

No. 25-

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IN THE  
Supreme Court of the United States

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FRITZ EMMANUEL LESLEY MIOT, *et al.*,  
*Petitioners,*

v.

DONALD J. TRUMP, *et al.*,  
*Respondents.*

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**On Petition for Writ of Certiorari to the United  
States Court of Appeals for the D.C. Circuit**

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**CONDITIONAL PETITION FOR A WRIT OF  
CERTIORARI BEFORE JUDGMENT**

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## QUESTIONS PRESENTED

Congress created Temporary Protected Status to permit individuals from a designated country to lawfully live and work in the United States when conditions in that country prevent its nationals from returning in safety. As this Court has seen on its interim orders docket, the Secretary of Homeland Security has terminated several countries' TPS designations. The government has sought *certiorari* before judgment to review one such termination, for Syria, in *Doe v. Noem*, 25A952. The Court should deny that petition for the reasons petitioners explained in their amicus brief in support of respondents there. No stay should issue and that appeal—like this appeal—should be heard in the ordinary course. But if the Court grants that petition, it should also grant this one, which addresses the termination of Haiti's TPS designation. Raising facts and arguments absent from *Doe*, this case is a better vehicle to review the questions presented. Granting both petitions and consolidating them for argument is the only way for the Court to address immediately *all* the issues implicated by the Secretary's various TPS designations.

Haiti has been designated for TPS since 2010. In November, the Secretary announced that she was terminating Haiti's TPS designation. Alleging that it is procedurally improper and motivated by racial animus, petitioners challenged the termination under the Administrative Procedure Act. Finding that they are likely to succeed on their statutory and constitutional claims under the APA, the district court granted petitioners interim relief.

The questions presented are whether 8 U.S.C. § 1254a(b)(5)(A) bars petitioners' APA claims and, assuming not, whether petitioners have shown a likelihood of success on the merits of their APA claims.

(i)

## **PARTIES TO THE PROCEEDING**

Petitioners are Fritz Emmanuel Lesly Miot, Rudolph Civil, Marlene Gail Noble, Marica Merline Laguerre, and Vilbrun Dorsainvil.

Respondents are Donald J. Trump, President of the United States of America; United States of America; the Department of Homeland Security; and Kristi Noem, Secretary of Homeland Security.

## **RULE 29.6 STATEMENT**

There are no corporate parties involved in this case.

## **RELATED PROCEEDINGS**

United States District Court (D.D.C.): *Miot v. Trump*, No. 25-cv-2471 (Feb. 2, 2026).

United States Court of Appeals (D.C. Cir.): *Miot v. Trump*, No. 26-5050 (Feb. 6, 2026).

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## **CONDITIONAL PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT**

If the government's petition for a writ of certiorari is granted in *Dahlia Doe v. Noem*, No. 25A952, petitioners Fritz Emmanuel Lesly Miot, Rudolph Civil, Marlene Gail Noble, Marica Merline Laguerre, and Vilbrun Dorsainvil respectfully and conditionally petition for a writ of certiorari before judgment to the United States Court of Appeals for the District of Columbia Circuit and ask that this case be consolidated with *Doe* for argument.

### **OPINIONS AND ORDERS BELOW**

The opinion and order (App. 1a) of the United States District Court for the District of Columbia postponing the termination of Haiti's TPS designation under 5 U.S.C. § 705 will be published in the Federal Supplement and is available at 2026 WL 266413. Docketed as No. 26-5050, respondents' appeal from that order is pending in the United States Court of Appeals for the District of Columbia Circuit.

The district court order denying Respondents' application to stay the postponement order is available at 2026 WL 544434. The D.C. Circuit order denying Respondents' application to stay the postponement order has yet to be published.

### **STATEMENT OF JURISDICTION**

The district court order was entered on February 2, 2026. App. 98a. The district court had subject matter jurisdiction pursuant to 28 U.S.C. § 1331. Respondents' appeal from the district court order was filed on February 6, 2026. The jurisdiction of this Court rests on 28 U.S.C. § 2101(e).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant statutory and constitutional provisions—5 U.S.C. § 559; 5 U.S.C. § 705; 5 U.S.C. § 706; 8 U.S.C. § 1254a; and U.S. Const. amend. V—are set forth in the appendix.

## INTRODUCTION

Like the petitioners in *Doe v. Noem*, No. 25A952, petitioners here are TPS holders. Petitioners in *Doe* are from Syria. Petitioners here are from Haiti. The legal questions presented in the two petitions overlap, but there are facts and legal issues in play here that are not present in *Doe*.

The government’s petition for a writ of certiorari in *Doe* asks whether 8 U.S.C. § 1254a(b)(5)(A) bars judicial review of claims brought under the Administrative Procedure Act and, if not, whether petitioners’ APA claims are likely to succeed on the merits. This case raises those questions, too, and others subsumed within them.

This case is a better vehicle than *Doe* for addressing myriad issues these petitions raise. In this case, unlike *Doe*, the district court issued a written decision—an 83-page decision that not only analyzes the jurisdictional and merits questions in detail but does so with respect to a wider range of APA claims than was considered in *Doe*. And in this case, unlike *Doe*, the administrative record has been produced, which will enable a more informed analysis of the merits.

Petitioners assert that certiorari should be denied in *Doe*, including for the reasons explained the amicus brief that they filed in support of respondents in that case. Although they are important—indeed, because they are important—the questions presented are best

decided in the normal course after the courts of appeals have addressed them. No stay should issue in either appeal and certiorari before judgment should not be granted. The government identifies no emergency that warrants review (or a stay of the district court order) at this stage of the proceedings. But if the Court nonetheless grants the government’s petition in *Doe*, it should also grant certiorari in this case.

### STATEMENT

Absent Temporary Protected Status (TPS), petitioners face the risk of immediate deportation to Haiti.<sup>1</sup> Without a functioning government, Haiti is a nation in chaos. Rape, kidnapping, and murder are rampant, while food, housing, and medical care are scarce.

Since the assassination of President Jovenel Moïse in 2021, armed gangs have gained control over much of [Haiti’s capital] Port-au-Prince, creating a power vacuum that has made governing a challenge and fueled further violence, homelessness and starvation. More than 5,600 people were killed and 1,400 were kidnapped amid gang conflicts last year, according to the United Nations. The violence has ren-

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<sup>1</sup> Petitioners’ amicus brief in opposition to the government’s stay application in *Doe* sets forth the dangers that would await them in Haiti—and the other hardships that would befall them—if Haiti’s TPS designation is terminated. Br. of Haitian TPS Holders as *Amici Curiae* in Opp. to Application to Stay Amicus Br. of Haitian TPS Holders at 5–9, *Doe v. Noem*, No. 25A952 (Mar. 6, 2026).

dered 1 million people homeless in Haiti, forcing many into makeshift shelters and exacerbating the country’s economic challenges.<sup>2</sup>

That was as of last March. Conditions have only gotten worse. Indeed, the Federal Register notice announcing the termination of Haiti’s TPS designation reports that as of late August “1.3 million people—approximately 12% of Haiti’s population—have been forced to flee their homes and are internally displaced due to escalating violence” that “has engulfed Port-au-Prince and spreads beyond.” 90 Fed. Reg. 54733, 54735 (Nov. 28, 2026) (cleaned up).

Recognizing the ongoing crises that grip Haiti, the State Department has issued a Level 4 travel advisory warning that people should “not travel to Haiti due to kidnapping, crime, terrorist activity, civil unrest, and limited health care.”<sup>3</sup> That warning “is not limited to Port-au-Prince” but also applies to “all other parts of Haiti.” ECF 81-1 ¶ 20.<sup>4</sup>

That petitioners risk death upon their removal to Haiti is not speculative. In February, the decapitated bodies of four Haitian women deported from the U.S. several months earlier were found dumped in a river.<sup>5</sup>

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<sup>2</sup> Fredlyn Pierre Louis, *Haitian immigrants grapple with uncertainty as TPS end date looms*, NBC NEWS (Mar. 8, 2025), <https://bit.ly/3MVcSbK>.

<sup>3</sup> Travel Advisory: Haiti, U.S. Dep’t of State (July 15, 2025), <https://bit.ly/48wRYs0> (last visited Mar. 9, 2026).

<sup>4</sup> All ECF references are to the docket in *Miot v. Trump*, No. 25-cv-2471 (D.D.C.).

<sup>5</sup> Héctor Ríos Morales, *Four Haitian Women Were Deported from Puerto Rico; They Have Now Been Found Decapitated*, LATIN TIMES (Feb. 4, 2026), <https://bit.ly/3Pa1LwK>. People who  
(continued . . .)

### A. Temporary Protected Status

When the Secretary designates a country for TPS, nationals of that country already present in the United States can lawfully live and work in the U.S. for the duration of the designation. A country may be designated for TPS if certain statutory conditions are met. The Secretary of Homeland Security may designate a country for TPS if the Secretary finds that (1) there is “an ongoing armed conflict” within the country; (2) the country has suffered “an earthquake, flood, drought, epidemic, or other environmental disaster” that renders it “unable, temporarily, to handle adequately the return” of nationals to the country; or (3) “there exist extraordinary and temporary conditions in the” country “that prevent” its nationals “from returning . . . in safety.” 8 U.S.C. §§ 1254a(b)(1)(A)–(C). When considering whether to designate a country because it is unsafe for its nationals to return home, the Secretary is allowed but not required to consider whether “permitting the [country’s nationals] to remain temporarily in the United States is contrary to the national interest of the United States.” *Id.* § 1254a(b)(1)(C).<sup>6</sup>

Once a country is designated for TPS, that country’s nationals who are physically present in the United

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return to Haiti after having lived in the United States, especially those who—like Petitioner Marlene Noble—came to the U.S. as young children and do not speak Creole, are targeted by the violent gangs that control Haiti. *See* ECF 81-1 ¶ 146; ECF 81-4 ¶¶ 3–8, 17–18; App. 87a–89a.

<sup>6</sup> Originally, Congress charged the Attorney General with administering the TPS statute, and the statute still refers to “the Attorney General.” But in 2002 Congress transferred responsibility to the Secretary of Homeland Security. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135, 2142–45, 2177–2212 (Nov. 25, 2002); Homeland Security Act Amendments of 2003, Pub. L. No. 108-7, 117 Stat. 11, 526–32 (Feb. 20, 2003).

States may register as TPS holders unless they are ineligible to do so.<sup>7</sup> TPS holders may not be deported and are authorized to work in the United States so long as their home country's designation remains in place. *Id.* § 1254a(a)(1)(A)–(B).

Individuals are ineligible for TPS if (1) they have been convicted of a felony or more than one misdemeanor; (2) they are known to have engaged in drug trafficking; (3) they belong to a terrorist organization; or (4) their presence in the United States would have potentially serious adverse foreign policy consequences for the United States. 8 U.S.C. §§ 1254a(c)(1)(A), (2)(A)–(B); *id.* §§ 1182(a)(2)–(3). Recognizing that errors might be made and that circumstances might change, the Secretary of Homeland Security is required to withdraw TPS from any individual who has received TPS but is subsequently determined to be ineligible. *Id.* § 1254a(c)(3).

A country's initial designation is for a "period . . . of not less than 6 months and not more than 18 months." 8 U.S.C. § 1254a(b)(2).

A TPS designation is subject to periodic review. At least 60 days before the TPS designation is set to expire, the DHS Secretary, "after consultation with appropriate agencies of the Government, shall review the conditions in the foreign state . . . and shall determine whether the conditions for such designation . . . continue to be met." 8 U.S.C. § 1254a(b)(3)(A). If the Secretary determines that the conditions for designation continue to exist, the designation must be extended. *Id.* § 1254a(b)(3)(A). Conversely, if the Secretary determines that the conditions for designation are no longer

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<sup>7</sup> Individuals who have been convicted of a felony or two misdemeanors are not eligible for TPS. See 8 U.S.C. § 1254a(c)(2)(B), (3)(A); *id.* § 1182(a)(2)–(3).

met, the designation must be terminated. *Id.* § 1254a(b)(3)(B). Regardless which, “notice of . . . such determination (including the basis for the determination . . .)” must be timely published “in the Federal Register.” 8 U.S.C. § 1254a(b)(3)(A). If the Secretary fails to make the mandated determination within the statutorily prescribed period, the designation is automatically extended by at least six months. *Id.* § 1254a(b)(3)(C). Thus, the only circumstance under which a TPS designation may be lawfully terminated is if, as a result of the statutorily mandated periodic review, the Secretary affirmatively determines that a foreign state “no longer continues to meet the conditions for designation under [8 U.S.C. § 1254a(b)(1)]” and then gives timely notice of “the basis for the determination.” *Id.* § 1254a(b)(3)(A)(B).

### **B. Haiti’s TPS designation**

Haiti was first designated for TPS in January 2010, following a devastating earthquake. 75 Fed. Reg. 3476 (Jan. 21, 2010). Since then, Haiti’s TPS designation has been extended—and the country has been redesignated—multiple times over multiple administrations.<sup>8</sup> These successive actions were prompted by the enduring effects of the 2010 earthquake, which not only damaged Haiti’s infrastructure and public health systems but also worsened pre-existing conditions, such as food insecurity and the lack of sufficient housing. Subsequent natural disasters, including Hurricane Matthew in 2016 and Hurricane Irma in 2017, compounded these problems, which directly and indirectly affect millions of Haitians. *See* 76 Fed. Reg. 29000

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<sup>8</sup> An extension of a TPS designation applies only to those who already hold TPS. The redesignation of country for TPS enables individuals who were not present in the U.S. at the time of the prior designation to register for TPS.

(May 19, 2011); 77 Fed. Reg. 59943 (Oct. 1, 2012); 79 Fed. Reg. 11808 (Mar. 3, 2014); 80 Fed. Reg. 51582 (Aug. 25, 2015); 86 Fed. Reg. 41863 (Aug. 3, 2021); 88 Fed. Reg. 5022 (Jan. 26, 2023); 89 Fed. Reg. 54484 (July 1, 2024).

During the prior administration, Haiti’s TPS designation was extended three times by then-Secretary Mayorkas who, upon completing the statutorily mandated review process, concluded each time that the statutory conditions for Haiti’s TPS designation continued to be met. *See* 86 Fed. Reg. 41863; 88 Fed. Reg. 5022; 89 Fed. Reg. 54484. In 2021, Secretary Mayorkas concluded that “Haiti is grappling with,” among other things, “a deteriorating political crisis, violence, and a staggering increase in human rights abuses” in addition to “rising food insecurity” and “a severe lack of healthcare services.” 86 Fed. Reg. at 41864–67.

In 2023, Secretary Mayorkas, reciting extensive evidence of Haiti’s deteriorating situation, determined once again that “Haiti is experiencing economic, security, political, and health crises simultaneously.” 88 Fed. Reg. at 5025. Finally, in July 2024, Secretary Mayorkas—citing political corruption, human-rights abuses, escalating gang violence, limited health care, food insecurity, and the continuing impact of a destructive 2021 earthquake that was quickly followed by a severe tropical storm—“determined” again “that an 18-month TPS extension is warranted because the extraordinary and temporary conditions supporting Haiti’s TPS designation remain.” 89 Fed. Reg. at 54487. The extension extended Haiti’s TPS designation through February 3, 2026. *Id.*

### **C. The termination of Haiti’s TPS designation**

Shortly before taking office, President Trump—who infamously claimed that Haitian TPS holders in

Springfield, Ohio were “eating the pets of the people” there<sup>9</sup>—vowed to “revoke” Haiti’s TPS designation and send Haitian TPS holders “back to their country.”<sup>10</sup> He has made good on that threat.

President Trump’s termination of Haiti’s TPS designation has been a three-step process. On February 24, his Secretary of Homeland Security, Kristi Noem, issued a “partial vacatur” prematurely terminating Haiti’s TPS designation effective August 3, 2025. 90 Fed. Reg. 10511 (Feb. 24, 2025). On July 1, the partial vacatur was held unlawful. *Haitian Evangelical Clergy Ass’n v. Trump*, 789 F. Supp. 3d 255 (E.D.N.Y. 2025) (*HECA*). The same day, Secretary Noem issued a termination notice that purported to terminate Haiti’s designation effective September 2, 2025. 90 Fed. Reg. 28760 (July 1, 2025). Then, on November 28, three months after petitioners challenged the July 1 termination notice on constitutional and statutory grounds, Secretary Noem issued a superseding termination notice purporting to terminate Haiti’s TPS designation effective February 3, 2026. 90 Fed. Reg. 54733 (Nov. 28, 2025). The operative complaint, petitioners’ second amended complaint, challenges the November 28 notice. ECF 90, *Miot v. Trump*, No. 25-cv-2471 (Dec. 19, 2025).

Secretary Noem issued the termination notice in “furtherance of” Executive Order 14159 (Jan. 20, 2025). 90 Fed. Reg. at 54736. Issued by President Trump within hours of regaining office, the order decries what it characterizes as an “unprecedented flood

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<sup>9</sup> Riley Hoffman, *READ: Harris-Trump presidential debate transcript*, ABC (Sept. 10, 2024), <https://bit.ly/4aLeOgQ>.

<sup>10</sup> Maggie Astor, Trump Says He Would Try Again to Revoke Haitian Immigrants’ Protections, N.Y. TIMES (Oct. 3, 2024), <https://nyti.ms/48QQTtS>.

of illegal immigration into the United States.” 90 Fed. Reg. 8443, 8443 (Jan. 29, 2025). Directing each to “align any and all departmental activities with the policies set out by this order,” the order instructs the Secretary of State, Attorney General, and DHS Secretary to “promptly” take action “to rescind the policy decisions of the previous administration” that “led to the increased or continued presence of illegal aliens in the United States.” *Id.* at 8446.

Although TPS holders are not “illegal aliens”—because the TPS designation itself makes their presence lawful—the order states that “[s]uch action shall include . . . ensuring that” TPS designations are “limited in scope and made for only so long as may be necessary to fulfill the textual requirements of the statute.” *Id.*

The Secretary gave two reasons for terminating Haiti’s TPS designation. First, despite acknowledging that “1.3 million people—approximately 12% of Haiti’s population—have been forced to flee their homes and are internally displaced due to escalating violence” that “has engulfed Port-au-Prince and spreads beyond,” she “determined that there are no extraordinary and temporary conditions in Haiti that prevent Haitian nationals . . . from returning in safety.” 90 Fed. Reg. at 54735 (cleaned up). Second, relying largely on purported criminality, she determined that

even if . . .there existed conditions that were extraordinary and temporary that prevented Haitian nationals . . .from returning in safety, termination of Temporary Protected Status of Haiti is still required because it is contrary to the national interest of the United States to permit Haitian nationals . . . to remain temporarily in the United States.

*Id.*

#### **D. The termination of all TPS designations**

Since President Trump returned to office, TPS designations for thirteen countries have been up for periodic review. The administration has terminated, sometimes in multiple steps, the designations for all thirteen. *See* 91 Fed. Reg. 10402 (Mar. 3, 2026) (Yemen); 91 Fed. Reg. 1547 (Jan. 1, 2026) (Somalia); 90 Fed. Reg. 58028 (Dec. 15, 2025) (Ethiopia); 90 Fed. Reg. 54733 (Nov. 28, 2025) (Haiti); 90 Fed. Reg. 53378 (Nov. 25, 2025) (Burma); 90 Fed. Reg. 50484 (Nov. 6, 2025) (South Sudan); 90 Fed. Reg. 45398 (Sept. 22, 2025) (Syria); 90 Fed. Reg. 43225 (Sept. 8, 2025) (Venezuela); 90 Fed. Reg. 30089 (July 8, 2025) (Honduras); 90 Fed. Reg. 30086 (July 8, 2025) (Nicaragua); 90 Fed. Reg. 28760 (July 1, 2025) (Haiti); 90 Fed. Reg. 24151 (June 6, 2025) (Nepal); 90 Fed. Reg. 23697 (June 4, 2025) (Cameroon); 90 Fed. Reg. 20309 (May 13, 2025) (Afghanistan); 90 Fed. Reg. 10511 (Feb. 24, 2025) (Haiti); 90 Fed. Reg. 9040 (Feb. 5, 2025) (Venezuela); 90 Fed. Reg. 8805 (Feb. 3, 2025) (Venezuela).

The terminations share at least two commonalities. First, each country whose designation was terminated is a majority non-white country. Second, in each instance, the Secretary concluded that “it is contrary to the national interest of the United States to permit” TPS holders “to remain . . . in the United States.” *E.g.*, 90 Fed. Reg. at 54735.

#### **E. Proceedings below**

Petitioners filed their original complaint, targeting the July 1 termination notice, on July 30. ECF 1. Petitioners filed an amended complaint, challenging the superseding November 28 termination notice on December 5. ECF 74. Two weeks later, on December 19, petitioners filed a slightly revised second amended complaint, which is the operative complaint. ECF 90.

Alleging that the termination was a procedurally defective predetermined outcome motivated at least in part by racial animus, petitioners assert claims under the Administrative Procedure Act and the Fifth Amendment.

The government produced the administrative record on December 10. ECF 78.

Recognizing that the litigation would not be complete before the scheduled February 3 termination date, petitioners filed a motion for interim relief under 5 U.S.C. § 705, asking that termination be postponed until a final resolution on the merits. ECF 81.

The government moved to dismiss, contending, *inter alia*, that 8 U.S.C. § 1254a(b)(5)(A) deprived the district court of jurisdiction and that petitioners claims failed on the merits. ECF 80.

Briefing on the parties' respective motions ensued. The government filed a brief in opposition to petitioners' motion for interim relief while petitioners filed a brief in opposition to the government's motion to dismiss. ECF 92; ECF 93.

After both parties had filed replies in support of their respective motions (ECF 99; ECF 100), the court held a two-day hearing on January 6 and 7. To ensure that the parties had a full opportunity to be heard, the court allowed the government to submit a post-hearing supplemental brief in support of its positions and allowed petitioners to file a supplemental brief in response. ECF 103; ECF 108.

On February 2, the day before Haiti's TPS designation was to have been terminated, the court denied the government's motion to dismiss and granted petitioners' motion to postpone the termination pending a final resolution on the merits. App. 1a–98a.

The court rejected the government's contention that § 1254a(b)(5)(A) bars review of petitioners' claims, recognizing that petitioners do not challenge the Secretary's substantive determinations but instead the process by which she arrived at those determinations. App. 23a.

The court held that petitioners are likely to succeed on the merits of their APA claims, finding sufficient evidence in the administrative record and the administration's across-the-board termination of all TPS designations to conclude that the termination of Haiti's designation was not only arbitrary and capricious but the preordained result of a pattern and practice of terminating TPS designations without adherence to the statutorily mandated periodic review process. App. 47a–76a. The evidence for this finding as to Haiti, as compared to other countries, was particularly strong, given the specific comments that President Trump had made about Haitian TPS holders and his corresponding declaration that he would revoke Haiti's TPS designation.

Finally, the court concluded that petitioners are likely to succeed on the merits of their equal-protection claim, finding sufficient evidence that the termination was motivated, at least in part, by racial animus. App. 76a–86a. Here again, the specific comments about Haitian TPS holders provided evidence for this claim absent from other TPS terminations.

On February 23, the district court denied Respondents' application to stay its order postponing termination of Haiti's TPS designation pending appeal. App. 99a. The court found, among other things, that petitioners "and other Haitian TPS holders face a greater risk of harm from an order allowing the Government to remove them to a perfect storm of suffering than the

Government faces from maintaining the *status quo*.” *Id.* 102a (cleaned up).

On March 6, the D.C. Circuit denied Respondents’ application to stay the postponement order. App. 104a. Like the district court, it found that “the termination of TPS would have devastating consequences for the plaintiffs, including risk of detention and deportation, separation from family members, and loss of work authorization,” and that TPS holders “removed to Haiti would be vulnerable to violence amid a collapsing rule of law and lack access to life-sustaining medical care.” App. 110a (cleaned up).

## **REASONS FOR GRANTING THE PETITION IF THE COURT GRANTS THE PETITION IN *DOE***

### **I. THIS CASE IS A BETTER VEHICLE THAN *DOE* FOR DECIDING THE QUESTIONS PRESENTED.**

This Court need not—and should not—grant review in *Doe* or this case now. It can—and should—allow each appeal to unfold in the ordinary course and can consider the merits after the issues are fully decided below. But if the Court accepts the government’s request to intervene now in *Doe*, the Court should simultaneously grant review in this case, too, which presents a better vehicle by which to review these issues.

This petition, unlike the petition in *Doe*, presents threshold issues that must be addressed before resolving the questions presented; implicates a broader range of APA claims than raised in *Doe*; and rests on a record that it is more developed both legally and factually. That makes this case a better vehicle for resolving the questions presented than *Doe*.

**A. This case raises threshold issues not raised in *Doe*.**

1. The first question presented in *Doe* is whether 8 U.S.C. § 1254a(b)(5)(A) precludes judicial review of the respondents' APA claims. The Court cannot decide that question without considering 5 U.S.C. § 559, pursuant to which a “[s]ubsequent statute may not be held to supersede or modify . . . chapter 7” of the APA “except to the extent that it does so expressly.” Petitioners in this case raised § 559 below. *See* ECF 93 at 4–6; ECF 100 at 1–3; ECF 108 at 1. The respondents in *Doe* did not. Because petitioners in this case raised this potentially dispositive antecedent issue below, it is the better vehicle by which to resolve the § 1254a(b)(5)(A) question.

The APA was enacted in 1946, decades before the jurisdictional bar in 8 U.S.C. § 1254a(b)(5)(A) was passed in 1990. *See* Administrative Procedure Act, Pub. L. No. 79-404, 60 Stat. 237 (June 11, 1946); Immigration Act of 1990, Pub. L. No. 101-649 Tit. III, § 302, 104 Stat. 4978, 5032 (Nov. 29, 1990). But the later-enacted statute does not expressly supersede or modify 5 U.S.C. § 705, which is both part of chapter 7 of the APA and the basis for the relief granted below. To the contrary, § 1254a(b)(5)(A) is silent as to the APA. Thus, § 559 forbids the Court from construing § 1254a(b)(5)(A) as limiting judicial review of unlawful agency action under § 705.<sup>11</sup>

Fighting this conclusion, the government argued below that this Court “has explicitly rejected Plaintiffs’ theory” in *Marcello v. Bonds*, 349 U.S. 302 (1955). ECF 92 at 10. But the government’s reliance on *Marcello* is

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<sup>11</sup> It also prevents the Court from construing § 1254a(b)(5)(A) as limiting judicial review of unlawful agency action under § 706, which is the ultimate basis for Petitioners’ APA claims.

misplaced. *Marcello* not only rests on a unique constellation of historical facts absent here (*see* 349 U.S. at 306–10) but addresses the displacement of hearing procedures, not the preclusion of judicial review. Whether a subsequently enacted statute bars judicial review under the APA is governed by *Shaughnessy v. Pedreiro*, 349 U.S. 48 (1955), not *Marcello*.

In any event, regardless which side is correct, the Court must address § 559 before it can decide whether § 1254a(b)(5)(A) precludes judicial review under the APA. This case, unlike *Doe*, squarely raises the issue.

2. Unlike *Doe*, this petition presents the question whether § 1254a(b)(5)(A) precludes review of constitutional claims brought under 5 U.S.C. § 706(2)(B), which requires courts to “hold unlawful and set aside agency action . . . found to be . . . contrary to constitutional right [or] power.” The Court would have no opportunity to address the question in *Doe* because the relief granted there does not rest on the respondents’ constitutional allegations. Stay App. 28a–29a, *Noem v. Doe*, No. 25A952.<sup>12</sup> The relief granted in this case, by contrast, rests in part on petitioners’ equal-protection claim. App. 76a–86a. This case therefore would enable the Court to more fully address the scope of § 1254a(b)(5)(A).

Whether § 1254a(b)(5)(A) applies to claims brought under § 706(2)(B) is relevant here and in the other cases currently challenging the termination of TPS designations. In each case, the plaintiffs have asserted an equal-protection claim. The question presented by the government’s petition for a writ of certiorari in *Doe*

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<sup>12</sup> Finding the *Doe* petitioners’ definition of the protected class “too expansive,” the *Doe* court concluded that the petitioners there had not shown a likelihood of success on their equal-protection claim.

is whether § 1254a(b)(5)(A) “precludes respondents’ APA claims.” Stay App. 32, *Doe*, No. 25A952. Were the Court to answer that question without considering claims brought under § 706(2)(B)—claims that must be addressed in the case—its decision would leave open the pressing question whether § 1254a(b)(5)(A) bars such claims.

**B. This case implicates a wider range of APA claims.**

In addition to being a better vehicle because this case squarely presents a constitutional claim under the APA, this case *also* raises other, non-constitutional APA claims not pursued in *Doe*.

1. Here, petitioners allege that the termination of Haiti’s TPS designation rests on three unexplained departures from past practice that are not raised in *Doe*: the Secretary’s failure to meaningfully consult with the State Department; the Secretary’s reliance on purported criminality among TPS holders; and the Secretary’s reliance on the supposedly temporary nature of a TPS designation. ECF 90 ¶¶ 188–90, 221, 247; *see also* ECF 81 at 24–25; ECF 93 at 24; ECF 100 at 10–11.

2. This case, unlike *Doe*, also raises the question whether the Secretary acted “without observance of procedure required by law” (5 U.S.C. § 706(2)(D)) inasmuch as her periodic review, such that it was, failed to consider all the conditions for designation set forth in § 1254a(b) and instead limited her supposed periodic review to the conditions set forth in § 1254a(b)(1)(C). *See* ECF 90 ¶ 248; *see also* ECF 81 at 25–26; ECF 93 at 27–28; ECF 100 at 15–16. When determining whether Haiti’s TPS designation should be extended or terminated, the Secretary failed to consider whether “there is an ongoing armed conflict within” Haiti and

whether, “due to such conflict, requiring the return of” Haitians to Haiti “would pose a serious threat to their personal safety.” 8 U.S.C. § 1254a(b)(1)(A). Her failure to consider this enumerated basis for designation violated the TPS statute, which requires the Secretary to “determine whether the conditions for . . . designation under this subsection”—*i.e.*, § 1254a(b)—“continue to be met.” *Id.* § 1254a(b)(3)(A). This case would allow the Court to analyze the viability of an APA claim based on that failure.

3. In this case, as in *Doe* and all pending TPS cases, the Secretary terminated a TPS designation based on U.S. “national interest.” 90 Fed. Reg. at 54735. The recent terminations mark the first time in the history of the TPS statute that a Secretary has relied on national interest as a basis for terminating a TPS designation. There is good reason why no previous Secretary has done so: Pursuant to the congressionally mandated periodic review process, the termination of a TPS designation may be based only on “conditions in the [designated] foreign state.” 8 U.S.C. § 1254a(b)(3)(A). Because U.S. national interest is not a condition “in” a foreign state, it has no role in the periodic review process and is not a lawful basis on which to terminate a TPS designation. Both petitioners and the respondents in *Doe* challenge the Secretary’s statutorily impermissible invocation of national interest.

But petitioners present arguments that are not presented in *Doe*.

First, petitioners here argue that even if a termination may be based on national interest, the Secretary’s discretion in defining the national interest is statutorily and constitutionally cabined. ECF 108 at 9–10; Hr’g Tr. 157–60, *Miot v. Trump*, No. 25-cv-2471 (Jan. 7, 2026); *see also* ECF 93 at 19–20. By enacting the

TPS statute, Congress conclusively determined that TPS should exist, that each TPS designation should be reviewed on a country-specific basis, and that the termination of a country's TPS designation must be based on conditions in *that* country. The Secretary's termination of all TPS designations because she believes that TPS designations are categorically contrary to the national interest effectively negates the statute that Congress enacted, substituting the Executive's view of the factors that should be considered in place of those specified by Congress. Petitioners—who allege that the termination of Haiti's TPS designation is animated by hostility to non-white immigrants—also argue that the Secretary's definition of the national interest is limited by the Fifth Amendment's equal-protection guarantee, which precludes the Secretary from terminating a TPS designation based on racial animus. The government disagrees with each of these assertions: It takes the position that the Secretary may adopt any definition of the national interest that she wishes and that she may determine the national interest in any manner she chooses, including arbitrarily through the flip of a coin. Hr'g Tr. 158–59 (respondents' counsel “agree[ing] that [the Secretary]” can “take a coin and flip it and decide, heads, it's in the national interest, tails, it's not”), *Miot v. Trump*, No. 25-cv-2471 (Jan. 7, 2026). Regardless who is right, this case, unlike *Doe*, squarely presents the issues.

Second, petitioners argue in the alternative that the TPS statute would violate the non-delegation doctrine if it did confer unfettered discretion on the Secretary to define the national interest however she chooses. *Doe*, by contrast, does not raise the issue.

**C. This record and decision below are more developed in this case.**

If certiorari is granted in *Doe*, granting certiorari in this case too will assist the Court’s analysis of the questions presented because this case is better developed legally and factually. In *Doe*, the district court issued an oral ruling based on 66 pages of briefing and a three-hour hearing. In this case, the district court received 173 pages of briefing and issued an 83-page written decision after a two-day hearing that spanned 14 hours. The briefing and decision in this case cover a wider range of issues in greater detail than the briefing and decision in *Doe*. The breadth and depth of the district court decision in this case will help the Court give thorough consideration to the multi-faceted questions presented. Granting review in this case alongside *Doe* would be particularly helpful to the Court’s consideration of the merits question because here, in contrast to *Doe*, the administrative record has been produced and the district court decision relies on that record.

**II. THE DECISION BELOW IS CORRECT.**

**A. The district court correctly held that it has jurisdiction over petitioners’ claims.**

Recognizing the “well-settled” and “strong” presumption “favoring judicial review of administrative action”—a presumption that is especially strong with respect to constitutional claims (*see Webster v. Doe*, 486 U.S. 592, 603 (1988)—the district court held that 8 U.S.C. § 1254a(b)(5)(A) does not deprive it of jurisdiction to hear petitioners’ claims. App. 22a (quoting *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 229 (2020); *Kucana v. Holder*, 558 U.S. 233, 251 (2010)).

The district court rightly concluded that although it divests courts of jurisdiction to “review . . . any determination of the [Secretary] with respect to the designation, or termination or extension of a designation, of a foreign state” for TPS, § 1254a(b)(5)(A) does not bar review of claims such as those asserted here.<sup>13</sup> As the court explained, petitioners do not challenge the Secretary’s “*determination*” as to conditions in Haiti or the U.S. national interest. App. 23a. “They challenge instead *how* the Secretary went about making her determination.” *Id.* The distinction is dispositive because—as every court to have considered the issue on the merits has concluded<sup>14</sup>—§ 1254a(b)(5)(A) “does not prevent courts from reviewing and setting aside agency action that is procedurally deficient.” *HECA*, 789 F. Supp. 3d at 269.<sup>15</sup>

This consensus is rooted in *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479 (1991), a case in which the Court interpreted a provision analogous to § 1254a(b)(5)(A). *See, e.g., Nat’l TPS All. v. Noem*, 166 F.4th 739, 757 (9th Cir. 2026) (citing *McNary*), *aff’g* 798 F. Supp. 3d 1108, 1133 (N.D. Cal. 2025) (same); *Afr. Communities Together v. Noem*, 2026 WL 395732,

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<sup>13</sup> The court noted 5 U.S.C. § 559 (App. 39 n.16) but did not rest its decision on it. *Cf. supra* at 15–16.

<sup>14</sup> The Ninth Circuit has suggested to the contrary in an unpublished stay order, *Nat’l TPS All. v. Noem*, No. 26-199, 2026 BL 42675 (9th Cir. Feb. 9, 2026), and in a subsequently vacated panel decision, *Ramos v. Wolf*, 975 F.3d 872 (9th Cir. 2020), *reh’g en banc granted, opinion vacated*, 59 F.4th 1010 (9th Cir. 2023).

