

In the Supreme Court of the United States

MARKWAYNE MULLIN, SECRETARY, DEPARTMENT OF HOMELAND SECURITY, ET AL.,
PETITIONERS

v.

DAHLIA DOE, ET AL.

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

v.

FRITZ EMMANUEL LESLY MIOT, ET AL.

*ON WRITS OF CERTIORARI BEFORE JUDGMENT
TO THE UNITED STATES COURTS OF APPEALS
FOR THE SECOND AND DISTRICT OF COLUMBIA CIRCUITS*

**JOINT APPENDIX
(Volume 2)**

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FRITZ EMMANUEL LESLY MIOT, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

Case No. 25-cv-02471 (ACR)

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.”¹ 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.²



¹ Letter from George Washington to Joshua Holmes (December 2, 1783).

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

So says the official responsible for overseeing the TPS program. And one of those (her word) “damn” countries is Haiti.³ 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 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

³ *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).

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

X

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 20–21.⁴ “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 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.

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

2025).⁵ This led to haphazard regulations 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 nationals and “has requested [temporary protected status] designation”;

⁵ 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 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).

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. Red. 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”⁶ 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 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

⁶ 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>].

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).⁷ 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 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

⁷ “[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).

rather expansive view that the Secretary’s TPS decision making is immune from judicial review.⁸ This Court joins the chorus.

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

⁸ 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. Department of Homeland Security*, 332 F. Supp. 3d 393, 404–05 (D. Mass. 2018).

(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 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)).⁹ 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).¹⁰

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 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.”

⁹ 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.

¹⁰ 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.

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.1.¹¹

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

¹¹ 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.

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).

* * *

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.¹² 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).

¹² 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.

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 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.¹³ 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.

¹³ 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://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 544.¹⁴ 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 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*

¹⁴ 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”).

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).¹⁵ 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 re-establish[ment] [of] the status quo absent the unlawful agency action.” *Texas v. United States*, 40

¹⁵ 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.*

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 vacatures 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. 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.¹⁶

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

¹⁶ 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 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).

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. 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).¹⁷ 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).

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

¹⁷ 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.

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).¹⁸ 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.” *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

¹⁸ 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.

plaintiffs, the Supreme Court again stayed the decision pending appeal. *See NTPSA V*, 146 S. Ct. 23 (2025).¹⁹ 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 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.

¹⁹ 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.

* * *

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,”²⁰ DHS

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

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.

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.”²¹ 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. 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

²¹ 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).

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 22–23.²² Compare this with the late Friday afternoon, three-sentence email exchange between staffers that occurred here.

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.²³ 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.

²² 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.

²³ 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 . . .”).

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 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. 113.²⁴ 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

²⁴ 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).

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 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
Jan. 23	“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.”	Doctors Without Borders Report	78-11 at 279
Feb. 19	“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 determination to hold a vote on a new constitution and a new government by the end of 2025 seems unrealistic.” ²⁵	Crisis Group Report	78-11 at 126

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

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 Article	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
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 about the strategy’s long-term effectiveness.” 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.”	InSight Crime Article	78-11 at 54, 58
June 27	“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.”	UN Integrated Office in Haiti, Report of the Secretary-General	78-13 at 149
July 2	“Top United Nations Officials Urge Swift Global Action as Haiti Nears Collapse.”	Meetings Coverage, UNSC	78-13 at 95

Aug. 7	“Threats of violence have forced essential services to shut down, including hospitals and roadways, and nearly 1.3 million people have been displaced from their homes. . . . The humanitarian situation in Haiti is considered among the most dire in the world.”	Aljazeera Article	78-7 at 150
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 cites 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

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 4.²⁶ “The memo,” it noted,

²⁶ 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.

“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* still²⁷ 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 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.”²⁸ 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

²⁷ *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.

²⁸ 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).

hope.” 90 Fed. Reg. at 54735 & n.19. He cautioned that “these fragile gains” depend on “more decisive international support.”²⁹ Emerging signals of hope, of course, are not actual change.³⁰ 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.

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

²⁹ ‘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>].

³⁰ 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.

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.* ¶ 91.³¹

To its credit, the Government does not defend President Trump’s derogatory statements. No one rationally could.³² 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

³¹ They are not. *See* 8 U.S.C. § 1254a.

³² 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.”

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 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.³³ *See* § 705 Opp’n at 35. 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

³³ 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.

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.”³⁴ (emphasis added).
- 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

³⁴ *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.

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.³⁵

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.2.³⁶ Plaintiffs allege 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.

* * *

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

³⁵ “[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.

³⁶ Courts properly consider statements of animus even when officials make them after they issue their formal decisions. *See N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204, 229 n.7 (4th Cir. 2016).

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.³⁷

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.³⁸ 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

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

³⁸ 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.

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 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 immediately³⁹ or remain in the United States unlawfully and face the ever-present risk of detention and removal.⁴⁰ 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.⁴¹

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 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

³⁹ 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).

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

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

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.”⁴² 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 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).

⁴² 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).

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.⁴³ 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.

⁴³ 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.

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-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



Ana C. Reyes

ANA C. REYES
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FRITZ EMMANUEL LESLY MIOT, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

Case No. 25-cv-02471 (ACR)

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,”¹ 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.

* * *

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.*

¹ William Shakespeare, *Hamlet* act 2, sc. 2.

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 41–46.² 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 designation it reviewed,³ 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.

² 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.

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

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 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 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



Ana C. Reyes

ANA C. REYES
United States District Judge

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 26-5050**September Term, 2025****1:25-cv-02471-ACR****Filed On:** March 6, 2026

Fritz Emmanuel Lesly Miot, et al.,

Appellees

v.

Donald J. Trump, President of the United
States of America, et al.,

Appellants

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 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

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

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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

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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

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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

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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 demonstrating 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.*

* 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

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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: 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

*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).

WALKER, *Circuit Judge*, dissenting:

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

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.⁴ The Government is likely to prevail on the merits, it is irreparably harmed, and the equities favor the Government.⁵

¹ 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.

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

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

⁴ *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.").

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

The Government is irreparably harmed by “an improper intrusion by a federal court into the workings of a coordinate branch of the Government.”⁶ To the extent our court has

⁶ *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. Ct. 732, 733 (2021) (Thomas, J., dissenting from denial of certiorari); *Little v. Reclaim Idaho*, 140 S. Ct. 2616, 2617 (2020)

occasionally required more than that by echoing the dissenters in *Trump v. CASA*, those requirements conflict with *CASA*'s holding.⁷

The Government's harm would be lightened, perhaps significantly, if the Government were unlikely to prevail on the merits.⁸ 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

(Roberts, C.J., joined by Alito, Gorsuch, and Kavanaugh, JJ., concurring in grant of stay)).

⁷ 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).

⁸ 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. Mayorkas*, 27 F.4th 718, 734 (D.C. Cir. 2022) ("the Plaintiffs' likelihood of success on the merits lightens the Executive's stated interests").

designation, of a foreign state.”⁹ So at this preliminary stage, the Government appears likely to prevail.¹⁰

That leaves the other equities — injury to the Plaintiffs, and the public interest.¹¹ And here the Plaintiffs have a point.¹² 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.¹³ And the public has an interest in “preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm.”¹⁴

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

⁹ 8 U.S.C. § 1254a(b)(5)(A).

¹⁰ 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).

¹¹ See *Nken*, 556 U.S. at 434.

¹² 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”).

¹³ 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).

¹⁴ *Nken*, 556 U.S. at 436.

someone seeking *permanent* withholding of removal), neither does the lawful termination of *Temporary* Protected Status.¹⁵ 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.¹⁶

Perhaps that is why the Supreme Court twice stayed lower court decisions preventing TPS terminations.¹⁷ 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.”¹⁸

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 interest” for the Plaintiffs to

¹⁵ *Id.* at 435.

¹⁶ *Id.*

¹⁷ *See NTPSA II*, 146 S. Ct. 23; *NTPSA I*, 145 S. Ct. 2728.

¹⁸ *Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025).

6

leave.¹⁹ 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.²⁰ That makes those cases and today’s case too similar to distinguish — the legal equivalent of fraternal, if not identical, twins.²¹

With respect, I dissent.²²

¹⁹ 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).

²⁰ 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.”).

²¹ 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.

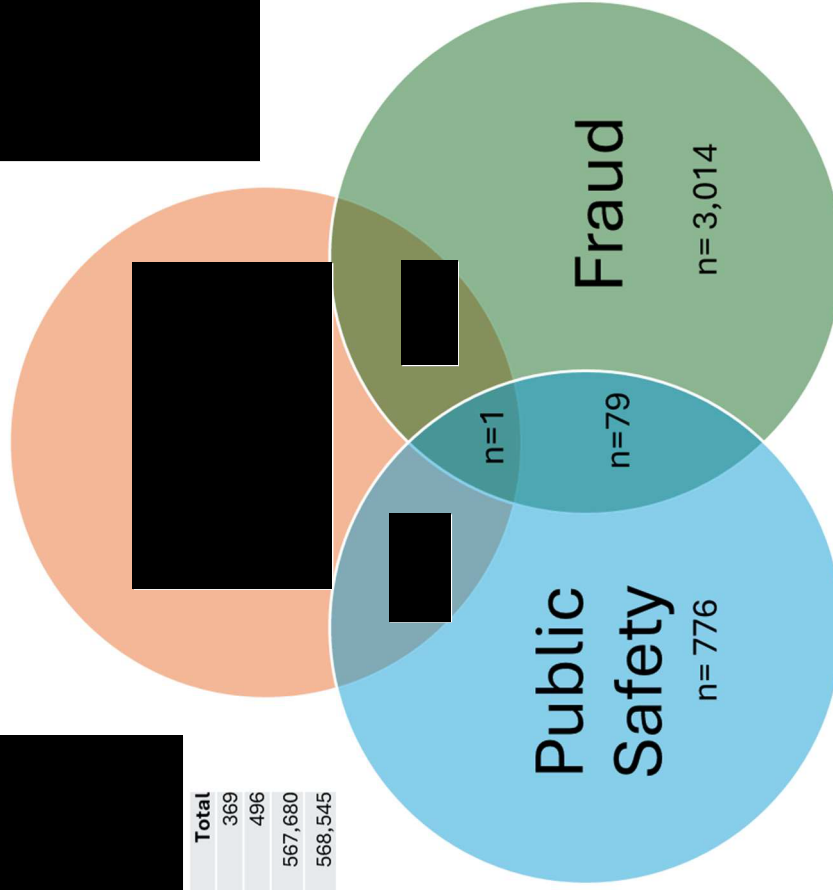
²² In the past year, plaintiffs challenging federal policies have often (but not always) prevailed on motions for emergency relief in the lower courts. Meanwhile, the Government has often (but not always) prevailed on the Supreme Court’s emergency docket. It has already

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.

Public Safety Records	Total
Egregious Public Safety (EPS)	369
Non-EPS	496
No Public Safety Record Information Found	567,680
Total	568,545

Fraud Record Determinations	Total
Fraud Found	2,327
Fraud Not Found	512
Inconclusive	273
No SOF Information Found	565,433
Total	568,545



Fraud + Public Safety(PS)*	Total
Fraud AND Public Safety Record Found	80

ALL	Total
A Number (A#) had a HIT for Fraud, PS, and NS	1

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FRAUD DETECTION AND NATIONAL SECURITY DIRECTORATE (FINS), Systems Information Division (SID) Disclaimer for all Special Protected Classes Information contained within this report may be subject to immigration specific confidentiality provisions, such as IRIRA § 404(b), IRCA Section 121(c), § C.F.R. § 208.6 (Disclosure of Asylum Information to Third Parties, which is applied to refugee information by policy), 8 U.S.C. § 1367, pertaining to certain victims of domestic abuse, and certain victims of qualifying criminal activities and severe forms of human trafficking, Legalization, 8 U.S.C. § 1255a(c)(4)-(5), Special Agriculture Worker (SAW), 8 U.S.C. §§ 11600(b)(5) and (6), LIFE Act, Pub. L. 106-553; Temporary Protected Status, 8 U.S.C. § 1254a(c)(6), other immigration specific limitations, and the terms and conditions as set forth in USCIS's System of Records Notices. This information may only be accessed by authorized personnel with a need to know the information and must be safeguarded. A violation of the confidentiality provisions in SAW (8 USC 11600(b)(5)(D)), Legalization (8 U.S.C. § 1255A (c)(5)(E)), or LIFE Legalization (Pub. L. 106-553 §1104(c)(5) (December 21 2000)) cases can result in a fine up to \$10,000. Violations of the confidentiality provisions of Section 1367(a)(2) are punishable by disciplinary action and a fine of up to \$5,000 per violation and may be assessed against anyone who shares any information relating to a protected individual in violation of the confidentiality provisions of Section 1367 (see 8 U.S.C. § 1367(c)). Onward disclosure request process Requests for authorization to disclose information are to be made through the DHS Single Point of Service Request for Information (SPS/RFI) process for referral to USCIS. To make a request for onward disclosure through the SPS/RFI process, an RFI form specifying the request for onward disclosure must be completed and submitted. The RFI form should include the information that would be shared, the entity with which it would be shared, and the purpose of the proposed disclosure, as well as the contact information of the requester. The RFI form can be obtained from the RFI Desk Office at uscis.rfi@dhs.gov. WARNING: this file is designated FOR OFFICIAL USE ONLY (FOUO) and contains DEPARTMENT OF HOMELAND SECURITY (DHS) U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS) information. This document is to be controlled, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need to know."		
	Date Data Request Received:	9/11/2025 Updated Request 10/29/2025
	Data Requested by Directorate Office and Division Branch and Employee Name:	OP&S for DHS Under Secretary of Strategy, Policy, and Plans, Rob Law.
	Data Retrieval Date:	9/11/2025 Same Data previously submitted to USCIS OP&S and added a Summary grouping by requested categories (FD-PS, FD-NS, PS+NS, ALL) on 10/29/2025.
	Data System(s) Searched:	Dan M. Summary added by Katie G.
	Data Quality Control Review By: SID:	NetGen, USCIS National Production Dataset (NPD)
		Gary P.
Notes:	Unique alien numbers were passed through FDNS-DS NetGen to identify if the alien number provided had an associated KST/Non-KST National Security Record or EPS/Non-EPS Public Safety Record indicating derogatory information. Only the primary entity on the FDNS Record was queried for each alien number. Please note the KST/Non-KST designation is based on FDNS-DS NetGen at the time the record was closed or the time when the data was queried. If one individual is the subject of multiple National Security investigations with both KST and Non-KST designations listed, KST will be reported. If one individual is the subject of multiple Public Safety investigations with both EPS and Non-EPS designations listed, EPS will be reported. Unique receipts were passed through FDNS-DS NetGen to identify associated Statement of Findings (SOF) where the receipt number was directly associated to the SOF. Summary tables for Record and SOF results are provided in the workbook.	
	Added a Summary grouping by requested categories (FD-PS, FD-NS, PS+NS, ALL) Definitions worksheet also included.	
Summary Analysis:		See summary tables for requested totals for Haiti report.

Note: Data provided above is based on previous metrics on worksheet entitled "Haiti".

* Public Safety data represents both Egregious Public Safety as well as non-Egregious Public Safety Categories.

Statement of Findings Determination on TPS Receipts Provided by TPS Country

Fraud Record Determinations	Total
Fraud Found	2,327
Fraud Not Found	512
Inconclusive	273
No SOF Information Found	565,433
Total	568,545

Notes: Receipt data provided were passed through FDNS-DS NexGen to identify if any receipt had an associated Statement of Findings.

Source: FDNS-NexGen as of 9-9-2025

TPS Alien Numbers Provided where the Alien Number is Associated with a Public Safety

Record and TPS Country

Public Safety Records	Total
Egregious Public Safety (EPS)	369
Non-EPS	496
No Public Safety Record Information Found	567,680
Total	568,545

Notes: Unique alien numbers were passed through FDNS-DS NexGen to identify if the alien number provided had an associated KST/Non-KST National Security Record or EPS/Non-EPS Public Safety Record indicating derogatory information. Only the primary entity on the FDNS Record was queried for each alien number. Please note the KST/Non-KST designation is based on FDNS-DS NexGen at the time the record was closed or the time when the data was queried. If one individual is the subject of multiple national security investigations with both KST and Non-KST designations listed, KST will be reported. If one individual is the subject of multiple Public Safety investigations with both EPS and Non-EPS designations listed, EPS will be reported. Unique receipts were passed through FDNS-DS NexGen to identify associated Statement of Findings (SOF) where the receipt number was directly associated to the SOF.

Source: FDNS-NexGen as of 8-7-2025

Notes: Unique alien numbers were passed through FDNS-DS NexGen to identify if the alien number provided had an associated KST/Non-KST National Security Record or EPS/Non-EPS Public Safety Record indicating derogatory information. Only the primary entity on the FDNS Record was queried for each alien number. Please note the KST/Non-KST designation is based on FDNS-DS NexGen at the time the record was closed or the time when the data was queried. If one individual is the subject of multiple national security investigations with both KST and Non-KST designations listed, KST will be reported. If one individual is the subject of multiple Public Safety investigations with both EPS and Non-EPS designations listed, EPS will be reported. Unique receipts were passed through FDNS-DS NexGen to identify associated Statement of Findings (SOF) where the receipt number was directly associated to the SOF.

Source: FDNS-NexGen as of 8-7-2025

Definitions	
Egregious Public Safety (EPS)	Any case where information indicates the alien is under investigation for, has been arrested for (without disposition), or has been convicted of any of a list of criminal concerns, including but not limited to murder, rape, sexual abuse of a minor, trafficking in firearms or explosives, or other crimes listed in the MOA with ICE, Policy Memorandum 110. Known or Suspected Terrorist is a category of individuals who have been nominated and accepted for placement in the Terrorist Screening Data Set (TSDS), are on the Terrorist Watch List, and have a specially- coded lookout posted in TECS, and/or CLASS, as used by DOS. A KST in TECS has a record number beginning with a "P" for person and ending in a "B10," and should indicate that the individual is a "Known Terrorist" or "Suspected Terrorist."
Known or Suspected Terrorist (KST)	Public Safety concerns that do not meet the threshold of Egregious Public Safety as defined above. A Known or Suspected Terrorist concern includes all other EPS concerns, regardless of source, including but not limited to: associates of KST(s), unindicted co-conspirators, terrorist organization members, persons involved with providing material support to terrorists or terrorist organizations, and agents of foreign governments.
Non-EPS	
Non-KST	

– Represents zero or rounds to 0.0

1) The report reflects the most up-to-date estimate available at the time the database is queried.

2) Counts may differ from those reported in previous periods due to system updates and post-adjudicative outcomes

4) Duplicates were removed based on record number, 4-digit number, SSN, and Name/DOB combination

4) Duplicates were removed based on receipt number, A-Number, SSN, and Name-DOB combination.

5) Country of Designation is based on Country of Citizenship or Country of Birth as of application.

6) Counts may include individuals that may have also been approved for lawful permanent resident (LPR) status.

8) As "Unknown," "Country of Denial" indicates current TPS holders whose Country of Citizenship and Current Country of Residence are unknown.

8) An "Unknown" "Country of Designation" indicates current TPS holders where their Country of Citizenship and Country of Birth is not one of the current TPS countries and not a former TPS designated country. These counts may include "stateless" individuals.

Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality
CLAIM3, ELIS, CIS2, NPD, queried 5/2025, PAERO07802.

OF association and not a known TSC-associated mutation. These results were subject to laboratory validation.

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Policy and Strategy
5900 Capital Gateway Drive
Camp Springs, MD 20588-0009



U.S. Citizenship
and Immigration
Services

October 1, 2025

**TEMPORARY PROTECTED STATUS (TPS)
POLICY CONSIDERATIONS: Haiti
(October 2025)¹**

Overview of Current Country Conditions

Haiti was first designated for Temporary Protected Status more than fifteen years ago on January 21, 2010 upon DHS finding extraordinary and temporary conditions existed that prevented Haitian nationals from returning in safety.² In July 2025, DHS determined that Haiti no longer meets TPS criteria and announced the termination of its designation, initially set for September 2, 2025.³ In spite of Section 244 of the Immigration and Nationality Act making Temporary Protected Status decisions not subject to judicial review, a July 2025 final ruling delayed the effective date of the termination to no earlier than February 3, 2026.⁴

While country conditions in Haiti may still be challenging, as described in the reports supporting the Secretary's June 4, 2025, decision to terminate TPS for Haiti, there have been improvements.

Haiti continues to experience gang violence. Gangs, some linked to political elites, have amassed control over 90% of Port-au-Prince and key regions in Haiti, weakening state authority and blocking access routes to the capital.^{5,6} However, there are some areas of improvement in the transportation and governance that offer signs of optimism.⁷ Domestic flights have resumed at Haiti's main international airport, though international flights are still suspended and the Federal

¹ The reporting period for this report is January 1, 2025, to September 30, 2025.

² See *Designation of Haiti for Temporary Protected Status*, 75 FR 3476 (Jan. 12, 2010).

³ See *Termination of the Designation of Haiti for Temporary Protected Status*, 90 FR 28760 (Jul. 1, 2025).

⁴ *Haitian Evangelical Clergy Ass'n v. Trump*, No. 25-cv-1464 (E.D.N.Y.) (July 15, 2025)

⁵ UN News, Top United Nations Officials urge Swift Global Action as Haiti Nears Collapse (Jul. 2, 2025), available at <https://press.un.org/en/2025/sc16111.doc.htm>

⁶ UN Security Council, Report of the Secretary-General on Haiti (Jun. 27, 2025,) available at https://digitallibrary.un.org/record/4084794/files/S_2025_418-EN.pdf

⁷ Juhakenson Blaise, Haiti registers a whopping 6M voters amid mass displacements, officials say, *The Haitian Times* (Sep. 12, 2025), available at <https://haitiantimes.com/2025/09/12/haiti-oni-registers-millions-voters/>

Aviation Administration extended its ban on U.S. commercial flights to Port-au-Prince until March 2026.^{8,9} Despite security-related challenges, the National Identification Office reported that 6.3 million Haitians of voting age are registered to vote in the upcoming 2026 elections, which will be the first the country has held since 2016.^{10,11,12}

Beyond country conditions, also of critical importance is the consideration of visa overstays, fraud, and public safety threats in determining whether it is in the national interest for Haiti's Temporary Protected Status designation to be extended.

Temporary Protected Status Designation Time Frames:

- Initial Temporary Protected Status designation period: January 21, 2010, through July 22, 2011¹³
- Temporary Protected Status extension and new designation periods:
 - July 23, 2011, through January 22, 2013¹⁴
 - January 23, 2013, through July 22, 2014¹⁵
 - July 23, 2014, through January 22, 2016¹⁶
 - January 23, 2016, through July 22, 2017¹⁷
 - July 23, 2017, through January 22, 2018¹⁸
- TPS Recission (litigated after a separate district court judge ignored the clear language of INA 244): January 18, 2018¹⁹
- New designation of Haiti for Temporary Protected Status: August 3, 2021, through February 3, 2023²⁰
- Temporary Protected Status extension and new designation periods:
 - February 4, 2023, through August 3, 2024²¹
 - August 4, 2024, through February 3, 2026²²

⁸ UN Security Council, Report of the Secretary-General on Haiti (Jun. 27, 2025,) available at https://digitallibrary.un.org/record/4084794/files/S_2025_418-EN.pdf

⁹ AP News, FAA extends ban on US commercial flights to Haiti's capital because of risk from gangs (Sep. 8, 2025,) available at <https://apnews.com/article/faa-ban-haiti-capital-commercial-flights-march-356bee7f9653220194b6fc65978f7de5>

¹⁰ Juhakenson Blaise, Haiti registers a whopping 6M voters amid mass displacements, officials say, The Haitian Times (Sep. 12, 2025), available at <https://haitiantimes.com/2025/09/12/haiti-oni-registers-millions-voters/>

¹¹ *Id.*

¹² *Id.*

¹³ See *Designation of Haiti for Temporary Protected Status*, [75 FR 3476](#) (Jan. 12, 2010).

¹⁴ See *Extension and Redesignation of Haiti for Temporary Protected Status*, [76 FR 29000](#) (May 19, 2011).

¹⁵ See *Extension of the Designation of Haiti for Temporary Protected Status*, [77 FR 59943](#) (Oct. 01, 2012)

¹⁶ See *Extension of the Designation of Haiti for Temporary Protected Status*, [79 FR 11808](#) (Mar. 3, 2014)

¹⁷ See *Extension of the Designation of Haiti for Temporary Protected Status*, [80 FR 51582](#) (Aug. 25, 2025)

¹⁸ See *Extension of the Designation of Haiti for Temporary Protected Status*, [82 FR 23830](#) (May 24, 2017)

¹⁹ Haiti is one of the countries with TPS litigation. As such, the rescission of the TPS designation in 2019 had not gone into effect prior to the redesignation in 2021. See *Termination of the Designation of Haiti for Temporary Protected Status*, [83 FR 2648](#) (Jan. 18, 2018).

²⁰ See *Designation of Haiti for Temporary Protected Status*, [86 FR 41863](#) (Aug. 3, 2021)

²¹ See *Extension and Redesignation of Haiti for Temporary Protected Status*, [88 FR 5022](#) (Jan. 26, 2023)

²² See *Extension and Redesignation of Haiti for Temporary Protected Status*, [89 FR 54484](#) (Jul. 1, 2024)

- Partial Vacatur of 2024 Temporary Protected Status Decision for Haiti to expire on August 3, 2025, instead of February 3, 2026²³
- Termination of the Designation of Haiti for Temporary Protected Status effective September 2, 2025²⁴

Reason(s) for Initial Temporary Protected Status Designation for Haiti:

Haiti was initially designated for Temporary Protected Status upon finding extraordinary and temporary conditions that prevented Haitian nationals (and aliens having no nationality who last habitually resided in Haiti) from returning safely.²⁵ Haiti's TPS designation was based on a variety of factors such as a natural disaster, destruction of critical infrastructure, and humanitarian challenges.²⁶

Historical Reason(s) for Extension and New Designation of Temporary Protected Status for Haiti:

DHS extended and newly designated Haiti for Temporary Protected Status in 2011, 2013, 2014, 2016, and 2017.^{27,28,29,30,31} According to the published notices, DHS determined there continued to be extraordinary and temporary conditions resulting from the effects of the January 2010 earthquake.

In 2018, DHS determined that the conditions for Haiti's designation on the basis of extraordinary and temporary conditions relating to the 2010 earthquake were no longer supported, which statutorily compelled the Secretary to terminate the designation.³² While the termination of Haiti's Temporary Protected Status was challenged in the courts even though the statute prohibits judicial review, the Temporary Protected Status designation and related benefits remained.

In 2021, DHS newly designated Haiti for Temporary Protected Status based on extraordinary and temporary conditions, citing a deteriorating political crisis, violence, and human rights abuses.³³ DHS extended and newly designated Haiti for Temporary Protected Status again in 2023 and 2024 based on extraordinary and temporary conditions, citing similar reasoning and conditions to what was included in the 2021 designation.^{34,35}

On July 1, 2025, DHS published the Secretary's determination that termination of Temporary

²³See *Partial Vacatur of 2024 Temporary Protected Status Decision for Haiti*, [90 FR 10511](#) (Feb. 24, 2025)

²⁴See *Termination of the Designation of Haiti for Temporary Protected Status*, [90 FR 28760](#), (Jul. 1, 2025)

²⁵See *Designation of Haiti for Temporary Protected Status*, [75 FR 3476](#) (Jan. 12, 2010).

²⁶See *Designation of Haiti for Temporary Protected Status*, [75 FR 3476](#) (Jan. 12, 2010).

²⁷See *Extension and Redesignation of Haiti for Temporary Protected Status*, [76 FR 29000](#) (May 19, 2011).

²⁸See *Designation of Haiti for Temporary Protected Status*, [77 FR 59943](#) (Oct. 1, 2012).

²⁹See *Extension of the Re-Designation Period for Haiti Temporary Protected Status*, [79 FR 25141](#) (May 2, 2014).

³⁰See *Extension of the Designation of Haiti for Temporary Protected Status*, [80 FR 51582](#) (Aug. 25, 2015).

³¹See *Extension of the Designation of Haiti for Temporary Protected Status*, [82 FR 23830](#) (May 24, 2017).

³²See *Termination of the Designation of Haiti for Temporary Protected Status*, [83 FR 2648](#) (Jan. 18, 2018).

³³See *Designation of Haiti for Temporary Protected Status*, [86 FR 41863](#) (Aug. 3, 2021).

³⁴See *Extension and Redesignation of Haiti for Temporary Protected Status*, [88 FR 5022](#) (Jan. 26, 2023).

³⁵See *Extension and Redesignation of Haiti for Temporary Protected Status*, [89 FR 54484](#) (Jul. 1, 2024).

Protected Status for Haiti is required because it is contrary to the national interest for Haitian nationals (or aliens having no nationality who last habitually resided in Haiti) to remain temporarily in the United States, effective September 2, 2025.³⁶ In July 2025, a final ruling established that the termination of Temporary Protected Status for Haiti would take effect no earlier than February 3, 2026.³⁷

I. Extraordinary and Temporary Conditions

1. Has the foreign state continued to experience extraordinary and temporary conditions that prevent nationals of the state from returning to the state in safety?

As discussed in Attachment B, Country of Origin Information Considerations, Haiti continues to experience challenges related to gang violence. Despite these concerns, Haiti has made important development gains in healthcare access through international humanitarian efforts to include safe drinking water and cholera treatment centers.^{38,39} The United States has provided significant security assistance to Haiti, including \$40 million for the Multinational Security Support mission and Haitian National Police, while the Haitian government has committed substantial investments to strengthen security, governance, and the judicial system.^{40,41} In response to escalating gang violence, the U.N. Security Council authorized the transition of the Kenya-led Multinational Security Support mission into a Gang Suppression Force with expanded authority to counter criminal gangs, working alongside Haitian security forces.^{42,43} Additionally, Haiti is preparing for its first general elections since 2016, scheduled for November 2025, and has proposed a new draft constitution aimed at restructuring governance and consolidating executive power.^{44,45}

2. What are relevant national interest considerations for the TPS for Haiti designation?

³⁶ See *Designation of Haiti for Temporary Protected Status*, 90 FR 28760 (Jul. 1, 2025).

³⁷ *Haitian Evangelical Clergy Ass'n v. Trump*, No. 25-cv-1464 (E.D.N.Y.) (July 15, 2025)

³⁸ Jacqueline Charles, UN directs \$9 million in emergency funds to Haiti amid worsening humanitarian crisis, *Miami Herald* (Sep. 10, 2025), available at <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article312042903.html>

³⁹ See *Designation of Haiti for Temporary Protected Status*, 90 FR 28760 (Jul. 1, 2025).

⁴⁰ Karla Rios, Haiti in Crisis: Developments Related to the Multinational Security Support Mission, US Congressional Research Service: Foreign Affairs Division (Jun. 3, 2025), available at <https://www.congress.gov/crs-product/IN12331>

⁴¹ Security Council, Haiti 'Running Out of Time', Delegate Warns Security Council, Noting Possible Fall of Capital to Gangs Cannot Be Allowed, United Nations (Apr. 21, 2025), available at <https://press.un.org/en/2025/sc16047.doc.htm>

⁴² United Nations, Security Council Authorizes Transition of Multinational Security Support Mission in Haiti to 'Gang Suppression Force' (Sep. 30, 2025), available at <https://press.un.org/en/2025/sc16185.doc.htm>

⁴³ U.S. Department of State, On the Next Steps to Restoring Security in Haiti (Oct. 1, 2025), available at <https://www.state.gov/releases/office-of-the-spokesperson/2025/10/on-the-next-steps-to-restoring-security-in-haiti/>

⁴⁴ Sarah Morland, Haiti leader says long-awaited general elections penned for November, Jan. 25, 2025, *Reuters*, available at <https://www.reuters.com/world/americas/haiti-leader-says-general-elections-planned-november-2025-01-29/>

⁴⁵ Juhakenson Blaise, Haitians reject draft constitution over concerns of fragmentation and weakened democracy (Jun. 9, 2025), available at <https://haitiantimes.com/2025/06/09/new-constitution-draft-rejection/>

DHS records indicate some members of the Haiti Temporary Protected Status population have been under administrative investigation for risk to national security or public safety, or for attempting to obtain immigration benefits through fraud or misrepresentation. As of September 17, 2025, DHS data shows approximately 50% of Haiti Temporary Protected Status beneficiaries or applicants have at least one TECS hit in their immigration benefit request history (which could span over many years and multiple benefit request types), indicating potential issues that required further investigation.^{46,47} It must be noted that a TECS hit does not always lead to derogatory findings or adverse adjudicative decisions. As of September 9, 2025, Fraud Detection and National Security-Data System NexGen data also shows approximately 2,327 of the Haiti Temporary Protected Status population (including current beneficiaries and applicants with pending applications) has a record where fraud was found, 512 had a record which was investigated but fraud was not found, and 273 had a record which was inconclusive regarding fraud.⁴⁸ NextGen data also shows 865 aliens of the Haiti Temporary Protected Status population (including current beneficiaries and applicants with pending applications) had Public Safety records, of which 369 had Egregious Public Safety (EPS)⁴⁹ records, and 51 had National Security Related Information (NSRI) records.⁵⁰ This information should be taken into consideration when evaluating whether a Temporary Protected Status decision for Haiti aligns with the national interest of the United States.

TPS as a Likely “Pull Factor” Driving Haiti’s Irregular Migration to the U.S.

Challenges such as poverty, chronic political instability, and devastating natural disasters have historically driven Haitian migration.⁵¹ There is empirical evidence to suggest that Temporary Protected Status designations—particularly repeated new designations—contribute as a pull factor for illegal immigration, especially when combined with other factors, such as broader immigration policies or perceptions of leniency in enforcement.⁵² As of 2022, approximately 731,000 Haitian immigrants resided in the United States, comprising the country’s 15th largest

⁴⁶ TECS is an information-sharing platform which can assist authorized users to access different databases to identify individuals who pose a risk to national security or public safety, and individuals attempting to obtain immigration benefits through fraud or misrepresentation. A TECS hit does not always lead to derogatory findings or adverse adjudicative decisions for a particular person, particularly in long assessment periods and/or in populations that have a high degree of name similarity.

⁴⁷ USCIS Internal Data, Office of Policy and Strategy, TECS data, TPS Haiti as of Sept. 17, 2025.

⁴⁸ USCIS Internal Data, Fraud Detection and National Security Directorate, FDNS-DS NexGen data, TPS Haiti, as of Sept. 9, 2025.

⁴⁹ The *Memorandum of Agreement Between USCIS and ICE Regarding the Referral of Immigration Benefit Fraud and Public Safety Cases*, Dec.2020 (USCIS-ICE MOA) defines an EPS case as one where an unlawful immigrant is under investigation or arrest or was convicted of certain criminal acts. These criminal acts include those defined in INA 101(a)(43) such as murder, rape, or sexual abuse of a minor, illicit trafficking of controlled substances, illicit trafficking in firearms or destructive devices, or crimes of violence with a penalty of at least 1 year.

⁵⁰ USCIS Internal Data, Fraud Detection and National Security Directorate, FDNS-DS NexGen data, TPS Haiti, as of Sept. 9, 2025.

⁵¹ Diana Roy and Rocio Cara Labrador, *Haiti’s Troubled Path to Development*, Council on Foreign Relations (Jun. 25, 2024), available at <https://www.cfr.org/backgrounder/haitis-troubled-path-development>

⁵² Migration Policy Institute, *Haitian Migration through the Americas: A Decade in the Making*, (Sept. 30, 2021), <https://www.migrationpolicy.org/article/haitian-migration-through-americas>

foreign-born population.⁵³ This is particularly noteworthy since Haiti's population is 11.8 million, ranking 83rd in the world.^{54,55} For several years, there has been a significant increase in the number of Haitians arriving in the United States unlawfully, particularly via land. U.S. authorities encountered Haitians at the U.S.-Mexico border approximately 53,900 times in Fiscal Year 2022 and more than 76,100 times in Fiscal Year 2023.⁵⁶ From 2019 through 2021, Haitians were the top nationality for migrants crossing the dangerous Darien Gap between Colombia and Panama, and they remained among the three largest groups in 2022 and 2023.⁵⁷ Additionally, the U.S. Coast Guard interdicted nearly 7,200 Haitians at sea in Fiscal Year 2022 and 5,100 in the first 11 months of Fiscal Year 2023, marking dramatic increases over previous years.⁵⁸ Since the beginning of Fiscal Year 2025, U.S. Coast Guard crews repatriated 603 aliens to Haiti, compared to 857 aliens to Haiti in Fiscal Year 2024.⁵⁹

Unchecked surges of aliens into the United States counter the national interests of the United States, as they can perpetuate unsafe migration practices and challenge the integrity of the U.S. immigration system by overwhelming immigration officers and enforcement mechanisms.

Recent Travel Trends

As noted in the Presidential Proclamation titled *Restricting the Entry of Foreign Nationals to Protect the United States From Foreign Terrorists and Other National Security and Public Safety Threats*, (2025 Presidential Proclamation)⁶⁰ the United States suspends or restricts visa issuance and entry for nationals of certain countries, including Haiti, based on specific criteria.⁶¹ Haiti's lack of a centralized authority capable of providing adequate law enforcement information and ensuring effective dissemination of such data has been identified as a key factor in these restrictions.⁶² This deficiency raises concerns about the ability to verify if Haitian nationals pose risks to U.S. national security.

⁵³ Beatrice Dain & Jeanne Batalova, Haitian Immigrants in the United States, (Nov. 8, 2023), Migration Policy Institute, available at <https://www.migrationpolicy.org/article/haitian-immigrants-united-states-2022>

⁵⁴ CIA World Factbook, Haiti, Sept. 12, 2025, available at <https://www.cia.gov/the-world-factbook/countries/haiti/#people-and-society>

⁵⁵ Beatrice Dain & Jeanne Batalova, Haitian Immigrants in the United States, (Nov. 8, 2023), Migration Policy Institute, available at <https://www.migrationpolicy.org/article/haitian-immigrants-united-states-2022>

⁵⁶ Beatrice Dain & Jeanne Batalova, Haitian Immigrants in the United States, (Nov. 8, 2023), Migration Policy Institute, available at <https://www.migrationpolicy.org/article/haitian-immigrants-united-states-2022>

⁵⁷ Beatrice Dain & Jeanne Batalova, Haitian Immigrants in the United States, (Nov. 8, 2023), Migration Policy Institute, available at <https://www.migrationpolicy.org/article/haitian-immigrants-united-states-2022>

⁵⁸ Beatrice Dain & Jeanne Batalova, Haitian Immigrants in the United States, (Nov. 8, 2023), Migration Policy Institute, <https://www.migrationpolicy.org/article/haitian-immigrants-united-states-2022>

⁵⁹ U.S. Coast Guard News, Coast Guard repatriates 191 aliens to Haiti (Sept. 2, 2025), available at <https://www.news.uscg.mil/Press-Releases/Article/4291448/coast-guard-repatriates-191-aliens-to-haiti/>

⁶⁰ 90 Fed. Reg. 24497 (June 10, 2025).

⁶¹ U.S. Embassy in Haiti, Immigrant Visas, available at <https://ht.usembassy.gov/immigrant-visas/> (last visited Sep. 22, 2025)

⁶² See *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).

The number of Nonimmigrant Visas (NIVs) issued by the Department of State to Haitian nationals has decreased since Fiscal Year 2018.⁶³ In Fiscal Year 2018, the average monthly number of Nonimmigrant Visas issued to Haitian nationals was 2,370.⁶⁴ The number decreased to 1,865 in 2019, to 996 in 2020, and finally to 715 in 2021 before increasing to 1,190 in 2022.⁶⁵ From Fiscal Year 2022 to 2023, the average monthly NIV issuances again decreased to 880 and subsequently to 662 in 2024 before increasing again to 1,224 by May 2025.⁶⁶ Although there are significant fluctuations in the average number of NIV issuances across the past eight years, ultimately the average number of monthly NIV issuances has declined by more than 50%. This downward trend in NIV issuance could be attributed to several factors, for example, shifts in U.S. immigration policies including stricter visa eligibility requirements; operational disruptions such as staffing shortages, backlogs, or changes in consular operations; the COVID-19 pandemic could have played a significant role in the sharp decline particularly in 2020 and 2021 due to travel restrictions, embassy closures, and reduced demand for travel; economic and political instability may have influenced the demand for visas as well as the ability of certain Haitians to meet visa requirements; enhanced scrutiny or vetting measures to prevent visa fraud and misuse, etc. Without more definitive or conclusive evidence, it is difficult to assess the exact reason(s) for this decline.

DHS records indicate that among all Advance Parole Document requests made by Haitian nationals in the United States, the percentage applying for travel authorization to Haiti varies, with an average of 7% between 2019 and 2025.⁶⁷ While the overall percentage of the Haitian nonimmigrant population applying for Advanced Parole remains relatively small, there were notable spikes to 18.6% in 2022 and to 14.8% in 2025.⁶⁸ The 2025 increase may reflect improved conditions in Haiti, conditions otherwise necessitating travel, or other factors, such as individuals seeking lawful entry to facilitate other immigration benefits.

Furthermore, the 2025 Proclamation highlighted the need to address terrorism-related and public-safety risks, as well as concerns about nationals from certain countries overstaying their visas,

⁶³ US Department of State, Monthly Nonimmigrant Visa Issuance Statistics, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics/monthly-nonimmigrant-visa-issuances.html> (last updated May 2025), synthesized by USCIS Office of Policy and Strategy, as of Sept. 16, 2025

⁶⁴ US Department of State, Monthly Nonimmigrant Visa Issuance Statistics, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics/monthly-nonimmigrant-visa-issuances.html> (last updated May 2025), synthesized by USCIS Office of Policy and Strategy, as of Sept. 16, 2025

⁶⁵ US Department of State Monthly Nonimmigrant Visa Issuance Statistics, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics/monthly-nonimmigrant-visa-issuances.html> (last updated May 2025), synthesized by USCIS Office of Policy and Strategy, as of Sept. 16, 2025

⁶⁶ US Department of State Monthly Nonimmigrant Visa Issuance Statistics, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics/monthly-nonimmigrant-visa-issuances.html> (last updated May 2025), synthesized by USCIS Office of Policy and Strategy, as of Sept. 16, 2025

⁶⁷ USCIS Internal Data, Office of Performance and Quality, U.S. Citizenship and Immigration Services

⁶⁸ USCIS Internal Data, Office of Performance and Quality, U.S. Citizenship and Immigration Services

which could strain immigration and law enforcement resources.⁶⁹ 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. President Trump imposed conditional restrictions and limitations on the entry of certain foreign nationals from 19 countries, including Haiti.⁷⁰ According to the Fiscal Year 2024 Department of Homeland Security Entry/Exit Overstay Report, 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%.⁷¹ 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 over six times higher for student and exchange visitors.⁷² Haiti's visa overstay rates consistently remain very high compared to other nations, reflecting ongoing challenges in compliance with U.S. visa regulations. Elevated overstay rates present potential risks to U.S. national security and public safety, as individuals who overstay their visas may be harder to locate and monitor, increasing vulnerabilities within immigration enforcement systems.

II. Additional Considerations

This section highlights certain incremental improvements in Haiti's governance and current conditions.

Safety and Security

On February 6, 2025, Secretary of State Rubio stated that the United States “will continue to support [a Multinational Security Support mission in Haiti]” and that he had issued a waiver to allow approximately \$40 million of security assistance to flow to that mission and the Haitian National Police amid the Trump Administration's foreign assistance “pause.”⁷³ In March 2025, the Haitian Government announced a historic investment to strengthen security and governance, including 236 million USD for the national police, 5.35 million USD for strategic equipment, and 33.6 million USD for the modernizing the armed forces.⁷⁴ The initiatives seek to restore authority, protect citizens, ensure justice, counter impunity, revitalize the judicial system, and

⁶⁹ See 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).

⁷⁰ *Id.*

⁷¹ U.S. Customs and Border Protection, Entry/Exit Overstay Report, Department of Homeland Security (Jul. 16, 2025), available at https://www.dhs.gov/sites/default/files/2025-08/25_0826_cbp_entry-exit-overstay-report-fiscal-year-2024.pdf.

⁷² U.S. Customs and Border Protection, Entry/Exit Overstay Report, Department of Homeland Security (Jul. 16, 2025), available at https://www.dhs.gov/sites/default/files/2025-08/25_0826_cbp_entry-exit-overstay-report-fiscal-year-2024.pdf.

