No. 25-20203

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Widmer Joseneyder Agelviz-Sanguino, Lisbeth Carolina Sanguino, K.M.A.S. and K.J.A.S., minors, by and through next of friend mother Lisbeth Carolina Sanguino
Petitioners – Appellees

v.

Kristi Noem, Secretary, U.S Department of Homeland Security; Todd Lyons, Acting Director, U.S. Immigration and Customs Enforcement; Kenneth Genalo, Acting Executive Associate Director, ICE and Removal Operations; Bret A. Bradford, ICE Field Office Director; Pamela Bondi, U.S. Attorney General; Marco Rubio, U.S. Secretary of States
Respondents - Appellants.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS
No. 4:25-CV-02116

RESPONDENTS – APPELLANTS' MOTION FOR ADMINISTRATIVE STAY AND STAY PENDING APPEAL OR IN THE ALTERNATIVE A PETITION FOR MANDAMUS

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INTRODUCTION

The district court's extraordinary injunction fails on every conceivable level. Without an injunction motion from Plaintiffs or any opportunity for the Government to respond, the district court entered two radical orders compelling the Executive to conduct sensitive foreign policy according to the court's dictates and then report the details of those efforts and provide additional sensitive information without basis. And the court ordered the Government to comply at a breakneck pace: within *hours*. By design, the orders were crafted to evade all but the swiftest appellate review and to ensure the Government would fail. And all of this was done without reasoning, evidence, a violation, a chance to object, or consideration of the injunction factors.

More fundamentally, the district court lacks jurisdiction to enter *any* orders, let alone these extraordinary ones. For habeas, jurisdiction lies in the district of confinement. But the Plaintiff is admittedly in El Salvador, a sovereign nation. As the evidence shows, the United States does not have constructive custody. And all that aside, this would still be the wrong venue: neither the immediate custodian nor senior officials being sued reside in the judicial district.

The district court's order thus constitutes an egregious abuse of discretion. This Court should enter an immediate administrative stay and a stay pending appeal. Alternatively, the Court should issue a writ of mandamus vacating the court's order and directing it to dismiss the case for lack of jurisdiction.

BACKGROUND

Lead Plaintiff Agelviz-Sanguino is a native and citizen of Venezuela. Dkt. 1 (Complaint), p.7, ¶ 20.[1] In September 2024, Plaintiff presented himself at the port of entry seeking admission into the United States as a refugee. *Id.* at p.9, ¶ 26. Upon inspection, he was detained and placed in expedited removal proceedings as a suspected Tren de Aragua gang member. *Id.* at p.9, ¶ 28. After expressing a fear of harm upon return to Venezuela, he was placed proceedings to apply for asylum. *Id.* at p.10, ¶¶ 31, 33.

On March 15, 2025, before those removal proceedings under Title 8 were completed, Plaintiff was removed to El Salvador under the Alien Enemies Act (AEA), 50 U.S.C. § 21. Complaint, p.11, ¶ 37.

On May 9, 2025, more than seven weeks after his removal and leaving the Southern District of Texas, Plaintiff filed his Complaint. Complaint, p.22. Nine days later, Plaintiffs filed a Motion for an Emergency Pretrial Hearing. ECF 6. Without moving for an injunction or providing any evidence, that motion requested information about the Plaintiffs' location and an order requiring Defendants to establish communications with Plaintiffs in El Salvador. *Id.*

[1] The facts for this Background section are drawn from the Complaint and are accepted as valid for purposes of this motion.

Without awaiting any written response, after an emergency hearing on May 19, 2025, the district court went much further. The court issued an order requiring the Government to file a declaration on the lead Plaintiff's location, health, and basis for detention "within 24 hours." ECF 10. The court also ordered that "within 48 hours," Defendants must:

> i. *Restore and help maintain attorney-client communication . . .*
>
> ii. Provide Plaintiffs' counsel with direct contact information for the facility holding Agelviz-Sanguino, including a designated point of contact responsible for ensuring compliance with this Order.
>
> iii. File a report with the Court within 72 hours detailing the steps taken to comply with this Order, including *any logistical arrangements made with El Salvadoran authorities.*
>
> b. If Defendants claim an inability to facilitate communication due to lack of control over El Salvadoran facilities, they must:
>
> i. Set forth in a declaration all efforts made to secure cooperation, including through diplomatic or contractual channels.
>
> ii. *Disclose all agreements or arrangements with El Salvador . . .* related to Agelviz-Sanguino's detention, including any memoranda of understanding with, or funding ties to CECOT.

