 705 of the APA, which does allow this Court to issue necessary and appropriate process to postpone the effective date of an agency action. A sister court in this district has observed that the standard under Section 705 is the same or similar to the standard for a preliminary injunction. I'm quoting here from *Rural & Migrant Ministry v. United States Environmental Protection Agency*, 565 F. Supp. 3d 578 -- one moment, please.

I'm noting I lost Mr. Osmond. Oh, he's back, okay. Thank you. Excuse me.

And you'll excuse me if I occasionally pause because you're all jumping around on the screen ahead of me, so it's fine. Let me, please, go back to the decision.

I was quoting from Judge Liman's case, *Rural & Migrant Ministry v. United States Environmental Protection Agency*, 565 F. Supp. 3d 578, 595 (S.D.N.Y. 2020). Judge Castel, as well, in *African Communities Together v. Lyons*,

2025 WL 2633396, at *10. But under that standard, the moving party must show that, number (1), it is likely to prevail on the merits; number (2), without a stay, it will suffer irreparable injury; number (3), there is no substantial harm to other interested persons; and number (4), the public interest will not be harmed. Now, other cases dealing with similar standards include *Winter v. Natural Resources Defense Council Incorporated*, 555 U.S. 7, 20 (2008), and in that instance, the slight modification is the discussion of a success on the merits, irreparable harm, the balance of equities tipping in the movant's favor, and an injunction being in the public interest. And then *Nken v.Holder*, 556 U.S. 418, which noted that in an action challenging agency action, the third and fourth prongs merge.

Now, as we discussed at the oral argument, there are certain instances in which a preliminary injunction can also be obtained upon a showing of irreparable harm and either likelihood of success on the merits or sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief. I've just been quoting from *Citigroup Global Markets, Incorporated v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35 (2d Cir. 2010). But the Second Circuit has also found that when plaintiffs seek a preliminary injunction or a temporary

restraining order that will affect government action taken in the public interest pursuant to a statutory or regulatory scheme, they must establish a clear or substantial likelihood of success on the merits. I'm quoting here from *Sussman v. Crawford*, 488 F.3d 136, 140 (2d Cir. 2007).

Plaintiffs here argue that the relevant standard is the substantial question standard, but that they can succeed under either standard. And the theory is that because the government conduct of which they complain is not, they argue, taken in the public interest, the substantial question standard applies. As I suggested at oral argument, I find that particular argument to be too clever by half. The government proffers that termination of TPS status for Syrian nationals is taken in the public interest, and it is clearly pursuant to a statutory scheme. I might find default with defendants' decision, but I'm not ready to say that they were acting in a manner contrary to the public interest. I find them to be acting within an existing regulatory framework, even if I may otherwise find that they failed to abide by certain requirements of that framework.

Of course — and let me just put this out here — if a reviewing court disagrees with my analysis, that provides an even stronger basis for my decision, because each of plaintiffs' arguments discussed in this opinion raises a substantial question going to the merits, and the balance of

hardships tips decidedly in plaintiffs' favor.

Again, as I suggested at oral argument, I find that the irreparable harm factor is squarely in defendants' favor. And I focused the bulk of my inquiries, and I focused the bulk of this decision, on whether plaintiffs have a likelihood of success as to any of their claims.

Before I get there, I do have to address the issue of my jurisdiction to consider plaintiffs' claims, as defendants are quick to note Title 8, United States Code, Section 12 -- excuse me, irreparable harm factor is in plaintiffs' favor. I may have misspoken a moment ago.

Let me go back to my issue of jurisdiction. Section 1254a(b)(5)(A) specifies that there is no judicial review of any termination -- determination of the Attorney General with respect to the designation, or termination or extension of a designation, of a foreign state under this subsection.

In case you had any doubts, I take very seriously the limits on my jurisdiction, but I also take seriously recent decisions from the Second Circuit and courts within the circuit making clear the restrictive manner in which jurisdiction-stripping provisions are construed. There's a recent decision from the Second Circuit, *Ozturk v. Hyde*, 136 F.4th 382, a Second Circuit decision from 2025, which makes clear or focuses on the presumption favoring interpretations of

statutes to allow judicial review absent clear statement. And I will just commend the parties to page 394 of that case, which has a series of citations to cases making clear the very high standards for finding that a court has no jurisdiction.

One of those cases is *McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479, from 1991, and courts and our friends at the Eastern District have concluded, reasoning from this *McNary* in the specific context of this TPS statute, that it is clear from context that the judicial review provision in the TPS statute refers to an individual designation, termination, or extension of a designation with respect to a particular country, not to defendants' determination practices or adoption of general policies or practices employed in making such determinations. The quote I just gave you was from -- I'll call it *Saget* for now. It may also be *Saget v. Trump*, 345 F. Supp 3d 287, at 295, an Eastern District decision from 2018. It is then cited in *Haitian Evangelical Clergy Association v. Trump*, 789 F. Supp. 3d 255, 269, and that decision was issued in 2025.