⁷³ Karla Rios, Haiti in Crisis: Developments Related to the Multinational Security Support Mission, US Congressional Research Service: Foreign Affairs Division (Jun. 3, 2025), available at <https://www.congress.gov/crs-product/IN12331>

⁷⁴ Meetings Coverage Security Council, Haiti ‘Running Out of Time’, Delegate Warns Security Council, Noting Possible Fall of Capital to Gangs Cannot Be Allowed, United Nations (Apr. 21, 2025), available at <https://press.un.org/en/2025/sc16047.doc.htm>

restore trust in public institutions.⁷⁵

In November 2024, gang violence forced the temporary closure of Haiti's main international airport for a second time that year.^{76,77} While the airport reopened to commercial flights in December, domestic flights did not resume until June 2025.⁷⁸ The resumption of domestic flights marks a rare success in Haiti's fight against gangs that control at least 85% of Port-au-Prince.⁷⁹ International flights have still not resumed and the Federal Aviation Administration is extending its ban on U.S. commercial flights to Port-au-Prince until March 2026.^{80,81}

In May 2025, the Trump Administration designated the Viv Ansanm gang coalition and Gran Grif gang as Foreign Terrorist Organizations and Specially Designated Global Terrorists.⁸² During Senate testimony, Secretary Rubio proposed that the Organization of American States take a larger role in Haiti, potentially coordinating a security mission, while emphasizing that the Multinational Security Support alone is insufficient.⁸³ The Administration expressed readiness to support the Organization of American States but stressed the importance of regional partner cooperation.⁸⁴

In August 2025, the United States proposed a significant shift in the ongoing effort to help Haiti wrestle back territory from criminal armed gangs by rebranding the current Kenya-led Multinational Security Support mission into a more aggressive Gang Suppression Force with a new mandate, more police and expanded autonomy from the Haitian police.⁸⁵ The United States

⁷⁵ Meetings Coverage Security Council, Haiti 'Running Out of Time', Delegate Warns Security Council, Noting Possible Fall of Capital to Gangs Cannot Be Allowed, United Nations (Apr. 21, 2025), available at <https://press.un.org/en/2025/sc16047.doc.htm>

⁷⁶ Danica Coto, Haiti's main airport reopens nearly 3 months after gang violence forced it closed, (May 20, 2024), AP News, <https://apnews.com/article/haiti-airport-reopening-portauprince-gangs-violence>

⁷⁷ Evens Sanon & Megan Jenetsky, Haiti's main airport shuts down as gang violence surges and a new prime minister is sworn in, (Nov. 11, 2024), AP News, available at <https://apnews.com/article/haiti-airport-gang-violence>

⁷⁸ Evens Sanon, Haiti's first domestic flight takes off since gangs halted commercial air travel last year, AP News (Jun. 12, 2025), available at <https://apnews.com/article/haiti-airport-flight-reopens-first-gangs>

⁷⁹ Evens Sanon, Haiti's first domestic flight takes off since gangs halted commercial air travel last year, AP News (Jun. 12, 2025), available at <https://apnews.com/article/haiti-airport-flight-reopens-first-gangs>

⁸⁰ UN Security Council, Report of the Secretary-General on Haiti (Jun. 27, 2025,) available at https://digitallibrary.un.org/record/4084794/files/S_2025_418-EN.pdf

⁸¹ AP News, FAA extends ban on US commercial flights to Haiti's capital because of risk from gangs (Sep. 8, 2025,) available at <https://apnews.com/article/faa-ban-haiti-capital-commercial-flights-march-356bee7f9653220194b6fc65978f7de5>

⁸² Karla Rios, Haiti in Crisis: Developments Related to the Multinational Security Support Mission, US Congressional Research Service: Foreign Affairs Division (Jun. 3, 2025), available at <https://www.congress.gov/crs-product/IN12331>

⁸³ Karla Rios, Haiti in Crisis: Developments Related to the Multinational Security Support Mission, US Congressional Research Service: Foreign Affairs Division (Jun. 3, 2025), available at <https://www.congress.gov/crs-product/IN12331>

⁸⁴ Karla Rios, Haiti in Crisis: Developments Related to the Multinational Security Support Mission, US Congressional Research Service: Foreign Affairs Division (Jun. 3, 2025), available at <https://www.congress.gov/crs-product/IN12331>

⁸⁵ Jacqueline Charles, 'Gang Suppression Force' to replace Haiti's Kenya-led mission under U.S. proposal, Miami Herald, (Aug. 31, 2025), available at <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article311889116.html>

and Panama are proposing a United Nations Security Council resolution to expand the Kenya-led multinational force in Haiti into a 5,550-member force with authority to detain gang members, aiming to address escalating violence.⁸⁶ The draft resolution expresses appreciation towards Kenya but emphasizes the need for a larger force due to the rapid growth of gang activity.⁸⁷ In September 2025, the United Nations Security Council authorized the transition of the Multinational Security Support mission to a Gang Suppression Force for an initial period of 12 months.^{88,89} The Gang Suppression Force is expected to work together with the Haitian National Police and Armed Forces to counter gangs that threaten the civilian population and undermine Haitian institutions.⁹⁰

National Governance

Elections for roles in the federal government are expected to unfold in three stages, starting in November 2025 and culminating in a presidential race in February 2026.⁹¹ General elections are due to be held in Haiti on November 15, 2025, the first elections held in the country since 2016.^{92,93} The National Identification Office reported that 6.3 million Haitians of voting age are registered to vote in the upcoming 2026 elections.⁹⁴

Haiti's latest draft constitution was submitted on May 21, 2025 to the Transitional Presidential Council (CPT) by the Steering Committee of the National Conference.⁹⁵ Key changes proposed in the draft include: the elimination of local managerial structures— Communal Section Administrative Council (CASEC) and the Assembly of the Communal Section (ASEC)— in favor of elected departmental governors who serve for five-year terms (with the possibility of

⁸⁶ Edith M. Lederer, US and Panama propose new force of 5,550 in Haiti with the power to detain gang suspect, Associated Press (Sep. 4, 2025), available at <https://apnews.com/article/un-haiti-kenya-panama-1255acdacddb8df502c19e9695aac4>

⁸⁷ Edith M. Lederer, US and Panama propose new force of 5,550 in Haiti with the power to detain gang suspect, Associated Press (Sep. 4, 2025), available at <https://apnews.com/article/un-haiti-kenya-panama-1255acdacddb8df502c19e9695aac4>

⁸⁸ United Nations, Security Council Authorizes Transition of Multinational Security Support Mission in Haiti to 'Gang Suppression Force' (Sep. 30, 2025), available at <https://press.un.org/en/2025/sc16185.doc.htm>

⁸⁹ U.S. Department of State, On the Next Steps to Restoring Security in Haiti (Oct. 1, 2025), available at <https://www.state.gov/releases/office-of-the-spokesperson/2025/10/on-the-next-steps-to-restoring-security-in-haiti/>

⁹⁰ United Nations, Security Council Authorizes Transition of Multinational Security Support Mission in Haiti to 'Gang Suppression Force' (Sep. 30, 2025), available at <https://press.un.org/en/2025/sc16185.doc.htm>

⁹¹ Al Jazeera, Haiti names new head of transitional council ahead of scheduled elections (Aug. 7, 2025), available at <https://www.aljazeera.com/news/2025/8/7/haiti-names-new-head-of-transitional-council-ahead-of-scheduled-elections>

⁹² Sarah Morland, Haiti leader says long-awaited general elections penned for November, (Jan. 25, 2025), Reuters, available at <https://www.reuters.com/world/americas/haiti-leader-says-general-elections-planned-november-2025-01-29/>

⁹³ Juhakenson Blaise, Haiti registers a whopping 6M voters amid mass displacements, officials say, The Haitian Times (Sep. 12, 2025), available at <https://haitiantimes.com/2025/09/12/haiti-oni-registers-millions-voters/>

⁹⁴ Juhakenson Blaise, Haiti registers a whopping 6M voters amid mass displacements, officials say, The Haitian Times (Sep. 12, 2025), available at <https://haitiantimes.com/2025/09/12/haiti-oni-registers-millions-voters/>

⁹⁵ Juhakenson Blaise, Haitians reject draft constitution over concerns of fragmentation and weakened democracy The Haitian Times, (Jun. 9, 2025), available at <https://haitiantimes.com/2025/06/09/new-constitution-draft-rejection/>

reelection), the consolidation of executive power under the president, and the prioritization of Haitian citizenship for individuals holding public office.⁹⁶

The transitional presidential council is considered to be widely unpopular, and its nine members have been rotating into the leadership position.⁹⁷ In August 2025, Laurent Saint-Cyr was named as the head of the transitional council ahead of the elections.⁹⁸ He is meant to be the final head of the council before it completes its task of holding a presidential election in February 2026.⁹⁹ At that point, Saint-Cyr and the council are expected to hand off power to the election's victor.¹⁰⁰

Access to Healthcare

While it is arguable that access to healthcare is not directly pertinent to the statutory consideration of whether extraordinary and temporary conditions are present that prevent nationals from returning in safety, because access to healthcare was considered by the prior Administration as a basis for establishing a new TPS designation, USCIS OP&S has reviewed conditions surrounding access to healthcare. There have been noticeable incremental improvements in international humanitarian efforts to increase access to healthcare in Haiti. The United Nations (UN) announced \$9 million in emergency funds to Haiti to help the UN and its partners step up life-saving support to the most vulnerable, including those who have fled their homes and host communities in the Center and Artibonite regions.¹⁰¹ L'Hôpital Universitaire La Paix in Port-au-Prince is the only public hospital functioning in a capital largely controlled armed gangs.^{102,103}

In April 2025, UNICEF has reached more than 8,500 displaced individuals and members of the host community through multisectoral interventions, including safe drinking water distribution via water-trucking and provision of household water treatment products; free primary health care, deworming, and vaccination through mobile clinics; sensitization and behavior change

⁹⁶ Juhakenson Blaise, Haitians reject draft constitution over concerns of fragmentation and weakened democracy The Haitian Times, (Jun. 9, 2025), available at <https://haitiantimes.com/2025/06/09/new-constitution-draft-rejection/>

⁹⁷ Al Jazeera, Haiti names new head of transitional council ahead of scheduled elections (Aug. 7, 2025), available at <https://www.aljazeera.com/news/2025/8/7/haiti-names-new-head-of-transitional-council-ahead-of-scheduled-elections>

⁹⁸ Al Jazeera, Haiti names new head of transitional council ahead of scheduled elections (Aug. 7, 2025), available at <https://www.aljazeera.com/news/2025/8/7/haiti-names-new-head-of-transitional-council-ahead-of-scheduled-elections>

⁹⁹ Al Jazeera, Haiti names new head of transitional council ahead of scheduled elections (Aug. 7, 2025), available at <https://www.aljazeera.com/news/2025/8/7/haiti-names-new-head-of-transitional-council-ahead-of-scheduled-elections>

¹⁰⁰ Al Jazeera, Haiti names new head of transitional council ahead of scheduled elections (Aug. 7, 2025), available at <https://www.aljazeera.com/news/2025/8/7/haiti-names-new-head-of-transitional-council-ahead-of-scheduled-elections>

¹⁰¹ Jacqueline Charles, UN directs \$9 million in emergency funds to Haiti amid worsening humanitarian crisis, Miami Herald (Sep. 10, 2025), available at <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article312042903.html>

¹⁰² Jacqueline Charles, UN directs \$9 million in emergency funds to Haiti amid worsening humanitarian crisis, Miami Herald (Sep. 10, 2025), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article312042903.html>

¹⁰³ Jacqueline Charles, UN directs \$9 million in emergency funds to Haiti amid worsening humanitarian crisis, Miami Herald (Sep. 10, 2025), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article312042903.html>

activities to prevent malnutrition; as well as educational plans, recreational activities, and psychosocial support for children.¹⁰⁴

Although the number of suspected cholera cases in Haiti have declined nationwide, cholera continues to affect displaced and host communities in Haiti.^{105,106} Out of the 3,077 suspected cases of cholera reported from December 29, 2024 to September 13, 2025, 92 cases were confirmed through culture testing.¹⁰⁷ As part of a strategy of early detection and rapid response, nearly 87 surveillance officers and 13 data managers from the Pan-American Health Organization¹⁰⁸ have been trained to deploy and identify suspected cholera cases since the beginning of 2025.¹⁰⁹ The Pan-American Health Organization has helped to establish a new cholera treatment center and provided training on cholera case management and infection control for six existing cholera treatment centers.¹¹⁰ Beyond treatment, community awareness sessions on disease prevention have reached 7,000 people and were accompanied by the distribution of mosquito nets, water purification tablets, and oral rehydration solution packets.¹¹¹

International Intervention and Resilience Building

Relatedly, in March 2025, the World Bank released a plan to make approximately US\$320 million in grant financing available with the aim of building resilience among Haiti's most vulnerable.¹¹² It will do so by strengthening economic governance and creating employment opportunities, maintaining essential institutional capacity for the provision of basic service delivery, and preserving human capital to increase resilience to natural disasters and shocks.¹¹³

¹⁰⁴ UNICEF, Haiti Humanitarian Flash Update No. 2 (May 2025), available at <https://www.unicef.org/documents/haiti-humanitarian-situation-report-no-5-may-2025> (last visited Oct. 12, 2025)

¹⁰⁵ UN WHO Pan American Health Organization, Hope amid hardship: Battling cholera in Haiti's displacement camps (Aug. 2025), available at <https://www.paho.org/en/stories/hope-amid-hardship-battling-cholera-haitis-displacement-camps>

¹⁰⁶ IciHaiti, Cholera present in IDP camps (Sep. 26, 2025), available at <https://www.icihaiti.com/en/news-45859-icihaiti-health-cholera-present-in-idp-camps.html>

¹⁰⁷ Pan American Health Organization, PAHO – Health Cluster Situation Report No. 26. Humanitarian Situation in Haiti. 13 September 2025, WHO (Sep. 23, 2025), available at <https://www.paho.org/en/documents/paho-health-cluster-situation-report-no26-humanitarian-situation-haiti-13-september-2025>

¹⁰⁸ The Pan American Health Organization (PAHO) is the specialized international health agency for the Americas and also serves as Regional Office for the Americas of the World Health Organization (WHO), the specialized health agency of the United Nations. See PAHO, "Who We Are" <https://www.paho.org/en/who-we-are>.

¹⁰⁹ UN WHO Pan American Health Organization, Hope amid hardship: Battling cholera in Haiti's displacement camps (Aug. 2025), available at <https://www.paho.org/en/stories/hope-amid-hardship-battling-cholera-haitis-displacement-camps>

¹¹⁰ UN WHO Pan American Health Organization, Hope amid hardship: Battling cholera in Haiti's displacement camps (Aug. 2025), available at <https://www.paho.org/en/stories/hope-amid-hardship-battling-cholera-haitis-displacement-camps>

¹¹¹ UN WHO Pan American Health Organization, Hope amid hardship: Battling cholera in Haiti's displacement camps (Aug. 2025), available at <https://www.paho.org/en/stories/hope-amid-hardship-battling-cholera-haitis-displacement-camps>

¹¹² Joanne Clark, World Bank to invest US\$320 million to support Haiti, Caribbean National Weekly (Mar. 7, 2025), available at <https://www.caribbeannationalweekly.com/news/world-bank-to-invest-us320-million-to-support-haiti/>

¹¹³ Joanne Clark, World Bank to invest US\$320 million to support Haiti, Caribbean National Weekly (Mar. 7, 2025), available at <https://www.caribbeannationalweekly.com/news/world-bank-to-invest-us320-million-to-support-haiti/>

Justice System

Between March and May 2025, the UN Integrated Office in Haiti and the Office of the UN High Commissioner for Human Rights provided support to the jurisdictions of Croix-des-Bouquets and Les Cayes for holding criminal hearings without jury assistance to address prolonged pretrial detention.¹¹⁴ As a result, 132 defendants were prosecuted for serious criminal offences, including rape, murder, criminal conspiracy and the unlawful possession and trafficking of firearms.¹¹⁵

From April to June 2025, the UN Integrated Office in Haiti and UN Office on Drugs and Crime conducted a series of capacity-building activities to enhance the skills of over 300 law enforcement officials, magistrates, lawyers and civil servants.¹¹⁶ In cooperation with UN Integrated Office in Haiti, the UN Office on Drugs and Crime also facilitated digital skills training for 90 officials.¹¹⁷

In April 2025, national authorities published a decree establishing specialized judicial units to investigate, prosecute, and adjudicate complex financial crimes and mass crimes, including cases of sexual violence.¹¹⁸ In June 2025, the UN Integrated Office in Haiti supported training by the bar of Port-au-Prince for 150 lawyers to engage effectively with the specialized units.¹¹⁹

In May 2025, the Minister of Justice and Public Security announced the government's plan to build three new prisons in the Centre, North, and South departments, in line with international standards.¹²⁰ These infrastructures aim to reduce prison overcrowding and improve detention conditions, while strengthening prison security in the light of the attacks perpetrated by gangs on several prisons in the country.¹²¹

¹¹⁴ UN Security Council, Report of the Secretary-General on Haiti. (Jun. 27, 2025), available at https://digitallibrary.un.org/record/4084794/files/S_2025_418-EN.pdf

¹¹⁵ UN Security Council, Report of the Secretary-General on Haiti. (Jun. 27, 2025), available at https://digitallibrary.un.org/record/4084794/files/S_2025_418-EN.pdf

¹¹⁶ UN Security Council, Report of the Secretary-General on Haiti (Jun. 27, 2025), available at https://digitallibrary.un.org/record/4084794/files/S_2025_418-EN.pdf

¹¹⁷ UN Security Council, Report of the Secretary-General on Haiti (Jun. 27, 2025), available at https://digitallibrary.un.org/record/4084794/files/S_2025_418-EN.pdf

¹¹⁸ UN Security Council, Report of the Secretary-General on Haiti (Jun. 27, 2025), available at https://digitallibrary.un.org/record/4084794/files/S_2025_418-EN.pdf

¹¹⁹ UN Security Council, Report of the Secretary-General on Haiti (Jun. 27, 2025), available at https://digitallibrary.un.org/record/4084794/files/S_2025_418-EN.pdf

¹²⁰ UN, Quarterly Report on the Human Rights Situation in Haiti (Aug. 1, 2025), available at <http://binuh.unmissions.org/en/quarterly-report-human-rights-situation-haiti-april-%E2%80%93-june-2025>

¹²¹ UN, Quarterly Report on the Human Rights Situation in Haiti (Aug. 1, 2025), available at <http://binuh.unmissions.org/en/quarterly-report-human-rights-situation-haiti-april-%E2%80%93-june-2025>

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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director
Camp Springs, MD 20588-0009



U.S. Citizenship
and Immigration
Services

October 29, 2025

DECISION

MEMORANDUM FOR THE SECRETARY

FROM:

Joseph B. Edlow
Director



SUBJECT:

**Decision Memorandum on the Termination of Temporary Protected
Status Designation for Haiti**

Purpose

U.S. Citizenship and Immigration Services (USCIS) is presenting a new recommendation of “termination” of the Temporary Protected Status designation for Haiti for your consideration after a federal district court judge impermissibly blocked your previous termination decision that was informed by the June 4, 2025 Decision Memo with subject “Temporary Protected Status for Haiti” (Attachment D). In continuing compliance with statutory requirements, this new recommendation, is based on a review of current conditions in Haiti and an analysis indicating that permitting Haitian nationals to remain temporarily in the United States is contrary to the U.S. national interest.

Background

Haiti was initially designated for Temporary Protected Status more than fifteen years ago 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.”¹ Following the initial designation, 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.² Thereafter, Temporary Protected Status was extended three more times based on extraordinary and temporary conditions: (1) from January 23, 2013 through July 22, 2014³; (2) from July 23, 2014 through January 22, 2016⁴; and (3)

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

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

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

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

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from January 23, 2016 through July 22, 2017.⁵ 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.⁶ Subsequently, then-Acting Secretary Duke announced the termination of the Temporary Protected Status designation of Haiti effective July 22, 2019.⁷

In spite of Section 244 of the Immigration and Nationality Act clearly stating that Temporary Protected Status determinations are not subject to judicial review, the termination of Haiti's 2011 designation was challenged in several lawsuits, and court injunctions required DHS to temporarily continue Temporary Protected Status for Haiti pending a final court order.⁸ Former Secretary Mayorkas newly designated Haiti on the basis of extraordinary and temporary conditions effective August 3, 2021 through February 3, 2023.⁹ Thereafter, Temporary Protected Status for Haiti was extended and newly designated from February 4, 2023 through August 3, 2024.¹⁰ In July 2024, DHS issued a notice stating that Secretary Mayorkas had once again extended and newly designated Haiti for Temporary Protected Status for an 18-month period, set to expire on February 3, 2026.¹¹

On February 24, 2025, DHS published a *Federal Register* notice announcing your 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 the statutory maximum of 18 months to 12 months with an amended end date of August 3, 2025.¹² On July 1, 2025, DHS published a *Federal Register* notice announcing your decision to terminate the Temporary Protected Status designation for Haiti, effective September 2, 2025.¹³ Again, in spite of the statutory prohibition of 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, 2026.¹⁴

Given this court-ordered change, Haiti's existing designation for Temporary Protected Status will expire on February 3, 2026. At least 60 days before a Temporary Protected Status designation

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

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

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

⁸ 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). *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.

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

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

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

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

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

¹⁴ On September 5, 2025, a second district court also issued a judgment setting aside the prior partial vacatur determination for Haiti TPS. *Nat'l TPS Alliance v. Noem*, No. 23-cv-1766 (N.D. Cal.).

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expires, you, after consultation with appropriate U.S. Government agencies, are required to review the conditions in a country designated for Temporary Protected Status to determine whether the conditions supporting the designation continue to be met, and, if so, the length of an extension of the designation.¹⁵ A timely determination must be made by December 5, 2025.

Statutory Considerations

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 is extended through February 3, 2026. On June 4, 2025, you signed a Decision Memo from Acting Director Alfonso-Royals with the subject "Temporary Protected Status for Haiti." You concurred with USCIS' recommendation of "termination" of Haiti's designation for Temporary Protected Status.

In that Decision Memo, USCIS reviewed then-current country conditions in Haiti and described its reasoning for why termination of Temporary Protected Status for Haiti was warranted. 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. USCIS concluded the situation in Haiti was 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. USCIS outlined the national interest concerns in its memo to you. In considering these factors individually and cumulatively, you determined that permitting Haitian nationals to remain temporarily in the United States was contrary to the U.S. national interest.¹⁶

Since you signed the June 4, 2025 Decision Memo, USCIS has once again examined conditions in Haiti and carefully considered relevant national interest considerations in assessing whether the designation for Haiti should be extended or terminated. Importantly, this memorandum requests a new determination based on updated conditions and considerations.

The country conditions in Haiti since your previous decision remain concerning, but termination is still warranted. 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 temporarily leave their homes and are internally displaced due to escalating violence and that gang violence has "engulfed" Port-au-Prince "and spreads beyond."¹⁷ While this temporary internal relocation is disruptive, it also indicates that there are areas in Haiti that remain suitable to reside in. At the UN Security Council briefing on Haiti on August 28, 2025, the Acting U.S. Ambassador to the UN,

¹⁵ See Immigration and Nationality Act (INA) sec. 244(b)(3)(A), 8 U.S.C. § 1254a(b)(3)(A); see also Attachment A: Temporary Protected Status Legal Authority.

¹⁶ For further details, please see Attachment D: June 4, 2024 Signed Decision Memo, Temporary Protected Status for Haiti.

¹⁷ 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>.

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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.”¹⁸ At that time, Acting Ambassador Shea further highlighted humanitarian concerns such as displacement of 1.3 million people, recruitment of children in armed gangs, and food insecurity in the country.¹⁹ USCIS has considered these concerns, and now places them in the context of more recent statements made by Ambassador Mike Waltz, who was officially sworn in as the U.S. Representative to the UN on September 20, 2025. During the most recent UN Security Council briefing on Haiti on October 22, 2025, Ambassador Waltz acknowledged that Haiti “has had a long and difficult history” and “truly stands at a crossroad.”²⁰ Ambassador Waltz also reiterated country conditions and their broader impact for the region: “...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.”²¹ In those same remarks, Ambassador Waltz applauded the UN Security Council’s September 30, 2025 adoption of the resolution transitioning the Kenyan-led Multinational Security Support mission to a new multinational Gang Suppression Force that would be supported by a newly created UN Support Office in Haiti.²² Per the United Nations, “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 vulnerable groups, support reintegration of former fighters and help strengthen Haitian institutions.”²³

On October 1, 2025, Secretary Rubio issued a press statement stating “[the Gang Suppression] 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.”²⁴ In recent remarks, the Alternate Representative to the UN for Special Political Affairs stated “just a few weeks ago, this Council passed a resolution for a Gang Suppression Force and a

¹⁸ U.S. Mission to the UN, “Remarks at a UN Security Council Briefing on Haiti” (Aug. 28, 2025), <https://ht.usembassy.gov/remarks-at-a-un-security-council-briefing-on-haiti/>.

¹⁹ *Id.*

²⁰ 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/>.

²¹ *Id.*

²² *Id.*

²³ 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>.

²⁴ 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/>.

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UN Support Office. These measures will restore security in Haiti and bring gangs to their knees.”²⁵ There have also been some positive developments in Haiti’s economic conditions, further underscoring signs of optimism. 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.”²⁶

Since your June 4, 2025 determination, USCIS also has continued to assess national interest factors in relation to the designation of Haiti for Temporary Protected Status. A key consideration in the national interest analysis has been the impact of Temporary Protected Status on national security and public safety threats in the United States. In May 2025, the U.S. Department of State (State) designated two Haitian gangs, Viv Ansanm and Gran Grif, as Foreign Terrorist Organizations.²⁷ According to State, “[t]he groups provide a unified platform for criminal groups to use violence to destabilize Haiti and quash actions aimed at restoring state control.”²⁸ As the influence of these Foreign Terrorist Organizations spreads and they exercise de facto territorial control, it raises concerns that individuals associated with or sympathetic to these groups – whether newly arriving or already residing in the United States – could have affiliations or intentions that run counter to U.S. interests, such as ties to gangs and weapon smuggling.²⁹ As recently as September 2025, Secretary Rubio and other U.S. officials have repeatedly commented that the designated Haitian gangs have overrun Haiti and have also destabilized the region.³⁰ 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 already announced arrests and indictments of

²⁵ U.S. Mission to the UN, “Explanation of Vote Following the Adoption of a UN Security Council Resolution on Haiti,” (Oct. 17, 2025), <https://usun.usmission.gov/explanation-of-vote-following-the-adoption-of-a-un-security-council-resolution-on-haiti/>.

²⁶ World Bank, “The World Bank in Haiti,” (last updated Apr. 28, 2025), <https://www.worldbank.org/en/country/haiti/overview>.

²⁷ See Foreign Terrorist Organization Designations of Viv Ansanm and Gran Grif, 90 FR 19065 (May 5, 2025).

²⁸ *Id.*

²⁹ See, e.g., New York Times, “Haiti Doesn’t Make Guns. So How Are Gangs Awash in Them?” (Mar. 20, 2025) (“The United Nations imposed an arms embargo on Haiti three years ago, yet most weapons on Haiti’s streets are from the United States, where they are purchased by straw buyers and smuggled into the country by sea or sometimes by land through the Dominican Republic, according to the United Nations.”), <https://www.nytimes.com/2025/03/30/us/haiti-gangs-guns-smuggling.html#:~:text=The%20United%20Nations%20imposed%20an,through%20Haiti's%20gang%20infested%20seaports>.

³⁰ See, e.g., U.S. Dep’t of State, “Secretary of State Marco Rubio with Ainsley Erhardt, Brian Kilmeade, and Lawrence Jones of Fox and Friends” (Sept. 23, 2025), <https://www.state.gov/releases/office-of-the-spokesperson/2025/09/secretary-of-state-marco-rubio-with-ainsley-erhardt-brian-kilmeade-and-lawrence-jones-of-fox-and-friends/> (“...even close to home in the Western Hemisphere, in a place like Haiti that’s been overrun by gangs that control that country and has destabilized the region...”); see also 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/> (“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.”).

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aliens linked to these gangs.³¹ On June 10, 2025, President Trump issued an Executive Order which published findings that “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.”³² These federal actions, including State’s designation of two major Haitian gangs as Foreign Terrorist Organizations and the President’s Executive Order restricting entry from Haiti and other countries on national security screening grounds, constitute new and material evidence that are relevant to the national interest assessment of the Haitian Temporary Protected Status population in the United States. It is not accurate to assume that aliens who entered years ago can be categorically viewed as low-risk merely because they have resided in the United States for an extended period. Given the outsized influence of gangs in Haiti and the associated gang-related activities that have expanded to the United States, permitting Haitian nationals to remain temporarily in the United States continues to be contrary to the U.S. national interest.

In approving the June 4, 2025 Decision Memo, you determined that an extension of the designation of Temporary Protected Status for Haiti was contrary to the national interest based on an analysis of migration factors, immigration policy, foreign policy, national security, and public safety. USCIS has re-examined country conditions since you signed the June 4, 2025 Decision Memo and found that while there have been some changes, these changes have not impacted the analysis that supported a determination to terminate Temporary Protected Status for Haiti based on the U.S. national interest. As part of the review process, DHS again consulted with State. State confirmed on September 5, 2025 that termination of the Temporary Protected Status designation would not pose negative foreign policy concerns.

Additional Relevant Considerations

A determination on Haiti’s Temporary Protected Status designation must take into account relevant U.S. national interest considerations. In light of the court’s final order which interfered with your June 4th decision, USCIS has again examined the records of Haitian beneficiaries of Temporary Protected Status. DHS records indicate some members of the Haiti Temporary Protected Status population have been under administrative investigation for risk to national security or public safety, or for attempting to obtain immigration benefits through fraud or misrepresentation. As of September 17, 2025, DHS data shows approximately 50% of Haiti Temporary Protected Status

³¹ See, e.g., 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>. (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 distribution of controlled substances and assault and battery with a dangerous weapon); see also 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>. (In Sept. 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.”).

³² 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).

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beneficiaries or applicants have at least one TECS³³ hit in their benefit request history which could span over many years and multiple benefit request types.³⁴ Though a TECS hit does not always lead to derogatory findings or a negative adjudicative outcome, this information should be taken into serious consideration when evaluating whether a Temporary Protected Status decision for Haiti aligns with the national interest of the United States. As of September 9, 2025, Fraud Detection and National Security-Data System NexGen data also shows approximately 2,327 of the Haiti Temporary Protected Status population (including current beneficiaries and applicants with pending applications) had a record where fraud was found, 512 had a record which was investigated but fraud was not found, and 273 had a record which was inconclusive regarding fraud.³⁵ Moreover, 865 aliens of the Haiti Temporary Protected Status population (including current beneficiaries and applicants with pending applications) had Public Safety records, 369 had Egregious Public Safety (EPS)³⁶ records, and 51 had National Security Related Information (NSRI) records.³⁷

Approximately 67,400 nationals of Haiti have entered the United States since June 3, 2024. Within this population, only 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.³⁸ While migration from Haiti to the U.S. involves several push and pull factors, Temporary Protected Status has been cited by a report as being a pull factor contributing to migration to the United States.³⁹

Overstaying the authorized period of admission in nonimmigrant status 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

³³ TECS is an information-sharing platform which can assist authorized users to access different databases to identify individuals who pose a risk to national security or public safety, and individuals attempting to obtain immigration benefits through fraud or misrepresentation. A TECS hit does not always lead to derogatory findings or adverse adjudicative decisions for a particular person, particularly in long assessment periods and/or in populations that have a high degree of name similarity.

³⁴ USCIS Internal Data, Office of Policy and Strategy, TECS data, TPS Haiti as of Sept. 17, 2025.

³⁵ USCIS Internal Data, Fraud Detection and National Security Directorate, FDNS-DS NexGen data, TPS Haiti, as of Sept. 9, 2025.

³⁶ *Memorandum of Agreement Between USCIS and ICE Regarding National Security, Public Safety and Immigration Benefit Fraud Referrals*, July 23, 2025 (USCIS-ICE MOA) defines an EPS case as one where an unlawful immigrant is under investigation or arrest or was convicted of certain criminal acts. These criminal acts include those defined in INA 101(a)(43) such as murder, rape, or sexual abuse of a minor, illicit trafficking of controlled substances, illicit trafficking in firearms or destructive devices, or crimes of violence with a penalty of at least 1 year.

³⁷ USCIS Internal Data, Fraud Detection and National Security Directorate, FDNS-DS NexGen data, TPS Haiti, as of Sept. 9, 2025.

³⁸ OHSS estimate as of September 30, 2025.

³⁹ See, e.g., Migration Policy Institute, "Haitian Migration through the Americas: A Decade in the Making" (Sept. 30, 2021) ("misinformation about TPS eligibility and about the general availability of legal status in the United States may have been one factor for migrants trying to reach the U.S. border"), <https://www.migrationpolicy.org/article/haian-migration-through-americas>.

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illegal border crossings. President Trump imposed conditional restrictions and limitations on the entry of certain foreign nationals from 19 countries, including Haiti.⁴⁰ According to the Fiscal Year 2024 Department of Homeland Security Entry/Exit Overstay Report, 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%.⁴¹ 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 over six times higher for student and exchange visitors.⁴² 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 taking American jobs despite lacking work authorization and legal status.

Of particular significance when evaluating the conditions in Haiti and the ability of Haitian nationals’ ability to safely return to Haiti, a number of Haitian nationals have requested advance parole documents for travel back to Haiti. This bears directly on the question of whether nationals may safely travel there. In the first nine months of 2025, approximately 1,219 Haitian nationals requested advanced parole documents, of which approximately 180 (14.8%) were for intended travel to Haiti.⁴³

Additionally, U.S. Immigration and Customs Enforcement (ICE) is currently removing aliens to Haiti. From FY2020 to FY2025 through August 31, 2025, ICE removed approximately 4,140 aliens to Haiti.⁴⁴ From October 1, 2024 to August 31, 2025 specifically, covering most of FY2025, approximately 670 aliens were removed to Haiti,⁴⁵ indicating that conditions in Haiti have been sufficiently stable for the safe removal of Haitian nationals.

There are also compelling foreign policy reasons for ending the Temporary Protected Status designation for Haiti. In Executive Order 14150, “America First Policy Directive to the Secretary of State,” President Trump declared “from this day forward, the foreign policy of the United States

⁴⁰ See 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).

⁴¹ 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.

⁴² 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.

⁴³ Estimates as of September 11, 2025. These figures do not necessarily include Temporary Protected Status beneficiaries, who receive a Temporary Protected Status Travel Authorization Document rather than an Advance Parole Document. USCIS does not collect intended destination country from Temporary Protected Status beneficiaries on Form I-131, Application for Travel Documents, Parole Documents, and Arrival/Departure Records.

⁴⁴ OHSS analysis of ICE ERO data as of August 31, 2025.

⁴⁵ *Id.*

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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.”⁴⁶ On September 11, 2025, the U.S. representative to the Organization of American States stated: “we must come together as a region now to deliver an appropriately resourced force with the scope and scale needed to take the fight to the gangs. The United States has taken decisive steps: designating Viv Ansanm and Gran Grif as Foreign Terrorist Organizations and Specially Designated Global Terrorists; offering a \$5 million reward for information leading to the arrest of Jimmy Cherizier (Barbecue); and promoting accountability for criminals and those supporting gangs through indictments, arrests, sanctions, arms seizures, and visa and U.S. residency restrictions. The era of impunity in Haiti is over.”⁴⁷ 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.

Conclusion

USCIS has found that country conditions in Haiti have largely remained similar since you signed the June 4, 2025 Decision Memorandum, with some positive developments as recognized in recent remarks by U.S. officials. Even if you find that the extraordinary and temporary conditions that underpin the Temporary Protected Status designation exist, the statute nonetheless compels you to terminate it if you find that it is contrary to the national interest to allow Haitians to remain in the United States. USCIS continues to assess that permitting Haitian nationals to remain temporarily in the United States is contrary to the national interest as explained in the June 4, 2025 Memorandum, and provides refreshed and expanded analysis supporting this recommendation in this memorandum. Accordingly, USCIS concludes that the recommendation of termination of the designation of Haiti for Temporary Protected Status is still warranted.

Options: Your options include the following actions:

- 1) *Terminate Haiti’s Designation for Temporary Protected Status (USCIS Recommendation)*
 - If you determine again that Haiti no longer meets the statutory requirements for its Temporary Protected Status designation, you must terminate Temporary Protected Status for Haiti. Termination would end Temporary Protected Status benefits for existing Haiti Temporary Protected Status beneficiaries after the termination determination is published in the *Federal Register* and the termination becomes effective. Upon the termination of Temporary Protected Status benefits, former beneficiaries without another immigration status, authorization to remain, or a period of stay authorized would no longer have permission to work or remain in the United States. They may, however,

⁴⁶ See America First Policy Directive to the Secretary of State, 90 FR 8337 (Jan. 29, 2025).

⁴⁷ U.S. Mission to the Organization of American States, “U.S. Remarks: Call for Coordinated UN Action in Support of Haiti” (Sept. 11, 2025), <https://usoas.usmission.gov/u-s-remarks-call-for-coordinated-un-action-in-support-of-haiti/>.

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apply for any other immigration benefits for which they may be otherwise eligible (e.g., asylum, lawful permanent residence).

- If you decide again to terminate Haiti's designation, the effective date of termination may not be earlier than 60 days after the date the *Federal Register* notice announcing the termination is published or, if later, the expiration of the most recent previous extension. (or earlier than the February 3, 2026 date set by the court in *Haitian Evangelical Clergy Ass'n v. Trump*. Note that you have the discretionary option to set an effective date longer than 60 days if you deem it appropriate to do so. However, a 60-day transition period aligns with recent determinations made when Temporary Protected Status designations have been terminated, helps to streamline enforcement operations, and avoids creating uncertainty or false hope of a future designation. Additionally, this population has been on notice for nearly four months since your initial termination decision was published.

2) *Extend Haiti's Designation for Temporary Protected Status*

- Under the Temporary Protected Status statute, if you determine that the statutory conditions for designation continue to be met, you must extend the Temporary Protected Status designation for an additional period of 6, 12, or 18 months.⁴⁸ Haiti was initially designated for Temporary Protected Status on January 1, 2010 based on a determination that there were extraordinary and temporary conditions in Haiti that prevented nationals of Haiti from returning in safety and a finding that allowing Haitians to remain temporarily in the United States would be not contrary to the national interest.
- Should the decision be made to extend the designation of Temporary Protected Status for Haiti, only existing Temporary Protected Status beneficiaries may re-register for Temporary Protected Status, and any Haitian nationals who may have entered the United States after the current continuous residence date will not be eligible for an initial application for Temporary Protected Status.

3) *No Decision/Automatic Extension*

- After review of the assessment, you could choose not to make a determination about whether Haiti's Temporary Protected Status designation should be extended or terminated at this time. If you do not make a determination at least 60 days prior to its expiration date, by statute, its period of designation will be automatically extended for 6 additional months (or, in your discretion, a period of 12 or 18 months).
- Should you choose not to make a determination about whether the conditions supporting Haiti's designation continue to be met, an announcement of the automatic extension is required via *Federal Register* notice, including information to beneficiaries and employers about continued employment authorization and the period of extension. Note that you would then have to review conditions prior to the expiration of that extension.

⁴⁸ Along with an extension of the Temporary Protected Status designation, the statute also provides that the Secretary may newly designate the country for Temporary Protected Status. See INA sec. 244(b)(1), 8 U.S.C. § 1254a(b)(1).

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Signature Level Justification: 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 they continue to meet the conditions for the Temporary Protected Status designation.⁴⁹

Timeliness: You are required by statute to decide whether to extend or terminate an existing Temporary Protected Status designation at least 60 days before the expiration of the current designation, or the designation is automatically extended for a minimum of 6 months.⁵⁰ For Haiti's designation, which is currently extended through February 3, 2026, you must make a decision by December 5, 2025, or the statutory automatic extension will occur.

You are further required to provide timely notice of your decision through publication in the *Federal Register*.⁵¹ Your earliest decision will facilitate publication of the *Federal Register* notice, which communicates policy and appropriate procedures to Temporary Protected Status beneficiaries, their employers, and benefit-granting agencies. **Based on the government's representation to the court in *Miot v. Trump*,**⁵² **USCIS should publish your decision in the *Federal Register* no later than December 5, 2025.** As such, USCIS respectfully requests your decision as soon as possible.

⁴⁹ INA sec. 244(b)(3)(A), 8 U.S.C. § 1254a(b)(3)(A).

⁵⁰ See INA sec. 244(b)(3)(A), (C), 8 U.S.C. § 1254a(b)(3)(A), (C).

⁵¹ See INA sec. 244(b)(3)(A), 8 U.S.C. § 1254a(b)(3)(A).

⁵² *Miot v. Trump*, No. 1:25-CV-02471 (D.D.C.), is a federal lawsuit filed in July 2025 by several Haitian nationals challenging the termination of Temporary Protected Status for Haiti. As of October 2025, the case is pending in the U.S. District Court for the District of Columbia.

Temporary Protected Status for Haiti

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USCIS Recommendation: USCIS recommends again that you terminate the Temporary Protected Status designation based on a finding that permitting Haitian nationals to remain temporarily in the United States is contrary to the U.S. national interest. Further, USCIS recommends the statutory minimum of 60 days following publication of the *Federal Register* notice, or February 3, 2026, whichever is later, for the effective date of the termination as appropriate for an orderly period of transition. The statutory minimum period of transition is consistent with the precedent of previous Temporary Protected Status country terminations and makes clear that the United States is committed to clarity and consistency. Moreover, the statutory minimum transition period minimizes additional administrative burden and strikes a balance between providing a reasonable timeframe for aliens to transition and safeguarding the integrity of the immigration system and public resources.

Secretary's Decision:1. Terminate: Terminate Haiti's designation

Specify the Effective Date of the Termination (if other than recommended): _____

Approve/date

 11-19-25
2. Extend: Extend Haiti's existing designation for 6, 12, or 18 months

Specify duration of extension (6, 12, or 18 months): _____

Approve/date _____

3. No Decision/Automatic Extension: Delay a decision on Haiti's designation, resulting in an extension of 6 months

Approve/date _____

Attachments:

Attachment A:	Temporary Protected Status Legal Authority
Attachment B:	USCIS RAIO Country of Origin Information Considerations Report and Addendum, Haiti, Sept. 12, 2025
Attachment C:	USCIS OP&S Policy Considerations Report, Haiti, Oct. 24, 2025
Attachment D:	June 4, 2025, Signed Decision Memo, Temporary Protected Status for Haiti

Schultz, Megan

From: Chretien, Spencer <[REDACTED]>
Sent: Friday, September 5, 2025 5:48 PM
To: Law, Rob
Subject: RE: [External] FW: State Consultation - Haiti TPS

This email is from an external US Government agency.

Hi Rob,

State believes that there would be no foreign policy concerns with respect to a change in the TPS status of Haiti.

Spencer Chretien

Senior Bureau Official
Bureau of Population, Refugees, and Migration



U.S. DEPARTMENT *of* STATE

SENSITIVE BUT UNCLASSIFIED

From: LAW, ROB <[REDACTED]>
Sent: Friday, September 5, 2025 4:55 PM
To: Chretien, Spencer <[REDACTED]>
Subject: [External] FW: State Consultation - Haiti TPS

Spencer,

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?

Thanks,
RTL

Rob Law
Senior Counselor, Office of the Secretary
U.S. Department of Homeland Security
[REDACTED]

From: Deshommes, Samantha L <[REDACTED]>
Sent: Friday, September 5, 2025 4:47 PM

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To: BURKE, RORY [REDACTED] NEWMAN, EMILY [REDACTED] >; GUNDUZ, IHSAN
[REDACTED] Chulapakorn, Adrienne [REDACTED] LAW, ROB
Cc: Good, Andrew R [REDACTED] Stiefel, Nathaniel I <[REDACTED]>
Subject: State Consultation - Haiti TPS

Good Afternoon,

I'm emailing to request that PLCY reach out to Department of State to satisfy the consultation requirement for S1's consideration (again) of TPS Haiti. Following the Secretary's June 4th decision, USCIS published the FRN terminating Haiti's TPS designation on July 1st. Haiti's TPS was therefore slated to terminate on Sept. 2nd. However, on July 15th, a U.S. District Court judge for the Eastern District of New York issued a final order that states that the effective date of any termination can be no earlier than Feb. 3, 2026. With the court order, S1 now has to make a decision 60-days prior to Feb. 3, 2026 on TPS designation for Haiti; the statutory deadline is thus Dec. 5, 2025.

