

No. 25-1077

In the Supreme Court of the United States

FRITZ EMMANUEL LESLEY MIOT, ET AL., PETITIONERS

v.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES,
ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT*

BRIEF FOR THE RESPONDENTS

D. JOHN SAUER
*Solicitor General
Counsel of Record*
BRETT A. SHUMATE
Assistant Attorney General
DREW C. ENSIGN
*Deputy Assistant
Attorney General*
SARAH E. WELCH
Attorney
*Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217*

QUESTIONS PRESENTED

The Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.*, authorizes the Secretary of Homeland Security to designate countries for Temporary Protected Status (TPS) if he finds that certain conditions for designation are met. 8 U.S.C. 1254a(b)(1). When a country is designated, certain aliens from that country generally may not be removed from the United States and are authorized to work here. The Act provides that “[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 state under this subsection.” 8 U.S.C. 1254a(b)(5)(A). The questions presented are:

1. Whether 8 U.S.C. 1254a(b)(5)(A) precludes judicial review of petitioners’ Administrative Procedure Act (APA) claims challenging the Secretary’s termination of Haiti’s TPS designation.
2. If reviewable, whether petitioners’ APA claims fail on the merits.
3. Whether petitioners’ equal-protection challenge to the Secretary’s termination of Haiti’s TPS designation fails on the merits.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction.....	1
Statement	2
Discussion.....	9
Conclusion	10

TABLE OF AUTHORITIES

Cases:

<i>Haitian Evangelical Clergy Ass’n v. Trump</i> , 789 F. Supp. 3d 255 (E.D.N.Y. 2025)	5
<i>Ramos v. Nielsen</i> : 336 F. Supp. 3d 1075 (N.D. Cal. 2018).....	4
709 F. Supp. 3d 871 (N.D. Cal. 2023).....	4
<i>Ramos v. Wolf</i> , 975 F.3d 872 (2020), reh’g en banc granted, opinion vacated, 59 F.4th 1010 (2023)	4
<i>Trump v. Hawaii</i> , 585 U.S. 667 (2018).....	8

Statutes:

Administrative Procedure Act, 5 U.S.C. 701 <i>et seq.</i> : 5 U.S.C. 705.....	6
Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (8 U.S.C. 1101 <i>et seq.</i>)	2
8 U.S.C. 1254a(a)	3
8 U.S.C. 1254a(a)(1).....	3
8 U.S.C. 1254a(b)(1)	2, 3
8 U.S.C. 1254a(b)(2)	3
8 U.S.C. 1254a(b)(3)(A).....	3
8 U.S.C. 1254a(b)(3)(B).....	3
8 U.S.C. 1254a(b)(3)(C).....	3

IV

Statutes—Continued:	Page
8 U.S.C. 1254a(b)(5)(A)	4, 6-8
8 U.S.C. 1254a(c)	3
6 U.S.C. 552(d)	3
6 U.S.C. 557	3

Miscellaneous:

75 Fed. Reg. 3476 (Jan. 21, 2010).....	4
83 Fed. Reg. 2648 (Jan. 18, 2018).....	4
86 Fed. Reg. 41,863 (Aug. 3, 2021).....	4
90 Fed. Reg.:	
p. 10,511 (Feb. 24, 2025).....	5
p. 28,760 (July 1, 2025).....	5
p. 54,733 (Nov. 28, 2025)	4-6

In the Supreme Court of the United States

No. 25-1077

FRITZ EMMANUEL LESLY MIOT, ET AL., PETITIONERS

v.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES,
ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT*

BRIEF FOR THE RESPONDENTS

OPINIONS BELOW

The order of the court of appeals denying a stay (Pet. App. 104a-119a) is available at 2026 WL 659420. The order of the district court denying a stay (Pet. App. 99a-103a) is available at 2026 WL 544434. The opinion and order of the district court (Pet. App. 1a-98a) is available at 2026 WL 266413.

JURISDICTION

The order of the district court was entered on February 2, 2026. The government filed a notice of appeal on February 5, 2025. The court of appeals' jurisdiction rests on 28 U.S.C. 1292(a)(1). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and 2101(e).

