

No. 25-5724

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

NATIONAL TPS ALLIANCE, et al.,
Appellees,

v.

KRISTI NOEM, et al.,
Appellants.

On Appeal from the United States District Court
for the Northern District of California
District Court Case No. 3:25-cv-1766

**MOTION TO STAY MANDATE PENDING REVIEW OF THE
GOVERNMENT’S PETITION FOR REHEARING EN BANC**

Pursuant to Fed. R. App. P. 2(a) and 41(b) the government respectfully moves the Court to stay the issuance of its mandate.

On January 28, 2026, the panel held that 8 U.S.C. § 1254a(b)(5)(A)’s bar on “judicial review” does not encompass the vacatur of Temporary Protected Status (“TPS”) extensions and that the Secretary lacked inherent authority to reconsider TPS extensions. *NTPSA v. Noem*, No. 25-5724, — F.4th —, 2026 WL 226573, at *7-9, *11-16 (9th Cir. Jan. 28, 2026) (*NTPSA III*), *judgment stayed by Noem v. Nat’l TPS Alliance*,

146 S. Ct. 23, 24 (2025). The panel ordered the mandate to issue on February 4, 2026, just seven days later.¹ *NTPSA III*, 2026 WL 226573, at *18 n.15.

The government intends to file a timely petition for rehearing en banc on February 3, 2026. *See* Fed. R. App. P. 40(b)(2). In the ordinary case, the mandate issues “7 days after entry of an order denying a timely petition for... petition for rehearing en banc[.]” Fed. R. App. P. 41(b); *see Matter of Thorp*, 655 F.2d 997, 998 (9th Cir. 1981) (noting that under former Fed. R. App. P. 41(a), a petition for rehearing “stays the issuance of the mandate until the petition has been disposed of unless otherwise ordered by the court.”); General Order 4.6(a) (discussing this Court’s policy that “the mandate should not issue forthwith” to allow time “after entry of judgment for the filing of a petition for rehearing en banc.”). To the extent the panel displaced that default rule by directing early issuance of the mandate, the government additionally moves to stay the mandate to preserve its right to seek en banc rehearing. *See* Fed. R. App. P. 2(a), 41(b); General Order 5.1(8) (automatic stay for en banc proceedings); *NTPSA III*, 2026 WL 226573, at *18 n.15 (citing Fed. R. App. P. 41 and 9th Cir. General Order 4.6).

¹ That opinion was subsequently reformatted and reissued on January 30, 2026. ACMS No. 72.

ARGUMENT

THE COURT SHOULD STAY ITS MANDATE TO FACILITATE EN BANC REVIEW

This Court has authority to stay the mandate to facilitate en banc review. Fed. R. App. P. 41(b); *see Henry v. Ryan*, 766 F.3d 1059, 1062 (9th Cir. 2014) (Fletcher, J., concurring in en banc rehearing) (“If a stay is not entered for the sole purpose of allowing time for the Court to consider a petition for certiorari, the governing language is in Rule 41(b): ‘The court may shorten or extend the time.’”); *cf. United States v. Lozoya*, 19 F.4th 1217, 1218 (9th Cir. 2021) (en banc) (“We have inherent power to recall our mandate in order to protect the integrity of our processes, but should only do so in exceptional circumstances.”). The exercise of that authority is warranted here, especially because the government has never had a meaningful opportunity to seek en banc rehearing of any of the panel’s three decisions in this expedited litigation.

As the panel is aware, this case involves the vacatur of the extension of the 2023 designation of Venezuela for TPS, the partial vacatur of the extension of TPS for Haiti, and the subsequent termination of Venezuela’s 2023 TPS designation. The district court granted preliminary APA relief. *See* 5 U.S.C. §705. The government appealed and sought a stay of the Venezuela termination, which this Court denied. The Supreme Court intervened and stayed the district court’s order, permitting the Venezuela 2023 TPS termination to take effect. *Noem v. NTPSA*, 145 S. Ct. 2728, 2728-29 (2025). In August, the Court nonetheless concluded that the Secretary lacked statutory authority to vacate

a TPS extension and that the statute’s review bar was inapplicable, so it affirmed the district court’s §705 stay. *NTPSA v. Noem*, 150 F.4th 1000 (9th Cir. 2025) (*NTPSA I*), *motion to vacate filed* (Nov. 25, 2025).

Seven days later, relying heavily on this Court’s preliminary-relief opinion, the district court entered partial final judgment for Plaintiffs on their APA claims. *NTPSA v. Noem*, 798 F. Supp. 3d 1108 (N.D. Cal. 2025). That judgment mooted the government’s interlocutory appeal and effectively prevented it from seeking rehearing of *NTPSA I*, because—unbeknownst to the government—the government only had three business days to prepare and file an en banc petition before the district court entered judgment. *See Akina v. Hawaii*, 835 F.3d 1003, 1010 (9th Cir. 2016) (“An interlocutory appeal of the denial of a preliminary injunction is moot when a court can no longer grant any effective relief sought in the injunction request.”). This Court declined to grant a stay of that judgment, *NTPSA v. Noem*, — F.4th —, 2025 WL 2661556, at *7-14 (9th Cir. Sept. 17, 2025) (*NTPSA II*), so the Supreme Court stayed the district court’s judgment and permitted the Venezuela TPS termination to (again) take effect. *Noem v. Nat’l TPS Alliance*, 146 S. Ct. 23, 24 (2025).