[REDACTED]

Happy to chat further if there are questions/desire to discuss.

I hope everyone has a great weekend!

~ Sam

Samantha Deshommes
Chief Regulatory Officer
Regulatory Coordination Division, Office of Policy & Strategy
U.S. Citizenship & Immigration Services, DHS
[REDACTED]

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‘The people of Haiti are in a perfect storm of suffering,’ warns UN chief



© IOM/Antoine Lemonnier | A mother and her child, displaced by gang violence, sleep on the bare floor of a school in Haiti.

28 August 2025 | **Peace and Security**

State authority is crumbling across Haiti while gang violence engulfs the capital Port-au-Prince and beyond, “paralysing daily life and forcing families to flee,” [UN Secretary-General](#) António Guterres [told the](#) Security Council on Thursday.

Six million people are in need of humanitarian assistance, while 1.3 million people – half of them children – having been forced to flee their homes, he added.

‘Shamefully overlooked’

Haiti now ranks among the five hunger hotspots worldwide that are of “highest concern,” said the UN chief. Yet it remains the world’s least funded humanitarian appeal. Less than 10 per cent of the \$908 million needed has been received.

The UN chief lamented the level of international neglect, describing Haiti as “shamefully overlooked and woefully underfunded,” as armed groups continue to block humanitarian access and attack aid workers.

Due to the lack of resources, around 1.7 million people risk receiving no humanitarian assistance at all. “This is not a funding gap. It is a life-and-death emergency,” he said, urging donors to act before lifesaving operations grind to a halt.

Across the country, basic services have collapsed, and mass displacement has left children without education, healthcare or any sense of safety. As of April, gang violence had interrupted the schooling of some 243,000 children, as attacks on schools continued.

‘Unimaginable suffering’

The head of the UN Children’s Fund ([UNICEF](#)), [Catherine Russell](#) , told ambassadors Haiti’s youth are enduring “unimaginable suffering amidst the brutal armed violence.”

She noted that last year the UN in Haiti had verified more than 2,000 grave violations against children – a nearly 500 per cent increase on the previous year.

The Caribbean nation last year was among the five worst offenders worldwide, Ms. Russell added, including cases of summary execution.

Even more concerning, she said, was the 700 per cent increase in cases of recruitment and use of children by armed groups, alongside a 54 per cent increase in killing and maiming, according to Ms. Russell.

Children now account for a staggering 50 per cent of all active gang members in Haiti.

“I ask Members of this Council to use all available leverage to protect children,” she said, and to support “concrete actions” which will prevent violations from spiralling still further.

Grave rights violations against children in [#Haiti](#) or anywhere in the world cannot be tolerated.

Every child deserves a chance to be safe, healthy & to live in peace.

Peace can only be forged & sustained when children are prioritized & protected. 🙌
<https://t.co/Sq9ThMOZK3>

— Catherine Russell
(@unicefchief) [August 28, 2025](#)

‘Signals of hope’

Despite the bleak outlook across Haiti and soaring levels of violence and lawlessness, “there are emerging signals of hope,” said the Secretary-General.

Closer coordination between the Prime Minister’s Task Force, the Haitian National Police and [Security Council](#)-backed Multinational Security Support Mission (MSS) is improving operations on the ground, he said.

But, more decisive international support is required to protect and expand these fragile gains.

The Kenyan-led mission was authorised by the Security Council in October 2023 and aims to help over-stretched Haitian authorities stem the gang violence and restore national security, especially in the capital.

Mr. Guterres welcomed efforts by the Security Council to advance his proposal to strengthen the MSS through UN logistical and operation

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support, and urged ambassadors “to act without delay and authorise an international force, supported by the UN through logistical and operational backing, and predictable financing.”

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HAITI

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UN Security Council approves new ‘suppression force’ for Haiti amid spiralling gang violence



Top UN advocate sounds alarm over sexual violence crisis in gang-ravaged Haiti

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FRITZ EMMANUEL LESLY MIOT,

Notice of address filed under seal pursuant to
LCvR 5.1(c);

RUDOLPH CIVIL,

Notice of address filed under seal pursuant to
LCvR 5.1(c);

MARLENE GAIL NOBLE,

Notice of address filed under seal pursuant to
LCvR 5.1(c);

MARICA MERLINE LAGUERRE,

Notice of address filed under seal pursuant to
LCvR 5.1(c); **and**

VILBRUN DORSAINVIL,

Notice of address filed under seal pursuant to
LCvR 5.1(c);

Plaintiffs,

v.

**DONALD J. TRUMP, in his official capacity as
President of the United States of America,**

1600 Pennsylvania Avenue NW Washington, DC
20500;

UNITED STATES OF AMERICA,

Serve: Pamela Jo Bondi
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530;

Serve: Jeanine Ferris Pirro
Interim U.S. Attorney, D.D.C.
601 D Street NW
Washington, DC 20579;

Case No. 1:25-cv-02471

**THE DEPARTMENT OF HOMELAND
SECURITY,**

2707 Martin Luther King Jr. Avenue SE
Washington, DC 20528; **and**

**KRISTI NOEM, in her official capacity as
Secretary of Homeland Security,**

2707 Martin Luther King Jr. Avenue SE
Washington, DC 20528;

Defendants.

SECOND AMENDED CLASS ACTION COMPLAINT

Haiti is a nation in chaos. In the past several years, violent gangs have taken over Haiti, establishing a “mafia-like model that is so entrenched that the country can barely function without their consent.”¹ These gangs “function like armed militias, controlling large swathes of the country.”² In 2024, gang violence led to “[m]ore than 5,600” killings and 1,400 kidnappings.³ Conditions have not improved in 2025. In just the first five months of 2025, gang violence led to over 4,000 homicides.⁴ And between July 1 and September 30, 2025 there were “at least 1,247” additional homicides.⁵ On November 19, 2025, U.S. Deputy Secretary of State Christopher Landau

¹ *Last Chance? Breaking Haiti’s Political and Criminal Impasse*, GLOBAL INITIATIVE AGAINST TRANSNATIONAL ORGANIZED CRIME at 10 (Jan. 2025), <https://globalinitiative.net/wp-content/uploads/2025/01/Last-chance-Breaking-Haitis-political-and-criminal-impasse-GI-TOC-January-2025.pdf>

² *From Criminal Governance to Community Fragmentation: Addressing Haiti’s Escalating Crisis*, GLOBAL INITIATIVE AGAINST TRANSNATIONAL ORGANIZED CRIME at 1 (Sept. 2025), <https://globalinitiative.net/wp-content/uploads/2025/09/From-criminal-governance-to-community-fragmentation-Addressing-Haitis-escalating-crisis-GI-TOC-September-2025.pdf>

³ *New leader takes over Haiti’s transitional presidential council as violence persists*, ASSOCIATED PRESS (March 7, 2025), <https://apnews.com/article/haiti-transitional-presidential-council-fritz-alphonse-jean-gangs-c95b666317c278fee61e5ef1fac7b01b>; Fredlyn Pierre Louis, *Haitian immigrants grapple with uncertainty as TPS end date looms*, NBC NEWS (March 8, 2025), <https://www.nbcnews.com/news/nbcblk/haitian-immigrants-grapple-uncertainty-tps-end-date-looms-rcna193868>.

⁴ *Security Council renews UN’s Haiti mission amid spiralling crises*, UN NEWS (July 14, 2025), <https://news.un.org/en/story/2025/07/1165391>.

⁵ *Gang Violence in Haiti Continues to Spread Beyond the Capital, Reaching the Rural Areas of Artibonite and Centre*, BINUH (Nov. 12, 2025), <https://binuh.unmissions.org/en/gang-violence-haiti-continues-spread-beyond-capital-reaching-rural-areas-artibonite-and-centre>.

posted online that gang violence in Haiti has recently “escalated.”⁶ As of the date of this filing, U.S. State Department warns: “Do not travel to Haiti due to kidnapping, crime, terrorist activity, civil unrest, and limited healthcare;” noting that “Haiti has been under a State of Emergency since March 2024” and that “[c]rimes involving firearms are common in Haiti,” including “robbery, carjackings, sexual assault, and kidnappings for ransom.”⁷ The State Department’s travel advisory bluntly states: “Do not travel to Haiti for any reason.”⁸

And though it is most pronounced in Haiti’s capital city of Port-au-Prince, where gangs control an estimated 90% of the territory,⁹ no part of the country is safe. In 2025, “[g]angs’ territorial expansion has reached unprecedented levels and continues to advance.”¹⁰ “During the third quarter of 2025” gang violence “continued to spread to the peripheral and rural areas of Port-au-Prince, as well as to the Artibonite and Centre departments.”¹¹ Indeed, Haitian police estimate that, as of December 1, 2025, “50% of the Artibonite region had fallen under gang control” following “large-scale attacks targeting towns including Bercy and Post-Sonde.”¹² Put simply, in

⁶ Christopher Landau, (@DeputySecState) X (Nov. 19, 2025), <https://x.com/DeputySecState/status/1991271188903952889> (last visited Dec. 4, 2025).

⁷ Travel Advisory: Haiti, U.S. Dept. of State, https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/Haiti.html?gad_source=1&gad_campaignid=44031958015&gclid=Cj0KCQjw4qHEBhCDARIsALYKFNMYYgiXJO6vJBxqwyd5WE0eBkljwcoBVZpnrV6RFdLQPI1AN5c2rfwQaAo1hEALw_wcB.

⁸ *Id.*

⁹ *Haiti’s gangs have ‘near-total control’ of the capital as violence escalates, UN says*, ASSOCIATED PRESS (July 2, 2025), <https://apnews.com/article/un-haiti-gangs-capital-violence-government-kenya-c14dd55725e2e415b794ab88b4184e65>.

¹⁰ *From Criminal Governance to Community Fragmentation*, *supra* note 2.

¹¹ BINUH, *supra* note 5.

¹² Junior Racine, Danica Coto, and Evens Sanon, *Gangs launch large-scale attack in Haiti’s central region as hundreds flee gunfire and burning homes*, ASSOCIATED PRESS (Dec. 1, 2025), <https://apnews.com/article/haiti-gangs-attack-pont-sonde-bercy-gran-grif-4a3a091383202babec7939b630c1691e>.

recent months, not just the capital but “rural communities have increasingly become targets of indiscriminate attacks.”¹³

Taking circumstances from bad to worse, the gangs dominating Haiti frequently target hospitals, murdering or kidnapping doctors and nurses.¹⁴ Consequently, “only 37 per cent of Haiti’s health facilities in Port-au-Prince are fully functional.”¹⁵ Given the collapse of Haiti’s health care system, the country was ill-equipped to confront a 2024 cholera outbreak with over 10,000 reported cases and remains ill-equipped to handle future public health crises.¹⁶ On April 8, 2025, Doctors Without Borders, which typically operates in warzones, closed two medical facilities because of armed attacks against its ambulances.¹⁷ In October 2025, because of a surge in gang violence, Doctors Without Borders permanently closed its emergency medical center, which had been “hit several times by stray bullets.”¹⁸

The violence has left “more than 1 million people homeless.”¹⁹ In 2024, Haiti alone “accounted for nearly 75% of global displacement cases.”²⁰ “Nearly one in six children in Haiti are now internally displaced, and almost 700,000 minors live without stable shelter or secure

¹³ Haiti, Global Centre for the Responsibility to Protect (Nov. 14, 2025), <https://www.globalr2p.org/countries/haiti/#:~:text=Since%20the%20assassination%20of%20President,and%20humanitarian%20organizations%2C%20has%20increased.>

¹⁴ *Haiti gang crisis: Top rights expert decries attacks on hospitals*, UN NEWS (Jan. 3, 2025), <https://news.un.org/en/story/2025/01/1158721#:~:text=%E2%80%9CCriminal%20gangs%20have%20murdered%20and,close%20or%20suspend%20their%20operations%E2%80%9D.>

¹⁵ *Id.*

¹⁶ *External situation report: Multi-country outbreak of cholera*, WORLD HEALTH ORGANIZATION (Jan. 24, 2025), [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20250110-multi-country-outbreak-of-cholera-sitrep--22.pdf?sfvrsn=568bfb6d_3&download=true.](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20250110-multi-country-outbreak-of-cholera-sitrep--22.pdf?sfvrsn=568bfb6d_3&download=true)

¹⁷ “*Extremely painful decision*”: MSF withdraws from two facilities in Port-au-Prince, DOCTORS WITHOUT BORDERS (April 8, 2025), [https://www.doctorswithoutborders.org/latest/extremely-painful-decision-msf-withdraws-two-facilities-port-au-prince.](https://www.doctorswithoutborders.org/latest/extremely-painful-decision-msf-withdraws-two-facilities-port-au-prince)

¹⁸ *Doctors Without Borders permanently closes its emergency center in Haiti’s capital*, ASSOCIATED PRESS (Oct. 15, 2025), <https://apnews.com/article/haiti-msf-doctors-without-borders-center-closes-violence-68595071309e258e9c67ca233eb31822>

¹⁹ Evens Sanon, *Gangs attack a neighborhood in Haiti that’s home to the country’s elite*, ASSOCIATED PRESS (Feb. 4, 2025), [https://apnews.com/article/haiti-gang-violence-kenscoff-capital-97e5fd96b963670a4faf8675d1ea7310.](https://apnews.com/article/haiti-gang-violence-kenscoff-capital-97e5fd96b963670a4faf8675d1ea7310)

²⁰ *From Criminal Governance to Community Fragmentation*, *supra* note 2.

housing.”²¹ Those displaced have been forced into “improvised shelters” or have taken up residence in “schools, churches and even government buildings,” many of which “have no running water, flushing toilets or garbage pickup.”²² “The humanitarian crisis in Haiti has reached ‘alarming levels’” with “nearly 2 million people facing emergency levels of food insecurity and 6,000 in catastrophic conditions facing starvation.”²³

These facts “only partially capture the gravity of the situation. Haiti is no longer experiencing a gradual decline, but a structural transformation.”²⁴

Due in large part to these conditions, many Haitians present in the United States enjoy Temporary Protected Status (“TPS”), a humanitarian status enshrined into law by Congress to further a core American value: That the United States is a “beacon of freedom” to those displaced from their homelands by havoc beyond their control. 126 Cong. Rec. H8687 (Oct. 2, 1990) (statement of Rep. Moakley).

A country can be designated for TPS if its citizens are unable to return to their home country due to armed conflicts, environmental disasters, or “other extraordinary and temporary conditions.” 8 U.S.C. § 1254a(b). Once a country is designated for TPS, eligible citizens of that country who are present in the United States receive deportation protections and work authorization until the country’s TPS designation is lawfully terminated. *See* 8 U.S.C. § 1254a(a)(1).

²¹ *Id.*

²² Frances Robles, *How 360,000 Haitians Wound Up Living in Empty Lots and Crowded Schools*, N.Y. TIMES (May 10, 2024), <https://www.nytimes.com/2024/05/08/world/americas/haiti-gangs-refugees-crisis.html>.

²³ *U.N. Chief warns gangs could overrun Haiti’s capital without additional support*, ASSOCIATED PRESS (Jan. 23, 2025), <https://www.npr.org/2025/01/23/g-s1-44314/gangs-could-overrun-haiti>

²⁴ *From Criminal Governance to Community Fragmentation*, *supra* note 2.

Subject to unlimited extensions, a TPS designation can last for up to 18 months at a time. 8 U.S.C. § 1254a(b)(2)(B). Congress, through the TPS statute, established a mandatory process for the Secretary of Homeland Security to follow to determine whether a country's TPS designation should be extended, redesignated, or terminated. Following "consultation with appropriate agencies of the Government," the Secretary must "review the conditions in the foreign state" for which the designation is in effect and, based on that review, "determine whether the conditions for such designation ... continue to be met." 8 U.S.C. § 1254a(b)(3)(A).

Thus, the Secretary must periodically review country conditions to determine whether "extraordinary and temporary conditions" prevent TPS holders from "returning" "in safety" to their countries of origin. 8 U.S.C. § 1254a(b)(1)(C). The Secretary's country conditions review must be "grounded in fact—*i.e.*, based on objective conditions in the foreign country" and must be undertaken "in good faith." *Id.* at 346. Historically, the Secretary's country-conditions review has focused on a "broad range of issues" including public safety, health care, education, food security, gender violence, and stability of the government. *Saget v. Trump*, 375 F. Supp. 3d 280, 300 (E.D.N.Y. 2019).

On November 28, 2025 Secretary of Homeland Security Kristi Noem published in the Federal Register a notice that Haiti's TPS designation would be terminated effective February 3, 2025.

The termination notice acknowledges that Haiti is an incredibly dangerous country—noting, for example, that "[g]ang violence in Haiti persists as armed groups operate with impunity, enabled by a weak or effectively absent central government." 90 Fed. Reg. 54733, 54735 (Nov. 28, 2025). The termination notice acknowledges 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.’” *Id.* And the termination notice quotes America’s U.N. Ambassador Mike Waltz’s October 22, 2025 assessment that “We have gangs that are terrorizing communities, extorting families, recruiting children to commit horrors on behalf of the gang leaders.” *Id.*

Despite acknowledging these and other unsafe conditions, Secretary Noem contradictorily justifies termination of Haiti’s TPS designation on the ground that “there are no extraordinary and temporary conditions in Haiti that prevent Haitian nationals ... from returning in safety.” 90 Fed. Reg. at 54735.

The termination notice goes on to state that, “even if” the Secretary “found that 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.” 90 Fed. Reg. at 54735; *see* 8 U.S.C. § 1254a(b)(1)(C). Secretary Noem’s primary “national interest” rationale is that TPS incentivizes unlawful migration from Haiti to the United States and that Haiti’s TPS designation must be terminated because some unspecified percentage of Haitian TPS holders are violent criminals who must be kept out of the United States. *See* 90 Fed. Reg. at 54736-37.

But Secretary Noem’s stated rationale is “not her real rationale.” *Saget*, 375 F. Supp. 3d at 345. Rather, the analysis in the termination notice is mere pretext for a decision to terminate Haiti’s TPS that was made before Secretary Noem took office and is rooted in racial animus. Indeed, while campaigning in 2024, President Trump announced publicly that he would terminate

Haiti's TPS were he to regain power.²⁵ In terminating TPS, Secretary Noem was following his orders. That is unlawful. *Saget*, 375 F. Supp. 3d at 360–61.

At least one of the real reasons why Secretary Noem terminated TPS is her and President Trump's discriminatory racial animus towards Haitians specifically and nonwhite immigrants generally. While campaigning, President Trump, despite knowing the assertion was false, claimed on national television that Haitian TPS recipients were stealing and eating the house pets of American citizens while simultaneously expressing a preference for immigrants from predominantly white—in his words, “nice”—nations like Switzerland and Norway.²⁶ He said that nonwhite immigrants are “poisoning the blood” of the United States.²⁷ He claimed that Haitians all “have AIDS,”²⁸ a statement he also made during his first term. *Saget*, 375 F. Supp. 3d at 371. And, after taking office, President Trump made his preference for white immigrants the official policy of the United States, bestowing special refugee status on white South African immigrants while simultaneously ending lawful immigration status for Haitians and other nonwhite immigrants.²⁹

Since taking office, President Trump and Secretary Noem have openly expressed their animus towards nonwhite immigrants, including Haitians. In a December 2025 meeting with his

²⁵ Maggie Astor, *Trump Says He Would Try Again to Revoke Haitian Immigrants' Protections*, N.Y. TIMES (Oct. 3, 2024), <https://www.nytimes.com/2024/10/03/us/politics/trump-haitian-immigrants-legal-status.html>.

²⁶ Maggie Haberman & Michael Gold, *Trump, at Fund-Raiser, Says He Wants Immigrants From “Nice” Countries*, N.Y. TIMES (April 7, 2024), <https://www.nytimes.com/2024/04/07/us/politics/trump-immigrants-nice-countries.html>.

²⁷ Hannah Fingerhut and Ali Swenson, *Trump defends controversial comments about immigrants poisoning the nation's blood at Iowa Rally*, ASSOCIATED PRESS (December 19, 2023), <https://apnews.com/article/donald-trump-immigration-iowa-dff7f632948fa6511fb7d1955a28610c>.

²⁸ *Trump Slams Haitians attempting to enter U.S., says they 'probably have AIDS,'* ABC 7 (Oct. 10, 2024), <https://abc7.com/haitian-migrants-donald-trump-former-president-immigration/11108741/>.

²⁹ Joey Garrison, *Who are Afrikaners? Trump welcomes white South Africans as other refugees are halted*, USA TODAY (May 10, 2025), <https://www.usatoday.com/story/news/politics/2025/05/10/afrikaner-refugees-trump-welcoming-white-south-africans/83557827007/>.

cabinet secretaries, President Trump called nonwhite Somali immigrants “garbage.”³⁰ In December 2025, Secretary Noem posted online that she encouraged President Trump to expand the scope of a travel ban from 19 predominantly nonwhite countries (including Haiti) to 30 predominantly nonwhite countries.³¹ Secretary Noem described immigrants from these countries as (among other things) “leeches,” “entitlement junkies,” and “foreign invaders” who “suck dry our hard-earned tax dollars,” adding “WE DON’T WANT THEM. NOT ONE.”³²

None of this is new. The first Trump administration also purported to terminate Haiti’s TPS designation without following the statutorily mandated process. Then, as now, the decision was “preordained and pretextual.” *Saget*, 375 F. Supp. 3d at 346. Rather than the result of an objective, good-faith review of conditions in Haiti, the decision was “made in part due to political influence,” with “both direct and circumstantial evidence a discriminatory purpose of removing non-white immigrants from the United States was a motivating factor behind the decision to terminate TPS for Haiti.” *Id.* at 346, 374. Accordingly, a federal court correctly concluded that there were serious questions surrounding the legality of the first Trump administration’s decision to terminate TPS was unlawful and preliminarily enjoined it based on Administrative Procedure Act (APA) and the Fifth Amendment’s equal protection guarantee. *See generally Saget*, 375 F. Supp. 3d 280.

Plaintiffs are individual Haitians who hold TPS. They seek to represent a class of similarly situated Haitian TPS holders. The short-term consequences of the Trump administration’s

³⁰ Dareh Gregorian, *Trump calls Ilhan Omar ‘garbage’ and says Somalis should ‘go back to where they came from,’* NBC NEWS (Dec. 2, 2025), <https://www.nbcnews.com/politics/donald-trump/trump-calls-ilhan-omar-garbage-somalis-go-back-came-from-rcna247041>

³¹ Camilo Montoya-Galvez, Nicole Sganga, Jennifer Jacobs, *Trump administration considering expanding travel ban to around 30 countries after National Guard shooting*, CBS NEWS (Dec. 2, 2025), <https://www.cbsnews.com/news/trump-travel-ban-30-countries-national-guard-shooting/>

³² Kristi Noem (@Sec_Noem), X (Dec. 1, 2025), https://x.com/Sec_Noem/status/1995642101779124476 (last visited Dec. 3, 2025).

unlawful decision are dire: TPS holders will lose their ability to legally work in the United States, jeopardizing their ability to provide for themselves and their families. The long-term consequences, however, are even worse: if forced to return to Haiti, TPS holders face imminent danger and possible death, whether from gang violence, lack of medical care, or starvation.

TPS holders cannot be criminals and retain their status: The statute expressly excludes individuals with more than one misdemeanor conviction from its protection. Nor are they a drain on public resources: The statute expressly prevents TPS holders from obtaining federal public benefits. TPS holders' labor and civic engagement have revitalized communities across America, from Brooklyn, New York and Springfield, Ohio to Miami, Florida, and numerous places in-between. Haitian TPS holders have a justified, statutorily guaranteed expectation that Haiti's TPS designation will remain in place until *lawfully* terminated.

As before, the Trump administration's decision to end Haiti's TPS designation is unlawful. It violates the APA and the Fifth Amendment. This Court should declare it unlawful and set it aside.

PARTIES

1. Plaintiff Fritz Emmanuel Lesly Miot is a Haitian TPS holder. He was born in Haiti and is 32 years old. He has held TPS since 2011. He is completing his fourth year of graduate science studies and is on track to obtain a Ph.D. in neuroscience at Loma Linda University in Loma Linda, California. His research in the laboratory, where he spends anywhere from thirty to sixty hours weekly, focuses on understanding how the processes of aging and Alzheimer's Disease damage blood vessels in the brain, with the goal of generating life-saving therapies. Mr. Miot's work authorization is based on his TPS status. In addition, he has Type 1 Diabetes (also known as "juvenile onset diabetes") which requires treatment in the form of daily insulin injections and

appointments with medical specialists. Without his student health insurance, Mr. Miot could not afford the insulin or the specialists he needs to keep his diabetes in control. In Haiti, neither the insulin nor the specialists would be readily accessible, if at all, even if he could afford them. Mr. Miot's loss of TPS and work authorization and his deportation to Haiti would endanger his health, all the while curtailing his research, graduate studies, and promising future in neuroscience.

2. Plaintiff Rudolph Civil is a Haitian TPS holder. He was born in Haiti and is 23 years old. He has held TPS since 2010. He lives in Bloomfield, New Jersey, and works as a software engineer for a major national bank at one of their main corporate offices in the New York City metro area. He graduated from the University of Florida with a degree in computer engineering and plans to obtain either an MBA or a master's degree in computer engineering. He also runs a side business as a photographer. Even before his last entry to the United States at age seven, he would make regular family trips to the United States on tourist visas. He is culturally American and is perceived as such. He supports himself while also sending financial support to his aunt in Haiti, which she relies on for basic needs and the education of her three children, one of whom has Down syndrome and special needs. He has also sent money to support his grandmother in Haiti.

3. Plaintiff Marlene Gail Noble is a Haitian TPS holder. She was born in Haiti and is 34 years old. She has held TPS since 2024. She was abandoned as an infant and does not know the identities of her biological parents, nor the circumstances of why she was abandoned. While she was a toddler living in Haiti, she contracted spinal tuberculosis, which caused her spinal cord to collapse and resulted in her being unable to sit, move, or function without additional medical care. In 1993, when she was two years old, the Gabriel Foundation, a faith-based organization based in Florida, brought her to the United States for medical treatment for her spine. She received

spinal fusion surgery in Florida sometime in the early 1990s. Through the same Foundation, in 1994, she was placed in the legal guardianship of a couple living in Pennsylvania. After at least three additional foster care placements, she was placed in the care of the Three Rivers American Indian Council based in Pittsburgh, Pennsylvania, for purposes of adoption. In 1997, she was placed in the home of her adoptive parents in Mercer County, Pennsylvania in 1999. Throughout her childhood, her humanitarian parole status was renewed each time before it expired, until approximately 2000 when she was nine years old. While she believed, as a teenager and young adult, that she was legally in the United States, it was never made clear to her whether she was a U.S. citizen. Ultimately, her adoptive parents were abusive to her, and she cut off all contact with them as a young adult. In 2021, she was put in contact with an immigration attorney. In October 2023, after evaluating other options for pursuing legal status in the United States that were ultimately unavailable to her, she and her immigration attorney filed a TPS application, which was approved in April 2024. She received a work authorization shortly afterward. She currently works as a prep laboratory assistant in a toxicology department. She prepares urine samples for pain management drug testing as well as blood samples for organ donor recipients. This is her second job since receiving TPS; earlier, she worked at a grocery store as a deli clerk. Her current diagnosis for her spine is kyphosis in spinal tuberculosis, which causes her much pain. She had a second spinal fusion surgery in 2017, as she outgrew the results of the first spinal fusion. She plans to continue working as able and enroll in community college to earn an associate degree in biology. She hopes to someday work as a post-mortem forensic toxicologist, which will require a four-year degree and a master's degree in forensic toxicology.

4. Plaintiff Marica Merline Laguerre is a Haitian TPS holder. She was born in Haiti and is 21 years old. She left Haiti with her parents when they went to the U.S. Virgin Islands. She

was one year old at the time. She came to the United States with them in 2007 or 2008 as a child. She has held TPS since 2010. She moved to New York about fifteen years ago. She is married to a U.S. citizen. She attended a preparatory high school in New York where, due to a partnership between her high school and the City University of New York, she obtained not only her high school degree but an associate degree in biology before even graduating from high school. She also obtained an “Advanced Regents Diploma,” which is awarded to students who have demonstrated mastery in a broader range of subjects than the standard diploma. She is studying economics at Hunter College in Manhattan, where she will be a junior when the Fall term begins in August, and works as a receptionist and administrative assistant at a licensed fiduciary firm which specializes in retirement planning. She aspires to have a career in finance, recently was one of only eighteen students nationwide to receive an Association of African American Financial Advisors SIE Scholarship associated with taking the Securities Industry Essentials exam, has been proactively networking and applying for Summer 2026 internships, and was just offered a New York 2026 Wealth Management Summer Analyst Program – Private Bank internship for the Summer of 2026 at a Long Island branch of one of the nation’s largest banks.

5. Plaintiff Vilbrun Dorsainvil is a Haitian TPS holder. He was born in Haiti and is 34 years old. He completed medical school and worked as a doctor in Haiti. His goal in attending medical school was to end corruption in Haiti’s medical system, and he and other family members were politically active in Haiti. He has held TPS since 2021. He lives and owns a home in Springfield, Ohio, where he is employed full time—based on his TPS work authorization—as a Registered Nurse at Springfield Regional Medical Center. He also is a registered travel agent, although he is not currently working as such. He received an Associate Degree in Nursing (ADN) from Clark State College in Springfield and hopes to get a Bachelor of Science in Nursing (BSN)

from there. He financially supports himself and his diabetic cousin, who lives in the United States. He also supports several people in Haiti, including his four-year old daughter and her mother, his mother, his godson, one of his brothers, and one of his nephews. He would be unable to continue supporting these people if he loses his work authorization. He left Haiti because of attacks he both suffered and feared because of his and his family members' outspoken views regarding corruption in Haiti.

6. Plaintiffs bring this action on their own behalf and also on behalf of a proposed class of all persons in the United States who have been granted, or have applied for, TPS pursuant to 8 U.S.C. § 1254a and 8 C.F.R. § 244.2 and named Haiti as the designated TPS country under which they applied.

7. Defendant Donald Trump is the President of the United States. He is sued in his official capacity.

8. Defendant United States of America includes all government agencies and departments responsible for the termination or vacatur of Haitian nationals' eligibility for TPS.

9. Defendant Department of Homeland Security is an agency of the United States government and is responsible for designating countries whose nationals may receive TPS, and for administering the TPS program.

10. Defendant Kristi Noem, who issued the decisions "partially vacating," and then terminating, Haiti's TPS designation, is the Secretary of the Department of Homeland Security. She is sued in her official capacity.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, as this case arises under the United States Constitution and the Administrative Procedure Act, 5 U.S.C. § 551

et seq. This Court has remedial authority pursuant to the APA, 5 U.S.C. § 706, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq.

12. The federal government has waived sovereign immunity and permitted judicial review of agency action under 5 U.S.C. § 702. In addition, claims against federal officials are not barred by sovereign immunity when they seek relief other than monetary relief. *See, e.g., Larson v. Domestic & Foreign Com. Corp.*, 337 U.S. 682, 697–99 & nn.18-19 (1949); *Shields v. Utah Idaho Cent. R.R. Co.*, 305 U.S. 177, 183–84 (1938).

13. Venue is proper in the District of Columbia because each Defendant is an agency of the United States or an officer of the United States sued in his or her official capacity. 28 U.S.C. § 1391(e)(1).

LEGAL FRAMEWORK

14. TPS was created by Congress as part of the Immigration Act of 1990. 104 Stat. 4978, 5030 (1990). TPS permits individuals from designated foreign countries to live and work lawfully in the United States when they cannot return safely to their home countries due to armed conflict, natural disaster, or other “extraordinary” circumstances. *See* 8 U.S.C. § 1254a.

15. Under the TPS statute as originally enacted, TPS was administered by the Attorney General. Although the codified language remains unchanged, in 2002, the authority to designate a country for TPS was transferred from the Justice Department to the Department of Homeland Security (DHS). *See* Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135, 2142–45, 2177–2212 (Nov. 25, 2002); Homeland Security Act of 2002 Amendments Act, Pub. L. 108-7, 117 Stat. 11, 526–32 (Feb. 20, 2003).

16. The TPS statute establishes both the standards and the process for determining whether a country should receive TPS designation, and whether that designation subsequently

should be extended or terminated. *See* 8 U.S.C. § 1254a. After it has engaged in the statutorily mandated process and considered the relevant factors, DHS may grant, extend, or terminate a country's TPS designation.

17. Following “consultation with the appropriate agencies of the Government,” the Secretary of Homeland Security may designate a country for TPS if she finds:

(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 [DHS 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(b)(1).

18. DHS has the authority to designate a country for TPS for a period of six to eighteen months. 8 U.S.C. § 1254a(b)(2).

19. If an individual from a TPS-designated country satisfies the statutory eligibility criteria, that individual is granted deportation protection and employment authorization.

20. To be eligible for TPS, an individual must be a national of the TPS-designated country (or someone without nationality who last habitually resided in that country); have been

present in the United States on the date of the designation; and register within a designated time frame. 8 U.S.C. § 1254a(c)(1)(A); 8 C.F.R. § 244.2.

21. Individuals are ineligible for TPS if they have been convicted of a felony or two or more misdemeanors in the United States. 8 U.S.C. § 1254a(c)(2)(B). Individuals also are ineligible for TPS if DHS determines that they committed a serious crime before coming to the U.S., engaged in certain enumerated activities, or constitute a danger to the security of the United States. 8 U.S.C. § 1254a(c)(2)(B)(ii); 8 U.S.C. § 1158(b)(2)(A).

22. After the Secretary designates a country for TPS, she is required to conduct a periodic review of that designation. 8 U.S.C. § 1254a(b)(2). At least sixty days before the TPS designation expires, the Secretary, in consultation with the other appropriate agencies, must “review the conditions in the foreign state.” 8 U.S.C. § 1254a(b)(3)(A).

23. The purpose of the periodic review is to ascertain “whether the conditions for” the TPS designation “continue to be met.” 8 U.S.C. § 1254a(b)(3)(A). For example, the Secretary must evaluate the conditions in the foreign country to assess whether there continue to be “extraordinary and temporary conditions” which “prevent aliens” “from returning ... in safety,” and may evaluate whether “permitting the aliens to remain” in the United States is “contrary to the national interest of the United States.” 8 U.S.C. § 1254(b)(1)(C).

24. The actual extension or termination of a country’s TPS designation is a ministerial act over which the Secretary has no discretion. If the Secretary determines that the conditions for designation continue to exist, the designation must be extended. 8 U.S.C. § 1254a(b)(3)(A). Conversely, if the Secretary determines that the conditions for designation are no longer met, the designation must be terminated. *Id.* § 1254a(b)(3)(B). 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).

25. 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 meets the conditions for designation under [8 U.S.C. § 1254a(b)(1)].” 8 U.S.C. § 1254a(b)(3)(B).

26. Like the Secretary’s initial decision to designate a country, the Secretary’s determination whether the conditions for designation continue to exist must be the product of inter-agency consultation and a “review of the conditions in the [previously designated] foreign state.” 8 U.S.C. § 1254(b)(3)(B)-(C).

27. The “statute requires” that the Secretary’s review of country conditions under sections (b)(3)(A) and (b)(3)(B) be “purely evidence-based” and conducted “in good faith.” *Saget*, 375 F. Supp. 3d at 346.

28. A decision to terminate TPS must flow from the evidence the Secretary considers; a termination decision that is “preordained” or “pretextual” violates the statute. *Saget*, 375 F. Supp. 3d at 346.

29. Following her review, the Secretary “shall provide on a timely basis for the publication of notice” of her determination, “including the basis for the termination” in the Federal Register. 8 U.S.C. § 1254a(b)(3)(A); *accord* 8 U.S.C. § 1254a(b)(3)(B) (“If the [Secretary] 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 [Secretary] shall terminate the designation by publishing notice in the Federal Register of the determination under this subparagraph (including the basis for the determination).”).

30. Congress placed no restrictions on the number of times TPS can be extended or redesignated (to allow later-arriving nationals to apply). So long as the periodic mandatory review finds that the statutory conditions for designation continue to exist, the Secretary must extend the designation. 8 U.S.C. § 1254a(b)(3)(A)

31. Given the statutorily prescribed procedure and timeline for terminating a country's TPS designation, the Secretary "does not have statutory or inherent authority to partially vacate a country's TPS designation." *Haitian Evangelical Clergy Ass'n et al. v. Trump*, 789 F. Supp. 3d 255, 273 (E.D.N.Y. 2025).

FACTUAL ALLEGATIONS

History of Haiti's TPS

Initial Designation: January 2010

32. Haiti was initially designated for TPS in 2010 during the Obama administration, following a devastating earthquake that killed more than 200,000 people and caused more than \$7 billion in damage. 75 Fed. Reg. 3476 (Jan. 21, 2010). Haiti's TPS designation was extended or redesignated multiple times between 2011 and 2015. *See* 76 Fed. Reg. 29000 (May 19, 2011); 77 Fed. Reg. 59943 (Oct. 1, 2012); 79 Fed. Reg. 11808 (Mar. 3, 2014); 80 Fed. Reg. 51582 (Aug. 25, 2015). In each extension or redesignation, DHS outlined conditions arising from the 2010 earthquake and its attendant damage to infrastructure, public health, agriculture, transportation, and educational facilities. Each extension or redesignation also cited the cholera epidemic that had broken out in Haiti following the 2010 earthquake, as well as the earthquake's exacerbation of Haiti's pre-existing vulnerabilities, including food insecurity and a lack of adequate housing.

33. As detailed below, the first Trump administration unlawfully tried to end Haiti's TPS designation but the U.S. District Court for the Eastern District of New York enjoined that attempt. *See generally Saget*, 375 F. Supp. 3d 280.

Designation: January 2021

34. During the Biden administration, DHS Secretary Alejandro Mayorkas, recognizing that Haiti's troubles went well beyond the earthquake and its lingering effects, designated Haiti for TPS on August 3, 2021. 86 Fed. Reg. 41863 (Aug. 3, 2021). Secretary Mayorkas concluded that "Haiti is grappling with a deteriorating political crisis, violence, and a staggering increase in human rights abuses." *Id.* at 41864. Further, Secretary Mayorkas cited Haiti's dire economic conditions, severely limited healthcare infrastructure, and pervasive food insecurity as additional reasons that justified the country's TPS designation. *See generally, id.*

35. As to Haiti's political crisis, Secretary Mayorkas noted that "[d]ue to political gridlock and the failure of parliament to approve an elections law and a national budget, parliamentary elections scheduled for October 2019 did not take place," and that the country's president was engaging in "rule by decree, without a legislative body," after the parliament lapsed, leaving only 10 senators and no deputies remaining in office. 86 Fed. Reg. at 41864–65.

36. With respect to human rights violations and abuses, Secretary Mayorkas concluded among other things that Haiti's President

became increasingly authoritarian through reliance on executive decrees to accomplish his agenda, including the creation of an intelligence agency accountable only to the president. The Human Rights Component of the United Nations Integrated Office in Haiti and the Office of the High Commissioner for Human Rights reported a staggering 333% increase in the number of human rights violations and abuses by law enforcement officials and non-state actors, respectively, against the rights to life and security of person in the period between July 2018 and December 2019.

86 Fed. Reg. at 41865.

37. With respect to security concerns, Secretary Mayorkas found, among other things, that "[v]iolent criminal gangs pose a growing challenge to state authority, including de facto control of territory," and that "[f]rom 2019–2021 a new federation emerged, uniting urban criminal

gangs that control entire neighborhoods in the capital city of Port-au-Prince.” 86 Fed. Reg. at 41865. Citing a U.S. State Department report, Secretary Mayorkas further noted that “gang activity was also on the rise outside of Port-au-Prince” and that the last months of 2020 “were particularly dangerous, with 14 kidnappings reported at that time.” *Id.* Similarly, he noted, “[i]n January 2021, a leading Haitian human rights organization, the Center for the Analysis and Research of Human Rights ... [found] that over a third of Haiti’s voters now live in areas controlled by criminal gangs.” *Id.* at 48166. Secretary Mayorkas further found that Haitian police and state officials were complicit “in gang attacks that left hundreds of people dead” and that “[r]obberies and kidnappings have become a daily reality as buses get intercepted by armed gangs controlling access to large swaths of the country.” *Id.*

38. As to Haiti’s economic situation, Secretary Mayorkas concluded that

Haiti's economic and social development continue to be hindered by political instability, governance issues, and fragility. With a Gross Domestic Product (GDP) per capita of US \$1,149.50 and a Human Development Index ranking of 170 out of 189 countries... Haiti remains the poorest country in the Latin America and Caribbean region and among the poorest countries in the world.

86 Fed. Reg. at 41866. He further found that “[p]ublic frustration with economic woes has contributed greatly to ongoing demonstrations, some of which have become violent.” *Id.*

39. Concerning healthcare, Secretary Mayorkas found that “only 31% of Haitians have access to healthcare services” and that numerous “vector-borne diseases are prevalent in Haiti, including malaria, chikungunya, dengue, and Zika.” 86 Fed. Reg. at 41867. And Secretary Mayorkas found that in a “country of 11 million people ... Haiti only has the capacity to treat a few hundred patients at a time, due to suboptimal coordination within the state apparatus [and] inadequate funding of the national response plan.” *Id.*

40. Concerning food insecurity, Secretary Mayorkas found that “[a]ccording to the World Food Programme ... Haiti has one of the highest levels of food insecurity in the world,” with “[m]ore than half of the population ... chronically food insecure.” 86 Fed. Reg. at 41867. He also found that, “[a]ccording to UNICEF, 4.1 million Haitians (nearly 40 per cent of the Haitian population) are estimated to be food insecure, and the estimated number of children suffering from acute malnutrition has risen to 167,000.” *Id.*

41. As for access to basic services, Secretary Mayorkas further found that, “as a result of deadly gang clashes, the displaced are in need of urgent humanitarian assistance and protection,” and that “[p]riority needs include sanitation, shelter, access to clean water and food.” *Id.*

42. Based on these and other factors, Secretary Mayorkas concluded, “after consultation with the appropriate U.S. Government agencies,” that “the statutory conditions supporting Haiti’s designation for TPS on the basis of extraordinary and temporary conditions are met.” 86 Fed. Reg. at 41868. Secretary Mayorkas designated Haiti for TPS for eighteen months “from August 3, 2021 through February 3, 2023.” *Id.*

Redesignation and extension: January 2023

43. On January 26, 2023, Secretary Mayorkas both redesignated Haiti for TPS and extended Haiti’s then current TPS designation, allowing both existing beneficiaries and new arrivals to apply for TPS under the new designation. 88 Fed. Reg. 5022 (Jan. 26, 2023). Secretary Mayorkas “determined that an 18-month TPS extension is warranted because the extraordinary and temporary conditions supporting Haiti’s TPS designation remain and that such extension is not contrary to the national interest of the United States” and “further determined that redesignating Haiti for TPS based on extraordinary and temporary conditions ... is warranted, including a determination that redesignation is not contrary to the national interest of the United States.” *Id.*

at 5025. In pertinent part, Secretary Mayorkas cited Haiti's continued political turmoil and country-wide security concerns, recent environmental disasters, humanitarian abuses, deteriorated economic conditions, and continuing food insecurity as reasons justifying extension of the TPS designation.

44. Concerning the political situation, in addition to making many of the same findings set forth in his 2021 designation, Secretary Mayorkas noted that after the July 7, 2021, assassination of Haiti's president, the then-recently appointed prime minister "was installed as head of a new government" that in turn "collud[ed]" with "illegal armed groups ... in the absence of political will to hold corrupt officers accountable." 88 Fed. Reg. at 5025–26.

45. Concerning the security situation, Secretary Mayorkas found, among other things, that following the July 2021 assassination of its president, "Haiti has experienced a sharp deterioration in an already fragile security situation," and that "[g]ang violence and kidnappings have spiked throughout the country, particularly in the capital, Port-au-Prince." *Id.* at 5026. In particular,

The United Nations documented 934 killings, 684 injuries, and 680 kidnappings in Port-au-Prince from January to June 2022. In one 10-day period in July 2022, more than 200 people were killed in gang violence in Port-au-Prince; nearly half of the decedents had no gang ties.

