

No. 25-4901

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

**NATIONAL TPS ALLIANCE, et al.,**  
Appellees,

v.

**KRISTI NOEM, et al.,**  
Appellants.

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On Appeal from the United States District Court  
for the Northern District of California  
District Court Case No. 3:25-cv-05687-TLT

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**MOTION TO VACATE THE JULY 31, 2025 DISTRICT COURT  
DECISION**

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BRETT A. SHUMATE  
*Assistant Attorney General*

YAAKOV M. ROTH  
*Principal Deputy Assistant Attorney General*

DREW C. ENSIGN  
*Deputy Assistant Attorney General*

RUTH ANN MUELLER  
*Senior Litigation Counsel*

LAUREN BRYANT  
CATHERINE ROSS  
ERIC SNYDERMAN  
LORI MACKENZIE  
DANIEL CAPPELLETTI  
ILANA KRAMER  
SHELBY WADE  
RACHEL BERMAN-VAPORIS  
JEFFREY M. HARTMAN  
*Trial Attorneys*  
Office of Immigration Litigation  
Civil Division, U.S. Dep't of Justice  
P.O. Box 878, Ben Franklin Station  
Washington, D.C. 20044  
Phone: (202) 532-4404  
Email: Jeffrey.M.Hartman@usdoj.gov

## INTRODUCTION

The government respectfully moves the Court to vacate the district court's decision regarding preliminary relief, *Nat'l TPS All. v. Noem*, 798 F. Supp. 3d 1008 (N.D. Cal. 2025), and dismiss the appeal, because this appeal of preliminary-relief ruling has become moot as a result of happenstance. *See United States v. Munsingwear*, 340 U.S. 36, 39-40 (1950); *Teter v. Lopez*, 125 F.4th 1301, 1309 (9th Cir. 2025) (en banc) (“When a case has become moot, our normal practice is to vacate the judgment.”); *Donovan v. Vance*, 70 F.4th 1167, 1172-73 (9th Cir. 2023) (vacating a district court order where the appeal became moot).

On July 31, 2025, the district court granted interim relief under 5 U.S.C. § 705 with respect to the Temporary Protected Status (“TPS”) terminations for Nepal, Nicaragua, and Honduras, which by its own terms expired unless renewed at the “hearing on the merits on November 18, 2025.” *Nat'l TPS All.*, 798 F. Supp. 3d at 1015. The government subsequently filed this interlocutory appeal and, following briefing and oral argument, this Court stayed the district court's order and permitted the challenged TPS terminations to take effect. ACMS No. 19, *Nat'l TPS All. v. Noem*, No. 25-4901 (9th Cir.). The government filed its opening brief on October 21, 2025.

At the November 18, 2025, merits hearing, the district court did not order any extension of its § 705 order, and Plaintiffs-Appellees did not request one. Consequently, the parties stipulated to abate briefing in this appeal. *See* ACMS No. 38. On December 31, 2025, the district court entered partial final judgment under the

Administrative Procedure Act (“APA”), setting aside Secretary Noem’s TPS terminations for Nepal, Nicaragua, and Honduras. *Nat’l TPS All. v. Noem*, No. 25-cv-05687-TLT, 2025 WL 4058572 (N.D. Cal. Dec. 31, 2025). Thus, the government’s appeal challenging the district court’s § 705 order is moot twice over. *See Shell Offshore Inc. v. Greenpeace, Inc.*, 815 F.3d 623, 628 (9th Cir. 2016) (“Because the only order on appeal has now expired, we are unable to grant any effectual relief to either party.”); *Akina v. Hawaii*, 835 F.3d 1003 (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.”). And this Court should vacate the district court’s § 705 decision under *Munsingwear* to avoid unfair prejudice to the government in this interlocutory appeal, and because the government did not cause mootness or fail to protect itself against mootness.

### **BACKGROUND**

The Secretary of Homeland Security is authorized to designate a foreign country for TPS if, among other reasons, a natural disaster means that a foreign state is unable, temporarily, to handle the return of its nationals. 8 U.S.C. § 1254a(b)(1)(B). Initial TPS designations are discretionary, 8 U.S.C. § 1254a(b)(1), and must be periodically reviewed to determine whether the conditions underlying a country’s TPS designation continue to be met, 8 U.S.C. § 1254a(b)(3)(A). If, during the periodic review, the Secretary determines that the foreign state “no longer continues to meet the conditions

for designation” the Secretary “shall terminate the designation[.]” 8 U.S.C. § 1254a(b)(3)(B).