I'll also note, as plaintiffs note, that every court to have considered analogous challenges to changes in TPS designations has found that it has jurisdiction to consider the challenges. And those cases are set forth at pages 11 and 12 of plaintiffs' brief. This Court joins that chorus, and finds that while it does not have jurisdiction to review the

Secretary's substantive (and discretionary) analysis of specific TPS determinations, it does retain jurisdiction to consider collateral agency patterns and practices that impact those determinations.

So let me now proceed to discuss the evidence that I can, and that I have, considered in resolving this motion.

For their part, plaintiffs suggest that I can consider statements made during the election campaigns and in the course of both Trump administrations, as well as Executive Order 14159, which, as we discussed at oral argument, appears to be predicated on a legally erroneous understanding of the TPS statute. They also suggest that I may consider significant procedural irregularities in the Secretary's decision to terminate; repeated disconnects between the proffered factual bases for termination of TPS status and the actual country conditions reported by other federal agencies; reliance on *post hoc* justifications for termination; and the failure to engage with the stated bases for continuing TPS designations, including in Syria.

Let me note that while I've been asked to consider statements from the first Trump Administration, I think that statements are, generally speaking, too attenuated to be useful to my analysis, and, thus, I have not considered them. However, what I have considered are the records developed by courts considering the first administration's TPS

determinations, and that includes the *Saget* decision and *Ramos v. Nielsen*, 336 F. Supp. 3d 1075, a Northern District of California decision from 2018, and to the extent relevant, I have considered the legal analyses of courts reviewing pre-2025 TPS determinations.

The defendants have also argued that I should not set much store by statements made on the campaign trail, or in confirmation hearings, or by individuals other than the Secretary. I have given only limited significance to campaign statements. In particular, I have considered them only to the extent that they were confirmed by and through writings and other actions like executive order 14159. I do believe it is appropriate for me to consider statements made by the President and Vice President, in addition to those of the Secretary, because my interpretation of the administration's policy with respect to certain classes of immigrants — for example, the degree to which that policy proceeds from discriminatory animus — may be informed by individuals other than the Secretary.

Finally, in this category, defendants suggest or argue that I may not consider materials relating to the termination of TPS status for any country but Syria. And here, too, I disagree. It is plain from the record of the terminations that have occurred to date — all of which, I believe, have involved non-European, majority non-White populations — that the

executive is engaging in a coordinated effort to end TPS status if and as each renewal comes up, and, with respect to Venezuela and Haiti, perhaps even before that time. The rationales are coordinated. The procedural errors are virtually identical, and each termination is of a piece with a stated policy to reduce immigrant population.

So what, then, are the claims that I am to consider?

As defined by the plaintiffs, they are three:

An APA claim that TPS termination was contrary to law based on its purported compliance with Section 1254a. This claim includes allegations that the termination was predetermined and that the Secretary improperly relied on the national interest.

There is a second APA claim — which has a degree of overlap with the first — that the termination is arbitrary and capricious because, among other things, it improperly relied on the national interest, it was politically influenced, it was pretextual, and it broke with longstanding government practice.

And then there's a claim under the Fifth Amendment's due process clause, making equal protection arguments.

So let me, please, consider each claim in turn. And I do so by beginning with the language of the TPS statute, Section 1254a. And in 1254a(b), the statute explains the bases for an initial designation of a foreign state or portion thereof. These bases include: Number (1) an ongoing armed

conflict, number (2) a natural or environmental disaster, or number (3) 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 Attorney General finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.

After the initial designation, the Secretary must undertake a periodic review. And the specific language is: After consultation with the appropriate agencies of the government, the Secretary — I believe it says the Attorney General — shall review the conditions in the foreign state, or part of such foreign state, for which a designation is in effect under this subsection, and shall determine whether the conditions for such designation under this subsection continue to be met.

There is, as well, a provision for termination of designation, which provides that if the Attorney General determines under subparagraph (A) — which, to note, is the periodic review of country conditions — that a foreign state, or part of such foreign state, no longer continues to meet the conditions for designation under paragraph (1), the Attorney General shall terminate the designation by publishing notice in the Federal Register of the determination under this subparagraph, including the basis for the determination.

In the absence of termination, it is my understanding that TPS status is extended. This Court agrees with Judge Kuntz, from the Eastern District, that Congress' directive that the Secretary shall review the conditions in the foreign state, evinces congressional intent that the Secretary undertake a periodic review grounded in fact — that is, based on objective conditions in the foreign country and regardless of any government official's political motives — and in good faith. I'm quoting here from 375 F. Supp. 3d at 346.

