No. 25-4901

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

NATIONAL TPS ALLIANCE, *et al.*,
Plaintiffs-Appellees,
vs.
KRISTI NOEM, *et al.*,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, NO. 3:25-CV-05687-TLT
HONORABLE TRINA L. THOMPSON

RESPONSE IN OPPOSITION TO DEFENDANTS-APPELLANTS' MOTION TO VACATE THE JULY 31, 2025 DISTRICT COURT DECISION

Emilou MacLean (SBN 319071)
emaclean@aclunc.org
Michelle (Minju) Y. Cho (SBN 321939)
mcho@aclunc.org
Amanda Young (SBN 359753)
ayoung@aclunc.org
ACLU FOUNDATION
OF NORTHERN CALIFORNIA
39 Drumm Street
San Francisco, CA 94111-4805
Telephone: (415) 621-2493

Ahilan T. Arulanantham (SBN 237841)
Counsel of Record
arulanantham@law.ucla.edu
CENTER FOR IMMIGRATION LAW
AND POLICY, UCLA SCHOOL OF LAW
385 Charles E. Young Dr. East
Los Angeles, CA 90095
Telephone: (310) 825-1029

Attorneys for Plaintiffs-Appellees

Additional Counsel for Plaintiffs-Appellees

Diana Sánchez (SBN 338871)
DianaSanchez@aclusocal.org
Eva L. Bitrán (SBN 302081)
ebitran@aclusocal.org
ACLU FOUNDATION OF SOUTHERN CALIFORNIA
1313 West 8th Street
Los Angeles, CA 90017
Telephone: (213) 977-5236

Jessica Karp Bansal (SBN 277347)
jessica@ndlon.org
Lauren Michel Wilfong
lwilfong@ndlon.org
NATIONAL DAY LABORER
ORGANIZING NETWORK
1030 S. Arroyo Parkway, Suite 106
Pasadena, CA 91105
Telephone: (626) 214-5689

Erik Crew
ecrew@haitianbridge.org
HAITIAN BRIDGE ALLIANCE
4560 Alvarado Canyon Road, Suite 1H
San Diego, CA 92120
Telephone: (949) 603-7411

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Law Review Journals

Other Authorities

INTRODUCTION

The Court should dismiss Defendants' appeal as moot but decline to vacate the district court's postponement decision. Applying precedent from both the Supreme Court and this Court, the circumstances of this appeal compel denial of Defendants' motion to vacate for three independent reasons.

First, vacatur of the district court's postponement decision is improper as a matter of law under this Court's decision in *United States v. Arpaio*, 951 F.3d 1001, 1005 (9th Cir. 2020). The purpose of vacatur is to "prevent an unreviewable decision from spawning any legal consequences." *Id.* (citation omitted); *accord United States v. Munsingwear, Inc.*, 340 U.S. 36, 40 (1950). But here, the district court decision was a preliminary ruling that "can be given no future preclusive effect." *Arpaio*, 951 F.3d at 1005. As such, "the *Munsingwear* rule does not apply, and [the appellant] is not entitled to vacatur." *Id.*

Second, even if *Munsingwear* vacatur could apply, the Court should deny Defendants' motion because Defendants adopted a litigation strategy that ensured this appeal would become moot. Defendants carry the burden of demonstrating they are "equitabl[y] entitle[d]" to the "extraordinary remedy" of vacatur. *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 26 (1994). However, Defendants' voluntary action in mooting this

appeal "constitutes a failure of equity that makes the burden decisive" and disentitles Defendants to that remedy. *See id.* In such cases, the Court's "established procedure" is to decline to vacate and remand to the district court to determine whether it should vacate its own judgment. *See, e.g.*, *Dilley v. Gunn*, 64 F.3d 1365, 1370–71 (9th Cir. 1995) (collecting cases).

Finally, if the Court reaches the equities of vacatur, the Court should deny the motion because the equities weigh heavily against vacatur.