Id. (emphasis added).

On May 20, 2025, Defendants filed a responsive declaration, including information relating to detention authority and attempts to obtain the information from El Salvador through diplomatic outreach. ECF 14.

On May 21, 2025, the court then issued a supplemental order compelling

compliance and requiring Defendants to provide a supplemental declaration detailing:

> a. *all actions taken by Defendants and the U.S. Embassy since* May 19, 2025, including
>
> > i. Names/titles of El Salvadoran officials contacted . . . and *copies of all written communications*.
> >
> > ii. Timeline of *follow-up attempts and plans* to escalate such attempts if no response is received.
>
> b. The specific El Salvadoran law cited as justification for Agelviz-Sanguino's detention, including…
>
> c. *All agreements or contracts between the U.S. and El Salvador…* [regarding detention].
>
> d. Agelviz-Sanguino's deportation records, including… [sensitive internal information on how Plaintiffs were identified as TdA members]

ECF 17. On May 21, 2025, at 5:24 p.m., the Government was ordered to comply with this laundry list of demands by "May 23, 2025, at 11:59pm," a few hours more than two days from issuance of the order.

ARGUMENT

A stay pending appeal turns on "(1) whether the stay applicant ... is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties ...; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 426 (2009). In suits against the Government, the latter two factors merge. *Id.* at 426.

Courts should be more lenient in granting stays in areas involving foreign affairs and national security, areas to which "the Government has traditionally been granted the widest latitude." *Sampson v. Murray*, 415 U.S. 61, 83–84 (1974); *see also White v. Carlucci*, 862 F.2d 1209, 1211–13 (5th Cir. 1989) (applying *Sampson* and its progeny).

I. The District Court's Order Is An Appealable Injunction.

This Court has jurisdiction to review the district court's order. Orders are appealable where they are "akin to preliminary injunctive relief." *Garza v. Hargan*, No. 17-5236, 2017 WL 9854552, at *1 (D.C. Cir. Oct. 20, 2017); *see Belbacha v. Bush*, 520 F.3d 452, 455 (D.C. Cir. 2008) (treating denial of temporary restraining order as "'tantamount to denial of a preliminary injunction'"); *Dep't of Educ. v. California*, 145 S.Ct. 966, 968 (2025) (same).[2] That is true here for two reasons.

First, courts have generally made appellate review immediately available where intervention is required to avoid "serious and potentially irreversible consequences." *Hope v. Warden York Cnty. Prison*, 956 F.3d 156, 162 (3d Cir. 2020). Immediate review may also be warranted where the relevant order can only

[2] Although a party must ordinarily first seek a stay pending appeal by the district court under Federal Rule of Appellate Procedure 8(a)(1), the importance of the issues involved as well as the fast-moving nature of this case warrant this Court's intervention. Plaintiffs are concurrently seeking a stay and dismissal in the district court. But absent a stay, the Government would be forced to either engage in further diplomatic discussions or divulge the details of previous ones by May 23.

be "effectually challenged" by immediate appeal. *See Ross v. Rell*, 398 F.3d 203, 204 (2d Cir. 2005). Here—due to the infringement of core Article II powers and breakneck deadlines—the court's orders can only be challenged by immediate appeal. The court's orders directed the United States to open diplomatic discussions and then report details to the court in a matter of days. The court first ordered the Government to seek details about the Plaintiffs' status within 24 hours, requiring the Government to immediately make a request to El Salvador. ECF 10. The Government filed a declaration explaining what it knew and that it asked. ECF 14.

Forcing the Government to open diplomatic discussions within a day was apparently insufficient for the court. So in its supplemental order, the court required the Government to disclose sensitive and privileged diplomatic details, including: "Names/titles of El Salvadoran officials contacted, methods of contact, and *copies of all written communications*" and "[a]ll agreements or contracts between the U.S. and El Salvador" regarding detention. ECF 17 (emphasis added). The court also ordered the Government to "follow-up" and create "plans to escalate such attempts if no response is received." *Id.* The order also required the Government to divulge sensitive law enforcement information regarding the determination that Plaintiffs are TdA members without justification. *Id.* In addition, the original order required the Government to create lines of communication with the Plaintiffs within CECOT and report on "any logistical arrangements made with El Salvadoran authorities" within

48 hours. ECF 10. The court plainly enjoined the Government and required it to engage in foreign policy by taking concrete steps and divulging sensitive foreign affairs and law enforcement information. So the orders "carr[y] many of the hallmarks of a preliminary injunction." *Dep't of Educ.*, 145 S.Ct. at 968.