<sup>15</sup> That the Secretary’s procedurally defective termination notice invoked national interest as a basis for terminating Haiti’s TPS designation is immaterial because “the Constitution gives Congress broad authority to set immigration policy” and the Executive “does not have the authority to override immigration laws enacted by Congress.” *Biden v. Texas*, 597 U.S. 785, 830 (2022) (Alito, J., dissenting).

at \*5–8 (D. Mass. Feb. 12, 2026) (*ACT*); *HECA*, 789 F. Supp. 3d at 269 (citing *McNary*); *CASA de Md., Inc. v. Trump*, 355 F. Supp. 3d 307, 317–21 (D. Md. 2018) (same); *Centro Presente v. DHS*, 332 F. Supp. 3d 393, 408–09 (D. Mass. 2018) (same). The district court was right to join that consensus.

**B. The district court correctly determined that petitioners are likely to succeed on the merits.**

**1. Petitioners are likely to succeed on their APA claims.**

1. The congressionally mandated periodic review process requires the Secretary to “consult[] with appropriate agencies of government” before terminating a TPS designation. 8 U.S.C. § 1254a(b)(3)(A). Here, the government has admitted that the only supposed consultation was a three-sentence email exchange between a DHS staffer and a State Department staffer that did not address conditions in Haiti at all and touched on national interest obliquely at best. App. 49a (citing ECF 78 at 409–10).

That perfunctory exchange stands in sharp contrast to the practice of every prior administration, including the first Trump administration, all of which based periodic reviews on a series of vetted State Department memos that compiled and analyzed information gathered from country and regional experts at the Department and culminated in a formal recommendation to the Secretary of State. *See Saget v. Trump*, 375 F. Supp. 3d 280, 298–300 (E.D.N.Y. 2019). The divergence from past practice “puts the inadequacy of the email exchange here into stark relief.” App. 52a.

Regardless of past practice, the email exchange did not constitute the meaningful consultation required by § 1254a(b)(3)(A). The district court therefore was right

to conclude that petitioners “are likely to succeed on their claim that Secretary Noem acted contrary to law and in excess of her statutory authority by failing to consult appropriate agencies as required by the TPS statute.” App. 48a. That the Secretary could terminate a TPS designation is not in dispute. The question is whether she may do so in the way that she has here, notwithstanding Congress’s carefully calibrated termination procedure.

2. By statute, any decision to terminate a TPS designation must be based on the Secretary’s review of “conditions in the [designated] state.” 8 U.S.C. § 1254a(b)(3)(A). In other words, a termination must be based on a country-specific review. But, as noted above (*supra* at 11), the current administration has terminated every TPS designation that has come up for review despite the disparate conditions in the various designated countries. As the district court found, this “strongly suggests that the Secretary engaged in a pattern and practice of terminating all TPS designations without the country specific statutorily-mandated periodic review.” App. 54a; *accord, e.g., ACT*, 2026 WL 395732, at \*12; *Doe v. Noem*, 2026 WL 184544, at \*14 (N.D. Ill. Jan. 23, 2026).

### 3. Agency action is

arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

*Motor Vehicle Mfrs. Ass’n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

The termination of Haiti’s TPS designation is arbitrary and capricious under each of these standards.

To start, “Secretary Noem’s determination that conditions in Haiti permit safe return” is not merely implausible but “runs counter to the evidence before [her].” App. 58a (quoting *State Farm*, 463 U.S. at 43). As the court found:

The Certified Administrative Record contains over 1,450 pages, and it speaks with remarkable consistency. Every document describing conditions in Haiti in 2025 describes the country as a nation deep in crisis.

*Id.*

The Secretary’s conclusion that allowing Haitian TPS holders to remain in the United States is contrary to the national interest rests in significant part on the suggestion that Haitians are criminals prone to overstaying their visas. 90 Fed. Reg. at 54736. But there is no “rational connection between the facts found and the choice” to terminate Haiti’s TPS designation. *State Farm*, 463 U.S. at 43.

The Secretary’s reliance on criminality is misplaced. Individuals who commit the types of crimes described in the termination notice are not eligible for TPS *by the statute’s own terms*. See 8 U.S.C. § 1254a(c)(2)(B), (3)(A); *id.* § 1182(a)(2)–(3); *Saget*, 375 F. Supp. 3d at 300. That presumably is why the termination notice and underlying data “say[] nothing about the criminality rate of Haitian TPS holders” in particular, relying instead on statements about Haitians generally. App. 73a.

Nor does the Secretary’s decision to terminate Haiti’s TPS designation have any rational connection to visa overstay rates. The termination notice says

that visa overstays hinder immigration enforcement because individuals who overstay their visas “may be harder to locate and monitor.” 90 Fed. Reg. at 54736. But, as the district court correctly noted, “TPS holders,” who are lawfully present in the United States “are easy to locate because they regularly update their address information with DHS to maintain that status and their work authorization.” App. 70a; *cf.* 8 U.S.C. § 1254a(c)(3)(C). And even if that were not the case, the government has conceded that the administrative record contains no data on Haitian TPS holders’ overstay rate. App. 70a.

Consistent with President Trump’s vow to “revoke” Haiti’s TPS designation (*supra* at 9), there is, as the district court found, abundant evidence that the termination of Haiti’s TPS designation was a preordained outcome rather than the product of a the congressionally mandated periodic review process. That evidence “includes Secretary Noem: (1) following the President’s direction to terminate before conducting any analysis; (2) terminating every TPS designation to come before her; (3) failing to consult appropriate agencies; (4) making gross generalizations without any supporting data; and, among other things, (5) ignoring key aspects of the analysis.” App. 75a–76a.

## **2. Petitioners are likely to succeed on their equal-protection claim.**

The district court correctly held that petitioners’ equal-protection claim is governed by *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), which governs equal-protection claims asserted by individuals in the United States, rather than *Trump v. Hawaii*, 585 U.S. 667 (2018), which governs claims asserted by individuals outside the U.S., because petitioners are present in, rather than seeking entry to, the United States. App.

77a–79a. The court was, moreover, correct to conclude that petitioners are likely to succeed on the merits of their claim. App. 79a–86a.

There are numerous indicia—in both word and deed—that the termination of Haiti’s TPS designation was motivated, at least in part, by racial animus.

The termination notice acknowledges that the decision to terminate Haiti’s designation was made in “furtherance” of President Trump’s directives. 90 Fed. Reg. at 54736. President Trump “has repeatedly invoked racist tropes of national purity, declaring that ‘illegal immigrants’—a category he wrongly assigns to Haitian TPS holders—are ‘poisoning the blood’ of America.” App. 79a. He has also “complained . . . that nonwhite immigration is an ‘invasion,’ creating a ‘dumping ground’ that is ‘destroying our country.’” App. 80a. And he has “stated that he prefers immigrants from ‘nice’—predominantly white—countries like Norway, Sweden, and Denmark over immigrants from ‘shithole countries’” like Haiti. *Id.*

Secretary Noem too has expressed racially charged antipathy toward nonwhite immigrants, describing them as “leeches,” “entitlement junkies,” and “foreign invaders” who “suck dry our hard-earned tax dollars.” App. 85a. And the conclusion that she draws from those characterizations is unambiguous: “WE DON’T WANT THEM. NOT ONE.” *Id.*

The administration has translated this racial animus into policy. Every country whose TPS designation has been cancelled is majority nonwhite. And, while it is expelling nonwhite TPS holders, it is giving preferential treatment to white—and only white—South Africans. ECF 90 ¶¶ 103–05.

Thus, as the district court found, petitioners “are likely to prevail on their Equal Protection claim.” App. 86a.

### **III. REVIEW AT THIS STAGE OF THE PROCEEDINGS IS UNWARRANTED BUT PROCEDURALLY PROPER.**

Again, petitioners do not think that certiorari (or a stay of the lower-court orders) should be granted in either *Doe* or this case at this stage of the proceedings. This Court will grant a petition for a writ of certiorari to review a case before intermediate appellate judgment “only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court.” S. Ct. R. 11.

To be sure, the legal issues concerning the termination of a TPS designation are exceedingly important. But the government has come nowhere close to making the requisite showing in *Doe* for a deviation from normal appellate practice. Syria has been designated for TPS since 2011. The government has identified no crisis requiring the immediate removal of Syrian TPS holders. Rather than grant review in its current posture, the Court should allow *Doe* to play out in the ordinary course so that the Court has the benefit of an appellate decision based upon a complete record before deciding the issues presented. But if this Court disagrees and grants the government’s request in *Doe* for certiorari before judgment, the Court should then also grant petitioners’ conditional petition for certiorari here for the reasons stated throughout this petition.

The fact that petitioners prevailed in the district court poses no bar to granting certiorari before judgment, either as a statutory or constitutional matter. This Court may review cases “in the courts of appeals”

upon a petition for certiorari before judgment by “*any* party to any civil or criminal case.” 28 U.S.C. § 1254(1) (emphasis added); *see also* 28 U.S.C. § 2101(e) (“An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment.”). That language “covers petitions brought by litigants who have prevailed.” *Camreta v. Greene*, 563 U.S. 692, 700 (2011) (citing Eugene Gressman et al., *Supreme Court Practice* 87 (9th ed. 2007)).<sup>16</sup> Moreover, it is beyond doubt that this case presents a live case or controversy: Respondents’ appeal seeking reversal is pending in the D.C. Circuit, and the serious harms that the district court found petitioners would suffer if the district court’s order is reversed (or if this Court grants review in *Doe*, rules for the government on the issues presented there, and thus removes some of the arrows in the Haitian TPS holders’ legal quiver) are real. There is thus no procedural impediment to this Court’s immediate review. And, for the reasons stated throughout this petition, granting the conditional petition here—if the Court has already decided

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<sup>16</sup> This Court has granted review of petitions filed by prevailing parties on numerous occasions. *See, e.g., Mistretta v. United States*, 488 U.S. 361, 371 (1989) (granting petitions of both *Mistretta* and *United States* where district court ruled in favor of *United States* on constitutionality of federal sentencing guidelines); *United States v. Nixon*, 418 U.S. 683, 689-690 (1974) (granting petition of *United States* where district court denied President Nixon’s motions regarding subpoena issued by *United States*); *see also, e.g., Wilson v. Girard*, 354 U.S. 524, 526 (1957); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 937, 937 (1952) (per curiam); *United States v. United Mine Workers of Am.*, 330 U.S. 258, 269 (1947). And even more significant, this Court recently has granted review of a petition filed by a prevailing party in the precise certiorari-before-judgment posture presented by petitioners here. *See Learning Res., Inc. v. Trump*, No. 24-1287, 2026 WL 477534, at \*6 (U.S. Feb. 20, 2026).

to review the questions presented in *Doe*—will allow the Court to consider the issues presented against a more-fully developed record and more-fulsome lower-court decision than what *Doe* presents and with additional bookending issues that *Doe* lacks.

### CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari before judgment should be granted if the government's petition in *Doe* is granted.

Respectfully submitted,

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## **APPENDIX**

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**APPENDIX A**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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Case No. 25-cv-02471 (ACR)

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FRITZ EMMANUEL LESLY MIOT, *et al.*,  
*Plaintiffs*,  
v.  
DONALD J. TRUMP, *et al.*,  
*Defendants*.

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MEMORANDUM OPINION

On December 2, 1783, then-Commander-in-Chief George Washington penned: “America is open to receive not only the Opulent & respected Stranger, but the oppressed & persecuted of all Nations & Religions.”<sup>1</sup> More than two centuries later, Congress reaffirmed President Washington’s vision by establishing the Temporary Protected Status (TPS) program. *See* 8 U.S.C. § 1254a (TPS statute). It provides humanitarian relief to foreign nationals in the United States who come from disaster-stricken countries. It also brings in substantial revenue, with TPS holders generating \$5.2 billion in taxes annually. *See* Part VI.

Department of Homeland Security (DHS) Secretary Kristi Noem has a different take.<sup>2</sup>

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<sup>1</sup> Letter from George Washington to Joshua Holmes (December 2, 1783).

<sup>2</sup> Dkt. 90 (Second Am. Compl.) ¶ 110 n.91. *But see supra* n.1.

## 2a



So says the official responsible for overseeing the TPS program. And one of those (her word) “damn” countries is Haiti.<sup>3</sup> Relevant here, three days before making the above post, Secretary Noem announced she would terminate Haiti’s TPS designation as of February 3, 2026. *See* 90 Fed. Reg. 54733 (Nov. 28, 2025) (Termination).

Plaintiffs are five Haitian TPS holders. They are not, it emerges, “killers, leeches, or entitlement junkies.” They are instead: Fritz Emmanuel Lesly Miot, a neuroscientist researching Alzheimer’s disease, Dkt. 90 (Second Am. Compl. (SAC)) ¶ 1; Rudolph Civil, a software engineer at a national bank, *id.* ¶ 2; Marlene Gail Noble, a laboratory assistant in a toxicology department, *id.* ¶ 3; Marica Merline Laguerre, a college economics major, *id.* ¶ 4; and Vilbrun Dorsainvil, a full-time registered nurse, *id.* ¶ 5. They claim that Secretary Noem’s decision violates the Administrative Procedure Act (APA), 5 U.S.C. § 706(2), and the Fifth

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<sup>3</sup> *See* 90 Fed. Reg. 24497 (June 10, 2025); *see also* USCIS Policy Memorandum, *Hold and Review of all Pending Asylum Applications and all USCIS Benefit Applications Filed by Aliens from High-Risk Countries*, December 2, 2025 (PM-602-0192) (naming Haiti as one of nineteen countries banned from certain immigration relief).

Amendment of the U.S. Constitution. The Government counters that the Court does not have jurisdiction, and, in any case, the Secretary did not violate the law.

Plaintiffs seek to stay the Secretary's decision under 5 U.S.C. § 705 pending the outcome of this litigation. *See* Dkt. 81 (§ 705 Mot.). To decide their motion, the Court considers first whether it has jurisdiction. It does. *See* Part II. It then considers: whether Plaintiffs have a substantial likelihood of success on the merits; whether they will be irreparably harmed absent a stay; and whether a merged balance of the equities and public interest analysis favors a stay. *See* Part III. Each element favors Plaintiffs. *See* Parts IV, V, and VI.

Plaintiffs charge that Secretary Noem preordained her termination decision and did so because of hostility to nonwhite immigrants. This seems substantially likely. Secretary Noem has terminated every TPS country designation to have reached her desk—twelve countries up, twelve countries down. *See* Section IV.A.2. Her conclusion that Haiti (a majority nonwhite country) faces merely “concerning” conditions cannot be squared with the “perfect storm of suffering” and “staggering” “humanitarian toll” described in page-after-page of the Certified Administrative Record (CAR). *See* Section IV.A.3.a. She ignored Congress's requirement that she “review the conditions” in Haiti only “after” consulting “with appropriate agencies.” 8 U.S.C. § 1254a(b)(3)(A); *see* Section IV.A.1. Indeed, she did not consult other agencies at all. *See id.* Her “national interest” analysis focuses on Haitians outside the United States or here illegally, ignoring that Haitian TPS holders already live here, and legally so. *See* Section IV.A.3.b. And though she states that the analysis must include “economic considerations,” she

ignores altogether the billions Haitian TPS holders contribute to the economy. *See id.*

The Government’s primary response is that the TPS statute gives the Secretary unbounded discretion to make whatever determination she wants, any way she wants. And, yes, the statute does grant her some discretion. But not unbounded discretion. To the contrary, Congress passed the TPS statute to standardize the then *ad hoc* temporary protection system—to replace executive whim with statutory predictability. *See* Section I.A.

As to irreparable harm, the Government contends that, at most, the harms to Haitian TPS holders are speculative. But the Department of State (State) warns:

Travel Advisory  
July 15, 2025

Haiti - Level 4: Do Not Travel

C T U H K

Reissued after addition of terrorism indicator.

Do not travel to Haiti due to kidnapping, crime, terrorist activity, civil unrest, and limited health care. Read the entire Travel Advisory.

**Country Summary:** In July 2023, the Department of State ordered nonemergency U.S. government employees and their family members to leave the country due to security risks.

Haiti has been under a State of Emergency since March 2024. Crimes involving firearms are common in Haiti. They include robbery, carjackings, sexual assault, and kidnappings for ransom. Do not travel to Haiti for any reason.

Dkt. 100 (§ 705 Reply) at 20–21.<sup>4</sup> “Do not travel to Haiti for any reason” does not exactly scream, as Secretary Noem concluded, suitable for return. And so, the Government studiously does not argue that Plaintiffs will suffer no harm if removed to Haiti. Instead, it argues Plaintiffs will not certainly suffer irreparable harm because DHS might not remove them. But this fails to take Secretary Noem at her

<sup>4</sup> Citations to pages in a filing on the docket refer to the page numbers assigned by the Court’s CM/ECF system.

word: “WE DON’T WANT THEM. NOT ONE.” *See* Section IV.B.2.b.

Finally, the balance of equities and public interest favor a stay. The Government does not cite any reason termination must occur post haste. Secretary Noem complains of strains unlawful immigrants place on our immigration-enforcement system. Her answer? Turn 352,959 lawful immigrants into unlawful immigrants overnight. She complains of strains to our economy. Her answer? Turn employed lawful immigrants who contribute billions in taxes into the legally unemployable. She complains of strains to our healthcare system. Her answer? Turn the insured into the uninsured. This approach is many things—in the public interest is not one of them.

For the reasons below, the Court GRANTS Plaintiffs’ Renewed Motion for a Stay Under 5 U.S.C. § 705, Dkt. 81.

## I. BACKGROUND

### A. The TPS Statute

Before Congress passed the TPS Statute, the Executive Branch handled nationality-based temporary protection through an “ad hoc framework for providing relief to nationals of certain designated countries.” *Nat’l TPS All. v. Noem (NTPSA III)*, 150 F.4th 1000, 1010 (9th Cir. 2025).<sup>5</sup> This led to haphazard regulations and

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<sup>5</sup> For the remainder of this Memorandum Opinion, the Court cites the relevant *NTPSA* opinions as follows: *NTPSA I*, 773 F. Supp. 3d 807 (N.D. Cal. 2025) (postponing vacatur/termination decisions on Venezuela’s designation); *NTPSA II*, 145 S. Ct. 2728 (May 19, 2025) (staying postponement pending appeal); *NTPSA III*, 150 F.4th 1000 (9th Cir. 2025) (affirming postponement); *NTPSA IV*, 798 F. Supp. 3d 1108 (N.D. Cal. 2025) (setting aside Haiti’s partial vacatur decision on summary judgment, and

procedures, resulting in discretionary temporary stays that left recipients uncertain of their immigration status. In 1990, Congress stepped in to replace chaos with structure by enacting the TPS statute, codified at 8 U.S.C. § 1254a. Congress wanted “a system of temporary status that was predictable, dependable, and insulated from electoral politics.” *NTPSA III*, 150 F.4th at 1008. So, it gave first the Attorney General and then the DHS Secretary, *see* 6 U.S.C. § 557, responsibility for the program but prescribed the relevant criteria and applicable process. It specified the kind of country conditions severe enough to warrant a designation under the statute. 8 U.S.C. § 1254a(b)(1). It prescribed the specific time frame for any such designation. *Id.* § 1254a(b)(2). And it prescribed with specificity the process for periodic review of a TPS designation, which would culminate in either termination or extension of such designation. *Id.* § 1254a(b)(3).

Before designating a country for TPS, the DHS Secretary must “consult[] with appropriate agencies.” *Id.* § 1254a(b)(1). And she must find one of three circumstances: that (1) “there is an ongoing armed conflict within the [foreign] state” such that “requiring the return” of nationals “would pose a serious threat to their personal safety”; (2) there has been an “environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected” and the foreign state is both “unable, temporarily, to handle adequately the return” of

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taking related action with respect to Venezuela’s designation); *NTPSA V*, 146 S. Ct. 23 (Oct. 3, 2025) (staying district court’s summary-judgment order as to the vacatur/termination decisions on Venezuela pending appeal); *NTPSA VI*, No. 25 5724, 2026 WL 226573 (9th Cir. Jan. 28, 2026) (affirming summary-judgment).

nationals and “has requested [temporary protected status] designation”; or (3) “there exist extraordinary and temporary conditions in the foreign state that prevent [its nationals] from returning to the state in safety, unless the [Secretary] finds that permitting” that country’s nationals “to remain temporarily in the United States is contrary to the national interest of the United States.” *Id.* § 1254a(b)(1)(A)–(C).

A country’s TPS designation does not automatically mean its citizens receive TPS. A foreign national is eligible for TPS only if she meets several criteria, including being otherwise admissible and registering for TPS within a specific time frame. *Id.* § 1254a(c); 8 C.F.R. § 244.2. In addition, a non-citizen waives eligibility for TPS if, among other things, she has been convicted of a felony or two or more misdemeanors in the United States. 8 U.S.C. § 1254a(c)(2)(B).

All initial TPS designations last six to eighteen months. *Id.* § 1254a(b)(2). Before the expiration of a designation, the statute mandates that the Secretary—again, “after consultation with appropriate agencies of the Government”—“review the conditions in the foreign state” and “determine whether the conditions for such designation . . . continue to be met.” *Id.* § 1254(a)(b)(3)(A). Following this review, the Secretary determines whether to redesignate, extend, or terminate TPS for the country.

Extension is the default—the designation “shall be extended” unless the Secretary affirmatively determines that conditions are “no longer me[t].” *Id.* § 1254a(b)(3)(C). And Congress did not cap how many times the Secretary can extend the designation. Nor did it set a maximum number of years an individual can hold TPS. The statutory design is straightforward: TPS exists because threats to life exist; when the

threat persists, so should TPS protection, unless the Secretary articulates a well-reasoned and well-supported national interest to the contrary.

## B. Factual Background

The Court bases this background on the entire record, including the SAC and the documents the SAC cites, the CAR, exhibits to the parties' pleadings, and party concessions and points of agreement in joint stipulations and at oral argument (altogether, the record).

### 1. *Obama Administration Designates Haiti for TPS*

We begin with an earthquake that registered 7.0 on the Richter scale. 75 Fed. Reg. 3476, 3477 (Jan. 21, 2010). It hit Haiti on January 12, 2010, and precipitated an unprecedented humanitarian crisis. Shortly after, then-DHS Secretary Janet Napolitano, in consultation with State, designated Haiti for TPS due to "extraordinary and temporary conditions." *Id.* at 3476 (citing 8 U.S.C. § 1254a(b)(1)(C)). Haitian nationals in the United States continuously as of January 12, 2010, could thus apply for TPS. *Id.* TPS recipients also obtained the right to remain and work in the United States while Haiti maintained its TPS designation. *Id.* at 3476–77.

Secretary Napolitano set the initial designation for eighteen months. *Id.* at 3476. Unfortunately, repeated environmental and political crises continued to batter the island. Secretary Napolitano and her successor, Jeh Johnson, therefore redesignated Haiti and/or extended its designation on May 19, 2011, 76 Fed. Reg. 29000; October 1, 2012, 77 Fed. Reg. 59943; March 3, 2014, 79 Fed. Reg. 11808; and August 25, 2015, 80 Fed. Reg. 51582. "With each of these decisions, DHS outlined conditions arising from the 2010 earthquake

in Haiti and its attendant damage to infrastructure, public health, agriculture, transportation, and educational facilities.” *Saget v. Trump*, 375 F. Supp. 3d 280, 301 (E.D.N.Y. 2019). “In addition, each extension cited the cholera epidemic and the exacerbation of preexisting vulnerabilities caused by the earthquake, including food insecurity and a housing crisis.” *Id.*

In the 2015 extension, the Secretary found that conditions prompting the original January 2010 TPS designation, “persist[ed], including a housing shortage, a cholera epidemic, limited access to medical care, damage to the economy, political instability, security risks, limited access to food and water, a heightened vulnerability of women and children, and environmental risks.” 80 Fed. Reg. at 51583. The Secretary found that “Haiti lacks sufficient housing units to address its pre-earthquake shortage.” *Id.* “Some Haitians have returned to unsafe homes or built houses in informal settlements located in hazardous areas without access to basic services.” *Id.* “Even prior to the 2010 earthquake, Haiti had one of the highest rates of hunger and malnutrition in the Western Hemisphere, with 45 percent of the population undernourished and 30 percent of children under 5 suffering from chronic malnutrition.” *Id.* Unfortunately, “[d]amage from the 2010 earthquake exacerbated Haiti’s historic food security challenges.” *Id.*

There was more. Public health, for example, continued to suffer. “The introduction of cholera in Haiti shortly after the earthquake, and its persistence since then, [was] mainly due to the lack of access to clean water and appropriate sanitation facilities.” *Id.* And the political situation continued to deteriorate. “The January 2010 earthquake had an immediate impact on governance and the rule of law in Haiti,

killing an estimated 18 percent of the country's civil service and destroying key government infrastructure." *Id.* As of 2015, "Haiti was left without a functioning legislative branch or duly elected local authorities. Increasingly, politically and economically motivated protests and demonstrations . . . turned violent." *Id.* at 51584.

## 2. *First Trump Administration Attempts to Terminate TPS for Haiti*

On January 20, 2017, President Donald J. Trump became the 45th President of the United States. He expressed little regard for Haiti and Haitians. He referred to Haiti as a "shithole"<sup>6</sup> country. *See* § 705 Motion at 46–47. He also "stated in a June 2017 meeting with then-DHS Secretary Kelly and others that Haitians 'all have AIDS' upon learning 15,000 Haitian people received visas to enter the U.S. that year." *Saget*, 375 F. Supp. 3d at 371; SAC ¶ 93. To little

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<sup>6</sup> Alexander Moritz Frey was the first to use "shithole" as a descriptor of a "wretched place," doing so in his seminal antiwar novel, *The Cross Bearers* (1930). *See Shithole*, Oxford English Dictionary, <https://www.oed.com/search/dictionary/?scope=Entries&q=shithole>.

Frey's life story confirms the role democracies can play in welcoming, as George Washington did, "the oppressed and persecuted." Frey, a prolific author and pacifist, served as a medic in the trenches of World War I alongside Adolf Hitler. Hitler later tried to convert him to Nazism, but Frey staunchly refused. He fled Germany in 1933, as Nazis burned his books, raided his apartment, and issued a warrant for his arrest. He lived his remaining years in exile, first in Austria and then in Switzerland. *See* Von David Gordon Smith, *Eye-Witness Account of Hitler's WWI Years Found*, Spiegel International (April 30, 2007), <https://www.spiegel.de/international/zeitgeist/rediscovering-alexander-moritz-frey-eye-witness-account-of-hitler-s-wwi-years-found-a-478359.html> [<https://perma.cc/RU49-2Y4U>].

surprise, then, his administration attempted to end TPS for Haiti.

Litigation ensued in the Eastern District of New York before Judge William F. Kuntz, II. *See Saget*, 375 F. Supp. 3d at 280. In his decision, he laid out the series of events leading to the litigation, which the Court recounts here only for historical context. In March 2017, career officials at DHS recommended extending TPS for Haiti for eighteen months, through January 22, 2019. *Id.* at 304–05. They did so based in large part on United States Citizenship and Immigration Services (USCIS) career analysts’ reporting on the effects of Hurricane Matthew, which had made landfall in Haiti in October 2016. It was “the strongest storm to hit Haiti in more than half a century and caused extensive damage.” *Id.* at 304. Haiti was “in a state of near total destruction” and “[b]y mid-December 2016 as many as 1.4 million people were in need of humanitarian assistance.” *Id.* Hurricane Matthew “exacerbated” conditions, and career officials highlighted that it would “likely take Haiti years to recover from the damages.” *Id.*

Ignoring this information and the recommendation, “new USCIS appointees began to cultivate a record they believed would weigh in favor of termination.” *Id.* at 305. These actions leaked to the press. The leaks included that then-DHS Secretary John F. Kelly sought “criminal activity data” of TPS holders, even though no Secretary had before considered that data to assess TPS and even though that data was, in any event, unavailable to USCIS. *Id.* at 305–11.

After substantial public pushback, Secretary Kelly issued a limited six-month extension of TPS to January 22, 2018. *Id.* at 311–12; 82 Fed. Reg. 23830 (May 24, 2017). The Federal Register Notice “cited the

effects of more recent natural disasters, such as Hurricane Matthew and extensive flooding in the spring of 2017.” *Saget*, 375 F. Supp. 3d at 313. But Secretary Kelly also signaled that the end was near: “[i]t is in the best interest of TPS beneficiaries to prepare for their return to Haiti in the event that Haiti’s TPS designation is not extended again.” 82 Fed. Reg. at 23832.

The same day that Secretary Kelly granted the six-month extension, “officials at DHS began exploring rationales for terminating TPS for Haiti, recognizing Secretary Kelly—or whoever would be Secretary at the time—would seek termination.” *Saget*, 375 F. Supp. 3d at 313. What happened next is a rather long story. *Id.* at 313–28. Bottom line: on November 20, 2017, then-acting-DHS Secretary Elaine C. Duke announced she would terminate TPS for Haiti. *Id.* at 328. The official notice published in January 2018. *See* 83 Fed. Reg. 2648 (Jan. 18, 2018).

After an extensive review of the record and legal analysis, Judge Kuntz found that substantial evidence, “at the very least [raised] serious questions” that the DHS Secretary based the termination decision on “animus toward nonwhite immigrants, including Haitians specifically.” *Saget*, 375 F. Supp. 3d at 372. Based on this and many other legal infirmities, Judge Kuntz held that Plaintiffs were “likely to succeed on and ha[d] raised serious questions going to the merits of their substantive APA claims and equal protection claim.” *Id.* at 379. He enjoined the Government from terminating TPS for Haiti pending a final decision on the merits of the case. *Id.* DHS appealed.

Before that appeal concluded, President Joseph R. Biden became the 46th President of the United States. Subsequently, DHS withdrew the appeal. *See Saget v.*

*Trump*, No. 18-cv-1599 (E.D.N.Y. Oct. 5, 2021) (Dkt. 164).

3. *The Biden Administration Redesignates Haiti for TPS*

Haiti's deterioration continued. Gang violence and kidnappings spiked. 86 Fed. Reg. 41863, 41866 (Aug. 3, 2021). State officials and police became "complicit[] . . . in gang attacks that left hundreds of people dead" and "the government . . . helped to unleash criminal violence on poor neighborhoods, including by providing gangs with money, weapons, police uniforms, and government vehicles." *Id.* This support encouraged "gangs to grow to the point where they [could] no longer be reined in, allowing criminality to explode." *Id.*

On July 7, 2021, an already fragile security situation spiraled when a group of assailants killed Haiti's then-President Jovenel Moïse. *Id.* This led to "a deteriorating political crisis, violence, and a staggering increase in human rights abuses." *Id.* at 41864. Haiti simultaneously faced "the challenges of 'rising food insecurity and malnutrition, . . . waterborne disease epidemics, and high vulnerability to natural hazards, all of which [were] further exacerbated by the coronavirus disease 2019 (COVID-19) pandemic.'" *Id.*

And so, on August 3, 2021, then-DHS Secretary Alejandro N. Mayorkas redesignated and extended Haiti's TPS through February 3, 2023. *Id.* at 41863. Just eleven days later, another catastrophic earthquake hit Haiti. This time, a 7.2-magnitude one "kill[ed] more than 2,200 people, injur[ed] 12,700, destroy[ed] 130,000 homes, and le[ft] thousands of people in urgent need of assistance." 88 Fed. Reg. 5022, 5027 (Jan. 26, 2023). Adding to the environmental crisis, Haitian gangs posed "an increasing threat as they expand[ed] their

influence and geographic presence” across the country. *Id.* at 5025.

Secretary Mayorkas therefore extended and redesignated Haiti, this time effective February 4, 2023, through August 3, 2024. *Id.* at 5022. During this period, the situation worsened. “Haitian law enforcement [was] unable to cope with the level of gang violence,” while gangs “expanded their arsenals and upgraded their firepower.” 89 Fed. Reg. 54484, 54489 (July 1, 2024). Extreme weather events continued to pummel the country. In June 2023, a 4.4 magnitude earthquake and 5.5 magnitude earthquake hit Haiti’s west coast only two days apart, causing deaths and destroying homes, blocking roads, and overwhelming healthcare facilities. *Id.* at 54490. Simultaneously, Haiti experienced “one of the highest levels of chronic food insecurity in the world with more than half of its total population chronically food insecure and 22 percent of children chronically malnourished.” *Id.* “Amidst the political, security, and environmental crises, Haiti’s economy ha[d] been decimated.” *Id.*

In response to these conditions, on July 1, 2024, Secretary Mayorkas again extended and redesignated Haiti, this time effective from August 4, 2024, through to February 3, 2026. *Id.* at 54484. This period—August 4, 2024, to February 3, 2026—is key because the dates bookend the core disputes in this litigation.

#### 4. *The 2024 Presidential Campaign*

President Trump hit the campaign trail again during the 2024 election cycle. Time had not tempered his views on Haiti. During a presidential debate, he accused Haitians of “eating the dogs,” “eating the cats,” and “eating the pets of the people [who] live” in Springfield, Ohio. *See* § 705 Mot. at 36–37; SAC ¶¶ 87–

92. He stated elsewhere that he would “[a]bsolutely . . . revoke” Haiti’s TPS designation and send “them back to their country.” SAC ¶ 60.

5. *Second Trump Administration Attempts to End All TPS Designations*

On January 20, 2025, President Trump became the 47th President of the United States. On January 25, 2025, the Senate confirmed Kristi Noem as the Secretary of DHS. She immediately took steps to end Venezuela’s TPS designation and, since then, has attempted to terminate the TPS designation for each country whose periodic review process has come due. *See infra* Section IV.A.2; Dkt. 113.

On February 24, 2025, Secretary Noem issued a “partial vacatur” of Secretary Mayorkas’s July 2024 extension and redesignation of Haiti for TPS. She purported to shorten Haiti’s designation period from the existing end date of February 3, 2026, to August 3, 2025. 90 Fed. Reg. 10511, 10511 (Feb. 24, 2025) (Partial Vacatur). Litigation quickly ensued in the Eastern District of New York. In *Haitian Evangelical Clergy Ass’n v. Trump*, Judge Brian M. Cogan concluded that Secretary Noem lacked statutory authority to issue the Partial Vacatur. 789 F. Supp. 3d 255, 273 (E.D.N.Y. 2025) (*HECA*). And so, he set aside the Partial Vacatur under the APA. *See id.*

Meanwhile, Secretary Noem continued her efforts to terminate TPS for Haiti. On July 1, 2025, she issued a formal notice purporting to terminate Haiti’s TPS designation as of September 2, 2025. *See* 90 Fed. Reg. 28760 (July 1, 2025) (July Termination). Other plaintiffs in a different TPS lawsuit in front of Judge Edward M. Chen in the Northern District of California amended their complaint to include a challenge to

Secretary Noem’s Partial Vacatur and July Termination. *Nat’l TPS All. v. Noem (NTPSA)*, No. 25-cv-1766 (N.D. Cal. Mar. 20, 2025) (Dkt. 74); *id.* (July 8, 2025) (Dkt. 250). Their initial complaint challenged Secretary Noem’s TPS decisions regarding Venezuela.

Enter our Plaintiffs. Independent of the *HECA* and *NTPSA* litigations, on July 30, 2025, Plaintiffs filed this suit to set aside the July Termination. *See* Dkt. 1.

