No. 24A

In the Supreme Court of the United States

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

v.

KILMAR ARMANDO ABREGO GARCIA, ET AL.

APPLICATION TO VACATE THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY

D. JOHN SAUER
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

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PARTIES TO THE PROCEEDING

Applicants (defendants-appellants below) are Kristi Noem, Secretary of Homeland Security, in her official capacity; Todd Lyons, Acting Director, U.S. Immigration and Customs Enforcement (ICE), in his official capacity; Kenneth Genalo, Acting Executive Associate Director, ICE Enforcement and Removal Operations, in his official capacity; Nikita Baker, ICE Baltimore Field Office Director, in her official capacity; Pamela Bondi, Attorney General of the United States, in her official capacity; and Marco Rubio, Secretary of State, in his official capacity.

Respondents (plaintiffs-appellees below) are Kilmar Armando Abrego Garcia; Jennifer Stefania Vasquez Sura; and A.A.V., a minor, by and through his next friend and mother, Jennifer Vasquez Sura.

RELATED PROCEEDINGS

United States District Court (D. Md.):

Abrego Garcia v. *Noem*, No. 25-cv-951 (Apr. 4, 2025)

United States Court of Appeals (4th Cir.):

Abrego Garcia v. *Noem*, No. 25-1345

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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, Secretary of Homeland Security, et al.—respectfully files this application to vacate the injunction issued by the U.S. District Court for the District of Maryland (App., *infra*, 78a-80a). In addition, the Solicitor General respectfully requests an immediate administrative stay of the district court's order, which requires the government's immediate action by 11:59 p.m. tonight, pending this Court's consideration of this application.

On Friday afternoon, a federal district judge in Maryland ordered unprecedented relief: dictating to the United States that it must not only negotiate with a foreign country to return an enemy alien on foreign soil, but also succeed by 11:59 p.m. tonight. Complicating the negotiations further, the alien is no ordinary individual, but rather a member of a designated foreign terrorist organization, MS-13, that the government has determined engages in "terrorist activity" or "terrorism"—or "retains the capability and intent to engage in terrorist activity or terrorism"—that

"threatens the security of United States nationals or the national security of the United States." 8 U.S.C. 1189(a)(1)(B) and (C); see *Specially Designated Global Terrorist Designations* (Feb. 6, 2025), 90 Fed. Reg. 10,030 (Feb. 20, 2025). The order compels the government to allow Kilmar Armando Abrego Garcia to enter the United States on demand, or suffer the judicial consequences.

Even amidst a deluge of unlawful injunctions, this order is remarkable. Even respondents did not ask the district court to force the United States to persuade El Salvador to release Abrego Garcia—a native of El Salvador detained in El Salvador—on a judicially mandated clock. For good reason: the Constitution charges the President, not federal district courts, with the conduct of foreign diplomacy and protecting the Nation against foreign terrorists, including by effectuating their removal. And this order sets the United States up for failure. The United States cannot guarantee success in sensitive international negotiations in advance, least of all when a court imposes an absurdly compressed, mandatory deadline that vastly complicates the give-and-take of foreign-relations negotiations. The United States does not control the sovereign nation of El Salvador, nor can it compel El Salvador to follow a federal judge's bidding. The Constitution vests the President with control over foreign negotiations so that the United States speaks with one voice, not so that the President's central Article II prerogatives can give way to district-court diplomacy. If this precedent stands, other district courts could order the United States to successfully negotiate the return of other removed aliens anywhere in the world by close of business. Under that logic, district courts would effectively have extraterritorial jurisdiction over the United States' diplomatic relations with the whole world.

Compounding these errors, Congress has already made clear that the district court here lacked authority to grant any relief at all—let alone the arbitrary, infeasi-

ble relief it ordered. District courts lack jurisdiction under 8 U.S.C. 1252(g) to "hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to * * * execute removal orders against any alien under" the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, except as otherwise provided. Yet the district court here allowed a collateral challenge to Abrego Garcia's removal that Congress foreclosed.

Respondents emphasize that Abrego Garcia was improperly removed to El Salvador because, although he could be removed anywhere else in the world under a 2019 order of removal, that order granted statutory withholding of removal to El Salvador alone. But, while the United States concedes that removal to El Salvador was an administrative error, see App., *infra*, 60a, that does not license district courts to seize control over foreign relations, treat the Executive Branch as a subordinate diplomat, and demand that the United States let a member of a foreign terrorist organization into America tonight. For starters, because MS-13 members such as Abrego Garcia have since been designated members of a foreign terrorist organization, they are no longer eligible for withholding of removal under 8 U.S.C. 1231(b)(3)(B). Further, the United States has ensured that aliens removed to CECOT in El Salvador will not be tortured, and it would not have removed any alien to El Salvador for such detention if doing so would violate its obligations under the Convention Against Torture. Moreover, respondents treat the relief here as "routine," Resp. C.A. Stay Opp. 1, but that relief goes far beyond merely facilitating an alien's return, which is what courts have ordered in other cases. This order—and its demand to accomplish sensitive foreign negotiations post-haste, and effectuate Abrego Garcia's return tonight—is unprecedented and indefensible.

In one respect, at least, this order is nothing new. It is the latest in a litany of injunctions or temporary restraining orders from the same handful of district courts that demand immediate or near-immediate compliance, on absurdly short deadlines. These orders virtually guarantee that decisions on sensitive, weighty, and vigorously disputed issues will be made after "barebones briefing, no argument, and scarce time for reflection." *Department of Educ.* v. *California*, No. 24A910, 2025 WL 1008354, at *2 (U.S. Apr. 4, 2025) (Kagan, J, dissenting).[1] Such orders unduly burden the parties and appellate courts, and they obstruct meaningful and orderly appellate review.