Now, unfortunately, on the record before me, that does not appear to have happened. Once again, for avoidance of doubt, this Court is not opining on the substance of the Secretary's termination decision or on her authority to make such a decision. But, again, on the record before it, this Court finds instances of noncompliance with the procedural requirements of the TPS statute that are sufficient to give plaintiffs a likelihood of success on their first APA claim.

To begin, the context in which the Secretary's decision was reached belies any notion of considered and good-faith review of country conditions. The President campaigned on revoking TPS if elected because, in his opinion, it's not legal, which is plainly incorrect. In other statements, he referred to immigrants poisoning the blood of this country. The Vice President displayed a similar misperception of the TPS program in referring to program

participants as illegal immigrants, despite their status in this country.

The Secretary did make statements at her confirmation hearing. I don't find them to be anything more than statements of opinion that are not readily disproven. I do want to be clear that these statements are relevant to this Court's decision on this motion insofar as they foretell or dovetail with later, postelection statements and conduct of the administration and confirmatory action — in particular here, the mass termination of TPS status.

Now, the campaign promises were quickly followed by executive order 14159, titled "Protecting The American People Against Invasion," issued on the same day as the President's inauguration. And, among other things, the President directed the Secretary of State, the Attorney General, and the Secretary of DHS to ensure that designations of temporary protected status are appropriately limited in scope and made for only so long as may be necessary to fulfill the textual requirements of that statute. Here, too, the significance of this statement is the later confirmatory action.

In particular, in early 2025, and continuing through the present, the Secretary has been taking a hatchet to the TPS system. Separate and apart from Venezuela and Haiti, where the Secretary sought to revoke or curtail previously granted extensions, the Secretary has announced termination of TPS

status for virtually every country that has come up for consideration, including Afghanistan, Cameroon, Nepal, Honduras, Nicaragua, and South Sudan. In the Federal Register notice for South Sudan, the Secretary makes clear that the only reason she did not terminate it earlier, and extended it from May through November of 2025, occurred because she had a noncurrent record, but she did move for termination at the end of that extension period.

As to Haiti, DHS's website makes note its disagreement with the E.D.N.Y. decision postponing the effective date of termination.

When TPS was terminated for Syria on September 19, 2025, DHS trumpeted it as evidence of restoring sanity to America's immigration system. Somewhat curiously, DHS also remarked that Syria had been a hotbed of terrorism and extremism even as the President sought to restore diplomatic relations with an interim president, Ahmed Al Sharaa, who was the reputed head of a group designated by the U.S. Government as a terrorist organization.

Here's the point: On this record, it confounds logic that as to a group of disparate countries, with disparate bases of designation, in different parts of the world, that in a few months all of them could resolve troubles that were so severe as to warrant TPS designation in the first instance, and have them immediately resolved, such that termination is appropriate

for all of them, and that is because that is not the case. As demonstrated in plaintiffs' submissions, as to at least four countries — Nicaragua, Cameroon, Nepal, and Venezuela — the record makes clear that the requisite interagency consultation did not occur.

There is an extensive record of *post hoc* justifications, and because of that, this Court cannot find that the Secretary engaged in a good-faith and objective review of country conditions in Syria, nor that she engaged in the requisite interagency consultation. There is no way to square the Secretary's determination that the armed conflict had subsided and that conditions in Syria that prevented Syrian nationals from returning in safety no longer existed, with, for example, the evidence that she cites, which makes plain that the armed conflict remains widespread, the State Department advisories, which, as plaintiffs' counsel noted, are not citizenship-specific, and the evidence of intervening events, including, but not limited to, Israeli incursions. I derive no confidence from the Secretary's reliance in her termination notice on a U.N. report that postdated the deadline for her to make a final decision.

A separate issue concerns the Secretary's reliance, both as to Syria and as to other countries for which she has issued termination notices, on the issue of whether termination is contrary to the national interest of the United States. I

agree with plaintiffs, to a degree, that under the TPS statute reliance on the national interest divorced from an analysis of country conditions — in this case, these would include promotion of the administration's America First policy, criminal cases taking place in this country, and foreign policy objectives — is not appropriately considered in the periodic review or termination inquiries.

So to review, Section 1254a(b)(1)(C) allows for TPS designation upon a finding that extraordinary and temporary conditions in the foreign state exist that prevent aliens who are nationals from the state from returning to the state in safety, unless the Attorney General finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.

However, 1254a(b)(3)(A) limits the periodic review process with the requisite interagency consultation to the conditions in the foreign state or part of such foreign state for which a designation is in effect under this subsection. In addition, in subsection (b)(3)(B), the statute specifies a process for termination of designation if the Secretary determines under subparagraph (A), which, as I noted, is the review of country conditions in the foreign state, that the foreign state no longer continues to meet the conditions for designation under paragraph (1). These provisions read together make clear that periodic review, including review for

termination, is limited to consideration of country conditions, and not to proclamations of the national interest divorced from those country conditions.