### C. Procedural Background

#### 1. *The Parties*

Plaintiffs are five Haitian nationals who hold TPS. *See* SAC ¶¶ 1–6. Fritz Emmanuel Lesly Miot is 32 years old and has held TPS since 2011. *Id.* ¶ 1. He is completing his Ph.D. in neuroscience at Loma Linda University in California, where he works on therapies targeting Alzheimer’s disease. *Id.* Mr. Miot has Type 1 diabetes and alleges that “[i]n Haiti, neither the insulin nor the specialists” he requires to treat the disease “would be readily accessible, if at all.” *Id.*

Rudolph Civil is 23 years old and has held TPS since 2010. *Id.* ¶ 2. He currently works as a software engineer for a major national bank in New York City. *Id.* He financially supports his aunt, her three children, one of whom has Down syndrome, and his grandmother in Haiti. *Id.*

Marlene Gail Noble is 34 years old and has held TPS since 2024. *Id.* ¶ 3. She contracted spinal tuberculosis as a toddler in Haiti, which caused her spinal cord to collapse. *Id.* In 1993, a faith-based organization in Florida brought her to the United States, where she received spinal fusion surgery and obtained temporary humanitarian parole status. *Id.* She currently works as a prep laboratory assistant in a toxicology

department. *Id.* She received a second spinal fusion surgery in 2017 and continues to live with kyphosis in spinal tuberculosis. *Id.* Ms. Noble plans to work as a post-mortem forensic toxicologist after pursuing further education. *Id.*

Marica Merline Laguerre is 21 years old and has held TPS since 2010. *Id.* ¶ 4. She simultaneously obtained a high school and associate degree in biology, along with an Advanced Regents Diploma, from a New York preparatory high school and the City University of New York. *Id.* She studies economics at Hunter College and aspires to a career in finance. *Id.*

Finally, Vilbrun Dorsainvil is 34 years old and has held TPS since 2021. *Id.* ¶ 5. He completed medical school and worked as a doctor in Haiti. *Id.* He currently works as a registered nurse at Springfield Regional Medical Center in Ohio. *Id.* He financially supports family members and plans to obtain a Bachelor of Science in Nursing. *Id.*

Plaintiffs name as Defendants Donald J. Trump in his official capacity as the President of the United States, Kristi Noem in her capacity as DHS Secretary, DHS, and the United States (collectively, the Government). *Id.* ¶¶ 7–10.

## 2. *The Haiti Litigation Continued*

On August 20, Plaintiffs filed their First § 705 Motion. Dkt. 26 (First § 705 Mot.). The Government confirmed, however, that because of *HECA*, Haiti's TPS designation would expire no earlier than February 3, 2026, notwithstanding the July Termination. Dkt. 31; Dkt. 65.

Before briefing concluded on Plaintiffs' First § 705 Motion, Judge Chen in California entered a final

judgment in the *NTPSA* litigation. *See NTPSA IV*, 798 F. Supp. 3d at 1108. He found the Partial Vacatur arbitrary and capricious because it “was preordained without any meaning[ful] analysis and review.” *Id.* at 1155. And that the Secretary made it without consulting government agencies or engaging in a review of country conditions. *Id.* at 1155–56. In fact, the only country conditions report in that record “supported the Mayorkas extension/redesignation.” *Id.* at 1156. Judge Chen found it “ironic, if not disingenuous, for Secretary Noem to rely on a report which supported the Mayorkas extension/redesignation to *vacate* that extension/redesignation.” *Id.* He concluded that her decision “was simply driven by her predetermined desire to terminate Haiti’s TPS on a hastened timeline.” *Id.* He granted the *NTPSA* plaintiffs summary judgment and set aside the Secretary’s Partial Vacatur under the APA. *Id.* at 1164.

As for the July Termination, Judge Chen denied the Government’s motion to dismiss. He concluded that “Plaintiffs’ APA and Equal Protection claims related to the Haiti termination are . . . plausible as there are allegations in the operative complaint suggesting pretext.” *Id.* at 1159. These included the following:

[O]n June 7, 2025, DHS announced in a press release that Haiti’s TPS would be terminated, *both* because country conditions had improved and because allowing Haitians to remain temporarily in the United States was against national interest. However, on July 1, 2025, when the decision to terminate was published in the Federal Register, no mention was made of improved conditions; the decision rested on a national interest assessment alone. Country conditions were referenced only indirectly in

the context of the Secretary’s national interest findings—and here there was no mention of any improved conditions; rather, the clear suggestion [was] that there was significant instability in the country.

*Id.*

Anticipating the Government’s appeal of his setting aside the Partial Vacatur, however, Judge Chen stayed the July Termination litigation. *Id.* at 1164–65.

The *HECA* and *NTPSA* decisions impacted this action. On September 17, 2025, the Government informed the Court that the “[t]he Secretary intends to conduct a review, make a decision regarding Haiti’s Temporary Protected Status (TPS) designation, and publish in the Federal Register no later than December 5, 2025.” Dkt. 59 at 1. Plaintiffs insisted that the Court grant a stay despite the Government’s representation. Dkt. 60 at 2–4. The Court instead took the Government at its word and denied Plaintiffs’ First § 705 Motion as moot and without prejudice. Sept. 22, 2025, Min. Order.

Secretary Noem then issued a decision, published on November 28, 2025, to terminate Haiti’s TPS designation as of February 3, 2026. *See* 90 Fed. Reg. at 54733. On December 5, 2025, Plaintiffs filed an amended complaint. Dkt. 74. They renewed their motion to stay on December 12, 2025. *See* § 705 Mot. Also on December 12, the Government filed a Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(1) and (b)(6). Dkt. 80 (MTD).

On December 15, 2025, the Court entered an order directing the Government to identify “all portions of the CAR that constitute ‘consultation with appropriate agencies of the Government’” under the TPS statute, 8

U.S.C. § 1254a(b)(3)(A). Dec. 15, 2025. Min. Order. The Court also directed the Government to provide “a complete list of agencies” the Secretary “consulted in [her] decision-making process.” *Id.*

The Government answered on January 2, 2026. Dkt. 98. It stated that the Secretary had not consulted with the U.S. Ambassador to Haiti, the U.S. Embassy in Haiti, State’s regional office or Haiti desk, or Congress in reaching her decision. *Id.* ¶¶ 2–4. She also did not consult with Secretary of State Marco Rubio, though the Government added that “DHS has no reason to believe that information provided by the Department of State to DHS during the consultation process lacks the support of the Secretary of State.” *Id.* ¶ 5. The Government also confirmed that of the eleven TPS-designated countries that had by that time come up for periodic review, “[t]he Secretary terminated TPS designations for all eleven countries as required by statute.” *Id.* ¶ 12. Another country came up for periodic review afterward, and the Secretary terminated the designation for that country as well. *See* Dkt. 113.

The Court held a two-day hearing on the renewed § 705 Motion on January 6 and 7, 2026. During that hearing, the Court granted in part Plaintiffs’ motion for discovery. It ordered, however, that such discovery must be limited and narrowly tailored, in line with the Supreme Court’s decision in *Department of Commerce v. New York*, 588 U.S. 752, 781–82 (2019).<sup>7</sup> *See* Dkt. 107 (Jan. 7 Hr’g Tr.) at 18–31; Jan. 23, 2026, Min. Order. It also accepted Plaintiffs’ SAC, Dkt. 90, which is the

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<sup>7</sup> “[I]n reviewing agency action, a court is ordinarily limited to evaluating the agency’s contemporaneous explanation in light of the existing administrative record.” *Dep’t of Com.*, 588 U.S. at 780. The Court authorized discovery here based on “a strong showing of bad faith or improper behavior.” *Id.* (cleaned up).

operative complaint here. *See* Dkt. 106 (Jan. 6 A.M. Hr’g Tr.) at 8.

## II. JURISDICTION

Courts have federal-question jurisdiction over APA and constitutional claims, unless a specific statute says otherwise. *See Elgin v. Dep’t of Treasury*, 567 U.S. 1, 9 (2012); *Chrysler Corp. v. Brown*, 441 U.S. 281, 317 n.47 (1979). The Government cites four: the TPS statute, 8 U.S.C. § 1254a(b)(5)(A); two subsections of a provision of the Immigration and Nationality Act of 1942 (INA) governing judicial review of removal orders, 8 U.S.C. §§ 1252(f)(1) and (a)(2)(B)(ii); and a provision of the APA, 5 U.S.C. § 701(a)(2).

The Government has made the same jurisdiction challenge in every other current TPS case—and there have been many. To varying degrees, each court has rejected the Government’s rather expansive view that the Secretary’s TPS decision making is immune from judicial review.<sup>8</sup> This Court joins the chorus.

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<sup>8</sup> The cases on point from President Trump’s second administration include *NTPSA VI*, 2026 WL 226573, at \*7–16; *NTPSA III*, 150 F.4th at 1016–18; *CASA, Inc. v. Noem*, 792 F. Supp. 3d 576, 588–94 (D. Md. 2025) (finding jurisdiction as to the termination of Afghanistan’s and Cameroon’s designations but denying cross-motions for summary judgment and plaintiffs’ motion for a stay); *Doe v. Noem*, No. 25 C 15483, 2026 WL 184544 (N.D. Ill. Jan. 23, 2026) (staying termination of Burma’s designation); *HECA*, 789 F. Supp. 3d at 269; *Nat’l TPS All. v. Noem*, No. 25-cv-5687, 2025 WL 4058572, at \*7–12 (N.D. Cal. Dec. 31, 2025) (granting summary judgment setting aside Honduras’, Nepal’s, and Nicaragua’s designations); *Doe v. Noem*, No. 25 Civ. 8686 (S.D.N.Y. Nov. 18, 2025) (Dkt. 59 at 9–11 (Oral Ruling Tr.) (postponing the termination of Syria’s TPS designation)).

The relevant cases from the first Trump administration include *Saget*, 375 F. Supp. 3d at 330–33 and *Centro Presente v.*

## A. The Presumption in Favor of Judicial Review

The Court begins with a “familiar principle of statutory construction: the presumption favoring judicial review of administrative action.” *Kucana v. Holder*, 558 U.S. 233, 251 (2010). This presumption is “well-settled” and “strong.” *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 229 (2020) (cleaned up); accord *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 16 (2020). And relevant here, courts “consistently” apply it “to legislation regarding immigration, and particularly to questions concerning the preservation of federal-court jurisdiction.” *Kucana*, 558 U.S. at 251; see also *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 496 (1991).

The presumption applies with force to claims that an agency exceeded statutory authority, see *Amgen, Inc. v. Smith*, 357 F.3d 103, 111 (D.C. Cir. 2004), or violated the Constitution, see *Webster v. Doe*, 486 U.S. 592, 603 (1988). Not surprising. For it would be “an extreme position” indeed to offer no recourse for action taken outside the bounds of an agency’s statutory grant or our constitutional order. *Bowen v. Mich. Acad. of Fam. Physicians*, 476 U.S. 667, 680 (1986). That noted, when Congress addresses jurisdiction in a statute, courts must determine “whether the challenged action falls within the preclusive scope of the statute.” *DCH Reg’l Med. Center v. Avar*, 925 F.3d 503, 506 (D.C. Cir. 2017) (cleaned up).

These principles guide the Court’s interpretation of the four provisions the Government raises. For each provision, the presumption against jurisdiction stripping

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*Department of Homeland Security*, 332 F. Supp. 3d 393, 404–05 (D. Mass. 2018).

is consistent with the Court’s interpretation of the statute’s plain text.

B. The TPS Statute Does Not Strip the Court’s  
Jurisdiction

Perhaps the Government’s strongest jurisdictional argument lies within the TPS statute itself. Section 1254a(b)(5)(A) divests courts of jurisdiction to “review . . . any determination of the [Secretary] with respect to the designation, or termination or extension of a designation, of a foreign state” for TPS. Indeed, if Plaintiffs had challenged the Secretary’s *determination*, the Court would lack jurisdiction. But they have not. They challenge instead *how* the Secretary went about making her determination.

This distinction between decision and process is the ballgame.

1. *Plaintiffs Do Not Challenge the  
Secretary’s Substantive Determination*

Twice in the immigration context, the Supreme Court has interpreted statutory language constraining review of an agency’s “determination.” Each case supports that Secretary Noem’s “determination” here refers to her act of designating, terminating, or extending TPS. And each contradicts the Government’s view that it applies more broadly to how she reached her determination.

In *McNary v. Haitian Refugee Center, Inc.*, the Supreme Court considered the statutory language in 8 U.S.C. § 1160(e)(1): “[t]here shall be no administrative or judicial review of a determination respecting an application for adjustment of status” for certain special agricultural workers. 498 U.S. at 483. The *McNary* Court concluded “the reference to ‘a

determination’ describes a single act *rather than* a group of decisions or a practice or procedure employed in making decisions.” *Id.* at 492 (emphasis added). In that case, the “single act” in question was the Secretary’s denial of Special Agricultural Worker (SAW) status to plaintiffs. *Id.* Had the Secretary instead, say, flipped a coin to make her decision, that would be a “practice or procedure” subject to review.

The Supreme Court doubled down two years later. In *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993), it considered a provision of the INA that prohibits “judicial review of a determination respecting an application for adjustment of status” for certain non-citizens, 8 U.S.C. § 1255a(f)(1). The *Reno* Court likewise held that a “determination” does not cover an entire agency regulation but refers only to the “single act” of adjudicating individual adjustment-of-status applications. 509 U.S. at 56 (quoting *McNary*, 498 U.S. at 492).

So too here. The Secretary has exclusive authority to engage in the “single act” of designating a country or terminating or extending its designation thereafter. *McNary*, 498 U.S. at 492. As all agree, the Court cannot override one of these “substantive” determinations. *See* Dkt. 93 (MTD Opp’n) at 22; Dkt. 99 (MTD Reply) at 4–6. But Plaintiffs do not ask for that. They instead assert that the Secretary failed to consult; engaged in a pattern or practice of terminating TPS writ large; preordained the outcome of her review; engaged in both unreasoned and unsupported decision making; and, among other failures, acted with discriminatory animus. These claims challenge purported deficiencies in Secretary Noem’s “group of decisions,” “practice,” and “procedure” in reviewing Haiti’s TPS designation. *McNary*, 498 U.S. at 492.

The Government counters that a stay or “set aside” of the Secretary’s Termination under the APA would inhibit the *substance* of that termination decision. To be sure, *McNary* does warn that a process decision can have “the practical effect of also deciding . . . claims for benefits on the merits.” 498 U.S. at 495 (distinguishing *Heckler v. Ringer*, 466 U.S. 602 (1984)).<sup>9</sup> But here, at most, the Court can order the Secretary to restart the periodic review process under lawful criteria, not to arrive at a particular substantive outcome. See 5 U.S.C. § 706(2); see also *infra* Section II.C.1 (explaining that a “set aside” does not impact the TPS statute’s “operation” or “enjoin” or “restrain” the Government).<sup>10</sup>

Indeed, most of Plaintiffs’ claims also do not assail the Secretary’s “single act” of terminating Haiti’s TPS designation at all. The APA claim that the Secretary exceeded her “statutory authority” presents a “first order question” unrelated to her final determination. *NTPSA III*, 150 F.4th at 1017. Likewise, the APA claim that the Secretary engaged in a “general pattern and practice” of unlawful terminations is “not unique to the Secretary’s decision on [Haiti’s] status.” *Doe v. Noem*, 25 C 15483, 2026 WL 184544, at \*8–9 (N.D. Ill. Jan. 23, 2026); cf. Dkt. 103 (Gov’t’s Suppl. Br.) at 9. Finally, the Equal Protection claim presents a “general collateral

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<sup>9</sup> The *McNary* Court distinguished *Heckler*. Unlike in *Heckler*, the *McNary* plaintiffs “d[id] not seek a substantive declaration that they are entitled to SAW status” and if they prevailed on their procedural claims, they would not have “establish[ed] their entitlement to SAW status.” *McNary*, 498 U.S. at 495.

<sup>10</sup> The Government’s reliance on *Federal Law Enforcement Officers Ass’n v. Ahuja*, 62 F.4th 551 (D.C. Cir. 2023), fails for the same reason. See Dkt. 103 (Gov’t’s Suppl. Br.) at 9; Jan. 7 Hr’g Tr. at 82–84. There, the plaintiff sought a “permanent injunction barring” the agency from pursuing a particular course. *Ahuja*, 62 F.4th at 561.

challenge[] to unconstitutional practices and policies.” *McNary*, 498 U.S. at 492. Even the Government’s best case (a vacated Ninth Circuit decision) acknowledges that plaintiffs can bring constitutional challenges to TPS determinations. *See Ramos v. Wolf*, 975 F.3d 872, 892 (9th Cir. 2020), *vacated*, 59 F.4th 1010 (9th Cir. 2023); MTD at 20–21 & n.4. At the very least, claims of these types all escape the TPS statute’s jurisdictional bar under the plain meaning of “determination.”

Confronted with *McNary*’s “single act” language, the Government falls back to the position that “at a minimum, § 1254a(b)(5)(A) bars claims that an agency’s decision was arbitrary and capricious,” unlike, for example, claims that the Secretary exceeded her authority. MTD at 21. That is not an unfair point. The garden-variety arbitrary-and-capricious claim presents the closest call. Still, even they fall on the procedural side of *McNary*’s line since they each implicate failures in how she came to her decision. *See infra* Section IV.A.3.

## 2. *The TPS Statute’s Jurisdiction-Stripping Provision Is Narrow*

The Government claims that the words “any” and “with respect to” in the TPS statute’s jurisdiction-stripping provision—“*any* determination of the [Secretary] *with respect to*” (emphasis added)—suggest that courts should read “determination” broadly enough to encompass the Secretary’s decision-making process. *See* MTD at 19–20. That argument misreads the statute. Grammatically, both phrases modify the noun “determination.” They do not invite in other nouns, nouns such as group of decisions, practice, or procedure.

To be sure, the word “any,” as the Government contends, “indicates a broad sweep.” *Id.* at 19. But, however broad, “[t]he adjective ‘any’ . . . cannot expand the reach of the noun it modifies.” *City & Cnty. of San Francisco v. EPA*, 604 U.S. 334, 348 (2025). So the word “any determination” captures all determinations the Secretary may make—whether to expand, designate, or terminate—but it does not capture the process by which she reaches that determination.

Similarly, the interpretive canon “that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme . . . carries particular force when construing phrases that govern conceptual relationships—like ‘with respect to’—whose meanings inherently depend on their surrounding context.” *United States v. Miller*, 604 U.S. 518, 533 (2025) (cleaned up). Here, “determination” is the jurisdiction-stripping provision’s key word. And “determination” means a “single act.” *See supra* Section II.B.1.<sup>11</sup>

The Government cites *Patel v. Garland* for the proposition that a “statute barring review of ‘any judgment regarding the granting of relief’ covers ‘any

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<sup>11</sup> The TPS statute’s phrasing does not appear as expansive as other jurisdiction-stripping provisions within the same Title of the U.S. Code. *See, e.g., Gebhardt v. Nielsen*, 879 F.3d 980, 987–89 (9th Cir. 2018) (discussing 8 U.S.C. § 1154(a)(1)(A)(viii)(I) endowing the Secretary with “sole and unreviewable discretion” to determine whether a citizen convicted of certain offenses poses a risk to a non-citizen for whom the citizen seeks to file an I-130 petition); *Saget*, 375 F. Supp. 3d at 331 (discussing statutory language, as in 8 U.S.C. § 1252(b)(9), that references review of “all questions of law and fact, including interpretation and application of constitutional and statutory provisions”). The Government itself recognizes this contrasting language (albeit for a different purpose). *See Gov’t’s Supp. Br.* at 10.

authoritative decision’ on the matter.” MTD at 19 (quoting 596 U.S. 328, 337–40 (2022)). *Patel* involved a statute that barred review of “any judgment regarding the granting of relief” concerning a non-citizen’s eligibility for adjustment of status. 596 U.S. at 335 (quoting 8 U.S.C. § 1255). There, “any judgment” encompasses an immigration judge’s (IJ’s) “factual findings.” *Id.* at 339. Even if the Court accepts that an IJ’s “judgment” (in a quasi-judicial proceeding) and the DHS Secretary’s TPS “determination” are similar enough statutory terms to compare directly, *Patel* does not help the Government. A factual finding is a constituent “authoritative *decision*” in an IJ’s “judgment.” *Id.* at 337–39 (emphasis added). But procedural and constitutional defects in the Secretary’s periodic review and consultation process are not decision-like at all. The Secretary’s path to the substantive “determination” is not part of the determination itself—for the reasons *McNary* sets out. *See supra* Section II.B.1.

The Government cites only one case interpreting the same TPS provision that arguably supports its view, *Ramos v. Wolf*, 975 F.3d 872 (9th Cir. 2020). *See* MTD at 20. But, again, the Government honestly concedes that the Ninth Circuit vacated this panel opinion on rehearing and the case later became moot. *Id.* at n.4. The Government claims that, even a vacated decision “still carries persuasive value.” *Id.* Maybe. But not *Ramos*—not least because the Ninth Circuit has twice since *Ramos* taken a more expansive view of jurisdiction under the TPS statute. *See supra* n.5. Indeed, the citation backfires—it speaks volumes that a vacated decision from a sister circuit is the best authority the Government can muster.

3. *Jurisdiction Here Does Not Eviscerate the Statutory Bar*

Quoting the D.C. Circuit’s decision in *DCH Regional Medical Center v. Azar*, the Government separately suggests that permitting review of Plaintiffs’ claims “would eviscerate the statutory bar, for almost any challenge to [a determination] could be recast as a challenge to its underlying methodology.” MTD at 21 (alteration in original) (quoting 925 F.3d 503, 506 (D.C. Cir. 2019)). But the Government replaced the original case language “estimates” with “determination.” This was no small change. *DCH* involved a bar on judicial review of Medicare “estimate” payments to hospitals. The D.C. Circuit held that “a challenge to the methodology for estimating uncompensated care is unavoidably a challenge to the estimates themselves.” *Id.* at 506. Change the methodology, necessarily change the estimates. Not so here. After changing her process to comport with the APA, the Secretary can determine to keep or end Haiti’s TPS designation.

The Government’s evisceration concern contains another flaw. In several jurisdictional statutes, Congress expressly permits a court to “modify” the substantive decision an agency makes. *See, e.g., Solondz v. FAA*, 141 F.4th 268, 276 (D.C. Cir. 2025) (appellate jurisdiction to “modify” a final order of the FAA regarding a pilot’s medical clearance); *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 181 (2023) (appellate jurisdiction to “modify” an SEC order “in whole or in part”). The TPS statute’s language here bars the Court from modifying the Secretary’s determination—and so at a minimum, is not superfluous on this score.

4. *Plaintiffs Have No Other Avenue to Challenge the Termination*

The Government claims that the TPS statute directs any judicial challenge exclusively to removal proceedings in immigration court, from which Plaintiffs can appeal to the applicable Federal Circuit. *See* Gov't's Suppl. Br. at 9–11; Jan. 7 Hr'g Tr. at 82–84, 95–102. Federal district courts, it argues, have no role.

But the Government does not explain, as it must, *see Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 208–16 (1994), what in the TPS statute makes it “fairly discernible” that Congress intended to channel the “type” of claims here *exclusively* to an IJ through the “comprehensive review process” for orders of removal for which the INA provides. Indeed, it ignores altogether the proper analysis, which asks the following three questions:

First, could precluding district court jurisdiction “foreclose all meaningful judicial review” of the claim? Next, is the claim “wholly collateral to [the] statute’s review provisions”? And last, is the claim “outside the agency’s expertise”? When the answer to all three questions is yes, “we presume that Congress does not intend to limit jurisdiction.”

*Axon Enter.*, 598 U.S. at 186 (citations omitted).

Here, the answer to all three questions is yes. *McNary*, and common sense, readily provide an affirmative answer to the first factor. Consider that non-citizens who lose TPS must depart voluntarily, and those who do can have no judicial review. *See* Jan. 7 Hr'g Tr. at 92–102. To see the inside of an immigration court, a former TPS holder must first break the law—*i.e.*, not depart. Then, she must either

go about her day in fear of being detained by Immigration and Customs Enforcement (ICE) or affirmatively self-surrender. But asking non-citizens to “voluntarily surrender themselves for deportation” to obtain review “is tantamount to a complete denial of judicial review.” *McNary*, 498 U.S. at 496–97; *accord Reich*, 510 U.S. at 212–13.

As to the second question, the APA and constitutional claims Plaintiffs raise are “wholly collateral” to 8 U.S.C. § 1252(b)(9). Section 1252(b)(9) provides for “[j]udicial review of all questions of law and fact . . . arising from any action take or proceeding brought to remove” a non-citizen. 8 U.S.C. § 1252(b)(9); *see id.* § 1252(a)(5) (channeling review of an order of removal to a circuit court). But the claims raised here “do not relate to the subject of the enforcement actions” that that provision covers—*i.e.*, orders of removal. *Axon Enter.*, 598 U.S. at 193. Finally, the “standard questions of administrative and constitutional law” at play here are outside the bread-and-butter determinations an IJ makes in everyday removal proceedings. *Id.* at 194 (cleaned up).

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In sum, the Government cannot bear its “heavy burden” of showing that the TPS statute displaces the strong presumption in favor of judicial review of the Secretary’s Termination. *Mach Mining, LLC v. EEOC*, 575 U.S. 480, 486 (2015).

### C. The INA’s Bars on Judicial Review of Removal Decisions Do Not Apply

The Court next examines the two subsections of the INA that the Government also argues precludes judicial review of Plaintiffs’ claims—Subsection (f)(1) and Subsection (a)(2)(B)(ii). Straight away, the

Government encounters a roadblock. Section 1252 is titled “[j]udicial review of *orders of removal*.” 8 U.S.C. § 1252 (emphasis added). In fact, the text of § 1252 mentions some permutation of “order” forty-eight times and “remove” or “removal” thirty-one times. *See id.* The Secretary’s Termination is decidedly not an order of removal.

But of course, a statute’s title is not dispositive. *See Yates v. United States*, 574 U.S. 528, 540 (2015). The Government’s greater problem is that the text of Subsection (f)(1) and Subsection (a)(2)(B)(ii) “points in the same direction as [the] title.” *Dubin v. United States*, 599 U.S. 110, 124 (2023). Both Subsections apply only to individualized immigration adjudications. They do not prevent judicial review of a generally-applicable agency action.

1. *Subsection (f)(1)*

Defendants first point to Subsection (f)(1). It provides:

Regardless of the nature of the action or the claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of part IV of [subchapter II of Title 8], as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.

*Id.* § 1252(f)(1).

But for good reason, “[n]o court” to consider the question has adopted the view that Subsection (f)(1) prevents a court from reviewing the Secretary’s action on a country’s TPS designation. *NTPSA I*, 773 F. Supp. 3d at 826; *accord HECA*, 789 F. Supp. 3d at 270.

*a. Subsection (f)(1) does not cover the TPS statute*

Subsection (f)(1) on its face applies only to “provisions of part IV” of subchapter II of Title 8 of the U.S. Code. The TPS statute appears in part V of that subchapter, not part IV.<sup>12</sup> The Government has conceded as much elsewhere. *See NTPSA I*, 773 F. Supp. 3d at 824. The Government counters that the relevant public law, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), contradicts this categorization. *See* Dkt. 72 at 5. True, where a public law conflicts with the codified language, the enacted version controls. *See U.S. Nat’l Bank of Or. v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 448 (1993). But on closer study, IIRIRA’s language is not the slam dunk the Government contends.

IIRIRA describes Subsection (f)(1)’s coverage as encompassing “chapter 4 of title II” of the INA. *See* IIRIRA, Pub. L. No. 104-208 § 306(a)(2), 110 Stat 3009-611–12 (Sept. 30, 1996). That is, the enacted text, unlike the codified version, refers to its own numbering system (one different from the U.S. Code’s numbering system). IIRIRA does place the TPS statute within chapter 4 of Title II of the enacted INA. *See id.* § 308, 110 Stat. at 3009-614–15. So far, so good for the

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<sup>12</sup> This organization is logical, as the TPS statute more readily concerns “Adjustment and Change of Status” (part V) than “Inspection, Apprehension, Examination, Exclusion, and Removal” (part IV). *See* 8 U.S.C. ch. 12, subch. II.

Government—but there is more. The enacted text of Subsection (f)(1) itself falls under the heading labeled “Appeals from Orders of Removal” and the Subsection concerns orders of removal—which just about mirrors the title of § 1252 in the U.S. Code. *See* 8 U.S.C. § 1252 (“Judicial review of orders of removal”). So, the public-law version of Subsection (f)(1) counsels that this provision applies to every statute that both (1) appears under “chapter 4 of title II” of the INA as amended in the enacted law; *and* (2) concerns an order of removal. The TPS statute meets only the first criteria.

In English: the Government relies on a statute, Subsection (f)(1), that it claims tells lower courts not to stick their judicial noses into agency actions falling within a range of statutes. But the range differs based on whether one consults the enacted version of Subsection (f)(1) or the U.S. Code version. Because the TPS statute falls inside the range described in the enacted text, but outside the range identified in the U.S. Code, the Government claims the Court must mind its own business.<sup>13</sup> The Government’s problem is that it does not matter either way. Even if the TPS statute falls initially inside the statutory range that Subsection (f)(1) identifies, both the enacted and codified versions of Subsection (f)(1)’s text concern orders of removal and TPS decision-making is not an order of removal. So, Subsection (f)(1) does not cover TPS-related claims.

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<sup>13</sup> For a surprisingly engaging explanation of the history and structure of the United States Code, the Court commends the aptly titled, *Detailed Guide to the U.S. Code Content and Features*, created by the U.S. House of Representatives Office of the Legal Revision Counsel. It is available at [https://uscode.house.gov/detailed\\_guide.xhtml](https://uscode.house.gov/detailed_guide.xhtml) [<https://perma.cc/MC98-58CQ>].

Hence, when the Supreme Court has described Subsection (f)(1)'s scope, it has repeatedly excluded the TPS statute (which is codified at § 1254a). It instead refers to Subsection (f)(1)'s coverage as extending to either “§§ 1221–1232” or “part IV of subchapter II” of Title 8 of the U.S. Code. *See Biden v. Texas*, 597 U.S. 785, 798 (2022); *Garland v. Aleman Gonzalez*, 596 U.S. 543, 549 (2022); *Jennings v. Rodriguez*, 583 U.S. 281, 312–13 (2018); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 481 (1999); *see also Gonzalez v. Immigr. & Customs Enf't*, 975 F.3d 788, 812 (9th Cir. 2020). The agency actions in this covered group all relate to “immigration laws governing the inspection, apprehension, examination, and removal of aliens.” *Aleman Gonzalez*, 596 U.S. at 544.<sup>14</sup> The TPS statute, which governs wholesale designation of foreign states for TPS, rather than enforcement of immigration laws on individual non-citizens, is of a different ilk.

*b. The relief sought does not affect the “operation of” the TPS statute*

Helpfully, other statutory terms in Subsection (f)(1) independently confirm that it does not cover judicial review of the Secretary's Termination. That is because even if the Court affords Plaintiffs the full relief they request, the Court will not (1) “enjoin” or “restrain” (2) the “operation of” the TPS statute. 8 U.S.C. § 1252(f)(1).

Start with “the operation of” language. The Government relies on an applicable Supreme Court case, but, unfortunately for it, the case contradicts its

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<sup>14</sup> The listed exception in Subsection (f)(1), too, concerns an individualized immigration determination. *See* § 1252(f)(1) (excepting from the jurisdiction-stripping language “the application of such provisions [of part IV] to an individual alien against whom proceedings under such part have been initiated”).

position. In *Garland v. Aleman Gonzalez*, the Supreme Court interpreted “to enjoin,” “to restrain,” and “operation of” in Subsection (f)(1). 596 U.S. at 550. It held that “[p]utting these terms together, § 1252(f)(1) generally prohibits lower courts from entering injunctions that order federal officials to *take or to refrain from taking actions to enforce, implement, or otherwise carry out* the specified statutory provisions.” *Id.* (emphasis added).

Applying this standard, the Supreme Court held that Subsection (f)(1) prohibited the district court’s order enjoining the Government from detaining, beyond a certain number of days without a bond hearing, a class of non-citizens “ordered removed,” when a statute explicitly permits such detention. *See id.* at 546 (cleaned up). The district court impermissibly “require[d] officials to take actions” that the statute does not require and “to refrain from actions” the statute allows. *Id.* at 551. In so doing, it impeded the “operation” of that detention statute. *Id.* Consistent with this approach, in *N.S. v. Dixon*, the D.C. Circuit recently held that an injunction that “prevents the Marshals from arresting and detaining any criminal defendant in the D.C. Superior Court for a suspected civil immigration violation” falls within Subsection (f)(1)’s ambit because a statute, 8 U.S.C. § 1226(a), permits such arrest and detention. 141 F.4th 279, 289 (D.C. Cir. 2025).

In contrast, a “set aside” of the Termination (and an accompanying declaration), 5 U.S.C. § 706(2), does not impact the TPS statute’s “operation.” Unlike in *Aleman Gonzalez*, Plaintiffs do not ask this Court to impose limitations that the TPS statute itself does not contain. *See* 596 U.S. at 551. They ask the Court only to hold that the Secretary did not follow the process the APA and the Constitution require and to set aside

her decision while she begins anew. Even with the set aside, she remains free to “carry out” the TPS statute’s full range of provisions—*i.e.*, to make discretionary decisions to designate countries or extend and terminate such designations following periodic review. *Id.* at 543; *cf.* Dkt. 68 at 21–22.

And the subset of Plaintiffs’ allegations that the Secretary exceeded her statutory authority fall outside of Subsection (f)(1)’s ambit for another reason. Any relief the Court could order against “conduct that allegedly is not even authorized by the statute” could not, by definition, enjoin “the operation” of that statute. *NTPSA III*, 150 F.4th at 1018–19.

*c. The relief sought would not “enjoin” or “restrain” operation of the TPS statute*

Subsection (f)(1)’s verbs pose yet another problem for the Government. Plaintiffs request two forms of relief: APA vacatur of the Termination and an accompanying declaration that the Secretary’s action violated the APA and the Equal Protection Clause. *See* SAC ¶ 90. If granted, neither would “enjoin” or “restrain” operation of the TPS statute.

First, APA vacatur. The *Aleman Gonzalez* Court applied Subsection (f)(1) proscription’s against “enjoin[ing]” or “restrain[ing]” operation of certain statutes to a district court’s *injunction*, as described *supra* Section II.C.1.b. It “d[id] not purport to hold that § 1252(f)(1) affects courts’ ability to ‘hold unlawful and set aside agency action, findings, and conclusions’” under the APA. *Aleman Gonzalez*, 596 U.S. at 571 (Sotomayor, J., concurring and dissenting in part) (citing 5 U.S.C. § 706(2)).

This Court concurs with the Fifth Circuit that Subsection (f)(1) does not extend to APA vacaturs,

because they are unlike injunctions. See *Texas v. United States*, 40 F.4th 205 (5th Cir. 2022).<sup>15</sup> Via injunction, a court can “compel[] or restrain[] further agency decision-making.” *Id.* at 220; see *Citizens for Resp. & Ethics in Wash. v. U.S. Dep’t of Just.*, 846 F.3d 1235, 1242 (D.C. Cir. 2017) (explaining that “breadth and flexibility are inherent in equitable remedies”). An APA vacatur, meanwhile, is neither forward-looking nor coercive. It accomplishes “nothing but reestablish[ment] [of] the status quo absent the unlawful agency action.” *Texas v. United States*, 40 F.4th at 220. So, while an injunction “enjoins” or “restrains” an actor under Subsection (f)(1), vacatur of past agency action does not.

Statements across three Supreme Court cases, two of which post-date *Aleman Gonzalez*, confirm this interpretation. In *Reno v. Am.-Arab Anti-Discrimination Comm.*, the Supreme Court explained that § 1252(f) is “nothing more or less than a limit on injunctive relief.” 525 U.S. at 481. Then, in *Biden v. Texas*, it stated that § 1252’s “title—‘Limit on injunctive relief’—makes clear the narrowness of its scope.” 597 U.S. at 798. Finally, in its landmark decision prohibiting district courts from issuing nationwide injunctions, the Supreme Court distinguished APA vacaturs as a form of relief. It explained that “[n]othing” in its opinion “resolves the distinct question [of] whether the Administrative Procedure Act authorizes federal courts to vacate federal agency action.” *Trump v. CASA, Inc.*, 606 U.S.