This case involves the disaster-related TPS designations of Nicaragua, Honduras, and Nepal. In 1999, Attorney General Reno designated Honduras and Nicaragua for TPS due to “the environmental disaster and substantial disruption of living conditions caused by Hurricane Mitch.” *Designation of Honduras Under [TPS]*, 64 Fed. Reg. 524 (Jan. 5, 1999); *Designation of Nicaragua Under [TPS]*, 64 Fed. Reg. 526 (Jan. 5, 1999). On July 8, 2025, following the required review and consultation with appropriate agencies, Secretary Noem announced the termination of TPS for both Honduras and Nicaragua, effective September 8. *Termination of the Designation of Honduras for TPS*, 90 Fed. Reg. 30,089 (July 8, 2025); *Termination of the Designation of Nicaragua for TPS*, 90 Fed. Reg. 30,086 (July 8, 2025).

In 2015, Nepal was designated for TPS when “a magnitude 7.8 earthquake struck,” “resulting in a substantial, but temporary, disruption of living conditions in the area affected.” *Designation of Nepal for TPS*, 80 Fed. Reg. 36,346 (June 4, 2015). On June 6, 2025, the Secretary announced the termination of TPS for Nepal, effective August 5. *Termination of the Designation of Nepal for TPS*, 90 Fed. Reg. 24,151 (June 6, 2025).

On July 7, 2025, the National TPS Alliance and seven individual Plaintiffs challenged the terminations for Nepal, Honduras, and Nicaragua and moved to postpone the effective date of the Secretary’s determinations. The district court granted the motion on July 31, 2025, to expire or be extended at a hearing on November 18,

2025. *Nat'l TPS All.*, 798 F. Supp. 3d at 1015. The Secretary appealed the following day, and the Ninth Circuit granted the Secretary's motion for a stay pending appeal on August 20, 2025. *See* ACMS No. 19. On January 7, 2026, the parties submitted a joint status report in which Plaintiffs argued that the Secretary's appeal became moot upon the expiration of the district court's postponement order by its own terms, and the Secretary requested a 30-day extension of the Court's stay of the appeal. ACMS No. 38.

### **ARGUMENT**

#### **I. THE COURT SHOULD VACATE THE DISTRICT COURT'S DECISION GRANTING INTERIM RELIEF BECAUSE IT BECAME MOOT AS A MATTER OF HAPPENSTANCE**

The Court should vacate the order on appeal because it became moot through happenstance prior to the resolution of the government's appeal. *See Nat'l TPS All.*, 798 F. Supp. 3d at 1015. "Under [*Munsingwear*], 'vacatur is generally automatic in the Ninth Circuit when a case becomes moot on appeal.'" *Donovan*, 70 F.4th at 1173 (quoting *Munsingwear*, 340 U.S. at 39, and *NASD Disp. Resol., Inc. v. Jud. Council of State of Cal.*, 488 F.3d 1065, 1068 (9th Cir. 2007)).

Here, as Plaintiffs have agreed, the district court's interim relief order under 5 U.S.C. § 705 expired on its own terms when the district court did not extend it following a merits hearing on November 18, 2025. *Nat'l TPS All.*, 798 F. Supp. 3d at 1015, 1040; ACMS No. 38 ("the postponement order that is the subject of this appeal expired by its own terms on November 18, 2025"). As a result of the expiration of the district court's postponement order, any post-judgment *opinion* on the availability of

interim relief under 5 U.S.C. § 705 at this juncture would be an advisory opinion inconsistent with Article III’s “case or controversy” requirement, and the appeal is thus moot. U.S. Const. Art. III, § 2, cl. 1; *see Akina*, 835 F.3d at 1010.

Even if the order’s November 18 expiration were not enough for mootness, the order undoubtedly became moot six weeks later when district court subsequently entered partial final judgment on Plaintiffs’ APA claims on December 31, 2025. *Nat’l TPS All.*, 2025 WL4058572, at \*29-30; *Primerica Life Ins. Co. v. Allred*, 572 F. App’x 541, 542 (9th Cir. 2014) (“Where a party appeals an interlocutory order subsequently superseded by a valid final judgment, the matter is moot.”) (citing *Taylor v. United States*, 181 F.3d 1017, 1018, 1022-23 (9th Cir. 1999) (en banc)). Either way, this interlocutory appeal is moot, preventing the government from seeking further review of the district court’s § 705 order. *See Shell Offshore Inc.*, 815 F.3d at 628.

*Munsingwear* vacatur is warranted in circumstances like this. Indeed, this Court has vacated its opinions in analogous circumstances when post hoc mootness prevents the losing party from fully vindicating their appellate rights. *See Searle v. Allen*, 148 F.4th 1121, 1133 (9th Cir. 2025) (claim dismissed after it became moot through happenstance prior to ruling on the complaint); *Samma v. Dep’t of Def.*, 136 F.4th 1108, 1115 (D.C. Cir. 2025) (vacating district court judgment that became moot during pendency of appeal); *Arizona All. for Retired Americans v. Clean Elections USA*, No. 22-16689, 2023 WL 1097766, at \*1 (9th Cir. Jan. 26, 2023) (vacating district court decision that became moot due to happenstance during pendency of its appeal).