Further support for this Court's interpretation is found in the declaration of plaintiffs' expert witness, Aaron Reichlin-Melnick, who noted, among other things, that: (1) the sole rationale cited to justify termination of TPS has been an end to the temporary country conditions which authorized the initial designation; and (2) until 2025, no Attorney General or Secretary has explained their conclusion that it is not contrary to the national interest to permit TPS beneficiaries to remain temporarily in the United States or has ever justified a termination on national interest grounds.

By contrast, the Secretary has invoked the "contrary to the national interest" standard in the 2025 termination notices for Venezuela, Haiti, Afghanistan, Cameroon, Nepal, Honduras, Nicaragua, and South Sudan, in addition to Syria. This Court can reasonably infer — indeed, can only infer — from the Secretary's across-the-board invocation of the "contrary to the national interest" standard that the specific conditions of each of the nine countries are completely irrelevant to the national interest determination. The Secretary's consideration of the national interest divorced from country conditions in the termination inquiry of a particular TPS designee is not only not the silver bullet that she believes it to be, but, in

fact, is contrary to the statute. With particular respect to Syria, the Secretary's heavy-handed reliance on the national interest divorced from country conditions — including as discussed earlier, her heavy reliance on the promotion of an America First policy, certain criminal cases in the U.S., and certain foreign policy objectives — renders her termination decision unlawful under the APA.

Let me underscore that I'm not saying the Secretary weighed the evidence incorrectly or that she came up with the wrong decision. What I'm saying is that I have nothing but the Federal Register notice from which I can conclude that the Secretary undertook either an interagency consultation or an objective review of country-condition materials. That notice is internally inconsistent, and flawed in the manners I've just described. Worse yet, the termination analysis in the notice contravenes Section 1254a by considering national interest divorced from country conditions. And it is for these reasons that I find, on this record, that plaintiffs have a substantial likelihood of success on their APA claim predicated on noncompliance with the TPS statute.

But, as noted, plaintiffs claim that the termination of TPS for Syria is also arbitrary and capricious because, among other reasons, it was pretextual, it was politically influenced, or it contravened the change-in-policy doctrine.

Now, as was suggested at oral argument, there is a

degree of factual overlap between the evidentiary support for plaintiffs' first and second APA claims; where the first claim focuses on what the Secretary did, the second adds the inquiry of why she did it.

I believe the parties are familiar with the arbitrary and capricious standard. It was discussed at some length in Judge Furman's decision in *New York v. Wolf*, 2020 WL 6047817 at page 5. One quote I'll just extract from that analysis is that, normally, an agency rule or decision would qualify as arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

So, as an initial matter, given the procedural deficiencies that I've outlined in my preceding section, I find that the Syrian termination notice was arbitrary and capricious insofar as there was a failure to comply with the relevant statute.

I turn now to the issue of pretext. That was discussed in the Supreme Court decision of *Dep't of Commerce v. New York*, 588 U.S. 572, 780. And in that section, the Supreme Court agreed with Judge Furman, of this district, that the

Secretary of Commerce's decision to reintroduce a citizenship question into the census should be set aside for resting on a pretextual basis. But for me, what is important is that the Supreme Court presented what I believe to be a number of guardrails for the lower court's review of a decision on pretext. These guardrails include the facts that the agency must disclose the basis of its action, a court is ordinarily limited to evaluating the agency's contemporaneous explanation in light of the existing administrative record; a court may not reject an agency's stated reason for acting simply because the agency might also have had other unstated reasons; a court may not set aside an agency's policy-making decision solely because it might have been influenced by political considerations or prompted by administration policies, and a recognition of a narrow exception against the general rule of inquiring into the mental processes of administrative decision-makers, which could be found on a strong showing of bad faith or improper behavior.

Ultimately, the Supreme Court found with Judge Furman because it found that it was rare to review a record as extensive as the one before it when evaluating informal agency action — and it should be. This is their quote: But having done so for the sufficient reasons we have explained, we cannot ignore the disconnect between the decision made and the explanation given.

Let me summarize it this way: This Court does not

have a record analogous to that present in the *Dep't of Commerce* case, which it believes it needs to find that plaintiffs have shown a substantial likelihood of success on their pretext claim. Judge Furman, as I recall, had a multiday trial and extra-record disclosure that was discussed in the Supreme Court opinion. And that record may some day be developed in this case, but I don't have it today.

Relatedly, this Court recognizes that the Eastern District judge in the *Saget* decision found an acting Secretary's decision to be pretextual, but that, too, was on a far more developed record than I have.