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<sup>15</sup> While the D.C. Circuit has yet to decide the question, it has held that § 1252(f)(1) does not cover declaratory relief. See *N.S.*, 141 F.4th at 290 n.7. And it has recognized the Fifth Circuit holding “that § 1252(f)(1) does not bar vacatur under the APA.” *Id.*

831, 847 n.10 (2025); *accord id.* at 869 (Kavanaugh, J., concurring). The limited purview of Subsection (f)(1) does not include a “set aside” under the APA.

Second, declaratory relief. On this point, the Court applies D.C. Circuit precedent. Subsection (f)(1) “does not proscribe issuance of a declaratory judgment.” *N.S.*, 141 F.4th at 290 n.7; *accord Brito v. Garland*, 22 F.4th 240, 252 (1st Cir. 2021); *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

Neither the setting aside of the Termination nor a declaration that it issued unlawfully falls within Subsection (f)(1)’s proscription.

*d. The posture of this case does not alter the Court’s analysis of Subsection (f)(1)’s scope*

The Government tries yet another tack. An APA stay, it claims, requires an evaluation of the same factors that a court would consider when issuing a preliminary injunction. *See* § 705 Opp’n at 18–20. So, it infers, a stay is the type of injunctive relief covered by Subsection (f)(1). And, yes, the factors are the same. But the similarities end there.

To begin, Subsection (f)(1)’s text “expressly identifies injunctive relief but makes no mention of stays nor other forms of relief under the APA.” *Immigrant Defs. L. Ctr. v. Noem*, 145 F.4th 972, 990 (9th Cir. 2025); *accord NTPSA VI*, 2026 WL 226573, at \*9–11. Congress, however, knows “how to limit relief under the APA in other statutory schemes such as the Magnuson-Stevens Act and the Clean Air Act.” *Id.* So, the omission here must be intentional.<sup>16</sup>

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<sup>16</sup> Section 1252(f)(1) was enacted in 1996, a half-century after the APA. *See Gonzalez*, 596 U.S. at 562. It “may not be held to

Moreover, an APA stay and a preliminary injunction are fundamentally different remedies. While there is some “functional overlap,” a stay is not “a coercive order.” *Nken v. Holder*, 556 U.S. 418, 428 (2009). Its effect (like that of a vacatur) is merely to return circumstances to the status quo. *Id.* And a stay does not operate *in personam*. So, here, an APA stay would not “direct[] the conduct of” the Secretary. *Id.* It would merely “temporarily divest[]” her Termination “of enforceability.” *Id.* Finally, it would be odd indeed, given the Court’s determination that Subsection (f)(1) permits APA vacatur, if it did not also allow the far less drastic APA stay.

Subsection (f)(1) does not strip the Court of jurisdiction in this case.

## 2. Subsection (a)(2)(B)(ii)

Undeterred, the Government tries a different provision of § 1252 next. Subsection (a)(2)(B)(ii) bars judicial review of “any other decision or action [not enumerated in § 1252(a)(2)(B)(i)] of . . . the Secretary of Homeland Security the authority for which is specified under [subchapter 12 of Title 8] to be in the discretion” of the Secretary. Subchapter 12 of Title 8 includes the TPS statute. But as with Subsection (f)(1), Subsection (a)(2)(B)(ii)’s text supports its application only to individual immigration adjudications.

Section 1252(a)(2)(B) contains a clause (i) and clause (ii). Clause (i) bars review of “judgment[s] regarding the granting of relief” under certain statutes—*e.g.*, cancellation of removal, adjustment of status, etc.

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supersede or modify [the APA] . . . except to the extent that it does so expressly.” 5 U.S.C. § 559; *cf. Marcello v. Bonds*, 349 U.S. 302, 309 (1955).

8 U.S.C. § 1252(a)(2)(B)(i). Clause (ii), meanwhile, is “a catchall provision” that applies to “decisions of the same genre” as in clause (i). *Kucana*, 558 U.S. at 246; see *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (explaining the canon of “avoid[ing] . . . the superfluity of a specific provision that is swallowed by the general one”). That genre encompasses “orders denying discretionary relief in *individual cases*.” *Make the Rd. New York v. Wolf*, 962 F.3d 612, 630–31 (D.C. Cir. 2020) (emphasis added); see *Nasrallah v. Barr*, 590 U.S. 573, 586 (2020) (explaining the two clauses cover “cancellation of removal, voluntary departure, adjustment of status, certain inadmissibility waivers,” and the like).

The Government asserts that various cases broaden the scope of Subsection (a)(2)(B)(ii) to all manner of immigration-related decisions entailing some discretion. See MTD at 21–25; Gov’t’s Suppl. Br. at 6. Those cases, however, all apply Subsection (a)(2)(B)(ii) in a manner that fits comfortably with this Court’s interpretation. In *Bouarfa v. Mayorkas*, 604 U.S. 6, 14 (2024), the Supreme Court precluded review of the Secretary’s revoked approval of an individual visa petition. In *iTech U.S., Inc. v. Renaud*, 5 F.4th 59, 68 (D.C. Cir. 2021), the D.C. Circuit prohibited review of USCIS’s revoked approval of a non-citizen’s I-140 immigration visa petition. And in *Zhu v. Gonzales*, 411 F.3d 292, 293 (D.C. Cir. 2005), it precluded review of the Attorney General’s refusal to waive the requirement that four non-citizens obtain a labor certification to petition for a work visa.

Subsection (a)(2)(B)(ii) poses no barrier to the Court’s review here.

#### D. The Administrative Procedure Act Does Not Bar Review

The Government makes one last statutory stand. The APA excludes from its own purview cases where the “agency action is committed to agency discretion by law.” 5 U.S.C. § 701(a)(2).<sup>17</sup> This exception, however, applies only where a statute offers “absolutely no guidance as to how [an agency’s] discretion is to be exercised.” *Make the Rd. N.Y.*, 962 F.3d at 632. For the reasons described below, the TPS statute is not (by a long shot) drawn so broadly. *Accord HECA*, 789 F. Supp. 3d at 275; *Nat’l TPS Alliance v. Noem*, No. 25-cv-05687, 2025 WL 4058572 (N.D. Cal. Dec. 31, 2025) (Dkt. 197).

To begin, the Government aims its § 701(a)(2) argument at only Plaintiffs’ APA claim (Count One), and not their Equal Protection claim (Count Two). *See* MTD at 28. The latter does not implicate APA review, which is all § 701(a)(2) covers. *See* 5 U.S.C. § 701(a)(2); *Make the Rd. N.Y.*, 962 F.3d at 632.

As to the APA claim, time and again, the Supreme Court has counseled that § 701(a)(2)’s scope is “narrow.” *E.g.*, *Heckler v. Chaney*, 470 U.S. 821, 838 (1985). It precludes review only of action “traditionally left to agency discretion,” *Lincoln v. Vigil*, 508 U.S. 182, 191 (1993), and “where the relevant statute is drawn so that a court would have no meaningful standard against which to judge the agency’s exercise of discretion,” *Dep’t of Com.*, 588 U.S. at 772 (cleaned up).

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<sup>17</sup> The APA also provides a court may not review agency action where a “statute[] preclude[s] judicial review.” 5 U.S.C. § 701(a)(1). The Court has already explained why that provision is inapplicable here. *Cf.* MTD at 27–28.

The quintessential example is an agency’s exercise of enforcement discretion. *See, e.g., Heckler*, 470 U.S. at 837–38; *Schieber v. United States*, 77 F.4th 806, 813 (D.C. Cir. 2023); *Baltimore Gas & Elec. Co. v. FERC*, 252 F.3d 456, 459–60 (D.C. Cir. 2001). So, in the immigration context, there is no APA review of the Government’s policy of prioritizing for removal certain categories of non-citizens over others. *See United States v. Texas*, 599 U.S. 670, 682–83 (2023). In such cases, the agency’s discretion is so expansive that there is no “law to apply.” *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410 (1971).

This action is not that. It instead resembles *Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 586 U.S. 9 (2018), where the Supreme Court found § 701(a)(2) inapplicable. In *Weyerhaeuser*, a group of landowners challenged the designation of their property as a critical habitat. *Id.* at 13. The Endangered Species Act mandates such designation after the Secretary of the Interior “tak[es] into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat.” 16 U.S.C. § 1533(b)(2). The Secretary of the Interior “may” still thereafter choose not to designate an area if he determines that the costs of doing so outweigh the benefits—“unless he determines, based on the best scientific and commercial data available, that failure to designate such area as critical habitat will result in the extinction of the species concerned.” *Id.* (emphasis added). Plaintiffs challenge that the agency did not follow “a standard set forth in the statute” (*i.e.*, the mandatory part), which the Supreme Court held is a garden-variety APA claims subject to review. *Weyerhaeuser*, 586 U.S. at 23–24.

Our statutory scheme is symmetrical. Under both the Endangered Species Act and the TPS statute, the decisionmaker is required to conduct a study weighing certain enumerated factors—in the TPS context, “country conditions” against “national interest,” in “consultation with appropriate agencies,” 8 U.S.C. § 1254a(b)(1), (3). In both statutory schemes, the discretionary part of the statute kicks in only *after* the Secretary has properly weighed these factors. The statute hardly offers “absolutely no guidance” to either the agency or this Court. *Make The Rd. New York*, 962 F.3d at 632 (cleaned up).<sup>18</sup> And so it is subject to APA review. *See Weyerhaeuser*, 586 U.S. at 23–24.

Section 701(a)(2) does not preclude APA review here.

#### E. The *NTPSA* Litigation Does Not Compel a Different Result

The Court ends its exhaustive (arguably exhausting) survey of subject-matter jurisdiction by addressing the Government’s non-statutory argument. It contends that two recent Supreme Court orders from its emergency docket concerning the TPS statute confirm this Court lacks jurisdiction. *See MTD* at 21. They do not.

Yes, the Supreme Court’s interim orders, while not “conclusive as to the merits,” “inform how a court should exercise its equitable discretion in like cases.”

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<sup>18</sup> The Government also analogizes this case to *Webster v. Doe*, 486 U.S. 592 (1988). There the Supreme Court considered a statute permitting the Central Intelligence Agency’s (CIA’s) Director to terminate an employee when he “shall deem such termination necessary or advisable in the interests of the United States.” *Webster*, 486 U.S. at 600 (quoting 50 U.S.C. § 403(c)). “Necessary or advisable,” without additional clarifying language, allocates great discretion to the CIA. Such unrestricted terminology is absent from the TPS statute.

*Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025). But the cited interim orders never discuss jurisdiction. And given the presumption of judicial review discussed earlier, the Court cannot conclude that the Supreme Court implicitly intended for every court handling every TPS case to find it likely has no jurisdiction.

Recall that in 2025, different plaintiffs challenged Secretary Noem’s vacatur of the previous administration’s extension of a 2023 designation of Venezuela for TPS and then her later decision to terminate that designation. *See NTPSA I*, 773 F. Supp. 3d 807. Judge Chen granted plaintiffs’ motion to postpone the Venezuela TPS actions pending litigation. *See id.* at 868. Without statement or opinion, the Supreme Court stayed that order pending appeal in May 2025. *See NTPSA II*, 145 S. Ct. 2728. After the district court entered final judgment for plaintiffs, the Supreme Court again stayed the decision pending appeal. *See NTPSA V*, 146 S. Ct. 23 (2025).<sup>19</sup> This time, it said more, but not much more: “[a]lthough the posture of the case has changed, the parties’ legal arguments and relative harms generally have not. The same result that we reached in May is appropriate here.” *Id.*

From this, the Government claims the Supreme Court agrees with its jurisdiction argument. Since its “only argument” on appeal, it says, was that the TPS statute’s jurisdiction-stripping provision bars arbitrary-and-capricious claims, that must be the “legal argument” the Supreme Court telegraphed has merit. *See MTD* at 21 (cleaned up). But the Government

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<sup>19</sup> The district court also set aside the Partial Vacatur of Haiti’s designation made in 2024. The Government did not petition for a stay of that portion of district court’s opinion. *See NTPSA V*, 146 S. Ct. at 24.

undersells its argumentative thoroughness. Its stay application *also* contended, jurisdiction aside, that the Secretary had authority to “vacate the outgoing administration’s extension” of Venezuela’s TPS designation. *Noem v. Nat’l TPS All.*, No. 25A326, Appl. for Stay at 19–22 (U.S. Sept. 19, 2025).

If this is what intrigued the Supreme Court, its order would not inform, much less resolve, this case. The Court is adjudicating the legality of a TPS termination, not a vacatur of a previous Secretary’s TPS designation. In fact, if the Supreme Court agreed with the Government on the merits—that the Secretary has authority to vacate a previous designation before its expiration, *id.*, or, as the Government’s first stay application asserted, that the Government did not violate the Equal Protection Clause, *Noem v. Nat’l TPS All.*, No. 24A1059, Appl. for Stay at 59–75 (U.S. May 1, 2025)—that would have presumably entailed an antecedent finding of district-court jurisdiction for at least some TPS-related claims.

In any event, this Court declines the invitation to try its hand at divination.

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The TPS statute preserves the Secretary’s discretion to make designation, extension, and termination decisions according to her “value judgments.” MTD at 23–25. But the Court retains jurisdiction—and indeed has a positive duty—to ensure that the Secretary adheres to the APA and the U.S. Constitution when the Secretary takes TPS-related action. It turns to that responsibility next.

### III. LEGAL STANDARD

Section 705 is the APA’s “general stay provision.” *Mexichem Specialty Resins, Inc. v. E.P.A.*, 787 F.3d 544, 558 (D.C. Cir. 2015). It authorizes courts to “issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.” 5 U.S.C. § 705. A court may do so “[o]n such conditions as may be required and to the extent necessary to prevent irreparable injury.” *Id.*

The factors governing issuance of a section 705 stay are the same as those that govern the grant of a preliminary injunction. *See Dist. of Columbia v. U.S. Dep’t of Agric.*, 444 F. Supp. 3d 1, 15 (D.D.C. 2020). To prevail on such a motion, the movant “must show (1) a substantial likelihood of success on the merits, (2) that it would suffer irreparable injury if the [stay] were not granted, (3) that a[] [stay] would not substantially injure other interested parties, and (4) that the public interest would be furthered by the [stay].” *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006). In a case like this one, where the Government is the non-movant, the third and fourth factors merge. *Nken*, 556 U.S. at 435.

### IV. LIKELIHOOD OF SUCCESS

#### A. APA Claim

##### 1. *The Secretary Likely Acted Contrary to Law in Failing to “Consult[]” Properly with “Appropriate Agencies”*

We begin with the APA’s familiar requirement that courts “hold unlawful and set aside agency action, findings, and conclusions” that are “in excess of statutory jurisdiction, authority, or limitations” or are

“without observance of procedure required by law.” 5 U.S.C. § 706(2)(C)– (D). Plaintiffs are likely to succeed on their claim that Secretary Noem acted contrary to law and in excess of her statutory authority by failing to consult appropriate agencies as required by the TPS statute.

The statutory text is unambiguous. Congress vested the DHS Secretary with the decision of whether to extend a country’s TPS designation upon “review [of] the conditions in the foreign state.” 8 U.S.C. § 1254a(b)(3)(A). But, among other limitations, she can terminate a TPS designation only “after consultation with appropriate agencies of the Government.” *Id.* That did not occur.

Recall that on February 24, 2025, Secretary Noem issued the Partial Vacatur of Haiti’s TPS designation. On September 5, 2025, the court in the *NTPSA* litigation found that the Partial Vacatur violated the APA, in part because the Secretary made the decision “without consultation with government agencies or country conditions review.” *NTPSA IV*, 798 F. Supp. 3d at 1155. Although the court did not formally invalidate DHS’s July Termination of Haiti’s TPS designation, it noted that the July Termination would be unlawful if the Vacatur is unlawful. *Id.* at 1164 & n.24. Presumably accepting that “the better part of valour is discretion,”<sup>20</sup> DHS decided to re-issue its periodic review decision on November 28, 2025, when it again terminated Haiti’s TPS designation (the operative Termination here). *See* 90 Fed. Reg. at 54733.

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<sup>20</sup> William Shakespeare, *Henry IV, Part I*, in *The Complete Works of William Shakespeare—Comprising His Plays and Poems* 385, 411 (1979).

On Friday, September 5, 2025—that is, the same day that the *NTPSA* court set aside the Partial Vacatur of Haiti’s TPS designation—a DHS staffer emailed a State staffer at 4:55 p.m.: “Due to the litigation, we are re-reviewing country conditions in Haiti based on the original TPS deadline. Can you advise on State’s views on the matter?” CAR 78-7 at 9–10 (HaitiTPSAR 409–10). The State staffer responded within 53 minutes: “State believes that there would be no foreign policy concerns with respect to a change in the TPS statue of Haiti.” *Id.*

This was it. The full extent of the supposed “consultation with appropriate agencies.” Believing it must be missing something, the Court questioned Government counsel about this:

Court: So in the Federal Register notice, the Secretary wrote, “After reviewing country conditions and consulting with appropriate U.S. Government agencies, the Secretary determined that Haiti no longer meets the conditions for the designating as TPS”; right?

Government Counsel: Yes.

Court: What were the appropriate agencies that the Secretary consulted? . . .

Government Counsel: So, Your Honor, it’s the Department of State email found at 409 and 410. That is what we have.

. . .

Court: No other agency was consulted?

Government Counsel: No other agency was consulted. . . .

Court: And the extent of the Department of

State consultation was the email exchange at 409 and 410.

Government Counsel: That is my understanding.

Jan. 6 A.M. Hr’g Tr. at 19:14–21:6.

Was this “consultation”? The Court “look[s] first to [the statute’s] language, giving the words used their ordinary meaning.” *Lawson v. FMR LLC*, 571 U.S. 429, 440 (2014). The ordinary meaning of “consultation” is “[t]he act of asking the advice or opinion of someone (such as a lawyer)” or “[a] meeting in which parties consult or confer.” *Consultation*, *Black’s Law Dictionary* (12th ed. 2024). To consult is to “seek information or advice from (someone with expertise in a particular area)” or to “have discussions or confer with (someone), typically before undertaking a course of action.” *Consult*, *The New Oxford Dictionary* (3d ed. 2015).

The Government contends that the email exchange suffices as consultation because “the statute leaves each Secretary with substantial discretion to determine when, where, how, and with whom to consult as appropriate in each instance.” Gov’t’s Suppl. Br. at 6. But Congress did not vest the Secretary with Humpty Dumpty-like power to make the word “consultation” mean “just what [she] chooses it to mean—neither more nor less.”<sup>21</sup> And the above exchange cannot suffice if the word “consultation” is to play any role in the TPS designation process. Instead, some “meaningful exchange of information” must occur. *Cal. Wilderness Coalition v. U.S. DOE*, 631 F.3d 1072, 1086 (9th Cir.

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<sup>21</sup> Lewis Carroll, *Alice’s Adventures in Wonderland and Through the Looking-Glass* 198 (Messner 1982); cf. *Lopez v. Gonzales*, 549 U.S. 47, 54 (2006).

2011); *Nat'l TPS All.*, 2025 WL 4058572 at \*14; *Doe*, 2026 WL 184544 at \*13–14.

The statutory text supports this view. To start, the Government is wrong about the level of the Secretary's discretion. Congress *did* tell the Secretary “when” and “with whom” to consult. When: the Secretary “*shall* review the conditions in the foreign state” only “*after* consultation.” 8 U.S.C. § 1254a(b)(3)(A) (emphasis added). And only after consulting and reviewing country conditions can she make her “determin[ation].” *Id.* With whom: “appropriate agencies of the Government.” *Id.* And recall that Congress passed the TPS program to *curb* the Executive's discretion, not expand it. *See supra* Section I.A.

Consider further that Congress requires “consultation with appropriate agencies” three times: before making the initial designation, 8 U.S.C. § 1254a(b)(1); before undertaking a periodic review, *id.* § 1254a(b)(3); and before issuing an annual report to Congress about the operation of the TPS program, *id.* § 1254a(i). And each time, the DHS Secretary can act, again, only “*after* consultation.” *Id.* (emphasis added). And only after consultation with *agencies*—plural, not singular. *Id.* Plainly, Congress's consultation requirement was not an afterthought, but instead an integral mechanism to ensure the DHS Secretary understands country conditions before acting.

The Government more specifically contends that “[w]hat constitutes sufficient consultation is *nothing more* than the Secretary's ‘determination’ ‘with respect to the termination’ of a country's designation.” Gov't's Suppl. Br. at 5–6 (citing 8 U.S.C. § 1254a(b)(5) (citation modified)) (emphasis added). That cannot be. Given that, as just noted, the Secretary can make a

“determination” only “after consultation,” consultation must mean something different than determination.

The Government cites Government Accountability Office Report 20-134, titled, *Temporary Protected Status: Steps Taken to Inform and Communicate Secretary of Homeland Security’s Decision* (GAO TPS Report). See Gov’t’s Suppl. Br. at 5. Relying on it, the Government contends that “the INA does not prescribe the other agencies that must be consulted”; that “State . . . generally has a role in providing input for the Secretary[s] . . . TPS reviews”; and that “DHS generally consults with State on TPS decisions, although it is not specifically required to do so under the statute.” *Id.* (citing GAO TPS Report at 2, 18–19). Fair.

But the consultation detailed in the GAO TPS Report puts the inadequacy of the email exchange here into stark relief. Typically, State’s Bureau of Population, Refugees, and Migration (PRM) compiles a “joint action memo” by reaching out to the regional bureau, which in turn reaches out to the overseas post (*e.g.*, the embassy), which in turns fills out and returns a detailed questionnaire about country conditions. See GAO Report at 23. Other agencies (*e.g.*, the U.S. Agency for International Development) may also provide information. See *id.* The Secretary of State then reviews PRM’s memorandum and sends a recommendation letter and final country conditions report to the DHS Secretary. See *id.* at 22–23.<sup>22</sup> Compare this with the late Friday afternoon, three-sentence email exchange between staffers that occurred here.

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<sup>22</sup> For a detailed review of this process, see *NTPSA IV*, 798 F. Supp. 3d at 1120–22, and *Saget*, 375 F. Supp. 3d at 298–300.

The most the Government can muster as to the Secretary of State’s position is that there is “no reason to believe” that the “information provided by the Department of State to DHS”—in its one-sentence email—lacks the Secretary of State’s support. Dkt. 98 ¶ 5. Maybe as to foreign policy.<sup>23</sup> But as to Haiti’s *country conditions*, Secretary Rubio—as recently as October 1, 2025—raised the concern that Haiti continues to face, “immediate security challenges.” CAR 78-7 at 32. And earlier in 2025, he warned that criminal elements in Haiti seek to create “a gang-controlled state where illicit trafficking and other criminal activities operate freely and terrorize Haitian citizens.” *Id.* at 46.

The Court makes the following observation: The State Travel Advisory for Haiti in the CAR is dated September 18, 2024. *See* CAR 78-7 at 17. Secretary Noem published her initial termination notice for Haiti on July 1, 2025. Two weeks later, on July 15, 2025, State “[r]eissued” its travel advisory because conditions had *worsened* since the previous September. It added a “terrorism indicator,” and the language “[d]o not travel to Haiti for any reason.” § 705 Reply at 20–21. This July reissue was State’s operative travel advisory on November 28, 2025, when Secretary Noem issued the Termination, and it remains in effect today. But it does not appear in the CAR. So? The Secretary

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<sup>23</sup> The Government contends that “foreign policy” covers “country conditions.” Jan. 6 A.M. Hr’g Tr. at 34:21–36:6. Not according to Secretary Noem. In the Termination, she listed “foreign policy” as part of the national interest analysis, not the country conditions analysis. *See* 90 Fed. Reg. at 54735 (“‘National interest’ is an expansive standard that may encompass an array of broad considerations, including foreign policy . . .”).

did not even consider updated information from State freely available to the public.

Perhaps every government agency would have agreed with Secretary Noem's Termination decision. Perhaps none of them would. We do not know. Because the Secretary did not consult. In terminating Haiti's TPS designation without consulting, she acted contrary to law and in excess of statutory authority.

2. *The Secretary Engaged in a Pattern and Practice of Terminating All TPS Designations Without the Requisite Periodic Review*

As of the publication of this Memorandum Opinion, the Secretary has terminated the TPS designations of all twelve countries, including Haiti, that "have come up for . . . period[ic] review" since President Trump took office in January 2025. Dkt. 98 at 4; Dkt. 113. This alone strongly suggests that the Secretary engaged in a pattern and practice of terminating all TPS designations without the country specific statutorily-mandated periodic review.

The Supreme Court has recognized that when agency action "appl[ies] some particular measure across the board," a person adversely affected may challenge "the entire . . . program, insofar as the content of that particular [contested] action is concerned." *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 890 n.2 (1990) (cleaned up). The D.C. Circuit describes such a claim as assailing an agency's alleged wholesale "practice of shrugging off . . . statutory . . . limitations." *Hisp. Affs. Project v. Acosta*, 901 F.3d 378, 387 (D.C. Cir. 2018).

Plaintiffs' pattern-and-practice allegations, see SAC ¶¶ 240–43; Dkt. 108 at 10–13, claim just that. They

assert that “[t]he fact that the administration has terminated every TPS designation that it has reviewed despite the disparate conditions in those countries is evidence that the administration is terminating TPS designations, including Haiti’s TPS designation, based on a predetermined agenda rather than a good-faith, fact-based, country-specific review as required by 8 U.S.C. § 1254a(b)(3)(A).” SAC ¶ 241. In fewer words, they allege that the Secretary impermissibly engaged in a “habitual[]” “practice” or “*de facto* policy” of terminations across the board. *Hisp. Affairs Project*, 901 F.3d at 386–88.

The Government concedes that twelve designated countries have come up for periodic review since January 20, 2025, and Secretary Noem has terminated all twelve.

Table of TPS Actions

<u>Date of Publication</u>	<u>TPS Action Taken</u>	<u>Country</u>	<u>Federal Register Citation</u>
2/3/2025	Vacatur	Venezuela	90 Fed. Reg. 8805
2/5/2025	Termination	Venezuela	90 Fed. Reg. 9040
2/24/2025	Partial Vacatur	Haiti	90 Fed. Reg. 10511
5/13/2025	Termination	Afghanistan	90 Fed. Reg. 20309
6/4/2025	Termination	Cameroon	90 Fed. Reg. 23697
6/6/2025	Termination	Nepal	90 Fed. Reg. 24151
7/1/2025	Termination	Haiti	90 Fed. Reg. 28760
7/8/2025	Termination	Nicaragua	90 Fed. Reg. 30086
7/8/2025	Termination	Honduras	90 Fed. Reg. 30089
9/8/2025	Termination	Venezuela	90 Fed. Reg. 43225
9/22/2025	Termination	Syria	90 Fed. Reg. 45398
11/6/2025	Termination	South Sudan	90 Fed. Reg. 50484
11/25/2025	Termination	Burma	90 Fed. Reg. 53378

11/28/2025	Termination	Haiti	90 Fed. Reg. 54733
12/15/2025	Termination	Ethiopia	90 Fed. Reg. 58028
1/14/2026	Termination	Somalia	91 Fed. Reg. 1547

Dkt. 113.<sup>24</sup> It is, to the Court’s knowledge, unprecedented in the thirty-five years since the establishment of the TPS program for a DHS Secretary to terminate every TPS designation that crosses her desk for review. *See* Jan. 7 Hr’g Tr. at 11–15, 60–68. This unprecedented, across-the-board nature of the Secretary’s terminations strongly suggests that each decision sprang from a “*de facto* policy” and “shrug[ed] off” the “statutory command” that she engage in an individualized review of the conditions of each country. *Hisp. Affairs Project*, 901 F.3d at 386– 88.

This is not only educated speculation. Secretary Noem has failed to consult, as required, appropriate agencies in making other termination decisions. As this Court does with Haiti, courts have concluded that she failed to consult before terminating the TPS designations for Burma, Honduras, Nepal, Nicaragua, and Venezuela, despite her statutory obligation to do so. *See Doe*, 2026 WL 184544 at \*14 (Burma); *Nat’l TPS Alliance*, 2025 WL 4058572 at \*22–23 (Honduras, Nepal, and Nicaragua); *NTPSA IV*, 798 F.Supp.3d at 1118 (Venezuela). These consistent judicial findings support a broader pattern of terminating TPS designations writ large.

Whatever the “Administration’s priorities,” *Dep’t of Com.*, 588 U.S. at 781, the Secretary has no authority

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<sup>24</sup> This chart omits one extension. South Sudan’s TPS automatically extended six months in May 2025 because Secretary Noem failed to conduct the required periodic review. *See* Dkt. 113. At the next opportunity, she terminated its designation. *See* 90 Fed. Reg. 5084 (Nov. 6, 2025).

to contravene an act of Congress. A pattern and practice of doing so is “arbitrary, capricious, and contrary to law, in violation of the APA.” *Hisp. Affairs Project*, 901 F.3d at 386. Plaintiffs are likely to succeed on the merits of their pattern-and-practice APA claim.

### 3. *The Secretary’s Actions Were Arbitrary and Capricious*

Agency action is arbitrary and capricious if the agency “has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983). “The scope of review under the ‘arbitrary and capricious’ standard is narrow and a court is not to substitute its judgment for that of the agency.” *Id.* But a court must ensure that the agency “remained within the bounds of reasoned decisionmaking.” *Dep’t of Com.*, 588 U.S. at 773 (cleaned up). It does so by considering whether the record confirms that the agency “examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” *State Farm*, 463 U.S. at 43 (cleaned up).

Plaintiffs contend that Secretary Noem’s explanation for terminating Haiti’s TPS designation is “implausible and contrary to the evidence.” § 705 Mot. at 37. The Government does not meaningfully dispute this. Instead, it urges the Court not to “second-guess” the Secretary’s decision-making or “reweigh the conflicting evidence.” § 705 Opp’n at 33–34 (cleaned up). The Court accedes—as it must—to that request.

The Court instead “determine[s] whether the [Secretary’s] decision-making was reasoned, principled, and based upon the record.” *Louisville Gas & El. Co. v. FERC*, 149 F.4th 693, 701 (D.C. Cir. 2025). It was not.

The Secretary offered two reasons for terminating Haiti’s TPS designation. First, because “there are no extraordinary and temporary conditions in Haiti that prevent Haitian” TPS holders “from returning [to] safety.” 90 Fed. Reg. at 54735. And second, because permitting Haitian TPS holders to remain in the United States “is contrary to the national interest.” *Id.* Neither justification withstands APA scrutiny.

*a. Conditions in Haiti*

Secretary Noem’s determination that conditions in Haiti permit safe return “runs counter to the evidence before [her].” *State Farm*, 463 U.S. at 43.

The Certified Administrative Record contains over 1,450 pages, and it speaks with remarkable consistency. Every document describing conditions in Haiti in 2025 describes the country as a nation deep in crisis.

Date	Statement	Source	CAR Cite
Jan. 16	“Haiti’s crisis has reached catastrophic levels, with allied criminal groups intensifying large-scale, coordinated attacks on the population and key state infrastructure, nearly paralyzing much of the country and worsening the already dire human rights and humanitarian situation.”	News Release Summarizing Human Rights Watch Report	78-11 at 34–35

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Jan. 23	<p>“The violence [in Haiti] has increased dramatically in 2024, as armed groups attacked new parts of the city including police stations, hospitals, and residential neighborhoods. This surge in conflict, occurring frequently in residential zones, has deeply affected communities and seriously disrupted the health care system, which is struggling to remain functional amid supply shortages and attacks on patients and medical staff. The instability has severely disrupted the operations of Doctors Without Borders . . . teams, at times forcing the temporary closure of facilities and suspensions of activities.”</p>	Doctors Without Borders Report	78-11 at 279
Feb. 19	<p>“Haiti is paralyzed. Early hope that an inclusive transitional government would quickly tackle the country’s rampant insecurity with help from an international force has faded. . . . [G]angs have seized the opportunity to occupy more territory, where they are lording it over the population with increasing ruthlessness. With almost one in ten people living in Haiti displaced, and almost half the population facing acute food insecurity, humanitarian conditions are desperate. In such circumstances, the transitional administration’s determina-</p>	Crisis Group Report	78-11 at 126

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	tion to hold a vote on a new constitution and a new government by the end of 2025 seems unrealistic.” <sup>25</sup>		
Feb. 26	“Gang violence in Haiti continued to surge in 2024, following a trend that began with the assassination of President Jovenel Moïse in 2021. The country reported a record number of homicides in 2024. . . . In a scenario where the state is largely absent and criminal actors enjoy undisputed social control, gangs carry out massacres and force residents to leave their homes to exploit the political turmoil and expand their control over the country.”	InSight Crime’s 2024 Homicide Round-Up	78-11 at 70–71
Mar. 11	Doctors Without Borders reported “cholera on the rise in Haiti.” It “expressed concerns about the trend as Haitians have less access to clean water.”	Voice of America	78-7 at 130
Mar. 12	The Federal Aviation Administration (FAA) “has extended its ban on U.S. flights to Port-au-Prince until Sept. 8, 2025. . . . The FAA first imposed the ban in November 2024 after gunfire hit three U.S. planes attempting to land.”	The Haitian Times Article	78-10 at 127

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<sup>25</sup> It was; the elections did not take place. *See* § 705 Mot. at 26.

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Mar. 18	“Overall, more than 1 million people are displaced across the country, a number that has tripled in the past year. Yet, as suffering reaches new extremes, Haiti’s crisis continues to struggle for the world’s attention. Resources are stretched thin, and humanitarian needs far exceed the current response capacity. Additionally, insecurity keeps growing.”	International Organization for Migration Article	78-11 at 240
Apr. 7	“Human rights violations and abuses have reached a scale and intensity that I have never seen before in Haiti,” said William O’Neill, the [UN] High Commissioner’s Designated Expert on Haiti.”	United Nations (UN) Human Rights Office of the High Commissioner Article	78-12 at 49
Apr. 21	“The situation in Haiti has reached a pivotal moment and is further deteriorating and approaching what is likely to become ‘a point of no return,’ requiring urgent international attention and political will to address the rapid erosion of that country’s statehood, briefers told the [UN] Security Council today.”	Meetings Coverage, UN Security Council (UNSC)	78-13 at 129
June 24	“A wave of drones strikes has reportedly killed hundreds of alleged gang members in Port-au-Prince and temporarily shaken Haiti’s criminal landscape, but legal concerns and mounting civilian casualties have raised questions	InSight Crime Article	78-11 at 54, 58

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	<p>about the strategy's long-term effectiveness."</p> <p>The drone strikes while temporarily putting gangs on the defensive, "are unlikely to offer a long-term solution to Haiti's security crisis, as these groups continue to adapt to shifts in the government's anti-gang strategy. Haiti's gangs are extremely well-armed and resilient. Each time authorities have altered their approach, the gangs quickly found ways to respond."</p>		
June 27	<p>"Haiti is one of only five countries worldwide with people in famine-like conditions. Internal displacement is at its highest since the earthquake of 2010. Hospitals, health centres and schools are routinely attacked and at the brink of collapse. Years of underfunding of humanitarian response, amid growing needs and rising violence, have eroded fundamental coping mechanisms and left millions of Haitians without essential support."</p>	UN Integrated Office in Haiti, Report of the Secretary-General	78-13 at 149
July 2	<p>"Top United Nations Officials Urge Swift Global Action as Haiti Nears Collapse."</p>	Meetings Coverage, UNSC	78-13 at 95
Aug. 7	<p>"Threats of violence have forced essential services to shut down, including hospitals and roadways, and nearly 1.3 million people have</p>	Aljazeera Article	78-7 at 150

	been displaced from their homes. . . . The humanitarian situation in Haiti is considered among the most dire in the world.”		
Aug. 9	“Haiti’s government announced . . . that it is implementing a three-month state of emergency in the country’s central region as gang violence surges.”	AP News Article	78-8 at 31
Sept. 8	“Federal Aviation Administration ban on U.S. commercial flights to Haiti’s capital that expired Monday has been extended to March 7, 2026 because of the risk that powerful gangs might attack flights with drones and small arms. The FAA noted that Haitian gangs now control 90% of Port-au-Prince as well as nearby strategic routes and border areas.”	AP News Article	78-8 at 17
Sept. 11	“Escalating terrorist and insurgent gang violence is devastating Haiti: more than 1.3 million people—half of them children—are displaced, communities are under siege, and children are being forcibly recruited and subjected to sexual violence. The territorial expansion of these criminals and murderers threatens to erase the hard-fought battles for national sovereignty by the under-resourced Haitian security forces.”	U.S. Mission to the Organization of American States, U.S. Remarks	78-7 at 91

Sept. 13	“In 2025, Haiti continues to face a deepening humanitarian emergency marked by widespread insecurity, displacement, and limited access to essential services. Armed violence and gang control have severely disrupted daily life, forcing hundreds of thousands to flee their homes and straining the delivery of food, water, sanitation, and health care. The resurgence of cholera in late 2022, after a three-year absence, has further complicated the crisis, with conditions in displacement sites heightening the risk of disease transmission.”	Pan American Health Organization (PAHO) Health Cluster Situation Report No. 26, Humanitarian Situation in Haiti	78-12 at 71
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Against this record of a country in chaos and crisis, Secretary Noem concluded that “there are no extraordinary and temporary conditions in Haiti that prevent Haitian” TPS holders “from returning [to] safety.” 90 Fed. Reg. at 54735. In doing so, she did not identify a single *present* condition in Haiti that indicates the many crises Secretary Mayorkas identified in July 2024, *see supra* Section I.B.3, have subsided, much less been resolved.