STATEMENT

1. In 1990, Congress established a discretionary program to provide temporary shelter in the United States for eligible nationals of countries experiencing certain temporary conditions. 8 U.S.C. 1254a(b)(1); see Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978. The Secretary of Homeland Security, “after consultation with appropriate agencies of the Government,” “may” designate countries for “temporary protected status” (TPS), if the Secretary finds that certain conditions for designation are met:

(A) * * * 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) * * * 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, (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) * * * 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 [Secretary] finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.

8 U.S.C. 1254a(a)(1) and (b)(1).*

When the Secretary designates a country for TPS, eligible individuals from that country who are physically present in the United States on the effective date of the designation (and have continuously resided here since such date as the Secretary may designate) generally may not be removed from the United States and may receive work authorization for the duration of the country's designation. 8 U.S.C. 1254a(a) and (c).

Congress required designations to be "temporary." 8 U.S.C. 1254a(a). Initial designations and extensions thereof may not exceed 18 months. 8 U.S.C. 1254a(b)(2) and (3)(C). Congress mandated periodic review, and required the Secretary to terminate TPS if, in his judgment, the country no longer satisfies conditions for designation. The Secretary, in consultation with appropriate agencies, "shall" review each designation at least 60 days before the designation period ends to determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). And the Secretary "shall terminate the designation" if he "determines" that the country "no longer continues to meet the conditions for designation." 8 U.S.C. 1254a(b)(3)(B). If, during the periodic review, the Secretary "does not determine" that the country "no longer meets the conditions for designation," then "the period of designation of the foreign state is extended for an additional period of 6 months (or, in the discretion of the [Secretary], a period of 12 or 18 months)." 8 U.S.C. 1254a(b)(3)(C).

The TPS statute bars judicial review of the Secretary's TPS determinations: "There is no judicial review

* The provisions at issue refer to the Attorney General; Congress has transferred the authority to the Secretary of Homeland Security. 6 U.S.C. 552(d), 557.

of any determination of the [Secretary] with respect to the designation, or termination or extension of a designation, of a foreign state under this subsection.” 8 U.S.C. 1254a(b)(5)(A).

2. a. In 2010, then-Secretary Napolitano designated Haiti for TPS, citing “extraordinary and temporary conditions” resulting from an earthquake. 75 Fed. Reg. 3476, 3477 (Jan. 21, 2010). Secretary Napolitano found that the designation would not be “contrary to the national interest” of the United States. *Ibid.* The designation was extended several times based on the earthquake’s aftermath. See 90 Fed. Reg. 54,733, 54,734 (Nov. 28, 2025) (listing extensions).

During the first Trump Administration, then-Secretary Nielsen terminated Haiti’s designation because the “‘extraordinary and temporary conditions’ relating to the 2010 earthquake that prevented Haitian nationals from returning in safety” were “no longer met.” 83 Fed. Reg. 2648, 2650 (Jan. 18, 2018). A district court enjoined that termination before it took effect. *Ramos v. Nielsen*, 336 F. Supp. 3d 1075, 1108 (N.D. Cal. 2018). The Ninth Circuit reversed but granted review en banc. *Ramos v. Wolf*, 975 F.3d 872 (2020), reh’g en banc granted, opinion vacated, 59 F.4th 1010 (2023). En banc review remained pending until a change in Administration mooted the appeal. See *Ramos v. Nielsen*, 709 F. Supp. 3d 871, 876 (N.D. Cal. 2023).

Then-Secretary Mayorkas redesignated Haiti for TPS in 2021 after finding “extraordinary and temporary conditions” based on a presidential assassination, “a deteriorating political crisis, violence, and a staggering increase in human rights abuses.” 86 Fed. Reg. 41,863, 41,864 (Aug. 3, 2021). He twice extended that designa-

tion; the latest extension was set to expire on February 3, 2026. 90 Fed. Reg. at 54,734.