I turn, then, to plaintiffs' next arbitrary and capricious argument, which claims undue political influence. Those standards are set forth in the *Saget* decision at 375 F. Supp. 3d, pages, I believe, 359 and 360. And I'll just very briefly summarize it. There must be some showing that the political pressure was intended to, and did, cause the agency's action to be influenced by factors not relevant under the controlling statute. And there are many cases cited for that proposition.

In resolving the political influence issue, the *Saget* court relied heavily on the case of that *Tummino v. Torti*, 603 F. Supp. 2d, 519, an Eastern District decision from 2009. And in the *Tummino* case, there was evidence of an FDA commissioner who had been improperly influenced by the White House, with the

promise of facilitation of the confirmation of another FDA commissioner. In the *Saget* case, the evidence of political influence included explicit coordination between the acting Secretary and the White House concerning the placement of the decision in the Administration's America First strategy, meetings with the White House to coordinate TPS decisions, and pressure from the Attorney General to make a decision and not leave it for a successor Secretary.

Though I concede it is a close call, I find that plaintiffs have demonstrated a likelihood of success on the political influence issue. As noted, the President made sweeping and erroneous statements concerning his belief in the legality of the TPS program and its inutility to what can only be fairly described as an anti-immigrant agenda. Once in office, the President issued a sweeping and, again, erroneous executive order, which paid lip service to the TPS statute while *sub silentio* calling for its demise. In a similar vein, once the Secretary was confirmed, she endeavored to terminate TPS status whenever presented with an opportunity to do so, resulting in termination decisions that are ground not in law and not in fact, but that are in political considerations simply not relevant under the TPS statute.

There is a final claim of arbitrary and capricious conduct, and that is the change in DHS position concerning the national interest and the length of time given for transition

periods. The case that was cited to me by the parties was *Food & Drug Admin. v. Wages & White Lion Invs. LLC*, 604 U.S. 542 from 2025. It was discussed slightly more recently in a case from a sister court in this district, Judge Vargas, in *New York v. Trump*, 778 F. Supp. 3d, 578 at 595-596.

The important thing for me to call to the parties' attention is this: As Judge Vargas noted, the change of position doctrine only applies if an agency changed existing policy. Judge Vargas subsequently notes that, as the Supreme Court explained in *Wages & White Lion Invs.*, for an agency position to constitute a policy within the meaning of the change-in-position doctrine, it must typically have been set forth in some formal manner, such as a regulation, a guidance memorandum or an agency enforcement action.

I do agree that plaintiffs have demonstrated practices in these two areas — the areas of national interest and transition periods, that have lasted as long as the TPS statute has been in existence. I don't have evidence sufficient to transform these practices into policies in the manner described, but the Supreme Court in *Wages & White Lion Invs.* and by Judge Vargas in the New York v. Trump indication and I, therefore, cannot find that plaintiffs have established a likelihood of success on this claim.

Now, changing topics, plaintiffs have separately alleged that the termination of TPS for Syria is violative of

the Fifth Amendment's due process clause. Plaintiffs allege an equal protection violation in that termination of TPS for Syria was motivated by defendants' animus toward noncitizens who are not White or of European origin.

Now, for reasons that I will just describe to you briefly, I find that plaintiffs win the battle in terms of the standard of review but lose the war in terms of the likelihood of success on their claim. I won't delve deeply because I know the parties are aware of equal protection clause jurisprudence, but, as noted by the Supreme Court, classifications based on race, national origin or alienage are subject to strict scrutiny and must narrowly tailored to serve a compelling state interest. I'm quoting from or citing to *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440, issued in 1985. A plaintiff can show intentional discrimination where a discriminatory purpose was a motivating factor in the government's action. I'm quoting here from *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977).

The dispute between the parties concerns the appropriate standard of review. Plaintiffs are arguing for strict scrutiny and analysis under *Arlington Heights*. Defendants are arguing for rational basis scrutiny and more deference to the executive under *Trump v. Hawaii*, the Supreme Court decision from 2018 at 585 U.S. 667.

On this issue, the Court finds that plaintiffs have

the stronger of the argument. As was discussed in the *Saget* decision, the Supreme Court's analysis in *Trump v. Hawaii* was informed by at least two factors that aren't present here: Number one, plaintiffs sought to invalidate a national security directive regulating the entry of aliens abroad; and, number two, the executive order was facially neutral toward religion and required probing the sincerity of the stated justifications for the policy by reference to extrinsic statements, many of which were made before the President took the oath of office.

Here, plaintiffs have legal status in this country under a congressionally created program that implicates the national security and foreign policy concerns to a much lesser degree than that present in *Trump v. Hawaii*, and, in this regard, my decision accords with that of other courts to have considered the issue, including *Nat'l TPS All. v. Noem*, 25 WL 2233985, the *Ramos v. Nielsen* case I mentioned earlier, and *Centro Presente v. United States Dep't of Homeland Sec.*, 332 F. Supp. 3d, 393, a District of Massachusetts decision from 2018.