According to Secretary Noem, “data surrounding internal relocation does indicate parts of the country are suitable to return to.” 90 Fed. Reg. at 54735. But the Secretary cited no data to support this proposition and failed to identify a single safe location. In response to an inquiry from the Court, the Government cited an October 29, 2025, USCIS memo in the administrative record as the supporting analysis. *See* Dkt. 119 at 2–3;

Dkt. 89-2 at 4.<sup>26</sup> “The memo,” it noted, “reflects that individuals have been internally displaced, thereby indicating that Haitian residents found certain areas in Haiti that could be suitable for return.” Dkt. 119 at 3. But the memo also fails to identify a single safe location by name or even geographic area. And the fact that, as the memo notes, 1.3 million Haitians—around twelve percent of the population—have been “internally displaced due to escalating violence” says nothing about whether they escaped to suitable areas. Dkt. 89-2 at 4. If anything, those areas are presumptively now *less suitable* for return, having been inundated with internal refugees.

Another USCIS memo from October 1, 2025, stated that “[w]hile country conditions in Haiti *may* still<sup>27</sup> be challenging . . . there have been improvements.” Dkt. 89-1 at 2 (emphasis added). “The Haitian government,” it notes, “has committed substantial investments to strengthen security, governance, and the judicial

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<sup>26</sup> This memorandum appears to have served as a template for the Termination and contains the same flaws. *See* Dkt. 89-2. For example, highlighting overstay of immigrant visas as a concern, it also ignores that current Haitian TPS holders are not in this category. *See id.* at 8–9. It is also equally atonal. It claims that because Immigration & Customs Enforcement (ICE) has removed 4,140 individuals to Haiti since 2020, conditions there “have been sufficiently stable for the safe removal of Haitian nationals.” *Id.* at 9. With respect, this borders on the absurd. The latter has zero relation to the former or reality. And, if anything, that ICE is actively removing Haitians not here lawfully helps Plaintiffs. It proves that terminating TPS for the hundreds of thousands of Haitians here lawfully is not necessary to address the unlawful immigration concerns Secretary Noem cites in her national interest analysis.

<sup>27</sup> *May* still be? The country is in the midst of “famine,” CAR 78-13 at 149, and a “humanitarian emergency,” CAR 78-12 at 71, and is quickly approaching “a point of no return,” CAR 78-13 at 129.

system.” *Id.* at 5. That sounds promising; it would be, if one ignored that the cited source is a UNSC warning that Haiti “is a country in full-blown conflict,” and that “any effort by the Haitian Government will not be enough to significantly reduce the intensity and violence of criminal groups.”<sup>28</sup> This USCIS memorandum is riddled with other such verifiably misleading statements.

Unable to identify present conditions supporting her conclusion, Secretary Noem turns instead to speculation about future improvement. Each source she cited speaks to how Haiti *might* improve *in the future*. She quoted a UN article referencing Secretary-General António Guterres’s statement that despite ongoing violence in Haiti, “there are emerging signals of hope.” 90 Fed. Reg. at 54735 & n.19. He cautioned that “these fragile gains” depend on “more decisive international support.”<sup>29</sup> Emerging signals of hope, of course, are not actual change.<sup>30</sup> Secretary-General Guterres’s full remarks to the UNSC underscore this point. *See* CAR 78-13 at 174, 179–83. They do not describe a nation on the brink of recovery. Rather, they describe a nation in crisis, whose future hinges on internal “unity” and “resolve from [the UNSC].” *Id.* at 183.

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<sup>28</sup> Security Council Meetings Coverage, *Haiti ‘Running Out of Time’, Delegate Warns Security Council, Noting Possible Fall of Capital to Gangs Cannot Be Allowed*, United Nations (Apr. 21, 2025), <https://press.un.org/en/2025/sc16047.doc.htm> [<https://perma.cc/2QYZ-49Q8>] (cleaned up).

<sup>29</sup> *‘The People of Haiti are in a Perfect Storm of Suffering,’ Warns UN Chief*, United Nations News (Aug. 28, 2025), <https://news.un.org/en/story/2025/08/1165738> [<https://perma.cc/BB3T-BDGK>].

<sup>30</sup> Secretary-General Guterres’s statement is, the Government agrees, a prospective-looking statement. *See* Jan. 6 A.M Hr’g Tr. at 78:1–:5.

Secretary-General Guterres began his August 2025 remarks by stating that “[t]he people of Haiti are in a perfect storm of suffering.” *Id.* at 179. He reported that the “State authority is crumbling,” the “humanitarian toll is staggering,” “[c]ivilians are under siege with appalling reports of rape and sexual violence,” “[h]ospitals and schools are under repeated attack,” and “[t]he rule of law has collapsed.” *Id.* Among other things, Guterres also described that “[c]hildren are being abducted and killed,” Haitians are facing “[m]ass displacement,” and “[s]ix million people need humanitarian assistance.” *Id.* at 179–81. It is hardly surprising that State advises, notwithstanding “emerging signals of hope,” against travel to Haiti *for any reason*. See § 705 Reply at 20–21. Canada’s travel advisory echoes that warning, explaining that “[a] countrywide state of emergency [is] in effect in response to ongoing gang violence.” CAR 78-10 at 100–01.

Secretary Noem also highlighted the new UNSC Gang Suppression Force (GSF) which plans to “work in close coordination with the Haitian National Police (HNP) and the Haitian armed forces to conduct intelligence-led operations to neutrali[z]e gangs, provide security for critical infrastructure and support humanitarian access.” 90 Fed. Reg. at 54735. The UNSC approved the GSF in September 2025, about two months before Secretary Noem announced her termination decision. *Id.* at 54735 n.20. It did so because Haiti “*faces an unprecedented crisis*,” CAR 78-7 at 94 (emphasis added), and to replace its earlier, failed effort, the Multinational Security Support (MSS) Mission, *id.* at 58–59. Secretary Noem did not explain—and the record does not reflect—whether the GSF had deployed to Haiti by the time Secretary Noem terminated the country’s TPS designation (only two

months after the GSF was authorized). Jan. 6 A.M Hr’g Tr. at 84:10–85:10.

And there is no evidence or reason to believe that the GSF will succeed anytime soon given the failed prior interventions. A December 2024 Congressional Research Service (CRS) report (which appears in the CAR) found that notwithstanding the MSS’s deployment, “Haiti’s political and security situation continued to deteriorate in 2024.” CAR 78-7 at 55. The updated June 2025 report found the same conclusion for 2025. It explained that “Haiti’s political and security situation has continued to deteriorate in 2025 despite the 2024 deployment of a Kenya-led, UN-authorized [MSS mission] that the U.S. government has helped train and equip.” *Id.* at 58. Indeed, when the U.S. Mission to the Organization of American States announced the UNSC’s approval of the GSF, it explained that “the continued existence of the Haitian state remains *more imperiled today* than when the Security Council first envisioned a way to support [with the MSS mission].” *Id.* at 91 (emphasis added).

Finally, Secretary Noem asserts that “according to the World Bank, ‘modest GDP growth is projected by 2026 as investment increases from a low baseline, assuming improvements on the political and security fronts.’” 90 Fed. Reg. at 54735. That same World Bank article explains that Haiti’s economy “contracted by 4.2 percent . . . [for] a sixth consecutive year” in 2024 and would likely continue contracting absent improvements in security and governance. CAR 78-14 at 19. The article goes on to explain that “[d]espite some signs of progress, Haiti continues to face critical security challenges.” *Id.*

An agency may rely on reasoned projections of future conditions to justify its actions. *See N.Y. State*

*Pub. Serv. Comm'n v. FERC*, 104 F.4th 886, 893 (D.C. Cir. 2024). But not here. The TPS statute requires periodic review, which focuses the inquiry on present conditions rather than future change, and Secretary Noem failed to explain why speculative future improvement outweighed overwhelming evidence of present danger. Because her explanation runs counter to the record before her, the Court finds Plaintiffs will likely show that Secretary Noem's decision to terminate Haiti's TPS designation is arbitrary and capricious.

*b. National Interest*

Secretary Noem also claimed to terminate Haiti's TPS designation because permitting Haitian TPS holders to remain in the United States "is contrary to the national interest." 90 Fed. Reg. at 54735. The Court has no role in second-guessing this analysis. The Court must, however, assess whether the Secretary's analysis considered "important aspects of the issue" and included "a rational connection between the facts found and the choice made." *State Farm*, 463 U.S. at 43 (cleaned up). She appears to have done neither.

Secretary Noem defined "national interest" as "an expansive standard that may encompass an array of broad considerations, including foreign policy, public safety (*e.g.*, potential nexus to criminal gang membership), national security, migration factors (*e.g.*, pull factors), immigration policy (*e.g.*, enforcement prerogatives), and economic considerations (*e.g.*, adverse effects on U.S. workers, impact on U.S. communities)." 90 Fed. Reg. at 54735. Yet, having articulated this framework, she failed to apply the standard to the relevant population: Haitian TPS holders.

*i. Failure to Focus on Haitian TPS Holders*

Secretary Noem premised her national interest analysis on Haiti's lack of reliable law-enforcement infrastructure. Because of that, she said, "federal officials" have problems "reliably assess[ing] the criminal histories or national security threats posed by aliens attempting to enter the U.S. illegally." 90 Fed. Reg. at 54736. But TPS holders are already in the country. So problems attendant with individuals attempting to enter the U.S. unlawfully are as applicable here as are problems attendant with power outages—which is to say, not at all.

Secretary Noem's analysis also focused on those who "overstay their visas" and so remain in the country unlawfully. *Id.* She claimed that these overstayers "may be harder to locate and monitor," increasing vulnerabilities in immigration enforcement systems. *See id.* She also said they "place an added strain on local communities by increasing demand for public resources, contributing to housing and healthcare pressures, and competing in an already limited job market." *Id.* But Haitian TPS holders are not in this cohort either. They are in the U.S. lawfully. *See* Jan. 6 P.M. Hr'g Tr. at 85:15–87:12. Indeed, TPS holders are easy to locate because they regularly update their address information with DHS to maintain that status and their work authorization. *See id.* at 94:25–95:6. And Secretary Noem provides no data to support the overgeneralization that those who overstay their visas are a strain on their local communities. *See* Dkt. 122. They may well cause a strain, but terminating Haiti's TPS termination not alleviate it because, again, Haitian TPS holders do not fall into this cohort.

The Government responds by speculating that maybe some Haitians overstayed their visas before obtaining TPS status. *See* Dkt. 119. Maybe. Who knows? Not Secretary Noem. The Court asked the Government: “[w]here in the [CAR] can the Court find the percentage of TPS holders represented in the overstay rates?” Dkt. 119 at 4. The response: “The [CAR] does not contain data that is this finely dissected.” *Id.* Which is to say, not enough people to even bother counting. And so, the problems attendant with individuals who overstay their visas are also as apt as are the problems attendant with power outages. “Regardless, Defendants maintain that the high visa overstay rate for Haitians is contrary to the national interest and thus requires termination of Haiti’s TPS designation.” *Id.* But the latter does not logically, much less necessarily, follow from the former. Nothing about the overstay rates requires TPS termination, and TPS termination would not address overstay rates.

Secretary Noem also cited “pull” migration factors to justify terminating Haiti’s TPS designation. *See* 90 Fed. Reg. at 54737. Yet TPS eligibility is limited to individuals who are already physically present in the United States at the time of designation. *See* 8 U.S.C. § 1254a(c)(1)(A). No one who arrives later—lawfully or unlawfully—can obtain TPS. Little wonder, then, that the Secretary never explained what role, if any, TPS holders play in creating a migration pull. How could they, given the statutory constraint? In any case, both President Trump and Secretary Noem have rather thoroughly addressed any pull migration possibility by banning individuals from Haiti entering the country. *See supra* n.3.

The CAR, moreover, disproves any migration pull. “Between 2018 and 2025, [nonimmigrant visa] issuances

for Haitian nationals decreased significantly, from 26,389 in 2018 to 5,515 in 2025.” CAR 78-5 at 116. “I-94 admissions have overall decreased between 2018 and 2023, from 95,160 in 2018 to 47,660 in 2023. Like nonimmigrant visa (NIV) issuances, this pattern is likely reflective of measures aimed to restrict visa eligibility criteria resulting in limited access to NIVs for Haitian nationals.” *Id.* at 117. Ignoring this current data, Secretary Noem relied instead on a 2013 report. 90 Fed. Reg. at 54737 n.35. But that decade-old report sheds no light on current migration dynamics or processing backlogs. *See* Jan. 6 P.M. Hr’g Tr. at 131:9–:12.

Secretary Noem highlighted that some Haitian TPS holders “have been the subject of administrative investigations.” 90 Fed. Reg. at 54736. But the underlying database that DHS searched identified that such people comprised only 0.4% of the total dataset, and it does not even detail how many of these people in fact made false statements. *See* CAR 78-5 at 195. And yet again, DHS cannot say whether any of those individuals are current TPS holders. This is a relevant question given that the database contained information on 568,545 individuals, but there are only about 353,000 current Haitian TPS holders. *See* 90 Fed. Reg. at 54738; *see also* Jan. 7 Hr’g Tr. at 37:8, 39:5–40:5. More importantly, Secretary Noem offered no comparative baseline to show whether the 0.4% statistic—whoever it covers—is high, low, or unremarkable.

Secretary Noem noted that “Haitian gang members have already been identified among those who have entered the United States and, in some cases, have been apprehended by law enforcement for committing serious and violent crimes.” 90 Fed. Reg. at 54737. She

referenced ICE's January 2025 apprehension of Wisteguens Jean Quely Charles. *Id.* But neither the Termination nor the CAR states whether Charles is or was a TPS holder. The Termination does mention one TPS holder, Dimitri Vobre. *Id.* at 54738; SAC ¶ 226. Mr. Vobre has denied any involvement with Haitian gangs, and "U.S. authorities have not offered any proof to back up their claim that he has fomented violence in Haiti." SAC ¶ 226 (cleaned up). Even assuming he was involved with Haitian gangs, it says something that DHS was able to cite all of *one* TPS holder as allegedly being a public menace. It says more that the Termination says nothing about the criminality rate of Haitian TPS holders. Secretary Noem's silence here speaks volumes, especially considering that TPS eligibility excludes individuals with disqualifying criminal histories. *See* 8 U.S.C. §§ 1254a(c)(2)(B), (3)(A); 1182(a)(2)–(3).

To recap, Secretary Noem's national interest analysis involved cohorts that she cannot say include any current Haitian TPS holders: individuals who are not in the country, individuals in the country unlawfully, individuals in an over-inclusive database, and individuals already subject to exclusion from the TPS statute. This is not a minor detail. Because her national interest analysis focuses only on cohorts that do not involve Haitian TPS holders, there is no reasoned basis to believe that terminating Haiti's TPS designation will address any of the concerns she raised. Quite the opposite, since turning around 353,000 lawful immigrants into unlawful ones overnight will further burden the very immigration-enforcement system she claims is already over-burdened. This is the type of irrational decision-making the APA prohibits. *See State Farm*, 463 U.S. at 43.

The careful, perhaps even the casual, reader by now also realizes something important is missing from Secretary Noem’s analysis: the cohort of current Haitian TPS holders. Let us turn to that cohort next.

*ii. Failure to Consider Economics*

Did Secretary Noem’s failure to consider this cohort potentially affect her analysis? Consider one example. She failed to consider the impact Haitian TPS holders have on our economy. Hence, she did not account for the \$1.3 billion they pay annually in taxes, among their many other contributions. *See infra* Part VI. This failure “is problematic, given that the [Secretary] specifically determined that,” *Am. Clinical Lab’y Ass’n v. Becerra*, 40 F.4th 616, 625 (D.C. Cir. 2022), national interest includes “economic considerations (*e.g.*, adverse effects on U.S. workers, impact on U.S. communities),” 90 Fed. Reg. at 54735.

Another example. Secretary Noem also failed to analyze the “impact on U.S. communities” of the loss of work authorization for all Haitian TPS holders and the resulting effects on employers, industries, and local economies. Amici representing states, labor organizations, and members of Congress explain that TPS holders are highly employed, pay taxes, and work in industries with labor shortages. *See infra* Part VI. The so-called adverse effects on U.S. workers? As a group, 14.5% of TPS holders are entrepreneurs—compared with 9.3% of the U.S.-born workforce. *See id.* One need not even credit those figures to recognize the defect here—the Secretary never considered whether such benefits exist at all. The Secretary “fail[ed] to show that [she] considered the issue, much less that [she] reached a reasoned conclusion.” *Nat. Res. Def. Council, Inc. v. Rauch*, 244 F. Supp. 3d 66, 97 (D.D.C. 2017).

The Court is sensitive that its role is not to weigh the record itself. If it was, this Memorandum Opinion would be considerably shorter. Secretary Noem is the decision-maker. But the Secretary cannot just throw *verifiably* inapposite or false assertion after inapposite or false assertion—no matter how inflammatory—against the wall and hope that something sticks. Nor can she lawfully fail to consider the very factors, such as economic considerations, that she herself has determined are relevant simply because they do not support her preferred outcome.

Which brings us to yet another APA violation, predetermining the outcome.

*c. Preordained Result*

Plaintiffs contend that the Trump administration preordained the decision to terminate Haiti's TPS designation. *See* SAC ¶ 64. Defendants argue that Plaintiffs mischaracterize the record. *See* § 705 Opp'n at 26. Not so. Plaintiffs have shown that there is no "rational connection between the facts found and the choice [the Secretary] made." *State Farm*, 463 U.S. at 43. Accordingly, they are likely to succeed in their claim that the Secretary's decision to terminate Haiti's TPS designation was preordained.

The Court will not regurgitate all it has detailed above. Suffice it to say, nearly everything the Court has already discussed supports that the Secretary preordained the result. This includes Secretary Noem: (1) following the President's direction to terminate before conducting any analysis; (2) terminating every TPS designation to come before her; (3) failing to consult appropriate agencies; (4) making gross generalizations without any supporting data; and, among

other things, (5) ignoring key aspects of the analysis. *See passim*.

As does Secretary Noem joining President Trump in insisting that nonwhite immigrants be forced to leave the United States, the subject to which the Court next turns.

### B. Equal Protection Claim

The Due Process Clause of the Fifth Amendment provides that “[n]o person shall be . . . deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. Although it is “not as explicit a guarantee of equal treatment as the Fourteenth Amendment,” *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 213 (1995), the Clause “contains an equal protection component prohibiting” the federal government from engaging in invidious discrimination against persons in the United States, *Washington v. Davis*, 426 U.S. 229, 239 (1976). These protections “are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality.” *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886). They apply to citizens and foreign nationals alike, even when a person’s “presence in this country is unlawful, involuntary, or transitory.” *Mathews v. Diaz*, 426 U.S. 67, 77 (1976).

Though subject to judicial review, the Government may treat people differently if it has sufficient justification. *See id.* at 78. Here, the Parties dispute the appropriate standard of review for Plaintiffs’ Equal Protection claim. Plaintiffs contend that the standard in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), applies because the Secretary’s decision to terminate Haiti’s

TPS was “motivated, at least in part, by racial animus.” § 705 Mot. at 13, 45–47. In the Government’s view, the more deferential standard in *Trump v. Hawaii*, 585 U.S. 667 (2018), governs because the Secretary’s decision arises in the context of immigration and involves issues related to national security. See § 705 Opp’n at 35–37.

For the reasons discussed below, the Court finds that *Arlington Heights* applies to this case. That noted, the Court would find Plaintiffs likely to succeed even if it applied the *Trump v. Hawaii* standard.

1. *Arlington Heights Governs Plaintiffs’ Equal Protection Claim*

The Government argues that “[t]he Supreme Court has specifically foreclosed [the *Arlington Heights*] standard in the context of immigration.” § 705 Opp’n at 35. It has not.

The Supreme Court has not announced a categorical rule for the standard of review in immigration cases. Nor has it declined to apply *Arlington Heights* in immigration cases. Consider *Department of Homeland Security v. Regents of the University of California*, 591 U.S. 1 (2020). A case the Supreme Court decided two years after *Hawaii*, and on which Defendants rely, *Regents* involved the DHS’s efforts to rescind the Deferred Action for Childhood Arrivals (DACA) program. As here, the plaintiffs in *Regents* were foreign nationals present in the United States who alleged that animus motivated DHS’s actions. See *Regents of the Univ. of Cal.*, 591 U.S. at 9, 33–35. The Court applied the *Arlington Heights* standard. *Id.* at 34–35; see also *Ramos v. Nielsen*, 321 F. Supp. 3d 1083, 1129–31 (N.D. Cal. 2018); *Saget*, 375 F. Supp. 3d at 368 (collecting cases).

*Hawaii* is different. It concerned President Trump’s executive order barring foreign nationals from seven majority-Muslim countries from entering the United States. *Hawaii*, 585 U.S. at 676. Unlike in *Regents*, and this case, the *Hawaii* plaintiffs “challenged the application of those *entry* restrictions to certain [foreign nationals] *abroad*.” *Id.* at 675 (emphasis added). This distinction is key because courts are most deferential in cases involving “foreign nationals seeking admission” into the United States. *Id.* at 703. But when the Government seeks to withdraw lawful status from individuals it has vetted, its authority is subject to greater constitutional constraints. TPS recipients fall squarely within the latter category.

The Government also contends that *Hawaii* applies because it is an immigration case that involves national security concerns. Mere invocation of “national security,” however, does not serve as a talismanic shield against an Equal Protection violation. If that were the case, then the Government could label anything it does as a national security measure to insulate discriminatory decision-making from judicial scrutiny. National security may justify differential treatment, but only where there is “a rational connection between the facts found and the choice made.” *Dep’t of Com.*, 588 U.S. at 773 (quoting *State Farm*, 463 U.S. at 43). No such connection appears here.

Even when judicial “review is deferential,” the Court is “not required to exhibit a naiveté from which ordinary citizens are free.” *Id.* at 785 (cleaned up). Secretary Noem’s decision to terminate Haiti’s TPS designation “was not supported by the evidence before [her], and [her] stated rationale was pretextual.” *Id.* at 773–74; *see supra passim*. When the record fails to support the Government’s stated rationale—and

where Plaintiffs claim that discriminatory animus played a motivating role in the Government's decision—*Arlington Heights* requires courts to look behind the proffered explanation and assess whether it is pretextual. *See Arlington Heights*, 429 U.S. at 266. The Court now turns to that analysis.

2. *Plaintiffs Are Likely to Succeed Under  
Arlington Heights*

“[O]fficial action will not be held unconstitutional solely because it results in a racially disproportionate impact.” *Arlington Heights*, 429 U.S. at 264–65. Courts must engage in a “sensitive inquiry into such circumstantial and direct evidence of intent as may be available.” *Id.* at 266. In doing so, courts may consider “the historical background of the decision”; “the specific sequence of events leading up to the challenged decision”; departures from normal procedural or substantive standards; and the legislative or administrative history, including “contemporary statements by members of the decisionmaking body.” *Id.* at 267–68. Applying these factors, the Court finds that Plaintiffs are likely to succeed on their claim that anti-black and anti-Haitian animus motivated Secretary Noem’s decision to terminate Haiti’s TPS designation.

*a. President Trump has expressed  
racially motivated animus*

President Trump has made—freely, at times even boastfully—several derogatory statements about Haitians and other nonwhite foreigners. To start, he has repeatedly invoked racist tropes of national purity, declaring that “illegal immigrants”—a category he wrongly assigns to Haitian TPS holders—are “poisoning the blood” of America. § 705 Mot. at 47. He has, Plaintiffs allege, complained that recently

admitted nonwhite Africans would “never ‘go back to their huts’ in Africa.” SAC 90 ¶ 66. He has complained further that nonwhite immigration is an “invasion,” creating a “dumping ground” that is “destroying our country.” *Id.* ¶¶ 94, 101. He has described immigrants as “not people,” *id.* ¶ 86, “snakes,” *id.* ¶ 84, and “garbage,” *id.* ¶ 107, who have “bad genes,” *id.* ¶ 98. He has also stated that he prefers immigrants from “nice”—predominantly white—countries like Norway, Sweden, and Denmark over immigrants from “shithole countries,” *id.* ¶¶ 102, 108.

President Trump has referred to Haiti as a “shithole country,” suggested Haitians “probably have AIDS,” and complained that Haitian immigration is “like a death wish for our country.” § 705 Mot. at 47. He has also promoted the false conspiracy theory that Haitian immigrants were “eating the pets of the people” in Springfield, Ohio. Even after that (ridiculous) claim was debunked, he claimed they were eating “other things too that they’re not supposed to be.” *Id.* at 47–48. About two weeks after the Termination, he again described Haiti as a “filthy, dirty, [and] disgusting” “shithole country.” *Id.* at 48. He stated: “I have also announced a permanent pause on Third World migration, including from hellholes like Afghanistan, Haiti, Somalia and many other countries.” *Id.* at 48 n.53. Then continued, “Why is it we only take people from shithole countries, right? Why cannot we have some people from Norway, Sweden, just a few, let us have a few, from Denmark.” *Id.* It is not a coincidence that Haiti’s population is ninety-five percent black while Norway’s is over ninety percent white. SAC 90 ¶ 70.

Plaintiffs allege that after taking office, putting words to practice, “President Trump made his

preference for white immigrants the official policy of the United States.” *Id.* ¶ 103. On the one hand, his administration eliminated “the lawful immigration status not only of Haitians but of immigrants from other predominantly nonwhite countries.” *Id.* On the other, it “gave special priority” to white South African immigrants, admitting them into the United States as refugees. *Id.* And, of course, Plaintiffs further allege that President Trump targeted the TPS designations of nonwhite countries. He described utilizing the TPS program as “a certain little trick,” and grouched that TPS recipients “are illegal immigrants as far as [he is] concerned.” *Id.* ¶ 91.<sup>31</sup>

To its credit, the Government does not defend President Trump’s derogatory statements. No one rationally could.<sup>32</sup> Instead, it argues that the Supreme Court’s decision in *Regents* prohibits the Court from considering them. *See* MTD at 42 (citing *Regents of the Univ. of Cal.*, 591 U.S. at 34–35). To be sure, the *Regents* Court found that President Trump’s statements at issue there—derogatory statements about Hispanics—were too remote on the facts presented to influence the decision-making of the relevant government actors. *See Regents of the Univ. of Cal.*, 591 U.S. at 35.

But the Supreme Court did not place any categorical bar on considering a President’s statement in the Equal Protection context. And so, courts since have relied on President Trump’s campaign and post-election statements as probative of intent where, as

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<sup>31</sup> They are not. *See* 8 U.S.C. § 1254a.

<sup>32</sup> Which is not to say that Americans cannot rationally debate immigration policy. They can, of course. They can even do so without calling fellow human beings “garbage” and “leeches.”

here, they are closely connected in time and substance to the challenged action. *See, e.g., Perkins Coie LLP v. Dep't of Just.*, 783 F. Supp. 3d 105, 162–64 (D.D.C. 2025); *Am. Ass'n of Univ. Professors v. Rubio*, 802 F. Supp. 3d 120, 187 (D. Mass. 2025).

Plaintiffs claim President Trump made numerous derogatory statements about nonwhite immigrants, and Haitians particularly, close in time to Secretary Noem's three TPS decisions about Haiti. In February 2025, the same month that Secretary Noem first acted, President Trump falsely alleged that “some of these countries allowed [in] every single prisoner,” specifically calling out “countries . . . from Africa, from Asia, not just South America, a lot, a lot from South America, but not even the most.” SAC ¶ 95. Notably missing from the list of continents are Europe and Australia. In June 2025, the same month as Secretary Noem's second action, President Trump instituted a travel ban that imposed visa restrictions on 19 countries—including Haiti—each of which is predominantly nonwhite. *Id.* ¶ 109. On December 16, 2025, shortly after Secretary Noem's third action, President Trump issued a new and expanded travel Proclamation that built on the travel Proclamation he issued on June 4th. *Id.* at n.88. That same month, he allegedly “called nonwhite Somali immigrants—and Somalian U.S. Rep. Ilhan Omar, an American citizen—‘garbage.’” *Id.* at ¶ 107. Echoing his previous comments that Haitians are undesirable because they come from a “shithole country,” President Trump said that Somali immigrants “come from hell and they complain and do nothing but bitch, we don't want them in our country.” *Id.* These are just a few of many examples.

The Government contends that Plaintiffs take the derogatory statements out of context. To be sure,

“outright admissions of impermissible racial motivation are infrequent.” *Hunt v. Cromartie*, 526 U.S. 541, 553 (1999). This is why *Arlington Heights* directs courts to conduct a “sensitive inquiry” into the evidence to determine whether discriminatory animus played a motivating factor in the Government’s actions. *Arlington Heights*, 429 U.S. at 266–68. But, whatever the context and at whatever level of sensitivity one considers them, the statements are what they are: unmitigated expressions of animus towards nonwhite foreigners.

Finally, it bears highlighting that during his first administration, President Trump also attempted to terminate Haiti’s TPS designation. Several courts enjoined his actions, finding the Government’s decisions to be “preordained” and motivated by the “discriminatory purpose of removing nonwhite immigrants from the United States.” *Saget*, 375 F. Supp. 3d at 346–47, 374; *Ramos*, 336 F. Supp. 3d at 1100–05; *Centro Presente v. Dep’t of Homeland Sec.*, 332 F. Supp. 3d 393, 415 (D. Mass. 2018). The Court has no trouble concluding that Plaintiffs are likely to succeed on their claim that that discriminatory intent continues through today.

*b. President Trump influenced Secretary Noem’s decision*

Further relying on *Regents*, the Government also argues that President Trump’s statements are irrelevant because the DHS Secretary makes TPS termination determinations.<sup>33</sup> See § 705 Opp’n at 35.

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<sup>33</sup> The Court requested that the Government submit certain documents referenced in *NTPSA IV*, 798 F. Supp. 3d 1108. See Dkt. 109. Finding that they do not add to the analysis, however, the Court does not rely on them.

But when a superior’s animus “influenced or manipulated the decision-making process,” government action “may violate the equal protection” guarantee “[e]ven if it cannot be proven that” the subordinate “personally harbor[s] animus.” *NAACP v. Dep’t of Homeland Sec.*, 364 F. Supp. 3d 568, 577 (D. Md. 2019); *Saget*, 375 F. Supp. 3d at 369–72. “Even if the Secretary had taken every formal step required by every applicable statutory provision, reversal would be required . . . [where] extraneous pressure intruded into the calculus of considerations on which the Secretary’s decision was based.” *D.C. Fed’n of Civic Assocs. v. Volpe*, 459 F.2d 1231, 1245–46 (D.C. Cir. 1971).

Yes, Secretary Noem is supposed to make the decision. But here is what occurred instead:

January 29: Secretary Noem explained that “[w]hen the President gives a directive, the Department of Homeland Security will follow it.” § 705 Mot. at 34.

February 22: President Trump stated that “[t]his week *I* also cancelled temporary protective status for migrants from Haiti, they are pouring into our country, pouring in.”<sup>34</sup> (emphasis added).

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<sup>34</sup> *President Trump Speaks at CPAC*, C-SPAN (Feb. 22, 2025 at 22:11), <https://www.c-span.org/program/public-affairs-event/president-trump-speaks-at-cpac/656191>. While the Government objects to the Court taking judicial notice of this speech, see Dkt. 118, Plaintiffs correctly note that courts routinely take judicial notice of televised speeches under Federal Rule of Evidence 201(b)(2), see Dkt. 121.

February 24: Secretary Noem published the decision of the partial vacatur of then-Secretary Mayorkas’s July 2024 extension of Haiti’s TPS designation. *See* 90 Fed. Reg. at 10511.

The Court need do nothing more than take the President and Secretary at their word in concluding that Secretary Noem only followed orders. At a minimum, President Trump influenced Secretary Noem’s decision through his many public statements, which Secretary Noem has acknowledged. *See supra* Section IV.B.2.a. Indeed, the Government concedes that DHS communicated and met with White House officials to discuss Haiti’s TPS designation.<sup>35</sup>

In any event, Plaintiffs also identify statements and actions by Secretary Noem that reinforce the inference of racial animus. Secretary Noem has described Haitians—and people from eighteen other nonwhite countries—as “leeches,” “entitlement junkies,” and “foreign invaders” who “suck dry our hard-earned tax dollars,” and has expressly claimed that “WE DON’T WANT THEM. NOT ONE.” *See* SAC ¶¶ 109–10. And recall that that X post and her recommendation that President Trump ban anyone from Haiti coming into the U.S. occurred a mere three days after she made the Termination decision. *See supra* n.2.<sup>36</sup> Plaintiffs allege

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<sup>35</sup> “[The Government] represent[s] that the communications were not in writing and the substance of the communications is privileged.” Dkt. 98 at 3. The Government also “represent[s] that the substance of those meetings is privileged.” *Id.* The Court has not yet had opportunity to consider those privilege assertions.

<sup>36</sup> Courts properly consider statements of animus even when officials make them after they issue their formal decisions. *See*

that she separately accused TPS holders of being “poorly vetted migrants” who include “MS-13 gang members to known terrorists and murderers.” SAC ¶ 111.

Though a closer call, even if the Court ignored President Trump’s statements altogether, Secretary Noem’s expressed animus towards nonwhite foreigners would support a stay.

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Taken together, the record strongly suggests that Secretary Noem’s decision to terminate Haiti’s TPS designation was motivated, at least in part, by racial animus. The mismatch between what the Secretary said in the Termination and what the evidence shows confirms that the termination of Haiti’s TPS designation was not the product of reasoned decision-making, but of a preordained outcome justified by pretextual reasons. Plaintiffs are likely to prevail on their Equal Protection claim.

#### V. IRREPARABLE HARM

To establish irreparable harm, the party seeking a stay must make two showings. *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 8 (D.C. Cir. 2016). “First, the harm must be certain and great, actual and not theoretical, and so imminent that there is a clear and present need for equitable relief to prevent irreparable harm.” *Id.* at 7–8 (cleaned up). “Second the harm must be beyond remediation.” *Id.* at 8. Plaintiffs satisfy both requirements.<sup>37</sup>

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*N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204, 229 n.7 (4th Cir. 2016).

<sup>37</sup> The named Plaintiffs alone establish irreparable harm sufficient to warrant a stay. The Court references the similar

In support of their irreparable harm showing, each Plaintiff submitted a declaration. *See* Dkt. 81-2 (Miot Decl.); 81-3 (Civil Decl.); 81-4 (Noble Decl.); 81-5 (Laguerre Decl.); 81-6 (Dorsainvil Decl.). These declarations describe the actual and imminent harms Plaintiffs will face if their TPS is terminated, including risk of deportation and detention, separation from family members, and loss of work authorization. The Court addresses each of these harms in turn.