BACKGROUND

On July 31, 2025, the district court issued an order granting Plaintiffs' motion to postpone Defendants' terminations of Temporary Protected Status ("TPS") for Honduras, Nepal, and Nicaragua, under 5 U.S.C. § 705. ER-2–38. The district court ordered this preliminary relief in order "to preserve the status quo and until a hearing on the merits on November 18, 2025." ER-2. The district court further ordered that the postponement was "subject to extension at the November 18, 2025 hearing." *Id.*

In August 2025, Defendants filed the present appeal, challenging the district court's postponement order. ECF 1.[1] This Court initially set a schedule that would have completed the

[1] This brief cites to filings in this case as "ECF" and filings before the district court as "Dist. Ct. Dkt."

briefing by October 19, 2025. ECF 2. But on August 20, 2025, this Court granted Defendants' motion for a stay pending appeal, suspended the briefing schedule, and ordered that the parties submit "proposed schedules to govern further proceedings in this case" within seven days of the issuance of a decision in *National TPS Alliance v. Noem*, No. 25-2120. ECF 19 at 1. Nine days later, on August 29, a three-judge panel issued a decision in that case. *See Nat'l TPS All. v. Noem*, 150 F.4th 1000 (9th Cir. 2025).

Defendants filed a joint proposed briefing schedule under which briefing would not have been complete until January 9, 2026. *See* ECF 21. The Court adopted the proposed briefing schedule. ECF 22.[2]

In the district court, Defendants moved for summary judgment and Plaintiffs moved for partial summary judgment. *See* Dist. Ct. Dkt. 142, 144. The district court proceeded under the schedule it had set in July 2025, holding a hearing on November 18, 2025, where the parties argued their cross-motions for

[2] In October 2025, Defendants also moved for a stay of the briefing schedule based on the lapse in government appropriations, ECF 25, which Plaintiffs opposed. ECF 26. The Court denied Defendants' motion. ECF 28.

summary judgment. *See* Dist. Ct. Dkt. 187.[3]

Before this Court, on December 3, 2025, the parties jointly moved to hold this appeal in abeyance "pending the district court's ruling on the Motions for Summary Judgment, with all associated briefing deadlines stayed." ECF 36 at 1. Plaintiffs independently represented in that motion that, in their view, the appeal was moot and no further action was needed. ECF 36 at 1. The Court granted the joint motion and further ordered that the parties file a joint status report with a proposed schedule within seven days of the district court's ruling. ECF 37.

On December 31, 2025, the district court issued an order granting summary judgment for Plaintiffs, denying summary judgment for Defendants, and entering a partial final judgment for Plaintiffs. Dist. Ct. Dkt. 197 at 51–52. As ordered by the Court, *see* ECF 37, the parties filed a joint status report on January 7, 2026, where Defendants requested that the Court continue its stay of this appeal for thirty days. ECF. 38 at 2. Plaintiffs, for their part, reiterated their position that the appeal was moot and should be dismissed. *Id.* at 1–2. The next day, Defendants appealed the district court's partial final judgment. *See* Dist. Ct.

[3] The district court also heard argument on Defendants' motion to dismiss and Defendants' motion to exclude expert testimony. *See* Dist. Ct. Dkt. 197 at 1–3.

Dkt. 201; *National TPS Alliance v. Noem*, No. 26-199.

A month later, on February 6, Defendants filed the present motion requesting to dismiss the appeal as moot and vacate the district court's postponement decision. *See* ECF 40 at 2.

ARGUMENT

I. Vacatur is improper as a matter of law because the district court's postponement decision has no preclusive effect.

Defendants' motion to vacate must be denied under *Arpaio*. In *Arpaio*, the appellant (Sheriff Joe Arpaio from Arizona) had been found guilty of criminal contempt. While awaiting sentencing, the President pardoned him. He then asked the district court to vacate the verdict under *Munsingwear*. *See Arpaio*, 951 F.3d at 1006. The Court held that "Arpaio is not entitled to vacatur" and, in fact, the "*Munsingwear* rule does not apply" at all, because the district court's decision "can be given no future preclusive effect." *Id.* at 1005. The Court reasoned that vacatur is intended to "prevent an unreviewable decision from spawning any legal consequences." *Id.* (citation omitted); *accord Munsingwear*, 340 U.S. at 40. In Arpaio's case, however, "vacatur would not further the purposes of *Munsingwear*" because the district court's decision "ha[d] no legal consequences." *Arpaio*, 951 F.3d at 1005–06. The Court explained that the lack of final judgment "precludes the attachment of 'legal consequences.'" *Id.* at

1006–07 (citation omitted). Because Arpaio "cannot be harmed by a preliminary adjudication," the Court held, "we decline to apply the *Munsingwear* rule to this case." *Id.* at 1006 (cleaned up) (citation omitted).