Where plaintiffs falter is in their definition of the protected class as "non-White, non-European." I find such a definition to be too expansive, too amorphous, and I'm not able to conduct the equal protection analysis. In this regard, I agree with Mr. Osmond that to accept the protected class would sweep in too much. I am aware that other courts have concluded

differently, and, indeed, I believe one of the NTPSA judges has adopted a class of immigrants, but I am not comfortable making factual determinations on so broad a class. And, as plaintiffs would seem to recognize by their briefing, at least implicitly, there is not sufficient evidence of Syrian-specific animus to support a finding of likelihood of success on the merits.

Once again, and for any reviewing court that might see this, if my perspective is unduly myopic, one can find plenty of evidence of race- and national origin-based animus in this record, but on this definition of the class, I do not feel comfortable doing so.

Let me, please, continue with the other elements of the stay motion.

We continue with irreparable harm.

Plaintiffs easily satisfy the irreparable harm prong of the preliminary injunction standard. Their submissions make plain the list of harms that can, and very likely will, befall them if the TPS termination date is not postponed.

Syrian TPS holders will lose their lawful status to reside and to work in the U.S. as of November 21, 2025. This will result in immediate vulnerability to arrest, detention, deportation, and family separation. They will lose their employment authorization. They will lose their livelihoods. And those with U.S. citizen children and family members will face decisions no one should have to make regarding family

separation.

Conversely, the record — particularly the information from the State Department — reflects a variety of risks to plaintiffs' lives and safety upon their return to Syria, including ongoing armed conflict, food insecurity, lack of healthcare, and widespread displacement.

I also find that plaintiffs have the stronger of the argument regarding their inability to pursue other -- or their diminished ability to pursue other avenues of immigration relief, which was something suggested by defendants. The short time frame afforded by the termination is insufficient, as a practical matter, to allow plaintiffs to make these contingency plans. Moreover, the anticipated gap in status occasioned by the termination of TPS will foreclose certain opportunities.

On the issue of the remaining two prongs, the balance of equities and the public interest, which are considered together, I find that they favor plaintiffs. There is no public interest in allowing the government to proceed with unlawful or arbitrary and capricious actions that violate the INA or the APA. The public has a substantial interest in ensuring that government agencies comply with federal laws. And I also accept plaintiffs' showing about the contributions that they and other Syrian TPS holders make to our communities and to our nation.

More fundamentally, I agree with plaintiffs that the

TPS statute springs from an appropriate concern regarding protecting vulnerable populations from deportation to countries experiencing armed conflict, human rights abuses, and humanitarian crises. There is a public interest in upholding those humanitarian principles.

Again, conversely, I don't see sufficient support in this record for defendants' conclusions that allowing these fewer than 7,000 people to remain in this country while this litigation proceeds would adversely impact national security or compromise the executive's ability to engage in foreign relations.

The final issue concerns the scope of relief — whether it is limited to the plaintiffs in this case or extends more broadly to those Syrian nationals who have been granted TPS status. Defendants raise two principal challenges in this regard. This Court finds that neither succeeds at this stage.

In the case of *Trump v. CASA, Inc.*, 606 U.S. 831, a 2025 decision, the Supreme Court held that injunctions asserting the power to prohibit enforcement of a law or policy against anyone likely exceed the equitable authority that Congress has granted to federal courts. However, the Court was careful to note in footnote 10 — and I quote — nothing we say today resolves the distinct question whether the Administrative Procedure Act authorizes federal courts to vacate agency action.

A sister court in this district recently observed — and that sister court is Judge Kaplan — in *Mercado v. Noem*, 2025 WL 2658779 at *17, he recognized that in the Supreme Court's decision in *AARP v. Trump*, the Supreme Court recently held that courts may issue temporary relief to a putative class, and citing the "Newberg and Rubenstein on Class Actions" treatise, he noted that those treatise authors found that the filing of a class suit, coupled with a showing that the standard for interim relief has been met, should be sufficient to enable such relief to the entire putative class and that nothing more was necessary, although that treatise did note that it might be safer practice to go through the entire Rule 23 analysis prior to granting preliminary relief.

It is true that plaintiffs here have filed this action as a class action. I don't think they should be penalized because I declined their generous offer to submit a class certification motion. If a reviewing court believes that footnote 10 in *CASA* is not sufficient for me to postpone the termination date, which I don't consider to be injunctive relief, for all Syrian TPS beneficiaries in this country, and that, instead, I need to certify a class, the Court can remand the matter back to me for an expedited decision on interim class relief.