The Fourth Circuit has not yet ruled on the government's request for that court to issue an administrative stay or a stay pending appeal by 5:00 p.m. yesterday. In light of that extraordinary circumstance, and to allow this Court time to consider the issues this application raises before the district court's deadline of 11:59 p.m. tonight, the government is filing this application now and respectfully requests, at a minimum, an immediate administrative stay. See Sup. Ct. R. 23.3.

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[1] See, *e.g.*, *D.V.D.* v. *DHS*, No. 25-cv-10676 (D. Mass. Mar. 28, 2025) (temporary restraining order enjoining removal of all aliens to third countries unless court-imposed conditions were satisfied); *Widakuswara* v. *Lake*, No. 25-cv-2390 (S.D.N.Y. Mar. 28, 2025) (temporary restraining order enjoining further actions to implement an Executive Order on reduction of the federal bureaucracy); *NTEU* v. *Vought*, No. 25-cv-381 (D.D.C. Mar. 28, 2025) (preliminary injunction enjoining certain actions with respect to the CFPB); *Washington* v. *Trump*, No. 25-cv-244 (W.D. Wash. Feb. 28, 2025) (temporary restraining order and preliminary injunction enjoining implementation of Executive Order on federal funding for "gender-affirming" care); *National Ass'n of Diversity Officers in Higher Educ.* v. *Trump*, No. 25-cv-333 (D. Md. Feb. 21, 2025) (preliminary injunction on implementation of Executive Orders on diversity, equity, and inclusion initiatives); *New York* v. *Trump*, No. 25-cv-1144 (S.D.N.Y. Feb. 21, 2025) (preliminary injunction enjoining the Treasury Department from granting access to DOGE-affiliated individuals to certain payment records); *American Foreign Serv. Ass'n* v. *Trump*, No. 25-cv-352 (D.D.C. Feb. 7, 2025) (temporary restraining order requiring reinstatement of USAID employees); *New York* v. *Trump*, No. 25-cv-39 (D.R.I. Jan. 31, 2025) (temporary restraining order on providing federal financial assistance to the States).

STATEMENT

A. Background

1. Kilmar Armando Abrego Garcia is a native and citizen of El Salvador. App., *infra*, 6a. Sometime around 2011, he entered the United States without inspection. *Id.* at 25a. In March 2019, officers from the Prince George's County Police Department arrested Abrego Garcia and three other men in Maryland. *Ibid.* The officers transferred him to the custody of the Department of Homeland Security (DHS). *Id.* at 26a. DHS served him with a notice to appear for removal proceedings and detained him under 8 U.S.C. 1226(a). App., *infra*, 26a. The notice charged that Abrego Garcia was subject to removal under Title 8 because he was an alien present in the United States without being admitted or paroled—and thus was here unlawfully. *Ibid.*; see 8 U.S.C. 1182(a)(6)(A)(i).

Ensuing proceedings established that Abrego Garcia was a ranking member of the deadly MS-13 gang and thus presented a danger to the community. Soon after he was detained, Abrego Garcia requested a bond hearing before an immigration judge (IJ). App., *infra*, 1a. At the hearing, DHS presented evidence that Abrego Garcia had been "arrested in the company of other ranking gang members" and had been "confirmed to be a ranking member of the MS-13 gang by a proven and reliable source." *Id.* at 2a. The IJ agreed that the "evidence show[ed] that [Abrego Garcia] is a verified member of MS-13." *Ibid.* The IJ specifically cited "the fact that a 'past, proven, and reliable source of information' [had] verified [Abrego Garcia's] gang membership, rank, and gang name." *Id.* at 3a. And the IJ noted that Abrego Garcia had "failed to present evidence to rebut th[e] assertion" that he "is a gang member." *Ibid.* Given Abrego Garcia's MS-13 membership, the IJ determined that Abrego Garcia had "failed to meet his burden of demonstrating that his release from custody would not

pose a danger to others." *Id.* at 2a. The IJ thus denied his request for release on bond. *Id.* at 3a. The Board of Immigration Appeals (Board) affirmed, explaining that the IJ had "appropriately considered allegations of gang affiliation against [Abrego Garcia] in determining that he has not demonstrated that he is not a danger to property or persons." *Id.* at 5a.

In October 2019, after Abrego Garcia had "conceded his removability as charged," an IJ ordered Abrego Garcia's removal from the United States under Title 8. App., *infra*, 7a; see *id.* at 60a. The IJ determined, however, that it was more likely than not that, if Abrego Garcia returned to El Salvador, he would be subject to persecution on account of his affiliation with his mother, whose "earnings from the pupusa business" had been allegedly targeted by "the Barrio 18 gang." *Id.* at 15a.[2] The IJ therefore granted Abrego Garcia withholding of removal to El Salvador under 8 U.S.C. 1231(b)(3). App., *infra*, 11a-15a. Withholding of removal "only bars deporting an alien to a particular country or countries," *INS* v. *Aguirre-Aguirre*, 526 U.S. 415, 419 (1999)—in Abrego Garcia's case, to El Salvador. Because "withholding of removal is a form of '"country specific"' relief" but does not confer any lawful status within the United States, DHS remains free to "remov[e] the alien to a third country other than the country to which removal has been withheld." *Johnson* v. *Guzman Chavez*, 594 U.S. 523, 531-532 (2021) (brackets and citations omitted).