Removal from the United States to Haiti constitutes irreparable harm.<sup>38</sup> TPS is the only avenue for legal status in the United States for many TPS holders, and so “[r]emoval is a concrete reality” if Haiti’s TPS designation is terminated. *NTPSA I*, 773 F. Supp. 3d at 836. It would cause Plaintiffs great harm given the “perfect storm of suffering” and the collapsing rule of law in Haiti. CAR 78-13 at 179–80. And while the Termination indicates “parts of” Haiti are suitable to return to, 90 Fed. Reg. at 54735, it does not identify a single safe location. *See supra* Section IV.A.3.a. Even after the Court gave it additional time to do so. *See id.*

For many Plaintiffs, removal to Haiti would be devastating because they have no meaningful ties to the country. Ms. Noble came to the United States when

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harm that would affect similarly situated Haitian TPS-holders to illustrate the injury’s scope, uniformity, and immediacy, even though it does not address Plaintiffs’ Motion for Class Certification (Dkt. 67) in this Memorandum Opinion.

<sup>38</sup> Considering removal and removal-related detention as potential harms does not invite the Court to decide questions of law or fact arising from actions to remove non-citizens—matters over which Congress has divested this Court of jurisdiction. *See* 8 U.S.C. § 1252(a)(5), (b)(9), (g). The Court’s inquiry is limited to whether removal or detention would cause irreparable harm; it is not weighing in on the lawfulness of removal or detention itself.

she was 2 years old and has lived here continuously for the past thirty-four years. Noble Decl. ¶¶ 5, 17. Aside from being born in Haiti, she has no connection to the country whatsoever—she does not know the identity of her biological family and she cannot speak French or Haitian Creole, the official languages of Haiti. *Id.* ¶ 18. In fact, she cannot even name one person she knows in Haiti. *Id.* Mr. Civil's circumstances are similar. He has not been to Haiti since 2010, when he was seven years old. Civil Decl. ¶ 7. He speaks Creole only infrequently and with an American accent, making him a vulnerable target for gangs. *Id.* Removal would return these individuals to what is essentially a foreign country, without language skills, a support network, or any realistic means of safe reintegration.

In addition, removal to Haiti would pose serious medical risks for many Plaintiffs. Several have ongoing medical conditions that require consistent treatment and prescription medication, which may be unavailable or difficult to access in Haiti. *See, e.g.*, Miot Decl. ¶ 8; Noble Decl. ¶ 20. For example, Mr. Miot has Type 1 Diabetes and must inject himself with insulin multiple times per day. Miot Decl. ¶ 7. He also requires regular care from specialists, including an endocrinologist and an ophthalmologist, to prevent complications from his diabetes. *Id.* In Haiti, Mr. Miot may be unable to obtain the insulin he needs to survive. *Id.* ¶ 8. And even if it were available, the cost of managing his diabetes in Haiti would likely be prohibitively high. *Id.*

Another Plaintiff, Ms. Noble, contracted spinal tuberculosis as a toddler in Haiti. Noble Decl. ¶ 4. Although she initially received treatment in Haiti, her spinal cord collapsed during that treatment. *Id.* So, when she was two years old, a faith-based organization in the United States brought her to this country for

further medical care. *Id.* ¶ 5. She has since undergone two spinal fusion surgeries in the United States following her diagnosis. *Id.* ¶¶ 5, 15. Returning Ms. Noble to Haiti would effectively put her life in jeopardy, as she likely would not have access to the medical care she needs. *See supra* Section I.C.1. The combination of Haiti’s inadequate medical infrastructure and the country’s ongoing instability and violence places Plaintiffs at serious risk of life-threatening interruptions in medical care.

Finally, removal would result in irreparable harm through forced family separation. If removed, Mr. Dorsainvil would be separated from his cousin, who has diabetes and relies on Mr. Dorsainvil for financial support to obtain necessary medical care. Dorsainvil Decl. ¶ 7. Mr. Miot would have to leave his sister, a physician with whom he lives and to whom he contributes financially by helping to pay her mortgage. Miot Decl. ¶ 6. And Ms. Laguerre would be forced to physically leave her husband, a commercial banker employed by one of the United States’ largest banks. Laguerre Decl. ¶ 17. Such separations would inflict great and lasting harm on both Plaintiffs and their U.S.-based family members—harm that cannot be remedied by a later favorable ruling.

Notwithstanding the daily news barrage of aggressive ICE raids throughout the country, the Government argues that Plaintiffs’ fears of removal amount to nothing more than “remote conjecture.” § 705 Opp’n at 42. But the Government’s reliance on *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d at 298, is misplaced. In *Chaplaincy*, the alleged harm depended on a chain of speculative contingencies. Here, termination of Plaintiffs’ TPS would instantaneously strip them of lawful immigration status. Plaintiffs would be

forced to either self-deport immediately<sup>39</sup> or remain in the United States unlawfully and face the ever-present risk of detention and removal.<sup>40</sup> Hence, the harm Plaintiffs would suffer due to loss of their TPS is not “theoretical,” but constitutes an actual and imminent injury. The likelihood that Plaintiffs who remain in the United States will be subject to removal or detention after the loss of their TPS rises beyond a mere possibility.

The Government contends that Plaintiffs could seek relief from removal through the immigration process. § 705 Opp’n at 42–43. But this alternative is illusory. The theoretical availability of such relief provides no assurance that Plaintiffs’ applications for relief would be processed, let alone granted, before removal. Indeed, the current administration is making it *more* difficult for those few Haitians who may have other immigration options. For example, USCIS has placed a hold on asylum applications and other immigration benefit requests filed by individuals from Haiti.<sup>41</sup>

The Court does not suggest that removal categorically constitutes irreparable harm. It does not. *See Nken*, 556 U.S. at 435. Here, however, it may not be

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<sup>39</sup> Failing to self-deport should, according to the Government, result in a hefty penalty. It seeks over \$900,000 in civil penalties for one woman’s failure to depart pursuant to a final order of removal. *See United States v. Veliz*, 3:26-cv-61 (E.D. Va. Jan. 23, 2026) (Dkt. 1).

<sup>40</sup> Courts have recognized that detention is “the sort of actual and imminent injur[y] that constitute[s] irreparable harm.” *Areceley R. v. Nielsen*, 319 F. Supp. 3d 110, 155 (D.D.C. 2018) (collecting cases).

<sup>41</sup> USCIS Policy Memorandum, *Hold and Review of All Pending Asylum Applications and All USCIS Benefit Applications Filed by Aliens from High-Risk Countries*.

possible to restore Plaintiffs to the status quo once they are removed—even if they later prevail on the merits—because TPS is a vehicle to *remain* in the country, not to enter it. *Cf. Sanchez v. Mayorkas*, 593 U.S. 409, 414 (2021) (finding that TPS does not constitute an “admission” into the United States for the purpose of an adjustment to permanent status). Thus, this case is different from those in which removal can later be undone through immigration proceedings that permit reinstatement of status or return to the United States. In effect, then, denying a stay may prevent Plaintiffs from obtaining any relief at all, even if the Court later sets aside the Secretary’s decision.

The loss of work authorization is also irreparable in this context. TPS holders participate in the U.S. workforce at exceptionally high rates. *See* Dkt. 54 (Rep. Amici) at 17. In 2021, 94.6% of TPS holders nationwide were employed. *See id.* at 17–18. If TPS is terminated, Plaintiffs will automatically lose their work authorization, resulting in immediate job loss, and attendant health insurance loss, that cannot be remedied retroactively. *See* Miot Decl. ¶ 6; Dorsainvil Decl. ¶ 4; Laguerre Decl. ¶ 16. Although economic harm is generally insufficient to establish irreparable injury, *Davis v. Pension Ben. Guar. Corp.*, 571 F.3d 1288, 1295 (D.C. Cir. 2009), the harm here extends beyond ordinary economic injury. Plaintiffs would not only suffer lost wages. They would lose the legal ability to work at all. It would implicate Plaintiffs’ fundamental ability to earn a livelihood, support their families, and remain self-sufficient. Plaintiffs could not simply find another job, as they would be categorically barred from lawful employment. The loss of work authorization therefore constitutes irreparable harm.

The Government's contention that "Plaintiffs' claimed irreparable harms . . . are inherent in the statutory scheme" because of the "temporary" nature of TPS is unavailing. § 705 Opp'n at 41. That it is temporary does not mean the Government can terminate the program summarily once a designation occurs. For instance, "temporary" may well refer to the duration of *each* designation/extension period (which can be no more than 18 months at a time under 8 U.S.C. § 1254a(b)(2)(B), (b)(3)(C)).

Assuming that "temporary" instead refers to the entire program's duration for a designated country does not help the Government. "Temporary" is any amount of time short of "permanent."<sup>42</sup> That does not tell us that a designation should last any length—short, medium, or long—even if we had a yardstick to measure time against (which we do not). Congress permitted repeated extensions of a country's TPS designation. *See* 8 U.S.C. § 1254a(b)(3)(A), (C). More than that, Congress chose to have the program automatically default to a six-month extension absent the Secretary's review. *See id.* § 1254a(b)(3)(C). If Congress meant the period to be "short," instead of "temporary," it would have said so. At a minimum, it would have signaled its intent, for example, by cabining the number of extensions or defaulting to termination instead of extension. True, "nothing requires that there be countries designated for TPS at any given moment." Gov't's Suppl. Br. at 12. But

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<sup>42</sup> The version of Black's Law Dictionary in circulation at the time Congress established the TPS program defines "temporary" as "[t]hat which is to last for a limited time only, as distinguished from that which is perpetual, or indefinite, in its duration" or the "[o]pposite of permanent." *Temporary*, *Black's Law Dictionary* (6th ed. 1990).

neither does the statute authorize, let alone mandate, the end of a country's designation merely because the Secretary believes it has gone on for some time.

Indeed, Congress perceived that some crises could last years, maybe even decades. And it ensured that TPS holders' stay would still be temporary. How? The answer lies in Title 8, Section 1254a(f)(4) of the United States Code: "[A]n alien provided temporary protected status under this section . . . shall not be considered to be . . . permanently residing in the United States under color of law." While the recipient is entitled to work authorization, 8 U.S.C. § 1254a(a)(2), TPS holders do not accrue time toward a green card or gain permanent residence credit, *id.* § 1254a(f)(1).

For these reasons, Plaintiffs have established that the harm they face is certain, imminent, and beyond remediation absent a stay. The irreparable-harm factor therefore weighs in Plaintiffs' favor.

#### VI. BALANCE OF EQUITIES AND PUBLIC INTEREST

The balance of the equities and the public interest factors merge where, as here, the Government is the opposing party. *Nken*, 556 U.S. at 435. In considering these factors, courts "explore the relative harms" to plaintiffs and defendants, "as well as the interests of the public at large." *Barnes v. E-Sys., Inc. Grp. Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1305 (1991). For the reasons discussed below, these factors favor Plaintiffs.

A stay is in the public interest. Consider the economy first. Haitian TPS holders substantially benefit the U.S. economy, contributing approximately \$3.4 billion to it annually. *See Rep. Amici* at 20. These economic contributions reflect the critical roles that

Haitian TPS holders play in workplaces across the country. Employers actively rely on Haitian TPS holders, who are far from expendable. *See id.* at 21. This is, in part, because they fill labor shortages in essential industries. *See* Dkt. 47 (State Amici) at 22–24. According to State Amici, a “recent estimate found that 75,000 TPS-eligible Haitians work in labor-short industries, defined as those with openings for at least four percent of their workforce.” *Id.* at 23.

Take healthcare, for example—a “labor-starved sector.” Rep. Amici at 20. Haitian workers constitute a considerable segment of this workforce. Recall that Mr. Dorsainvil is a registered nurse. *See* Dorsainvil Decl. ¶ 2. He is not alone among Haitians in the United States. “As of 2021, the 103,000 Haitian healthcare workers comprised the sixth-largest immigrant group in this field, where the demand for labor is high and understaffing and overwork is already the norm.” Dkt. 37 (Labor Amici) at 18. Direct care services provide another example: seven percent of all direct care professionals in the United States are Haitian. *See* Rep. Amici at 21. In Massachusetts alone, approximately 2,000 long-term caregivers will lose work authorization if Haiti’s TPS designation is terminated. *See* Rep. Amici at 21. “[B]ecause Haitian immigrants are highly concentrated, with almost 66% residing in just three metropolitan areas—Miami, New York City, and Boston—suddenly removing Haitian TPS holders would have a drastic impact on co-workers’ workload and patient care quality.” Labor Amici at 37. These are not isolated examples. Haitian TPS holders also play indispensable roles in hospitality, food service, education, and manufacturing—industries that already face labor shortages and would be further destabilized by the loss of this workforce. *See* Rep. Amici at 20, 22–23; State Amici at 22–23; Labor Amici at 17–24.

TPS holders also make substantial contributions as entrepreneurs and taxpayers. As a group, 14.5% of TPS holders are entrepreneurs—compared with 9.3% of the U.S.-born workforce. *See* State Amici at 23. In 2021, more than 38,100 self-employed TPS holders generated \$1.5 billion in business income. *See id.* This translates into significant tax revenue: in 2023, TPS holders from all countries paid \$3.1 billion in federal taxes and \$2.1 billion in state and local taxes, supporting programs such as Social Security and Medicare. *See* State Amici at 23–24. And these contributions come despite TPS holders remaining largely ineligible for nearly all federal public benefits. *See* Rep. Amici at 19. Because Haitian TPS holders make up “nearly one quarter of all TPS holders nationwide,” State Amici at 12, they paid about \$1.3 billion in federal, state, and local taxes.<sup>43</sup> Thus, without Haitian TPS holders, the United States would lose not only a vital segment of its workforce but also a significant source of tax revenue.

The public interest in maintaining Haiti’s TPS designation extends beyond economics. Many Haitian TPS holders are homeowners and long-term residents who have lived in the United States for more than a decade and are deeply embedded into their local communities. *See* State Amici at 24–25; Rep. Amici at 25; *see also* Miot Decl.; Civil Decl.; Noble Decl.; Laguerre Decl.; Dorsainvil Decl. Without jobs, Haitian TPS holders and their families would lose employer-

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<sup>43</sup> To reach this number, the Court took \$5.2 billion—the total federal (\$3.1 billion) and state and local (\$2.1 billion) taxes TPS holders paid—and multiplied it by twenty-five percent, the approximate percent of TPS holders who are Haitian. *See* State Amici at 12.

sponsored health insurance—coverage held by fifty five percent of TPS holders. *See* State Amici at 25.

Moreover, hundreds of thousands of U.S. citizens, many of them children, live in mixed-status households with Haitian TPS holders. *See id.* at 17. As State Amici explain, termination of Haiti’s TPS designation would force TPS-holder parents into an “agonizing” choice among untenable options: “(1) returning to Haiti alone, leaving their children behind; (2) taking their U.S. citizen children with them to a dangerous country that the children do not know; or (3) staying in the United States without authorization.” *Id.* at 18–19. None of these options is acceptable. Unsurprisingly, the fear that a family member will be deported is profoundly anxiety inducing for children, and studies have shown the obvious—that parental deportation is deeply traumatic and disruptive for children. *See id.* at 19–21. The emotional and developmental harms associated with forced family separation cannot be undone by a later favorable ruling.

Continued TPS also supports public safety and public health. Individuals with lawful immigration status are more likely to report crimes, helping to keep communities safer. *See id.* at 28. Conversely, stripping TPS holders of their lawful status may discourage them from reporting crimes or seeking medical care due to fear of detention or deportation. *See id.* at 27–29.

The Government asserts that termination serves the public interest by advancing national security. § 705 Opp’n at 46. But they offer no evidence that Haitian TPS holders pose any threat to the United States. In fact, Haitian immigrants are overwhelmingly law-abiding, with incarceration rates lower than those of native-born Americans. *See* Rep. Amici at 24.

The Government neither rebuts Plaintiffs' evidence nor identifies any national security interest in terminating Haiti's TPS designation pending the resolution of this litigation.

The Government also invokes the public interest in enforcing immigration laws. But there is no public interest in allowing an unlawful immigration policy to take effect. To the contrary, the public interest is served when agencies comply with statutory and constitutional constraints. *Karem v. Trump*, 960 F.3d 656, 668 (D.C. Cir. 2020); *Newby*, 838 F.3d at 12. In any event, the immigration laws are being properly enforced; Haitian TPS holders are treated as they are—lawful immigrants. Turning them into unlawful immigrants overnight will make enforcing immigration laws more, not less, difficult.

The Government next contends that there is a public interest in the efficient administration of immigration laws at the border. But its analysis is misplaced. This case does not concern new arrivals of Haitians at the border. Rather, it concerns Haitians who have been granted lawful TPS and authorization to live and work in the United States. Maintaining that status pending the outcome of this litigation does nothing to undermine border administration of immigration laws.

Lastly, the balance of the equities favors a stay. Maintaining Haiti's TPS designation pending resolution of this case will prevent harm to Plaintiffs and their families, employers, and communities. By contrast, the Government identifies no harm that would result from continued TPS during the pendency of this litigation.

The balance of the equities and public interest factors together favor a stay, which maintains the status quo while this litigation proceeds.

## VII. CONCLUSION

There is an old adage among lawyers. If you have the facts on your side, pound the facts. If you have the law on your side, pound the law. If you have neither, pound the table. Secretary Noem, the record to-date shows, does not have the facts on her side—or at least has ignored them. Does not have the law on her side—or at least has ignored it. Having neither and bringing the adage into the 21st century, she pounds X (f/k/a Twitter).

Kristi Noem has a First Amendment right to call immigrants killers, leeches, entitlement junkies, and any other inapt name she wants. *Secretary* Noem, however, is constrained by both our Constitution and the APA to apply faithfully the facts to the law in implementing the TPS program. The record to-date shows she has yet to do that.

By accompanying Order, the Court GRANTS Plaintiffs' Renewed Motion for a Stay Under 5 U.S.C. § 705.

Date: February 2, 2026

/s/ Ana C. Reyes  
ANA C. REYES  
United States District Judge

**APPENDIX B**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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Case No. 25-cv-02471 (ACR)

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FRITZ EMMANUEL LESLY MIOT, *et al.*,  
*Plaintiffs*,  
v.  
DONALD J. TRUMP, *et al.*,  
*Defendants*.

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MEMORANDUM OPINION AND ORDER

The Government moves to stay, pending judicial review, the Court’s Order staying the effective date of the Termination of the Designation of Haiti for Temporary Protected Status, 90 Fed. Reg. 54733 (Nov. 28, 2025) (Termination). *See* Dkt. 123 (Order); Dkt. 126 (Mot.). The Government offers no new merits argument, however. And it now bears the burden of establishing irreparable harm, a burden it cannot meet. *See Nken v. Holder*, 556 U.S. 418, 434 (2009). The Court therefore DENIES the Government’s Motion to Stay the Court’s Order Granting Relief Under 5 U.S.C. § 705.

Taking heed (finally) that “brevity is the soul of wit,”<sup>1</sup> the Court does not regurgitate its Memorandum Opinion, Dkt. 124 (Mem. Op.). The Court does, however, address two new assertions the Government makes and its claim of irreparable harm.

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<sup>1</sup> William Shakespeare, *Hamlet* act 2, sc. 2.

*Consultation.* The Government contends that the Court “demanded that the Secretary consult some other (unnamed) ‘appropriate’ agency in addition to the State Department.” *Miot v. Trump*, No. 26-5050, at 8 (D.C. Cir. Feb. 6, 2026). Not so. To start, the Court did not demand anything, Congress did. And the Court found that the Secretary did not consult *any* agency, including that it did not consult with the Department of State. *See* Mem. Op. at 41–43. To be sure, that Congress requires the Secretary to consult “agencies”—plural—confirms its intent that the consultation be meaningful. *See id.* at 41–46.<sup>2</sup> But the Court did not reach whether consulting only one other agency would meet the requirement that the Secretary “shall” consult “appropriate agencies.” 8 U.S.C. § 1254a(b)(3)(A). It did not reach it because, again, the Secretary did not consult outside DHS at all.

*Pattern or Practice.* The Government lobs that “[t]he mere existence of multiple decisions in the same direction does not suggest dysfunction; otherwise, the fact that the Biden Administration renewed every TPS

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<sup>2</sup> On a related note, the Court in its Memorandum Opinion cited definitions of “consultation” and to “consult” from 2024 and 2015, respectively. *See* Mem. Op. at 43. It would have done better also to consult (no pun intended) dictionaries from the time Congress enacted the TPS statute, 1990. It has now done so. “Consultation” was then defined as the “[a]ct of consulting or conferring; e.g. patient with doctor; client with lawyer” and “[d]eliberation of persons on some subject.” *Consultation, Black’s Law Dictionary* (6th ed. 1990). To “consult” was then defined as “to have regard to” or “to ask the advice of opinion of (~a doctor).” *Consult, Merriam-Webster’s Collegiate Dictionary* (9th ed. 1990). These definitions mirror the later ones, *see* Mem. Op. at 43, and so do not change the Court’s analysis.

designation it reviewed,<sup>3</sup> for four years, would be equally suggestive of failure to objectively follow the legal process.” Mot. at 14. This “he started it” grievance is a non-starter. The Biden administration’s TPS decisions were not the subject of this or, to the Court’s knowledge, any other litigation. If they had been, courts may well have considered those uniform designations to be a pattern or practice subject to APA scrutiny. This Court, all else equal, assuredly would have.

*Irreparable Harm to the Government and the Public Interest / Balance of Equities.* At argument, the Government attempted to sidestep the irreparable harm analysis. It stated: “I can make this very simple. If Your Honor’s not going to rule for us on the likelihood of success on the merits, then that’s the end of the inquiry.” Feb. 12 Hr’g Tr. at 14. Fair enough, since the Government has no legitimate interest in enforcing a likely unlawful Termination. But the irreparable harm standard exists and so the Court considers it.

The Order preserves the status quo, which at least suggests that the Government will not face irreparable harm. *See Make the Rd. New York v. Noem*, No. 25-5320, 2025 WL 3563313, at \*32 (D.C. Cir. Nov. 22, 2025) (statement of Judges Millett & Childs). Haitian TPS holders will maintain their TPS status pending litigation. They will continue to work and maintain health insurance. They will continue to pay federal, state, and local taxes. They will continue to contribute to their communities. And no additional Haitians will gain TPS. Given this, the Court asked the Government to identify concrete examples of harm if the Termination remains stayed pending litigation. It could not name

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<sup>3</sup> The Court assumes, for now, that the Government’s uncited assertion is true.

one. *See* Dkt. 129 (ICE Decl.); Dkt. 132 (Feb. 12 Hr’g Tr.) at 22–23.

The Government cannot name a single concrete harm from maintaining the status quo. And so instead it argues that the Court’s decision is “an improper intrusion by a federal court into the workings of a coordinate branch of the Government” Mot. at 14 (quoting *INS v. Legalization Assistance Project*, 510 U.S. 1301, 1305–06 (1993)). The argument, taken to its logical conclusion, is that anytime a court stays government action, the Government is irreparably harmed. That is not the standard.

Consider the Supreme Court’s recent decision granting the Government’s motion for an emergency stay in *Trump v. Wilcox*, 145 S. Ct. 1415, 1415 (2025). The Supreme Court held that the Government was likely to succeed on the merits, but it did not then just call it a day. It next explored the comparative irreparable harm as between the two parties: “the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty.” *Id.*

Here, Plaintiffs and other Haitian TPS holders face a greater risk of harm from an order allowing the Government to remove them to a “perfect storm of suffering” than the Government faces from maintaining the *status quo*. *See* Mem. Op. at 72–82 (discussing further the comparative harms). The Supreme Court went on: “A stay is appropriate to avoid the disruptive effect of the repeated removal and reinstatement of officers during the pendency of this litigation.” *Wilcox*, 145 S. Ct. at 1415. Here, granting a stay would cause disruption. Indeed, with almost

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353,000 TPS holders having, then losing overnight, and then potentially regaining legal immigration status, it would cause chaos.

\* \* \*

For the reasons stated in its Memorandum Opinion of February 2, 2026, and the reasons above, the Court DENIES the Government's Motion to Stay the Court's Order Granting Relief Under 5 U.S.C. § 705, Dkt. 126.

SO ORDERED.

Date: February 23, 2026

/s/ Ana C. Reyes  
ANA C. REYES  
United States District Judge

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**APPENDIX C**

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Filed On: March 6, 2026]

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No. 26-5050

1:25-cv-02471-ACR

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FRITZ EMMANUEL LESLY MIOT, *et al.*,

*Appellees*

v.

DONALD J. TRUMP, PRESIDENT OF THE  
UNITED STATES OF AMERICA, *et al.*,

*Appellants*

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September Term, 2025

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BEFORE: Walker\*, Pan, and Garcia, Circuit Judges

**ORDER**

Upon consideration of the emergency motion for a stay pending appeal, the opposition thereto, the reply, the amicus briefs, and the Rule 28(j) letters, it is

ORDERED that the motion for a stay be denied.

Plaintiffs-appellees are Haitian nationals who hold Temporary Protected Status (TPS) under 8 U.S.C. § 1254a. TPS is a form of humanitarian immigration

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\* Judge Walker would grant the motion for a stay pending appeal for the reasons stated in the attached dissenting statement.

protection that shields eligible nationals of designated countries from removal and authorizes them to work in the United States. *See id.* § 1254a(a)(1). The Secretary of Homeland Security may “designate” a country for TPS if she finds that “extraordinary and temporary conditions” in that country “prevent” its nationals from returning “in safety,” unless she determines that allowing them to remain temporarily in the United States is “contrary to the national interest.” *Id.* § 1254a(b)(1); *see* 6 U.S.C. § 557.

Haiti has been designated for TPS since 2010. *See Miot v. Trump*, 2026 WL 266413, at \*3–6 (D.D.C. Feb. 2, 2026). The Department of Homeland Security recently estimated that there are “approximately 352,959” Haitian TPS holders in the United States. 90 Fed. Reg. 54733, 54738 (Nov. 28, 2025). On November 28, 2025, the Department published a notice in the Federal Register announcing that then-Secretary Noem was “terminating the Temporary Protected Status designation of Haiti.” *Id.* at 54733. The plaintiffs sued and the district court postponed the termination under 5 U.S.C. § 705, finding it to be arbitrary and capricious, contrary to the TPS statute, and in violation of the Fifth Amendment’s equal protection guarantee.

The government now seeks the “extraordinary” relief of a stay pending appeal. *Citizens for Resp. & Ethics in Washington v. FEC*, 904 F.3d 1014, 1017 (D.C. Cir. 2018) (per curiam). To secure such relief, the government must (1) make a “strong showing that [it] is likely to succeed on the merits”; (2) demonstrate that it will be “irreparably injured” if the district court’s order remains in effect during the appeal; (3) show that issuing a stay will not “substantially injure the other parties interested in the proceeding”; and (4) establish that “the public interest” favors a stay. *Nken*

*v. Holder*, 556 U.S. 418, 434 (2009). We focus on irreparable harm and the weighing of the equities because it is most clear that the government has not satisfied its burden on either score. *See KalshiEX LLC v. Commodity Futures Trading Comm’n*, 119 F.4th 58, 64 (D.C. Cir. 2024) (noting that “a showing of irreparable harm is a necessary prerequisite for a stay”).

In its stay motion, the government takes a minimalist approach to addressing the injuries it faces, arguing only that the district court’s order imposes irreparable harm because it is “an improper intrusion into the workings” of the executive. *See Mot. 27* (quoting *INS v. Legalization Assistance Project*, 510 U.S. 1301, 1305–06 (1993) (O’Connor, J., in chambers)). The sole elaboration it offers is that the district court’s postponement of the termination of Haiti’s TPS designation “overrides the Secretary’s considered judgment on a matter of foreign affairs,” which inflicts “harm [that] is particularly pronounced” in light of the Secretary’s finding “that maintaining Haiti’s TPS designation is contrary to the national interest.” *Id.* at 28; *see* 90 Fed. Reg. at 54735–38.

These “generalized assertions of injury” are insufficient to support a stay pending appeal. *Fed. Educ. Ass’n v. Trump*, 2025 WL 2738626, at \*3 (D.C. Cir. Sept. 25, 2025) (per curiam). The government must demonstrate an injury that is “both certain and great,” and “of such *imminence* that there is a clear and present need for equitable relief to prevent irreparable harm.” *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006) (cleaned up). Of course, courts must be sensitive to intrusions on executive branch prerogatives. But when faced with requests for emergency stays of considered lower-court orders, we have been appropriately skeptical of the idea that the

government is irreparably injured “any time” it is enjoined by a court, particularly when the order at issue “maintains the status quo.” *Make the Rd. N.Y. v. Noem*, 2025 WL 3563313, at \*31–32 (D.C. Cir. Nov. 22, 2025) (cleaned up). As the district court observed in declining to stay its order, the government has failed to “name a single concrete harm from maintaining the status quo” in this case. *Miot v. Trump*, 2026 WL 544434, at \*2 (D.D.C. Feb. 23, 2026).

The government instead relies on the Supreme Court’s two stay orders in another TPS-related case, *National TPS Alliance v. Noem*. There, the Northern District of California postponed the Secretary’s decisions to vacate a prior extension of Venezuela’s TPS designation and then to terminate that designation entirely. *See Nat’l TPS All. v. Noem*, 773 F. Supp. 3d 807 (N.D. Cal. 2025), *aff’d*, 150 F.4th 1000 (9th Cir. 2025). The Supreme Court stayed that postponement order without explanation. *See Noem v. Nat’l TPS All.*, 145 S. Ct. 2728 (2025) (*NTPSA I*). The Northern District of California subsequently entered final judgment against the government, setting aside the Secretary’s vacatur and termination decisions as to Venezuela’s TPS designation, and the Secretary’s vacatur of a prior extension of Haiti’s TPS designation. *See Nat’l TPS All. v. Noem*, 798 F. Supp. 3d 1108 (N.D. Cal. 2025), *aff’d*, 166 F.4th 739 (9th Cir. 2026). The government applied for a stay of that decision, but only with respect to “the portions of the District Court’s judgment pertaining to Venezuela.” *Noem v. Nat’l TPS All.*, 146 S. Ct. 23, 24 (2025) (*NTPSA II*). The Supreme Court granted the government’s request; that second stay order, like the first, contained no substantive reasoning. *See id.*

In the government’s view, the *NTPSA* stay orders “necessarily” support its stay motion here because they involved “the same harms.” Reply 11; *see* Mot. 27. That assertion merits careful consideration. The *NTPSA* orders “inform” how we should approach “like cases,” *Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025), and the Supreme Court must have found some irreparable harm to the government when issuing them. But given the lack of express guidance from the Court, we must assess whether there are any material “differences between the cases.” Reply 12.

A closer examination shows that *NTPSA* is meaningfully distinct from this case. First, the government asserted a concrete and imminent harm there that is absent here. In that litigation, the government explained that halting the termination of Venezuela’s TPS designation would “undermine the United States’ foreign policy just as the government is engaged in complex and ongoing negotiations with Venezuela.” *See* Stay Application 37, *NTPSA I*; *see also* Stay Application 24, *NTPSA II* (similar). It is not only plausible but likely that disruption to those specific ongoing negotiations was a factor motivating the stays. *See Adams v. Vance*, 570 F.2d 950, 954 (D.C. Cir. 1978) (per curiam) (“Courts must beware ignoring the delicacies of diplomatic negotiation . . . .” (internal quotation marks omitted)). By contrast, the stay motion here references no such diplomatic concerns. To the contrary, the government has underscored that “Haiti lacks a central authority” with which it can engage. 90 Fed. Reg. at 54736.

Second, as noted above, in the *NTPSA* litigation the district court set aside the Secretary’s vacatur of an extension of Haiti’s TPS designation. In practical terms, that decision prevented the government from

ending Haiti’s TPS designation in August 2025 and instead kept the designation in place until February 2026. *Nat’l TPS All. v. Noem*, 798 F. Supp. 3d at 1128. On September 19, 2025, the government sought a stay of other parts of the district court’s order, but it specifically declined to seek relief as to the portion of the decision concerning Haiti’s TPS designation. *See* 146 S. Ct. at 24. The government explained that it had no urgent need for a stay because Haiti’s TPS designation would expire “in the next few months”—that is, four and a half months later in February 2026. Stay Application 7–8 n.6, *NTPSA II*. But here too, it should be no more than a “few months” before this court can adjudicate the government’s appeal on the merits. Yet the government does not explain what has changed to make the continued presence of Haitian TPS holders during that interim period a matter of “imminen[t]” irreparable harm. *See Chaplaincy of Full Gospel Churches*, 454 F.3d at 297.

The government’s failure to meet its burden of demonstrating irreparable harm alone justifies denying emergency relief that would upend the status quo and increase uncertainty while this appeal proceeds. *See KalshiEX LLC*, 119 F.4th at 63 (noting that failure to demonstrate irreparable harm is “fatal” to an applicant’s stay request). But even assuming the government faces some irreparable harm, we must also “balance the equities and weigh the relative harms to the” parties. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010). The two distinctive factors discussed—the lack of any imminent negotiations with the Haitian government or other concrete injury, and the government’s failure to treat an earlier order prolonging Haiti’s TPS designation as an emergency—at least lessen the degree of harm to the government. The equities in

favor of the government are thus not as weighty here as they were in *NTPSA*.

On the other side of the ledger, the plaintiffs face substantial and well-documented harms. As the district court detailed at length, the termination of TPS would have “devastating” consequences for the plaintiffs, including risk of detention and deportation, separation from family members, and loss of work authorization. *Miot*, 2026 WL 266413, at \*34–36. Moreover, plaintiffs removed to Haiti would be vulnerable to violence amid a “collapsing rule of law” and lack access to life-sustaining medical care. *Id.* To be sure, the Supreme Court has explained that “the burden of removal alone cannot constitute the requisite irreparable injury” to a noncitizen. *Nken*, 556 U.S. at 435. But it did so on direct review of a removal order, observing that “those who prevail” in that context “can be afforded effective relief by facilitation of their return.” *Id.*; see Brief for Respondent at 44, *Nken*, 556 U.S. 418 (No. 08-681), 2009 WL 45980 (discussing the government’s “policy and practice” of “facilitating” the return of “aliens who were removed pending judicial review but then prevailed before the courts”). Here, by contrast, the government has declined to represent that it would provide similar relief if the plaintiffs ultimately prevail in this litigation. See Tr. of Hr’g 16–20 (Feb. 17, 2026). On this record, the balance of equities tilts decisively toward the plaintiffs, providing a second reason that a stay pending appeal is not justified.

We respectfully disagree with our dissenting colleague’s contrary conclusion. Two points merit emphasis. First, Judge Walker’s view on each of the stay factors is colored largely by his view of the merits. But the government bears the burden of separately demon-

strating each of *Nken*'s requirements. And though we do not find it necessary to resolve the government's likelihood of success on the merits given our conclusions above, the dissent oversimplifies matters by asserting that the TPS statute's plain text deprives the district court of jurisdiction over plaintiffs' suit. True, the statute provides that "[t]here is no judicial review of any determination of the [Secretary]" regarding a "termination or extension of a designation." 8 U.S.C. § 1254a(b)(5)(A). But the vast majority of courts to address the question have concluded—drawing in part on *McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479 (1991), and the "presumption favoring judicial review of administrative action," *Kucana v. Holder*, 558 U.S. 233, 251 (2010)—that the statute does *not* bar challenges, like plaintiffs', to the process by which a TPS determination is reached as opposed to challenges to the determination itself.\*

Second, as to irreparable harm, the dissent defends the government's choice not to seek relief in the *NTPSA II* litigation but to do so here on the ground that the government has always been consistent that Haiti's TPS designation needed to end in February 2026. Dissent 6 n.21. That view ignores that the government had attempted to end Haiti's TPS designation by August 2025. So the problem remains:

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\* See, e.g., *Doe v. Noem*, 2026 WL 544631, at \*1 (2d Cir. Feb. 17, 2026); *Nat'l TPS All. v. Noem*, 166 F.4th 739, 757 (9th Cir. 2026); *Miot*, 2026 WL 266413, at \*10–13; *Afr. Communities Together v. Noem*, 2026 WL 395732, at \*7 (D. Mass. Feb. 12, 2026); *Doe v. Noem*, 2026 WL 184544, at \*8 (N.D. Ill. Jan. 23, 2026); *Haitian Evangelical Clergy Ass'n v. Trump*, 789 F. Supp. 3d 255, 269 (E.D.N.Y. 2025); *Centro Presente v. U.S. Dep't of Homeland Sec.*, 332 F. Supp. 3d 393, 406–09 (D. Mass. 2018); *Saget v. Trump*, 375 F. Supp. 3d 280, 330–33 (E.D.N.Y. 2019); *CASA de Maryland, Inc. v. Trump*, 355 F. Supp. 3d 307, 320–22 (D. Md. 2018).