Defendants have also suggested that Section 1252(f)(1) of Title 8 of the United States Code, which provides that no

court, other than the Supreme Court, shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of Part V of this subchapter, other than with respect to the application of such provisions to the individual alien against whom proceedings under such part have been initiated. There's an initial tussle between the parties as to whether the statute in question is in Part IV or Part V. I do think defendants have the better of that argument. However, I do join those courts that have rejected arguments predicated on this provision because I find that the relief sought is an order pursuant to 705. It is not injunctive relief. The *Haitian Evangelical Clergy Ass'n* that I mentioned earlier came that that conclusion, and I give that as one example.

I consider the postponement under Section 705 to be a stay of agency action, not injunctive relief on the merits. I think it operates on the agency action itself. I think it's what is considered and set aside in the *CASA* decision, and I believe it to be permissible.

So, for all of these reasons, and with my deep thanks to those of you who have listened for this long, as I've read this decision into the record, I am granting the plaintiffs' motion in part. I am ordering a postponement of the termination date of TPS status for Syria pending further order of this or a reviewing court.

I know what's going to happen, friends. I know the

next stage is appeal. I will, later today, issue a written notice that's just a bottom-line order, indicating what I've done today, so that gives one side, perhaps both sides, the opportunity to file their notices of appeal. And I will expect that you will keep me apprised of what is happening in the appeal.

Again, I thank you, and I'm going to let you go. We are adjourned.

MR. OSMOND: Your Honor, could the government be heard on one point before we sign off?

THE COURT: Yes, sir.

MR. OSMOND: We understand that the Court has ruled, but the government would respectfully request that the Court stay its decision for 14 days so that the government can seek authorization from the Solicitor General to appeal to the Second Circuit.

As you know, the Ninth Circuit and Supreme Court have stayed district court decisions in similar TPS cases, and the Fourth Circuit recently refused plaintiffs' motion for a stay in a TPS case where the district judge had denied plaintiffs' request to postpone the Secretary's TPS determination.

If the Court would find it useful, I can go through the factors governing the stay, but those are integral to the factors that you just discussed, so I don't know if that would be helpful.

THE COURT: Sir, I understand exactly why you're making this request. You know, as well as I do, that if I do that, then effectively the termination takes place on Friday, and that's my concern. I, who have no horse in this race, am here to preserve the status quo and not to disrupt it.

I do want you to understand that I'm aware of both -- well, candidly, from my life before this job, as to the hurdles you will have to deal with internally — by "hurdles," I mean the steps you will have to take — so with appropriate regard for your arguments, which I know, with an understanding of what the Supreme Court has done and what the Fourth Circuit has done, only because this thing otherwise terminates on Friday, I am denying your request for a stay. And if the Second Circuit disagrees with me, I know they'll let me know.

So I'm genuinely sorry that I can't give that relief, sir, because it's not my goal to make your life any more difficult. And I know, sir, you know that you and I both lost a lot of time because of the timing of the complaint, but I just can't do it, and I'm sorry. But you have your record, sir. Thank you.

Anything else, Mr. Osmond?

MR. OSMOND: Nothing else, Judge. Thank you.

THE COURT: All right. Thank you, all. We're adjourned. Take care, everyone.

(Adjourned)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAHLIA DOE, SARA DOE, NESMA DOE, LAILA DOE, WALEED DOE, MUSTAFA DOE, and AHMAD DOE,

Plaintiffs,

-v.-

SECRETARY KRISTI NOEM, *United States Department of Homeland Security, in her official capacity*; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES; and UNITED STATES OF AMERICA,

Defendants.

25 Civ. 8686 (KPF)

ORDER

KATHERINE POLK FAILLA, District Judge:

For the reasons set forth on the record at the November 19, 2025 conference, Plaintiffs' motion for a preliminary injunction (Dkt. #19) is GRANTED in part. Defendants' termination of Temporary Protective Status for Syrians in the United States is hereby POSTPONED, pending further order from this Court or a reviewing court, pursuant to 5 U.S.C. § 705.

Given the anticipated appeal in this matter, Plaintiffs' motion to compel production of the Certified Administrative Record (Dkt. #35) is DENIED without prejudice as to its renewal at a later date.

The Clerk of Court is directed to terminate the pending motions at docket entries 19 and 35.

SO ORDERED.

Dated: November 19, 2025
New York, New York

KATHERINE POLK FAILLA
United States District Judge

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 17th day of February, two thousand twenty-six.

Present:

Beth Robinson,
Alison J. Nathan,
Maria Araújo Kahn,
Circuit Judges.

Dahlia Doe, et al.,

Plaintiffs-Appellees,

v. 25-2995

Kristi Noem, Secretary, United States Department of Homeland Security, in her official capacity, et al.,

Defendants-Appellants.

