

No. 25-4901

**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-05687-TLT

**DEFENDANTS' REPLY IN SUPPORT OF THE GOVERNMENT'S
MOTION TO VACATE THE JULY 31 DISTRICT COURT DECISION**

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ARGUMENT

All agree that this appeal must be dismissed as moot. Opp. at 1, 5. Additionally, and contrary to Plaintiffs' assertions, vacatur of the district court's interim relief order under *United States v. Munsingwear*, 340 U.S. 36, 39 (1950), is warranted. See *National TPS Alliance v. Noem*, 798 F. Supp.3d 1008 (N.D. Cal. 2025) (interim relief order). The challenged order became moot on appeal through happenstance prior to the resolution of the government's appeal. See *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). Plaintiffs' efforts to evade the result are unavailing and simply underscore the government's equitable entitlement to vacatur.

To begin, Plaintiffs are mistaken that *Munsingwear* vacatur is unavailable where a district court's final judgment moots an interlocutory appeal, as the Supreme Court has employed *Munsingwear* to vacate a Court of Appeals opinion that addressed an injunction that became moot during following a final judgment, observing that "vacatur of the prior judgment is . . . appropriate to clear the path for future relitigation of the issues between the parties and to eliminate a judgment, review of which was prevented through happenstance." *Harper ex rel. Harper v. Poway Unified Sch. Dist.*, 549 U.S. 1262, 1262 (2007) (alterations and quotation omitted); see *Mayorkas v. Innovation L. Lab*, 141 S. Ct. 2842 (2021) (remanding to the Ninth Circuit with instructions to vacate as moot the district court's order granting a preliminary injunction); *Innovation L. Lab v. Mayorkas*, 5

F.4th 1099, 1100 (9th Cir. 2021) (vacating prior decision as moot and instructing the district court to vacate as moot its decision granting a preliminary injunction); *see also Chicago Headline Club v. Noem*, No. 25-3023, —F.4th. —, 2026 WL 622677, at *5 (7th Cir. Mar. 5, 2026) (vacating district court’s order granting a preliminary injunction and explaining that “[i]t is especially appropriate for appellate courts to exercise [the vacatur] power when supervising the district courts and ensuring that an order does not spawn unfair, adverse legal consequences.”) (citations omitted); *Smith v. Edwards*, 88 F.4th 1119, 1127 (5th Cir. 2023) (vacating a district court’s preliminary injunction order after the appeal became moot) (citing, *inter alia*, *U.S. Bancorp Mortg. Co. v. Bonner Mall*, 513 U.S. 18 (1994)); *United States v. Sec’y, Fla. Dep’t of Corr.*, 778 F.3d 1223, 1230 (11th Cir. 2015) (same); *Haley v. Pataki*, 60 F.3d 137, 142 (2d Cir. 1995) (similar; vacating district court preliminary injunction where the order became moot on appeal and the Governor voluntarily complied with the order); *Opp.* at 5.

Plaintiffs’ reliance on *United States v. Arpaio*, 951 F.3d 1001, 1005 (9th Cir. 2020), is misplaced. *Opp.* 5-9. In that case, Arpaio sought to vacate the district court’s finding that he was guilty of criminal contempt after the district court dismissed the case prior to sentencing due to Arpaio’s receipt of a presidential pardon. *Id.* at 1003-4. The Court found that the district court’s dismissal in this posture meant that there was no final judgment of conviction in Arpaio’s case, which precluded any legal consequences, criminal or civil, as a result of the district court’s pre-pardon finding of guilt. *Id.* at 1004, 1006. Since the purpose of *Munsingwear* vacatur was to prevent “an unreviewable

decision from spawning any legal consequences, so that no party is harmed by . . . a ‘preliminary’ adjudication,” the Court concluded vacatur was inappropriate where the order finding Arpaio guilty could not harm him in the future. *Id.* at 1005 (quoting *Camreta v. Greene*, 563 U.S. 692, 713 (2011)).

Arpaio is thus entirely inapt. Here, the district court entered a published decision providing universal preliminary relief, *Nat’l TPS All. v. Noem*, 798 F. Supp. 3d 1008 (N.D. Cal. 2025), containing findings of fact and conclusions of law that impact (and prejudice) the government’s appeal of its partial final judgment and any future litigation before the district court with respect to the remaining issues. *See* Case No. 26-199, ACMS Dkt. 1; *Nat’l TPS All. v. Noem*, No. 25-cv-05687-TLT, 2025 WL 4058572 (N.D. Cal. Dec. 31, 2025). Underscoring this, Plaintiffs concede that the district court’s order “may provide useful precedent that eases the task of deciding other cases” and proclaim its usefulness in providing “guidance on crucial issues that continue to be relitigated across the country.” Opp. 16-18 & n.9. The district court’s challenged order has been relied on by other district courts to interfere with the Secretary’s authority in other TPS litigation. *See Hernandez Lazo v. Noem*, No. 2:25-CV-6639 (NJC), 2026 WL 303430, at *8 (E.D.N.Y. Feb. 4, 2026) (citing the district court’s interim decision and requiring the parties to address its relevance to that proceeding); *Doe v. Noem*, No. 25 C 15483, 2026 WL 184544, at *23 (N.D. Ill. Jan. 23, 2026) (relying on the district court’s interim decision in finding that the Secretary did not explain her change in position on orderly transition periods for TPS holders); *CASA, Inc. v. Noem*, No. CV 25-1484-TDC, 2025