The government has not explained why its inability to terminate Haiti's TPS at its preferred date was for many months tolerable but now constitutes a "certain," "great," and "imminen[t]" harm. *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297.

The dissent's approach reduces to the proposition, sourced to *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), that any and every injunction entered against the government categorically imposes irreparable harm—even when the government previously treated that same harm as bearable. That position "overstates the holding" of *CASA. Castañon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1063 (7th Cir. 2025). *CASA* was tethered to the distinct context of a "universal injunction against the government." 606 U.S. at 859. Absent clearer guidance from the Court, we decline to read it as having endorsed such a broad and seemingly novel proposition.

Per Curiam

FOR THE COURT:  
Clifton B. Cislak, Clerk

BY: /s/  
Daniel J. Reidy  
Deputy Clerk

WALKER, *Circuit Judge*, dissenting:

In 2010, the Secretary of Homeland Security designated Haiti for Temporary Protected Status.<sup>1</sup> That allowed Haitians in the United States to stay here and work here.<sup>2</sup> Now, sixteen years later, the Secretary has decided to terminate Haiti's temporary designation.<sup>3</sup>

The Plaintiffs sued. The district court stayed the termination. The Government moved in this court for a stay of the district court's stay while the Government appeals.

As the Supreme Court and the Ninth Circuit have done in extraordinarily similar cases, I would grant the Government's request for emergency relief.<sup>4</sup> The Government is likely to prevail on the merits, it is

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<sup>1</sup> Designation of Haiti for Temporary Protected Status, 75 Fed. Reg. 3476 (January 21, 2010). The designation has been extended numerous times, most recently on July 1, 2024. Extension of Redesignation of Haiti for Temporary Protected Status, 89 Fed. Reg. 54484.

<sup>2</sup> Designation of Haiti for Temporary Protected Status, 75 Fed. Reg. 3476 (January 21, 2010).

<sup>3</sup> Termination of the Designation of Haiti for Temporary Protected Status, 90 Fed. Reg. 54733 (November 28, 2025).

<sup>4</sup> *Noem v. NTPSA*, 145 S. Ct. 2728 (2025) (*NTPSA I*) (Venezuela); *Noem v. NTPSA*, 146 S. Ct. 23 (2025) (*NTPSA II*) (Venezuela); *NTPSA v. Noem*, No. 26-199 (9th Cir. February 9, 2026) (Nepal, Honduras, Nicaragua); *see also id.* slip op. at 6 (Hawkins, J., concurring) (“I concur in the result and specifically in Section 3 of the Order, heeding guidance from the Supreme Court's stay orders in the Venezuela TPS status case in this circuit.”).

irreparably harmed, and the equities favor the Government.<sup>5</sup>

The Government is irreparably harmed by “an improper intrusion by a federal court into the workings of a coordinate branch of the Government.”<sup>6</sup> To the

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<sup>5</sup> See *Nken v. Holder*, 556 U.S. 418, 434 (2009).

<sup>6</sup> *INS v. Legalization Assistance Project*, 510 U.S. 1301, 1305-06 (1993) (O’Connor, J., in chambers); see also *Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2562 (2025) (“the Government is likely to suffer irreparable harm from the District Courts’ entry of injunctions that likely exceed the authority conferred by the Judiciary Act”); *Trump v. Wilcox*, 145 S. Ct. 1415, 1416-17 (2025) (“the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty”); *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (“Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” (cleaned up)); *American Foreign Service Association v. Trump*, No. 25-5184, 2025 WL 1742853, at \*3 (D.C. Cir. June 20, 2025) (“The district court’s preliminary injunction inflicts irreparable harm on the President by interfering with the national-security determinations entrusted to him by Congress.”); *Media Matters for America v. FTC*, No. 25-5302, 2025 WL 2988966, at \*19 (D.C. Cir. October 23, 2025) (Walker, J., dissenting) (“The FTC has an interest in lawfully enforcing consumer protection laws, and it was irreparably harmed when the district court enjoined its lawful activity.” (cleaned up)); William Baude et al., *Hart & Wechsler’s The Federal Courts and the Federal System* 388 (8th ed. 2025) (“The rule in *Maryland v. King* — that the government as applicant for emergency relief suffers irreparable injury whenever its statutes (or regulations) are enjoined — appears now to be followed by most of the Justices. The satisfaction of the irreparable harm prong in any case where the government seeks emergency relief from an injunction of one of its programs is an important reason why, in such instances, the Court’s analysis of the merits predominates.”) (citing *Abbott v. Perez*, 585 U.S. 579, 602 n.17 (2018); *Republican Party of Pennsylvania v. Degraffenreid*, 141 S.

extent our court has occasionally required more than that by echoing the dissenters in *Trump v. CASA*, those requirements conflict with *CASA*'s holding.<sup>7</sup>

The Government's harm would be lightened, perhaps significantly, if the Government were unlikely to prevail on the merits.<sup>8</sup> But for Temporary Protected Status, "[t]here is no judicial review of any determination of the [Secretary] with respect to the designation, or termination or extension of a designation, of a foreign

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Ct. 732, 733 (2021) (Thomas, J., dissenting from denial of certiorari); *Little v. Reclaim Idaho*, 140 S. Ct. 2616, 2617 (2020) (Roberts, C.J., joined by Alito, Gorsuch, and Kavanaugh, JJ., concurring in grant of stay)).

<sup>7</sup> *Cf. CASA*, 145 S. Ct. at 2581 (Sotomayor, J., dissenting) ("[The majority] turns one of the most critical factors we must consider in deciding whether to grant a stay" — the irreparable-harm factor — "into a box-checking exercise whenever the relevant enjoined action is an executive one." (cleaned up)); *id.* at 2580 ("What grave harm does the Executive face that prompts a majority of this Court to grant it relief? The answer, the Government says, is the inability to enforce the Citizenship Order against nonparties. For the majority, that answer suffices."); *Make the Road New York v. Noem*, 2025 WL 3563313, at \*31 (D.C. Cir. Nov. 22, 2025); *Federal Education Association v. Trump*, 2025 WL 2738626, at \*3 (D.C. Cir. Sept. 25, 2025).

<sup>8</sup> *See Labrador v. Poe*, 144 S. Ct. 921, 929 (2024) (Kavanaugh, J., concurring) ("Courts historically have relied on likelihood of success as a factor because, if the harms and equities are sufficiently weighty on both sides, the best and fairest way to decide whether to temporarily enjoin a law pending the final decision is to evaluate which party is most likely to prevail in the end."); *Huisha-Huisha v. Mayorcas*, 27 F.4th 718, 734 (D.C. Cir. 2022) ("the Plaintiffs' likelihood of success on the merits lightens the Executive's stated interests").

state.”<sup>9</sup> So at this preliminary stage, the Government appears likely to prevail.<sup>10</sup>

That leaves the other equities — injury to the Plaintiffs, and the public interest.<sup>11</sup> And here the Plaintiffs have a point.<sup>12</sup> If termination means the unlawful removal to Haiti of Plaintiffs who would prefer to stay in America, the Plaintiffs are injured: America is a safe and developed nation with individual liberties and economic opportunity — Haiti is not.<sup>13</sup> And the public has an interest in “preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm.”<sup>14</sup>

But whether the Plaintiffs might one day be “*wrongfully* removed” just leads us back to the merits, including the “temporary” nature of Temporary Protected Status. Most temporary things last, at most, days, weeks, or maybe months — not sixteen years. And because “removal alone cannot constitute the requisite irreparable injury” (even for someone seeking *permanent* withholding of removal), neither does the

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<sup>9</sup> 8 U.S.C. § 1254a(b)(5)(A).

<sup>10</sup> See *CASA*, 145 S. Ct. at 2571 (Kavanaugh, J., concurring) (“[D]istrict courts and courts of appeals are . . . not perfectly equipped to make expedited preliminary judgments on important matters of this kind. Yet they have to do so, and so do we. By law, federal courts are open and can receive and review applications for relief 24/7/365.”) (citing 28 U.S.C. § 452).

<sup>11</sup> See *Nken*, 556 U.S. at 434.

<sup>12</sup> Cf. *Labrador*, 144 S. Ct. at 929 (Kavanaugh, J., concurring) (“not infrequently — especially with important new laws — the harms and equities are very weighty on both sides”).

<sup>13</sup> See *Miot v. Trump*, \_\_ F. Supp. 3d \_\_, 2026 WL 266413, at \*4-6 (D.D.C. February 2, 2026) (describing Haiti); cf. *Byrne v. Boadle*, 159 Eng. Rep. 200 (Exch. 1863).

<sup>14</sup> *Nken*, 556 U.S. at 436.

lawful termination of *Temporary Protected Status*.<sup>15</sup> Likewise, because “[t]here is always a public interest in prompt execution of removal orders” (even for orders that *can* be reviewed in court), there is an equal or greater public interest in the prompt execution of the Secretary’s *unreviewable* termination order.<sup>16</sup>

Perhaps that is why the Supreme Court twice stayed lower court decisions preventing TPS terminations.<sup>17</sup> Or perhaps not — the Supreme Court’s emergency orders did not explain its conclusion that the equities favored the Government. So the Plaintiffs are correct that we cannot know with certainty every reason why the Supreme Court reached that conclusion.

But we *can* know that it *did* reach that conclusion. Otherwise, it could not have issued the stays. And we forget our place in the judicial hierarchy when the Supreme Court’s stays do not inform “how [we] should exercise [our] equitable discretion in like cases.”<sup>18</sup>

The majority distinguishes today’s case from *NTPSA I* and *NTPSA II* because the Government’s injury was arguably greater there than here. But here again, the merits affect the equities. In *NTPSA I*, in *NTPSA II*, and in this case, it is undoubtedly in the interests of the Plaintiffs to stay in the United States, and in those cases and this one, the Secretary has made a formal determination in the exercise of unreviewable discretion that it is in the “national

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<sup>15</sup> *Id.* at 435.

<sup>16</sup> *Id.*

<sup>17</sup> *See NTPSA II*, 146 S. Ct. 23; *NTPSA I*, 145 S. Ct. 2728.

<sup>18</sup> *Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025).

interest” for the Plaintiffs to leave.<sup>19</sup> The weight of those equities does not materially change just because a court thinks the Secretary’s reasons for the national-interest decision were stronger there than here — after all, Congress has told us *not* to review the Secretary’s decision.<sup>20</sup> That makes those cases and today’s case too similar to distinguish — the legal equivalent of fraternal, if not identical, twins.<sup>21</sup>

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<sup>19</sup> Compare Termination of the October 3, 2023 Designation of Venezuela for Temporary Protected Status, 90 Fed. Reg. 9040 (February 5, 2025), with Termination of the Designation of Haiti for Temporary Protected Status, 90 Fed. Reg. 54733 (November 28, 2025).

<sup>20</sup> See 8 U.S.C. § 1254a(b)(5)(A) (“There is no judicial review of any determination of the [Secretary] with respect to the designation, or termination or extension of a designation, of a foreign state.”).

<sup>21</sup> The majority also notes that in the *NTPSA* litigation, the Government did not seek a stay in September 2025 after a district court set aside the Secretary’s vacatur of an extension of Haiti’s designation for Temporary Protected Status. But that’s because the Government said it could wait until Haiti’s designation expired in February 2026. But we are, of course, now *past* February 2026. And the Government said then, and says now, that the nation needs the designation’s termination to go into effect no later than February 2026. In other words, the Government’s position didn’t change. The only thing that changed is the calendar — and with it, the need for a stay.

With respect, I dissent.<sup>22</sup>

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<sup>22</sup> In the past year, plaintiffs challenging federal policies have often (but not always) prevailed on motions for emergency relief in the lower courts. Meanwhile, the Government has often (but not always) prevailed on the Supreme Court's emergency docket. It has already happened with other cases about Temporary Protected Status. And it might happen again here.

That *Groundhog Day* dynamic is not unprecedented, *cf.* William Baude, *Foreword: The Supreme Court's Shadow Docket*, 9 N.Y.U. J.L. & Liberty 1, 44 (2015) (from roughly 2005 to 2015, on the non-emergency orders docket, "there were sixteen state-on-top summary reversals in AEDPA cases"), even if "the volume of cases challenging new laws and coming to [the Supreme] Court on the emergency docket is a relatively recent development." *Labrador*, 144 S. Ct. at 934 (Kavanaugh, J., concurring); *see also id.* ("The emergency docket has always existed, and both the Court and even individual Justices acting in chambers have made a plethora of important decisions for the Nation in an emergency posture.") (citing examples that include *West Virginia v. EPA*, 577 U.S. 1126 (2016); *Purcell v. Gonzalez*, 549 U.S. 1 (2006); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952)). It is the product of, among other things, a judicial hierarchy with one Supreme Court atop nearly 1,500 federal judges. When judges and justices disagree, it does not mean they are harboring nefarious motives, making outcome-based decisions, or intentionally twisting the non-partisan, neutral legal principles that divide formalists and functionalists, minimalists and maximalists, hawks and doves on standing, stare decisis traditionalists and skeptics, unitary executive theorists and doubters, and on and on and on. And even when some of our nation's almost 1,500 federal judges issue decisions that could be uncharitably explained, *cf.* *DHS v. DVD*, 145 S. Ct. 2627, 2630 (2025) ("a claim that a lower court has failed to give effect to an order of this Court is properly addressed here"); *id.* at 2630 (Kagan, J., concurring) ("... I do not see how a district court can compel compliance with an order that this Court has stayed."), I try to give their motives the benefit of the doubt that I aspire to earn from them.

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**APPENDIX D**

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2843–26;

DHS Docket No. USCIS– 2014–0001]

RIN 1615–ZB70

Termination of the Designation of Haiti for  
Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services  
(USCIS), Department of Homeland Security (DHS).

ACTION: Notice.

SUMMARY: Through this notice, the Department of Homeland Security (DHS) newly announces that the Secretary of Homeland Security (Secretary) is terminating the designation of Haiti for Temporary Protected Status. Because of interference by a federal district court judge, the designation of Haiti is set to expire on February 3, 2026. After reviewing country conditions and consulting with appropriate U.S. Government agencies, the Secretary determined that Haiti no longer meets the conditions for the designation for Temporary Protected Status. The Secretary, therefore, is newly terminating the Temporary Protected Status designation of Haiti as required by statute. This termination is effective February 3, 2026. After February 3, 2026, nationals of Haiti (and aliens having no nationality who last habitually resided in Haiti) who have been granted Temporary Protected Status under Haiti’s designation will no longer have Temporary Protected Status. This determination to terminate the TPS designation for Haiti supersedes the determination announced in the July 1, 2025 notice, “Termination

of the Designation of Haiti for Temporary Protected Status.”

**DATES:** The designation of Haiti for Temporary Protected Status is terminated, effective at 11:59 p.m., local time, on February 3, 2026.

**FOR FURTHER INFORMATION CONTACT:**

Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, (240) 721–3000.

**SUPPLEMENTARY INFORMATION:**

List of Abbreviations

CFR—Code of Federal Regulations  
DHS—U.S. Department of Homeland Security  
EAD—Employment Authorization Document  
FR—Federal Register  
FRN—Federal Register Notice  
Government—U.S. Government  
INA—Immigration and Nationality Act  
Secretary—Secretary of Homeland Security  
TPS—Temporary Protected Status  
UN—United Nations  
USCIS—U.S. Citizenship and Immigration Services  
U.S.C.—United States Code

**What is Temporary Protected Status?**

The Immigration and Nationality Act (INA) authorizes the Secretary of Homeland Security, after consultation with appropriate agencies of the U.S. Government, to designate a foreign state (or part thereof) for Temporary Protected Status (TPS) if the Secretary determines that certain country conditions exist. *See* INA sec. 244(b)(1), 8 U.S.C. 1254a(b)(1). The Secretary, in her discretion, may grant Temporary Protected Status to eligible nationals of that foreign state (or aliens having

no nationality who last habitually resided in the designated foreign state). *See* INA sec. 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a foreign state's Temporary Protected Status designation or extension, the Secretary—after consultation with appropriate U.S. Government agencies—must review the conditions in the foreign state designated for Temporary Protected Status to determine whether the conditions for the Temporary Protected Status designation continue to be met. *See* INA sec. 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that the conditions in the foreign state continue to meet the specific statutory criteria for the designation, Temporary Protected Status will be extended for an additional period of 6 months or, in the Secretary's discretion, 12 or 18 months. *See* INA sec. 244(b)(3)(A), (C), 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for Temporary Protected Status designation, the Secretary must terminate the designation. *See* INA sec. 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B). There is no judicial review of “any determination of the [Secretary] with respect to the designation, or termination or extension of a designation of a foreign state” for Temporary Protected Status. *See* INA sec. 244(b)(5)(A), 8 U.S.C. 1254a(b)(5)(A).

Temporary Protected Status is a temporary immigration benefit granted to eligible nationals of a country designated by the Secretary for Temporary Protected Status under the INA, or to eligible aliens without nationality who last habitually resided in the designated country. During the designation period, Temporary Protected Status beneficiaries are eligible to remain in the United States and may not be

removed, so long as they continue to meet the requirements of Temporary Protected Status. In addition, Temporary Protected Status beneficiaries are authorized to work and obtain an Employment Authorization Document (EAD), if requested. Temporary Protected Status beneficiaries may also apply for and be granted travel authorization as a matter of discretion. The granting of Temporary Protected Status does not result in or lead to lawful permanent resident status or any other immigration status.

To qualify for Temporary Protected Status, beneficiaries must meet the eligibility standards at INA section 244(c)(2), 8 U.S.C. 1254a(c)(2) in accordance with the implementing regulations at 8 CFR parts 244 and 1244. When the Secretary terminates a country's designation, beneficiaries return to the same immigration status or category that they maintained before Temporary Protected Status, if any (unless that status or category has since expired or been terminated), or any other lawfully obtained immigration status or category they received while registered for Temporary Protected Status, as long as it is still valid on the date Temporary Protected Status terminates.

#### Designation of Haiti for Temporary Protected Status

Haiti was initially designated for Temporary Protected Status on January 21, 2010, based on a determination that there were extraordinary and temporary conditions in Haiti that prevented nationals of Haiti from returning in safety and that permitting such aliens to remain temporarily in the United States would not be contrary to the national interest of the United States.<sup>1</sup> Following the initial designation,

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<sup>1</sup> Designation of Haiti for Temporary Protected Status, 75 FR 3476 (Jan. 21, 2010).

former Secretary Napolitano extended and newly designated Haiti for Temporary Protected Status once, from July 23, 2011 through January 22, 2013, based on extraordinary and temporary conditions.<sup>2</sup> Thereafter, Temporary Protected Status was extended three more times based on extraordinary and temporary conditions: (1) from January 23, 2013 through July 22, 2014;<sup>3</sup> (2) from July 23, 2014 through January 22, 2016;<sup>4</sup> and (3) from January 23, 2016 through July 22, 2017.<sup>5</sup> Former Secretary Kelly then granted a six-month extension of Temporary Protected Status from July 23, 2017 through January 22, 2018, but made clear that a further extension appeared unwarranted based on then-current country conditions.<sup>6</sup> Subsequently, then-Acting Secretary Duke announced the termination of the Temporary Protected Status designation of Haiti effective July 22, 2019.<sup>7</sup>

Despite the law barring judicial review, the termination of Haiti's 2011 Temporary Protected Status designation was challenged in several lawsuits, and court injunctions required DHS to temporarily continue Temporary Protected Status for Haiti pending a final

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<sup>2</sup> Extension and Redesignation of Haiti for Temporary Protected Status, 76 FR 29000 (May 19, 2011).

<sup>3</sup> Extension of the Designation of Haiti for Temporary Protected Status, 77 FR 59943 (Oct. 1, 2012).

<sup>4</sup> Extension of the Designation of Haiti for Temporary Protected Status, 79 FR 11808 (Mar. 3, 2014).

<sup>5</sup> Extension of the Designation of Haiti for Temporary Protected Status, 80 FR 51582 (Aug. 25, 2015).

<sup>6</sup> Extension of the Designation of Haiti for Temporary Protected Status, 82 FR 23830 (May 24, 2017).

<sup>7</sup> Termination of the Designation of Haiti for Temporary Protected Status, 83 FR 2648 (Jan. 18, 2018).

court order.<sup>8</sup> Former Secretary Mayorkas then newly designated Haiti on the basis of extraordinary and temporary conditions effective August 3, 2021 through February 3, 2023.<sup>9</sup> Thereafter, Temporary Protected Status for Haiti was extended and newly designated from February 4, 2023 through August 3, 2024.<sup>10</sup>

In July 2024, DHS issued a notice stating that Secretary Mayorkas had once again determined to extend and newly designate Haiti for Temporary Protected Status for an 18-month period, set to expire on February 3, 2026.<sup>11</sup> On February 24, 2025, DHS published a Federal Register notice announcing the Secretary's decision to partially vacate the July 1, 2024 Temporary Protected Status decision by reducing the period of extension and new designation of Temporary Protected Status for Haiti from 18 months to 12 months with an amended end date of August 3, 2025.<sup>12</sup> On July 1, 2025, DHS published a Federal Register notice announcing the Secretary's decision to termi-

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<sup>8</sup> On Dec. 28, 2023, the U.S. District Court for the Northern District of California dismissed *Ramos v. Nielsen*, No. 18-cv-01554 (N.D. Cal. Dec. 28, 2023). Related litigation in *Bhattarai v. Nielsen*, No. 19-cv-731 (N.D. Cal. Mar. 12, 2019) was consolidated with *Ramos* in August 2023. The court agreed with the government position that subsequent Temporary Protected Status designations rendered the pending litigation moot.

<sup>9</sup> Designation of Haiti for Temporary Protected Status, 86 FR 41863 (Aug. 3, 2021).

<sup>10</sup> Extension and Redesignation of Haiti for Temporary Protected Status, 88 FR 5022 (Jan. 26, 2023).

<sup>11</sup> Extension and Redesignation of Haiti for Temporary Protected Status, 89 FR 54484 (July 1, 2024).

<sup>12</sup> Partial Vacatur of 2024 Temporary Protected Status Decision for Haiti, 90 FR 10511 (Feb. 24, 2025).

nate the Temporary Protected Status designation for Haiti, effective September 2, 2025.<sup>13</sup>

Again, in spite of the statute prohibiting judicial review, on July 15, 2025, a judge in the U.S. District Court for the Eastern District of New York issued a final judgment in *Haitian Evangelical Clergy Ass'n v. Trump*, No. 25-cv-1464, that makes the effective date of any termination no earlier than February 3, 2026. In compliance with the U.S. District Court for the Eastern District of New York's final judgment, the current Temporary Protected Status designation period for Haiti ends February 3, 2026. In view of the district court's ruling with respect to the partial vacatur, the Secretary made a new, superseding determination under 8 U.S.C. 1254a(b)(3)(A), which is being announced in this notice.

#### Secretary's Authority To Terminate the Designation of Haiti for Temporary Protected Status

At least 60 days before the expiration of a foreign state's Temporary Protected Status designation or extension, the Secretary—after consultation with appropriate U.S. Government agencies—must review the conditions in the foreign state designated for Temporary Protected Status to determine whether the country continues to meet the conditions for the designation. *See* INA sec. 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that the foreign state no longer meets the conditions for the Temporary Protected Status designation, the Secretary must terminate the designation. *See* INA sec. 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B). The termination may not take effect earlier than 60 days after the date the Federal

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<sup>13</sup> Termination of the Designation of Haiti for Temporary Protected Status, 90 FR 28760 (July 1, 2025).

Register notice of termination is published, or if later, the expiration of the most recent previous extension of the country designation. *See id.* The Secretary may determine the appropriate effective date of the termination and expiration of any Temporary Protected Status-related documentation, such as EADs, issued or renewed after the effective date of termination. *See id.*; *see also* INA sec. 244(d)(3), 8 U.S.C. 1254a(d)(3) (providing the Secretary the discretionary “option” to allow for a certain “orderly transition” period if she determines it to be “appropriate”).

#### Reasons for the Secretary’s Termination of the Temporary Protected Status Designation for Haiti

Consistent with INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A), after consulting with appropriate U.S. Government agencies, the Secretary reviewed country conditions in Haiti and considered whether Haiti continues to meet the conditions for the designation under INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C). This review included examining: (a) whether extraordinary and temporary conditions in Haiti that prevent aliens who are Haitian nationals from returning to Haiti in safety continued to exist, and (b) if permitting Haitian nationals to remain temporarily in the United States was contrary to the national interest of the United States.

Based on the Department’s review, the Secretary has determined that there are no extraordinary and temporary conditions in Haiti that prevent Haitian nationals (or aliens having no nationality who last habitually resided in Haiti) from returning in safety. Moreover, even if the Department found that there existed conditions that were extraordinary and temporary that prevented Haitian nationals (or aliens having no nationality who last habitually resided in

Haiti) from returning in safety, termination of Temporary Protected Status of Haiti is still required because it is contrary to the national interest of the United States to permit Haitian nationals (or aliens having no nationality who last habitually resided in Haiti) to remain temporarily in the United States.

Certain conditions in Haiti remain concerning. As an example of the challenges still facing the country, during his August 28, 2025 address to the United Nations (UN) Security Council, the UN Secretary-General reported that 1.3 million people—approximately 12% of Haiti’s population—have been forced to flee their homes and are internally displaced due to escalating violence and gang violence that has “engulfed” Port-au-Prince “and spreads beyond.”<sup>14</sup> At the UN Security Council briefing on Haiti on August 28, 2025, the Acting U.S. Ambassador to the UN, Dorothy Shea, commented that “the United States remains concerned about escalating levels of violence in Haiti” and “the territorial expansion of the gangs threatens to undermine gains made by both the Haitian National Police and the Multinational Security Support mission.”<sup>15</sup> During the most recent UN Security Council briefing on Haiti on October 22, 2025,

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<sup>14</sup> United Nations, “Security-General’s remarks to the Security Council—on Haiti [trilingual, as delivered; scroll down for all-English and all-French],” Aug. 28, 2025, <https://www.un.org/sg/en/content/sg/statement/2025-08-28/secretary-generals-remarks-the-security-council-haiti-trilingual-delivered-scroll-down-for-all-english-and-all-french>.

<sup>15</sup> U.S. Mission to the UN, “Remarks at a UN Security Council Briefing on Haiti” (Aug. 28, 2025) (further highlighting humanitarian concerns such as displacement, recruitment of children in armed gangs, and food insecurity), <https://ht.usembassy.gov/remarks-at-a-un-security-council-briefing-on-haiti/>.

U.S. Ambassador to the UN Mike Waltz<sup>16</sup> likewise acknowledged that Haiti “has had a long and difficult history” and “truly stands at a crossroad.”<sup>17</sup> Ambassador Waltz further stated: “We have gangs that are terrorizing communities, extorting families, recruiting children to commit horrors on behalf of the gang leaders. The spillover effects of this violence threaten not only Haiti but the stability of the wider Caribbean and the Western Hemisphere.”<sup>18</sup>

The data surrounding internal relocation does indicate parts of the country are suitable to return to. There have also been some other positive developments. For example, in a recent briefing, the UN Secretary General stated that despite continuing violence in Haiti, “there are emerging signals of hope.”<sup>19</sup> On September 30, 2025, the UN Security Council approved a resolution which authorized a new multinational Gang Suppression Force to replace the Kenyan-led security support mission. Per the UN, “under an initial 12-month mandate, the GSF [Gang Suppression Force] will work in close coordination with the Haitian National Police (HNP) and the Haitian armed forces to conduct intelligence-led operations to neutrali[z]e gangs, provide security for critical infrastructure and support humanitarian access. The 5,550-strong force will also protect

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<sup>16</sup> Ambassador Waltz was officially sworn in as the U.S. Representative to the UN on September 20, 2025.

<sup>17</sup> U.S. Mission to the UN, “Remarks at a UN Security Council Briefing on Haiti” (Oct. 22, 2025), <https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-haiti-8/>.

<sup>18</sup> *Id.*

<sup>19</sup> United Nations, “‘The people of Haiti are in a perfect storm of suffering,’ warns UN chief,” Aug. 28, 2025, <https://news.un.org/en/story/2025/08/1165738>.

vulnerable groups, support reintegration of former fighters and help strengthen Haitian institutions.”<sup>20</sup> On October 1, 2025, Secretary Rubio issued a press statement stating “this force will address Haiti’s immediate security challenges and lay the groundwork for long-term stability . . . moving forward, the GSF, with support from the UNSOH [UN Support Office in Haiti], will transition to an international burden-sharing model with the sufficient resources needed to fight the gangs.”<sup>21</sup> Further, according to the World Bank, “modest GDP growth is projected by 2026 as investment increases from a low baseline, assuming improvements on the political and security fronts.”<sup>22</sup>

Based on the Department’s review, the Secretary has determined that while the current situation in Haiti is concerning, the United States must prioritize its national interests and permitting Haitian nationals to remain temporarily in the United States is contrary to the U.S. national interest.

“National interest” is an expansive standard that may encompass an array of broad considerations, including foreign policy, public safety (*e.g.*, potential

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<sup>20</sup> United Nations, “UN Security Council approves new ‘suppression force’ for Haiti amid spiraling gang violence,” Sept. 30, 2025, <https://news.un.org/en/story/2025/09/1166006>.

<sup>21</sup> U.S. Dep’t of State, “On the Next Steps to Restoring Security in Haiti,” Oct. 1, 2025, <https://www.state.gov/releases/office-of-the-spokesperson/2025/10/on-the-next-steps-to-restoring-security-in-haiti/>; *see also* U.S. Mission to the UN, “Remarks at a UN Security Council Briefing on Haiti,” (Oct. 22, 2025) (remarks of Ambassador Waltz applauding the adoption of the resolution supporting the GSF), <https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-haiti-8/>.

<sup>22</sup> World Bank, “The World Bank in Haiti” (last updated Apr. 28, 2025), <https://www.worldbank.org/en/country/haiti/overview>.

nexus to criminal gang membership), national security, migration factors (e.g., pull factors), immigration policy (e.g., enforcement prerogatives), and economic considerations (e.g., adverse effects on U.S. workers, impact on U.S. communities).<sup>23</sup> Determining whether permitting a class of aliens to remain temporarily in the United States is contrary to the U.S. national interest therefore calls upon the Secretary’s expertise and discretionary judgment.

President Trump clearly articulated policy imperatives bearing upon the national interest in his immigration and border-related executive orders and proclamations. In Proclamation 10888 “Guaranteeing the States Protection Against Invasion,” President Trump emphasized that Congress has established a complex and comprehensive framework under the INA to regulate the entry and exit of aliens and goods across U.S. borders. Under normal conditions, this framework supports national sovereignty by enabling the admission of aliens whose presence serves the national interest and excluding those who may pose

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<sup>23</sup> See, e.g., *Poursina v. USCIS*, 936 F.3d 868, 874 (9th Cir. 2019) (observing, in an analogous INA context, “that the ‘national interest’ standard invokes broader economic and national-security considerations, and such determinations are firmly committed to the discretion of the Executive Branch—not to federal courts” (citing *Trump v. Hawaii*, 585 U.S. 667, 684–86 (2018)); *Flores v. Garland*, 72 F.4th 85, 89–90 (5th Cir. 2023) (same); *Brasil v. Sec’y, Dep’t of Homeland Sec.*, 28 F.4th 1189, 1193 (11th Cir. 2022) (same); cf. *Matter of D–J–*, 23 I&N Dec. 572, 579–81 (A.G. 2003) (recognizing that taking measures to stem and eliminate possible incentives for potential large-scale migration from a given country is “sound immigration policy” and an “important national security interest”); *Matter of Dhanasar*, 26 I&N Dec. 884, 890–91 (AAO 2016) (taking into account impact on U.S. workers in “national interest” assessments).

risks to public health, safety, or national security. However, in a high-volume border environment—particularly when the system is overwhelmed—this screening process can become ineffective. Limited access to critical information and significant processing delays hinder the ability of federal officials to reliably assess the criminal histories or national security threats posed by aliens attempting to enter the U.S. illegally. As a result, public safety and national security risks are significantly heightened in such conditions.<sup>24</sup>

In Executive Order (E.O.) 14161 “Protecting the United States From Foreign Terrorists and Other National Security and Public Safety Threats,” President Trump instructed the Secretary of State, Attorney General, Secretary of Homeland Security, and Director of National Intelligence to jointly submit to the President a report that identified countries throughout the world “for which vetting and screening information is so deficient as to warrant a partial or full suspension on the admission of nationals from those countries.”<sup>25</sup> Proclamation 10949 “Restricting the Entry of Foreign Nationals to Protect the United States from Foreign Terrorists and Other National Security and Public Safety Threats” built upon the findings of that review. President Trump determined to fully restrict and limit the entry of nationals from Haiti following his review of the requested report. In support of this decision, President Trump outlined that “according to the [Fiscal Year 2023 Entry/Exit]

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<sup>24</sup> Guaranteeing the States Protection Against Invasion, 90 FR 8333 (Jan. 29, 2025).

<sup>25</sup> Protecting the United States From Foreign Terrorists and Other National Security and Public Safety Threats, 90 FR 8451 (Jan. 30, 2025).

Overstay Report [published on August 5, 2024], Haiti had a B–1/B–2 visa overstay rate of 31.38 percent and an F, M, and J visa overstay rate of 25.05 percent.”<sup>26</sup> In addition, “as is widely known, Haiti lacks a central authority with sufficient availability and dissemination of law enforcement information necessary to ensure its nationals do not undermine the national security of the United States.”<sup>27</sup>

Overstaying the terms of the nonimmigrant visa is a violation of U.S. immigration laws and presents challenges for immigration enforcement and resource allocation. Visa overstaying diverts resources from other critical enforcement priorities, such as addressing illegal border crossings. According to the Fiscal Year 2024 Department of Homeland Security Entry/Exit Overstay Report [published on July 16, 2025], Haiti had a Non-Visa Waiver Program Countries Business or Pleasure Visitors (B–1/B–2) visa overstay rate of 24.84% and a Student and Exchange Visitors (F, M, J) visa overstay rate of 22.35%.<sup>28</sup> These figures significantly exceed the global average overstay rates of 2.33% for B–1/B–2 visas and 3.23% for F, M, J visas—over ten times higher for business or pleasure visitors and six times higher for student and exchange

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<sup>26</sup> Restricting the Entry of Foreign Nationals to Protect the United States From Foreign Terrorists and Other National Security and Public Safety Threats, 90 FR 24497 (June 10, 2025).

<sup>27</sup> Restricting the Entry of Foreign Nationals to Protect the United States From Foreign Terrorists and Other National Security and Public Safety Threats, 90 FR 24497 (June 10, 2025).