On February 24, 2025, then-Secretary Noem partially vacated the most recent extension by reducing the extension period to August 3, 2025. 90 Fed. Reg. 10,511 (Feb. 24, 2025). She separately announced the termination of Haiti's TPS designation, effective September 2, 2025. 90 Fed. Reg. 28,760 (July 1, 2025). A district court set aside the partial vacatur, leaving the February 3, 2026, expiration date in effect. *Haitian Evangelical Clergy Ass'n v. Trump*, 789 F. Supp. 3d 255, 276 (E.D.N.Y. 2025).

Due in part to that litigation, on November 28, 2025, Secretary Noem terminated Haiti's TPS designation effective February 3, 2026. 90 Fed. Reg. at 54,733. "[A]fter consulting with appropriate U.S. Government agencies, the Secretary reviewed country conditions in Haiti." *Id.* at 54,735. She determined that "no extraordinary and temporary conditions in Haiti * * * prevent Haitian nationals * * * from returning in safety." *Ibid.* While "[c]ertain conditions in Haiti remain concerning," including "escalating violence and gang violence" in the capital, she found that data indicate that "parts of the country are suitable to return to," that a new Gang Suppression Force would help provide security, and that Haiti's GDP is projected to grow. *Ibid.*

Further, the Secretary determined, "even if" extraordinary and temporary conditions persisted, "termination of [TPS for] 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." 90 Fed. Reg. at 54,735. She highlighted that large numbers of Haitians illegally arrived in the United States in recent years and that "extremely high numbers [were] seen around the time of and fol-

lowing the latest new designations of [TPS],” suggesting that TPS serves as a “pull factor[.]” for illegal immigration. *Id.* at 54,737. She further found that “Haiti lacks a functioning central authority capable of maintaining or sharing” critical law-enforcement or security information, which “severely limit[s] the U.S. government’s ability to screen and vet Haitians in the United States with [TPS].” *Ibid.* She considered that information void particularly concerning because “Haitian gangs—such as those designated by the State Department as Foreign Terrorist Organizations—pose a serious threat to U.S. interests.” *Ibid.*

The Secretary underscored the United States’ support for “Haiti’s path toward peace, stability, and democratic governance.” 90 Fed. Reg. at 54,738. “Ending [TPS] for Haiti,” she explained, “reflects a necessary and strategic vote of confidence” in Haiti’s future, and aligns with the “foreign policy vision of a secure, sovereign, and self-reliant Haiti.” *Ibid.*

The Secretary thus determined that “Haiti no longer * * * meet[s]” the statutory basis for TPS and that termination was required. 90 Fed. Reg. at 54,739.

b. Petitioners—five Haitian TPS holders—filed an amended class-action complaint challenging the Secretary’s termination of Haiti’s TPS designation and moved to postpone the termination under 5 U.S.C. 705. See Am. Compl. 9-13, 81-84; D. Ct. Doc. 81 (Dec. 12, 2025). On February 2, 2026, the day before the termination was to take effect, the district court granted that motion and stayed consideration of the motion to certify a class. Pet. App. 1a-98a.

The district court held that petitioners’ Administrative Procedure Act (APA) and equal-protection claims were reviewable, despite Section 1254a(b)(5)(A). Pet. App.

23a-31a. The court interpreted Section 1254a(b)(5)(A) as limited to challenges to “the Secretary’s *determination*” — not challenges to “*how* the Secretary went about making her determination,” including petitioners’. *Id.* at 23a.

The district court then found a panoply of APA violations:

- The Secretary purportedly failed to adequately “consult appropriate agencies.” Pet. App. 48a; see *id.* at 48a-54a. The court acknowledged that DHS requested and received the Department of State’s views that “there would be no foreign policy concerns with respect to a change in the TPS statu[s] of Haiti.” *Id.* at 49a (citation omitted). But the court deemed that exchange not sufficiently “meaningful” to qualify as consultation. *Id.* at 50a (citation omitted).
- The court found the termination likely arbitrary and capricious by disagreeing with the Secretary’s determination that “conditions in Haiti permit safe return.” Pet. App. 57a-58a. The court deemed Haiti “a nation deep in crisis,” *id.* at 58a; see *id.* at 58a-69a, and faulted the Secretary’s national-interest assessment for failing to focus on Haitian TPS holders and their economic impact, *id.* at 70a-75a.
- The court considered the Secretary’s termination of “every TPS designation that crosses her desk” so “unprecedented” as to “strongly suggest[.]” that each decision “shrug[ged] off” required “individualized review of the conditions of each country.” Pet. App. 55a-56a (citation omitted). The court further concluded that “nearly everything” in its analysis indicated that “the Secretary preordained the result.” *Id.* at 75a; see *id.* at 75a-76a.