In reaching that conclusion, *Arpaio* applied the general rule that "[t]he purpose underlying the vacatur rule in *Munsingwear* is to deny preclusive effect to a ruling that, due to mootness, was never subjected to meaningful appellate review." *United States v. Tapia-Marquez*, 361 F.3d 535, 538 (9th Cir. 2004) (citing *Munsingwear,* 340 U.S. at 41). Where vacatur would not further that purpose, it is improper as a threshold matter. *See Arpaio*, 951 F.3d at 1005–06.

Here, just as in *Arpaio*, the district court decision was a preliminary ruling that "can be given no future preclusive effect." *Id*. at 1005. Therefore, "the *Munsingwear* rule does not apply, and [Defendants are] not entitled to vacatur." *Id.*

This Court's precedent counseling against vacatur of preliminary decisions derives from a hornbook principle of civil litigation: that vacatur rules about "appeal[s] from *final* judgments need not carry over to *interlocutory* appeals." Wright & Miller, 13C Fed. Prac. & Proc. Juris. § 3533.10.3 (3d ed. 2025) (emphases added). This appeal presents the "easiest illustration" of that principle: In "appeals from injunction orders that have

expired or become moot[,] if the case remains alive in the district court, it is sufficient to dismiss the appeal without directing that the injunction order be vacated." *Id.* Other circuits also follow the rule from *Arpaio* (and Wright & Miller) by declining to vacate preliminary decisions. *See, e.g.*, *Radiant Glob. Logistics, Inc. v. Furstenau*, 951 F.3d 393, 397 (6th Cir. 2020) (holding vacatur is "inappropriate . . . when the mooted appeal is of a preliminary injunction in an ongoing litigation—as is the case here—because '[a] preliminary injunction has no preclusive effect—no formal effect at all—on the judge's decision whether to issue a permanent injunction'") (citation omitted); *Fleet Feet, Inc. v. NIKE, Inc.*, 986 F.3d 458, 466 (4th Cir. 2021) (same).

Although this appeal concerns a different form of temporary relief under § 705, these principles apply equally. *See, e.g.*, *Nat'l TPS All. v. Noem*, 150 F.4th at 1015 ("[P]ostponement of agency action under the APA is governed by the preliminary injunction factors"). The postponement decision, just like preliminary injunctions and other preliminary orders, lacks preclusive effect. *See Arpaio*, 951 F.3d at 1005–06. The district court's postponement decision constitutes a "preliminary estimate[] of the merits" that did "not foreclose further litigation in the same proceeding" and "lack[s] preclusive effect in other proceedings." Wright & Miller, 18A Fed. Prac. & Proc. Juris. § 4445 (3d ed. 2025). And while a *court*

of appeals' decision on a preliminary ruling can sometimes create binding precedent as "law of the circuit," *see Rodriguez v. Robbins*, 804 F.3d 1060, 1080 (9th Cir. 2015) (describing "law of the circuit" exception to the general rule that preliminary injunction decisions do not constitute law of the case), *rev'd on other grounds in Jennings v. Rodriguez*, 583 U.S. 281 (2018), the *district court's* decision creates no comparable binding precedential effect, *e.g.*, *United States v. Ensminger*, 567 F.3d 587, 591 (9th Cir. 2009).

Given the preliminary nature of the postponement decision, "[t]here is no preclusion and [thus] no reason for [the Court] to apply *Munsingwear* to this case." *Arpaio*, 951 F.3d at 1007.

Defendants' contention that this Court has vacated opinions in analogous cases, Mot. at 5, is borderline frivolous. *Searle v. Allen* directly undermines Defendants' entitlement to vacatur because, there, the plaintiff's constitutional claim became moot on appeal, but this Court did not vacate the district court's decision. *See Searle*, 148 F.4th 1121, 1133–34 (9th Cir. 2025). In *Samma v. Department of Defense*, the D.C. Circuit (not this Court) vacated a *summary judgment* decision "to avoid binding the government to a judgment it had no opportunity to challenge on the merits." 136 F.4th 1108, 1115 (D.C. Cir. 2025). Here, by contrast, Defendants seek vacatur of a *preliminary* ruling. They concede they will have every opportunity to challenge "the disputed issues" in their

appeal of the partial final judgment. Mot. at 6. Lastly, the Court's unpublished order in *Arizona Alliance for Retired Americans v. Clean Elections USA*, at best, reiterates the general proposition that the equities must support vacatur. *See* No. 22-16689, 2023 WL 1097766, at *1 (9th Cir. Jan. 26, 2023). But Defendants ignore their threshold failure: Defendants are "not entitled to vacatur" because "vacatur would not further the purposes of *Munsingwear*," meaning "the *Munsingwear* rule does not apply" at all. *See Arpaio*, 951 F.3d at 1005.