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 v. Shaughnessy*, 342 U.S. 580, 589 (1952). Article II "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), which is why the Supreme Court has "taken care to avoid 'the danger of unwarranted judicial interference in the conduct of foreign policy,'" *Biden v. Texas*, 597 U.S. 785, 805 (2022). These injunctions usurp the Executive's Core Article II duties. By definition, that harm is both serious and irreversible, so immediate review is warranted. *See Hope*, 956 F.3d at 162; *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 84 (1981); *see also Adams v. Vance*, 570 F.2d 950, 953 (D.C. Cir. 1978) (permitting appeal of a TRO that "commanded an unprecedented action irreversibly altering the delicate diplomatic balance in the environmental arena").

Second, the district court's orders do far more than act to preserve the status quo. *See Fernandez-Roque v. Smith*, 671 F.2d 426, 429 (11th Cir. 1982) (appealability is determined by considering whether the order merely preserves the

status quo or grants the relief requested). Here, the status quo involves an illegal alien who is a member of a Foreign Terrorist Organization and who was lawfully removed. The relief ordered is further diplomatic engagements, the development of a plan to do so, and the release of sensitive law enforcement processes and diplomatic arrangements. Without even allowing the government an opportunity to respond in writing to Plaintiffs' motion, the orders issued in this case exceed the any plausible preservation of the status quo and operate to give an illegal alien sweeping access to highly sensitive government information. This Court should thus treat the district court's order as an appealable injunction.

II. The District Court Plainly Lacks Jurisdiction.

To begin, Plaintiffs brought the wrong claims to the wrong forum. And it is not a close call. There is no likelihood that *any* orders from the district court—short of outright dismissal for lack of jurisdiction—would survive review on appeal.

"Challenges to removal under the AEA, a statute which largely 'preclude[s] judicial review,' *Ludecke v. Watkins*, 335 U.S. 160, 163–164 (1948), must be brought in habeas." *Trump v. J. G. G.*, 145 S. Ct. 1003, 1005 (2025) (per curiam) (cleaned up). Yet Plaintiffs' Complaint cannot support habeas jurisdiction. Habeas "'jurisdiction lies in only one district: the district of confinement.'" *J.G.G.*, 145 S. Ct. at 1005–06 (quoting *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004)). But the lead Plaintiff alleges that he was removed before the Complaint was filed,

Complaint, ¶ 1, and "is being held in custody by the Government of El Salvador," *id.* at ¶ 65. Indeed, he has been in El Salvador for months. The remaining Plaintiffs do not even allege that they are in custody, *id.* at ¶¶ 2-4, nor claim they were in custody at the time their Complaint was filed—let alone within this district.

The district court thus entered its extraordinary orders without any pretense of jurisdiction. Without addressing the jurisdictional flaw, Plaintiffs simply asserted in their Complaint that "the Government of El Salvador is detaining Plaintiff at the direction and behest of the Defendants, and at the financial compensation of Defendants." Complaint, at ¶ 65. That bare assertion cannot support jurisdiction. An injunction requires evidence, not merely allegations. And the only evidence submitted below (which the district court forced the Government to produce) establishes beyond any doubt that the United States *does not* have constructive custody over anyone in El Salvador. ECF 21.[3]

A person is "held 'in custody' by the United States when the United States official charged with his detention has 'the power to produce' him." *Munaf v. Geren*, 553 U.S. 674, 686 (2008) (quoting *Wales v. Whitney*, 114 U.S. 564, 574 (1885)). It is undisputed that the lead Plaintiff is currently in El Salvador, and not actually within the United States' physical custody. Nor can Plaintiffs invoke "constructive

[3] Defendants will file a courtesy copy of this evidence (which is already on file with the district court) with this Court under seal.

custody" by asserting that "the imprisoning sovereign is the respondent's agent." *Abu Ali v. Ashcroft*, 350 F. Supp. 2d 28, 47 (D.D.C. 2004) (quoting *Steinberg v. Police Ct. of Albany, N. Y.*, 610 F.2d 449, 453 (6th Cir. 1979)). Agency requires control. *See* Restatement (Third) Of Agency § 1.01 (2006) (Am. L. Inst. 2006); *id.* cmt. f(1) ("An essential element of agency is the principal's right to control the agent's actions."). The United States has no control over the actions of a foreign sovereign, as the unrebutted evidence provided below establishes.