WL 3514378, at *4 (D. Md. Dec. 8, 2025) (citing the district court’s interim decision as support for applying the *Arlington Heights* framework to challenges to TPS terminations); *Doe v. Trump*, 796 F. Supp. 3d 599, 603 (N.D. Cal. 2025) (relying in part on the district court’s interim decision in holding that the government was not likely to succeed). Those are precisely the types of concrete and adverse “legal consequences” that *Munsingwear* is designed to alleviate. 340 U.S. at 41.

Plaintiffs are equally mistaken in their argument that the government’s own conduct prevented appellate review. Opp. 9-13. No voluntary act by the government caused mootness; instead, it was the happenstance that the district court’s interim relief – that could have been extended – expired on its own terms, and the district court’s act of entering partial final judgment. *See Dilley v. Gunn*, 64 F.3d 1365, 1371 (9th Cir. 1995) (“The relevant inquiry ‘is whether the party seeking relief from the judgment below caused the mootness by voluntary action.’”) (quoting *U.S. Bancorp Mortg. Co.*, 513 U.S. at 24). There was no reason to expect that Plaintiffs or the district court would permit the interim relief to expire, and the government was not required to seek an expedited briefing schedule based on the *possible* expiration of the district court’s interim decision on its own term to protect its appellate rights. *See Fialka-Feldman v. Oakland Univ. Bd. of Trustees*, 639 F.3d 711, 717 (6th Cir. 2011) (explaining that “failure to expedite a case is not the kind of fault or unilateral action to which the cases refer” and noting that the “norm in appellate litigation is *not* to accelerate appeals, making it strange to penalize the [party seeking *Munsingwear* vacatur] for doing what most litigants do”). Nor does

the government's agreement to a joint briefing schedule that *Plaintiffs'* counsel proposed undermine its equitable entitlement to vacatur, especially because the government actually filed its principal brief on appeal. ACMS No. 29 (opening brief filed on Oct. 20, 2025); Ex. A, Emails Regarding Briefing Schedule. Indeed, the discussion between the parties on the briefing schedule shows that Plaintiffs proposed the schedule that set the Government's brief due on October 20, 2025, and their brief due on December 12, 2025. *Id.* Plaintiffs also insisted on language permitting their right to seek further modification of the schedule. *Id.* Thus, even if the government had insisted on a briefing schedule that would have completed prior to November 18, it could not have ensured completion by that date given Plaintiffs' ability to amend the schedule at any time. Ex. A at 1.

Nor does the December 3, 2025 joint stipulation of the parties constitute an act by the government to prevent appellate review. This appeal was *already* moot at that time; as explained in the joint stipulation, the district court's interim order had expired by its own terms. ACMS No. 36. The district court's later entry of partial final judgment merely doubly mooted this appeal. Thus, this appeal became moot as a result of happenstance—the expiration of the district court's interim order by its own terms when it could easily have been extended—and not any voluntary act by the government.

Accordingly, vacatur is warranted. *See U.S. Bancorp Mortg. Co.*, 513 U.S. at 25 & n.3 (“mootness by happenstance provides sufficient reason to vacate”).¹

Finally, contrary to Plaintiffs’ arguments, all of the relevant equitable factors demonstrate the government’s equitable entitlement to vacatur. Again, the government did not cause mootness and 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 district court’s published opinion on interim relief 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). Thus, the government did not fail to protect itself and did not cause the mootness, both of which weigh in favor of vacatur. *See Donovan*, 70 F.4th at 1173.

The public interest also weighs heavily in favor of vacatur because aside from the usual public interest in allowing litigants the opportunity to fully exhaust appellate review, this interest is especially weighty here where Plaintiffs proclaim the importance of a district court decision that the government was prevented from challenging through no fault of its own. *U.S. Bancorp Mortg. Co.*, 513 U.S. at 27 (“the public interest

¹ The government mistakenly cited *Searle v. Allen*, 148 F.4th 1121 (9th Cir. 2025) to support this Court’s history of vacatur when a case became moot through happenstance. Gov’t Mot. at 5. As Plaintiffs correctly note, the Court did not vacate a district court decision in *Searle*, it merely held it lacked jurisdiction over a claim that became moot. *Id.* at 1133-34.