II. Vacatur is also improper because Defendants prevented appellate review through their own conduct.

An independent reason vacatur is improper is that mootness was not a result of "external 'happenstance.'" *United States v. Payton*, 593 F.3d 881, 885 (9th Cir. 2010) (citation omitted). Rather, Defendants took several steps in this litigation that contributed to mootness and "destroy[ed] [their] own right to appeal." *Dilley*, 64 F.3d at 1370 (citation omitted). In this situation, the Court has long held that an appellate court should not vacate a lower court opinion but rather remand to the district court to consider the issue in the first instance. *See id.*; *Scott v. Iron Workers Loc. 118*, 928 F.2d 863, 864–65 (9th Cir. 1991) (citing *Ringsby Truck Lines v. W. Conf. of Teamsters*, 686 F.2d 720, 722–23 (9th Cir. 1982)).

"[T]he conduct of the parties as litigants cannot be attributed

to 'happenstance.'" *Dilley*, 64 F.3d at 1372. As discussed above, the district court decision stated that its postponement relief would expire on November 18, 2025 (absent extension). ER-2. Had Defendants wished to protect their right to appeal the decision, they could have requested a briefing schedule that provided for judicial review before November 18, 2025. *See Donovan v. Vance*, 70 F.4th 1167, 1173 (9th Cir. 2023) (vacatur improper where appellant "fail[ed] to protect" themselves against mootness) (citation omitted). Instead, Defendants requested a briefing schedule that ensured the briefing would not be complete until months after the expiration date. ECF 21.[4]

Defendants took further action to guarantee mootness: Defendants were indisputably aware that a ruling on summary judgment could render this appeal moot. *See* Mot. at 5; *SEC v. Mount Vernon Mem'l Park*, 664 F.2d 1358, 1361–62 (9th Cir. 1982) (holding that district court's entry of final judgment moots preliminary injunction appeal). Nonetheless, after Defendants moved for summary judgment, they asked the Court to hold this appeal in abeyance until the district court ruled on the parties' cross-motions for summary judgment. ECF 36 at 1. This voluntary

[4] Defendants also attempted to stay the briefing schedule indefinitely, although the Court denied the motion. *See* ECF 25, 28.

conduct disentitles them to the relief they seek. S*ee Dilley*, 64 F.3d at 1371–72.

The obvious fact that Defendants had no control over the district court's actions do not make the events in this case "happenstance." *Cf.* Mot. at 6. This Court has already rejected such a proposition, holding that an adjudicating court's actions "can hardly amount to the kind of external 'happenstance' requiring vacatur in fairness to a party 'frustrated by the vagaries of circumstance.'" *Payton*, 593 F.3d at 885 (citation omitted).

"Vacatur is particularly *in*appropriate where mootness arises voluntarily[.]" *Redd v. Guerrero*, 122 F.4th 1203, 1206 (9th Cir. 2024) (Berzon, J. with respect to denial of en banc rehearing) (citing *U.S. Bancorp*, 513 U.S. at 25)); *see also Payton*, 593 F.3d at 885 (holding equity weighs "strongly" against vacatur where "mootness was brought about by the voluntary act of the party losing the decision now sought to be vacated").[5] This case is therefore unlike the decisions Defendants rely on where mootness

[5] Defendant's conduct "constitutes a failure of equity that makes the burden decisive, whatever [Plaintiffs'] share in the mooting of the case might have been." *U.S. Bancorp*, 513 U.S. at 26. It is Defendants' "burden, as the party seeking relief from the status quo . . . to demonstrate not merely equivalent responsibility for the mootness, but equitable entitlement to the extraordinary remedy of vacatur." *Id.* It is therefore of no moment that Plaintiffs agreed to the briefing schedule or to hold the appeal in abeyance.

occurred by external "happenstance," "not [the] appellants' doing." *See NASD Disp. Resol., Inc. v. Jud. Council of State of Cal.*, 488 F.3d 1065, 1070 (9th Cir. 2007) (*Munsingwear* vacatur proper where other decisions "resolved the controversy" in cases where the appellants "were not even parties"); *Donovan*, 70 F.4th at 1173 ("[T]he President revoked the challenged EOs while Plaintiffs' appeal was pending, a happenstance outside their control."); *Teter v. Lopez*, 125 F.4th 1301, 1307 (9th Cir. 2025) (en banc) (state legislature's enactment mooted plaintiff's claims).[6]