Id. Further, the Secretary found that

Haitian gangs have also attacked religious and government infrastructure. On June 10, 2022, a gang known as 5 Seconds took temporary control of the Court of First Instance, the main courthouse in Port au Prince. While the courthouse had not been used for criminal trials for several years due to persistent insecurity, the gang nevertheless forced judicial officials out and stole computers, desks, and other assets.

Id. The Secretary also found that

In mid-September, gangs blocked access to the Varreux Terminal in Port-au-Prince, the main entry point for fuel in Haiti, cutting off millions of gallons of diesel and gasoline and causing a severe fuel shortage. The fuel blockage paralyzed Haiti's

economy. Health centers and hospitals had to close, and the distribution of water was interrupted. The lack of access to clean water contributed to the outbreak of cholera in early October, and complicated efforts to respond to and contain the outbreak.

Id.

46. In addition, Secretary Mayorkas identified “recent environmental disasters” that “contributed to the extraordinary and temporary conditions in Haiti.” 88 Fed. Reg. at 5027. He cited both (1) the “7.2 magnitude earthquake [that] hit the southern region of Haiti” on August 14, 2021, “killing more than 2,200 people, injuring 12,700, destroying 130,000 homes, and leaving thousands of people in urgent need of assistance”, and (2) Tropical Storm Grace, which struck just two days later and unleashed “torrential rains [that] caused floods and landslides in the same departments affected by the earthquake, as well as in Sud-Est.” *Id.*

47. Concerning the humanitarian situation, Secretary Mayorkas found, among other things, that “Haiti has 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% of children chronically malnourished.” 88 Fed. Reg. at 5027. He further noted:

As of October 2022, the total number of people in acute food insecurity stood at 4.7 million people, including 1.8 million people in the ‘emergency’ phase on the World Food Program’s (WFP) Integrated Food Security Classification Index. For the first time ever, 19,000 Haitians are considered to be in the ‘catastrophe’ phase (the most severe classification).

Id. Secretary Mayorkas found that Haiti’s security situation exacerbated its humanitarian situation:

Armed clashes between gangs destroyed water networks and disrupted water truck deliveries in several Port-au-Prince neighborhoods during 2022. A Doctors Without Borders project coordinator noted that in addition to an epidemic of scabies directly connected to the lack of water since the beginning of 2022, people could only ‘afford small quantities of drinking water, but they [couldn’t] access clean water in quantities needed for hygiene.’” *Id.* “Adding to the struggle Haitians face to meet their basic needs, two WFP warehouses were looted and pillaged in September 2022, resulting in the loss of approximately \$6 million of relief assistance, including 2,000 tons of food.” *Id.* And “[t]he United Nations and the Haitian government have reported a new cholera outbreak, with the first cases detected

between October 1-2, 2022. As of November 15, 2022, there were 8,146 hospitalized suspected cases and 821 confirmed cases of cholera, resulting in 188 deaths.

Id.

48. Concerning Haiti's economy, Secretary Mayorkas concluded that

Haiti's economy has floundered. Haiti is among the countries with the greatest inequality in the region. The richest 20% of its population holds more than 64% of its total wealth, while the poorest 20% has less than 1%.

88 Fed. Reg. at 5027.

49. "In summary," Secretary Mayorkas concluded, "Haiti is experiencing extraordinary and temporary conditions resulting from grave insecurity and gang crime, as well as socio-economic and humanitarian conditions, including those resulting from environmental disasters aggravating food insecurity." 88 Fed. Reg. at 5028.

Redesignation and extension: July 2024

50. On July 1, 2024, Secretary Mayorkas redesignated and extended Haiti's TPS designation. 89 Fed. Reg. 54484 (July 1, 2024). Secretary Mayorkas "determined that an 18-month TPS extension is warranted because the extraordinary and temporary conditions supporting Haiti's TPS designation remain" and "it is not contrary to the national interest of the United States to permit Haitian TPS beneficiaries to remain in the United States temporarily." *Id.* at 54491. Again, Secretary Mayorkas cited Haiti's continued political turmoil, security concerns, humanitarian abuses, and decimated economy as reasons justifying extension of the TPS designation.

51. As to Haiti's political situation, Secretary Mayorkas found, among other things, that "Haitian gangs are the primary source of violence and instability in Haiti and pose an increasing threat as they continue to escalate and expand their influence and geographic presence over large portions of metropolitan Port-au-Prince" and "several of Haiti's ten departments." 89

Fed. Reg. at 54488. Secretary Mayorkas further noted that, “an ongoing political impasse has left Haiti without a functioning democratically elected national government and hindered Haiti’s ability to respond to the gang-driven violence.” *Id.* Haiti’s “justice system,” he concluded, “is plagued by insecurity, corruption, strikes, and political interference.” *Id.*

52. Concerning the security situation, Secretary Mayorkas found, among other things, that “gang violence continues to escalate and expand outside the capital and other major cities.” 89 Fed. Reg. at 54488. Secretary Mayorkas noted that, “gang violence killed or injured more than 2,500 people” in the first three months of 2024, and further noted that the gangs have “an established presence in at least six [of Haiti’s ten] departments.” *Id.* He noted that, “in early March 2024, gangs attacked police stations and stormed two prisons” allowing more than “4,700 inmates to escape.” *Id.* Secretary Mayorkas found that the “coordinated gang attacks” have “displaced over 15,000 people from their homes in Port-au-Prince,” and “the U.S. military evacuated all non-essential Embassy personnel by airlift on Saturday, March 9, and Sunday, March 10.” *Id.* at 54489.

53. As to Haiti’s humanitarian situation, Secretary Mayorkas found, among other things, that “Haiti has 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.” 89 Fed. Reg. at 54490. Secretary Mayorkas also cited the deleterious impact cholera has had in Haiti, noting that as of January 2024 “an estimated 73,000 Haitians were confirmed or suspected to have cholera across all ten departments.” *Id.* at 55491. “Only 55 percent of Haitian households could access safe drinking water while two-thirds of Haitians had limited or no access to sanitation services.” *Id.* The intersection of Haiti’s gang violence and deteriorated

healthcare system led Secretary Mayorkas to determine that there is a “more significant likelihood of severe disease and death for those Haitians who contract cholera.” *Id.*

54. Concerning Haiti’s economy, Secretary Mayorkas found, among other things, that “amidst the political, security, and environmental crises, Haiti’s economy has been decimated and threatens the future of the country.” 89 Fed. Reg. at 54491. He noted “estimate[s] that three-quarters of Haiti’s healthcare facilities lack adequate medical supplies and sufficient trained personnel as the security crisis has led to a mass exodus of health workers.” *Id.*

55. Based on these and other factors, Secretary Mayorkas concluded that “after consultation with appropriate U.S. Government agencies,” “the conditions supporting Haiti’s designation for TPS continue to be met.” *Id.* Secretary Mayorkas designated Haiti for TPS for eighteen months “beginning on August 4, 2024, and ending on February 3, 2026.” *Id.*

**The Trump Administration’s Preordained Agenda
to End TPS for Haiti**

56. As explained above, the TPS statute authorizes ending a TPS designation only after “consultation with appropriate agencies of the Government” (8 U.S.C. § 1254a(b)(1)), and only after an evidence-based review process. *Id.* at §§ 1254a(b)(1)(C), (b)(3)(A), (b)(3)(B); *accord Saget*, 375 F. Supp. 3d at 346 (the use of the word “shall” in § 1254a(b)(3)(A) evidences congressional “intent that the Secretary undertake a periodic review grounded in fact—i.e., based on objective conditions in the foreign country and regardless of any government official’s political motives—and in good faith”).

57. Contrary to this mandatory framework, President Trump and his surrogates made the decision to end TPS before they took office, well *before* Secretary Noem could have consulted with any government agency, let alone undertaken the statutorily prescribed review process.

58. While campaigning for office, President Trump repeatedly said that if elected he and his administration would end Haiti's TPS.

59. At a campaign rally on September 13, 2024, President Trump said, "We will do large deportations in Springfield, Ohio."³³ This threat was targeted at Haitian TPS holders, specifically. Over the past several years, thousands of Haitian TPS holders had moved to Springfield, Ohio. The reason is simple: Although "[t]housands of new jobs had been created there, thanks to a successful effort by the city's leadership and Chamber of Commerce to attract new business to Springfield," the City's population "had dwindled to under 60,000, from about 80,000 in the late 1960s and early 1970s," which left local employers without enough native-born workers to fill the new jobs.³⁴ Meeting that need, Haitian TPS holders have helped power Springfield's economic recovery.

60. On October 2, 2024, a reporter asked President Trump whether he would end TPS for Haiti if elected to a second term. President Trump responded unambiguously: "Absolutely I'd revoke it, and I'd bring them back to their country."³⁵

61. Signaling in advance that a second Trump administration was determined to end TPS designations without regard to the law, now-Vice President Vance, falsely describing TPS holders as "illegal aliens" even though they are in the country legally, declared during the campaign that "[w]e're going to stop doing mass grants of Temporary Protected Status," even

³³ *Former President Trump Holds News Conference Near Los Angeles*, C-SPAN (Sept. 13, 2024) <https://www.c-span.org/program/campaign-2024/former-president-trump-holds-news-conference-near-los-angeles/648784>.

³⁴ Miriam Jordan, *Why Thousands of Haitians Have Settled in Springfield, Ohio*, N.Y. TIMES (Sept. 14, 2024), <https://www.nytimes.com/2024/09/14/us/haitian-migrants-springfield-ohio.html>.

³⁵ Maggie Astor, *Trump Says He Would Try Again to Revoke Haitian Immigrants' Protections*, N.Y. TIMES (Oct. 3, 2024), <https://www.nytimes.com/2024/10/03/us/politics/trump-haitian-immigrants-legal-status.html>.

though the statute, by design, provides for granting blanket relief to all eligible citizens of a designated country present in the United States on the date of designation.³⁶

62. Secretary Noem too expressed a generalized hostility to TPS designations before taking office. When asked a question about TPS in her confirmation hearing, she answered, “[TPS] has been abused and manipulated by the Biden administration, and that will no longer be allowed.”³⁷

63. Secretary Noem has made clear that her decisions to end TPS for Haiti and other countries are based not on the statutorily required review process, nor on any consultation with government agencies, but on President Trump’s directive to end TPS. Concerning her decision to terminate TPS for Venezuela, for example, Secretary Noem said, “[w]hen the President gives a directive, the Department of Homeland Security will follow it.”³⁸

64. These public statements by President Trump and his surrogates are evidence that, as in the first Trump administration, the decision to end Haiti’s TPS designation was a preordained decision rather than a product of the review process mandated by Congress under the statute. That is unlawful. *Saget*, 375 F. Supp. 3d at 346 (TPS decision that is “preordained” and not “evidence-based, as the statute-requires” is unlawful).

³⁶ Chris Cameron, *Vance Vows an End to Programs for Legal Immigrants*, N.Y. TIMES (Oct. 22, 2024), <https://www.nytimes.com/2024/10/22/us/politics/vance-trump-legal-immigrants.html>.

³⁷ *Homeland Security Secretary Nominee Governor Kristi Noem Testifies at Confirmation Hearing*, C-SPAN (Jan. 17, 2025) <https://www.c-span.org/program/senate-committee/homeland-security-secretary-nominee-gov-kristi-noem-testifies-at-confirmation-hearing/654484>.

³⁸ Kristi Noem (@Sec_Noem), X (Jan. 29, 2025), https://x.com/sec_noem/status/1884752724194963594?s=46&t=DFMGDqrcqeJ4X9klKmN2s (last visited Feb. 23, 2025).

**President Trump’s Motivation for Terminating TPS:
Discriminatory Animus Against Haitians
and Other Non-White Immigrants**

65. President Trump’s hostility to nonwhite immigrants is nothing new. He has for years espoused racial animus against immigrants of color. President Trump’s and his staff’s statements and actions during his first administration reflected that animus.

66. At a White House meeting in June 2017, President Trump complained that Nigerian immigrants recently admitted into the United States would “never ‘go back to their huts’ in Africa.”³⁹

67. At a White House meeting with U.S. Senators on January 11, 2018, President Trump disparaged an immigration plan that protected people from predominantly nonwhite nations, including Haiti, El Salvador, and several African nations, asking, “Why are we having all these people from shithole countries come here?”⁴⁰

68. In the same meeting, he targeted Haitians specifically, asking, “Why do we need more Haitians?”⁴¹

69. He later added his view that the United States should welcome more immigrants from predominantly white Norway.⁴²

³⁹ Michael D. Shear & Julie Hirschfeld Davis, *Stoking Fears, Trump Defied Bureaucracy to Advance Immigration Agenda*, NY TIMES (Dec. 23, 2017), <https://www.nytimes.com/2017/12/23/us/politics/trump-immigration.html? r=1>

⁴⁰ *Saget*, 375 F. Supp. 3d at 371.

⁴¹ Ali Vitali, *Trump referred to Haiti and African nations as ‘shithole’ countries*, NBC NEWS (Jan. 12, 2018), <https://www.nbcnews.com/politics/white-house/trump-referred-haiti-african-countries-shithole-nations-n836946>.

⁴² *Id.*

70. Norway’s population is over 90 percent white.⁴³ Haiti’s population, by contrast, is 95 percent black.⁴⁴

71. Senator Richard Durbin explained that President Trump’s singling out of Haitians for exclusion was “an obvious racial decision.”⁴⁵

72. President Trump’s efforts to terminate TPS during his first administration also reflected his hostility towards nonwhite immigrants. As *Saget* details, Secretary Duke “was well aware that the White House wanted to terminate TPS for Haiti and other predominantly non-white foreign nations.”⁴⁶ Secretary Duke’s own handwritten notes indicate that she understood what was happening.⁴⁷ “This conclusion,” she wrote, “is the result of an America first view of the TPS decision.”⁴⁸

73. The administration also worked to create a public narrative that traded on insidious racial stereotypes.

74. In early 2017, DHS and USCIS appointees sought crime and public assistance data on Haitians with TPS.⁴⁹

⁴³ *The World Factbook: Norway*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/the-world-factbook/countries/norway/> (last updated July 23, 2025) (identifying Norway’s Ethnic groups as 81.5% Norwegian, 8.9% other European, and 9.6% other).

⁴⁴ *The World Factbook: Haiti*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html> (last updated July 23, 2025) (identifying Haiti’s Ethnic groups as 95% Black, and 5% mixed and White).

⁴⁵ Carl Hulse, *Inside the Oval Office Immigration Meeting that Left a Senator Stunned*, N.Y. TIMES (Jan. 19, 2018), <https://www.nytimes.com/2018/01/19/us/politics/trump-durbin-immigration-daca.html>

⁴⁶ 375 F. Supp. 3d at 370.

⁴⁷ *Id.* at 347-48

⁴⁸ *Id.* at 348.

⁴⁹ Alicia A. Caldwell, *AP Exclusive: US Digs for Evidence of Haiti Immigrant Crimes*, AP News (May 9, 2017), <https://apnews.com/article/crime-immigration-haiti-only-on-ap-united-states-government-740ed5b40ce84bb398c82c48884be616> (“Internal emails . . . show a top immigration official wanted not only crime data on Haitians who are protected from deportation under the [TPS] program, but also how many were receiving public benefits.”).

75. In an April 2017 email, USCIS’s Office of Policy and Strategy Chief directed her staff to compile “details on how many [Haitian] TPS holders are on public and private relief” and “how many have been convicted of crimes of any kind (any criminal/detainer stats you can find).”⁵⁰

76. She also sought information on how many were “out of work,” and the number of current Haitian TPS recipients who were “illegal pre-TPS designation.”⁵¹

77. After staff said they could not gather that information, she pressed them to search further: “I know some of it is not captured,” she said, “but we’ll have to figure out a way to squeeze more data out of our systems.”⁵²

78. Likewise, in an April 2017 email, Secretary of Homeland Security John F. Kelly directed staff to collect, “[s]pecific to Haiti, details on how many are on public and private relief, how many school aged kids [are] in school, how many [are] convicted of crimes of any kind.”⁵³

79. “According to internal DHS communications,” *Saget* explains, “officials sought this data to bolster the decision to terminate TPS for Haiti.”⁵⁴

80. DHS’s relentless efforts to manufacture prejudicial information about Haitian TPS recipients drew the attention of lawmakers, who expressed concerns about the reports⁵⁵ and alarm about “the troubling news that your department has asked for information on criminal history and public benefits use of Haitian nationals protected under [TPS].”⁵⁶ They noted that the timing of

⁵⁰ Plaintiffs’ Response to Defendants’ Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(B)(1), Fed. R. Civ. P. 12(B)(6), or, alternatively, for Summary Judgment Pursuant to Fed. R. Civ. P. 56, Exhibit 20 at 1, *Saget v. Trump*, 345 F. Supp. 3d 287 (E.D.N.Y. 2018) (No. 1:18-cv-01599-WFK-ST).

⁵¹ *Id.*, Exhibit 20 at 49.

⁵² Caldwell, *supra* note 49, *see also Saget*, 375 F. Supp. 3d at 309 (quoting April 27, 2017, email to USCIS staffers).

⁵³ *Saget*, 375 F. Supp. 3d at 307–08 (alterations in the original).

⁵⁴ *Id.* at 307.

⁵⁵ Letter from Sen. Bill Nelson to John F. Kelly, Sec’y, Dep’t of Homeland Sec. (May 17, 2017), <http://www.ijdh.org/wp-content/uploads/2016/10/2017-05-17-Nelson-to-Kelly-Haiti-TPS-Extension.pdf>.

⁵⁶ Letter from Sens. Robert Menendez, et al., to John F. Kelly, Sec’y, Dep’t of Homeland Sec. (May 19, 2017), https://www.menendez.senate.gov/imo/media/doc/HAITI-TPS_5_19_17.pdf.

this information request suggests that this information is pretext to deny an extension of TPS,” and urged the administration to “keep [its] review within the bounds dictated by Congress.”⁵⁷

81. President Trump has also repeatedly espoused racial animus against immigrants of color during his campaigns.

82. For instance, in his 2016 campaign’s kick-off speech, President Trump disparaged Latin American immigrants:

When Mexico sends its people, they’re not sending their best.... They’re sending people that have lots of problems, and they’re bringing those problems with us. They’re bringing drugs. They’re bringing crime. They’re rapists.⁵⁸

83. During his 2024 presidential campaign, President Trump made numerous statements demonstrating his discriminatory animus against Haitians in particular, and nonwhite immigrants generally based on their perceived race or ethnicity. Some of these statements are described below.

84. President Trump compared immigrants to snakes.⁵⁹

85. President Trump said that immigrants are “poisoning the blood” of America.⁶⁰

86. President Trump said that immigrants are “not people.”⁶¹

⁵⁷ *Id.*

⁵⁸ *Full Text: Trump announces a presidential bid*, WASH. POST (June 16, 2015), https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/full-text-donald-trump-announces-a-presidential-bid/?utm_term=.6fa0170ce812

⁵⁹ See, e.g., Dara Lind, “*The Snake*”: Donald Trump brings back his favorite anti-immigrant fable at CPAC (Feb. 23, 2018), <https://www.vox.com/policy-and-politics/2018/2/23/17044744/trump-snake-speech-cpac>; John T. Bennett, “*Dumping ground*”: Trump echoes conservative ‘Project 2025’ at first rally as a felon, ROLL CALL (June 10, 2024), <https://rollcall.com/2024/06/10/dumping-ground-trump-echoes-conservative-project-2025-at-first-rally-as-a-felon/>.

⁶⁰ C-Span, *Donald Trump on Illegal Immigrants “Poisoning the Blood of Our Country,”* <https://www.c-span.org/clip/campaign-2024/donald-trump-on-illegal-immigrants-poisoning-the-blood-of-our-country/5098439>; Hannah Fingerhut and Ali Swenson, *Trump defends controversial comments about immigrants poisoning the nation’s blood at Iowa Rally*, ASSOCIATED PRESS (December 19, 2023), <https://apnews.com/article/donald-trump-immigration-iowa-dff7f632948fa6511fb7d1955a28610c>.

⁶¹ Will Weissert and Jill Colvin, *Why Trump’s alarmist message on immigration may be resonating beyond his base*, ASSOCIATED PRESS (Apr. 1, 2024), <https://apnews.com/article/border-immigration-trump-biden-rhetoric-2024-election-327c08045edcc200f850d893de6a79d6>.

87. In the Fall of 2024, President Trump focused on Haitian TPS holders in particular. President Trump accused Haitian TPS holders in Springfield, Ohio of stealing Springfield residents' house pets, cooking them, and eating them. At the September 10, 2024, presidential debate, President Trump falsely asserted that in

Springfield, [Haitian immigrants are] eating the dogs. The people that came in. They're eating the cats. They're eating -- they're eating the pets of the people that live there. And this is what's happening in our country.⁶²

88. President Trump's assertion at the debate was a lie—Haitian TPS holders were not stealing peoples' pets and eating them. Ohio's Republican Governor, Mike DeWine, stated after President Trump's accusations at the debate: "There is simply no evidence of this at all. Discussions about Haitians eating dogs is just not helpful. And, again, these people are here legally... and they want to work, and they are, in fact working."⁶³

89. Springfield's city manager likewise stated that claims that Haitian TPS holders were stealing peoples' pets and eating them are "disinformation."⁶⁴ Similarly, "[t]he Springfield police ... denied the claims."⁶⁵

90. President Trump's lie that Haitian TPS holders were stealing peoples' pets and eating them reflects discriminatory animus against Haitians. False accusation of immigrants eating animals in this manner is a very old xenophobic trope. For example, "the way Trump has described

⁶² Riley Hoffman, *READ: Harris-Trump presidential debate transcript*, ABC NEWS (Sept. 10, 2024), <https://abcnews.go.com/Politics/harris-trump-presidential-debate-transcript/story?id=113560542>.

⁶³ Rebecca Picciotto, *'A piece of garbage': Republican Ohio Gov. condemns Trump-Vance false immigrant pet-eating conspiracy*, CNBC (Sept. 16, 2024), <https://www.cnbc.com/2024/09/15/republican-ohio-gov-mike-dewine-trump-vance-false-immigrant-pets-conspiracy.html>

⁶⁴ Anastasiia Riddle, *Springfield city manager slams immigration 'rumors' and 'disinformation'*, THE COLUMBUS DISPATCH (Sept. 12, 2024), <https://www.dispatch.com/videos/news/politics/2024/09/12/watch-springfield-city-manager-refute-viral-immigrants-claims/75191623007/>

⁶⁵ Jasmine Garsd, *The stereotype of immigrants eating dogs and cats is storied—and vitriolic as ever*, NPR NEWS (Sept. 11, 2024), <https://www.npr.org/2024/09/11/nx-s1-5108401/donald-trump-debate-eating-dogs-cats-immigrants-false-stereotype>

immigrants”—especially “those of color”—as “a threat to workers” has “parallels” to the anti-immigrant rhetoric of Grover Cleveland, who “had trading cards printed up during his 1888 run for the presidency, depicting Chinese male immigrants eating rats” and describing Chinese workers “as a threat to white American workers.”⁶⁶

91. President Trump’s campaign against Haitian TPS holders did not stop there. In an interview on October 8, 2024, he said to “look at Springfield, where 30,000 illegal immigrants are dropped,” stating that “they may [be in this country] through a certain little trick, but they are illegal immigrants as far as I’m concerned.”⁶⁷ Indicative of President Trump’s disregard for the law, the “little trick” to which he derisively referred was a duly enacted statute—8 U.S.C. § 1254a—which established TPS and authorizes TPS holders’ lawful presence in the United States.

92. After initially admitting “it’s possible, of course, that all of these rumors” that Haitian TPS holders were eating pets “will turn out to be false,” Vice President Vance later “stood by the debunked claims,” saying that he was willing “to create stories so that the American media actually pays attention,” in an effort to advance President Trump’s anti-immigrant agenda.⁶⁸

93. Two days later, on October 10, 2024, President Trump said that immigrants from Haiti “probably have AIDS,” a slur that he has wielded numerous times in his political career.⁶⁹ A similar statement—that “Haitians ‘all have AIDS’”—was cited by a federal court as evidence

⁶⁶ Karen Weintraub, *et al.*, *Immigrants-eat-pets trope is a century-old stereotype and ‘very old racism,’* USA TODAY (Sept. 12, 2024), <https://www.usatoday.com/story/news/politics/elections/2024/09/12/immigration-pets-historic-trope/75183935007/>

⁶⁷ Edith Olmsted, *Trump Escalates Racist Attacks With Dangerous Lie*, THE NEW REPUBLIC (Oct. 9, 2024), <https://newrepublic.com/post/186961/donald-trump-racist-attacks-springfield-ohio-lie>.

⁶⁸ Maggie Astor, *Vance Sticks By Pet-Eating Claims and Says He’s Willing to ‘Create Stories,’* N.Y. TIMES (Sept. 15, 2024), <https://www.nytimes.com/2024/09/15/us/politics/jd-vance-springfield-pets.html>.

⁶⁹ *Trump Slams Haitians attempting to enter U.S., says they ‘probably have AIDS,’* ABC 7 (Oct. 10, 2024), <https://abc7.com/haitian-migrants-donald-trump-former-president-immigration/11108741/>.

of President Trump’s unconstitutional animus against Haitian TPS holders. *Saget*, 375 F. Supp. 3d at 371.

94. President Trump’s invective during the 2024 campaign was not limited to Haitians but directed at other predominantly nonwhite immigrants as well. In an interview with *Time* Magazine, President Trump compared immigration from predominantly nonwhite countries to an “invasion like probably no country has ever seen before.”⁷⁰

95. Similarly, during a speech to Republican Senators in February 2025, President Trump stated that there were “[m]any, many thousands and thousands of murderers” let into the country “from all over the world.” He went on to falsely allege 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.”⁷¹

96. President Trump has similarly claimed that “we know” that immigrants “come from prisons” and that “[w]e know they come from mental institutions and insane asylums.”⁷² Secretary Noem herself has said essentially the same thing: that “countries that hate us empty out their prisons, their mental institutions”⁷³ and “sent criminals to America.”⁷⁴

⁷⁰ Time Staff, *Read the Full Transcripts of Donald Trump’s Interviews With TIME*, TIME (Apr. 30, 2024), <https://time.com/6972022/donald-trump-transcript-2024-election/>.

⁷¹ *Speech: Donald Trump Addresses GOP Senators at Dinner at Mar-a-Lago – February 7, 2025*, ROLL CALL, <https://rollcall.com/factbase/trump/transcript/donald-trump-speech-gop-senators-mar-a-lago-february-7-2025/>

⁷² Trip Gabriel, *Trump Escalates Anti-Immigrant Rhetoric with ‘Poisoning the Blood’ Comment*, N.Y. TIMES (Oct. 5, 2023), <https://www.nytimes.com/2023/10/05/us/politics/trump-immigration-rhetoric.html>

⁷³ *South Dakota Gov. Kristi Noem calls on Nikki Haley to exit 2024 race*, CBS News (Mar. 4, 2024), <https://www.cbsnews.com/video/kristi-noem-calls-on-nikki-haley-to-exit-2024-race/>

⁷⁴ @KristiNoem, X (Feb. 27, 2024, <https://perma.cc/D58Z-4X8H>)

97. President Trump’s and Secretary Noem’s claim that immigrants from predominantly nonwhite countries are “coming from prisons and insane asylums” is—like President Trump’s claim about Haitian TPS holders stealing pets and eating them—false.⁷⁵

98. In October 2024, President Trump suggested that immigrants who commit crimes do so because “it’s in their genes,” and further stated “we got a lot of bad genes in our country right now.”⁷⁶

99. Reflecting his obsession with immigrants’ physical traits, President Trump lamented the presence of immigrants from predominantly nonwhite regions of the world:

They come from Africa. They come from Asia. They come from all over the world. They come from the Middle East, Yemen ... Large numbers of people are coming in from China.... And if you look at these people, did you see them? They are physically fit. They’re 19 to 25. Almost everyone is a male, and they look like fighting age.⁷⁷

100. Throughout his 2024 campaign, President Trump denigrated and vilified nonwhite immigrants from across the world. In an interview with NewsNation in October 2024, he asserted:

It’s not just South America, it’s all over the world. They’re coming in from Africa, they’re coming in from the Congo. They are coming in from all parts of South America ... We have people coming in from the Middle East at numbers we have never seen. They are coming in from Asia. And it’s not sustainable by us or any

⁷⁵ Angelo Fichera, *Fact Checking Trump’s Recent Immigration Claims*, N.Y. Times (Dec. 24, 2023), <https://www.nytimes.com/2023/12/24/us/politics/trump-immigration-fact-check.html>; *FactChecking Trump’s Rally, Fox Interview*, FactCheck.org (Mar. 30, 2023), <https://www.factcheck.org/2023/03/factchecking-trumps-rally-fox-interview/>; Daniel Dale, *Fact check: Trump’s Own Campaign Can’t Find Proof for His ‘Mental Institutions’ Immigration Story*, CNN (Apr. 29, 2023), <https://www.cnn.com/2023/04/29/politics/fact-check-trump-mental-institutions-migrants-doctor>; *Fact-checking Over 12,000 of Donald Trump’s Quotes About Immigrants*, The Marshall Project (Oct. 21, 2024), <https://www.themarshallproject.org/2024/10/21/fact-check-12000-trump-statements-immigrants>

⁷⁶ Patrick Svitek, *Trump Suggests ‘Bad Genes’ to Blame for Undocumented Immigrants Who Commit Murders*, WASH. POST (Oct. 7, 2024), <https://www.washingtonpost.com/politics/2024/10/07/trump-undocumented-immigrants-bad-genes/>

⁷⁷ Alexandra Hutzler, *Trump continues to demonize migrants, falsely claims they’re ‘building an army’*, ABC NEWS (May 24, 2024), <https://abcnews.go.com/Politics/trump-continues-demonize-migrants-falsely-claims-building-army/story?id=110535732>

country... We have drug dealers, the biggest drug dealers. We have terrorists, we have everybody.”⁷⁸

101. Consistent with his animus toward nonwhite immigrants, President Trump portrays the areas in which they settle in the United States as “dumping grounds” that are “destroying our country.”⁷⁹

102. Importantly, President Trump does not describe immigrants from predominantly white countries this way and has a stated preference for admitting immigrants from predominantly white countries. For example, during the 2024 campaign he asked rhetorically:

Why can’t we allow people to come in from nice countries... you know like Denmark, Switzerland? Do we have any people coming in from Denmark? How about Switzerland? How about Norway?⁸⁰

103. After he took office, President Trump made his preference for white immigrants the official policy of the United States: In the Spring and early Summer of 2025, when the Trump administration was eliminating the lawful immigration status not only of Haitians but of immigrants from other predominantly nonwhite countries,⁸¹ the administration simultaneously “gave special priority” to white South African immigrants, admitting them into the United States as refugees.⁸²

⁷⁸ Damita Menezes and Ali Bradley, *Trump on Springfield Haitian migrants: ‘They have to be removed’*, NEWSNATION (Oct. 2, 2024), <https://www.newsnationnow.com/politics/2024-election/trump-springfield-haitian-migrants-removed/>.

⁷⁹ John T. Bennett, *‘Dumping ground’: Trump echoes conservative ‘Project 2025’ at first rally as a felon*, ROLL CALL (June 10, 2024), <https://rollcall.com/2024/06/10/dumping-ground-trump-echoes-conservative-project-2025-at-first-rally-as-a-felon/>.

⁸⁰ Maggie Haberman & Michael Gold, *Trump, at Fund-Raiser, Says He Wants Immigrants From “Nice” Countries*, N.Y. TIMES (April 7, 2024), <https://www.nytimes.com/2024/04/07/us/politics/trump-immigrants-nice-countries.html>.

⁸¹ Termination of the Designation of Afghanistan for Temporary Protected Status, 90 Fed. Reg. 20309 (May 13, 2025); Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans, 90 Fed. Reg. 13611 (March 25, 2025); Termination of the Designation of Cameroon for Temporary Protected Status, 90 Fed. Reg. 23697 (June 4, 2025); Termination of the Designation of Nepal for Temporary Protected Status, 90 Fed. Reg. 24151 (June 6, 2025).

⁸² Joey Garrison, *Who are Afrikaners? Trump welcomes white South Africans as other refugees are halted*, USA TODAY (May 10, 2025), <https://www.usatoday.com/story/news/politics/2025/05/10/afrikaner-refugees-trump-welcoming-white-south-africans/83557827007/>.

104. President Trump justified his preference for white immigrants over nonwhite immigrants by claiming that white South Africans are “racially disfavored landowners.” Exec. Order No. 14204 (Feb. 7, 2025). But that is not true: “Although white South Africans make up only 7 percent of the population, they own farmland that covers about half the country.”⁸³

105. That the administration’s discriminatory immigration policies are race-based rather than nationality-based is evidenced by the administration’s disparate treatment of white and “coloured” South Africans. When asked whether the administration’s resettlement program for Afrikaners was open to mixed-race South Africans, “Spencer Chretien, the highest-ranking official in the State Department’s refugee and migration bureau, sa[id] the program is intended for white people.”⁸⁴

106. President Trump’s preference only for white immigrants is not limited to white South Africans. His administration is undertaking a “radical overhaul of the U.S. refugee system that would slash the program to its bare bones while giving preference” not only to white South Africans, but to “English speakers” and “Europeans who oppose migration.” The net effect of these changes will be to “help mostly white people who say they are being persecuted while keeping the vast majority of other people out” of the United States. The rationale for the administration’s overhaul of the refugee system is that “America’s acceptance of refugees has made the country too diverse.”⁸⁵

⁸³ John Eligon, Zolan Kanno-Youngs, Erica L. Green, *Trump Ambushes South African President With Video of False Claims: What to Know*, NY TIMES (May 21, 2025), <https://www.nytimes.com/article/afrikaner-refugees-trump-south-africa.html>

⁸⁴ Ted Hesson et al., *US diplomats asked if non-whites qualify for Trump refugee program for South Africans*, REUTERS (July 25, 2025), <https://bit.ly/3XR2Smo>; *see also id.* (“In South Africa the term coloured refers to mixed-raced people, a classification created by the apartheid regime still in use today.”).

⁸⁵ Zolan Kanno-Youngs, Hameed Aleaziz, *Trump Considers Overhaul of Refugee System That Would Favor White People*, N.Y. TIMES (Oct. 15, 2025), <https://www.nytimes.com/2025/10/15/us/politics/trump-refugee-white-people.html>

107. In a December 2025 meeting with his cabinet secretaries, President Trump called nonwhite Somali immigrants—and Somlian U.S. Rep. Ilhan Omar, an American citizen—“garbage.” 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 complaint and do nothing but bitch, we don’t want them in our country.” President Trump added “I can say that about other countries, too.”⁸⁶

108. Recent remarks by President Trump confirm his abiding racism and corresponding preference for white immigrants. In a recent speech he again described people from Haiti, Somalia, and other predominantly non-white countries as coming from “shithole” countries that are “filthy, dirty, [and] disgusting” and again questioned why we can’t have immigrants from “Norway [and] Sweden” before wishing that Denmark would “send us some nice people.”⁸⁷

109. That the Trump administration seeks to prevent nonwhite immigration—and, therefore, that the administration’s policies are race-based rather than nationality-based—is further demonstrated by the travel ban that the administration instituted in June 2025 and expanded in December 2025. “The June travel ban imposed ... visa restrictions on 19 countries in total.”⁸⁸ Each of those countries—Afghanistan, Burma, Burundi, Chad, Republic of the Congo, Cuba, Equatorial Guinea, Eritrea, Haiti, Iran, Laos, Libya, Sierra Leone, Somalia, Sudan, Togo, Turkmenistan, Venezuela, and Yemen—are predominantly nonwhite. The administration has not

⁸⁶ Dareh Gregorian, *Trump calls Ilhan Omar ‘garbage’ and says Somalis should ‘go back to where they came from,’* NBC NEWS (Dec. 2, 2025), <https://www.nbcnews.com/politics/donald-trump/trump-calls-ilhan-omar-garbage-somalis-go-back-came-from-rcna247041>

⁸⁷ CNN, *Almost eight years later, Trump confirms he used the phrase ‘shithole countries,’* at 00:49–1:18, <https://bit.ly/3YtFQC0>.

⁸⁸ Aaron Reichlin-Melnick, *President Trump Expands his Travel Ban: What You Need To Know*, AMERICAN IMMIGRATION COUNCIL (Dec. 19, 2025), <https://bit.ly/3YDSt2k>.

imposed a similar travel ban on any predominantly white country.⁸⁹ The Department of Homeland Security justified the expanded travel ban as “slamming the door shut on” “foreign invaders.”⁹⁰

110. Shortly before the travel ban was expanded, Secretary Noem posted online that she had urged President Trump to impose “a full travel ban on every damn country that’s been flooding our nation with killers, leeches, and entitlement junkies.”⁹¹ She went on to describe immigrants from such countries as “foreign invaders” who “suck dry our hard-earned tax dollars” and concluded by saying that “WE DON’T WANT THEM. NOT ONE.”⁹²

111. Secretary Noem has made yet other statements indicating racial animus against nonwhite immigrants. She has, for example: “described immigration as an ‘invasion happening on purpose to remake the foundation of this country’”; stated at her confirmation hearing “that TPS ‘has been abused and manipulated’”; stated, “[b]efore reviewing any country conditions,” that “TPS ‘will no longer be allowed extensions going forward the way that they are’”; described TPS as “‘an immigration scheme that makes Americans less safe’”; and called TPS holders “‘poorly vetted migrants’ that included ‘MS-13 gang members to known terrorists and murderers.’” *Nat’l TPS Alliance v. Noem*, --- F. Supp. 3d ---, 2025 WL 2233985 (N.D. Cal. July 31, 2025) (cleaned up). As another court recently held:

By stereotyping the TPS program and immigrants as invaders that are criminal, and by highlighting the need for migration management, Secretary Noem’s statements perpetuate the discriminatory belief that certain immigrant populations will replace the white population. Although the Secretary’s statements may appear innocent or

⁸⁹ Aaron Reichlin-Melnick, *President Trump Expands his Travel Ban: What You Need To Know*, AMERICAN IMMIGRATION COUNCIL (Dec. 19, 2025), <https://bit.ly/3YDSt2k>.

⁹⁰ Department of Homeland Security (@DHSgov), X (Dec. 16, 2025), <https://x.com/DHSgov/status/2001044290957414556> (last visited Dec. 19, 2025).

⁹¹ Kristi Noem (@Sec_Noem), X (Dec. 1, 2025), https://x.com/Sec_Noem/status/1995642101779124476 (last visited Dec. 3, 2025); see also Camilo Montoya-Galvez, Nicole Sganga, Jennifer Jacobs, *Trump administration considering expanding travel ban to around 30 countries after National Guard shooting*, CBS NEWS (Dec. 2, 2025), <https://www.cbsnews.com/news/trump-travel-ban-30-countries-national-guard-shooting/>.

⁹² Kristi Noem (@Sec_Noem), X (Dec. 1, 2025), https://x.com/Sec_Noem/status/1995642101779124476 (last visited Dec. 3, 2025).

only mildly offensive to one who is not a member of the targeted group, the statements are in reality intolerably abusive or threatening when understood from the perspective of a plaintiff who is a member of the targeted group. Indeed, code words may demonstrate discriminatory intent.

Id. (cleaned up).

112. The Trump administration does not confine its racial animus to nonwhite immigrants in America; it extends that animus to nonwhite immigrants in other predominantly white countries. On December 5, 2025, the administration released a national security strategy claiming that Europe is facing the “stark prospect of civilizational erasure,” and pledging to support anti-migration political parties in that part of the world in order to prevent a future in which “certain NATO members will become majority non-European.” The document cautions that Europe is becoming “unrecognizable” due to migration from non-white countries and that the United States should help Europe “correct its current trajectory;” the document bluntly states: “We want Europe to remain European [and] regain its civilizational self-confidence.” The document “echoes some of the language of the Great Replacement Theory, a nationalist conspiracy theory embraced by some of [President Trump’s] top aides that warns of a deliberate effort to replace white people with nonwhite immigrants.”⁹³

113. In recent months, the Trump administration has also embraced the concept of “remigration,” a portmanteau of “reverse migration.” On November 28, 2025 the Department of Homeland Security posted online: “The stakes have never been higher, and the goal has never been more clear: Remigration now.”⁹⁴

⁹³ Michael D. Shear, Jeanna Smialek and Lara Jakes, *Trump Administration Says Europe Faces ‘Civilizational Erasure,’* N.Y. TIMES (Dec. 5, 2025), <https://www.nytimes.com/2025/12/05/world/europe/trump-europe.html?smid=nytcore-ios-share&referringSource=articleShare>

⁹⁴ Department of Homeland Security (@DHSgov), X (Nov. 28, 2025), <https://x.com/DHSgov/status/1994445836915253664>

114. The term “remigration” has different meanings depending on context. Although the literal dictionary definition has no overtly racist meaning—“the act of migrating again”⁹⁵—for far-right groups, the term is a racist dog whistle for “creating greater ethnic homogeneity, creating Whiter countries” via forced deportation of nonwhite immigrants.⁹⁶ As Julia Ebner, a researcher at the Institute for Strategic Dialogue at Oxford University put it, the term “sounds a lot more benign than what it actually stands for.”⁹⁷

115. The Trump administration, since embracing the term “remigration,” has been coy about its intended use. When “CNN asked DHS to further explain the policies and context” behind its use of the term, a spokesperson responded “‘Is the English language too difficult for you?’ ... before citing the Collins English Dictionary’s definition” of the term. “But when pressed to respond to CNN’s initial inquiry” about the term’s “far-right connotations” DHS did not respond.”⁹⁸

116. On November 30, 2025, Secretary Noem appeared on NBC’s *Meet the Press*. She was asked about the term “remigration.” Specifically, Secretary Noem was asked: “As you probably know, this term has been used in different situations, but including by the far right in Europe to call for the mass deportation of non-white immigrants. How specifically does the Trump administration define remigration?” In response, Secretary Noem did not disavow the racist use of the term, instead reiterating talking points about “criminal illegal aliens.”⁹⁹

⁹⁵ *Remigration*, MIRIAM WEBSTER ONLINE, <https://www.merriam-webster.com/dictionary/remigration>

⁹⁶ Chelsea Bailey, *DHS issued a call to ‘remigrate.’ Here’s the history of the term often associated with far-right groups*, CNN (Oct. 19, 2025), <https://www.cnn.com/2025/10/19/us/remigrate-dhs-explained>

⁹⁷ Ashifa Kassam, *How remigration became a buzzword for global far right*, THE GUARDIAN (Oct. 3, 2024), <https://www.theguardian.com/world/2024/oct/03/how-remigration-became-a-buzzword-for-europes-far-right>

⁹⁸ Bailey, *DHS issued a call to ‘remigrate,’ supra* note 91.

⁹⁹ Transcript, *Meet the Press* (Nov. 30, 2025), <https://www.nbcnews.com/meet-the-press/meet-press-november-30-2025-n1313101>

117. Thus, there is both “direct and circumstantial evidence” that a “discriminatory purpose of removing non-white immigrants from the United States was a motivating factor behind the decision to terminate TPS for Haiti.” *Saget*, 375 F. Supp. 3d at 374.

**Upon Taking Office, President Trump and his Surrogates
Follow Through on the Plan to End Haiti’s TPS**

February 12, 2025 “Partial Vacatur”

118. On January 20, 2025, President Trump issued Executive Order 14159. The Order directed his new administration to “take all appropriate action, consistent with law, to rescind the policy decisions of the previous administration that led to the increased or continued presence of illegal aliens in the United States, and align any and all departmental activities with the policies set out by this order and the immigration laws.”¹⁰⁰

119. The Order specifically required that TPS designations be “limited in scope.”¹⁰¹

120. On January 25, 2025, Kristi Noem was sworn in as DHS Secretary.

121. As promised, Secretary Noem, at the direction of President Trump, issued what she styled a “partial vacatur” of Haiti’s TPS designation on February 24, 2025. 90 Fed. Reg. 10511, 10511 (Feb. 24, 2025). Contrary to statute, which prohibits ending a country’s TPS designation before the date on which it was scheduled to expire (8 U.S.C. § 1254a(b)(3)(B)), the “partial vacatur” purported to end Haiti’s TPS designation as of “August 3, 2025, instead of February 3, 2026,” its previously fixed expiration date. 90 Fed. Reg. at 10511.

122. According to the “partial vacatur,” Secretary Noem acted “[i]n furtherance of” the objectives set forth in President Trump’s executive order entitled “Protecting the American People

¹⁰⁰ Exec. Order 14159 (Jan. 20, 2025), available at <https://www.whitehouse.gov/presidentialactions/2025/01/protecting-the-american-people-against-invasion/>.