2. Thereafter, Abrego Garcia was released from DHS custody under an order of supervision. App., *infra*, 60a; D. Ct. Doc. 1-3, at 1 (Mar. 24, 2025). In February 2025, however, the Secretary of State designated MS-13 as a foreign terrorist organization under 8 U.S.C. 1189. *Specially Designated Global Terrorist Designations*

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[2] The pupusa is a thick, handmade corn tortilla filled with savory ingredients that is a staple food of El Salvador.

(Feb. 6, 2025), 90 Fed. Reg. 10,030 (Feb. 20, 2025). The Secretary of State found that MS-13 engages in "terrorist activity" or "terrorism"—or "retains the capability and intent to engage in terrorist activity or terrorism"—that "threatens the security of United States nationals or the national security of the United States." 8 U.S.C. 1189(a)(1)(B) and (C); see 90 Fed. Reg. at 10,030. The government then sought to remove identified MS-13 members as expeditiously as possible, given those determinations regarding the national-security threat.

Thus, on March 12, 2025, DHS officers "arrested Abrego Garcia due to his prominent role in MS-13" and questioned him about his affiliation with that foreign terrorist organization. App., *infra*, 60a; see *id.* at 29a-31a. According to Abrego Garcia, he was then transferred to a detention center in Texas and told that he was being removed to El Salvador, where he would be detained at the Terrorist Confinement Center known as CECOT. *Id.* at 31a & n.1.

On March 15, DHS executed Abrego Garcia's removal order by placing him on a flight to El Salvador. App., *infra*, 59a. That flight carried only aliens being removed under the INA, not the Alien Enemies Act. *Ibid.* Although DHS was "aware of th[e] grant of withholding of removal at the time [of] Abrego Garcia's removal from the United States," Abrego Garcia was removed to El Salvador "[t]hrough administrative error," *id.* at 60a—in other words, while removing him from the United States was not error, the administrative error was in removing him to El Salvador, given the withholding component of the 2019 order.

B. Proceedings Below

1. On March 24, 2025, respondents—Abrego Garcia, his wife, and their child—brought suit against various federal officials (collectively, the United States) in the U.S. District Court for the District of Maryland, alleging that the government

had "removed Plaintiff Abrego Garcia to El Salvador" in violation of the withholding-of-removal statute, the Due Process Clause, and the Administrative Procedure Act (APA). App., *infra*, 35a, 36a; see *id.* at 35a-39a.

Significantly, respondents did not seek the relief the district court granted here. Respondents' complaint instead sought an injunction "ordering Defendants to immediately cease compensating the Government of El Salvador for its detention of Plaintiff Abrego Garcia" and "ordering Defendants to immediately *request* that the Government of El Salvador release Plaintiff Abrego Garcia from CECOT and deliver him to the U.S. Embassy in El Salvador." App., *infra*, 40a (emphasis added). If "the Government of El Salvador decline[d] such request," the complaint sought a further injunction "ordering Defendants to take all steps reasonably available to them, proportionate to the gravity of the ongoing harm, to return Plaintiff Abrego Garcia to the United States." *Ibid.*

Along with their complaint, respondents filed an ex parte emergency motion for a temporary restraining order. App., *infra*, 41a-42a. In that motion, respondents "admitted[]" that the district court "has no jurisdiction over the Government of El Salvador and cannot force that sovereign nation to release Plaintiff Abrego Garcia from its prison." *Id.* at 42a. "But," respondents asserted, "because that government is detaining Plaintiff at the direct request and pursuant to financial compensation from defendants," the district court could "order Defendants to immediately stop paying such compensation, and to *request* that the Government of El Salvador return Plaintiff Abrego Garcia to their custody." *Ibid.* Respondents disclaimed asking for any other "emergency relief." *Ibid.* The district court denied respondents' ex parte motion because respondents had failed to explain why the court should dispense with

notice to the United States and "take the unusual step" of deciding the motion ex parte. D. Ct. Doc. 5, at 1 (Mar. 25, 2025).

On March 25, respondents filed a renewed motion for a temporary restraining order. App., *infra*, 43a-45a. In that motion, respondents reiterated that the district court "admittedly has no jurisdiction over the Government of El Salvador and cannot force that sovereign nation to release Plaintiff Abrego Garcia from its prison." *Id.* at 44a. Respondents then requested the same "emergency relief" as in their ex parte motion. *Ibid.*

The district court set a briefing schedule on respondents' renewed motion. D. Ct. Doc. 8, at 1 (Mar. 25, 2025). In a supplemental memorandum in support of their motion, respondents acknowledged that "[t]his case may end up raising difficult questions of redressability in a subsequent phase." App., *infra*, 47a. Respondents nevertheless argued that a "preliminary injunction should issue promptly," ordering the United States to "request that the government of El Salvador return [Abrego Garcia] to Defendants' custody" and to "cease paying the government of El Salvador to continue to detain [him]." *Ibid.*

On the afternoon of Friday, April 4, the district court construed respondents' renewed motion as a motion for a preliminary injunction and granted it, directing the United States "to return Abrego Garcia to the United States no later than 11:59 PM on [Monday,] April 7th, 2025." App., *infra*, 79a; see *ibid.* (directing the United States "to facilitate and effectuate the return of Plaintiff Kilmar Armando Abrego Garcia to the United States by no later than 11:59 PM on Monday, April 7, 2025"). The court said that it would, "in due course," issue "[a] memorandum opinion further setting forth the basis" for its ruling, but summarily stated its conclusions that (1) respondents "are likely to succeed on the merits because Abrego Garcia was removed to El