When, as here, "an appellant renders his appeal moot by his own act," the Court's "established procedure" is to remand "so the district court can decide whether to vacate its judgment" in the first instance. *See, e.g.*, *Scott*, 928 F.2d at 865; *Dilley*, 64 F.3d at 1371 (collecting cases); *Cammermeyer v. Perry*, 97 F.3d 1235, 1239 (9th Cir. 1996).[7]

---

[6] *Teter* is also distinguishable because this Court has adopted a unique rule of vacatur for mootness caused by a change in legislature. *See Chem. Producers & Distribs. Ass'n v. Helliker*, 463 F.3d 871, 880 (9th Cir. 2006) (explaining "[t]he rule of vacatur that [the Court] recognize[d] is for mootness caused by enactments of Congress and state legislatures," and declining to extend that rule to other circumstances); *Teter*, 125 F.4th at 1309 (citing *Chem. Producers*, 463 F.3d at 880).

[7] This approach was also contemplated by the Supreme Court in *Bancorp*, 513 U.S. at 29 ("[A] court of appeals presented with a request for vacatur of a district-court judgment may

On remand, the district court would "decide whether to vacate its judgment in light of 'the consequences and attendant hardships of dismissal or refusal to dismiss' and 'the competing values of finality of judgment and right to relitigation of unreviewed disputes.'" *Dilley*, 64 F.3d at 1371 (citation omitted). But, as explained above, the district court's preliminary decision is not a final judgment and lacks preclusive effect, making vacatur improper as a matter of law. *See Arpaio*, 951 F.3d at 1005–06. Accordingly, the proper course is for the Court to deny vacatur outright. *See id.*; *supra* at 5–9.

III. To the extent the Court reaches the equities, Defendants have failed to demonstrate equitable entitlement to the extraordinary remedy of vacatur.

Even if the Court concludes that *Munsingwear* applies and reaches the equities in the first instance, Defendants have failed to demonstrate that they are equitably entitled to the "extraordinary remedy" of vacatur. *U.S. Bancorp*, 513 U.S. at 26.

In *U.S. Bancorp*, the Supreme Court "rejected the notion that automatic vacatur was the 'established practice' *whenever* mootness prevents appellate review of a lower court decision." *Dilley*, 64 F.3d at 1370 (quoting *U.S. Bancorp*, 513 U.S. at 22–23);

---

remand the case with instructions that the district court consider the request, which it may do pursuant to Federal Rule of Civil Procedure 60(b).").

see also Pinson v. Carvajal, 69 F.4th 1059, 1065 (9th Cir. 2023) (noting the same). Instead, "*U.S. Bancorp* makes clear that the touchstone of vacatur is equity." *Dilley*, 64 F.3d at 1370; *see also In re Burrell*, 415 F.3d 994, 1000 (9th Cir. 2005) (same).[8]

Here, the equitable principles weigh decisively against vacatur. First, vacatur is improper because mootness was not a result of happenstance. As explained, Defendants themselves helped engender the mootness they complain of now. But in any case, the events that led to mootness were, far from any "external 'happenstance," a completely anticipated part of this litigation. *See Payton*, 593 F.3d at 883. Second, the public interest weighs heavily against vacatur. The district court's order is a valuable legal decision that addresses issues of outsized importance and that are certain to be relitigated. *See Bancorp*, 513 U.S. at 26. Moreover, vacatur would permit Defendants to use that remedy "as a refined form of collateral attack" that "disturb[s] the orderly operation of the federal judicial system." *Id.* at 27. Lastly, Defendants suffer no harm from the district court's decision.

[8] Defendants' cited cases likewise reiterate that "vacatur is not always appropriate when a case becomes moot on appeal." *NASD Disp. Resol., Inc.*, 488 F.3d at 1068; *see also Teter*, 125 F.4th at 1309 (noting the "equitable tradition of vacatur") (citing *U.S. Bancorp*, 513 U.S. at 25); *Donovan*, 70 F.4th at 1173 (reviewing "equitable principles").