¹⁰¹ *Id.*

Against Invasion,” which she characterized as directing her “to promptly take all appropriate actions, consistent with law, to rescind policies that led to increased or continued presence of illegal aliens in the United States.” 90 Fed. Reg. at 10513. The “partial vacatur” offered no explanation why prematurely ending Haiti’s TPS designation in contravention of 8 U.S.C. § 1254a(b)(3)(B) is, supposedly, “consistent with law.” Rather, in the press statement announcing the partial vacatur, Secretary Noem stated that DHS was “returning integrity to the TPS system,” and “returning TPS to its original status: temporary.”¹⁰²

123. The “partial vacatur” did not purport to be a product of the mandatory review process set forth in 8 U.S.C. § 1254a(b)(3). It did not claim that Secretary Noem “consult[ed] with appropriate agencies of the Government.” *Id.* § 1254a(b)(3)(A). Nor did it claim that she “review[ed] the conditions in” Haiti, let alone “determined whether the conditions for [Haiti’s] designation ... continue to be met.” *Id.*

124. Rather, Secretary Noem merely criticized her predecessor’s most recent extension and redesignation decision. According to Secretary Noem, “partial vacatur” of the July 1, 2024, extension and redesignation—which extended Haiti’s TPS designation to February 3, 2026—was warranted because, in her view, it (1) contained “no discussion ... of why the 18-month period was selected”; (2) lacked “justification of why permitting the ever-increasing population of Haitian TPS recipients ... to remain temporarily in the United States is not contrary to the U.S. national interest”; and (3) cited country conditions reports that “[d]ate back to early 2023” or earlier. 90 Fed. Reg. at 10513.

¹⁰² Press Release, DHS, Secretary Noem Rescinds Previous Administration's Extension of Haiti's TPS (Feb. 20, 2025), <https://www.dhs.gov/news/2025/02/20/secretary-noem-rescinds-extension-haitis-temporary-protected-status>

125. Despite her criticisms of the July 1, 2024, extension and redesignation, Secretary Noem’s “partial vacatur” did not do what the statute requires be done before Haiti’s TPS designation could lawfully be terminated: She did not determine that it was now possible for Haitian TPS holders to return to Haiti “in safety.” Nor did she determine that the presence of Haitian TPS holders is “contrary to the national interest.” 8 U.S.C. § 1254a(b)(3).

126. Instead of engaging in the procedure required by statute for terminating a country’s TPS designation, Secretary Noem purports to have “partially vacate[d]” the existing designation. 90 Fed. Reg. at 10511. But the TPS statute does not contemplate vacatur of an existing designation. To the contrary, because the statute specifies a particular termination procedure, the Secretary may not bypass that procedure, whether by styling her decision a “vacatur” or otherwise.

127. Moreover, even if she had conducted the requisite periodic review before issuing the “partial vacatur” and, as a result of that review, had determined that the statutory conditions for designation no longer exist, Secretary Noem still could not terminate Haiti’s TPS designation before “the expiration of the most recent previous extension” (8 U.S.C. § 1254a(b)(3)(B)), which in this case is February 3, 2026. 89 Fed. Reg. at 54491.

128. Ignoring duly enacted law, Secretary Noem prematurely ended Haiti’s TPS designation at the behest of President Trump.¹⁰³ Instead of giving due consideration to the statutorily identified factors after consultation with the appropriate agencies, she reached a predetermined decision, having earlier announced that “[w]hen the President gives a directive [to end a TPS designation], the Department of Homeland Security will follow it.”¹⁰⁴

¹⁰³ Kristi Noem (@Sec_Noem), X (Jan. 29, 2025), https://x.com/sec_noem/status/1884752724194963594?s=46&t=DFMGDqrcqeJ4X9klKmN2s (“When the President gives a directive, the Department of Homeland Security will follow it.”) (last visited July 13, 2025).

¹⁰⁴ Interview with Krisi Noem, Homeland Security Secretary, CNN (January 29, 2025), <https://transcripts.cnn.com/show/cnc/date/2025-01-29/segment/12>

129. On July 1, 2025, Hon. Brian J. Cogan of the United States District Court for the Eastern District of New York held that Secretary Noem’s “partial vacatur” of Haiti’s TPS was unlawful. *See generally Haitian Evangelical Clergy Ass’n et al. v. Trump*, 789 F. Supp. 3d 255 (E.D.N.Y. 2025).

130. Judge Cogan ruled that Secretary Noem “does not have statutory or inherent authority to partially vacate a country’s TPS designation” and that accordingly her purported “partial vacatur” of Haiti’s TPS designation “must be set aside as unlawful” under the Administrative Procedure Act. *Haitian Evangelical Clergy Ass’n*, 789 F. Supp. 3d at 273.

131. Because Judge Cogan set aside the “partial vacatur” as unlawful, the original expiration date of Haiti’s TPS designation is once again in effect. As established by the July 2024 extension and redesignation that Secretary Noem purported to “partially vacate,” Haiti’s current TPS designation does not expire until February 3, 2026. *See Haitian Evangelical Clergy Ass’n*, 789 F. Supp. 3d at 273.

July 1, 2025 Termination

132. On June 27, 2025, Secretary Noem announced in a press release that Haiti’s TPS would be terminated effective September 2, 2025.¹⁰⁵

133. Notice of the termination was published in the Federal Register on July 1, 2025. 90 Fed. Reg. 28760 (“After September 2, 2025, nationals of Haiti ... who have been granted TPS under Haiti’s designation will no longer have TPS.”).

134. The unlawful July 1, 2025, termination of Haiti’s TPS designation rested on the unlawful February 24, 2025, “partial vacatur” of Haiti’s TPS designation. As the government

¹⁰⁵ *See DHS Terminates Haiti TPS, Encourages Haitians to Obtain Lawful Status* (June 27, 2025), <https://www.dhs.gov/news/2025/06/27/dhs-terminates-haiti-tps-encourages-haitians-obtain-lawful-status>

admitted with respect to Secretary Noem's February 2025, termination of Venezuela's TPS designation, "[t]he Secretary's vacatur was an essential prerequisite of her determination to terminate, rather than extend," Haiti's TPS designation. Stay Appl. at 18 n.12, *Noem v. Nat'l TPS All.*, No. 24A1059 (U.S. May 1, 2025). Because 8 U.S.C. § 1254a(b)(3)(B) prohibits termination of a TPS designation before the end of its most recent extension, unlawfully vacating a country's most recent extension allows the administration to then, in a second action, unlawfully terminate the country's TPS designation earlier than otherwise allowed while nominally adhering to the statute's text. In other words, the only reason Secretary Noem could—albeit falsely—claim authority to terminate Haiti's TPS designation effective September 2, 2025, is because she purported to “partially vacate” the July 1, 2024, notice that had extended Haiti's TPS designation through February 3, 2026.

135. Because the “partial vacatur” on which it necessarily depends was “unlawful” (*Haitian Evangelical Clergy Ass'n*, 789 F. Supp. 3d at 273), Secretary Noem's termination of Haiti's TPS designation effective September 2, 2025, was itself unlawful. Specifically, Secretary Noem's termination of Haiti's TPS designation effective September 2 is unlawful because it is premature. As Judge Cogan correctly recognized, under “the statutorily prescribed timeline, ... the next available date for termination of Haiti's TPS designation [is] February 3, 2026.” *Id.* at 270.

136. Timing aside, Secretary Noem's termination of Haiti's TPS designation was unlawful in other ways.

137. Secretary Noem appeared terminate Haiti's TPS designation based on her subjective belief that Haitians, as a population, have had TPS for too long. Both the press release announcing the termination and the Federal Register notice memorializing it confirm as much.

The press release announcing her decision stated that terminating Haiti's TPS "ensures that Temporary Protected Status is actually temporary."¹⁰⁶ The Federal Register notice likewise states that TPS "is an inherently temporary status." 90 Fed. Reg. 28760.

138. But that misreads the TPS statute. Although designations are for fixed time periods and subject to periodic review because the conditions for designation might eventually cease to exist, the statute places no limit on the number of times that a TPS designation can be extended or redesignated. So long as the periodic mandatory review finds that the conditions for designation continue to exist, the Secretary must extend the designation. 8 U.S.C. § 1254a(b)(3)(A). Indeed, under the statute, designations are automatically extended unless and until the Secretary affirmatively determines that the conditions for designation have ceased to exist. *Id.* § 1254a(b)(3)(A), (C).

139. In addition to being contrary to the text of the TPS statute, Secretary Noem's focus on the supposed "inherently temporary" nature of a TPS designation, (90 Fed. Reg. 28760), was also a departure from longstanding DHS policy, which was to extend, redesignate, or terminate a TPS designation based on the Secretary's periodic review of the conditions in the foreign state (rather than the Secretary's subjective beliefs about whether TPS holders have enjoyed TPS for too long).

140. This departure from past policy, enacted *sub silentio* and without a "reasoned explanation" is itself arbitrary and capricious under the Administrative Procedure Act—particularly since DHS's "prior policy has engendered serious reliance interests" for TPS holders. *F.C.C. v. Fox Television Stations, Inc.*, 566 U.S. 502, 515 (2011); accord *Encino Motorcars, LLC*

¹⁰⁶ See *DHS Terminates Haiti TPS, Encourages Haitians to Obtain Lawful Status* (June 27, 2025), <https://www.dhs.gov/news/2025/06/27/dhs-terminates-haiti-tps-encourages-haitians-obtain-lawful-status>

v. Navarro, 579 U.S. 211, 222 (2016) (“An unexplained inconsistency in agency policy is a reason for holding an interpretation to be an arbitrary and capricious change from agency practice.” (cleaned up)); *cf. Haitian Evangelical Clergy Ass’n*, 789 F. Supp. 3d at 267 (“where a TPS extension is given, it creates important reliance interests” (cleaned up)).

141. The July 1, 2025, Federal Register notice memorializing the termination of Haiti’s TPS designation was also unlawful because it reports no determination whether it is safe for Haitian TPS holders to return to Haiti. Under the TPS statute, Secretary Noem was *required* to “review the conditions in [Haiti]” and “determine whether the conditions for [Haiti’s TPS] designation ... continue to be met.” 8 U.S.C. § 1254a(b)(3)(A). Haiti was designated for TPS under 8 U.S.C. § 1254a(b)(1)(C); Secretary Noem, therefore, was required to review whether there continue to be “conditions [in Haiti] that prevent [Haitians] from returning in safety,” and had the option to also review whether permitting Haitian TPS holders to remain in the United States was in the “national interest” of the United States. 8 U.S.C. § 1254a(b)(1)(C). Based on this review, she was then required to “determine whether the conditions” for Haiti’s TPS designation “continue to be met” and to publish in the Federal Register not only her “determination” but “*the basis for the determination.*” 8 U.S.C. § 1254a(b)(3)(A) (emphasis added).

142. The July 1, 2025 Federal Register notice did not do this. Although it stated that Secretary Noem reviewed “whether extraordinary and temporary conditions in Haiti that prevent aliens who are Haitian nationals from returning to Haiti in safety continue to exist,” (90 Fed. Reg. 28762), it reported no determination whether Haitians can “return[] in safety.” 8 U.S.C. § 1254a(b)(1)(C). Instead, the entire basis for the termination in the Federal Register notice was Secretary Noem’s conclusion that allowing Haitian TPS holders to stay in the United States is

“contrary to the national interest,” (90 Fed. Reg. 28762)—a consideration that, unlike the country condition review, is not mandatory. *See* 8 U.S.C. § 1254a(b)(1)(C), (b)(3)(A).

143. Because the July 1, 2025 Federal Register notice does not report any determination whether it is safe for Haitian TPS holders to return to Haiti, much less “the basis for [such] determination,” the July 1, 2025 Federal Register notice did not satisfy the TPS statute. 8 U.S.C. § 1254a(b)(3)(A).

144. Moreover, the word “determination” for purposes of § 1254a(b)(3)(A) means a factual determination as to the existence or non-existence of the conditions for designation under § 1254a(b)(1). The Secretary does not “determine” whether to extend or terminate a country’s TPS designation; the only “determination” she makes is the factual determination regarding the existence or non-existence of the conditions for designation. The supposed “decision” to terminate is neither a determination nor a decision—it is merely a ministerial result compelled by the Secretary’s factual conclusion. If the Secretary determines that the conditions for designation continue to exist, she must extend the designation. § 1254a(b)(3)(A) (the Secretary “shall provide on a timely basis for the publication of notice of each such determination ... and, in the case of an affirmative determination, the period of extension of designation ... in the Federal Register”). Conversely, if she determines that the conditions for designation no longer exist, then she must terminate the designation. *Id.* § 1254a(b)(3)(B) (“If the [Secretary] determines ... that a foreign state ... no longer continues to meet the conditions for designation ..., the [Secretary] shall terminate the designation”). She has no discretion in the matter either way. Moreover, as noted, whether the Secretary finds that the conditions for designation do or do not exist, she must publish notice of not only her determination but also “the basis for the determination.” *Id.* at § 1254a(b)(3)(A)-(B).

145. Thus, because the July 1, 2025 Federal Register notice did not say whether it was safe for Haitian TPS holders to return to Haiti, it failed to contain the mandatory “determination” with respect to country conditions.

146. That (i) the July 1, 2025 termination of Haiti’s TPS designation was premature and predicated on Secretary Noem’s subjective belief that Haitians have had TPS for too long, and (ii) the Federal Register notice of the termination is statutorily deficient, not only made the July 1, 2025 termination unlawful for the reasons set out above, but also demonstrate that termination of Haiti’s TPS designation was preordained and pretextual.

147. In particular, that the July 1, 2025 termination was based on a “national interest” determination and not any determination of whether it is safe for Haitian TPS holders to return to Haiti itself suggests that Secretary Noem’s review was not “purely evidence-based” as the statute requires. *Saget*, 375 F. Supp. 3d at 346. In other words, the absence of any determination concerning whether it is safe for Haitian TPS holders to return to Haiti itself suggests that Secretary Noem started from the conclusion that President Trump wanted—to end TPS for Haiti—and then worked backwards from that preferred result. That is unlawful. *See Saget*, 375 F. Supp. 3d at 362 (it is unlawful for officials to “reverse-engineer facts” in order to “justify termination”).

148. That Secretary Noem based her July 1, 2025 termination on the statute’s “national interest” language also evidences that the termination was unlawful. Until 2025, when the second Trump administration took power, *no* TPS designation for *any* country in the 35-year history of the TPS statute had *ever* been terminated based on “national interest.” But in President Trump’s second term, four countries’ TPS designations (including Haiti’s) were terminated based exclusively or primarily on Secretary Noem’s assessment of “national interest.” 90 Fed. Reg. 9040 (Venezuela); 90 Fed. Reg. 20309 (Afghanistan); 90 Fed. Reg. 23697 (Cameroon); 90 Fed. Reg.

28760 (Haiti). This deviation from past practice is itself evidence of arbitrary and capricious agency action. *Fox Television Stations, Inc.*, 566 U.S. at 515 (2011); *Encino Motorcars*, 579 U.S. at 222.

149. The July 1, 2025 termination notice’s focus on several of President Trump’s executive orders is further evidence that the termination notice was unlawful. *See Saget*, 375 F. Supp. 3d at 343 (evidence of improper political influence—such as “consider[ing] how the Haiti TPS decision fit into the White House’s grander ‘America First’ strategy” and terminating the designation to “ensure[] agenda adherence” with the White House’s political objectives—was evidence that the termination was arbitrary and capricious under the APA).

150. Moreover, the July 1, 2025 termination notice’s extensive focus on several of President Trump’s executive orders as the basis for the termination suggests that the termination decision was in fact a product of President Trump’s wishes—and that Secretary Noem did not reach the decision independently.

151. The facts cited in the July 1, 2025 termination in support of Secretary Noem’s “national interest” considerations are largely false. That the termination rested on falsehoods is evidence that the process undergirding the termination was a sham designed to create a pretext for termination TPS for Haiti.

152. Secretary Noem’s July 1, 2025 termination notice identified two reasons why it was supposedly against the “national interest” to allow Haitian TPS holders to remain in the United States: that TPS is generally bad because it encourages illegal Haitian migration to the United States, and that some unspecified percentage of Haitians are criminals.

153. ***First***, Secretary Noem’s July 1, 2025 termination notice asserted that TPS is a “pull factor” for illegal migration to the United States from Haiti. 90 Fed. Reg. 28762.

154. But Secretary Noem is wrong that TPS is a “pull factor” for illegal migration—and the very data on which she relies confirms as much.

155. Secretary Noem asserts: “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.” 90 Fed. Reg. 28762.

156. But the data Secretary Noem cites are *not* only from U.S. Border Patrol. They are from *both* U.S. Border Patrol (USBP) *and* from U.S. Customs and Border Protection (CPB).

157. USBP data includes only arrests of individual who enter the country *unlawfully*, between ports of entry.

158. CPB data also includes individual who entered the country *lawfully*, through a port of entry and whose “encounter” was with CPB’s Office of Field Operations.

159. The full picture of the data on which Secretary Noem relied is below¹⁰⁷:

¹⁰⁷ U.S. Customs and Border Protection, *Nationwide Encounters*, <https://www.cbp.gov/newsroom/stats/nationwide-encounters>, last accessed Dec. 3, 2025; U.S. Customs and Border Protection, FY21 - FY24 Nationwide Encounters by Area of Responsibility, <https://www.cbp.gov/sites/default/files/2024-10/nationwide-encounters-fy21-fy24-aor.csv>.

<u>Fiscal Year</u>	<u>U.S. Border Patrol</u> (between ports of entry)	<u>Office of Field Operations</u> (at ports of entry)
2021	46,160	2,560
2022	30,850	25,740
2023	2,430	161,350
2024	2,790	218,010
2025 through January	390	11,240
TOTAL	82,550	418,900

160. These data show that, in reality, Haitian migrants largely stopped crossing the U.S.-Mexico border unlawfully in 2022.

161. Monthly data show that this shift in crossing patterns first began in the summer of 2022, soon after DHS created a humanitarian exception process permitting some individual to access ports of entry to seek asylum despite the ongoing use of Title 42 (a pandemic-era public health policy which shuttered the ports of entry to asylum seekers in March 2020).

162. Thus, the data show that—contrary to the July 1, 2025 termination notice—the Haitian migrant population in the U.S. today overwhelmingly entered lawfully. From 2021 through January 2025, 83.5% of all Haitians encountered by CBP have been encountered legally at ports of entry. From 2023 through January 2025, after lawful pathways became accessible to Haitian migrants, **98.9%** of CBP encounters of Haitians occurred at lawful ports of entry.

163. More recent data confirm these points. Haiti’s current TPS designation began in the summer of 2024, when Secretary Mayorkas issued his redesignation and extension. From July 2024 through January 2025, the USBP reported only 247 apprehensions of Haitian migrants—or an average of just 35 irregular entries per month. These data do not support the assertion that TPS

is a “pull factor” for illegal or irregular migration—especially when compared to the approximately 350,000 Haitian TPS holders lawfully present in the United States.

164. Thus, the very data on which Secretary Noem relies show that the availability of TPS for Haiti is not a “pull factor” for illegal migration, as Secretary Noem falsely asserted in the July 1, 2025 termination notice. That the termination notice manipulated the data in order to suggest otherwise is evidence that this rationale was pretextual and that the real reason for the termination was the Trump administration’s preordained plan to terminate.

165. ***Second***, Secretary Noem’s July 1, 2025 termination notice asserts that allowing Haitian TPS holders to stay in the United States is contrary to the national interest because Haitian people in general are a threat to public safety.

166. For example, the July 1, 2025 termination notice asserted 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. 28763.

167. Echoing President Trump’s false claims that predominantly nonwhite countries are “emptying their prisons and mental asylums” and “sending” criminals to the United States, the July 1, 2025 termination notice states that “rising Haitian migration” poses a “broad[] risk” to the public safety of the United States in part due to “large-scale prison breaks in Haiti.” 90 Fed. Reg. 28763. Notably, however, the termination notice does not identify any Haitian TPS holder who escaped from a prison.

168. Indeed, the July 1, 2025 termination notice never says anything about criminality rates for *Haitian TPS holders*. It refers only to “Haitians” as criminals. The implication of this

rhetorical sleight-of-hand is that Haitians are, as a group, dangerous, and violent. This stereotyping is consistent with President Trump’s discriminatory rhetoric.

169. In reality, research from across the political spectrum shows that immigrants in general are not criminals: immigrants are less likely to commit crimes than native-born Americans. Extensive research shows that “since the 1960’s immigrants are 60% less likely to be incarcerated than U.S.-born people” and that even “undocumented immigrants were 37.1% less likely to be convicted of a crime.”¹⁰⁸ A 2024 study commissioned by the U.S. Department of Justice’s National Institute of Justice and based on Texas criminal records showed that “undocumented immigrants are arrested at less than half the rate of native-born U.S. citizens for violent and drug crimes and a quarter the rate of native-born citizens for property crimes.”¹⁰⁹

170. The data concerning Haitians, as a group, are consistent with the research overall. An analysis of U.S. Census data by the libertarian CATO Institute showed that “[n]ative-born Americans have an incarceration rate 48 percent higher than that of all Haitian immigrants” and that even “Haitian illegal immigrants have an incarceration rate 81 percent below native-born Americans.”¹¹⁰

171. In any event, by law TPS holders must have clean records in order to continue receiving TPS protections. Individuals “convicted of any felony or two or more misdemeanors” are “not ... eligible for temporary protected status” in the first place and the Secretary is required

¹⁰⁸ Jasmine Garsd, *Immigrants are less likely to commit crimes than U.S.-born Americans, studies find*, NPR NEWS (March 8, 2024), <https://www.npr.org/2024/03/08/1237103158/immigrants-are-less-likely-to-commit-crimes-than-us-born-americans-studies-find>

¹⁰⁹ U.S. Dep’t of Just., Nat’l Inst. of Just., *Undocumented Immigrant Offending Rate Lower Than U.S.-Born Citizen Rate* 1 (2024), <https://docs.house.gov/meetings/JU/JU01/20250122/117827/HHRG-119-JU01-20250122-SD004.pdf>

¹¹⁰ Alex Nowrasteh, *Haitian Crime in the United States. What Does the Evidence Say?*, CATO INSTITUTE (Oct. 5, 2021), <https://www.cato.org/blog/haitian-crime-united-states-what-does-evidence-say>

to “withdraw temporary protected status” if a TPS holder becomes ineligible by virtue of criminal activity. 8 U.S.C. § 1254a(c)(2)(B), (3)(A).

172. The Government knows—or has the information it needs to know—how many TPS holders have lost their TPS because they committed crimes.

173. Eligible immigrants are required to register or, for those already holding TPS, re-register with the government during each TPS registration period. 8 U.S.C. § 1254a(c)(1)(A)(iv); 8 U.S.C. § 1254a(c)(1)(A) (providing that TPS may be withdrawn to an individual alien if “the alien fails, without good cause, to register with [DHS] annually, at the end of each 12-month period after the granting of” TPS).

174. The registration process involves submitting to an “extensive background check” to verify whether the registrant has committed any crimes.¹¹¹ USCIS Form I-821—which those applying for TPS must complete and submit as part of the registration process—states that “USCIS may require you to appear for an interview or provide biometrics (fingerprints, photograph, and/or signature) at any time to verify your identity, obtain additional information, and conduct background and security checks, including a check of criminal history records maintained by the Federal Bureau of Investigation (FBI), before making a decision on your application or petition.”¹¹²

175. Thus, if a TPS holder commits a crime such that he or she is no longer eligible for TPS, the government revokes his or her TPS status.

¹¹¹ Aaron Reichlin-Melnick, *Temporary Protected Status: What’s Up With That?*, AM. IMM. COUNCIL (Oct. 29, 2024), <https://www.americanimmigrationcouncil.org/blog/temporary-protected-status-whats-up-with-that/>; Catholic Legal Immigration Network, *Temporary Protected Status: Comprehensive Background*, (Jan. 7, 2019) (“All noncitizens from the designated country who are in the United States on the date of designation may then apply for and receive TPS if they meet the statutory requirements (including a criminal background check).”), <https://www.cliniclegal.org/resources/humanitarian-relief/temporary-protected-status-comprehensive-background>

¹¹² USCIS Form I-821, <https://www.uscis.gov/sites/default/files/document/forms/i-821instr.pdf>

176. Accordingly, Secretary Noem could have included in the July 1, 2025 termination notice data on how many Haitians have lost their TPS status because of criminality. She did not do so. That she did not suggests that the data fail to show appreciable criminality among Haitian TPS holders.

177. The July 1, 2025 termination notice's only reference to supposed criminality among Haitian TPS holders offers no evidence of such criminality. According to the notice, "DHS records indicate that there are Haitian nationals who are TPS recipients who have been the subject of administrative investigations for fraud, public safety, and national security." 90 Fed. Reg. at 28763. Notably, the notice does not state the number or outcome of any such investigations, much less claim that any of the alleged subjects of investigation were charged, much less convicted, of any crimes. Once again, the notice's make-weight argument evidences the administration's determination to justify a predetermined outcome.

178. Rather than provide data demonstrating how many Haitian TPS holders are criminals, the July 1, 2025 termination notice offers a single, anecdotal example meant to illustrate that Haitians, as a group, are dangerous: the case of Wisteguens Jean Quely Charles, a Haitian with numerous criminal convictions who was arrested in Boston in January 2025. The termination notice says that Charles's case in particular "underscores the broader risk posed by rising Haitian migration." 90 Fed. Reg. 28763.

179. But as the termination notice itself states, Charles was convicted of numerous felonies, which means that he is, by statute, not eligible for TPS. Notably, the July 1, 2025 termination notice does not say that Charles was a TPS holder—only that he is "Haitian." Indeed, on information and belief, Charles was not a TPS holder during the time period identified in the July 1, 2025 termination notice.

180. Charles’s case, therefore, does not illustrate how continuing Haiti’s TPS designation is contrary to the national interest.

181. Secretary Noem’s focus on supposed criminality was, moreover, a departure from prior DHS practice. As former USCIS Director Leon Rodriguez explained in his testimony in *Saget*, DHS “did not consider crime rates among TPS recipients during his tenure as USCIS Director.” 375 F. Supp. 3d at 300. Director Rodriguez explained that “crime rates were not a factor because ‘by definition, you do not qualify to receive TPS in the first place if you are a convicted criminal. And if you are convicted while you were on TPS, your TPS would ordinarily be terminated based on that conviction.” *Id.* (cleaned up). Director Rodriguez went on: “If somebody is convicted of a crime while they are on TPS, ordinarily Immigrations and Customs Enforcement, which is the enforcement agency within the Department of Homeland Security, would initiate proceedings to terminate their TPS[] and then to potentially place that person in deportation proceedings.” *Id.* at 300–01 (cleaned up).

182. In short, the July 1, 2025 termination notice’s two stated reasons why continuing Haiti’s TPS is supposedly contrary to the national interest—that TPS incentivizes illegal migration and increases criminality—are both pretextual.

November 28, 2025 Termination

183. On July 1, 2025—the same day that Secretary Noem published the notice terminating Haiti’s TPS designation—the United States District Court for the Eastern District of New York held unlawful and set aside Secretary Noem’s “partial vacatur” of Haiti’s TPS designation. *See Haitian Evangelical Clergy Ass’n v. Trump*, 789 F. Supp. 3d 255 (E.D.N.Y. 2018). The effect of this ruling was to restore February 3, 2026 as the effective end-date of Haiti’s TPS designation.

184. On November 28, 2025, in response to the ruling in *Haitian Evangelical Clergy Association*, Secretary Noem published a “new, superseding” notice in the federal register terminating Haiti’s TPS designation. 90 Fed. Reg. 54733.

185. The November 28, 2025 termination notice is largely identical to the July 1, 2025 termination notice.

186. As in the July 1, 2025 termination notice, Secretary Noem appears to have terminated Haiti’s TPS designation based on her subjective belief that Haitians have had TPS for too long. The November 28, 2025 termination notice reiterates that TPS “is an inherently temporary status.” 90 Fed. Reg. at 54739.

187. As in the July 1, 2025 termination notice, Secretary Noem’s approach regarding the word “temporary” is contrary to the plain text of the statute: Although designations are for fixed time periods and subject to periodic review because the conditions for designation might eventually cease to exist, the statute places no limit on the number of times that a TPS designation can be extended or redesignated. So long as the periodic mandatory review finds that the conditions for designation continue to exist, the Secretary must extend the designation. 8 U.S.C. § 1254a(b)(3)(A). Indeed, under the statute, designations are automatically extended unless and until the Secretary affirmatively determines that the conditions for designation have ceased to exist. *Id.* § 1254a(b)(3)(A), (C).

188. As with the July 1, 2025 termination notice, Secretary Noem’s focus on the supposed “inherently temporary” nature of a TPS designation, (90 Fed. Reg. at 54739), is a departure from longstanding DHS policy, which was to extend, redesignate, or terminate a TPS designation based on the Secretary’s periodic review of the conditions in the foreign state (rather than the Secretary’s subjective beliefs about whether TPS holders have enjoyed TPS for too long).

This departure from past policy, enacted *sub silentio* and without a “reasoned explanation” is itself arbitrary and capricious under the Administrative Procedure Act—particularly since DHS’s “prior policy has engendered serious reliance interests” for TPS holders. *F.C.C. v. Fox Television Stations, Inc.*, 566 U.S. 502, 515 (2011); accord *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016) (“An unexplained inconsistency in agency policy is a reason for holding an interpretation to be an arbitrary and capricious change from agency practice.” (cleaned up)); cf. *Haitian Evangelical Clergy Ass’n*, 789 F. Supp. 3d at 267 (“where a TPS extension is given, it creates important reliance interests” (cleaned up)).

189. Similar to the July 1, 2025 termination notice, the November 28, 2025 termination notice is based primarily on Secretary Noem’s assessment that termination of Haiti’s TPS designation is “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 54735.

190. But as with the July 1, 2025 termination notice, that Secretary Noem based her termination on the statute’s “national interest” language is itself evidence that the termination is unlawful. Until 2025, when the second Trump administration took power, *no* TPS designation for *any* country in the 35-year history of the TPS statute had *ever* been terminated based on “national interest.” But in President Trump’s second term, four countries’ TPS designations (including Haiti’s) were terminated based exclusively or primarily on Secretary Noem’s assessment of “national interest.” 90 Fed. Reg. 9040 (Venezuela); 90 Fed. Reg. 20309 (Afghanistan); 90 Fed. Reg. 23697 (Cameroon); 90 Fed. Reg. 28760 (Haiti). This *sub silentio* deviation from past practice is itself evidence of arbitrary and capricious agency action. *Fox Television Stations, Inc.*, 566 U.S. at 515 (2011); *Encino Motorcars*, 579 U.S. at 222.

191. As with the July 1, 2025 termination notice, the November 28, 2025 termination notice's reliance on President Trump's executive orders is further evidence that the termination notice is unlawful. *See Saget*, 375 F. Supp. 3d at 343 (evidence of improper political influence—such as “consider[ing] how the Haiti TPS decision fit into the White House's grander ‘America First’ strategy” and terminating the designation to “ensure[] agenda adherence” with the White House's political objectives—was evidence that the termination was arbitrary and capricious under the APA); *accord Tummino v. Torti*, 603 F. Supp. 2d 519, 544-45 (E.D.N.Y. 2009) (“the mere existence of ‘extraneous pressure’ from the White House or other political quarters would render [the agency's] decision invalid” under the APA” (quoting *D.C. Fed'n of Civic Ass'ns v. Volpe*, 459 F.2d 1231, 1248-49) (D.C. Cir. 1971))).

192. Moreover, as with the July 1, 2025 termination notice, the November 28, 2025 termination notice's extensive focus on several of President Trump's executive orders as the basis for the termination suggests that the termination decision was in fact a product of President Trump's wishes—and that Secretary Noem did not reach the decision independently.

193. As with the July 1, 2025 termination notice, the facts cited in the November 28, 2025 termination notice in support of Secretary Noem's “national interest” considerations are largely false. That the termination rests on falsehoods is evidence that the process undergirding the termination was a sham designed to create a pretext for termination TPS for Haiti.

194. Secretary Noem's November 28, 2025 termination notice repeats two of the same reasons set forth in the July 1, 2025 termination notice for why it is supposedly against the “national interest” to allow Haitian TPS holders to remain in the United States: (1) that TPS is generally bad because it encourages illegal Haitian migration to the United States, and (2) that some unspecified percentage of Haitians are criminals. It adds a third reason not present in the

July 1, 2025 notice: that certain Haitian nationals present in the United States are supporters of the gangs currently wreaking havoc in Haiti.

195. ***First***, just as in the July 1, 2025 termination notice, Secretary Noem’s November 28, 2025 termination notice asserts that TPS is a “pull factor” for illegal migration to the United States from Haiti. 90 Fed. Reg. at 54736-37.

196. As in the July 1, 2025 notice, Secretary Noem asserts that because of Haiti’s TPS designation “there has been a significant increase” in the number of Haitians arriving in the United States illegally. 90 Fed. Reg. at 54736.

197. Relying on the very same data as in the July 1, 2025 notice, Secretary Noem asserts: “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.” 90 Fed. Reg. at 54736.

198. But, as in the July 1, 2025 notice, the data Secretary Noem cites are *not* only from U.S. Border Patrol. They are from *both* U.S. Border Patrol (USBP) *and* from U.S. Customs and Border Protection (CPB). USBP data includes only arrests of individual who enter the country *unlawfully*, between ports of entry. CPB data also includes individual who entered the country *lawfully*, through a port of entry and whose “encounter” was with CPB’s Office of Field Operations.

199. The full picture of the data on which Secretary Noem relied is below¹¹³:

¹¹³ U.S. Customs and Border Protection, *Nationwide Encounters*, <https://www.cbp.gov/newsroom/stats/nationwide-encounters>, last accessed Dec. 3, 2025; U.S. Customs and Border Protection, FY21 - FY24 Nationwide Encounters by Area of Responsibility, <https://www.cbp.gov/sites/default/files/2024-10/nationwide-encounters-fy21-fy24-aor.csv>.

<u>Fiscal Year</u>	<u>U.S. Border Patrol</u> (between ports of entry)	<u>Office of Field Operations</u> (at ports of entry)
2021	46,160	2,560
2022	30,850	25,740
2023	2,430	161,350
2024	2,790	218,010
2025 through January	390	11,240
TOTAL	82,550	418,900

200. These data show that, in reality, Haitian migrants largely stopped crossing the U.S.-Mexico border unlawfully in 2022.

201. Monthly data show that this shift in crossing patterns first began in the summer of 2022, soon after DHS created a humanitarian exception process permitting some individual to access ports of entry to seek asylum despite the ongoing use of Title 42 (a pandemic-era public health policy which shuttered the ports of entry to asylum seekers in March 2020).

202. Thus, the data show that—contrary to the termination notice—the Haitian migrant population in the U.S. today overwhelmingly entered lawfully. From 2021 through January 2025, **83.5%** of all Haitians encountered by CBP have been encountered legally at ports of entry. From 2023 through January 2025, after lawful pathways became accessible to Haitian migrants, **98.9%** of CBP encounters of Haitians occurred at lawful ports of entry.

203. More recent data confirm these points. Haiti’s current TPS designation began in the summer of 2024, when Secretary Mayorkas issued his redesignation and extension. From July 2024 through January 2025, the USBP reported only **247** apprehensions of Haitian migrants—or an average of just 35 unlawful entries per month. These data do not support the assertion that TPS

is a “pull factor” for illegal migration—especially when compared to the approximately 350,000 Haitian TPS holders lawfully present in the United States.

204. Thus, as with the July 1, 2025 termination notice the very data on which Secretary Noem relies in the November 28, 2025 termination notice show that the availability of TPS for Haiti is not a “pull factor” for illegal migration, as Secretary Noem falsely asserts in the termination notice. That the termination notice manipulates the data in order to suggest otherwise is evidence that this rationale is pretextual and that the real reason for the termination was the Trump administration’s preordained plan to terminate.

205. ***Second***, just as in the July 1, 2025 termination notice, the November 28, 2025 termination notice asserts that allowing Haitian TPS holders to stay in the United States is contrary to the national interest because Haitian people in general are a threat to public safety.

206. For example, copying the same language as the July 1, 2025 termination notice, the November 28, 2025 termination notice asserts 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.

207. Again copying the same language from the July 1, 2025 termination notice, the November 28, 2025 termination notice reiterates false claims that predominantly nonwhite countries are “emptying their prisons and mental asylums” and “sending” criminals to the United States. *See* 90 Fed. Red. 54737. Notably, however, as with the July 1, 2025 termination notice, the November 28, 2025 termination notice does not identify any Haitian TPS holder who escaped from a prison.

208. Indeed, like the July 1, 2025 termination notice, the November 28, 2025 termination notice never says anything about criminality rates for *Haitian TPS holders*. It refers only to “Haitians” generally as criminals. The implication of this rhetorical sleight-of-hand is that Haitians are, as a group, dangerous, and violent. This stereotyping is consistent with President Trump’s discriminatory rhetoric.

209. In reality, research from across the political spectrum shows that immigrants in general are not criminals: immigrants are less likely to commit crimes than native-born Americans. Extensive research shows that “since the 1960’s immigrants are 60% less likely to be incarcerated than U.S.-born people” and that even “undocumented immigrants were 37.1% less likely to be convicted of a crime.”¹¹⁴ A 2024 study commissioned by the U.S. Department of Justice’s National Institute of Justice and based on Texas criminal records showed that “undocumented immigrants are arrested at less than half the rate of native-born U.S. citizens for violent and drug crimes and a quarter the rate of native-born citizens for property crimes.”¹¹⁵

210. The data concerning Haitians, as a group, are consistent with the research overall. An analysis of U.S. Census data by the libertarian CATO Institute showed that “[n]ative-born Americans have an incarceration rate 48 percent higher than that of all Haitian immigrants” and that even “Haitian illegal immigrants have an incarceration rate 81 percent below native-born Americans.”¹¹⁶

¹¹⁴ Jasmine Garsd, *Immigrants are less likely to commit crimes than U.S.-born Americans, studies find*, NPR NEWS (March 8, 2024), <https://www.npr.org/2024/03/08/1237103158/immigrants-are-less-likely-to-commit-crimes-than-us-born-americans-studies-find>

¹¹⁵ U.S. Dep’t of Just., Nat’l Inst. of Just., *Undocumented Immigrant Offending Rate Lower Than U.S.-Born Citizen Rate* 1 (2024), <https://docs.house.gov/meetings/JU/JU01/20250122/117827/HHRG-119-JU01-20250122-SD004.pdf>

¹¹⁶ Alex Nowrasteh, *Haitian Crime in the United States. What Does the Evidence Say?*, CATO INSTITUTE (Oct. 5, 2021), <https://www.cato.org/blog/haitian-crime-united-states-what-does-evidence-say>

211. In any event, by law TPS holders must have clean records to maintain their TPS status. Individuals “convicted of any felony or two or more misdemeanors” are “not ... eligible for temporary protected status” in the first place and the Secretary is required to “withdraw temporary protected status” if a TPS holder becomes ineligible by virtue of criminal activity. 8 U.S.C. § 1254a(c)(2)(B), (3)(A).

212. The Government knows—or has the information it needs to know—how many TPS holders have lost their TPS because they committed crimes.

213. Eligible immigrants are required to register or, for those already holding TPS, re-register with the government during each TPS registration period. 8 U.S.C. § 1254a(c)(1)(A)(iv); 8 U.S.C. § 1254a(c)(1)(A) (providing that TPS may be withdrawn to an individual alien if “the alien fails, without good cause, to register with [DHS] annually, at the end of each 12-month period after the granting of” TPS).

214. The registration process involves submitting to an “extensive background check” to verify whether the registrant has committed any crimes.¹¹⁷ USCIS Form I-821—which those applying for TPS must complete and submit as part of the registration process—states that “USCIS may require you to appear for an interview or provide biometrics (fingerprints, photograph, and/or signature) at any time to verify your identity, obtain additional information, and conduct background and security checks, including a check of criminal history records maintained by the

¹¹⁷ Aaron Reichlin-Melnick, *Temporary Protected Status: What’s Up With That?*, AM. IMM. COUNCIL (Oct. 29, 2024), <https://www.americanimmigrationcouncil.org/blog/temporary-protected-status-whats-up-with-that/>; Catholic Legal Immigration Network, *Temporary Protected Status: Comprehensive Backgrounder*, (Jan. 7, 2019) (“All noncitizens from the designated country who are in the United States on the date of designation may then apply for and receive TPS if they meet the statutory requirements (including a criminal background check).”), <https://www.cliniclegal.org/resources/humanitarian-relief/temporary-protected-status-comprehensive-backgrounder>

Federal Bureau of Investigation (FBI), before making a decision on your application or petition.”¹¹⁸

215. Thus, if a TPS holder commits a crime such that he or she is no longer eligible for TPS, the government revokes his or her TPS status.

216. Accordingly, Secretary Noem could have included in her November 28, 2025 termination notice data on how many Haitians have lost their TPS status because of criminality. She did not do so. That she did not suggests that the data fail to show appreciable criminality among Haitian TPS holders.

217. Like the July 1, 2025 termination notice, the November 28, 2025 termination notice’s only reference to supposed criminality among Haitian TPS holders offers no evidence of such criminality. According to the notice, “DHS records indicate that there are Haitian nationals who are TPS recipients who have been the subject of administrative investigations for fraud, public safety, and national security.” 90 Fed. Reg. at 54737. Notably, the notice does not state the number or outcome of any such investigations, much less claim that any of the alleged subjects of investigation were charged, let alone convicted, of any crimes. Once again, the notice’s make-weight argument evidences the administration’s determination to justify a predetermined outcome.

218. Rather than provide data demonstrating how many Haitian TPS holders are criminals, the November 28, 2025 termination notice, like the July 1, 2025 termination notice, offers a single, anecdotal example meant to illustrate that Haitians, as a group, are dangerous: the case of Wisteguens Jean Quely Charles, a Haitian with numerous criminal convictions who was arrested in Boston in January 2025. The termination notice says that Charles’s case in particular “underscores the broader risk posed by rising Haitian migration.” 90 Fed. Reg. at 54737.

¹¹⁸ USCIS Form I-821, <https://www.uscis.gov/sites/default/files/document/forms/i-821instr.pdf>

219. But as the November 28, 2025 termination notice itself states, Charles was convicted of numerous felonies, which means that he is, by statute, not eligible for TPS. Notably, the notice does not say that Charles was a TPS holder at the time of his crimes—only that he is “Haitian.” Indeed, on information and belief, Charles was not a TPS holder during the time period identified in the November 28, 2025 termination notice.

220. Charles’s case, therefore, does not illustrate how continuing Haiti’s TPS designation contributes to criminality.

221. Secretary Noem’s focus on supposed criminality is, moreover, a departure from prior DHS practice. As former USCIS Director Leon Rodriguez explained in his testimony in *Saget*, he “did not consider crime rates among TPS recipients during his tenure as USCIS Director.” 375 F. Supp. 3d at 300. Director Rodriguez explained that “crime rates were not a factor because ‘by definition, you do not qualify to receive TPS in the first place if you are a convicted criminal. And if you are convicted while you were on TPS, your TPS would ordinarily be terminated based on that conviction.” *Id.* (cleaned up). Director Rodriguez went on: “If somebody is convicted of a crime while they are on TPS, ordinarily Immigrations and Customs Enforcement, which is the enforcement agency within the Department of Homeland Security, would initiate proceedings to terminate their TPS[] and then to potentially place that person in deportation proceedings.” *Id.* at 300–01 (cleaned up).

222. Plaintiffs’ original complaint, filed nearly three months before the November 28, 2025 termination notice, identified each of the foregoing factual errors in the July 1, 2025 termination notice. The fact that the November 28, 2025 termination notice repeats those errors is itself evidence that the stated rationale for the termination is pretextual

223. *Third*, the November 28, 2025 termination notice contains an additional basis for its national interest rationale that was not present in the July 1, 2025 termination notice: that certain Haitian nationals in the United States are “linked to” the gangs currently wreaking havoc in Haiti. 90 Fed. Reg. at 54738. The November 28, 2025 termination notice states that these nationals “pose not just an overseas threat but a tangible national security and public safety risk within our borders.” *Id.*

224. The termination notice points to two examples on this front. First, “U.S. lawful permanent residents who were found to be affiliated” with the Haitian gang Viv Ansanm. 90 Fed. Reg. at 54738. Second, a “Haitian alien who”—according to the government—“engaged in a campaign of violence and gang support that contributed to Haiti’s destabilization.” *Id.* Neither example helps the government.