Salvador in violation of the [withholding-of-removal statute], and without any process"; (2) Abrego Garcia's "continued presence" in El Salvador "constitutes irreparable harm"; (3) "the balance of equities and the public interest weigh in favor of returning him to the United States"; and (4) preliminary relief "is necessary to restore him to the status quo and to avoid ongoing irreparable harm resulting from Abrego Garcia's unlawful removal." *Ibid.*

2. The United States immediately filed a notice of appeal. D. Ct. Doc. 22 (Apr. 4, 2025). The United States also filed, in the district court and the Fourth Circuit, an emergency motion for an immediate administrative stay and a stay pending appeal. C.A. Doc. 3 (Apr. 5, 2025); D. Ct. Doc. 29 (Apr. 5, 2025).

3. On the morning of Sunday, April 6, the district court issued a memorandum opinion in support of its April 4 injunction. App., *infra*, 81a-102a. The court held that it had jurisdiction to hear respondents' claims, rejecting the United States' contention that 8 U.S.C. 1252(g) deprived the court of jurisdiction because those claims challenge the execution of a removal order. App., *infra*, 92a-96a. The court also held that respondents had satisfied each of the requirements for preliminary injunctive relief. *Id.* at 96a-102a. In particular, the court concluded that respondents would prevail on their statutory withholding, due process, and APA claims in light of the IJ's grant of withholding of removal to El Salvador. *Id.* at 97a-99a. The court also concluded that Abrego Garcia's placement at CECOT would cause him irreparable harm, *id.* at 100a-101a, and that the balance of equities and public interest favored injunctive relief, *id.* at 101a-102a. The court stated that it had granted what it regarded as the "narrowest" relief warranted: an "order that Defendants return Abrego Garcia to the United States." *Id.* at 82a. The court declined to issue an immediate administrative stay or a stay pending appeal. *Id.* at 102a & n.20.

4. The United States asked the Fourth Circuit to rule on its stay motion by 5 p.m. yesterday. On Saturday morning, the Fourth Circuit requested that respondents file a response by 2 p.m. on Sunday. But as of the time of this filing, the Fourth Circuit has not acted on either the government's request for a stay pending appeal or its request for an administrative stay.

ARGUMENT

Under Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Court may stay or vacate a district order's interlocutory order granting emergency relief. See, *e.g.*, *Trump* v. *International Refugee Assistance Project*, 582 U.S. 571 (2017) (per curiam); *Brewer* v. *Landrigan*, 562 U.S. 996 (2010); *Brunner* v. *Ohio Republican Party*, 555 U.S. 5, 6 (2008). An applicant must show (1) a likelihood of success on the merits, (2) a reasonable probability of obtaining certiorari, and (3) 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.* Those factors strongly support relief here.[3]

A. The United States Is Likely To Succeed On The Merits

The district court's injunction—which requires Abrego Garcia's release from the custody of a foreign sovereign and return to the United States by midnight on Monday—is patently unlawful. As respondents acknowledged below, the district court has no jurisdiction over the Government of El Salvador and thus no authority to order Abrego Garcia's return to the United States. App., *infra*, 42a, 44a. The court nevertheless ordered his return into the United States on an arbitrary and impossible

[3] The United States has applied to "vacate" rather than "stay" the district court's injunction, though the practical effect of the relief is the same; the traditional stay standard should govern. See Appl. to Vacate Order at 11 n.4, *Bessent* v. *Dellinger*, 144 S. Ct. 338 (No. 24A790).

timeline for sensitive foreign negotiations—arrogating core Article II prerogatives to Article III, in contravention of bedrock constitutional responsibilities. On top of all that, Congress already deprived the district court of jurisdiction to enter any relief, because 8 U.S.C. 1252(g) provides that no court shall have jurisdiction to address collateral attacks on the execution of a removal order outside the statutorily prescribed process. The injunction therefore cannot stand. Moreover, at a minimum, it should be vacated insofar as it requires the government to bring Abrego Garcia back to the United States, where he has no lawful status.

1. An injunction demanding the release of a member of a foreign terrorist organization from the custody of a foreign sovereign and his return to the United States is an abuse of judicial power

a. Tellingly, the district court's injunction is so unprecedented that not even respondents requested the district court to enter it. Before the district court, respondents never asked for an injunction ordering Abrego Garcia's return to the United States—not in their complaint, or their ex parte motion for a temporary restraining order, or their renewed motion for a temporary restraining order, or their supplemental memorandum in support of injunctive relief, or any other filing. See App., *infra*, 40a, 42a, 44a, 47a. Instead, respondents asked for only two forms of immediate relief: (1) an order directing federal officials "to immediately stop paying" the Government of El Salvador "compensation" for detaining Abrego Garcia; and (2) an order directing federal officials "to *request* that the Government of El Salvador return Plaintiff Abrego Garcia to their custody." *Id.* at 42a; see *id.* at 40a, 44a, 47a. Respondents disclaimed asking for any other emergency relief. See *id.* at 42a, 44a ("That is all Plaintiff asks for this Court [to] order as emergency relief.").