A. Equity weighs against vacatur because this appeal did not become moot by happenstance.

"[T]he reference to 'happenstance' in *Munsingwear* must be understood as an allusion to [the] equitable tradition of vacatur." *Dilley*, 64 F.3d at 1370 (quoting *U.S. Bancorp*, 513 U.S. at 25). For instance, "[a] party who seeks review of the merits of an adverse ruling, but is frustrated by the *vagaries of circumstance*, ought not in fairness be forced to acquiesce in the judgment." *Id.* (emphasis added) (citation omitted). However, "the equitable principles weighing in favor of vacatur in these situations cut the other direction where the appellant by his own act prevents appellate review of the adverse judgment." *Id.* As discussed, Defendants took several actions that led to this appeal becoming moot. *See supra* at 9–13.

But regardless of how the Court construes Defendants' conduct, vacatur is not warranted because this appeal did not become moot by the "vagaries of circumstance" or "happenstance," *U.S. Bancorp*, 513 U.S. at 25. This appeal became moot by fully anticipated and commonplace litigation events—namely, the termination of the postponement relief and the entry of partial final judgment. *See, e.g.*, *Mount Vernon Mem'l Park*, 664 F.2d at 1361–62; *Planned Parenthood Ariz. Inc. v. Betlach*, 727 F.3d 960, 963 (9th Cir. 2013). These events were contemplated from the

outset and inherent in the nature of the relief. *See* ER-2; 5 U.S.C. § 705 (describing postponement as relief "pending the conclusion" of proceedings).

Because the appeal became moot due to anticipated events, not external happenstance, the equities weigh against vacatur. *See Payton*, 593 F.3d at 885 (holding that mootness "precipitated" by the court's actions is not an "external 'happenstance'" requiring vacatur).

B. The public interest also weighs heavily against vacatur.

The district court's postponement decision is "valuable to the legal community as a whole" and "should stand unless a court concludes that the public interest would be served by a vacatur." *Bancorp*, 513 U.S. at 26; *accord Dickens v. Ryan*, 744 F.3d 1147, 1148 (9th Cir. 2014). And, to the contrary, the public interest would be served by denying vacatur. *See Bancorp*, 513 U.S. at 26 (instructing courts "must also take account of the public interest").

The "district-court opinion represents a substantial investment of public resources," which, in turn, may provide "useful precedent that eases the task of deciding other cases." *See* Wright & Miller, 13C Fed. Prac. & Proc. Juris. § 3533.10.2 (3d ed. 2025) (discussing "the presumption against vacating the lower-court judgment" due to "the public benefits of judicial

lawmaking"); *accord Freedom From Religion Found., Inc. v. Abbott*, 58 F.4th 824, 837 (5th Cir. 2023) (holding that "like all judicial precedents, the district court's judgment is valuable 'to the legal community as a whole'") (quoting *Bancorp*, 513 U.S. at 26); *In re Mem'l Hosp. of Iowa Cnty., Inc.*, 862 F.2d 1299, 1302 (7th Cir. 1988) (explaining district court "decisions have persuasive force as precedent that may save other judges and litigants time in future cases"). Although "district courts do not have precedential force over each other, it is common for courts to look to and rely on other district courts' decisions for reasoning and analysis." Robert Scott Lewis, *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership: Settlement Conditioned on Vacatur?*, 47 ALA. L. REV. 883, 887 (1996).

Moreover, the strong likelihood that the relevant issues will be relitigated "counsels strongly . . . against the withdrawal of that opinion." *Armster v. U.S. Dist. Ct. for Cent. Dist. of Cal.*, 806 F.2d 1347, 1360 (9th Cir. 1986). In fact, the district court's decision has already been cited by five other courts and five secondary sources.[9] The district court's "resolution of such

[9] *See Hernandez Lazo v. Noem*, No. 2:25-CV-6639 (NJC), 2026 WL 303430, at *8 (E.D.N.Y. Feb. 4, 2026); *Doe v. Noem*, No. 25 C 15483, 2026 WL 184544, at *22 (N.D. Ill. Jan. 23, 2026); *J.G. M.F. v. Wofford*, No. 1:26-CV-00068-DJC-CKD, 2026 WL 88985, at

complex issues through litigation involves costs to society which are wasted if [the] judicial decision is vacated," especially because the Defendants' "resources devoted to litigation are obtained through tax revenue." Robert P. Deyling, *Dangerous Precedent*, 27 J. MARSHALL L. REV. 689, 693–94 (1994).