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; Opp. 16-18.

CONCLUSION

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”). Because all factors relevant to vacatur favor the government, the Court should follow its “normal practice” by vacating the district court’s judgment and dismissing this appeal as moot. *Teter*, 125 F.4th at 1309.

Respectfully submitted,

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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 1,724 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 March 10, 2026, counsel for Appellants electronically filed this Reply 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

Exhibit A

From: [Hartman, Jeffrey M. \(CIV\)](#)
To: [Arulanantham, Ahilan](#); [Weiland, William H. \(CIV\)](#)
Cc: [Emi MacLean](#); [Jessica Bansal Contact](#)
Subject: Re: NTPSA II - Scheduling at CA9
Date: Thursday, September 4, 2025 6:58:05 PM

No problem, Ahilan. I will add that proposed language and get this on file in an hour or so.

Best,
Jeff

From: Arulanantham, Ahilan <arulanantham@law.ucla.edu>
Sent: Thursday, September 4, 2025 6:10:13 PM
To: Hartman, Jeffrey M. (CIV) <Jeffrey.M.Hartman@usdoj.gov>; Weiland, William H. (CIV) <William.H.Weiland@usdoj.gov>
Cc: Emi MacLean <emaclean@aclunc.org>; Jessica Bansal Contact <jessica@ndlon.org>
Subject: [EXTERNAL] Re: NTPSA II - Scheduling at CA9

So sorry Jeffrey. This got lost.

We would like you to add this language at the end of the filing:

“Plaintiffs reserve the right to seek modification of this schedule should proceedings in the district court become delayed, or for other reasons not presently anticipated.”

With that insertion you have our authorization to file.

Take care,
ahilan

From: Hartman, Jeffrey M. (CIV) <Jeffrey.M.Hartman@usdoj.gov>
Date: Thursday, September 4, 2025 at 2:55 PM
To: Weiland, William H. (CIV) <William.H.Weiland@usdoj.gov>, Arulanantham, Ahilan <arulanantham@law.ucla.edu>
Cc: Emi MacLean <emaclean@aclunc.org>, Jessica Bansal Contact <jessica@ndlon.org>
Subject: Re: NTPSA II - Scheduling at CA9

Good Afternoon, Ahilan,

I am just following up on Will's email about filing the proposed briefing schedule in National TPS Alliance v. Norm (9th Cir. 25-4901). If our draft pleading with the briefing schedule that you proposed looks ok, please let us know and I can file it shortly. Alternatively, if you have no substantive changes, please feel free to shift the signature footnote and update the certificates of service and compliance and file with my signature. The government is amenable to your proposed briefing schedule.

Sincerely,
Jeff

From: Weiland, William H. (CIV) <William.H.Weiland@usdoj.gov>
Sent: Thursday, September 4, 2025 12:18 PM
To: Arulanantham, Ahilan <arulanantham@law.ucla.edu>
Cc: Emi MacLean <emaclean@aclunc.org>; Jessica Bansal Contact <jessica@ndlon.org>; Hartman, Jeffrey M. (CIV) <Jeffrey.M.Hartman@usdoj.gov>
Subject: RE: NTPSA II - Scheduling at CA9

Ahilan,

Good morning. Defendants agree, and have drafted the attached for filing with the court. If you approve, we will file today.

Best,
Will

William H. Weiland
(202)305-0770

From: Arulanantham, Ahilan <arulanantham@law.ucla.edu>
Sent: Thursday, September 4, 2025 1:57 AM
To: Weiland, William H. (CIV) <William.H.Weiland@usdoj.gov>
Cc: Emi MacLean <emaclean@aclunc.org>; Jessica Bansal Contact <jessica@ndlon.org>
Subject: [EXTERNAL] NTPSA II - Scheduling at CA9

Dear Will,

I hope you are well. The Ninth Circuit in NTPSA II ordered us to submit a scheduling proposal “within seven days” of the decision in NTPSA I. We think that means we have to submit the proposal today (Sept 4).

In hopes of reaching agreement on a schedule that would not have to be modified further (with one caveat mentioned below), what do you think about:

Govt Opening Brief: 10/20/25

Plaintiffs’ Response Brief: 12/12/25

Govt Reply Brief: 1/9/26

We propose this in part because we don’t think this particular ruling will determine the speed at which protections might be restored to our clients, and therefore we see no need to force a huge amount of work over the holidays (our brief comes over Thanksgiving, and your reply over Christmas/New Year’s). If that changes due to other circumstances, we would reserve the right to seek modification.

Let us know if this is agreeable to you.

Take care,
ahilan

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