That is for good reason. Abrego Garcia is a native and citizen of El Salvador being detained in El Salvador by the Government of El Salvador. As respondents have "admitted[]," the district court "has no jurisdiction over the Government of El Salvador," which is not a party. App., *infra*, 42a, 44a. And because the court lacks jurisdiction over the Government of El Salvador, it "cannot force that sovereign nation to release Plaintiff Abrego Garcia from its prison." *Ibid.*

The district court's injunction, however, demands that the United States accomplish just that, no matter the foreign-relations consequences. The court's injunction, entered last Friday afternoon, requires Abrego Garcia's "return" to "the United States no later than 11:59 PM on April 7th." App., *infra*, 79a; see *id.* at 82a (characterizing the court's injunction as an order for Abrego Garcia's "return"). But neither a federal district court nor the United States has authority to tell the Government of El Salvador what to do. The Government of El Salvador has custody of Abrego Garcia, so he cannot be returned to the United States unless the Government of El Salvador releases him. Compliance with the district court's order thus requires the Government of El Salvador to "release Plaintiff Abrego Garcia from its prison." *Id.* at 42a, 44a.

The district court's injunction thus does not just offend the sovereignty of the Government of El Salvador—though it surely does that. The negotiate-by-midnight order gravely offends the separation of powers, under which the Executive, not the Judiciary, conducts relations with foreign sovereigns and protects the Nation against foreign terrorists, including by effectuating their removal. As this Court has repeatedly recognized, "any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations [and] the war power." *Harisiades* v. *Shaughnessy*, 342 U.S. 580, 588-589 (1952); see *Trump* v. *Ha-*

waii, 585 U.S. 667, 702 (2018). Under the Constitution, "[s]uch matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference." *Harisiades,* 342 U.S. at 589; see *Trump* v. *United States*, 603 U.S. 593, 607 (2024) (recognizing that Article II entrusts the Executive with "important foreign relations responsibilities," including "managing matters related to terrorism, trade, and immigration"); *Hawaii*, 585 U.S. at 702 ("For more than a century, this Court has recognized that the admission and exclusion of foreign nationals is a 'fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control.'") (citation omitted).

The district court's injunction, however, subjects the Executive's conduct of foreign relations to precisely such interference. This case does not involve just "[*a*]*ny* policy toward aliens," *Harisades*, 342 U.S. at 588 (emphasis added); it involves policy toward an alien *who is in the custody of a foreign sovereign* (and who is part of a designated foreign terrorist organization). And because the United States cannot comply with the district court's injunction unless the Government of El Salvador releases Abrego Garcia from custody, the injunction makes the district court the arbiter of "relations with [a] foreign power[]" itself. *Hawaii*, 585 U.S. at 702 (citation omitted). Such relations go to the core of the Executive's responsibilities under Article II, which "authorizes the Executive to engag[e] in direct diplomacy with foreign heads of state and their ministers." *Zivotofsky* v. *Kerry*, 576 U.S. 1, 14 (2015); see *id.* at 13-15 (recognizing that "the President himself has the power to open diplomatic channels simply by engaging in direct diplomacy with foreign heads of state and their ministers" and that the President is positioned to engage in "delicate and often secret diplomatic contacts"). "Accordingly, the Court has taken care to avoid 'the danger of unwarranted judicial interference in the conduct of foreign policy,' and declined to

'run interference in [the] delicate field of international relations.'" *Biden* v. *Texas*, 597 U.S. 785, 805 (2022) (quoting *Kiobel* v. *Royal Dutch Petroleum Co.*, 569 U.S. 108, 115-116 (2013)). By subjecting such relations to judicial control, the court's injunction impermissibly intrudes on those Article II prerogatives.

Compounding that error, the district court's injunction, which was entered on Friday afternoon, sets an arbitrary—and impossible—deadline of 11:59 p.m. on Monday, April 7, for Abrego Garcia's return. App., *infra*, 79a. The United States' negotiations with a foreign sovereign should not be put on a judicially mandated clock, least of all when matters of foreign terrorism and national security are at stake. See *Biden* v. *Texas*, 597 U.S. at 806 (reversing court of appeals' decision requiring resumption of program to return arriving aliens to contiguous territory pending their removal proceedings in part because that order "imposed a significant burden upon the Executive's ability to conduct diplomatic relations with Mexico"). The idea that district judges are best positioned to decide how long delicate foreign negotiations should take—and can grossly interfere with those negotiations by signaling to foreign partners that they can leverage the United States' obligation to comply with court orders into concessions to beat the district judge's clock—is antithetical to the constitutional order.

b. The district court's and respondents' attempts to justify the court's injunction are meritless. In its Sunday morning memorandum opinion, the court characterized its injunction as the "narrowest" relief that it could issue. App., *infra*, 82a. That characterization is indefensible, especially because the injunction went far beyond what respondents themselves had requested. An injunction that demands that the United States persuade El Salvador to release a member of a foreign terrorist

organization from El Salvador's custody and return him to the United States on an arbitrary, impossible timeline is hardly "narrow[]." *Ibid.*

In opposing a stay of the injunction in the court of appeals, respondents insisted that they did "request[]" the injunction that the district court entered. Resp. C.A. Stay Opp. 9. But contrary to respondents' characterization, the court did not merely order the United States to "facilitate" Abrego's return, *ibid.*; it ordered the United States actually to "effectuate" it, App., *infra*, 79a. If there were any doubt on that score, the court's memorandum opinion eliminated it, by reiterating that its injunction "order[s]" that "Defendants *return* Abrego Garcia to the United States." *Id.* at 82a (emphasis added). Again, respondents clearly disclaimed such a request in repeatedly telling the court that it "has no jurisdiction over the Government of El Salvador and cannot force that sovereign nation to release Plaintiff Abrego Garcia from its prison." *Id.* at 42a, 44a.