The district court's decision is also particularly valuable because it provides guidance on crucial issues that continue to be relitigated across the country. *Cf. United States v. Perez-Garcia*, 96 F.4th 1166, 1174 (9th Cir. 2024) (holding it was against the public interest to "deprive the legal community as a whole of 'the benefit of a[] . . . court decision that adjudicated properly presented questions," especially where the appeal raised claims that were "common"); *Dickens*, 744 F.3d at 1148 (concluding it

---

*1 (E.D. Cal. Jan. 12, 2026); *CASA, Inc. v. Noem*, No. CV 25-1484-TDC, 2025 WL 3514378, at *4 (D. Md. Dec. 8, 2025); *Doe v. Trump*, 796 F. Supp. 3d 599, 603 (N.D. Cal. 2025); Jack Goldsmith, *Interim Orders, the Presidency, and Judicial Supremacy*, 139 Harv. L. Rev. 86, 104 (2025); Lucas Guttentag, *Abusing Discretion: An Interview with Professor Lucas Guttentag on the Trump Administration's Initial Wave of Immigration Policies*, 30 BERKELEY J. CRIM. L. 274, 302 (2025); *Recent developments in temporary protected status (TPS)*, IMMIGR. LEGIS. & EXEC. ACTION HANDBOOK § 2:17 (2025); *Appeals Court Stays Postponement of TPS Terminations for Honduras, Nepal, and Nicaragua*, 27 No. 16 IMMIGR. BUS. NEWS & COMMENT NL 15 (Sep. 1, 2025); *In Response to Court Stay, DHS Extends Timeline to End TPS for Nepal, Honduras, and Nicaragua*, 102 No. 33 INTERPRETER RELEASES Art. 6 (Aug. 25, 2025).

was improper "to undo th[e] precedent and force future panels to duplicate [the court's] efforts by re-deciding issues [which were] already resolved"). The decision can provide persuasive force on the question of DHS's authority over the TPS designations for Lebanon, El Salvador, Sudan, and Ukraine, all of which remain in place as of this filing.

Because TPS holders have repeatedly challenged the termination of TPS designations,[10] the public interest is best served by preserving a "substantial body of judicial precedents." *Moore v. Thurston*, 928 F.3d 753, 758–59 (8th Cir. 2019) (denying vacatur of district court decision where plaintiffs "repeatedly" challenged ballot access requirements, reasoning "the public interest [was] best served by a substantial body of judicial precedents"); *see also Armster*, 806 F.2d at 1360 (discussing the "strong public interest" in "address[ing] the appropriateness of the Government's actions" where the cases raises "important" issues")

[10] *See, e.g.*, *Nat'l TPS All. v. Noem*, No. 25-5724, 2026 WL 226573 (9th Cir. Jan. 28, 2026); *Haitian Evangelical Clery Ass'n v. Trump*, Case No. 1:25-cv-01464 (E.D.N.Y. March 14, 2025); *Haitian Ams. United Inc. v. Trump*, Case No. 1:25-cv-10498 (D. Mass. March 3, 2025); *CASA, Inc. v. Noem*, Case No. 8:25-cv-00525 (D. Md. Feb. 20, 2025); *CASA, Inc. v. Noem*, Case No. 8:25-cv-01484 (D. Md. May 7, 2025); *Miot v. Trump*, Case No. 1:25-cv-02471 (D.C.C. July 30, 2025); *Dahlia Doe v. Noem*, Case No. 1:25-cv-08686 (S.D.N.Y. Oct. 20, 2025).

(cleaned up) (citation omitted).[11]

Defendants may argue that vacatur would not undermine the public interest because it would not erase the district court's opinion from the Federal Reporter. Vacating the opinion, however, would "cloud[] and diminish[] the significance" of that opinion. *In re Mem'l Hosp.*, 862 F.2d at 1302; *see also* Jill E. Fisch, *Rewriting History*, 76 CORNELL L. REV. 589, 630 (1991) (explaining that "[a]lthough a vacated decision may remain in the case reporters, its precedential value is extremely limited" because of the difficulty in "determining the basis" for the vacatur). Judicial precedent "should stand unless a court concludes that the public interest would be served by a vacatur," *Bancorp*, 513 U.S. at 26 (citation omitted). And here, Defendants identify no public interest that would be served by vacatur.

Indeed, allowing Defendants "to employ the secondary remedy of vacatur as a refined form of collateral attack," would "disturb the orderly operation of the federal judicial system" and undermine the public interest. *See Bancorp*, 513 U.S. at 27; *accord Bain v. Cal. Tchrs. Ass'n*, 891 F.3d 1206, 1220 n.9 (9th Cir. 2018).