225. As to the first example, the fact that the termination notice refers to “lawful permanent residents” and not TPS holders confirms the pretextual nature of the notice. TPS provides no path to citizenship—so the fact that the November 28, 2025 termination notice invokes lawful permanent residents only reinforces that the administration’s concern is with “Haitians” and not “Haitian TPS holders.” Not only is the example inapposite but neither the November 28, 2025 termination notice nor the source it cites identifies any of those lawful permanent residents who support Viv Ansanm. *See* 90 Fed. Reg. at 54738 at n. 43. It is thus impossible to know whether the government’s assertion is true.

226. The second example, the “Haitian alien” who allegedly supported Haitian gangs refers to Dimitri Vorbe. 90 Fed. Reg. 24738 n. 44. Vorbe is not a typical TPS holder; he is instead a “prominent Haitian businessman”—one of Haiti’s “so-called oligarchs.” And “U.S. authorities” have not “offer[ed] any proof to back up their claim” that he has fomented violence in Haiti, an

accusation he denies. In any event, “[t]his is the second time that Vorbe” has been detained in the United States—he was first arrested by ICE in 2020 on allegations that he overstayed his visa, and “[s]ince then, U.S. authorities have had possession of his Haitian passport while his case has been making its way through immigration court.”¹¹⁹ Put simply: the administration has known of Vorbe for years because his case has been working its way through immigration court for years. The administration could have included his case in the July 1, 2025 termination notice but did not do so. That, in turn, suggests that the inclusion of his case in the November 28, 2025 termination notice is more pretextual backfill to support the preordained decision to terminate Haiti’s TPS designation.

227. In both instances, the November 28, 2025 termination notice confirms that the administration already has at its disposal the tools it needs to identify and remove alleged threats to national security: the unnamed lawful permanent aliens are subject to removal “under section 237(a)(4)(C) of the Immigration and Nationality Act” and Vorbe is “in ICE custody pending removal proceedings.” The November 28, 2025 termination notice never connects the dots and explains why terminating Haiti’s TPS designation is necessary to removing individual criminals who by virtue of their criminality are not eligible for TPS. Indeed, the TPS statute itself already gives the government the ability to terminate individuals’ TPS if they constitute a national security threat. 8 U.S.C. § 1254a(c)(2)(B)(ii).

228. In short, the termination notice’s stated reasons why continuing Haiti’s TPS is supposedly contrary to the national interest are all pretextual.

¹¹⁹ Jacqueline Charles, *ICE arrests Haitian businessman in Miami, while administration cancels visas in Haiti*, Miami Herald (Sept. 25, 2025), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article312233775.html>

229. The November 28, 2025 termination notice—unlike the July 1, 2025 notice—also states that Haitians can now “return[] in safety.” 90 Fed. Reg. at 54735. The falsity of that statement is shown by other statements in the termination notice, including that: (1) “approximately 12% of Haiti’s population” has 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’” and (2) that as recently as October 28, 2025 there continue to be “gangs that are terrorizing communities, extorting families, [and] recruiting children to commit horrors.” Fed. Reg. at 54735 (citations omitted). These facts, admitted by Secretary Noem in the very termination notice, demonstrate that Haitians *cannot* return in safety

230. The closest the November 28, 2025 termination notice comes to actually supporting its statement that Haiti is now safe for TPS holders is one line: that the “data surrounding internal relocation does indicate parts of the country are suitable to return to.” 90 Fed. Reg. 54735. But not only does the termination notice never identify which parts of the country are supposedly “suitable,” the legal standard is not “suitability”—it is “safety.”

231. Indeed, even assuming that the statement “parts of the country are suitable to return to” could be construed as a statement that parts of Haiti are safe to return to, that statement would be flatly contradicted by the government’s own State Department, which advises individuals to “not travel to Haiti due to kidnapping, crime, terrorist activity, civil unrest, and limited healthcare;” noting that “Haiti has been under a State of Emergency since March 2024” and that “[c]rimes involving firearms are common in Haiti,” including “robbery, carjackings, sexual assault, and kidnappings for ransom.”¹²⁰ On November 19, 2025—just days before Secretary Noem re-

¹²⁰ Travel Advisory: Haiti, U.S. Dept. of State, https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/Haiti.html?gad_source=1&gad_campaignid=44031958015&gclid=

terminated Haiti's TPS designation—U.S. Deputy Secretary of State Christopher Landau posted online that gang violence in Haiti has recently “escalated.”¹²¹ Thus, according to the government itself, the situation in Haiti is becoming less safe. These contradictions underscore the pretextual nature of the decision to terminate Haiti's TPS designation.

232. And though it is most pronounced in Haiti's capital city of Port-au-Prince, where gangs control an estimated 90% of the territory,¹²² the violence is by no means confined to the capital. In 2025, “[g]angs’ territorial expansion has reached unprecedented levels and continues to advance.”¹²³ “During the third quarter of 2025” gang violence “continued to spread to the peripheral and rural areas of Port-au-Prince, as well as to the Artibonite and Centre departments.”¹²⁴ Indeed, Haitian police estimate that, as of December 1, 2025, “50% of the Artibonite region had fallen under gang control” following “large-scale attacks targeting towns including Bercy and Post-Sonde.”¹²⁵ Put simply, in recent months, not just the capital but “rural communities have increasingly become targets of indiscriminate attacks.”¹²⁶ These facts underscore the pretextual nature of the decision to terminate Haiti's TPS designation.

233. The November 28, 2025 termination notice—quoting the U.N. Secretary General—states that there are “emerging signals of hope” for Haiti. 90 Fed. Reg. at 54735. But the same

[Cj0KCQjw4qHEBhCDARIsALYKFNMYYgiXJO6vJBxqwyd5WE0eBkljwcoBVZpnrV6RFdLQPI1AN5c2rfwQaAo1hEALw_wcB](#)

¹²¹ Christopher Landau, (@DeputySecState) X (Nov. 19, 2025), <https://x.com/DeputySecState/status/1991271188903952889> (last visited Dec. 4, 2025).

¹²² *Haiti's gangs have 'near-total control' of the capital as violence escalates, UN says*, ASSOCIATED PRESS (July 2, 2025), <https://apnews.com/article/un-haiti-gangs-capital-violence-government-kenya-c14dd55725e2e415b794ab88b4184e65>.

¹²³ *From Criminal Governance to Community Fragmentation*, *supra* note 2.

¹²⁴ BINUH, *supra* note 5.

¹²⁵ Junior Racine, Danica Coto, and Evens Sanon, *Gangs launch large-scale attack in Haiti's central region as hundreds flee gunfire and burning homes*, ASSOCIATED PRESS (Dec. 1, 2025), <https://apnews.com/article/haiti-gangs-attack-pont-sonde-bercy-gran-grif-4a3a091383202babec7939b630c1691e>.

¹²⁶ Haiti, Global Centre for the Responsibility to Protect (Nov. 14, 2025), <https://www.globalr2p.org/countries/haiti/#:~:text=Since%20the%20assassination%20of%20President.and%20humanitarian%20organizations%2C%20has%20increased>.

U.N. source that the termination notice cites further quotes the Secretary General stating that Haiti is in a “perfect storm of suffering” and that “[s]tate authority is crumbling across Haiti while gang violence engulfs the capital ... and beyond.” The Secretary General further described conditions in Haiti as “a life-and-death emergency.”¹²⁷ Indeed, this source confirms how unsafe conditions in Haiti are, not that conditions are improving. That Secretary Noem cherry-picked a lone statement that advances her preferred policy while ignoring numerous contradictory statements demonstrates the pretextual nature of the decision to terminate Haiti’s TPS designation.

234. In any event, the “emerging signal of hope” to which Secretary Noem refers in the November 28, 2025 termination notice is a U.N.-created “Gang Suppression Force,” (GSF) which, if it comes to fruition, is intended 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 (citation omitted). In theory, “[t]he 5,550-strong force will also protect vulnerable groups, support reintegration of former fighters and help strengthen Haitian institutions.” *Id.* According to the termination notice, terminating Haiti’s TPS designation is required in order to not send mixed signals concerning America’s support for the GSF. “The United States,” it says, “cannot call for bold change on the ground while signaling doubt from afar.” 90 Fed. Reg. at 94738.

235. But the GSF itself is speculative and pretextual. The GSF has not yet been deployed to Haiti, and will not be deployed to Haiti until at least the summer of 2026, if ever. According to the UN itself, the GSF will be funded by “voluntary contributions” so questions remain, including “Where is the money going to come from? Where are the people going to come from? And how

¹²⁷ 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>.

long will it take?” Critically, the Trump administration, which “pushed for” the GSF “refuses to continue bearing the brunt of the force’s costs.”¹²⁸

236. In short, the GSF exists in name only. No forces have been deployed to Haiti and it is unclear whether they ever will be deployed. Invoking the GSF is—at best—mere speculation that Haiti may, hopefully, one day, be safe. It is not support for the legally relevant question: whether Haiti *is* safe *now*.

237. Secretary Noem’s invocation of America’s commitments to the U.N.-backed GSF as a basis to terminate TPS for Haitians, moreover, is difficult (if not impossible) to reconcile with the U.N.’s issuance in 2022 of a “non-return advisory” for Haiti, which—citing the principle of anti-refoulement that is foundational to international law—called on all nations to suspend forced return of Haitian nationals.¹²⁹ And, according to a July 4, 2025 statement by U.N. Haiti expert Bill O’Neill, “The human rights situation in Haiti is catastrophic by any measure. In my 30 years working in, and on, the country, I have never seen this level of sustained violence and fear. There is currently no possibility for a safe, dignified and sustainable return of Haitians who are abroad. If anything, their country is much more dangerous than the one they fled.”¹³⁰

238. It is, moreover, a non-sequitur to say that Haiti’s TPS designation must be terminated so as to “align” America’s immigration policy with its support for the GSF. The very reason the GSF is needed is because Haiti is unsafe. America’s statutorily defined immigration policy is to extend a country’s TPS designation when conditions in the country prevent its nationals

¹²⁸ Daniela Mohor, *Haiti-in-depth*, THE NEW HUMANITARIAN (Dec. 3, 2026), <https://www.thenewhumanitarian.org/analysis/2025/12/03/haiti-depth-new-gang-suppression-force-what-it-means-haiti>

¹²⁹ UNHCR, *UNHCR calls on states to refrain from forced returns of Haitians* (Nov. 3, 2022), <https://www.unhcr.org/us/news/press-releases/unhcr-calls-states-refrain-forced-returns-haitians>

¹³⁰ States should not return anyone to Haiti – UN expert Bill O’Neill, United Nations (July 4, 2025), https://www.ohchr.org/en/statements-and-speeches/2025/07/states-should-not-return-anyone-haiti-un-expert-bill-oneill?utm_source=chatgpt.com

“from returning ... in safety.” 8 U.S.C. § 1254a(b)(1)(C). Extending Haiti’s TPS designation is therefore entirely consistent with support for the GSF. Indeed, if it were safe to return to Haiti, there would be no need for the GSF.

239. Accordingly, invoking the U.N. and the practically nonexistent GSF as a basis to terminate Haiti’s TPS is yet more pretext by Secretary Noem and the Trump administration.

240. Since taking office in January 2025, the administration has terminated every TPS designation that it has reviewed. Specifically, the administration has terminated or vacated the following TPS designations:

- Venezuela, 90 Fed. Reg. 8805 (Feb. 3, 2025) (vacatur of 2025 extension of 2023 designation);
- Venezuela, 90 Fed. Reg. 9040 (Feb. 5, 2025) (termination of 2023 designation);
- Haiti, 90 Fed. Reg. 10511 (Feb. 24, 2025) (partial vacatur);
- Afghanistan, 90 Fed. Reg. 20309 (May 13, 2025) (termination);
- Cameroon, 90 Fed. Reg. 23697 (June 4, 2025) (termination);
- Nepal, 90 Fed. Reg. 24151 (June 6, 2025) (termination);
- Haiti, 90 Fed. Reg. 28760 (July 1, 2025) (termination, later supplanted by November 28, 2025 termination);
- Nicaragua, 90 Fed. Reg. 30086 (July 8, 2025) (termination);
- Honduras, 90 Fed. Reg. 30089 (July 8, 2025) (termination);
- Venezuela, 90 Fed. Reg. 43225 (Sept. 8, 2025) (termination of 2021 designation);
- Syria, 90 Fed. Reg. 45398 (Sept. 22, 2025) (termination);

- South Sudan, 90 Fed. Reg. 50484 (Nov. 6, 2025) (termination);¹³¹
- Burma, 90 Fed. Reg. 53378 (Nov. 25, 2025) (termination);
- Haiti, 90 Fed. Reg. 54733 (Nov. 28, 2025);
- Ethiopia, 90 Fed. Reg. 58028 (Dec. 15, 2025).

241. The 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).

242. The fact that every country whose TPS designation has been terminated by the administration is, like Haiti, predominantly non-white is evidence—corroborated, for example, by the administration’s preferential treatment of white South Africans and President Trump’s recently reiterated preference for immigration from predominantly white countries—that the termination of Haiti’s TPS designation is motivated by racial animus.

243. On December 19, 2025, DHS issued a press release touting its 2025 accomplishments “[u]nder the leadership of President Donald J. Trump and Secretary Noem.” Those “accomplishments” included “end[ing] TPS for Afghanistan, Burma, Cameroon, Ethiopia, Haiti, Honduras, Nepal, Nicaragua, South Sudan, Syria, and Venezuela, and issu[ing] orders for these foreign nationals to self-deport.” Referencing the end to TPS designations and other

¹³¹ In May, 2025 South Sudan received an “automatic six-month extension” of its TPS designation by operation of 8 U.S.C. § 1254a(b)(3)(C) because “the record of country conditions and consultation from the Department of State for South Sudan was not able to be updated prior to” the statutory deadline. 90 Fed. Reg. 19217, 19217–18 (May 6, 2025). Notwithstanding this dearth of information, the Federal Register notice of South Sudan’s extension nevertheless “encouraged” South Sudanese TPS holders “to prepare for their return to South Sudan” during the six-month reprieve. *Id.* at 19,217. And, following that automatic six-month extension, Secretary Noem terminated South Sudan’s TPS at the first possible opportunity. 90 Fed. Reg. 50484 (Nov. 6, 2025).

purported “accomplishments,” the press release declared that “President Trump has delivered some of the most historic and consequential achievements in presidential history.”¹³²

244. The November 28, 2025 termination of Haiti’s TPS designation is also unlawful in that it was not the result of a legally adequate consultation with appropriate agencies of government. The administrative record produced to date shows that the only consultation between DHS and the State Department was a lone, two-sentence email exchange between staffers that was devoid of substantive analysis. *See* HaitiTPSAR000409-10. That perfunctory exchange, which did not address conditions in Haiti, does not satisfy the statutory requirement that the Secretary make her determination only “after consultation with appropriate agencies of the Government.” 8 U.S.C. § 1254a(b)(3)(A).

245. The DHS staffer on this email exchange was Rob Law. Before he returned to government in the second Trump Administration, Mr. Law was a DHS staffer during the first Trump administration. In 2017, he was directly involved in the unlawful attempt to terminate Haiti’s TPS designation. In 2017, Mr. Law “intentionally edited” the decision memorandum for the Secretary “to support the case for termination and to undermine the case for extension.” *Saget*, 375 F. Supp. 3d at 351. Mr. Law wrote: “[t]he draft is overwhelmingly weighted for extension which *I do not think is the conclusion we are looking for.*” *Id.* (emphasis in original, citation omitted). Then, “[i]n fewer than thirty minutes—and thus within no time to conduct factual investigation or analysis,” Mr. Law “returned another draft [decision] Memorandum that ‘made the document fully support termination.’” In the draft, Law “provided comment boxes where additional data should be provided to back up this decision.” *Id.* (citation omitted). Mr. Law also wrote to a colleague:

¹³² *Under President Trump and Secretary Noem, the Department of Homeland Security Has Historic Year*, DEPARTMENT OF HOMELAND SECURITY (Dec. 19, 2025), <https://www.dhs.gov/news/2025/12/19/under-president-trump-and-secretary-noem-department-homeland-security-has-historic>

“I need positive data on the current status of Haiti to bolster the recommendation to terminate TPS. Look back to Sec. Kelly’s [six-month] extension for language citing ‘improvement’ or the like that I can plug in.... *Be creative.*”

Id. at 372 (emphasis in original, citation omitted).

246. The State Department staffer on this email exchange was Spencer Cretien, the same person who confirmed in 2025 that the Trump Administration’s resettlement program for Afrikaners was intended only for white people.¹³³

247. Limiting the consultation between DHS and the State Department to a lone, two-sentence email exchange devoid of substantive analysis is sharp departure from past practice. In the past, there was extensive consultation between the two departments during the statutorily mandated period review. *See, e.g., Saget*, 375 F. Supp. 3d at 298–99, 315–19. The unexplained departure from past practice is evidence of an arbitrary and capricious process designed to reach a predetermined result.

248. The November 28 termination notice, moreover, makes clear that when Secretary Noem conducted her periodic review to determine whether the conditions for Haiti’s TPS designation continue to be met, the only conditions she considered are those set forth in 8 U.S.C. § 1254a(b)(1)(C)—namely, whether “there exist extraordinary and temporary conditions in [Haiti] that prevent [Haitians] from returning to [Haiti] in safety.” The Secretary did not consider whether any of the other bases for designation exist. As relevant here, the Secretary failed to consider whether there is “an ongoing armed conflict” that would “pose a serious threat to [Haitians’] personal safety” if forced to return to Haiti. 8 U.S.C. § 1254a(b)(1)(A). The Secretary is, however, required by law to “review the conditions in the foreign state” and “determine whether the

¹³³ Ted Hesson et al., *US diplomats asked if non-whites qualify for Trump refugee program for South Africans*, REUTERS (July 25, 2025), <https://bit.ly/3XR2Smo>; *see also id.* (“In South Africa the term coloured refers to mixed-raced people, a classification created by the apartheid regime still in use today.”).

conditions for such designation *under this subsection* continue to be met.” 8 U.S.C. § 1254a(b)(3)(A) (emphasis added). Because the Secretary is required to determine whether the conditions for designation “under this subsection” still exist, the Secretary must consider *all* the conditions for designation set forth in § 1254a(b)(1). The statute does not allow her to restrict her inquiry to a single condition. In failing to consider all possible bases for designation set forth in 8 U.S.C. § 1254a(b)(1), the Secretary failed to observe procedure required by law.

**President Trump’s Unlawful Attempt to Terminate Haiti’s
TPS During His First Administration**

249. President Trump’s attempt to terminate Haiti’s TPS is nothing new. He attempted to do so during his first administration.

250. As now, President Trump’s first attempt to terminate Haiti’s TPS was unlawful because it was preordained and pretextual. It accordingly was enjoined by a federal district court which concluded (among other things) that the termination decision violated the Administrative Procedure Act and the Equal Protection Clause of the Fifth Amendment. *See generally Saget*, 375 F. Supp. 3d 280.

251. In November 2017, President Trump’s Acting Secretary of Homeland Security, Elaine Duke, announced in a press release that TPS for Haiti would be terminated. *Saget*, 375 F. Supp. 3d at 327–28.

252. The Federal Register Notice for the termination contained three short paragraphs listing Acting Secretary Duke’s rationale for termination. Citing the Haitian President’s intention to “rebuild Haiti’s National Palace” and finding that “cholera is ... at its lowest level since the outbreak began,” Acting Secretary Duke determined “that the conditions for the designation of Haiti for TPS under 244(b)(1)(C) of the INA. 8 U.S.C. 1254a(b)(1)(C), are no longer met.” 83 Fed. Reg. 2648, 2650.

253. A group of Haitian TPS holders sued, asserting claims against President Trump, Acting Secretary Duke, and other administration officials. The complaint alleged, among other things, that the termination decision violated both the Fifth Amendment’s equal protection clause and the Administrative Procedure Act.

254. Following a week-long hearing during which numerous witnesses testified and thousands of pages of exhibits were introduced, the court agreed, issuing a lengthy decision enjoining the termination of Haiti’s TPS designation. The evidence presented at the hearing included deposition testimony from DHS officials, email communications of both career officials and Trump administration political appointees, and decision memoranda concerning country conditions in Haiti drafted by career USCIS employees but then edited by political appointees to make conditions appear safe for Haitian returnees. *See Saget*, 375 F. Supp. 3d at 301–27.

255. Among many other things, the court concluded that the “sequence of events leading up to the decision to terminate Haiti’s TPS was a stark departure from ordinary procedure, suggestive of a pre-determined outcome not anchored in an objective assessment, but instead a politically motivated agenda.” *Saget*, 375 F. Supp. 3d at 372. For example, the Court found that

[t]he evidence shows DHS officials pushed back on drafts ‘weighted for extension’ because extension ‘was not the conclusion [they were] looking for.’ DHS officials directed USCIS officials to ‘[b]e creative’ in finding ‘positive data on the current status of Haiti to bolster the recommendation to terminate TPS.’ Plaintiffs offer evidence that DHS and USCIS officials departed from prior practice by changing their interpretation of the TPS statute because the new interpretation would better support termination.

Id. at 343 (citations omitted, alterations in original). The Court also pointed to Acting Secretary Duke’s supposed “[r]ationale’ for terminating TPS,” reciting handwritten notes in which she acknowledged not knowing of a proper basis for terminating Haiti’s designation but nevertheless avowed a “‘need to rationalize conflicting info’” because “‘all agree [TPS] must end.’” *Id.* at 324 (citations omitted, alterations in original).

256. Ultimately, the Court concluded that the plaintiffs had “proffered significant evidence based on hard facts” that “the Government’s decision was pretextual,” with the evidence “tending to show DHS, USCIS, and the Department of State reverse engineered the TPS process with the principal aim of ‘getting to no.’” *Id.* at 343. Put simply: “[T]he reasons motivating [Acting Secretary Duke’s] decision were not those articulated in the Federal Register Notice. *Id.* at 361–62.

257. As to the plaintiffs’ Equal Protection claim, the Court found that the evidence showed “direct evidence of direct communications and involvement between the White House and DHS in formulating the decision to terminate Haiti’s TPS.” 375 F. Supp. 3d at 369. The Court found that those communications “reveal[ed] the intent to formulate a general policy of terminating TPS for predominantly non-white foreign countries in order to decrease the presence of non-white immigrants in the United States.” 375 F. Supp. 3d at 374. The Court observed that “[u]nlike prior decisions on TPS, the White House was not only involved in but was influential in producing the decision to terminate TPS for Haiti.” *Id.* The White House’s influence on the TPS decision-making process, coupled with President Trump’s repeated invective against Haitians in particular and immigrants generally, caused the Court to conclude that

[b]ased on the facts on this record, and under the factors prescribed by [the Supreme Court’s decision in] *Arlington Heights*, there is both direct and circumstantial evidence a discriminatory purpose of removing non-white immigrants from the United States was a motivating factor behind the decision to terminate TPS for Haiti.

Id. at 374.

258. The government appealed the Court’s ruling, but before the circuit court issued its ruling, Secretary Mayorkas designated Haiti for TPS in August 2021. 86 Fed. Reg. 41863 (Aug. 3, 2021). That mooted the case, and the parties agreed to a stipulated dismissal.

**The Extraordinary Harms Haitian TPS Holders Will Suffer
Because of the Termination**

259. Plaintiff Fritz Emmanuel Lesly Miot is reasonably fearful that, if forced to return to Haiti, he will die. He needs insulin to survive. Yet in Haiti, he would not have ready access to insulin, or to the specialists he needs to treat his diabetes, due to Haiti's non-functional healthcare system. Moreover, Mr. Miot's diabetes leaves him more vulnerable to serious medical consequences from diseases that are prevalent in Haiti but not the United States, such as cholera, malaria, and dengue fever. He would also be vulnerable to kidnapping and robbery by the gangs that currently hold sway in Haiti; those gangs view anyone who has spent time in the United States as a target, because they believe that people who spent time in the United States have money.

260. Plaintiff Rudolph Civil is reasonably fearful that, if forced to return to Haiti, he would soon be kidnapped or killed. Because he is culturally American, he will stick out in Haiti; for example, his Haitian Creole is very rusty because he does not speak it very much. That would make him a target for gang kidnapping. His family members have been targeted by gangs as well, making him fearful that he would be targeted too. In 2023, his father was attacked by a man who broke into his father's house and twice tried to shoot and kill his father; but both times the gunman's gun jammed, so the gunman hit his father over the head with the gun and stole his father's phone and other valuables. His cousin, a young woman in her mid-twenties, was in the house with his father when this happened, and the gunman abducted her from the house. He would not be able to find employment in Haiti; there are no jobs for computer engineers. He is also concerned with catching the diseases that are common in Haiti. Nor does he have a plan for stable housing—he cannot move in with his father because, as mentioned, his father is already a target of gang violence.

261. Plaintiff Marlene Gail Noble is reasonably fearful that, if forced to return to Haiti, she will be unable to get treatment for her health issues (namely, her diagnosis of kyphosis in spinal tuberculosis) because Haiti does not have a functional health care system. Because she has been in the United States for the last 34 years, she does not know anyone in Haiti; in fact, she cannot name a single person she knows in Haiti. Additionally, she does not speak, nor can she understand, French or Haitian Creole, the official languages of Haiti. She would be vulnerable to kidnapping and being held for a money ransom because people perceived as American by Haitian gangs are targeted. For the same reason, she could even be murdered. She fears that, upon being forced to return to Haiti, she would be unable to find a home and resources or food.

262. Plaintiff Marica Merline Laguerre is reasonably concerned for her safety if she is forced to return to Haiti. She already has sleepless nights at the prospect of having to return to Haiti, a country where she has not lived since she was a year old. She does not speak Haitian Creole well. She is aware of how chaotic Haiti is right now; her uncle's house burned down and her uncle is now homeless. A different uncle had his business seized by gangs, who threatened him and his family and stole all of the food, goods, and merchandise in the business. She knows that the gangs rape women, kidnap people and hold them for ransom, and kill or otherwise abuse people, and that the police are ineffective and cannot protect people. She fears being raped by gang members. She also fears that, because she would stick out as someone who has spent virtually her entire life in the United States, gangs would kidnap her and hold her for a money ransom.

263. Plaintiff Vilbrun Dorsainvil is reasonably fearful that, if forced to return to Haiti, he would lose his health, dental, and vision insurance through his work. If he is no longer authorized to work by way of TPS for Haitians terminating, he will lose these benefits. In addition,

he would be unable to support the people who currently depend on the money he sends to them. Most notably, he would be unable to financially support his cousin, who currently lives with him and has diabetes. Without Mr. Dorsainvil's support, his cousin would not be able to afford his diabetes medical care. Mr. Dorsainvil fears it would be unsafe for him to return to Haiti due to his and his family's political affiliations, which in the past resulted in the imprisonment of his brother, J.C., the vandalization of J.C.'s home, and his other brother, B., being followed by gangs. He fears he will be a prime target for the gangs to kill, abuse, or hold for a money ransom because, as a professional, they would easily surmise that he had been living abroad, and as a result has money to pay a ransom or knows someone who does. Returning to Haiti would make it very difficult, if not impossible, for him to get basic necessities, such as food, work, and health care, due to there being widespread lawlessness, malnutrition, unemployment, and homelessness in Haiti today. He also fears catching diseases like cholera, dengue, and malaria, which are common and claim lives in Haiti, but which are easily treated in the United States. Even if he was able to find a job, it would not be safe to get to work considering the pervasive violence in the streets of Haiti.

CLASS ALLEGATIONS

264. Plaintiffs bring this action under Federal Rules of Civil Procedure 23(a) and 23(b)(2) on behalf of themselves and a class of all other persons similarly situated.

265. Plaintiffs seek to represent the following Proposed Class: All persons in the United States who have been granted, or have applied for, Temporary Protected Status pursuant to 8 U.S.C. § 1254a and 8 C.F.R. § 244.2 and named Haiti as the designated TPS country under which they applied.

266. The proposed class satisfies the requirements of Rule 23(a)(1) because the class is so numerous that joinder of all members is impractical. By the government's own account, over 300,000 Haitians currently hold TPS. 90 Fed. Reg. 28764.

267. The proposed class satisfies both the commonality and typicality requirements of Rule 23(a)(2) and (3). Because of Defendants' unlawful decision to "partially vacate", and then terminate, Haiti's TPS designation, all class members face the imminent loss of work authorization and protections from deportation.

268. The proposed class satisfies the adequacy requirements of Rule 23(a)(4). The representative Plaintiffs seek the same relief as the other members of the class: an order setting aside under 5 U.S.C. § 706 the "partial vacatur" and termination of Haiti's TPS designation and a declaratory judgment that the "partial vacatur" and termination of Haiti's TPS designation violated the Fifth Amendment's equal protection guarantee.

269. The proposed class is represented by experienced attorneys with extensive experience litigating challenges to the government's unlawful TPS terminations, class actions, and other complex cases in federal court.

270. The proposed class satisfies Rule 23(b)(2). Defendants have acted on grounds generally applicable to the class by unlawfully "vacating," and then terminating, Haiti's TPS designation; relief is therefore appropriate with respect to the class as a whole.

CLAIMS FOR RELIEF

Count One

(Administrative Procedure Act)

271. The allegations in paragraphs 1-257 are incorporated by reference as if fully set forth herein.

272. The Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq.*, ensures that federal agencies are accountable to the public by providing a “right of review” to any person “suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action.” 5 U.S.C. § 702.

273. The APA directs federal courts to “hold unlawful and set aside agency action” that is: “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” 5 U.S.C. § 706(2)(A); “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right,” *id.* § 706(2)(C); “without observance of procedure required by law,” *id.* § 706(2)(D); or “contrary to constitutional right,” *id.* § 706(2)(B).

274. On February 20, 2025, the Trump administration implemented the first part of its plan to terminate Haiti’s TPS designation. On that date, purporting to “partially vacate” the agency’s July 1, 2024, extension of Haiti’s designation through February 3, 2026, Defendants declared that Haiti’s designation would terminate on August 3, 2025, six months before the previously fixed expiration date. 90 Fed. Reg. 10511, 10511 (Feb. 24, 2025).

275. In a decision in a separate case, a federal court held that “Secretary Noem does not have statutory or inherent authority to vacate a country’s TPS designation” and that therefore “her partial vacatur [of Haiti’s TPS designation] must be set aside as unlawful under the APA.” *Haitian Evangelical Clergy Ass’n v. Trump*, 789 F. Supp. 3d at 273. That court further held that “Secretary Noem cannot reconsider Haiti’s TPS designation in a way that takes effect before February 3, 2026, the expiration of the most recent previous extension.” *Id.*

276. On July 1, 2025, Secretary Noem, employing the “partial vacatur” as a necessary predicate, terminated Haiti’s TPS designation effective September 2, 2025. 90 Fed. Reg. 28760. However, due to the district court’s ruling in *Haitian Evangelical Clergy Association*—which

restored the effective end-date of Haiti's TPS designation to February 3, 2026—Secretary Noem opted to issue a new termination notice.

277. On November 28, 2025, Secretary Noem issued her new termination notice, effective February 3, 2026. 90 Fed. Reg. 54733.

278. The termination of Haiti's TPS designation effective February 3, 2026 violates the APA in multiple ways, each of which is an independent basis for setting it aside under 5 U.S.C. § 706.

279. The termination of Haiti's TPS designation constitutes final agency action. *Cf.* 5 U.S.C. § 704 (providing that judicial review of APA claims is generally limited to “final agency action for which there is no other adequate remedy in a court”).

280. The termination of Haiti's TPS designation is arbitrary, capricious, an abuse of discretion, not in accordance with law, in excess of statutory authority, and without observance of procedure required by law because it was a preordained outcome justified by pretextual reasons. Even before taking office, President Trump stated publicly that he would have Secretary Noem terminate Haiti's TPS designation. Accordingly, the decision to terminate Haiti's TPS was made before any “consultation with appropriate agencies of the Government” could have occurred. 8 U.S.C. § 1254a(b)(1). The decision to terminate Haiti's TPS was made to help fulfill President Trump's campaign promise to rid America of immigrants. Once in office, Secretary Noem “reverse-engineered facts ... to justify termination,” “‘looking for’ an outcome of termination rather than coming to the outcome after a fact-based review of country conditions.” *Saget v. Trump*, 375 F. Supp. 3d 280, 362 (E.D.N.Y. 2019). The process by which the termination was accomplished reflects a departure from past agency processes and practices for making TPS determinations.

281. The termination of Haiti's TPS designation is arbitrary, capricious, an abuse of discretion, not in accordance with law, in excess of statutory authority, without observance of procedure required by law, and contrary to constitutional rights because it was motivated by unlawful discriminatory animus. The Due Process Clause of the Fifth Amendment prohibits the federal government from taking action for which discriminatory intent or purpose is a motivating factor. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265-66 (1977). The termination of Haiti's TPS designation was motivated by President Trump's and his surrogates' discriminatory intent to remove nonwhite immigrants in general and Haitians in particular. This discriminatory intent is demonstrated by, among other things, President Trump's and Secretary Noem's own statements about nonwhite immigrants, Haitians, and Haitian TPS holders; the Trump administration's termination of lawful immigration statuses like TPS for nonwhite immigrants; the Trump administration's simultaneous removal of immigration barriers to white immigrants; and the departures from past TPS decision-making process.

Count Two

(Fifth Amendment—Equal Protection)

282. The allegations in paragraphs 1-257 are incorporated by reference as if fully set forth herein.

283. The Due Process Clause of the Fifth Amendment to the Constitution prohibits the federal government, including Defendants, from denying any person equal protection of the laws. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 217–18 (1995); *Bolling v. Sharpe*, 347 U.S. 497, 499–500 (1954); *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265-66 (1977).

284. As demonstrated by President Trump's and Secretary Noem's own words, by their disregard of statutory requirements, by the pretextual reasons given for terminating Haiti's TPS

designation, and by their efforts to remove nonwhite immigrants while simultaneously facilitating the entry of white immigrants, the termination of Haiti's TPS designation was, at least in part, improperly motivated by animus and discriminatory intent based on race and ethnicity.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- a. Enter an order certifying this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), and appointing Plaintiffs and their counsel to represent the members of the class;
- b. Declare that Defendants' termination of Haiti's TPS designation:
 - (i) violates the Administrative Procedure Act because it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," "in excess of statutory jurisdiction, authority, or limitations," "without observance of procedure required by law", and "contrary to constitutional right"; and
 - (ii) violates the Fifth Amendment's guarantee of equal protection;
- c. Set aside the termination of Haiti's TPS designation as unlawful and unconstitutional;
- d. Award Plaintiffs costs and attorneys' fees; and
- e. Grant such further relief as the Court deems just and proper.

Dated: December 19, 2025

Respectfully Submitted,
/s/ Geoffrey M. Pipoly

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

FRITZ EMMANUEL LESLY MIOT,) CIVIL NO.:
) 25-2471-ACR
Plaintiff,)
vs.)
DONALD J. TRUMP, et al.,) January 6, 2026
) Washington, D.C.
Defendant.) 10:30 a.m.
) Morning session

Transcript of Motions Hearing
Before the Honorable Ana C. Reyes
United States District Judge

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P R O C E E D I N G S

THE COURT: Ms. White, can you call the case, please.

THE CLERK: Yes, Your Honor. This is civil action 25-2471, Fritz Emmanuel Lesly Miot, et al. versus Donald J. Trump, et al.

Will the parties please identify themselves for the record, beginning with plaintiff's counsel.

MR. PIPOLY: Geoffrey Pipoly for the plaintiffs.

MR. SIMON: Andrew Tauber for plaintiffs.

MS. HARRELL: Kaitlyn Harrell for the plaintiffs.

MS. INGOLIA: Brooke Ingolia for the plaintiffs.

MR. AUDAIN: Raymond Audain for the plaintiffs.

MR. SAMPAT: I believe we have someone on screen too.

THE COURT: Ms. Zota? Yeah, okay.

MR. SAMPAT: Dhruvan Sampat on behalf of the United States.

THE COURT: Remind me -- I'm sorry, say your name again slowly, the last name.

MR. SAMPAT: Sampat.

THE COURT: Okay.

MS. TORRES: Good morning, Your Honor. Amanda Torres on behalf of the United States.

THE COURT: I'm sorry, your last name?

1 MS. TORRES: Torres.

2 THE COURT: Torres.

3 MR. SAMPAT: Yeah.

4 MR. SIMON: Good morning, Your Honor. Jeremy Simon
5 also on behalf of the United States.

6 THE COURT: All right. So you guys can be seated.

7 So I know I sent you some stuff over the weekend. I
8 apologize. I told myself when I took the bench that I would,
9 you know, try to give lawyers a heads-up as to what I was
10 going to do at hearings, and I would do it in advance, you
11 know, so they had time to prepare and not do things at the
12 last minute. I have failed woefully at that. But I did want
13 to give you a heads-up at least as to sort of what I expected
14 to cover, and I'm sorry I didn't get it to you sooner. And I
15 know I asked the question of government last night, and I
16 understand if you haven't had a chance to get those answers.
17 So I just want to go over what we're going to do at the
18 hearing. And sort of what I'm hoping -- well, what I'm hoping
19 to accomplish.

20 So first, I want to spend a substantial amount of
21 time, maybe all of today, just making sure I understand the
22 facts and making sure that we're all working from the same set
23 of facts and, if there are any contested facts, I know what
24 those are.

25 And I'm well aware that under the APA, I'm not

1 supposed to or cannot second-guess the secretary's
2 determination. I'm also quite aware that the government's
3 argument is that I don't have jurisdiction because there are
4 jurisdiction-stripping statutes.

5 And the questions, at least to the government's ear,
6 might sound like they are keyed to factual sort of trying to
7 second-guess what the secretary is doing. And as I said to my
8 clerks, just trust me, that's not what I'm doing. Honestly,
9 I'm trying to figure out where we are in the facts so if I
10 decide the APA applies, I can do the analysis with respect to
11 whether it's contrary to law, whether there were some issues
12 that the government should have considered that didn't
13 consider, you know, the typical sort of APA factors that apply
14 when we're looking at or reviewing a agency decision.

15 Because of that, most of that is going to have
16 government's counsel up. And that may be, you know, for a
17 long time before I get to plaintiffs. I am going to have
18 argument on the actual legal issues as well. I, in
19 particular, want to focus on jurisdiction. I think I have a
20 pretty good grasp on -- well, I think I have a good grasp on
21 all of it, but I think sort of, you know, obviously the main
22 fight is going to be on jurisdiction.

23 With respect to the APA, you know, the APA is what
24 it is. Obviously, I'll let you make your arguments, but I
25 don't need extensive briefing on what the APA requires and

1 doesn't require, but I'll of course let you make your
2 arguments. And then also on the Equal Protection Clause.

3 And I don't think we've had a major hearing in this
4 case, so just I want to say the following, is that I have a
5 lot of questions, and oftentimes I'll see that a lawyer is
6 sort of going off somewhere that isn't an answer to my
7 question. I'm going to bring you back. I might cut you off.
8 And the reason I do that is because if we go off on a tangent,
9 I forget what the original question was and I never get it
10 answered. So I'm not trying to be rude, I'm just trying to
11 make sure my questions get answered. I will give all the
12 lawyers in this case as much time as they want to argue after
13 I've had the questions asked and answered. And we'll do it,
14 you know, bit by bit or portion by portion.

15 We will be -- we will continue this hearing as long
16 as necessary so that all counsel feel like they've been fully
17 heard. I'm not going to cut you off from argument. I'm just
18 trying to make sure I get what I need and then you guys can
19 make your argument. Does that all make sense?

20 MR. PIPOLY: Yes, Your Honor.

21 THE COURT: Okay. All right. So whoever's going to
22 argue for the government on sort of the -- the administrative
23 record and the Federal Register, if I could see you first,
24 please.

25 MR. TAUBER: Excuse me, Your Honor, one preliminary

1 matter. I know that the government has raised objections to
2 the second amended complaint. I was wondering whether we
3 might perhaps clear those up first just at a --

4 THE COURT: Oh, what are the objections?

5 MR. TAUBER: -- threshold area?

6 THE COURT: I'm sorry, what are the objections to
7 the second amended complaint?

8 MR. SAMPAT: If we may. Your Honor, we were
9 exchanging emails with plaintiff's counsel yesterday, and we
10 said we wouldn't -- we would be amenable to consenting for
11 leave, but it would be up to plaintiffs to amend their
12 705 motion to propose the theory in their second amended
13 complaint as a basis for interim relief. Because they're --

14 THE COURT: The basis with respect to -- hold on, I
15 know what this is -- with respect to the major questions
16 doctrine?

17 MR. SAMPAT: So major questions doctrine, also
18 their -- the amendment in the amended allegations that we had
19 mentioned during the December 18th hearing about the policy
20 and practice of terminating all other TPS.

21 THE COURT: Oh, I thought those had been added?

22 MR. PIPOLY: They have been, Your Honor. So here's
23 what happened.

24 THE COURT: What's the issue?

25 MR. PIPOLY: My understanding was that you gave us

1 leave in the room on the 18th to amend to complaint.

2 THE COURT: Yeah, I did.

3 MR. PIPOLY: The government disagrees with that.

4 THE COURT: Okay. Do you have an objection to them?
5 On the major questions doctrine, I'm going to tell you right
6 now, you're not going to win this on the major questions
7 doctrine. I have litigated the major question doctrine
8 extensively, and this is not that. I mean, if you want to
9 amend your complaint to do it --

10 MR. PIPOLY: It's not the major questions doctrine,
11 Your Honor. It's nondelegation. It's not --

12 THE COURT: Well, okay. I've also litigated
13 nondelegation. Two sides of a coin. You're not going to win
14 this on nondelegation, I'm telling you that right now.

15 MR. PIPOLY: So what happened on the amended
16 complaint, we understood the Court's instructions on
17 December 18th to be you have leave of Court to amend those.

18 THE COURT: Yeah.

19 MR. PIPOLY: To amend the complaint.

20 THE COURT: If you want to amend it to non -- I
21 mean, I don't know that you need to claim --

22 MR. PIPOLY: No, no -- I don't think --

23 THE COURT: -- a doctrine in the complaint.

24 MR. PIPOLY: Right, but --

25 THE COURT: But if the government wants you to do

1 that, for whatever reason, to -- safe rather than sorry on
2 appeal, if I decide that you don't win on nondelegation, then
3 by all means. I don't care.

4 MR. PIPOLY: I agree with you, Your Honor. It's not
5 a claim, it's a legal theory.

6 THE COURT: Right.

7 MR. PIPOLY: I didn't think we needed to amend for
8 it. On December 19th, I emailed the government twice --

9 THE COURT: Guys, I don't care. You have leave to
10 amend.

11 MR. PIPOLY: Okay.

12 THE COURT: You've amended; right?

13 MR. PIPOLY: We've amended --

14 THE COURT: If you want to amend again to add
15 nondelegation, knock yourselves out. I don't care.

16 MR. PIPOLY: We don't -- we don't think we need
17 to.

18 THE COURT: Okay. Well, then make that argument on
19 appeal or whatnot.

20 MR. PIPOLY: I just want to get this on the record.
21 Our position has been for about three weeks now that if the
22 government wants to submit an additional five pages, six pages
23 to address any of those new allegations, it's free to do so.

24 THE COURT: You can do whatever you want, yes.

25 MR. PIPOLY: Right. Thank you, Your Honor.

1 MR. SAMPAT: So I just want to make sure we're all
2 on the same page. So the government can file some pages to
3 address the new allegations and plaintiffs can respond?

4 THE COURT: Yeah, whatever you guys want. Just work
5 it out. You guys don't need to email back and forth about
6 that for three weeks. Just tell me this is what we're doing
7 and you guys can do that.

8 MR. SAMPAT: Absolutely, Your Honor. We can work it
9 out and then we'll submit papers hopefully in the next week or
10 two on those issues.

11 THE COURT: I have to make a decision by
12 February 5th, so just keep that in mind -- or February 4th or
13 whatever.

14 MR. SAMPAT: February 3rd.

15 THE COURT: 3rd?

16 MR. SAMPAT: 3rd, Your Honor. I apologize for
17 cutting Your Honor short on that.

18 THE COURT: No, no, it's fine. It's fine.

19 You guys happy now? You guys got what you need?

20 MR. PIPOLY: Yes. Yes, Your Honor, I think so.

21 THE COURT: Government, you're good?

22 MR. SAMPAT: Yes, Your Honor.

23 THE COURT: Okay. All right.

24 So if I could see you.

25 MR. SAMPAT: One quick question. Are we also going

1 to be talking about the sources in the determination notice,
2 the footnote notice?