The district court's and respondents' efforts to analogize the court's injunction to relief in other immigration cases also fail. See App., *infra*, 90a-91a; Resp. C.A. Stay Opp. 10. Each of those other cases involved a U.S. Immigration and Customs Enforcement (ICE) directive that describes a policy for "facilitating" the return of certain lawfully removed aliens whose petitions for review are granted after their removal. *E.g.*, *Ramirez* v. *Sessions*, 887 F.3d 693, 706 n.11 (4th Cir. 2018) (citation omitted); see also *Nken* v. *Holder*, 556 U.S. 418, 435 (2009) (noting that aliens "who prevail" on petitions for review of removal orders "can be afforded effective relief by facilitation of their return"). The ICE directive defines "facilitating an alien's return" to mean "engag[ing] in activities which allow a lawfully removed alien to travel to the United States (such as by issuing a Boarding Letter to permit commercial air travel) and, if warranted, parol[ing] the alien into the United States upon his or her arrival

at a U.S. port of entry." *Ramirez*, 887 F.3d at 706 n.11 (citation omitted). The directive further specifies that facilitating an alien's return "does not necessarily include funding the alien's travel via commercial carrier to the United States or making flight arrangements for the alien." *Ibid.* (citation omitted).

Yet what the district court's injunction requires the United States to do in this case goes far beyond "facilitating" an alien's return as defined by the ICE directive. Whereas the ICE directive contemplates actions entirely within the United States' control—like issuing a travel document or paroling an alien into the United States—the court's injunction in this case requires the United States to secure an alien's release from the custody of a foreign sovereign. Accordingly, respondents and the district fail to identify another case that involved an order that bears any resemblance to this one. Far from being "routine," Resp. C.A. Stay Opp. 1, the injunction in this case is an unprecedented attempt to tell a foreign sovereign what to do and to usurp the Executive's conduct of foreign relations in the process.

2. Section 1252(g) of Title 8 deprives the district court of jurisdiction over respondents' claims

a. The district court's injunction should be vacated for an independent reason: Section 1252(g) of Title 8 deprives the district court of jurisdiction over respondents' claims. By its terms, Section 1252(g) strips district courts of "jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to * * * execute removal orders against any alien under" the INA, except as provided in Section 1252. 8 U.S.C. 1252(g); see *Reno* v. *American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999).

Respondents' claims in this case are claims by or on behalf of Abrego Garcia "arising from the decision or action" by the federal government to "execute [a] removal

order[] against" Abrego Garcia under the INA. 8 U.S.C. 1252(g). That much is clear from respondents' complaint, which alleges that the government violated the withholding-of-removal statute and the Due Process Clause by "*remov*[*ing*] Plaintiff Abrego Garcia to El Salvador." App., *infra*, 35a, 36a (emphasis added); see *id.* at 33a (alleging that federal officials "decided to deport Plaintiff Abrego Garcia without following the law"). Indeed, respondents acknowledge that their "core contention in this case is that Defendants *removed* [*Abrego Garcia*] *from the United States* without legal justification." *Id.* at 67a. And, tellingly, the injunction that the district court granted purports to undo that removal, by directing Abrego Garcia's "return" to the United States. *Id.* at 79a. There can thus be no question that respondents' claims arise from the government's decision or action to "execute [a] removal order[] against" Abrego Garcia under the INA. 8 U.S.C. 1252(g).

To be sure, what respondents challenge is not the validity of the removal order itself; they acknowledge that there is a valid removal order against Abrego Garcia. See App., *infra*, 46a. Rather, what respondents challenge is Abrego Garcia's "removal to El Salvador," after he was granted withholding of removal to that country. *Ibid.* But Section 1252(g) does not refer to claims challenging the validity of a removal order; it refers to claims arising from a decision or action to "*execute* [a] removal order[]." 8 U.S.C. 1252(g) (emphasis added). And the *execution* of a removal order necessarily involves deciding *where* the alien will go. See *Johnson* v. *Guzman Chavez*, 594 U.S. 523, 536 (2021) (explaining that withholding of removal "relates to *where* an alien may be removed"). The facts of this case illustrate the point: DHS "executed" Abrego Garcia's Title 8 removal order by placing him on a flight to a particular country (here, El Salvador). App., *infra*, 59a; see *ibid.* ("Abrego-Garcia * * * was on the third flight and thus had his removal order to El Salvador executed."). By challenging

Abrego Garcia's "removal to El Salvador," *id.* at 46a, respondents' claims arise from the execution of a removal order against him.

Section 1252(g) therefore deprives district courts of jurisdiction over respondents' claims, "[e]xcept as provided in [Section 1252]." 8 U.S.C. 1252(g). That exception does not apply in this case; indeed, respondents never invoked Section 1252 as a basis for jurisdiction. See App., *infra*, 21a. Section 1252(g) deprives the district court of jurisdiction to hear respondents' claims—and to enter the injunction at issue here.

b. The district court's and respondents' attempts to evade Section 1252(g)'s jurisdictional bar lack merit. In its Sunday morning memorandum opinion, the district court stated that there is no removal order in the record. App., *infra*, 94a. But the record shows that Abrego Garcia was charged with removability under Title 8, see *id.* at 6a; that the IJ found Abrego Garcia removable as charged, see *id.* at 7a; and that Abrego Garcia had "his removal order * * * executed" when he was put on a plane to El Salvador with other "aliens with Title 8 removal orders," *id.* at 59a. Not only have respondents never disputed that there is a valid removal order against Abrego Garcia, they have conceded that the "government could have chosen to remove Mr. Abrego Garcia to any *other* country on earth." *Id.* at 46a. They are plainly challenging his removal to El Salvador versus somewhere else—and Section 1252(g) bars that claim.