Last week, following the close of expedited briefing on November 29 and oral argument on January 14, the panel affirmed the district court’s partial final judgment. *NTPSA III*, 2026 WL 226573, at *7-9, *11-16. The panel ordered the mandate to issue on February 4, 2026, providing the government only six days to file an en banc petition.

Because the government intends to utilize that opportunity to seek en banc rehearing, the Court should enter an order staying the mandate. *See* Fed. R. App. P. 2(a), 41(b).

As the government's forthcoming petition explains, en banc rehearing of this case is warranted because it involves exceptionally important legal issues regarding TPS that will affect hundreds of thousands of people in multiple TPS-related cases implicating the Secretary's authority to administer TPS. Fed. R. App. P. 40(b)(2) (en banc criteria). Indeed, this Court previously concluded the issue warranted en banc consideration but did not issue an en banc opinion before that case became moot. *Ramos v. Wolf*, 975 F.3d 872, 889 (9th Cir. 2020), *vacated upon rehearing en banc*, 59 F.4th 1010, 1011 (9th Cir. 2023); *Ramos v. Mayorcas*, 2023 WL 4363667, at *1 (9th Cir. June 29, 2023) (granting dismissal). The Supreme Court has likewise recognized the exceptional importance of the issues, indicating that the issues deserve its review by twice granting stays. *Noem*, 146 S. Ct. at 24; *Noem*, 145 S. Ct. at 2728-29; *see Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (requiring "reasonable probability" four justices would vote for certiorari to grant a stay).

The panel ordered that its mandate will issue after just seven days because of unspecified "exigencies." *NTPSA III*, 2026 WL 226573, at *18 n.15 (citing Fed. R. App. P. 41 and 9th Cir. General Order 4.6). But no party requested expedited issuance of the mandate. And, in light of the Supreme Court's stay of the district court's judgment, *Noem*, 146 S. Ct. at 24, speedy issuance of the mandate will not have any practical effect on either the timing of the Supreme Court's review or the real-world implementation

of the Secretary’s termination of the 2023 TPS designation for Venezuela. *See Noem*, 146 S. Ct. at 24 (staying the judgment until “disposition of the Government’s appeal in the United States Court of Appeals for the Ninth Circuit and disposition of a petition of a petition for a writ of certiorari, if such writ is timely sought.”). Nor will issuance of the mandate affect TPS for Haiti: that part of this case has been moot since November 28, 2025, because the Secretary issued a new termination notice, ending Haiti’s TPS protections on February 3, 2026—the day *before* the mandate will issue on February 4, 2026. *Termination of Designation of Haiti for [TPS]*, 90 Fed. Reg. 54,733 (Nov. 28, 2025); *see* ACMS No. 65, Gov’t 28(j) Letter (Jan. 7, 2026). The government is unaware of any other reason why expedited issuance of the mandate on February 4, 2026 would implicate or address any exigencies.

At most then, expedited issuance of the mandate would curtail future proceedings before this Court, even though the issues here are exceptionally important and deserve the en banc Court’s consideration. Thus, in order to preserve the en banc Court’s ability to review the government’s forthcoming petition for rehearing en banc, the government respectfully requests that the Court enter an order staying issuance of its mandate until “7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc.” Fed. R. App. P. 41(b). Alternatively, if the filing of the government’s rehearing petition does not itself stay expedited issuance of the mandate on February 4, 2026, and if the panel does not grant this motion prior to the issuance of the mandate, the government respectfully requests that the Clerk and

En Banc Coordinator circulate this motion to the en banc court for its consideration in light of the government's forthcoming petition for rehearing en banc. *See* General Order 5.1(b)(2) ("The En Banc Coordinator shall supervise the en banc process, including time schedules provided in this Chapter"). Finally, if the mandate should issue during (and despite) the pendency of this motion, the government respectfully requests that this Court recall its mandate and then stay its re-issuance.

CONCLUSION

This Court should enter an order expressly staying the issuance of its mandate until “7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc.” Fed. R. App. P. 41(b); *see* General Order 5.1(8) (automatic stay). If the panel denies the motion, the government respectfully requests that the Clerk and En Banc Coordinator circulate this motion to the en banc Court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 27(d)(1), I certify that the text of this motion is in double-spaced, proportionally spaced 14-point Garamond type, and the motion contains 1,577 words in compliance with Ninth Circuit Rule 27-1(d).

/s/ Jeffrey M. Hartman
JEFFREY M. HARTMAN
Trial Attorney
Office of Immigration Litigation

Dated: February 2, 2026

CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2026, counsel for Appellants electronically filed this motion with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the ACMS system and that service will be accomplished via the ACMS system.

/s/ Jeffrey M. Hartman
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