3 THE COURT: Yes.

4 MR. SAMPAT: Yes, okay. I was just making sure.

5 THE COURT: Bring up whatever you want. If you want
6 to put it on that side or wherever, so you have easy access,
7 whatever you want. If you want to bring up your computer.
8 I'm sorry, too. I'm sure I wrecked your Sunday. If it makes
9 you feel any better, you wrecked my Sunday.

10 MR. SAMPAT: I apologize for that, Your Honor.

11 THE COURT: All right. So I want to start by just
12 making sure so we're all on the same page with respect to what
13 the secretary has determined.

14 MR. SAMPAT: Yes.

15 THE COURT: So I'm going to read to you from the
16 Federal Register what my understanding of the secretary's
17 bottom line is, and you tell me if you agree or disagree if
18 there's things to add in the bottom line. Obviously, this is
19 not all the reasons, just sort of the bottom line.

20 So -- and I understand there are two bottom lines,
21 and one is -- and this is at Federal Register 54735, "Based on
22 the department's review, the secretary has determined that
23 there are no extraordinary and temporary conditions in Haiti
24 that prevent Haitian nationals from returning to safety."
25 That's one.

1 "Two, even if the department found that there
2 existed conditions that were extraordinary and temporary that
3 prevented Haitian nationals from returning in safety,
4 termination of TPS of Haiti is still required because it is
5 contrary to the national interest of the United States to
6 prevent -- to permit Haitian nationals to remain temporarily
7 in the United States."

8 That's what we're dealing with; right?

9 MR. SAMPAT: That is, yes, Your Honor, I agree with
10 that.

11 THE COURT: And is it the government's argument --
12 and I'm going to get into this much later in great detail, but
13 I just wanted to make sure I understand. Is it the
14 government's contention that the statute allows the secretary
15 to decide there is a massive humanitarian crisis in a
16 country -- it is, you know -- what's that book? It is -- the
17 book with the kids who get stranded on the island.

18 MR. SAMPAT: *Lord of the Flies*.

19 THE COURT: *Lord of the Flies*. It's like *Lord of*
20 *the Flies* in a country. By the way, there were actually a
21 group of teenagers who got stranded on an island for months
22 near Australia in the early 1900s, and they did not go *Lord of*
23 *the Flies*. They were actually quite cooperative with each
24 other, but be that as it may.

25 MR. SAMPAT: I'd be curious to know if that was pre

1 or post *Lord of the Flies* being published.

2 THE COURT: I know. I think it was -- I think it
3 might have been pre.

4 But anyway, it's *Lord of the Flies*, it's like a
5 humanitarian crisis, the country is up in flames. But even
6 though it's totally unsafe for anyone to return to the
7 country, if the secretary determines that it's in the national
8 interest of the U.S. to end TPS status, the text of the
9 statute or the statute allows her to do that.

10 MR. SAMPAT: That is correct. And if I may, I'll
11 read from the statute to make sure it's in the record.

12 So it says, "The Attorney General, after
13 consultation with the" --

14 THE COURT: You need to slow down when you're
15 reading.

16 MR. SAMPAT: I apologize.

17 "The Attorney General, after consultation with
18 appropriate agencies of the government, may designate any
19 foreign state under this section only if," and the
20 subsection C is, "the Attorney General finds that there exists
21 extraordinary and temporary conditions in the foreign state
22 that prevent aliens who are nationals of the state from
23 returning to the state in safety unless the Attorney General
24 finds that permitting the aliens to remain temporarily in the
25 United States is contrary to the national interest of the

1 United States."

2 THE COURT: Okay. And that's designated country?

3 MR. SAMPAT: That is a designated --

4 THE COURT: We're not here on designation; right?
5 We're here on extension. So can you also just read the
6 extension in?

7 MR. SAMPAT: On termination, Your Honor.

8 THE COURT: Well, not extension.

9 MR. SAMPAT: Yes. So the termination --

10 THE COURT: You say tomato, I say tomato.

11 MR. SAMPAT: The termination subprovision is at
12 8 U.S.C. 1254(a) (b) (3) (B), which is, "If the Attorney General
13 determines" --

14 THE COURT: You need to slow down.

15 MR. SAMPAT: I'm sorry.

16 "If the Attorney General determines, under
17 subparagraph A," which goes to the reasons for designation --
18 that could lead to designation, I should say, "that a foreign
19 state no longer continues to meet the conditions for
20 designation under subparagraph 1, the Attorney General shall
21 terminate the designation by publishing notice in the Federal
22 Register."

23 THE COURT: So then based on that language, you also
24 think the secretary can say national interest trumps
25 whatever's happening, send them all back.

1 MR. SAMPAT: Yes.

2 THE COURT: Okay. All right. Just so I know what
3 to look forward to, does the plaintiffs agree or disagree with
4 that reading? And I don't want argument, just tell me if you
5 agree.

6 MR. TAUBER: We disagree.

7 THE COURT: Okay. All right. I had a feeling.

8 Then I just want to make sure I understand sort of
9 the government's view as to how the TPS process works. So
10 let's say a secretary designates a country under the TPS
11 statute on January 1st, 2020, all right. Everyone in the
12 United States from that country -- we're going to have a
13 hypothetical country throughout this hearing. It's going to
14 be called Yankee. That's the country. The reasons will
15 become obvious later. So okay. So a country, Yankee, if --
16 all Yankees in the U.S. as of January 1st, 2020, can apply for
17 TPS status.

18 MR. SAMPAT: I believe there's a -- there normally
19 is a notice of like you have to have been in the United States
20 at a date certain.

21 THE COURT: Okay. Right.

22 MR. SAMPAT: Or --

23 THE COURT: Yes, but there's a date certain -- like
24 let's say this date certain is January 1st, 2020.

25 MR. SAMPAT: If that's the case, yeah, my

1 understanding is, if they're here based on the date
2 represented in the secretary's notice, then as of that date
3 you can apply for a TPS.

4 THE COURT: Okay. So then if I come on February 1st
5 2020 from Yankee, then I'm out of luck.

6 MR. SAMPAT: I believe the notices read -- are
7 forward-looking, so it's if you were here on January 1st and
8 after.

9 THE COURT: After for how long?

10 MR. SAMPAT: Until the designation or it's
11 revisited. That's my understanding of how the statute
12 works.

13 THE COURT: Okay. I don't think that's how the
14 statute works, so can you give me sort of the reading of the
15 statute? Because my understanding was somewhat different. My
16 understanding was that people who come into the country after
17 designation cannot --

18 MR. SAMPAT: That's right. I think you're right,
19 Your Honor. Sorry. Sorry, I was misremembering.

20 THE COURT: All right. Okay. So just so I make
21 sure, January 1st, 2020, is the date of the designation. If
22 you're here before then, you know, you can apply within
23 180 days for status. If you come February 2020, you can't
24 come under the TPS designation.

25 MR. SAMPAT: That is my understanding.

1 THE COURT: Okay. Now, if, let's say, the statute
2 is extended, the -- I'm sorry, the designation is extended,
3 that's still the case, you don't get to come in after an
4 extension and claim TPS status.

5 MR. SAMPAT: So unless the -- the extension now
6 creates a new date.

7 THE COURT: Right.

8 MR. SAMPAT: Right.

9 THE COURT: Unless it -- well, unless it creates a
10 new date, or unless there's a new designation?

11 MR. SAMPAT: So I think a lot of the extensions have
12 had new dates of like new cut-off dates.

13 THE COURT: Right, but they don't need to; right?

14 MR. SAMPAT: I don't think they do.

15 THE COURT: Right.

16 MR. SAMPAT: But I think they normally do just as a
17 matter of practice.

18 THE COURT: But it's certainly possible that an
19 agency could say we're going to extend the January 2020
20 designation but not redesignate. So if you come in -- let's
21 say, the new designation date is -- the extension date is, you
22 know, June 2021; right? So you have the original designation
23 of January 2020, and you have a extension of the 2020
24 designation on January 1st, 2021.

25 MR. SAMPAT: Okay.

1 THE COURT: But no new designation, just a pure
2 extension. Do you understand the hypothetical?

3 MR. SAMPAT: Yes, but I think -- I think it's been
4 that it ends up being an extension -- hold on, let me think
5 this through.

6 THE COURT: So there's a difference between an
7 extension and a designation.

8 MR. SAMPAT: Yes.

9 THE COURT: An extension is not automatically a new
10 designation. There has to be a new designation made for there
11 to be a new designation [sic].

12 MR. SAMPAT: Right.

13 THE COURT: This is important because if there's an
14 extension, that does not allow people who came in after the
15 original designation date, January 2020, to apply for TPS
16 status. Is that -- so if I came in in August of 2021, so
17 after the extension date, I still do not get TPS status.

18 MR. SAMPAT: That is my understanding.

19 THE COURT: Right. Okay. Now, the secretary can do
20 something different; right? The secretary can say not only am
21 I extending the January 2020 designation in July of 2021, I'm
22 also redesignating the country. So then if I came in under in
23 August 2021, I would have the right to apply for TPS status
24 for the July 2021 designation.

25 MR. SAMPAT: I would just simply say you have the

1 ability to apply for a TPS.

2 THE COURT: Right.

3 MR. SAMPAT: Right. I just --

4 THE COURT: Yeah. I mean just because I apply
5 doesn't mean I'm going to get it.

6 MR. SAMPAT: Right.

7 THE COURT: And if I have TPS designation, and I, I
8 don't know, murder a dentist and his wife, then you guys can
9 say, well, we're kicking you out of the country.

10 MR. SAMPAT: So it could be that. But I will also
11 say that also all of this assumes that the extension and the
12 redesignation have a new extension date and all that.

13 THE COURT: Yeah. Yeah.

14 MR. SAMPAT: Right.

15 THE COURT: Okay. I just want to make sure that we
16 are on the same page. The secretary can designate a country
17 as having TPS status and continue to extend that designation,
18 and that's different than designating the statute, the country
19 extending the original designation, and then creating a new
20 designation with respect to who's entitled to apply for the
21 TPS visas.

22 MR. SAMPAT: I think that's correct. I want to look
23 at the statutory language very carefully again to confirm.

24 THE COURT: I'm going to have a lot of questions
25 about that, so maybe on a break you can confer.

1 You guys agree with that?

2 MR. TAUBER: Yes, Your Honor.

3 THE COURT: Okay. Thank you.

4 MR. TAUBER: If there's an extension, it only
5 applies to the people who are eligible under the initial
6 designation.

7 THE COURT: Right.

8 MR. TAUBER: And for the people who arrive
9 thereafter, you need the redesignation which is the standard
10 practice over the years.

11 THE COURT: It's not required. I can extend without
12 redesignating.

13 MR. TAUBER: That is correct.

14 THE COURT: Okay. So in the Federal Register
15 notice, the secretary wrote, "After reviewing country
16 conditions and consulting with appropriate U.S. Government
17 agencies, the secretary determined that Haiti no longer meets
18 the conditions for the designating as TPS"; right?

19 MR. SAMPAT: Yes.

20 THE COURT: Okay. What were the appropriate
21 agencies that the secretary consulted? I just want the -- you
22 just list all of them for me.

23 MR. SAMPAT: So, Your Honor, it's the Department of
24 State email found at 409 and 410. That is what we have. But
25 our position on the consultation piece is that it's not

1 defined in the statute.

2 THE COURT: I'm going to get to argument. We're
3 going to have lots of argument, I promise you. But if we have
4 argument on every question, we're never going to get out of
5 here.

6 MR. SAMPAT: Understood.

7 THE COURT: I promise you, I'm not going to stop you
8 from arguing. Okay.

9 MR. SAMPAT: So it was the Department of State, and
10 that --

11 THE COURT: Department of State and the 409, 410
12 email.

13 MR. SAMPAT: Yeah.

14 THE COURT: Okay.

15 MR. SAMPAT: That is what we have, Your Honor.

16 THE COURT: No other agency was consulted.

17 MR. SAMPAT: No other agency was consulted, agency
18 being outside of DHS; right? Like DHS now has subsumed other
19 components.

20 THE COURT: Okay.

21 MR. SAMPAT: Like USCIS and others.

22 THE COURT: So USCIS was consulted?

23 MR. SAMPAT: So USCIS doesn't constitute an agency
24 under the statute, is our understanding.

25 THE COURT: That was going to be my next question.

1 So in terms of actual agency under the statute, who was
2 consulted?

3 MR. SAMPAT: The Department of State.

4 THE COURT: And the extent of the Department of
5 State consultation was the email exchange at 409 and 410.

6 MR. SAMPAT: That is my understanding.

7 THE COURT: Okay. All right. And -- with respect
8 to paragraph 245 of the amended complaint, can you pull up
9 that up?

10 MR. SAMPAT: The first amended complaint or the
11 second amended complaint, Your Honor?

12 THE COURT: The one that talks about Rob Law.

13 MR. SAMPAT: Oh, then that would be the second
14 amended complaint, I assume.

15 MR. TAUBER: Page 78 of the second amended.

16 MR. SAMPAT: I'm sorry?

17 MR. TAUBER: Page 78.

18 MR. SAMPAT: Thank you.

19 THE COURT: By the way, do you have a water or
20 something up with you? You're going to be up.

21 MR. SAMPAT: I have a bottle but --

22 THE COURT: Feel free to bring it up. I was arguing
23 once, and do you see how there's a -- on these podiums in the
24 courtroom, they have like a lower level?

25 MR. SAMPAT: Yeah.

1 THE COURT: Right. So I had gone up to argue. I
2 was arguing a motion to dismiss, and I put my -- it was a
3 glass of water, and I put it on that little podium thing in
4 the middle. And when I went to get something or put a
5 notebook under, as I was arguing, the water -- like the cup
6 spilled over. So you could like -- opposing counsel could
7 hear water dripping down. It was like water was pouring down
8 my leg, and I was still trying to argue and answer the judge's
9 questions. So I always caution people about that. But if you
10 want to have water up with you, by all means.

11 MR. SAMPAT: I appreciate that, Your Honor. If I
12 need a drink, I will certainly ask Your Honor for it.

13 THE COURT: All right. So I want to go through
14 these allegations, and you tell me if they're true or not, to
15 your knowledge. And if you need to defer, let me know. Okay.

16 So the first is that Rob Law was a staffer at the
17 Department of Homeland Security during President Trump's first
18 administration?

19 MR. SAMPAT: Your Honor, I am -- that is my
20 understanding based on the *Saget* decision. But we'd want to
21 confirm with our client.

22 THE COURT: Okay. And with respect to the *Saget*
23 decision, then, true that, in 2017, he was involved in the
24 decision to end TPS designation for Haiti?

25 MR. SAMPAT: Again, that's based on the *Saget*

1 decision, yes.

2 THE COURT: All right. True that he wrote an email
3 in 2017, quote, The draft of the decision memo is
4 overwhelmingly weighted for extension, which I do not think is
5 the conclusion we are looking for?

6 MR. SAMPAT: I don't know if that was -- if that was
7 based on the Court's individual finding that that's what it
8 said, but, again, because we're here on a motion to dismiss on
9 the 705, we haven't contested the allegations of the
10 complaint. So for the purposes of the motion to dismiss, we
11 wouldn't be contesting --

12 THE COURT: What about with respect to the motion to
13 stay?

14 MR. SAMPAT: So it gets a little wonky there, Your
15 Honor. And I know Your Honor didn't want argument. I don't
16 think it would be appropriate for the Court to consider the
17 administrative record even on the 705 motion. And if --

18 THE COURT: What?

19 MR. SAMPAT: If I may.

20 THE COURT: I'm sorry, I can't consider the
21 administrative record on the 705 stay motion on a likelihood
22 of success analysis?

23 MR. SAMPAT: Yes, because it would be -- it would be
24 jumping the gun in a way.

25 THE COURT: Jumping the gun to?

1 MR. SAMPAT: To summary judgment. And it would be
2 looking at -- it would be looking at on the record itself,
3 when a motion to dismiss is based on the allegations in the
4 complaint that the government hasn't -- that can't contest.
5 Additionally, we haven't had a chance to brief the actual
6 administrative record. That's not what we briefed in the
7 papers before the Court.

8 THE COURT: Well, I can tell you right now, I'm
9 getting into the administrative record on the administrative
10 stay, on the 705 stay. How can I not if I'm looking at a
11 likelihood of success consideration?

12 MR. SAMPAT: I think it could be based on
13 allegations. It's how --

14 THE COURT: But I can't assess whether or not
15 someone has a likelihood of success on an APA claim without
16 looking at the administrative record. Like that -- I can't
17 possibly do that. I don't even know how I would go about
18 trying to do that.

19 MR. SAMPAT: And this is why I said, Your Honor,
20 it's a little wonky.

21 THE COURT: It's a lot wonky if that's your
22 argument.

23 MR. SAMPAT: But I would say that the rules do
24 contemplate reasonable opportunity and reasonable notice to
25 the parties to -- if the Court's going to consider stuff

1 outside of the pleadings. So on a --

2 THE COURT: I'm sorry. I'm sorry. Hold on. Are
3 you -- you're not seriously telling me that the government's
4 not on notice that we were going to be getting into the
5 administrative record on their motion to stay this
6 designation. You're not seriously contending that.

7 MR. SAMPAT: Your Honor, we're saying that --

8 THE COURT: No, no, I want you to answer my question
9 first.

10 MR. SAMPAT: We are saying that.

11 THE COURT: I'm sorry, you are saying as a
12 representative of the United States Government that you all
13 have not been on notice for months that, when we got into
14 this, we were going to get into the administrative record? I
15 told you at one of our hearings, at many of our hearings, I
16 want you all collecting the administrative record quickly
17 because we're going to have to move on this very quickly when
18 I get their January -- or when I get your January motions.

19 MR. SAMPAT: Understood, Your Honor, and --

20 THE COURT: No, no, so you have been on notice that
21 I was going to consider the administrative record.

22 MR. SAMPAT: So, Your Honor, with your order
23 requiring us to file the administrative record quickly after
24 the decision came out, the parties agreed upon a briefing
25 schedule that related to the motion to dismiss and the 705.

1 THE COURT: But that doesn't answer my question
2 about -- I want -- we're going to -- we're obviously going to
3 spend some time on this, but I just want an answer from the
4 government. Is the government contending that DHS and DOJ
5 lawyers were not on notice that I was going to consider the
6 administrative record in connection with the 705 motion? It's
7 just like brand-new news to you?

8 MR. SAMPAT: Your Honor, I think what we're saying
9 is there wasn't reasonable notice about the administrative
10 record being part of these proceedings --

11 THE COURT: There was or was not?

12 MR. SAMPAT: There was not.

13 THE COURT: How could there not have been? I -- why
14 did I ask for the administrative record so quickly? On what
15 planet would someone think that a motion to stay with respect
16 to an APA issue, you wouldn't be looking at the administrative
17 record? I mean, if there is some case law that I can't look
18 at it, I need you to tell me.

19 MR. SAMPAT: We'll certainly look at that, Your
20 Honor. And I'm also making my record.

21 THE COURT: Yeah, yeah, make your record.

22 MR. SAMPAT: But --

23 THE COURT: But I just don't think the record
24 supports that you haven't been on notice that I was going to
25 consider this. I think that would be a gross

1 mischaracterization of the record.

2 MR. SAMPAT: I think I've sufficiently made my
3 record to that point.

4 THE COURT: I mean, you've said things. I don't
5 know whether you've rebutted it. But go ahead.

6 MR. SAMPAT: Understood, Your Honor. But I would
7 say the rules do contemplate reasonable notice that the
8 administrative record, in fact, outside of the pleadings, will
9 be considered.

10 THE COURT: On a 705 motion to stay.

11 MR. SAMPAT: On a motion to dismiss.

12 THE COURT: Right, right. But the motion to dismiss
13 is different. I'm focused on the motion to stay.

14 MR. SAMPAT: Sure. This is why I said it's a little
15 wonky. So if Your Honor believes that the cart is properly
16 before the Court and can probably be considered on the 705,
17 we're obviously here prepared to talk about it.

18 THE COURT: Right. I just want to make sure I'm not
19 missing something, because it just didn't occur to me that one
20 of the arguments was going to be I couldn't look at the
21 administrative record with respect to the 705 motion. Is that
22 your argument?

23 MR. SAMPAT: With respect to the 705 motion, the
24 only thing we're arguing is we needed a little bit more --
25 more notice as opposed to the order over the weekend saying

1 the entire record was going to be before the Court, especially
2 after we saw the plaintiff's 705 motion which doesn't really
3 cite the AR at all.

4 THE COURT: Okay. All right. If there is case law
5 that I cannot consider the AR on the 705, I need you all to
6 get that to me very quickly, because that's going to change a
7 lot of what I'm about to think through these things.

8 The email over the weekend or the minute order over
9 the weekend was not you need to focus on this because you
10 might not otherwise be focused on it. The actual reason for
11 the minute order, and I'll just be very blunt about it, was
12 because I had another hearing which involved things cited in a
13 government directive policy, where I said, at a hearing, the
14 next time we're at a hearing, I'm going to be focused on the
15 citations the documents cited in that government policy. And
16 when we got to the next hearing, government counsel, all
17 three -- none of the three of them at counsel table had read
18 those documents, which was, to put it mildly, stunning.

19 So the reason I sent the email over the weekend was
20 just like, guys, be clear, we are going to be looking at these
21 things. So that was my intent. If you want -- you know, I
22 will not be surprised if we're here for more hearings before
23 February 2nd. And if you want, if you feel like you haven't
24 had time to brief any of the AR issues or whatnot, I'm happy
25 to get whatever briefing you all want. I'm not going to cut

1 you guys off. But I just didn't realize this was an issue.

2 So do you guys believe we can consider the AR on the
3 705?

4 MR. TAUBER: Absolutely, Your Honor.

5 THE COURT: All right. If you want more briefing,
6 if you all feel like you didn't get notice, if you want more
7 hearings, whatever you guys want, my only constraint is I have
8 to do something by February 2nd.

9 MR. SAMPAT: Understood, Your Honor.

10 THE COURT: Okay. All right. So with respect to --
11 let me ask this more this way. With respect to paragraph 245,
12 and you're not contesting, at least as of right now, the
13 allegations in that paragraph, and those all deal with respect
14 to the *Saget* decision.

15 MR. SAMPAT: We're not contesting it right now, Your
16 Honor.

17 THE COURT: Okay. And I want to spend some time on
18 409, 410.

19 MR. SAMPAT: On the email?

20 THE COURT: Yeah.

21 MR. SAMPAT: Your Honor, may I have a moment.

22 THE COURT: Yeah, take as much time as you.

23 By the way, do you have the unredacted version of
24 409, 410? Can I just look at it, just in camera?

25 MR. SAMPAT: Certainly.

1 THE COURT: Okay. What's the basis for the
2 redaction of that second paragraph?

3 MR. SAMPAT: Your Honor, our understanding, it's a
4 deliberative process. And our understanding is that our
5 client -- if Your Honor is going to require it, then would be
6 formally invoking the privilege, is my understanding.

7 THE COURT: I mean, I just -- I have no idea what's
8 interesting or privileged about that, but fine. We're going
9 to -- imagine we're going to be briefing other privilege
10 issues.

11 I want to make sure, so I understand again, 409, 410
12 of the administrative record is the consultation with the
13 State Department; correct?

14 MR. SAMPAT: Yes.

15 THE COURT: And it begins with an initial email from
16 a member of the Department of Homeland Security,
17 Ms. Deshommes, D-e-s-h-o-m-m-e-s, to a number of people at
18 DHS, and she is requesting that, quote, PLCY reach out to the
19 Department of State to satisfy the consultation requirement
20 for S1's consideration again of TPS Haiti. Is that correct?

21 MR. SAMPAT: That is a proper representation of
22 what's written in that email, yes, Your Honor.

23 THE COURT: Was that on September 5th? I couldn't
24 tell. Was that September 5th, 2025?

25 MR. SAMPAT: I believe that is correct. And just

1 looking at page 409, it -- said with the date stamp, yeah, I
2 believe that's September 5th.

3 THE COURT: And then Mr. -- one of the individuals
4 who received this email is Mr. Law?

5 MR. SAMPAT: Is who, Your Honor?

6 THE COURT: Mr. Law.

7 MR. SAMPAT: Yes, Your Honor.

8 THE COURT: And that's the same Mr. Law who was
9 involved in the *Saget* decision, and the Court determined that
10 he had pre -- he had changed language in documents to arrive
11 at a preordained decision.

12 MR. SAMPAT: I do not -- I cannot confirm that, Your
13 Honor, if that is the same person. Obviously, the names are
14 the same. But I --

15 THE COURT: Okay. We're going to need confirmation
16 on that.

17 MR. SAMPAT: Okay.

18 THE COURT: All right. And Mr. Law forwards the
19 initial email to Spencer Cretien, C-r-e-t-i-e-n, on
20 September 5th, 2025. So the same day?

21 MR. SAMPAT: Yes, and within 10 minutes, yes.

22 THE COURT: Okay. And Mr. Cretien is the senior
23 bureau official of the Bureau of Population Refugees and
24 Migration?

25 MR. SAMPAT: According to his signature block, yes,

1 that's correct.

2 THE COURT: We're going to get into this later, but
3 the 2020 GAO paper on how these TPS designations get made
4 suggests that DHS will consult with the Bureau of Population
5 and Refugees and Migration.

6 MR. SAMPAT: And migration, Your Honor.

7 THE COURT: And migration.

8 MR. SAMPAT: That is my understanding of the GAO
9 report.

10 THE COURT: Okay. And Mr. Law says as follows,
11 quote, Can you advise on State's view on the matter and the
12 matter being the, quote, country conditions in Haiti. Right?

13 MR. SAMPAT: Yes, in that the question is there,
14 that "in Haiti" part is not in the email, or not part of that
15 sentence. It's the sentence prior that talks about, "Due to
16 the ongoing -- due to the litigation, we are rereviewing
17 country conditions in Haiti based on the original TPS
18 deadline."

19 THE COURT: Okay. And then, "Can you advise on
20 State's view of the matter."

21 MR. SAMPAT: That is correct.

22 THE COURT: That's it. That's his entire email.

23 MR. SAMPAT: Your Honor, I have no reason to believe
24 that's -- that this is redacted or has -- doesn't represent a
25 full encapsulation of what was said.

1 THE COURT: It's State's view is that this is the
2 email, this is the full thing.

3 MR. SAMPAT: Yeah.

4 THE COURT: The response comes 53 minutes later,
5 right, from Friday, September 5th, 2025, at 4:55 p.m., to
6 September 5th, 2025, at 5:48 p.m.?

7 MR. SAMPAT: That is correct.

8 THE COURT: Okay. And there is nothing else in the
9 administrative record or that State is aware of or that you're
10 aware of that there's any other response from State. This is
11 it.

12 MR. SAMPAT: That is my understanding, Your Honor,
13 from the record.

14 THE COURT: Okay. Are you aware of any emails or
15 communications from State to DHS on this that are not in the
16 administrative record?

17 MR. SAMPAT: Not to my knowledge.

18 THE COURT: Okay. And the sum total of the response
19 is, quote, State believes that there would be no foreign
20 policy concerns with respect to a change in the TPS status of
21 Haiti, end quote. Right?

22 MR. SAMPAT: I'm sorry --

23 THE COURT: Sure. The response from State,
24 53 minutes later, is, on a Friday afternoon, State believes
25 that there would be no foreign policy concerns with respect to

1 a change in the TPS status of Haiti, end quote.

2 MR. SAMPAT: That is correct. And, Your Honor, if I
3 may go back to your prior question --

4 THE COURT: Yeah, sure.

5 MR. SAMPAT: -- about if there are any other emails,
6 can I just confer with my other counsel?

7 THE COURT: Sure.

8 MR. TAUBER: Your Honor, while he's doing that, if I
9 might point you to a citation in response to one of your
10 earlier questions about the Court's possibility to consider --

11 THE COURT: Well, why don't we wait until there are
12 actually people to pay attention.

13 MR. TAUBER: Certainly.

14 MR. SAMPAT: Thank you for your patience, Your
15 Honor.

16 THE COURT: Yeah, sure.

17 MR. SAMPAT: On the issue of whether there are any
18 other emails, relying on what the government submitted also on
19 Friday at noon, my understanding is that there's nothing else
20 that's not in the record.

21 THE COURT: Okay. And that response does not
22 address country conditions in Haiti; right?

23 MR. SAMPAT: I'm sorry -- the Mr. Cretien --

24 THE COURT: Right.

25 MR. SAMPAT: -- email? I apologize. Whether the

1 country conditions are also considered part of foreign policy,
2 I don't -- I don't know, but I guess foreign policy concerns
3 could consider, as part of that umbrella, the country
4 conditions that are --

5 THE COURT: Okay. But in actual terms, like the way
6 you and I understand the phrase "country conditions," being,
7 is there a massive humanitarian crisis in Haiti right now, it
8 doesn't address what the actual conditions of the ground are
9 in Haiti; right?

10 MR. SAMPAT: I can certainly say that the email does
11 not talk about the conditions specifically, but it is quite
12 possible that the email meant to encapsulate that by using the
13 word "foreign policy concerns."

14 THE COURT: So it's the government's contention that
15 it's possible that Mr. Cretien went down to write, in his
16 typewriter, country conditions in Haiti are there's a
17 humanitarian crisis, and instead wrote, because it would
18 encapsulate the same thing, there are no foreign policy
19 conditions or problems? I don't think that's how we interpret
20 that; right?

21 MR. SAMPAT: Well, Your Honor, I would say foreign
22 policy concerns are broader than simply country conditions, so
23 I think it is possible that --

24 THE COURT: But if someone said to you what's the
25 country condition right now in Spain, you wouldn't say to me,

1 there are no foreign policy considerations that the U.S. has
2 with Spain. You would say Spain's economy is X, Spain's
3 population is Y, it's high tourist season, it's low tourist
4 season; right? I mean, that's what you would naturally go
5 to.

6 MR. SAMPAT: Based on my understanding, certainly.

7 THE COURT: Okay. All right.

8 MR. SAMPAT: But if I may, Your Honor, but that's my
9 understanding. I don't operate at this level. So different
10 people could have different meanings and have different
11 umbrella terms for certain --

12 THE COURT: Certainly, this email tells us nothing
13 about what's happening in Haiti right now; right?

14 MR. SAMPAT: I can certainly say that it does not
15 talk about some of the -- some of the stuff that's represented
16 in the article, sure.

17 THE COURT: Right.

18 MR. SAMPAT: I can say that.

19 THE COURT: And it doesn't address at all whether
20 it's safe for Haitian TPS holders to return to Haiti; right?

21 MR. SAMPAT: Again, I don't think -- it doesn't say
22 it explicitly, but that, too --

23 THE COURT: Or even implicit -- I mean, foreign
24 policy certainly can't encompass whether or not it's safe for
25 Haitians to return to Haiti.

1 MR. SAMPAT: I don't think that's -- I think it's
2 broad, Your Honor. I think --

3 THE COURT: It's not that broad. I mean, it has
4 some meaning.

5 MR. SAMPAT: It certainly has some meaning.

6 THE COURT: I mean, if you were going to determine
7 whether or not it was safe for Haitians to go to Haiti, you
8 wouldn't look about whether or not there are U.S. foreign
9 policy concerns.

10 Assume we're outside the realm of TPS or
11 administrative record. If we're just in the realm of people
12 who speak the English language, if you said to somebody, is it
13 safe for Haitians to return to Haiti, and someone said to you,
14 there are no foreign policy problems in the U.S. with doing
15 so, you would say, okay, but that's nonresponsive. That's not
16 really answering my question. That's what you would say;
17 right?

18 MR. SAMPAT: If I'm asking about country
19 conditions --

20 THE COURT: No, no, no, just is it safe for Haitians
21 to return to Haiti.

22 MR. SAMPAT: So in that sense, yes. But again, I
23 think the context of this email matters, right, because it
24 says there would be no foreign policy concerns with respect to
25 a change in TPS status for Haiti. So --

1 THE COURT: So right, so but one of the things that
2 we're looking for under the TPS is whether or not it's safe
3 for individuals to return, right, to the country? One of the
4 factors?

5 MR. SAMPAT: It's not required.

6 THE COURT: No, no, I'm just -- one of the things
7 that we look, at one of the things the secretary can look at
8 in the TPS designation requirement, is whether or not it's
9 safe to return to the country; right?

10 MR. SAMPAT: Yeah, I --

11 THE COURT: That's -- we're beyond that.

12 MR. SAMPAT: Statutory --

13 THE COURT: If I were to ask somebody speaking the
14 English language as human beings understand it, is it safe to
15 return to Haiti, and the person responded there's no foreign
16 policy problems with -- there's no foreign policy issues with
17 respect to that question, you would say -- one would say,
18 okay, but that doesn't tell me if it's safe for Haitians to
19 return to the country. It doesn't tell if they're going to be
20 attacked when they're there. It doesn't tell me if they're
21 going to be part of a massive humanitarian crisis when -- it
22 doesn't tell me anything about whether it's safe to return.

23 MR. SAMPAT: I would say that the answer would be
24 odd --

25 THE COURT: Odd. It would be totally

1 nonresponsive.

2 MR. SAMPAT: I --

3 THE COURT: Like if we were at a trial and someone
4 said -- one of the lawyers asked is it safe for Haitians to
5 return to Haiti, and the person said there's no foreign policy
6 issue, the lawyer would say move to strike as nonresponsive,
7 and I would be like, yeah, nonresponsive; right?

8 MR. SAMPAT: I think in that context, certainly.

9 THE COURT: Okay.

10 MR. SAMPAT: But what I would just say is, again,
11 not operating on this level, there are multiple meanings that
12 can be discerned from this between the recipient and the
13 sender. So whether --

14 THE COURT: You think they were having an implicit
15 conversation?

16 MR. SAMPAT: I'm sorry?

17 THE COURT: You think they were having an implicit
18 conversation?

19 MR. SAMPAT: I think there could have been a mutual
20 understanding --

21 THE COURT: A mutual understanding that when I ask
22 about the country conditions are in Haiti, what I'm really
23 trying to get is whether there are foreign policy concerns and
24 when I get that there are foreign policy concerns, that
25 addresses my question?

1 MR. SAMPAT: Potentially.

2 THE COURT: Do you think that the one-sentence email
3 response, "There would be no foreign policy concerns with
4 respect to the change in the TPS status of Haiti," is a
5 fulsome response to the question?

6 MR. SAMPAT: I cannot say that, Your Honor, because,
7 again, I don't understand what Mr. Cretien meant when he said
8 "no foreign policy concerns." It could have been --

9 THE COURT: I mean, you understand the words in the
10 English language; right? You understand the word "no"; right?

11 MR. SAMPAT: I understand.

12 THE COURT: You understand the word -- phrase,
13 "foreign policy."

14 MR. SAMPAT: I do.

15 THE COURT: And you understand the word "concern."

16 MR. SAMPAT: I do.

17 THE COURT: Do you think that when someone asks what
18 are the country conditions in Haiti with respect to TPS
19 status, and the response is there are no foreign policy
20 concerns, do you consider that, on behalf of the United States
21 Government, a fulsome response?

22 MR. SAMPAT: I may have additional follow-ups
23 myself.

24 THE COURT: What additional follow-ups would you
25 have?

1 MR. SAMPAT: Based on this, Your Honor, I don't
2 know.

3 THE COURT: Yes, you do. You're a lawyer. If
4 someone sent you that email, you would have some follow-up
5 questions; right?

6 MR. SAMPAT: Potentially, but again --

7 THE COURT: Absolutely, you would.

8 MR. SAMPAT: But again, Your Honor, because I'm not
9 at State, I'm not at DHS, I don't know if they meant to
10 encapsulate it. Again, I think foreign policy concerns is an
11 umbrella phrase. I think it can capture a few things, but
12 that's about it.

13 THE COURT: Let's say I agree with you, for purposes
14 of argument, that foreign policy concerns encompasses country
15 conditions in Haiti, and whether or not it -- TPS -- DHS
16 should end the TPS designation, is it a fulsome response?
17 Does it tell you everything you would want to know with
18 respect to making the determination?

19 MR. SAMPAT: If I personally was a decision-maker,
20 no. But again, I am not the decision-maker.

21 THE COURT: Okay. All right. Because -- I'm sorry.
22 I cut you off.

23 MR. SAMPAT: No, no. I'm not the decision-maker. I
24 think these individuals that are consulting on this issue have
25 been doing this for a long time. If --

1 THE COURT: So basically, in order to figure out
2 what they were thinking and saying, we would need to get them
3 here and have them be questioned.

4 MR. SAMPAT: I don't think that's -- I don't think
5 that's necessary, Your Honor.

6 THE COURT: No, no, no, but if -- put aside whether
7 or not I can do it, putting aside whether it's appropriate
8 under the APA, I'm not saying that we're going to do this. I
9 just want to make sure I understand the argument. The
10 argument is basically, in order to understand this question
11 and response and whether it's a fulsome response, I would have
12 to ask the individuals involved. I would have to ask Mr. Law
13 and Mr. Cretien; right?

14 MR. SAMPAT: I think there could be some --
15 potentially not. I think there can be some case law
16 potentially out there that says foreign policy concerns is an
17 umbrella phrase that can capture country conditions. In the
18 way I'm thinking about this --

19 THE COURT: No, no, but I've agreed with you, just
20 for purposes of this discussion, that it does. I just want
21 know is this a fulsome response. Is this a fulsome response?

22 MR. SAMPAT: If we both understand, if we're in
23 agreement that foreign policy concerns can include country
24 conditions, then I think this is -- then I do think this can
25 be a fulsome response, yes.

1 THE COURT: Your friend wants to talk to you.

2 MR. SAMPAT: Oh, sorry.

3 (Counsel confer.)

4 MR. SAMPAT: Your Honor, I would just say that the
5 foreign policy concerns is responsive to the actual question
6 that was posed, which is, can you advise on State's views on
7 the matter. So it's broad, that's the response.

8 Your Honor, may I have a drink of water, please.

9 THE COURT: You can have some Scotch, too, if you
10 want it. I have some in the back.

11 Can you remind me, do you know what page the 409,
12 410 is on the AR?

13 MR. SAMPAT: I believe it's seven pages off, so it
14 may be 416 in the PDF version.

15 THE COURT: Yeah, got it. Good call.

16 The question isn't just can you advise on State's
17 view of the matter. The question is, due to litigation, we
18 are rereviewing country conditions in Haiti based on the
19 original TPS deadline. Can you advise on State's views on the
20 matter.

21 The matter that he's discussing is the country
22 conditions in Haiti.

23 MR. SAMPAT: I think he's representing that DHS is
24 looking at the country conditions.

25 THE COURT: Yeah, and can you advise on State's view

1 on the matter, the matter being the country conditions in
2 Haiti.

3 MR. SAMPAT: I think that's one interpretation. I
4 think a different interpretation can certainly mean that just
5 asking about TPS generally as it relates to Haiti.

6 THE COURT: What do you think is the better
7 interpretation?

8 MR. SAMPAT: I think both are plausible, Your
9 Honor.

10 THE COURT: Yeah, the reason you're not answering is
11 because you don't want to, for obvious reasons. But
12 obviously, the answer is matter refers to country conditions
13 in Haiti. If it was going to refer to something else, they
14 would have said can you advise on State's view on whether to
15 renew TPS status. Or it wouldn't have asked about country
16 conditions at all. It would have just said, due to the
17 litigation, we are reviewing whether to extend the TPS
18 deadline, can you advise on State's view on the matter.
19 Right? I mean, country conditions is doing some work there.

20 MR. SAMPAT: So, Your Honor, this goes back to what
21 I was talking about where these individuals operate on
22 different levels and communicate in different ways.

23 THE COURT: But they communicate using the English
24 language; right? I mean, it's not like they're communicating
25 in Klingon. I mean, we just don't understand Klingon; right?

1 MR. SAMPAT: Sure. I'm not saying this is Klingon.

2 THE COURT: In any event, there was no follow-up
3 from Mr. Law to this.

4 MR. SAMPAT: No. From the record, it seems like the
5 answer is no, Your Honor.

6 THE COURT: There was no follow-up from anyone else
7 at State or DHS on this?

8 MR. SAMPAT: From our understanding, between the
9 certified administrative record and the responses we've
10 submitted last Friday, the answer -- we don't think there were
11 any responses.

12 THE COURT: Okay. Are you aware as to whether or
13 not Mr. Cretien talked to anyone at state?

14 MR. SAMPAT: I am not a -- I am personally not aware
15 of that.

16 THE COURT: You all don't know because State's not
17 your client.

18 MR. SAMPAT: No. As -- let me rephrase, we are not
19 aware, Your Honor.

20 THE COURT: Okay. All right. Now, the email
21 response doesn't address whether or not TPS holders have been
22 found to be part of Haitian gangs; right?

23 MR. SAMPAT: I'm sorry, the email --

24 THE COURT: The response from State, it doesn't
25 address whether TPS holders have been found to be part of

1 Haitian gangs; right?

2 MR. SAMPAT: It does not do so explicitly, but,
3 again, I don't know what work foreign policy concerns is doing
4 there.

5 THE COURT: Okay. It doesn't address whether there
6 are any immigration issues with Haitians coming into the
7 country and us being unable to vet them; right?

8 MR. SAMPAT: I think foreign policy could do a lot
9 of work there with immigration being a foreign policy issue as
10 well.

11 THE COURT: But it doesn't say -- fair, but it
12 doesn't say -- not only -- it doesn't say there are no foreign
13 policy concerns with kicking all the Haitians out. It doesn't
14 say, and, by the way, that would be a good thing, to kick them
15 all out, because there's all these immigration problems that
16 they're creating. It doesn't say that.

17 MR. SAMPAT: It does not explicitly say that, but,
18 again, foreign policy concerns encapsulates that, maybe. Also
19 the Department of State, my assumption, and I could be wrong
20 about this, would be that they're not going to be weighing in
21 on the immigration issues necessarily --

22 THE COURT: Sure, fair. I'm just -- I mean, it is
23 the Bureau of Migration, but sure. All right.

24 And, I take it, it's the government's position that
25 this one-email sentence -- or two-email sentence email and the

1 sentence back, there are no foreign policy concerns, is
2 consultation as that word is defined and understood in the
3 statute.

4 MR. SAMPAT: That is our legal argument. But I know
5 Your Honor wants to get down to the facts right now, but we
6 could preserve that for legal argument.

7 THE COURT: Okay. All right.

8 All right. And I want to talk about the GAO report
9 for a little bit, the 2020 GAO report. And I'm taking this
10 discussion from a case which, unfortunately, I did not write
11 down. I apologize. Oh, yeah, *National TPS Alliance* is the
12 case that addresses the GAO report. And I don't think I
13 mentioned that as a document you all had to have familiarity
14 with so if you don't, that's fine. But if you do, great.

15 MR. SAMPAT: Your Honor, if I may just ask, I don't
16 believe it's in the administrative record.

17 THE COURT: I don't think it is.

18 MR. SAMPAT: Okay. So in that case, Your Honor, I
19 am not familiar with it.

20 THE COURT: Okay. All right. So the GAO -- there's
21 a 2020 GAO report that discusses how DHS goes about making
22 these TPS determinations. And one of the things that says has
23 happened in the past is that PRM asked the relevant regional
24 bureau to communicate with the overseas post to get
25 information about country conditions. To your knowledge, that

1 did not occur; correct?

2 MR. SAMPAT: To my knowledge, that did not occur.

3 THE COURT: Okay. And then it says, "The regional
4 bureau has a questionnaire on country conditions for the post
5 to fill out, and the post provides responses to the
6 questionnaire plus a recommendation to the regional bureau."
7 To your knowledge, that did not occur; correct?

8 MR. SAMPAT: Based on the administrative record and
9 the responses we submitted last Friday, we don't believe that
10 occurred.

11 THE COURT: Okay. And then after the regional
12 bureau gets the information from the post addressed, a country
13 conditions report and recommendation, and then works with PRM
14 to compose a joint action memo. To your knowledge, that did
15 not occur; correct?

16 MR. SAMPAT: Based on the administrative record and
17 our responses, that's our understanding.

18 THE COURT: And there's no joint action memo in the
19 administrative record; correct?

20 MR. SAMPAT: Not to my recollection, Your Honor.

21 THE COURT: Okay. Then PRM provides the joint
22 action memo which includes a country conditions report to
23 Secretary of State. That did not occur; correct?