On the equal-protection claim, the district court held that the Secretary’s termination decision was likely motivated by racial animus. Pet. App. 76a-86a. Applying heightened scrutiny instead of the deferential standard of *Trump v. Hawaii*, 585 U.S. 667 (2018), Pet. App. 77a-79a, the court found that racial animus infected the termination decision by invoking statements by President Trump dating to 2017, *id.* at 79a-81a, and a handful of Secretary Noem’s statements, *id.* at 85a-86a.

After finding that the equitable factors favored petitioners, the district court indefinitely postponed the Haiti termination, Pet. App. 98a, and denied the government’s motion for a stay pending appeal, *id.* at 99a-103a.

c. The D.C. Circuit rendered a 2-1 decision denying the government’s stay request. Pet. App. 104a-119a. The majority bypassed the merits, “focus[ing] on irreparable harm and the weighing of the equities,” and denied a stay solely on that basis. *Id.* at 106a.

Judge Walker dissented. Pet. App. 113a-119a. He would have granted a stay, “[a]s the Supreme Court and the Ninth Circuit have done in extraordinarily similar cases.” *Id.* at 113a. On the merits, he explained that the government was “likely to prevail” because Section 1254a(b)(5)(A) precludes judicial review. *Ibid.*; see *id.* at 113a-116a.

3. While proceedings before the district court were ongoing, the government was separately litigating a challenge to the termination of TPS for Syria. See Gov’t Br. at 8-11, *Mullin v. Doe*, No. 25-1083 (Mar. 30, 2026). The court in that case likewise postponed the termination decision, and the court of appeals likewise denied the government’s request for a stay. *Ibid.* The government filed an application asking this Court to stay the district court’s order and to grant certiorari before judg-

ment. See Gov't Appl. 13-34, *Noem v. Doe*, No. 25A952 (Feb. 26, 2026).

That stay application was pending when the court of appeals issued its decision denying a stay in this case. Following that decision, the government filed an application asking this Court to stay the district court's order and to grant certiorari before judgment in this case, as well as in *Doe*. See Gov't Appl. 15-40, *Trump v. Miot*, No. 25A999 (Mar. 11, 2026).

On March 16, 2026, this Court granted both petitions for certiorari before judgment and consolidated the cases.

DISCUSSION

Petitioners filed this conditional petition for a writ of certiorari before judgment while the government's application was pending in *Noem v. Doe*, No. 25A952, and before the government had filed its application in *Trump v. Miot*, No. 25A999. Petitioners assert (Pet. 2-3, 14, 27) that the Court should deny the government's request for certiorari before judgment in *Doe*, but that if the Court were to grant certiorari in *Doe*, it should also grant certiorari before judgment in this case. Since the petition was filed, the Court has effectively granted petitioners' request by granting the government's petition for certiorari before judgment in *Miot*. The Court could therefore deny or dismiss this conditional petition as superseded. Alternatively, the Court could hold the conditional petition for certiorari pending the Court's resolution of *Doe* and *Miot*, and then dispose of the petition as appropriate in light of the decision in those cases.

CONCLUSION

The petition for a writ of certiorari should be denied, or, in the alternative, held pending the Court's resolution of *Mullin v. Doe*, No. 25-1083 (argued Apr. 29, 2026), and *Trump v. Miot*, No. 25-1084 (argued Apr. 29, 2026), and then disposed of as appropriate in light of the decision in those cases.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
BRETT A. SHUMATE
Assistant Attorney General
DREW C. ENSIGN
*Deputy Assistant
Attorney General*
SARAH E. WELCH
Attorney

MAY 2026