For similar reasons, respondents' contention (C.A. Stay Opp. 13-14) that the execution of Abrego Garcia's removal order was not the execution of a removal order "under this chapter"—*i.e.*, Chapter 12 of Title 8—fails. Abrego was charged with removability under that Chapter and placed in removal proceedings governed by that Chapter. See App., *infra*, 6a. The removal order that was executed was thus a removal order under that Chapter.

Citing various lower-court decisions, the district court also expressed the view that Section 1252(g) does not deprive courts of jurisdiction to review non-"discretionary" decisions or "pure question[s] of law." App., *infra*, 94a-95a (citing, *e.g.*, *Borwin* v. *United States INS*, 194 F.3d 483 (4th Cir. 1999)). But those purported exceptions to Section 1252(g)'s jurisdictional bar appear nowhere in the text of Section 1252(g). See, *e.g.*, *Silva* v. *United States*, 866 F.3d 938, 940 (8th Cir. 2017) ("The statute * * * makes no distinction between discretionary and nondiscretionary decisions."); *Foster* v. *Townsley*, 243 F.3d 210, 214 (5th Cir. 2001) ("[A] plain reading of the statute demonstrates that Congress did not exclude non-discretionary decisions from this provision limiting judicial review."). And even if they did, the exceptions would not cover this case. The decision to execute Abrego Garcia's removal order was a discretionary one—made several years after that order but soon after the designation of MS-13 as a foreign terrorist organization. See pp. 6-7, *supra*. And contrary to the district court's suggestion, respondents' claims arising from that discretionary decision do not present a "pure question of law," App., *infra*, 95a; the challenged error here was an "administrative error," not a purely legal one, *id.* at 60a; see *Silva*, 866 F.3d at 941 (holding that an error in executing a removal order did not present a "pure question of law"). Indeed, the administrative error here involved removal to El Salvador—not removal anywhere—and the 2019 order granting withholding did not, of course, account for MS-13's ensuing designation as a foreign terrorist organization whose members cannot invoke withholding of removal, or the United States' ensuing work with El Salvador to ensure that removed aliens are treated consistently with the Convention Against Torture. Section 1252(g) therefore deprived the district court of jurisdiction to enter any relief on respondents' claims, including this injunction.

3. At a minimum, the district court erred in ordering Abrego Garcia's return to the United States

The district court did not simply order Abrego Garcia's release from the custody of the Government of El Salvador; it ordered that he be brought back "to the United States." App., *infra*, 79a. But a plaintiff's remedy must be "limited to the inadequacy that produced his injury in fact." *Gill* v. *Whitford*, 585 U.S. 48, 66 (2018) (brackets and citation omitted). Here, the only injury that the court identified was Abrego Garcia's "continued presence in El Salvador." App., *infra*, 79a. Abrego Garcia has never claimed any entitlement to be in the United States. Nor could he. He does not dispute that there is a removal order against him. See *id.* at 46a. Although Abrego Garcia was granted withholding of removal to El Salvador, that only "prohibits DHS from removing [him] *to* that particular country, not *from* the United States." *Guzman Chavez*, 594 U.S. at 536. The removal order "remains in full force, and DHS retains the authority to remove [him] to any other country authorized by the statute." *Ibid.*; see App., *infra*, 46a (acknowledging that the "government could have chosen to remove Mr. Abrego Garcia to any *other* country on earth"). On top of that, Abrego Garcia is certainly removable now—without any entitlement to withholding—based on his membership in a designated foreign terrorist organization. See 8 U.S.C. 1231(b)(3)(B). Congress sensibly determined that when individuals associate with terrorist organizations, the government has the strongest of interests in removing them elsewhere, and thus Congress gave the Executive Branch greater flexibility to prevent the serious national-security harms from having foreign terrorists remain on U.S. soil. The district court's order directing that Abrego Garcia be brought back to *the United States* heightens the unlawfulness of the order.

B. The Other Factors Support Vacating The District Court's Injunction

The remaining factors—*i.e.*, whether the underlying issues warrant review, whether the applicant likely faces irreparable harm, and, in close cases, the balance of equities, see *Hollingsworth*, 558 U.S. at 190—likewise support relief here.

1. The questions raised by this case plainly warrant this Court's review. See *Does 1-3* v. *Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring) (identifying certworthiness as a stay factor). As explained, the district court's injunction vastly exceeds the court's authority, grossly interferes with the President's core foreign-relations powers, and exercises jurisdiction in the very type of case where Congress barred it. See pp. 11-20, *supra*. If allowed to stand, the injunction would allow district courts to function as *de facto* Secretaries of State, empowered to dictate the conduct of relations with a foreign sovereign over which the district court has "no jurisdiction," as respondents acknowledge. App., *infra*, 42a, 44a. The case presents questions of important questions of federal law that warrant this Court's review. Sup. Ct. R. 10(c). In addition, the questions of the proper interpretation of 8 U.S.C. 1252(g) are independently certworthy for the reasons discussed above.