Here, just as in those cases, the government is equitably entitled to *Munsingwear* vacatur. *See NASD*, 488 F.3d at 1069. The government timely appealed the district court’s grant of interim relief under 5 U.S.C. § 705. ACMS No. 1; *Nat’l TPS All.*, 798 F. Supp. 3d at 1008. Further, the government promptly appealed the district court’s partial final judgment, so vacating the panel’s opinion will not prevent the parties from obtaining judicial review of the disputed issues. *See Nat’l TPS All.*, 2025 WL 4058572, at \*29-30, *appeal pending* No. 26-199 (9th Cir. filed Jan. 9, 2026).

Nor will vacatur of the district court’s decision affect the interim status quo. As Plaintiffs concede, the district court’s postponement order has already expired on its own terms and has no continuing real-world impacts. ACMS No. 38; *Nat’l TPS All.*, 798 F. Supp. 3d at 1015, 1040.

Vacatur is also warranted because it is in the public interest for litigants to have the opportunity to fully exhaust appellate review and not be bound in ongoing litigation by a precedent that the litigant was prevented from challenging through no fault of its own. *U.S. Bancorp Mortg. Co. v. Bonner Mall P’ship*, 513 U.S. 18, 27 (1994) (“the public interest is best served by granting [vacatur] relief when the demands of orderly procedure cannot be honored”) (internal citation and quotation omitted); *Donovan*, 70 F.4th at 1173.

There is no persuasive counterargument. “[M]ootness by happenstance provides sufficient reason to vacate.” *Donovan*, 70 F.4th at 1173 (quoting *U.S. Bancorp Mortg. Co.*, 513 U.S. at 25 n.3). This Court “declin[e]s to apply *Munsingwear* vacatur only when ‘the

*party seeking appellate relief fails to protect itself or is the cause of subsequent mootness.”* *Donovan*, 70 F.4th at 1173 (emphasis original; quoting *NASD*, 488 F.3d at 1069). Here, the government neither failed to protect itself from mootness nor caused the case to become moot on appeal. *See Donovan*, 70 F.4th at 1173.

First, the government did not fail to protect itself because it did not fail to take any action that could have prevented this appeal from becoming moot. *See Donovan*, 70 F.4th at 1173. The government timely appealed the district court’s grant of temporary relief and filed its opening brief, and the district court’s order expired before the Court resolved the government’s appeal. *See Donovan*, 70 F.4th at 1173; *Nat’l TPS All.*, 798 F. Supp. 3d at 1015, 1040; ACMS No. 29 (opening brief). Thus, the government did not fail to protect itself, which weighs in favor of vacatur. *See Donovan*, 70 F.4th at 1173.

Second, the government did not cause the mootness. *See Teter*, 125 F.4th at 1309. After securing a stay pending appeal, the government did agree to a joint briefing schedule that made Plaintiffs’ brief due after November 18, when the district court’s order was set to expire. ACMS No. 22. However, that agreement occurred long before the expiration of the district court’s order, the district court could have extended its order at the November 18 hearing, and the government had no control over the district court’s decision not to do so. *Nat’l TPS All.*, 798 F. Supp. 3d at 1015; ACMS No. 22. Thus, mootness occurred here as a matter of happenstance outside of the government’s control. *See U.S. Bancorp Mortg. Co.*, 513 U.S. at 25 & n.3 (“mootness by happenstance provides sufficient reason to vacate”).

**CONCLUSION**

Because all factors relevant to vacatur favor the government, this Court should follow its “normal practice,” *Teter*, 125 F.4th at 1309, by vacating the district court’s decision in *Nat’l TPS All. v. Noem*, 798 F. Supp. 3d 1008 (N.D. Cal. 2025), and dismissing this appeal as moot.

Respectfully submitted,

BRETT A. SHUMATE  
*Assistant Attorney General*

YAAKOV M. ROTH  
*Principal Deputy Assistant Attorney General*

DREW C. ENSIGN  
*Deputy Assistant Attorney General*

RUTH ANN MUELLER  
*Senior Litigation Counsel*

/s/ Jeffrey M. Hartman  
JEFFREY M. HARTMAN  
RACHEL P. BERMAN-VAPORIS  
ERIC SNYDERMAN  
LAUREN BRYANT  
CATHERINE ROSS  
LORI MACKENZIE  
DANIEL CAPPELLETTI  
ILANA KRAMER  
SHELBY WADE

*Trial Attorneys*  
Office of Immigration Litigation  
U.S. Department of Justice  
P.O. Box 878, Ben Franklin Station  
Washington, DC 20044  
Telephone: (202) 532-4404  
Email: Jeffrey.M.Hartman@usdoj.gov

**CERTIFICATE OF COMPLAINT**

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, 925 words in compliance with Ninth Circuit Rule 27-1(d).

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

**CERTIFICATE OF SERVICE**

I hereby certify that on February 6, 2026, counsel for Appellants electronically filed this Motion to Vacate 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  
JEFFREY M. HARTMAN  
Trial Attorney  
Office of Immigration Litigation