On November 25, 2025, the Government appealed from the district court's postponement order issued pursuant to 5 U.S.C. § 705. One week later, the Government moved to stay that order pending appeal. No administrative stay was granted by the applications judge, and the motion was calendared to be decided on submission by this three-judge motions panel sitting January 13, 2026. On January 15, 2026, given that the Government's motion papers did not address the basis for our interlocutory appellate jurisdiction over a § 705 postponement order, we ordered both parties to submit supplemental letter briefs identifying the source of our jurisdiction.

Based on that briefing, we conclude that we have appellate jurisdiction pursuant to 28 U.S.C. § 1292(a)(1) and *Carson v. American Brands, Inc.*, 450 U.S. 79 (1981).

Having assured ourselves of our jurisdiction, and for the reasons discussed below, the Government's motion for a stay pending appeal is **DENIED**.

First, for purposes of this stay pending appeal, we have considered the Supreme Court's stay orders related to a different Temporary Protected Status (TPS) termination. However, those orders involved a TPS designation of a different country, with different factual circumstances, and different grounds for resolution by the district court. In light of these differences, and because the Supreme Court's stay orders contained no explanation of their grounds for granting emergency relief, they are not dispositive of our analysis of the merits in this dispute. *See Nat'l Insts. of Health v. Am. Pub. Health Ass'n*, 145 S. Ct. 2658, 2663 (2025) (Gorsuch, J., concurring in part) ("[R]egardless of a decision's procedural posture, its reasoning—its *ratio decidendi*—carries precedential weight in future cases." (internal quotations omitted)).

We go on to consider the four stay factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 426 (2009) (internal quotations omitted).

At this juncture, we conclude that the Government has not made the requisite strong showing of likely success on the merits. First, while the TPS statute bars judicial review of "any determination of the [Secretary] with respect to the . . . termination . . . of a [TPS] designation," 8 U.S.C § 1254a(b)(5)(A), it does not bar judicial review of the Secretary's compliance with that statute's procedural requirements—the contrary interpretation runs headlong into both *McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479 (1991), and the "presumption favoring judicial review of administrative action," *Kucana v. Holder*, 558 U.S. 233, 251 (2010). Next, the district court's postponement order under APA § 705 does not operate as an injunction requiring the Secretary to take any particular action; rather, it merely postpones the effective date of the Secretary's purported termination and thus does not run afoul of 8 U.S.C. § 1252(f)(1). *See Make the Road N.Y. v. Noem*, No. 25-5320, 2025 WL 3563313, at *15–18 (D.C. Cir. Nov. 22, 2025); *Immigrant Defs. L. Ctr. v. Noem*, 145 F.4th 972, 989–90 (9th Cir. 2025); *Texas v. United States*, 40 F.4th 205, 219–20 (5th Cir. 2022); *cf. Nken*, 556 U.S. at 428 (an injunction "is a means by which a court tells someone what to do or not to do"). Finally, the Government is unlikely to succeed on its argument that the Secretary engaged in the required inter-agency consultation under 8 U.S.C. § 1254a(b)(3)(A) before

terminating Syria's TPS designation. Because the Government has not established a likelihood of success, its stay application must be denied.

Even if the Government had established a likelihood of success, it must also demonstrate that it will suffer irreparable harm absent a stay. On this posture, the Government must establish "an injury that is neither remote nor speculative, but actual and imminent[.]" *Grand River Enter. Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 66 (2d Cir. 2007) (internal quotations omitted). Unlike in prior TPS cases, which involved over 300,000 TPS holders, the Government here has not claimed that allowing the 6,100 Syrian TPS holders to remain in the country during the pendency of this litigation would "strain[] police stations, city shelters, and aid services in local communities that had reached a breaking point." Stay Application at 37, *Noem v. Nat'l TPS All.*, No. 24A1059; *see also* Stay Application at 24, *Noem v. Nat'l TPS All.*, No. 25A326. Nor has it alleged that the district court's postponement order will imminently threaten "complex and *ongoing* negotiations" with Syria. Stay Application at 37, *Noem v. Nat'l TPS All.*, No. 24A1059 (emphasis added). The Government has not explained how general harm to "public safety" and "the national interest," Stay Motion at 25, is sufficiently "actual and imminent" to justify immediate intervention, *Pryor*, 481 F.3d at 66 (internal quotations omitted).

Although the Government's failure to demonstrate irreparable harm is a sufficient basis to deny the stay, we also conclude that the final two stay factors—the balance of equities and the public interest—decidedly favor the Plaintiffs-Appellees, who have demonstrated that upon termination of their TPS they will be stripped of their authorization to work in the United States and face immediate removability to Syria.

For the foregoing reasons, it is hereby **ORDERED** that the Government's motion for a stay pending appeal is **DENIED**. The current time frame by which this matter will advance to a merits panel for resolution of the appeal reflects the Government's choice to proceed on a non-expedited basis. Its opening brief is currently due on the date it requested: March 11, 2026. If the Government wishes to file its brief sooner, it may move to expedite the briefing schedule.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court