2. For similar reasons, the district court's injunction irreparably harms the government by placing the conduct of foreign relations under judicial superintendence. See pp. 11-17, *supra*. The injunction also threatens irreparable harm to the public by directing the return of "a verified member of MS-13" to the United States. App., *infra*, 2a. At a bond hearing in 2019, "a 'past, proven, and reliable source of information' verified [Abrego Garcia's] gang membership," and Abrego Garcia "failed to present evidence to rebut th[e] assertion" that he "is a gang member" of MS-13. *Id.* at 3a. An IJ therefore determined that Abrego Garcia had "failed to meet his burden of demonstrating that his release from custody would not pose a danger to others,"

id. at 2a, and the Board affirmed the IJ's denial of release on bond, finding that the IJ had "appropriately considered allegations of gang affiliation against [Abrego Garcia]," *id.* at 5a. Since then, the Secretary of State has designated MS-13 as a foreign terrorist organization. 90 Fed. Reg. at 10,030; see pp. 6-7, *supra*. Self-evidently, the public interest supports vacating the order directing Abrego Garcia's return to the United States. See *Nken*, 556 U.S. at 435 (noting that the "public interest in prompt execution of removal orders" may "be heightened" if an "alien is particularly dangerous").

The district court's assertion that there is "no evidence linking Abrego Garcia to MS-13" ignores the evidence that was before the IJ and the Board. App., *infra*, 82a n.2. Further, any suggestion that DHS could eliminate the public safety concern by detaining Abrego Garcia upon his return is profoundly misguided. The United States has a compelling interest in ensuring that members of foreign terrorist organizations do not interact with anyone else in the United States, because MS-13 members present heightened risks of violence against government officials and fellow detainees and attempt to recruit others to their ranks. See Gov't C.A. Stay Mot. 16-17. Moreover, the Executive's assessment of the danger that Abrego Garcia poses to this country is entitled to substantial deference. See *Hawaii*, 585 U.S. at 704 ("'[J]udicial inquiry into the national-security realm raises concerns for the separation of powers' by intruding on the President's constitutional responsibilities in the area of foreign affairs.").

3. On the other side of the balance, vacating the district court's injunction would not cause respondents irreparable harm. Respondents assert that Abrego Garcia is "suffering irreparable harm in the form of separation from" his family. App., *infra*, 36a. But the district court declined to rely on that assertion in entering its

injunction, see *id.* at 100a-101a—for good reason. While respondents challenge Abrego Garcia's "removal to El Salvador," they acknowledge that the "government could have chosen to remove [him] to any *other* country on earth," thereby separating him from his family. *Id.* at 46a. Because respondents take issue only with *where,* not *whether* Abrego Garcia was removed, the harm that they claim from family separation is not implicated or properly redressable here.

Respondents also allege that Abrego Garcia is at imminent risk of irreparable harm, including torture or death, "with every additional day he spends detained in CECOT." App., *infra*, 35a. But both the United States and El Salvador are parties to the Convention Against Torture, and the United States is obligated not to return a person to a country where that person is likely to be tortured. See 8 C.F.R. 1208.18. The United States has accordingly ensured that removed aliens will not be tortured, and it would not have removed any alien to El Salvador for detention in CECOT if doing so would violate its obligations under the Convention. "The Judiciary is not suited to second-guess such determinations" about "whether there is a serious prospect of torture at the hands of" a foreign sovereign. *Munaf* v. *Geren*, 553 U.S. 674, 702 (2008); see *Kiyemba* v. *Obama*, 561 F.3d 509, 514 (D.C. Cir. 2009) ("Under *Munaf*, * * * the district court may not question the Government's determination that a potential recipient country is not likely to torture a detainee."), cert. denied, 559 U.S. 1005 (2010).

It is true that an IJ concluded six years ago that Abrego Garcia should not be removed to El Salvador, due to his claims about threats from a different gang. App., *infra*, 11a-15a. But given the Secretary of State's designation of MS-13 as a foreign terrorist organization in February 2025, see 90 Fed. Reg. at 10,030, the IJ's finding that Abrego Garcia is "a verified member of MS-13" would render him ineligible for

statutory withholding of removal if the issue arose today, App., *infra*, 3a; see 8 U.S.C. 1231(b)(3)(B)(iv). So while "there is a public interest in preventing aliens from being wrongfully removed," *Nken*, 556 U.S. at 436, that interest is substantially diminished in this case and outweighed by the harm that the district court's injunction threatens to cause the government and the public.

C. This Court Should Grant An Immediate Administrative Stay

At the very least, this Court should grant an administrative stay while it considers this application. An administrative stay is particularly warranted in this case because of the exceedingly short period that the district court gave the government to comply with its injunction. As explained above, the court entered its injunction on a Friday afternoon and directed Abrego Garcia's return by midnight tonight—giving the government little more than one business day to secure Abrego Garcia's release from a foreign sovereign. See p. 15, *supra*. In light of that impending deadline, an administrative stay is necessary to ensure an opportunity for meaningful appellate review of the court's injunction. Heightening the concern, the district court did not even issue its memorandum opinion explaining the basis for its injunction until the morning of Sunday, April 6—the calendar day before the compliance deadline. App., *infra*, 81a-102a. In these circumstances, an administrative stay is warranted while this Court assesses the government's entitlement to vacatur.

CONCLUSION

This Court should vacate the district court's injunction. In addition, the Solicitor General respectfully requests an immediate administrative stay of the district court's injunction pending this Court's consideration of this application.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

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