As courts have repeatedly confirmed, plenary and indefinite control over the detention site is key. This case is not like *Boumediene v. Bush*, 553 U.S. 723, 765 (2008), where the United States held "plenary control" over imprisonment despite *de jure* sovereignty by Cuba. Instead, this case is closer to *Johnson v. Eisentrager*, 339 U.S. 763 (1950), where "the United States' control over the prison in Germany [housing the petitioners in *Eisentrager*] was neither absolute nor indefinite." *Boumediene*, 553 U.S. at 768; *see also Al Maqaleh v. Gates*, 605 F.3d 84, 97 (D.C. Cir. 2010) (no habeas on US Air Force Base in Afghanistan). Here, not only does the United States not have sovereignty over the Salvadoran detention facility, but it lacks a military presence, lease, or equivalent. That defeats habeas jurisdiction.

Even more analogous is *United States ex rel. Keefe v. Dulles*, 222 F.2d 390 (D.C. Cir. 1954). There, a servicemember pled guilty to crimes while stationed in France and was serving his sentence in a French prison. *Id.* at 391. The petitioner's

wife sought a writ of habeas corpus, naming various United States officials as respondents instead of "the foreign jailer." *Id.* The D.C. Circuit held there was no habeas jurisdiction because the petition "show[ed] on its face that Keefe [was] not in the custody of the respondents." *Id.* at 392. Moreover, because the petition alleged he was detained by French civil authorities, there was no appropriate respondent within the court's jurisdiction responsible for his detention. *Id.* This was despite allegations that the U.S. officials "acting through their agents, servants, or employees … 'actually have deprived the [petitioner] of his liberty.'" *Id.* at 391. Likewise in *Koki Hirota v. Gen. of the Army MacArthur*, the Supreme Court rejected a habeas petition because the petitioners were Japanese citizens in Japanese custody even though General MacArthur established the military tribunals that convicted the petitioners. *Koki Hirota v. Gen. of the Army MacArthur*, 338 U.S. 197, 198 (1948) (per curiam).[4]

This case is far easier than any of those. El Salvador is a sovereign nation over which the United States has no control. As the evidence below demonstrates, El Salvador makes its own decisions regarding detentions. There is no bilateral agreement granting the United States control over anyone removed to El Salvador. To the contrary, the understandings that do exist make clear that El Salvador has sole

[4] *See also Rasul v. Bush*, 542 U.S. 466, 481–82 (2004) ("At common law, courts exercised habeas jurisdiction over the claims of aliens detained within … dominions under the sovereign's control.").

control. And any arrangement is non-binding and non-enforceable. Indeed, the "corrective machinery specified in the [agreement] itself is nonjudicial." *Holmes v. Laird*, 459 F.2d 1211, 1221–22 (D.C. Cir. 1972). The prisons are operated exclusively by the Salvadoran government, which has its own law and procedures. The consequence is that the United States cannot simply produce the Plaintiffs; it must engage in sensitive diplomatic discussion with a separate sovereign that has complete discretion to deny any requests.

Even if the Government had constructive custody, the district court would still lack jurisdiction. The proper venue for habeas premised on constructive custody is "in the district where the respondent resides." *Padilla*, 542 U.S. at 2718, 2725 n.16. All but one of the Defendants reside in the District of Columbia. The only one who does not, Bret Bradford, an ICE field office director in Houston, is not plausibly the constructive custodian of a Plaintiff in El Salvador, as he certainly cannot "produce" the Plaintiff from CECOT. *See Guerra v. Meese*, 786 F.2d 414 (D.C. Cir. 1986) (Parole Commission is not custodian despite its power to release the petitioner). Plaintiffs have not argued or asserted (let alone established) otherwise, and the district court made no such finding.

Notably, Plaintiffs are members of a putative class in *J.G.G. et al v. Trump et al*, 1:25-cv-00766-JEB (D.D.C.), where class counsel are contending that habeas jurisdiction for constructive custody is proper in the *District of Columbia*. *Id.* (ECF

102). So regardless of whether constructive custody exists or might exist, the district court here still plainly lacks jurisdiction.