<sup>28</sup> U.S. Customs and Border Protection, Entry/Exit Overstay Report, Department of Homeland Security (July 16, 2025), [https://www.dhs.gov/sites/default/files/2025-08/25\\_0826\\_cbp\\_entry-exit-overstay-report-fiscal-year-2024.pdf](https://www.dhs.gov/sites/default/files/2025-08/25_0826_cbp_entry-exit-overstay-report-fiscal-year-2024.pdf).

visitors.<sup>29</sup> Haiti’s visa overstay rates consistently remain very high compared to other nations, reflecting ongoing challenges in enforcing compliance with U.S. visa regulations. Elevated overstay rates present potential risks to U.S. national security and public safety, as aliens who overstay their visas may be harder to locate and monitor, increasing vulnerabilities within immigration enforcement systems. Moreover, aliens who overstay nonimmigrant visas can place an added strain on local communities by increasing demand for public resources, contributing to housing and healthcare pressures, and competing in an already limited job market.

In E.O. 14159 “Protecting the American People Against Invasion,” President Trump underscored that enforcing the immigration laws “is critically important to the national security and public safety of the United States.”<sup>30</sup> In furtherance of that objective, the President directed the Secretary, along with the Attorney General and Secretary of State, to promptly take all appropriate action, consistent with law, to rescind policies that led to increased or continued presence of illegal aliens in the United States.<sup>31</sup> Among the directed actions are to ensure that the Temporary Protected Status designations are consistent with the Temporary Protected Status statute and “are appropriately limited in scope and made for only so long as may be necessary to fulfill the textual requirements of that statute.”<sup>32</sup>

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<sup>29</sup> *Id.*

<sup>30</sup> Protecting the American People Against Invasion, 90 FR 8443 (Jan. 29, 2025).

<sup>31</sup> *Id.*, sec. 16, 90 FR 8446.

<sup>32</sup> *Id.*, sec. 16, 90 FR 8446.

Prior to FY2025, U.S. Border Patrol recorded a consistent year-over-year increase in encounters with Haitian nationals: 56,596 in FY2022, 163,781 in FY2023, and 220,798 in FY2024.<sup>33</sup> For several years, there has been a significant increase in the number of Haitians arriving in the United States illegally, particularly via land. According to one report, “from 2019 through 2021, Haitians were the top nationality for migrants crossing the dangerous Darien Gap between Colombia and Panama, and they have remained among the three largest groups in 2022 and 2023.”<sup>34</sup> Another report states: “the continuation of a devastating political, environmental, social, and economic situation . . . in Haiti guarantees an unbroken chain migration, particularly to the United States and Canada; and when combined with already heavy backlogs in processing resident status changes, a large and growing flow of Haitians will persist.”<sup>35</sup> This pattern of large-scale illegal immigration as a result of “pull factors” has continued for years.

The numerous new designations of Temporary Protected Status for Haiti in 2011, 2021, and 2023, opened eligibility to those who entered and continued to enter the U.S. many years after the initial 2010

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<sup>33</sup> U.S. Customs and Border Protection, “U.S. Border Patrol and Office of Field Operations Encounters by Area of Responsibility and Component” (last updated: Sept. 19, 2025), available at: <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

<sup>34</sup> Migration Policy Institute, “Haitian Immigrants in the United States” (Nov. 8, 2023), available at: <https://www.migrationpolicy.org/article/haitian-immigrants-united-states-2022>.

<sup>35</sup> IOM, “Engaging the Haitian Diaspora” (Sept 10, 2013), available at: <https://environmentalmigration.iom.int/resources/engaging-haitian-diaspora>.

designation.<sup>36</sup> As noted above, illegal immigration from Haiti into the U.S. continued to increase with extremely high numbers seen around the time of and following the latest new designations of Temporary Protected Status for Haiti by then Secretary Mayorkas.

Approximately 67,400 nationals of Haiti have entered the United States since June 3, 2024. Within this population, approximately 3,000 are nonimmigrants in valid status, approximately 1,000 are nonimmigrants out of status, approximately 63,000 were encountered at a border or port of entry and have no lawful immigration status, and it is estimated that 400 crossed the U.S. border without being apprehended.<sup>37</sup> These realities are unsustainable and inconsistent with President Trump's outlined policy priorities as well as U.S. national interests.

Beyond migration factors and immigration policy, public safety and national security are important considerations when assessing if a Temporary Protected Status designation is in line with U.S. national interests. DHS records indicate that there are Haitian

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<sup>36</sup> The intent of Temporary Protected Status was to create a temporary safe haven for aliens who are already in the United States. *See* INA sec. 244(c)(1)(A)(i) (limiting Temporary Protected Status eligibility to aliens continuously physically present in the United States since the country's designation), (c)(5) (clarifying that a Temporary Protected Status designation does not authorize aliens to come to the United States to apply for such status). Using TPS to grant temporary status to successive waves of new arrivals from a designated country may generate a significant pull factor for illegal immigration and act in tension with the congressional design.

<sup>37</sup> Office of Homeland Security Statistics, estimate as of September 30, 2025.

nationals who are Temporary Protected Status recipients who have been the subject of administrative investigations for fraud, public safety, and national security. These issues underscore a conflict with the national interest of the United States.

As acknowledged previously in this notice, gang violence in Haiti persists as armed groups operate with impunity, enabled by a weak or effectively absent central government. The Congressional Research Service described the situation in Haiti in a recent report: “The gangs—some of which are aligned with political elites—amassed control over territory and illicit markets amid political instability following the 2021 assassination of then-President Jovenel Moïse. Since April 2024, Haiti has been governed by a Transitional Presidential Council (TPC). The TPC, tasked with governing until elections can be convened, has been plagued by allegations of corruption and infighting.”<sup>38</sup> As such, it has not been able to effectively crack down on gang violence. However, the revamped international efforts and multinational Gang Suppression Force aim to combat gang violence to improve conditions in Haiti. On May 2, 2025, the Secretary of State announced the State Department’s designation of Viv Ansanm and Gran Grif as Foreign Terrorist Organizations and Specially Designated Global Terrorists. In his announcement, the Secretary noted “Haitian gangs, including the Viv Ansanm coalition and Gran Grif, are the primary source of instability

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<sup>38</sup> Library of Congress, Congressional Research Service, “Haiti in Crisis: Developments Related to the Multinational Security Support Mission” (June 3, 2025), available at: <https://www.congress.gov/crs-product/IN12331#:~:text=Between%20January%20and%20March%202025,attributed%20to%20gang%2Drelated%20violence>.

and violence in Haiti. They are a direct threat to U.S. national security interests in our region . . . their ultimate goal is creating a gang- controlled state where illicit trafficking and other criminal activities operate freely and terrorize Haitian citizens.”<sup>39</sup> In October 2025, Ambassador Waltz said in an interview “we in the UN Security Council just took action yesterday on the gangs that have taken over Haiti, right off Florida’s shores. These gangs are in coordination with all of these transnational groups. They’re shipping drugs, money, weapons. They’re destabilizing the entire region.”<sup>40</sup>

Widespread gang violence in Haiti is sustained by the country’s lack of functional government authority. This breakdown in governance directly impacts U.S. national security interests, particularly in the context of uncontrolled migration. As previously outlined, when immigration flows exceed our capacity to properly vet aliens at the border, the risks are compounded by the inability to access reliable law enforcement or security information from the alien’s country of origin. The joint assessment by the Secretary of State, Secretary of Homeland Security, and Director of National Intelligence has found that Haiti lacks a functioning central authority capable of maintaining or sharing such critical information,

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<sup>39</sup> U.S. Department of State, “Terrorist Designations of Viv Ansanm and Gran Grif” (May 2, 2025), available at: <https://www.state.gov/releases/office-of-the-spokesperson/2025/05/terrorist-designations-of-viv-ansanm-and-gran-grif/>.

<sup>40</sup> U.S. Mission to the UN, “U.S. Representative to the United Nations, Ambassador Mike Waltz’s Interview with Martha Maccallum on Fox News” (Oct. 1, 2025), <https://usun.usmission.gov/u-s-representative-to-the-united-nations-ambassador-mike-waltz-interview-with-martha-maccallum-on-fox-news/>.

severely limiting the U.S. government’s ability to screen and vet Haitians in the United States with Temporary Protected Status. And Haitian gangs—such as those designated by the State Department as Foreign Terrorist Organizations—pose a serious threat to U.S. interests. These challenges support the determination that permitting Haitian nationals to remain temporarily in the United States is contrary to the national interest.

This lack of government control has not only destabilized Haiti internally but has also had direct consequences for U.S. public safety. Haitian gang members have already been identified among those who have entered the United States and, in some cases, have been apprehended by law enforcement for committing serious and violent crimes. For example, in January 2025, U.S. Immigration and Customs Enforcement (ICE) apprehended Wisteguens Jean Quely Charles, a member of a violent Haitian street gang, who had been arrested, charged and convicted for 17 crimes between August 2022 and August 2024 including both “possession of and possession to distribute controlled substances, distribution of controlled substances, trespassing, carrying dangerous weapon to wit brass knuckles, possession of a firearm without a permit, possession of ammunition without a permit, assault and battery with a dangerous weapon, assault and battery, and resisting arrest.”<sup>41</sup> This case underscores the broader risk posed by rising Haitian migration, particularly in light of multiple large-scale

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<sup>41</sup> U.S. Immigration and Customs Enforcement, “ICE ERO Boston arrests Haitian gang member with numerous convictions” (Jan. 24, 2025), available at: <https://www.ice.gov/news/releases/ice-ero-boston-arrests-haitian-gang-member-numerous-convictions>.

prison breaks in Haiti<sup>42</sup> and the increasing numbers of encounters reported by U.S. Customs and Border Protection. The inability of the previous administration to reliably screen aliens from a country with limited law enforcement infrastructure and widespread gang activity presents a clear and growing threat to U.S. public safety.

Moreover, since the U.S. designated Viv Ansanm and Gran Grif as foreign terrorist organizations, the Department of Homeland Security, Department of Justice, and Department of State have announced arrests and indictments of aliens linked to these gangs. These actions demonstrate that these groups pose not just an overseas threat but a tangible national security and public safety risk within our

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<sup>42</sup> See The Guardian “Haiti declares state of emergency after thousands of dangerous inmates escape” (Mar. 4, 2024) (“Haiti has declared a three- day state of emergency and a night-time curfew after armed gangs stormed the country’s two biggest jails, allowing more than 3,000 dangerous criminals, including murderers and kidnappers, to escape back on to the streets of the poor and violence-racked Caribbean nation.”), available at: <https://www.theguardian.com/world/2024/mar/04/haiti-mass-jailbreak-violence-port-au-prince-gangs>; Al Jazeera, “Haiti declares curfew after 4,000 inmates escape jail amid rising violence” (Mar. 4, 2024) (“Haiti’s government has declared a state of emergency and imposed a curfew after an explosion of gang-led violence over the weekend saw thousands of prisoners escape after assaults on the country’s two biggest prisons.”), available at: <https://www.aljazeera.com/news/2024/3/4/thousands-of-inmates-escape-prison-amid-deepening-haiti-violence>; see also Reuters, “Haiti prison break leaves 12 dead as inmates go hungry” (Aug. 16, 2024) (“A prison break in the Haitian city of Saint-Marc left 12 inmates dead on Friday, Mayor Myriam Fievre said, the third such incident in Haiti in recent months amid a protracted humanitarian crisis fueled by gang violence.”), available at: <https://www.reuters.com/world/americas/haitian-inmates-escape-prison-third-recent-jailbreak-miami-herald-says-2024-08-16/>.

borders. In addition, that these aliens were able to operate inside the United States raises serious concerns about how they entered or remained in the United States, potentially due to inadequate screening at the border or a lack of actionable intelligence from Haitian authorities on known gang affiliates. In July 2025, State announced deportation actions against U.S. lawful permanent residents who were found to be affiliated with Viv Ansanm.<sup>43</sup> In September 2025, ICE announced the arrest of a Haitian alien who “engaged in a campaign of violence and gang support that contributed to Haiti’s destabilization.”<sup>44</sup>

In E.O. 14150 “America First Policy Directive to the Secretary of State,” President Trump declared “from this day forward, the foreign policy of the United States shall champion core American interests and always put America and American citizens first.” Moreover, it instructed “as soon as practicable, the Secretary of State shall issue guidance bringing the Department of State’s policies, programs, personnel, and operations in line with an America First foreign policy, which puts America and its interests first.”<sup>45</sup> As mentioned, the UN Security Council adopted a

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<sup>43</sup> U.S. Department of State, “Deportation Actions Against U.S. Legal Permanent Residents Affiliated with Haitian Foreign Terrorist Organization Viv Ansanm” (July 21, 2025), <https://www.state.gov/releases/office-of-the-spokesperson/2025/07/deportation-actions-against-u-s-legal-permanent-residents-affiliated-with-haitian-foreign-terrorist-organization-viv-ansanm/>.

<sup>44</sup> ICE, “ICE arrests illegal alien from Haiti connected to criminal terrorist organizations” (Sept. 25, 2025), <https://www.ice.gov/news/releases/ice-arrests-illegal-alien-haiti-connected-criminal-terrorist-organizations>.

<sup>45</sup> America First Policy Directive to the Secretary of State, 90 FR 8337 (Jan. 29, 2025).

resolution to transition the Multinational Security Support mission to a Gang Suppression Force and authorized the establishment of a UN Support Office in Haiti.<sup>46</sup> On October 1, 2025, Secretary Rubio released a press statement commending the adoption of the resolution: “The message from the Security Council is clear: the era of impunity for those who seek to destabilize Haiti is over. The United States remains committed to working with international stakeholders to support Haiti’s path toward peace, stability, and democratic governance. We call on all nations to join us in this critical effort.”<sup>47</sup> Ending Temporary Protected Status for Haiti reflects a necessary and strategic vote of confidence in the new chapter Haiti is turning. The United States cannot call for bold change on the ground while signaling doubt from afar. Our immigration policy must align with our foreign policy vision of a secure, sovereign, and self-reliant Haiti and not a country that Haitian citizens continue to leave in large numbers to seek opportunities in the United States.

In summary, the current situation in Haiti is concerning. However, the United States must prioritize its national interests, which includes assessing foreign policy, public safety, national security, migration factors, immigration policy, and economic considerations. In considering these factors individually and cumulatively, the Secretary has determined that permitting Haitian nationals to

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<sup>46</sup> United Nations, “UN Security Council approves new ‘suppression force’ for Haiti amid spiraling gang violence” Sept. 30, 2025, <https://news.un.org/en/story/2025/09/1166006>.

<sup>47</sup> U.S. Department of State, “On the Next Steps to Restoring Security in Haiti” (Oct. 1, 2025), <https://www.state.gov/releases/2025/10/on-the-next-steps-to-restoring-security-in-haiti/>.

remain temporarily in the United States is contrary to the U.S. national interest.

DHS estimates that there are approximately 352,959 nationals of Haiti (and aliens having no nationality who last habitually resided in Haiti) who hold Temporary Protected Status under Haiti's designation.<sup>48</sup>

#### Effective Date of Termination of the Designation

The Temporary Protected Status statute provides that the termination of a country's Temporary Protected Status designation may not be effective earlier than 60 days after the notice is published in the Federal Register or, if later, the expiration of the most-recent previous extension. *See* INA sec. 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

The Temporary Protected Status statute authorizes the Secretary, at her discretion, to allow for an "orderly transition" period with respect to the termination and the expiration of any Temporary Protected Status-related documentation, such as EADs. The Secretary has determined, in her discretion, that the statutory minimum transition period of 60 days is sufficient and warranted here given the Secretary's finding that continuing to permit Haitian nationals to remain temporarily in the United States is contrary to the U.S. national interest. *See* INA sec. 244(d)(3), 8 U.S.C.

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<sup>48</sup> As of November 10, 2025, approximately 18,068 of these nationals of Haiti (and aliens having no nationality who last habitually resided in Haiti) are also approved as Lawful Permanent Residents. Data queried by Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality November 2025.

1254a(d)(3).<sup>49</sup> Accordingly, the termination of the Haiti Temporary Protected Status designation will be effective February 3, 2026.<sup>50</sup>

DHS recognizes that Haiti Temporary Protected Status beneficiaries under the designation continue to be employment authorized until the designation ends on February 3, 2026.<sup>51</sup> Accordingly, through this

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<sup>49</sup> Whether to allow for an additional “orderly departure” period following a Temporary Protected Status designation termination (beyond the statutory minimum of 60 days) is an “option” left to the Secretary’s unfettered discretion. INA 244(d)(3), 8 U.S.C. 1254a(d)(3). Although DHS has allowed such extended periods for certain Temporary Protected Status terminations, *see, e.g., Termination of the Designation of Sudan for Temporary Protected Status*, 82 FR 47228 (Oct. 11, 2017) (12-month orderly transition period); *Termination of the Designation of Sierra Leone Under the Temporary Protected Status Program; Extension of Employment Authorization Documentation*, 68 FR 52407 (Sept. 3, 2003) (6-month orderly transition period), certain other Temporary Protected Status designations were terminated without allowing for such transition periods, *see, e.g., Termination of Designation of Angola Under the Temporary Protected Status Program*, 68 FR 3896 (Jan. 27, 2003) (no orderly transition period); *Termination of Designation of Lebanon Under Temporary Protected Status Program*, 58 FR 7582 (Feb. 8, 1993) (same). The Secretary has determined that a 60-day period is appropriate under the circumstances.

<sup>50</sup> *See* 8 CFR 244.19 (“Upon the termination of designation of a foreign state, those nationals afforded temporary Protected Status shall, upon the sixtieth (60th) day after the date notice of termination is published in the Federal Register, or on the last day of the most recent extension of designation by the [Secretary of Homeland Security], automatically and without further notice or right of appeal, lose Temporary Protected Status in the United States. Such termination of a foreign state’s designation is not subject to appeal.”).

<sup>51</sup> *See* INA 244(a)(1)(B), 8 U.S.C. 1254a(a)(1)(B); *see also* 8 CFR 244.13(b).

Federal Register notice, DHS automatically extends the validity of certain Employment Authorization Documents previously issued under the Temporary Protected Status designation of Haiti through February 3, 2026. Therefore, as proof of continued employment authorization through February 3, 2026, Temporary Protected Status beneficiaries can show their EADs that have the notation A-12 or C-19 under Category and a “Card Expires” date of February 3, 2026, August 3, 2025, August 3, 2024, June 30, 2024, February 3, 2023, December 31, 2022, October 4, 2021, January 4, 2021, January 2, 2020, July 22, 2019, January 22, 2018, or July 22, 2017.

The Secretary has considered putative reliance interests in the Haiti Temporary Protected Status designation, especially when considering whether to allow for an additional transition period akin to that allowed under certain previous Temporary Protected Status terminations. Temporary Protected Status, as the name itself makes clear, is an inherently temporary status. Temporary Protected Status designations are time-limited and must be periodically reviewed, as frequently as every six months in some cases, and Temporary Protected Status notices clearly notify aliens of the designations’ expiration dates. Further, whether to allow for an orderly transition period is left to the Secretary’s unfettered discretion. *See* INA sec. 244(b)(3), (d)(3); 8 U.S.C. 1254a(b)(3), (d)(3). The statute inherently contemplates advance notice of a termination by requiring timely publication of the Secretary’s determination and delaying the effective date of the termination by at least 60 days after publication of a Federal Register notice of the termination or, if later, the existing expiration date. *See* INA sec. 244(b)(3), (d)(3); 8 U.S.C. 1254a(b)(3), (d)(3).

Notice of the Termination of the Temporary Protected Status Designation of Haiti

By the authority vested in me as Secretary under INA section 244(b)(3), 8 U.S.C. 1254a(b)(3), I have reviewed, in consultation with the appropriate U.S. Government agencies, (a) conditions in Haiti; and (b) whether permitting the nationals of Haiti (and aliens having no nationality who last habitually resided in Haiti) to remain temporarily in the United States is contrary to the national interest of the United States. Based on my review, I have determined that Haiti no longer continues to meet the conditions for Temporary Protected Status under INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).

Accordingly, I order as follows:

(1) Pursuant to INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(1)(B), and considering INA section 244(d)(3), 8 U.S.C. 1254a(d)(3), the designation of Haiti for Temporary Protected Status is terminated effective at 11:59 p.m., local time, on February 3, 2026.

(2) Information concerning the termination of Temporary Protected Status for nationals of Haiti (and aliens having no nationality who last habitually resided in Haiti) will be available at local USCIS office upon publication of this notice and through the USCIS Contact Center at 1-800-375-5283. This information will be published on the USCIS website at *www.uscis.gov*.

Kristi Noem,  
*Secretary of Homeland Security.*

[FR Doc. 2025-21379 Filed 11-26-25; 8:45 am]

BILLING CODE 9111-97-P

**APPENDIX E**

United States Code Annotated  
Title 5. Government Organization and Employees  
Part I. The Agencies Generally  
Chapter 5. Administrative Procedure  
Subchapter II. Administrative Procedure  
5 U.S.C.A. § 559

Currentness

**§ 559. Effect on other laws; effect of subsequent statute**

This subchapter, chapter 7, and sections 1305, 3105, 3344, 4301(2)(E), 5372, and 7521 of this title, and the provisions of section 5335(a)(B) of this title that relate to administrative law judges, do not limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, requirements or privileges relating to evidence or procedure apply equally to agencies and persons. Each agency is granted the authority necessary to comply with the requirements of this subchapter through the issuance of rules or otherwise. Subsequent statute may not be held to supersede or modify this subchapter, chapter 7, sections 1305, 3105, 3344, 4301(2)(E), 5372, or 7521 of this title, or the provisions of section 5335(a)(B) of this title that relate to administrative law judges, except to the extent that it does so expressly.

United States Code Annotated  
Title 5. Government Organization and Employees  
Part I. The Agencies Generally  
Chapter 7. Judicial Review  
5 U.S.C.A. § 705

Currentness

**§ 705. Relief pending review**

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

United States Code Annotated  
Title 5. Government Organization and Employees  
Part I. The Agencies Generally  
Chapter 7. Judicial Review  
5 U.S.C.A. § 706

Currentness

**§ 706. Scope of review**

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
  - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
  - (B) contrary to constitutional right, power, privilege, or immunity;
  - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
  - (D) without observance of procedure required by law;
  - (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

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(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

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United States Code Annotated  
Title 8. Aliens and Nationality  
Chapter 12. Immigration and Nationality  
Subchapter II. Immigration  
Part V. Adjustment and Change of Status

Effective: July 4, 2025

Currentness

**8 U.S.C.A. § 1254a. Temporary protected status**

(a) Granting of status

(1) In general

In the case of an alien who is a national of a foreign state designated under subsection (b) (or in the case of an alien having no nationality, is a person who last habitually resided in such designated state) and who meets the requirements of subsection (c), the Attorney General, in accordance with this section—

(A) may grant the alien temporary protected status in the United States and shall not remove the alien from the United States during the period in which such status is in effect, and

(B) shall authorize the alien to engage in employment in the United States and provide the alien with an “employment authorized” endorsement or other appropriate work permit.

(2) Duration of work authorization

Work authorization provided under this section shall be effective throughout the period the alien is in temporary protected status under this section.

(3) Notice

(A) Upon the granting of temporary protected status under this section, the Attorney General shall provide the alien with information concerning such status under this section.

(B) If, at the time of initiation of a removal proceeding against an alien, the foreign state (of which the alien is a national) is designated under subsection (b), the Attorney General shall promptly notify the alien of the temporary protected status that may be available under this section.

(C) If, at the time of designation of a foreign state under subsection (b), an alien (who is a national of such state) is in a removal proceeding under this subchapter, the Attorney General shall promptly notify the alien of the temporary protected status that may be available under this section.

(D) Notices under this paragraph shall be provided in a form and language that the alien can understand.

(4) Temporary treatment for eligible aliens

(A) In the case of an alien who can establish a prima facie case of eligibility for benefits under paragraph (1), but for the fact that the period of registration under subsection (c)(1)(A)(iv) has not begun, until the alien has had a reasonable opportunity to register during the first 30 days of such period, the Attorney General shall provide for the benefits of paragraph (1).

(B) In the case of an alien who establishes a prima facie case of eligibility for benefits under paragraph (1), until a final determination with respect to the alien's eligibility for such benefits

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under paragraph (1) has been made, the alien shall be provided such benefits.

(5) Clarification

Nothing in this section shall be construed as authorizing the Attorney General to deny temporary protected status to an alien based on the alien's immigration status or to require any alien, as a condition of being granted such status, either to relinquish nonimmigrant or other status the alien may have or to execute any waiver of other rights under this chapter. The granting of temporary protected status under this section shall not be considered to be inconsistent with the granting of nonimmigrant status under this chapter.

(b) Designations

(1) In general

The Attorney General, after consultation with appropriate agencies of the Government, may designate any foreign state (or any part of such foreign state) under this subsection only if—

(A) the Attorney General finds that there is an ongoing armed conflict within the state and, due to such conflict, requiring the return of aliens who are nationals of that state to that state (or to the part of the state) would pose a serious threat to their personal safety;

(B) the Attorney General finds that—

(i) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected,

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(ii) the foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state, and

(iii) the foreign state officially has requested designation under this subparagraph; or

(C) the Attorney General finds that there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless the Attorney General finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.

A designation of a foreign state (or part of such foreign state) under this paragraph shall not become effective unless notice of the designation (including a statement of the findings under this paragraph and the effective date of the designation) is published in the Federal Register. In such notice, the Attorney General shall also state an estimate of the number of nationals of the foreign state designated who are (or within the effective period of the designation are likely to become) eligible for temporary protected status under this section and their immigration status in the United States.

(2) Effective period of designation for foreign states

The designation of a foreign state (or part of such foreign state) under paragraph (1) shall—

(A) take effect upon the date of publication of the designation under such paragraph, or such later date as the Attorney General may specify in the notice published under such paragraph, and

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(B) shall remain in effect until the effective date of the termination of the designation under paragraph (3)(B).

For purposes of this section, the initial period of designation of a foreign state (or part thereof) under paragraph (1) is the period, specified by the Attorney General, of not less than 6 months and not more than 18 months.

(3) Periodic review, terminations, and extensions of designations

(A) Periodic review

At least 60 days before end of the initial period of designation, and any extended period of designation, of a foreign state (or part thereof) under this section the Attorney General, after consultation with appropriate agencies of the Government, shall review the conditions in the foreign state (or part of such foreign state) for which a designation is in effect under this subsection and shall determine whether the conditions for such designation under this subsection continue to be met. The Attorney General shall provide on a timely basis for the publication of notice of each such determination (including the basis for the determination, and, in the case of an affirmative determination, the period of extension of designation under subparagraph (C)) in the Federal Register.

(B) Termination of designation

If the Attorney General determines under subparagraph (A) that a foreign state (or part of such foreign state) no longer continues to meet the conditions for designation under paragraph (1), the Attorney General shall terminate the designation

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by publishing notice in the Federal Register of the determination under this subparagraph (including the basis for the determination). Such termination is effective in accordance with subsection (d)(3), but shall not be effective earlier than 60 days after the date the notice is published or, if later, the expiration of the most recent previous extension under subparagraph (C).

### (C) Extension of designation

If the Attorney General does not determine under subparagraph (A) that a foreign state (or part of such foreign state) no longer meets the conditions for designation under paragraph (1), the period of designation of the foreign state is extended for an additional period of 6 months (or, in the discretion of the Attorney General, a period of 12 or 18 months).

### (4) Information concerning protected status at time of designations

At the time of a designation of a foreign state under this subsection, the Attorney General shall make available information respecting the temporary protected status made available to aliens who are nationals of such designated foreign state.

### (5) Review

#### (A) Designations

There is no judicial review of any determination of the Attorney General with respect to the designation, or termination or extension of a designation, of a foreign state under this subsection.

(B) Application to individuals

The Attorney General shall establish an administrative procedure for the review of the denial of benefits to aliens under this subsection. Such procedure shall not prevent an alien from asserting protection under this section in removal proceedings if the alien demonstrates that the alien is a national of a state designated under paragraph (1).

(c) Aliens eligible for temporary protected status

(1) In general

(A) Nationals of designated foreign states

Subject to paragraph (3), an alien, who is a national of a state designated under subsection (b)(1) (or in the case of an alien having no nationality, is a person who last habitually resided in such designated state), meets the requirements of this paragraph only if—

- (i) the alien has been continuously physically present in the United States since the effective date of the most recent designation of that state;
- (ii) the alien has continuously resided in the United States since such date as the Attorney General may designate;
- (iii) the alien is admissible as an immigrant, except as otherwise provided under paragraph (2)(A), and is not ineligible for temporary protected status under paragraph (2)(B); and
- (iv) to the extent and in a manner which the Attorney General establishes, the alien registers for the temporary protected status

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under this section during a registration period of not less than 180 days.

(B) Registration fee

(i) In general

The Attorney General may require payment of a reasonable fee as a condition of registering an alien under subparagraph (A)(iv) (including providing an alien with an “employment authorized” endorsement or other appropriate work permit under this section). The amount of any such fee shall not exceed \$500, subject to the adjustments required under clause (ii). In the case of aliens registered pursuant to a designation under this section made after July 17, 1991, the Attorney General may impose a separate, additional fee for providing an alien with documentation of work authorization. Notwithstanding section 3302 of Title 31, all fees collected under this subparagraph shall be credited to the appropriation to be used in carrying out this section.

(ii) Annual adjustments for inflation

During fiscal year 2026, and during each subsequent fiscal year, the maximum amount of the fee authorized under clause (i) shall be equal to the sum of—

(I) the maximum amount of the fee authorized under this subparagraph for the most recently concluded fiscal year; and

(II) the product resulting from the multiplication of the amount referred to in subclause (I) by the percentage (if any) by which the Consumer Price Index for All

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Urban Consumers for the month of July preceding the date on which such adjustment takes effect exceeds the Consumer Price Index for All Urban Consumers for the same month of the preceding calendar year, rounded to the next lowest multiple of \$10.

(iii) Disposition of temporary protected status fees

All of the fees collected pursuant to this subparagraph shall be deposited into the general fund of the Treasury.

(iv) No fee waiver

Fees required to be paid under this subparagraph shall not be waived or reduced.

(2) Eligibility standards

(A) Waiver of certain grounds for inadmissibility

In the determination of an alien's admissibility for purposes of subparagraph (A)(iii) of paragraph (1)—

(i) the provisions of paragraphs (5) and (7)(A) of section 1182(a) of this title shall not apply;

(ii) except as provided in clause (iii), the Attorney General may waive any other provision of section 1182(a) of this title in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest; but

(iii) the Attorney General may not waive—

(I) paragraphs (2)(A) and (2)(B) (relating to criminals) of such section,

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(II) paragraph (2)(C) of such section (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana, or

(III) paragraphs (3)(A), (3)(B), (3)(C), and (3)(E) of such section (relating to national security and participation in the Nazi persecutions or those who have engaged in genocide).

(B) Aliens ineligible

An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that—

(i) the alien has been convicted of any felony or 2 or more misdemeanors committed in the United States, or

(ii) the alien is described in section 1158(b)(2)(A) of this title.

(3) Withdrawal of temporary protected status

The Attorney General shall withdraw temporary protected status granted to an alien under this section if—

(A) the Attorney General finds that the alien was not in fact eligible for such status under this section,

(B) except as provided in paragraph (4) and permitted in subsection (f)(3), the alien has not remained continuously physically present in the United States from the date the alien first was granted temporary protected status under this section, or

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(C) the alien fails, without good cause, to register with the Attorney General annually, at the end of each 12-month period after the granting of such status, in a form and manner specified by the Attorney General.

(4) Treatment of brief, casual, and innocent departures and certain other absences

(A) For purposes of paragraphs (1)(A)(i) and (3)(B), an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States, without regard to whether such absences were authorized by the Attorney General.

(B) For purposes of paragraph (1)(A)(ii), an alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence described in subparagraph (A) or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

(5) Construction

Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for temporary protected status under this section.

(6) Confidentiality of information

The Attorney General shall establish procedures to protect the confidentiality of information provided by aliens under this section.

(d) Documentation

(1) Initial issuance

Upon the granting of temporary protected status to an alien under this section, the Attorney General shall provide for the issuance of such temporary documentation and authorization as may be necessary to carry out the purposes of this section.

(2) Period of validity

Subject to paragraph (3), such documentation shall be valid during the initial period of designation of the foreign state (or part thereof) involved and any extension of such period. The Attorney General may stagger the periods of validity of the documentation and authorization in order to provide for an orderly renewal of such documentation and authorization and for an orderly transition (under paragraph (3)) upon the termination of a designation of a foreign state (or any part of such foreign state).

(3) Effective date of terminations

If the Attorney General terminates the designation of a foreign state (or part of such foreign state) under subsection (b)(3)(B), such termination shall only apply to documentation and authorization issued or renewed after the effective date of the publication of notice of the determination under that subsection (or, at the Attorney General's option, after such period after the effective date of the determination as the Attorney General determines to be appropriate in order to provide for an orderly transition).

(4) Detention of alien

An alien provided temporary protected status under this section shall not be detained by the Attorney

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General on the basis of the alien's immigration status in the United States.

(e) Relation of period of temporary protected status to cancellation of removal

With respect to an alien granted temporary protected status under this section, the period of such status shall not be counted as a period of physical presence in the United States for purposes of section 1229b(a) of this title, unless the Attorney General determines that extreme hardship exists. Such period shall not cause a break in the continuity of residence of the period before and after such period for purposes of such section.

(f) Benefits and status during period of temporary protected status

During a period in which an alien is granted temporary protected status under this section—

- (1) the alien shall not be considered to be permanently residing in the United States under color of law;
- (2) the alien may be deemed ineligible for public assistance by a State (as defined in section 1101(a)(36) of this title) or any political subdivision thereof which furnishes such assistance;
- (3) the alien may travel abroad with the prior consent of the Attorney General; and
- (4) for purposes of adjustment of status under section 1255 of this title and change of status under section 1258 of this title, the alien shall be considered as being in, and maintaining, lawful status as a nonimmigrant.

(g) Exclusive remedy

Except as otherwise specifically provided, this section shall constitute the exclusive authority of the Attorney General under law to permit aliens who are or may become otherwise deportable or have been paroled into the United States to remain in the United States temporarily because of their particular nationality or region of foreign state of nationality.

(h) Limitation on consideration in Senate of legislation adjusting status

(1) In general

Except as provided in paragraph (2), it shall not be in order in the Senate to consider any bill, resolution, or amendment that—

(A) provides for adjustment to lawful temporary or permanent resident alien status for any alien receiving temporary protected status under this section, or

(B) has the effect of amending this subsection or limiting the application of this subsection.

(2) Supermajority required

Paragraph (1) may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members duly chosen and sworn. An affirmative vote of three-fifths of the Members of the Senate duly chosen and sworn shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under paragraph (1).

(3) Rules

Paragraphs (1) and (2) are enacted—

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(A) as an exercise of the rulemaking power of the Senate and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the matters described in paragraph (1) and supersede other rules of the Senate only to the extent that such paragraphs are inconsistent therewith; and

(B) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner as in the case of any other rule of the Senate.

(i) Annual report and review

(1) Annual report

Not later than March 1 of each year (beginning with 1992), the Attorney General, after consultation with the appropriate agencies of the Government, shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate on the operation of this section during the previous year. Each report shall include—

(A) a listing of the foreign states or parts thereof designated under this section,

(B) the number of nationals of each such state who have been granted temporary protected status under this section and their immigration status before being granted such status, and

(C) an explanation of the reasons why foreign states or parts thereof were designated under subsection (b)(1) and, with respect to foreign states or parts thereof previously designated, why the designation was terminated or extended under subsection (b)(3).

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(2) Committee report

No later than 180 days after the date of receipt of such a report, the Committee on the Judiciary of each House of Congress shall report to its respective House such oversight findings and legislation as it deems appropriate.

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United States Code Annotated  
Constitution of the United States  
Annotated

Amendment V. Grand Jury; Double Jeopardy;  
Self-Incrimination; Due Process; Takings

U.S.C.A. Const. Amend. V

**Amendment V. Grand Jury Indictment for  
Capital Crimes; Double Jeopardy; Self-  
Incrimination; Due Process of Law; Takings  
without Just Compensation**

Currentness

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.