---

[11] In addition to other courts, the district court decision can provide guidance to the agencies involved in the challenged actions. *See Black Mesa Water Coal. v. Jewell*, 797 F.3d 1185 (9th Cir. 2015).

Defendants filed this appeal and "us[ed] considerable public resources in the process," only to later adopt a litigation strategy which guaranteed it would become moot. *Perez-Garcia*, 96 F.4th at 1174. Permitting Defendants to benefit from such behavior "would not serve the interests of justice or judicial economy." *Id.*

Defendants fail to contend with these considerations. Defendants simply claim "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." Mot. at 6. This conclusory assertion distorts the *Munsingwear* rule. As explained above, that rule does not counsel vacatur any time a litigant loses the ability to exhaust appellate review, regardless of the nature of the underlying ruling and the reasons for mootness.

Defendants are also wrong on the facts. The district court's postponement order does not bind Defendants as it lacks preclusive effect and is not binding precedent. *See supra* at 5–9. Defendants concede elsewhere that they maintain the opportunity for "judicial review of the disputed issues" through their appeal of the partial final judgment. Mot. at 5. And far from being faultless, Defendants took actions that led to this appeal becoming moot. *See supra* at 9–13. Where those factors are present, vacatur is not appropriate.

C. On the other hand, Defendants cannot point to any prejudice in letting the decision stand.

Despite the burden to show equitable entitlement to vacatur, Defendants concede that the district court decision has no impact on the "interim status quo" and "no continuing real-world impacts." Mot. at 6. As discussed, the decision has no preclusive or binding effect on Defendants. *See supra* at 5–9. And Defendants are actively seeking judicial review of the "disputed issues" through their appeal of the final judgment. *See* Mot. at 6; *Redd*, 122 F.4th at 1205 (holding there was no prejudice where the appellant had recourse to challenge the decision's holding in future cases). Even before the appeal became moot, the decision had no effect on Defendants' conduct because it had been stayed by this Court. ECF 19**.** Such "lack of prejudice weighs heavily in favor of denying the motion." *Dickens*, 744 F.3d at 1148.

CONCLUSION

For the foregoing reasons, this Court should dismiss Defendants' appeal as moot but deny their request to vacate the district court's decision.

Dated: March 3, 2026

Respectfully submitted,

By: */s/ Diana Sánchez*

Diana Sánchez (SBN 338871)
DianaSanchez@aclusocal.org
Eva L. Bitrán (SBN 302081)
ebitran@aclusocal.org
ACLU FOUNDATION OF SOUTHERN CALIFORNIA
1313 West 8th Street
Los Angeles, CA 90017
Telephone: (213) 977-5236

Emilou MacLean (SBN 319071)
emaclean@aclunc.org
Michelle (Minju) Y. Cho (SBN 321939)
mcho@aclunc.org
Amanda Young (SBN 359753)
ayoung@aclunc.org
ACLU FOUNDATION OF NORTHERN CALIFORNIA
39 Drumm Street
San Francisco, CA 94111-4805
Telephone: (415) 621-2493

Ahilan T. Arulanantham (SBN 237841)
Counsel of Record
arulanantham@law.ucla.edu
CENTER FOR IMMIGRATION LAW AND POLICY, UCLA SCHOOL OF LAW
385 Charles E. Young Dr. East
Los Angeles, CA 90095
Telephone: (310) 825-1029

Jessica Karp Bansal (SBN 277347)
jessica@ndlon.org
Lauren Michel Wilfong
lwilfong@ndlon.org
NATIONAL DAY LABORER
ORGANIZING NETWORK
1030 S. Arroyo Parkway, Suite 106
Pasadena, CA 91105
Telephone: (626) 214-5689

Erik Crew
ecrew@haitianbridge.org
HAITIAN BRIDGE ALLIANCE
4560 Alvarado Canyon Road, 1H
San Diego, CA 92120
Telephone: (949) 603-7411

Attorneys for Plaintiffs-Appellees

CERTIFICATE OF COMPLIANCE

This brief complies with Rule 27(d)(2) because it does not exceed 5,200 words, excluding the parts of the document exempted by Rule 32(f) of the Federal Rules of Appellate Procedure. The brief also complies with the typeface and typestyle requirements of Rules 32(a)(5)–(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

Dated: March 3, 2026

Respectfully submitted,

By: */s/Diana Sánchez*
Diana Sánchez