III. The District Court's Orders Are Impermissible

A. The court impermissibly ordered the Executive to conduct foreign policy.

Even putting aside the jurisdictional defects, the order below is impermissible. The district court's order essentially commands the executive branch to engage in foreign policy. Courts must avoid "the danger of unwarranted judicial interference in the conduct of foreign policy," and decline to "run interference in [the] delicate field of international relations" without "the affirmative intention of the Congress clearly expressed." *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 115–116 (2013). The Supreme Court has long held that the President is "the sole organ of the federal government in the field of international relations," *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 320 (1936), whose branch is entrusted with significant independent authority over foreign affairs, *see, e.g., Trump v. United States*, 603 U.S. 593, 608–09 (2024). A judicial order that forces the Executive to engage with a foreign power in a certain way, let alone compel a certain action by a foreign sovereign, is constitutionally intolerable.

The orders below already forced the Government to request information from El Salvador. Going forward, the orders direct the Government to follow up with a foreign nation, create a plan to do so, and establish communications within a foreign

prison. And after all of this, produce the sensitive diplomatic communications and arrangements. The district court strayed far out of its lane with these orders.

B. The court failed to conduct any legal analysis.

A party seeking a preliminary injunction must establish the four *Winter* factors: (1) a substantial likelihood it will prevail on the merits, (2) a substantial threat it will suffer irreparable injury if the injunction is not granted, (3) that the threatened injury to the movant outweighs the threatened harm the injunction may do to the nonmovant, and (4) that granting the preliminary injunction will not disserve the public interest. *Texas v. U.S. Dep't of Homeland Sec.*, 123 F.4th 186, 198 (5th Cir. 2024) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). The plaintiff bears the burden of proof. Yet, in entering its unprecedented and unjustifiable orders, the district court failed to enter any findings of fact or conclusions of law related to the *Winter* factors. That was a *per se* abuse of discretion. *See Software Dev. Techs. v. TriZetto Corp.*, 590 F. App'x 342, 345 (5th Cir. 2014) (holding that district court abused its discretion by ruling on a preliminary injunction without entering findings of fact or conclusions of law).

In addition, Fed. R. Civ. P. 65(a)(1) states that a court may "issue a preliminary injunction only on notice to the adverse party." Courts have consistently treated Rule 65(a)(1) as mandatory and "have not hesitated to dissolve preliminary injunctions issued without notice or the opportunity to for a hearing on disputed

questions of fact and law." *Phillips v. Charles Schreiner Bank*, 894 F.2d 127, 130 (5th Cir. 1990) (collecting cases). "[O]ur entire jurisprudence runs counter to the notion of court action taken before reasonable notice and an opportunity to be heard." *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974).

Yet here, Plaintiffs did not file a motion for a temporary restraining order or a preliminary injunction. Instead, Plaintiffs moved for an emergency pre-trial hearing and provided no evidence. The district court ordered an emergency hearing with just a few hours of notice. At the hearing, the Government requested an opportunity to respond in writing. Less than two hours after the hearing and without providing the Government that opportunity, the district court entered its order. Next, the court issued a second supplemental order *sua sponte* demanding even more than Plaintiffs had requested. *See United States v. Sineneng-Smith*, 590 U.S. 371, 376 (2020) (courts must abide by principles of party presentation).

In short, the district court took these extraordinary measures with no evidence from Plaintiffs, no discussion of what laws were violated, and no explanation of the decision. That was a manifest abuse of discretion. Entering multiple orders with the force and effect of a preliminary injunction without providing the government an opportunity to respond and without acknowledging or addressing the *Winter* factors—and doing so where the timeline for engaging in foreign policy is wholly

unreasonable to the task, and inappropriate in all events—is extraordinarily outside the norm and warrants immediate relief from this Court.

IV. Immediate Relief Is Warranted And Required.

Beyond likelihood of success on the merits, a stay applicant is also required to show that the applicant will be irreparably injured absent a stay, that issuance of the stay will not substantially injure the other parties, and that issuance of a stay is in the public interest. *Nken*, 556 U.S. at 426. As explained above, in the absence of a stay, the Government will be required to engage in further diplomatic discussion and release sensitive information despite an utter lack of basis for any of this. That constitutes substantial and irreparable harm, satisfying the second *Nken* factor.

Furthermore, preventing infringement of core Article II powers and the release of sensitive foreign-policy and national-security information is essential to ensuring the safety and security of U.S. citizens. *See Haig v. Agee*, 453 U.S. 280, 307 (1981) ("It is 'obvious and unarguable' that no governmental interest is more compelling than the security of the Nation."). The President has determined that members of TdA pose a threat to the United States and thus invoked the AEA. The court's orders thus impair the strong public interest in ensuring the national security of the country from foreign invasion and terrorist organizations.

Finally, Plaintiffs will not be harmed if this Court grants a stay. Although Plaintiffs emphasize conditions they fear the lead Plaintiff may face in El Salvador,

the United States abides by a policy not to remove aliens to countries where they are likely to be tortured. *See Munaf v. Geren*, 553 U.S. 674, 702 (2008); *Arar v. Ashcroft*, 585 F.3d 559, 578 (2d Cir. 2009) (en banc). The evidence below confirms this. By contrast, Plaintiffs—including the lead Plaintiff who has already been in El Salvador for months—have no evidence that they will be persecuted there. The requirements for a stay under *Nken* are readily satisfied here.

V. Alternatively, The Court Should Grant Mandamus Relief.

If this Court were to conclude that the district court's order is unappealable, the Court should exercise its discretion to treat this motion as a petition for writ of mandamus. *Ukiah Adventist Hosp. v. FTC*, 981 F.2d 543, 548 n.6 (D.C. Cir. 1992). This Court has recognized that a writ of mandamus to a district court may issue when three conditions are satisfied: (1) there is no other adequate means by which to obtain relief; (2) the right to the writ is "clear and indisputable"; and (3) the writ is warranted as an exercise of the court's discretion. *In re Westcott*, 135 F.4th 243, 245 (5th Cir. 2025) (citing *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380 (2004)). Those requirements are satisfied here.

First, if this court concludes that the district court's order is not appealable, that leaves the Government with "no other adequate means" to vindicate the President's authority under Article II to exercise the Foreign Affairs power of the United States. *Id.* Indeed, "accepted mandamus standards are broad enough to allow

a court of appeals to prevent a lower court from interfering with a coequal branch's ability to discharge its constitutional responsibilities." *Cheney*, 542 U.S. at 382.

Second, the court's orders represent a clear "usurpation of judicial power," making the government's right to relief "clear and indisputable." *Id.* at 246. Indeed, the usurpation of judicial power is self-evident, where the court issued extraordinary orders before establishing (or even addressing) jurisdiction, and without considering any legal or factual entitlement to the relief ordered (which went beyond what the Plaintiffs even sought). *Id.* (pronouncing on the meaning of law without jurisdiction is the "very definition" of an "ultra vires" act).

Finally, mandamus is "plainly 'appropriate under the circumstances.'" This Court explained in *In re Westcott* that appropriate circumstances included those "of public importance and exceptional character," such as an "intrusion by the federal judiciary on a delicate area of federal-state relations." *Id.* at 247. The conduct of foreign relations is closely analogous. "If a district judge manipulates the legal process in order to claim jurisdiction over an issue of great public interest that properly belongs in another court—and ultimately to the people and their elected representatives—it falls on the appellate courts to restore the constitutional balance." *Id.* at 250. "When district courts overstep their bounds and exercise powers that properly belong in another branch of government, it is incumbent on federal appellate courts to right the ship and ensure that the judiciary does not exceed its

authority under Article III of the Constitution." *Hoffman v. Westcott*, 131 F.4th 332, 336 (5th Cir. 2025).

CONCLUSION

The district court issued injunctions without considering jurisdiction, without requiring Plaintiffs to offer any evidence or identify any basis in law to support their request, without considering any of the requisite preliminary injunction factors, and without giving the government an opportunity to respond. And the relief the court ordered and the timetable under which it must be implemented grossly intrudes upon Executive authority to conduct foreign policy. For these reasons, this Court should issue an administrative stay, stay the orders pending appeal, or alternatively issue a writ of mandamus vacating the orders and directing dismissal. If the Court does not order dismissal, it should strongly consider reassignment of this case to another district judge.

DATE: May 22, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2025 I electronically filed the foregoing Defendants-Appellants' Motion for Administrative Stay with the Clerk of the Court through the Court's ECF system and that it will be served electronically upon registered participants identified on the Notice of Electronic Filing.

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CERTIFICATE OF COMPLIANCE

1. This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because:

The brief contains 4,550 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface and typestyle requirements of Fed. R. App. P. 32(g)(1) because:

The brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman fourteen-point.

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