24 MR. SAMPAT: My understanding, between the
25 administrative record and the responses we submitted last

1 Friday, that's my understanding, it did not occur.

2 THE COURT: Then after the Secretary of State
3 determines what the State Department will recommend, a final
4 country conditions report and recommendation letter is
5 provided to the DHS secretary and OPS. And that did not
6 occur; correct?

7 MR. SAMPAT: Based on the administrative record and
8 our responses last Friday, that's our understanding.

9 THE COURT: To our knowledge, Secretary Rubio never
10 weighed in on this issue; right?

11 MR. SAMPAT: I --

12 THE COURT: Never weighed in on -- I understand you
13 have arguments about what he has said about Haiti and we'll
14 get to those.

15 MR. SAMPAT: Sure.

16 THE COURT: But with respect to the question with
17 respect to whether to renew or not or extend the Haiti TPS
18 determination, what's in front of the secretary of DHS right
19 now, Secretary Rubio, did not weigh in on that?

20 MR. SAMPAT: I can't say that with certainty, Your
21 Honor. We don't know.

22 MS. TORRES: I'm going to --

23 THE COURT: Yeah, yeah, sure.

24 MR. SAMPAT: Your Honor, I'm just going to read the
25 response that we submitted to the Court, which is that DHS did

1 not consult directly with Secretary Rubio on that issue. So
2 he may have said something. We're obviously not aware of --

3 THE COURT: You're not aware of it?

4 MR. SAMPAT: We're not aware --

5 THE COURT: There's nothing in the administrative
6 record that he did?

7 MR. SAMPAT: As it pertains to the country
8 conditions and things like that, certainly.

9 THE COURT: Right.

10 MR. SAMPAT: Obviously, there are statements in THE
11 record and press releases about issues in Haiti.

12 THE COURT: I just want to make sure the record is
13 absolutely clear. There are references in the administrative
14 record to things that Secretary Rubio has said about Haiti in
15 other contexts; correct?

16 MR. SAMPAT: In the context of gangs and things like
17 that, all of which can also go to country conditions.

18 THE COURT: I understand. But with respect to --
19 there's nothing in the administrative record that Secretary
20 Rubio was asked to weigh in on the Haiti TPS decision and
21 weighed in; correct?

22 MR. SAMPAT: My understanding from the record, that
23 there's nothing in the record that says he was asked to weigh
24 in and that he did weigh in specifically on this decision.

25 THE COURT: Okay. Great. All right.

1 All right. Then I want to go through with you the
2 responses that you submitted. And thank you for doing that,
3 for all the work.

4 MR. SAMPAT: If I may.

5 THE COURT: Yeah, sure.

6 So response No. 2 is DHS did not, quote, directly
7 consult with the U.S. ambassador in Haiti. To your knowledge,
8 DHS did not consult at all with the U.S. ambassador in Haiti
9 directly or indirectly; correct?

10 MR. SAMPAT: I don't know, Your Honor. It may have
11 been done indirectly. These are responses that were vetted
12 and if it says directly consult, it is possible that there was
13 indirect --

14 THE COURT: There's nothing in the record that they
15 indirectly consulted; right?

16 MR. SAMPAT: Nothing in the -- I didn't see any
17 emails or anything in the record that said that there was some
18 question to the U.S. ambassador in Haiti, no.

19 THE COURT: Okay. And then throughout -- throughout
20 docket 98, you say things like, "DHS consulted with the
21 Department of State regarding the periodic review of Haiti's
22 designation for TPS." I want to make sure -- I know, I'm
23 going to sound repetitive. I just want to make sure I fully
24 understand. In docket 98, when you talk about DHS consulted
25 with the Department of State, we're talking about the email

1 exchange at 409 and 410; right?

2 MR. SAMPAT: Your Honor, can you point me to the
3 page number in our response on that?

4 THE COURT: It's No. 2, I think is one of them, of
5 paragraph 2. If I got it right.

6 MR. SAMPAT: Oh, yes. Okay. You were looking at
7 the same one. I apologize. That is -- that is my
8 understanding of that; it is the email found at 409 and 410.

9 THE COURT: When you say your understanding, you're
10 speaking on behalf of the government. That's the government's
11 understanding.

12 MR. SAMPAT: Yes.

13 THE COURT: Okay. And then No. 3, "DHS did not
14 directly consult with embassy in Haiti." In the
15 administrative record, there's no indication they consulted
16 directly or indirectly; correct?

17 MR. SAMPAT: There's nothing in the record that
18 shows communication with the embassy in Haiti, I'll certainly
19 concede that. And I assume Your Honor's going to ask about
20 the second sentence?

21 THE COURT: Yes.

22 MR. SAMPAT: So with that, I believe it is the same
23 email.

24 THE COURT: Okay. With all of the consults in
25 docket 98, it's the same email.

1 MR. SAMPAT: I believe it is the same email, yes.

2 THE COURT: Okay. Same question, No. 4, there's
3 nothing in the administrative record that DHS, directly or
4 indirectly, consulted with Department of State's regional
5 office or Haiti desk; right?

6 MR. SAMPAT: That is my understanding.

7 THE COURT: Okay.

8 MR. SAMPAT: Now, if I may add one thing, Your
9 Honor.

10 THE COURT: Sure.

11 MR. SAMPAT: If -- you know, obviously, we don't
12 know anything about what Mr. Cretien did or things like that,
13 so it's not in the administrative record. So I can say
14 that but --

15 THE COURT: What we know is that whatever he did, he
16 did in 53 minutes.

17 MR. SAMPAT: He may -- he responded in 53 minutes,
18 but it could be based on review of certain things; right. I'm
19 just leaving that open.

20 THE COURT: Okay. All right.

21 And then No. 5, "DHS did not consult directly with
22 Secretary Rubio. DHS has no reason to believe that
23 information provided by the Department of State to DHS during
24 the consultation process lacks the support of the Secretary of
25 State"; right?

1 MR. SAMPAT: That was our response to No. 5, yes.

2 THE COURT: But you don't know either way whether it
3 does because no one asked him; right?

4 MR. SAMPAT: We don't know that, Your Honor.

5 THE COURT: Okay. So it's just speculation whether
6 or not he agrees or disagrees.

7 MR. SAMPAT: I don't think I can concede that it's
8 speculation necessarily.

9 THE COURT: I mean, it might be informed
10 speculation, but it's speculation. No one asked the guy;
11 right?

12 MR. SAMPAT: Well, it's -- again --

13 THE COURT: You're not a mind reader.

14 MR. SAMPAT: I personally am not, not as much as I'd
15 like to be.

16 THE COURT: So it's speculation. It might be an
17 educated guess, but you're still speculating. No one asked
18 him; right?

19 MR. SAMPAT: I cannot say that nobody asked him
20 because if there were --

21 THE COURT: To your knowledge, no one asked him.

22 MR. SAMPAT: My knowledge at this moment, no -- that
23 is my understanding.

24 THE COURT: And DHS didn't consult with Congress,
25 didn't consult with foreign governments. Did DHS consult with

1 the United Nations? And I'm asking this -- is your hand you
2 okay?

3 MR. SAMPAT: I cut myself, so it's just burning a
4 little bit.

5 THE COURT: Do you want some iodine or something?

6 MR. SAMPAT: No, no, it's okay.

7 THE COURT: Because there's a number of references
8 in the Federal Register in the administrative record to
9 actions that the Security Council took and actions by the UN,
10 and so that's why I'm sort of asking this question. To your
11 knowledge, DHS did not consult with the United Nations; is
12 that correct?

13 MR. SAMPAT: I can certainly say there's nothing in
14 the record that shows any sort of communications directly with
15 the UN. That does not necessarily mean that there was -- that
16 actions by the UN did not play a role --

17 THE COURT: Right.

18 MR. SAMPAT: -- in the decision-making.

19 THE COURT: Sure. Okay.

20 And then No. 7, you note, DHS is only aware of the
21 decision memorandum presented to the secretary where she
22 determined that conditions in Haiti no longer prevented
23 nationals from returning in safety and, therefore, was quote,
24 compelled to terminate the designation.

25 Do you see that?

1 MR. SAMPAT: Yes.

2 THE COURT: Is there some work that the word
3 "compelled" is doing there? Because that -- I mean, that
4 seems like a -- because she determined that it was safe to
5 return to Haiti, she did not have any discretion, she had to
6 terminate. Is that the government's argument?

7 MR. SAMPAT: That's in the statutory text, yes, Your
8 Honor.

9 THE COURT: Okay. So compelled.

10 MR. SAMPAT: Would Your Honor --

11 THE COURT: No, no, I just want to make sure I
12 understand the argument. I mean, that was just -- compelled a
13 very strong word. So the government's argument is, if she
14 finds that it's safe to return to Haiti, she has no choice,
15 she has to end the designation.

16 MR. SAMPAT: Yes. And, again, if I may just --

17 THE COURT: Okay.

18 MR. SAMPAT: So going back to 8 U.S.C.
19 1254(a)(b)(3)(B), says, "If the Attorney General," in this
20 case, the Secretary of Homeland Security, "determines, under
21 subparagraph A, that the foreign State no longer continues to
22 meet the conditions for designation, the Attorney General
23 shall terminate the designation."

24 THE COURT: Okay.

25 MR. SAMPAT: So we think the statute is a mandatory

1 duty to terminate.

2 THE COURT: Okay. I -- I want to talk about the
3 White House communications for a bit. But let's take a break
4 first and then I'll want to hear from both sides on the
5 privilege issue with respect to the White House
6 communications, unless guys you want to do that tomorrow. I
7 mean, I'd prefer to do it now but if you guys need till
8 tomorrow, that's fine.

9 MR. PIPOLY: Now's fine, Your Honor.

10 MR. SAMPAT: Let me confer with counsel.

11 THE COURT: Well, let's come back at -- let's take a
12 11-minute break. Let's come back at 11:45.

13 (A recess was taken at 11:34 a.m. until 11:48 a.m.)

14 THE COURT: Okay. So talk to me about, first of
15 all, do you agree -- my understanding is that the government
16 is contesting that there were -- first of all, there were
17 White House meetings; right? Meetings, plural?

18 MR. SAMPAT: I apologize, Your Honor, I didn't mean
19 to cut you off. AUSA Torres will be handling that portion of
20 it. Thank you.

21 MS. TORRES: Good morning, Your Honor.

22 THE COURT: Good morning.

23 MS. TORRES: Sorry, Your Honor was in the middle of
24 asking a question.

25 THE COURT: No, no.

1 MR. SAMPAT: Um --

2 THE COURT: So there are -- there were meetings
3 between the White House and DHS officials about the Haitian
4 TPS designation?

5 MS. TORRES: So, Your Honor, what I can represent to
6 you today is there was an in-person conversation that occurred
7 between the secretary and the President or his senior
8 officials. That is the only information I have to represent
9 today.

10 I would just like to make the record clear, Your
11 Honor, that we -- first of all, this isn't part of the
12 administrative record. It's -- also, Your Honor has not yet
13 ruled on plaintiff's motion for extra record discovery or
14 supplemental discovery.

15 THE COURT: Yeah, that's going to happen either at
16 the end of the day or tomorrow. So we're going to have oral
17 argument on that, spoiler alert.

18 MS. TORRES: Okay.

19 THE COURT: So far, everything I see on the record
20 indicates there's sufficient bad faith to order extra record
21 discovery, so that's where we're heading.

22 Now, I think what the plaintiffs have asked for is
23 extraordinarily broad, and so it's going to be far more
24 limited than what they've asked for. But I am going to let
25 you guys argue that because I don't think we actually argued

1 the bad faith aspect last time. But I have since dug into the
2 record, and I have a number of concerns. I have not made a
3 bad faith determination with respect overall to the merits,
4 but with respect to sufficiently to order extra record
5 discovery, I think we're there.

6 MS. TORRES: Understood, Your Honor.

7 THE COURT: I'll let you all argue that.

8 MS. TORRES: Understood.

9 THE COURT: That's the last thing we're going to get
10 to of the hearing.

11 MS. TORRES: Okay. So possibly tomorrow, Your
12 Honor?

13 THE COURT: Yeah. If you guys want to argue it
14 today, we can. But I think once we go through everything I'm
15 going to go through with your colleague, I think I'm sort of
16 ready to make that determination.

17 MS. TORRES: Okay, Judge.

18 THE COURT: So far as you are aware, there was one
19 meeting?

20 MS. TORRES: Yes.

21 THE COURT: Okay. Do you know approximately when
22 that occurred?

23 MS. TORRES: I do not.

24 THE COURT: And what's the privilege that the
25 government is claiming over that meeting?

1 MS. TORRES: So, Your Honor, these kinds of
2 communications are typically privileged under the Presidential
3 Communication Privilege or deliberative process, let's say.
4 But today, Your Honor, I am not formally invoking a
5 privilege.

6 THE COURT: You're not invoking a privilege.

7 MS. TORRES: Right at this moment, no. There's --
8 and there's many reasons for that, Your Honor.

9 THE COURT: By all means.

10 MS. TORRES: Yes. Your Honor has not yet ruled on
11 the plaintiff's motion for extra record discovery. There's
12 not an --

13 THE COURT: Okay. Well, assume that I'm going to
14 rule we're going to get some. At that point, would you claim
15 a privilege?

16 MS. TORRES: There is an extensive process by which
17 we must go through before claiming a privilege, Your Honor,
18 and that goes -- Your Honor is aware, it would go to the
19 highest levels. So today, I'm not prepared to invoke that
20 privilege.

21 THE COURT: Okay. Let me ask you this: Do you know
22 whether there was an agenda for that meeting or any notes
23 taken of that meeting that exist?

24 MS. TORRES: So, Your Honor, we have posed that
25 question. We are still waiting for that response. But today,

1 I can represent that we don't have those materials.

2 THE COURT: Okay. All right. If I order extra
3 record discovery, which is where I'm headed, obviously, you
4 know, you guys should continue those efforts to determine if
5 there was anything. And if you're going to invoke a
6 privilege, I mean, we just don't have a lot of time, so --

7 MR. SAMPAT: Yes, Your Honor.

8 THE COURT: Okay. And then -- all right. And I
9 guess, not only were there notes or agendas of the meeting,
10 but if there were any email communications leading up to it,
11 obviously, that would be part of the discovery.

12 Do you guys want -- I mean, I don't know that
13 there's much to respond to, but if you want to respond to
14 anything?

15 MR. PIPOLY: So Ms. Harrell is going to handle
16 that.

17 THE COURT: Good morning, ma'am.

18 MS. HARRELL: Hi, Your Honor. As Your Honor just
19 mentioned, there's not a whole lot for us to respond to at
20 this point, because we don't know who, what, when, where --

21 THE COURT: Well, we know the who. I mean, it was
22 the secretary, and my guess is either President Trump or, you
23 know, go out there and say Stephen Miller. I'll bet a lot of
24 money Stephen Miller was at that meeting.

25 MS. HARRELL: Fair.

1 THE COURT: But other senior officials.

2 MS. HARRELL: Well, fair, but to the extent that the
3 government plans to invoke the Presidential Communications
4 Privilege, we would assert that would not be an appropriate
5 invocation here, because the President does not have ultimate
6 decision-making authority.

7 THE COURT: Hold on. You need to slow down. So
8 this will help you actually, so go ahead. The President
9 doesn't have ultimate decision-making authority?

10 MS. HARRELL: The President doesn't have ultimate
11 decision-making authority over the termination. That's the
12 secretary. So we would just submit that would not be an
13 appropriate invocation.

14 THE COURT: Okay.

15 MS. HARRELL: To the extent it's useful to Your
16 Honor for us to go ahead and give you that given the -- short
17 on time.

18 THE COURT: Just to give her a heads-up when she's
19 talking to her people so they know what to argue when they
20 come back.

21 Then with respect to deliberative privilege?

22 MS. HARRELL: I mean, we need a little bit more
23 information about what happened and when before we can really
24 formulate a --

25 THE COURT: Well, I mean, my guess is that the

1 meeting happened sometime in 2025.

2 MS. HARRELL: Fair.

3 THE COURT: And I would -- I would guess that it
4 happened before the initial termination decision. I would be
5 willing to place a bet on that, not a big bet but a bet. My
6 guess is that it was a short meeting. And my guess is going
7 to be that there were no notes taken or that survive. And my
8 guess is going to be that the subject of the meeting, I'm
9 going to be told, is either -- generally, about what to do
10 with TPS extensions or specifically what to do about the Haiti
11 extensions. And without deposing the individuals or getting
12 them on the stand, we won't be able to learn more. So what
13 more information do you need so she can get it?

14 MS. HARRELL: I mean, beyond what Your Honor -- I
15 think that Your Honor's already articulated everything that we
16 would be looking for. We want to know, again, who was there,
17 the -- when the meeting happened, if there were any minutes
18 that were taken, if there were any email exchanges preceding
19 or following that meeting. I mean, that -- those are the
20 things that come to mind off the top, but again --

21 THE COURT: And what happened at the meeting.

22 MS. HARRELL: Yeah, also what happened at the
23 meeting, yes, Your Honor.

24 THE COURT: Okay. All right. Thank you.

25 MR. PIPOLY: Your Honor, if I could add one quick

1 thing to that. One thing that I'll note, and the only reason
2 I know this is because I was in *Saget*, there was a -- if you
3 read the *Saget* decision, there was a White House meeting that
4 occurred in that case where the then-secretary, Elaine Duke,
5 had handwritten notes.

6 The government, in *Saget*, produced the record of the
7 White House meeting as part of the administrative record.
8 That was not extra record discovery. You can see that in the
9 *Saget* opinion, the way it's cited, or I can pull it up and
10 submit it.

11 THE COURT: Well, why don't you just let her know so
12 she knows what she's looking for. She has a lot on her
13 plate.

14 MR. PIPOLY: Sure.

15 THE COURT: That might inform whether you all claim
16 privilege or not over this time.

17 MR. PIPOLY: Right. I mean, that's really the
18 point, is how can it be privileged now and not privileged
19 then.

20 THE COURT: Well, it's amazing how things change.

21 MR. PIPOLY: It is.

22 THE COURT: I mean, it's not -- you know, I don't
23 think they're like equitably estopped from making the
24 argument.

25 MR. PIPOLY: Oh, certainly.

1 THE COURT: I mean, obviously, you would have a
2 response if they did, but who's tracking that down.

3 MR. PIPOLY: Certainly not. It's just a data
4 point.

5 THE COURT: Yeah. So just as a professional
6 courtesy, can you just let her know at a break or sometime
7 today.

8 MR. PIPOLY: Yes.

9 THE COURT: So she knows what she looking at.

10 MR. PIPOLY: I'll pull it up and send it.

11 THE COURT: I'm going to take a wild guess that
12 Secretary Noem did not take minutes or notes at the meeting.

13 MR. PIPOLY: No, I'm guessing not, but there was a
14 written agenda back then.

15 THE COURT: Okay. What was on the agenda, by the
16 way, back then?

17 MR. PIPOLY: It was pretty broad. It's more or less
18 what you said. And some of the same people that you just
19 mentioned were in the meeting then too.

20 THE COURT: Okay. All right. I want to -- or I
21 want to go over the Federal Register.

22 MR. SAMPAT: Are we still looking only at the
23 notice, or are we now looking at the sources cited in the
24 notice?

25 THE COURT: We're going to start looking at the

1 sources cited.

2 So the federal notice, I want to talk about some
3 issues. And, first of all, the federal notice does go into
4 some depth as to the current problems in Haiti. That was
5 clearly something the secretary considered; right?

6 MR. SAMPAT: Yes.

7 THE COURT: Yes. Okay.

8 And then it goes into some discussion of how things
9 are improving in Haiti, according to the Register; right?

10 MR. SAMPAT: That is correct.

11 THE COURT: And I want to talk about those for a
12 bit.

13 MR. SAMPAT: Okay.

14 THE COURT: All right. So the first thing that the
15 notice states is that, quote -- and this is -- shoot, this is
16 at the page that has footnote 19, which I think is 36 but I'm
17 not positive.

18 MR. SAMPAT: 35, Your Honor.

19 THE COURT: 35, sorry.

20 And she notes, There have also been some positive
21 developments. For example, in a recent briefing, the UN
22 secretary general stated that despite continuing violence in
23 Haiti, quote, there are emerging signals of hope, end quote,
24 and then she cites to footnote 19; right?

25 MR. SAMPAT: That is correct.

1 THE COURT: And footnote 19 is a citation to the
2 following -- oh, by the way, I recalled on the break that when
3 we had a bunch of these preliminary injunction hearings in
4 early 2025, that a judge, and I think it was Judge Moss, sent
5 around a case or a decision that was actually reversible error
6 not to consider the administrative record on preliminary
7 injunction. I will try to track down that case. I didn't
8 have a chance at the break. But just as an FYI, you might
9 want to look at the preliminary injunction context.

10 And the reason I think -- the reason I think it was
11 reversible error not to discuss it in a preliminary injunction
12 decision was because I didn't quite understand how to look at
13 an AR when we were, you know, working within days of a lot of
14 these things going on. So that's why it's in my head that was
15 the decision and the outcome, but something for you guys to
16 look at.

17 MR. SAMPAT: Thank you for the notice, Your Honor.

18 THE COURT: Okay. And I could be misremembering, my
19 best recollection right now.

20 All right. So footnote 19 is a citation to the
21 following, "United Nations: The people of Haiti are in a
22 perfect storm of suffering, warns UN chief, August 28, 2025."
23 Right?

24 MR. SAMPAT: Yes, I believe that is an accurate
25 representation of the footnote citation, Your Honor.

1 THE COURT: Okay. And perfect storm of suffering is
2 not a good thing; right? It's a bad thing. It means like it
3 couldn't possibly get worse; it's a perfect storm.

4 MR. SAMPAT: As a title, certainly, but there --

5 THE COURT: Okay. No, no, I understand. Just the
6 phrase, it's bad.

7 MR. SAMPAT: The connotation is that there are
8 issues.

9 THE COURT: Okay. And the UN secretary general is a
10 credible source to DHS.

11 MR. SAMPAT: I'm sorry?

12 THE COURT: The secretary general of the UN, he's a
13 credible source to DHS; right?

14 MR. SAMPAT: I -- I don't think I would contest
15 that, Your Honor.

16 THE COURT: Would you agree with it? I mean, they
17 wouldn't cite -- they wouldn't refer to him and cite him if
18 they didn't think it was credible; right?

19 MR. SAMPAT: Sure.

20 THE COURT: So -- and then in particular, the
21 secretary determined that his comments on August 28th, 2025,
22 as reflected in this article that he cited, are worthy of
23 consideration.

24 MR. SAMPAT: I think if they've added it into the
25 Federal Register, they're worthy of consideration, yes.

1 THE COURT: Okay. All right.

2 And then with respect to the emerging signals of
3 hope, the chief said -- or the article --

4 Do you have the article up?

5 MR. SAMPAT: I have it in front of me, Your Honor.

6 THE COURT: Okay. Despite the bleak outlook across
7 Haiti and soaring levels of violence and lawlessness, quote,
8 there are emerging signals of hope, said the secretary
9 general. Right?

10 MR. SAMPAT: That is an accurate --

11 THE COURT: That is the part that is quoted.

12 MR. SAMPAT: That is the part that is quoted, yes.

13 THE COURT: Okay. And then he goes on to say,
14 "Closer coordination between the prime minister's task force,
15 the Haitian National Police and Security Council-backed
16 national security support mission is improving operations on
17 the ground," he said; right?

18 MR. SAMPAT: That is a correct representation of
19 what is in that article.

20 THE COURT: And then he continues -- or the article
21 continues, "But more decisive international support is
22 required to protect and expand these fragile gains."

23 MR. SAMPAT: That is what the article says, but I
24 will note that is not attributed to the secretary general.

25 THE COURT: Okay. But we trust the article, right,

1 because we're relying on it?

2 MR. SAMPAT: Sure, but I -- our exchange about the
3 secretary general being a credible source, I just want to make
4 it very clear --

5 THE COURT: Sure.

6 MR. SAMPAT: -- he's not being cited for that
7 statement.

8 THE COURT: Okay. In any event, the article
9 described the gains as fragile.

10 MR. SAMPAT: The article does, yes.

11 THE COURT: Okay. And then the article goes on to
12 say, Haiti now ranks among the five hunger hot spots worldwide
13 that are of, quote, highest concerns, said the UN chief. And
14 the "highest concern" is a quotation to the UN chief; right?

15 MR. SAMPAT: I'm sorry, what page is that on, Your
16 Honor?

17 THE COURT: I'm sorry, I don't have it in front of
18 me. The next paragraph starts, "Yet it remains the world's
19 least funded."

20 MR. SAMPAT: I have, "The Kenyan-led mission was
21 authorized by this" --

22 THE COURT: Yeah, and go down. I skipped some.

23 MR. SAMPAT: Oh, that's just the next paragraph and
24 then I have a -- let me see if I can -- if there's an issue.

25 THE COURT: Oh, oh, yeah, I'm pulling from the

1 article, not from the Federal Register.

2 MR. SAMPAT: No, no, so I'm looking at the article.
3 I don't have the paragraph you're referring to, unfortunately.

4 THE COURT: Do you have it?

5 MR. TAUBER: Yeah, I have it on my computer screen.
6 It's after the heading "Shamefully Overlooked," if that helps
7 you, Drew.

8 THE COURT: Can you just come up and help him.

9 MR. SAMPAT: I'm sorry, Your Honor, could you repeat
10 the question again so I can find my place? I think I found
11 it.

12 THE COURT: Sure. So the article goes on to quote
13 the UN chief further, right, and the article says, Haiti now
14 ranks among the five hunger hot spots worldwide that are of,
15 quote, highest concern, said the UN chief. Right?

16 MR. SAMPAT: Yes, it says that, but I will note
17 again, the quotations are around highest concerns. So it's
18 unclear whether secretary general said Haiti now ranks among
19 five hunger hot spots.

20 THE COURT: Okay. In any event, it's a country that
21 has the highest concern with respect to hunger; right?

22 MR. SAMPAT: It is a two-word snippet of a quote.
23 So not having the full quote --

24 THE COURT: So are you serious? Is it that without
25 a full quote, we can't take much out of what an article says

1 the UN chief said, because then we're going to run into
2 problems with emerging signals of hope. We're not going to
3 have it both ways. We're not going to say we can snip
4 quotations when we want and not when we don't, so which is it?

5 MR. SAMPAT: Your Honor, I think if that's part of
6 the quote, that's part of the quote. I'm saying, for the
7 record, the five hunger hot spots worldwide is not part of
8 what the secretary general said.

9 THE COURT: But he's quoting as saying that it's --
10 one of the highest concern countries with respect, we can
11 assume, hunger hot spots, or just in general, if you want to
12 say it that way.

13 MR. SAMPAT: I think that's a fair representation of
14 the article.

15 THE COURT: Okay. And again, we're relying on the
16 article, because it's relied on in the Federal Register;
17 right?

18 MR. SAMPAT: Yes.

19 THE COURT: We're not going to say the article can
20 be quoted for some things but not other things; right?

21 MR. SAMPAT: Sure.

22 THE COURT: We're going to be consistent.

23 MR. SAMPAT: Sure.

24 THE COURT: Okay. Then the article goes on to say,
25 Haiti remains the world's least-funded humanitarian appeal.

1 Less than 10 percent of 908 million needed has been received.
2 The UN chief lamented the level of international neglect,
3 describing Haiti as, quote, shamefully overlooked and woefully
4 underfunded, end quote.

5 MR. SAMPAT: That is a fair representation of what
6 the article says, yes.

7 THE COURT: And that the quotation from the UN chief
8 is that Haiti has been shamefully overlooked and woefully
9 underfunded; correct?

10 MR. SAMPAT: That is correct.

11 THE COURT: Okay. And he says -- it says, Due to
12 the lack of resources, around 1.7 million people risk
13 receiving no humanitarian assistance at all. Quote, This is
14 not a funding gap, it is a life-and-death emergency, end
15 quote. Right?

16 MR. SAMPAT: That is the quote, and it's followed by
17 "he said," and I believe that means the UN chief, yes.

18 THE COURT: So the UN chief is also saying that
19 there's a life-and-death emergency in Haiti right now, at
20 least as of the date of this article which is 2025, right, I
21 believe September or August?

22 MR. SAMPAT: August 28th, 2025. And that is my
23 understanding of what the secretary general said, yes.

24 THE COURT: Okay. And then it goes on later to say,
25 The head of the UN Children's Fund, UNICEF, told ambassadors

1 Haiti's youth are, quote, enduring, quote, unimaginable
2 suffering amongst the brutal armed violence, end quote.
3 Right?

4 MR. SAMPAT: That is the quote from the head of
5 UNICEF, yes.

6 THE COURT: Okay.

7 MR. SAMPAT: I apologize, Your Honor, if I may.

8 THE COURT: Sure.

9 MR. SAMPAT: The quote is, "Unimaginable suffering
10 amidst brutal armed violence." Everything that precedes that
11 is not attributed to the head of UNICEF.

12 THE COURT: Okay. So -- now someone looking at this
13 article, would they come away thinking that the UN chief
14 believes that Haiti is a safe country to return to?

15 MR. SAMPAT: I -- Your Honor, I'm not an expert in
16 these matters.

17 THE COURT: I'm just saying, you're a human being,
18 you read the news. If you were told that there's a country
19 where there's emerging signals of hope, and that currently it
20 ranks as one of the highest concerns hunger hot spots in the
21 world, is shamefully overlooked and woefully underfunded,
22 there's a life-and-death emergency and the children of the
23 country are enduring, quote, unimaginable suffering amidst
24 brutal armed violence, would you take it to be that individual
25 thinks Haiti is a safe country to return to because he said

1 emerging signals of hope in the midst of everything I've just
2 quoted?

3 MR. SAMPAT: In this context, Your Honor, I would
4 say unless he explicitly said the words that I do not believe
5 that Haiti is a safe country to return to, I cannot discern
6 what somebody would say just based on these snips of quotes
7 that could be taken out of context.

8 THE COURT: It's the government's position that a
9 country -- that a UN chief who describes a country as, quote,
10 one of the highest concern hunger hot spots worldwide, is
11 shamefully overlooked and woefully underfunded, has
12 life-and-death emergency, and has children who are enduring
13 unimaginable suffering amidst the brutal armed violence, you,
14 as a government representative, cannot tell me whether someone
15 would take from that that the UN chief, who had all those
16 quotes we just went through, thinks that that country is safe
17 to return to.

18 MR. SAMPAT: Your Honor, I cannot say that.

19 THE COURT: Okay. Would you agree with me that
20 selectively quoting the UN chief as describing Haiti as having
21 emerging signals of hope would be to not provide important and
22 full context to the UN chief's words?

23 MR. SAMPAT: Your Honor, not necessarily, because I
24 would point Your Honor to the Federal Register and the
25 sentences that follow footnote 19 that talk about the strides

1 made by the UN.

2 THE COURT: No, no, no, no, I'm just talking about
3 this article. We're going to get to all of it, don't you
4 worry.

5 MR. SAMPAT: Your Honor, I was here worried about
6 that. On this article itself, I would just say that -- I'm
7 sorry, I lost Your Honor's question.

8 THE COURT: Yeah, sure. Would you agree with me
9 that if someone looked at the quotes attributed to the UN
10 chief in this article, all of them, and pulled out and said
11 the UN chief believes that there are emerging signals of hope
12 in Haiti and says nothing else about what the UN chief
13 believes based on this article, that that would be leaving a
14 misimpression as to what the UN chief thought about conditions
15 in Haiti?

16 MR. SAMPAT: Not necessarily. And I would point
17 Your Honor in the article to the request from Mr. Gutierrez --
18 I believe that's how it's pronounced -- that's urging
19 ambassadors to act -- quote, act without delay and authorize
20 an international force supported by the UN through logistical
21 and operational backing and predictable financing.

22 THE COURT: Yeah, yeah, sure. Sure, sure, like
23 they're asking for more stuff. I'm just asking about the UN
24 chief's views. If I read this article and I wanted to
25 summarize it for high school teacher, and a high school

1 teacher said what are the UN chief's views of the current
2 situation as of August 2025 in Haiti, and I said, the UN chief
3 believes that there are emerging signals of hope, would I have
4 given a misimpression as to the UN chief's actual full views
5 given that I have not also noted that the UN chief believes
6 that it's one of the countries of highest hunger concerns, is
7 shamefully overlooked and woefully underfunded, has a
8 life-and-death emergency, and that there are children
9 undergoing unimaginable suffering amidst the brutal armed
10 violence, would you agree that I would leave a misimpression
11 if I said all the UN chief thought, based on this article, was
12 there are emerging signals of hope?

13 MR. SAMPAT: All I would say, Your Honor, I think it
14 requires context, and for that -- so I cannot.

15 THE COURT: Fair enough. When we talk about the UN
16 chief believing that there are emerging signals of hope, that
17 requires context; right?

18 MR. SAMPAT: As well as the other quotes he's given,
19 sure.

20 THE COURT: Sure.

21 MR. SAMPAT: But what I would say, Your Honor,
22 though, is, again, it could have been all these quotes, but
23 there are emerging signals of hope, which could intimate that
24 the signals of hope outweigh some of these other quotes -- his
25 findings and the quoted language.

1 THE COURT: And signals of hope is something that's
2 coming -- coming; right? It's not like we have hope that
3 there are signals of hope coming down the line. It's a
4 prospective-looking statement.

5 MR. SAMPAT: That's how I interpret it. But
6 again --

7 THE COURT: So if we're talking about what the UN
8 chief thinks about conditions on the ground as of the date of
9 this article, he wasn't saying there was hope on the ground as
10 of the date of the article. He's saying we have signals that
11 hope may be down the line.

12 MR. SAMPAT: Potentially. But again, without a full
13 transcript of what he said, I mean, there could be things in
14 what he said that had indications that he believes that
15 signals of hope currently exist.

16 THE COURT: Okay. Well, I mean, I'm not the one who
17 pulled this article. The secretary is; right? And we don't
18 know that the secretary -- the full -- all of his remarks are
19 not in the administrative record; right? I didn't see a
20 transcript of these remarks.

21 MR. SAMPAT: That is correct, I did not see it, Your
22 Honor.

23 THE COURT: So what the secretary was confidently
24 relying on was excerpts from this article; right?

25 MR. SAMPAT: That is my understanding based on the

1 notice.

2 THE COURT: Okay. All right.

3 Now the Federal Register also notes that the UN
4 security has created a, quote, Gang Suppression Force which
5 will, quote, work in close coordination with the Haitian
6 National Police and the Haitian armed forces, to conduct
7 intelligence-led operations to neutralize gangs, provide
8 security for critical infrastructure and support humanitarian
9 access, end quote; right?

10 MR. SAMPAT: That's -- if I'm following Your Honor
11 correctly, that is the last two sentences of the middle column
12 and going into the third column.

13 THE COURT: Right.

14 MR. SAMPAT: I have that.

15 THE COURT: Okay. And it cites for that footnote,
16 Footnote 20; right?

17 MR. SAMPAT: I believe it's the next sentence that's
18 cited as Footnote 20 your Honor.

19 THE COURT: I'm sorry, so what's that sentence?

20 MR. SAMPAT: That sentence says the 5550 strong
21 force will also protect vulnerable groups, support integration
22 of former groups, support reintegration of former fighters,
23 and help strengthen Haitian institutions.

24 THE COURT: Okay. So for those two sentences, thank
25 you, the citation is to Footnote 20?

1 MR. SAMPAT: Yes, I will say it's that sentence that
2 cites the Footnote 20. I don't know if that was also meant to
3 cite the prior sentence.

4 THE COURT: Okay. All right. In any event,
5 Footnote 20 is a citation to United Nations, "UN Security
6 Council amidst spiraling gang violence." And that's a news
7 article from the UN dated September 30th, 2025; right?

8 MR. SAMPAT: UN Security Council approves new
9 suppression force for Haiti amidst spiraling gang -- yes, that
10 is a proper citation to the article title.

11 THE COURT: Okay. And in the start we all agree
12 that the Gang Suppression Force is necessary because the
13 Haitian government hasn't been able to control the spiraling
14 gang violence in Haiti; right?

15 MR. SAMPAT: Your Honor, I am not a foreign policy
16 expert. I cannot say whether it's necessary or why the UN
17 thought it was necessary, why the --

18 THE COURT: Well, someone made the determination
19 that Haiti wasn't getting it done alone because they're
20 creating the suppression force.

21 MR. SAMPAT: And in my review of this certified
22 administrative record, that's certainly the scent that I got,
23 is that --

24 THE COURT: Okay.

25 MR. SAMPAT: Yeah.

1 THE COURT: All right. And if we look at the
2 document that the secretary cites, we needed the Gang
3 Suppression Force because a prior force created by the UN
4 Security Council in 2023 was unable to stem the gang violence.
5 And the quote, it starts "The multinational security support
6 mission led by the Security Council in October 2023," do you
7 see that?

8 MR. SAMPAT: Is that in the article or --

9 THE COURT: It's in the article.

10 MR. SAMPAT: Could you --

11 THE COURT: Sure. The quote, it starts "The
12 multinational security support mission" --

13 MR. SAMPAT: Oh, authorized by the Security Council
14 in 2023, yeah, okay. I have it.

15 THE COURT: It faced chronic underfunding,
16 insufficient personnel, and limited operational capacity,
17 making it difficult to contain gangs that now control large
18 parts of the capital; right?

19 MR. SAMPAT: In Port-au-Prince, it's followed by the
20 capital. And that is an accurate representation of what's in
21 there --

22 THE COURT: So there was a Gang Suppression Force in
23 2023, and it didn't work, so now they're creating another one
24 right.

25 MR. SAMPAT: I would say -- I don't think I would

1 characterize the MSS as a gang suppression force. I think it
2 was different. And I think that's the reason that there was a
3 change to a gang suppression force later.

4 THE COURT: Okay. Whatever happened in 2023 with
5 the Multinational Security Support Mission, it didn't work.

6 MR. SAMPAT: My understanding is that there were
7 some concerns about how the -- if I may just refer to it as
8 the MSS?

9 THE COURT: Sure.

10 MR. SAMPAT: How the MSS was operating, its
11 authorities, and things like that, but from --

12 THE COURT: The only thing I want to know is
13 whatever they did -- whatever the UN Security Council did in
14 October 2023 didn't work, because it was chronically
15 underfunded, there weren't sufficient personnel. And they
16 have limited operational capacity, making it difficult to
17 contain gangs that now control large parts of the capital;
18 right?

19 MR. SAMPAT: I would say, I can't agree that it
20 didn't work. It could be that it worked, but just not as
21 effectively so --

22 THE COURT: Okay. It didn't work as effectively as
23 was necessary to control the gang violence.

24 MR. SAMPAT: Potentially. But again, I'm not a
25 foreign policy --

1 THE COURT: Well, I mean, it's not potentially. I
2 mean, this is -- again, this is the thing you guys are citing
3 to. I didn't bring this into the conversation. This is in
4 the Federal Register. And whatever the secretary looked at
5 said that what the MSS did in October of 2023 was not
6 sufficiently effective because there remained, according to
7 the title of the article, "spiraling gang violence," and
8 that's why we need the Gang Suppression Force right?

9 MR. SAMPAT: So it does say "making it difficult."
10 So it doesn't necessarily mean it didn't work. The Gang
11 Suppression Force just may be a better alternative. It could
12 be --

13 THE COURT: I'm not saying that the MSS didn't do
14 anything. I'm just saying whatever they did was not
15 sufficiently effective to stem the spiraling gang violence;
16 right?

17 MR. SAMPAT: Based on this article it seems like the
18 MSS had issues about how it was going around, you know,
19 handling the gang violence and a change was made. That's
20 about as much as I can say without saying whether they were
21 doing a good job or not.

22 THE COURT: Okay. Whatever job they were doing we
23 needed a Gang Suppression Force created. Wouldn't have
24 created it if it wasn't needed; right?

25 MR. SAMPAT: The record is a little murky on this.

1 Like, whether the Gang Suppression Force was created or if the
2 MSS evolved into --

3 THE COURT: Oh, I don't care about that. I mean,
4 what I -- whether it evolved or was created, I don't really
5 care. The point is that it came into being, the Gang
6 Suppression Force it's coming into being; right?

7 MR. SAMPAT: It's coming into being, but as Your
8 Honor said, if this was about a good job, maybe somebody could
9 say we should scrap the MSS altogether and do the GSF.

10 THE COURT: Okay. We're going back and forth on
11 something I really don't care about and doesn't matter. My
12 only point is, as of August 2025, notwithstanding whatever put
13 in place 2023, there was spiraling gang violence, yes?

14 MR. SAMPAT: Yes, I can --

15 THE COURT: And because of that the Security Council
16 evolved, created, brought through a stork, the Gang
17 Suppression Force; right?

18 MR. SAMPAT: The Gang Suppression Force was created
19 after 2023, yes.

20 THE COURT: It was created after September 2025.

21 MR. SAMPAT: Sorry, yes. Yes, Your Honor.

22 THE COURT: In fact, the Gang Suppression Force
23 isn't in effect yet; right?

24 MR. SAMPAT: That I am not aware of, Your Honor.

25 THE COURT: Well, certainly as of September 2025 it

1 wasn't, because that's the first time it got created.

2 MR. SAMPAT: As of September 30th, 2025, it was not,
3 because that's -- that is my understanding as to when it was
4 also -- was created.

5 THE COURT: All right.

6 MR. SAMPAT: It became a recognized entity.

7 THE COURT: Right. And we don't actually know if
8 the Gang Suppression Force is even on the ground in Haiti
9 right now; right?

10 MR. SAMPAT: I don't know that, Your Honor.

11 THE COURT: Okay. And we don't know if it has --
12 you're going to tell me we can't assume, but would it be
13 reasonable to assume that it has not turned around a spiraling
14 gang violence issue in the last three months?

15 MR. SAMPAT: I don't know that, Your Honor.

16 THE COURT: Okay.

17 MR. SAMPAT: But --

18 THE COURT: We don't know one way or the other?

19 MR. SAMPAT: I don't know that one way or the other.
20 But I know there is some extra record stuff I came across
21 during my research about that the Gang Suppression Force has
22 been able to grow and what not, so --

23 THE COURT: So what's that?

24 MR. SAMPAT: It's that the 5,500 person mission that
25 were authorized, I think Secretary Rubio said something about

1 7,500 people being pledged for the --

2 THE COURT: Being pledged.

3 MR. SAMPAT: That is my understanding. That is
4 again --

5 THE COURT: That's really what I'm trying to get to
6 is that as of today we don't even know if the Gang Suppression
7 Force is on the ground in Haiti, but what we do know is that
8 it was only authorized at the end of September 2025; right?

9 MR. SAMPAT: And so that certainly, Your Honor. But
10 I would just say the 7,500 point is stuff that I looked at,
11 not part of the record, not part of this litigation obviously
12 -- or at least I don't think it is, but --

13 THE COURT: Okay. So the gang suppression -- my
14 point being, the Gang Suppression Force is something that's
15 coming down the pike. It might be at the very beginning of
16 the pike, or it's coming down the pike, but in any event, it's
17 at the very beginning of the pike.

18 MR. SAMPAT: If we consider three months beginning
19 of the pike --

20 THE COURT: I mean I don't, but I'm just assuming
21 that you will.

22 MR. SAMPAT: So I think it's three months in, if
23 they are just getting started, I think that's the way it is.
24 Again, I don't know how these things work.

25 THE COURT: My point being -- here's where I'm

1 getting with this.

2 MR. SAMPAT: Sure.

3 THE COURT: Is to say that Haiti is safe today, and
4 therefore we don't need an extension, it -- the fact that
5 there's a Gang Suppression Force doesn't really tell us
6 anything one way or the other about whether it's safe today
7 and whether we need an extension today, right? It hasn't come
8 into being, the boots aren't on the ground, or if they are
9 they're literally just getting off the bus. And so when we're
10 looking at that and what the secretary is making a
11 determination about is not whether or not Haiti will be safe
12 sometime in the indefinite future, it's about whether or not
13 Haiti is safe today; right?

14 MR. SAMPAT: I think the secretary is making a
15 determination based on information in front of her, and
16 foreign policy decisions that are being made --

17 THE COURT: I'm just -- just as a factual matter, if
18 you say Haiti is safe today because a Gang Suppression Force
19 was put into place in 2025, that doesn't really answer the
20 question about whether or not it's safe today, because the
21 thing doesn't even exist yet, or it just began to exist.

22 MR. SAMPAT: I can't say whether it exists as of
23 right now. Let's assume for the purposes right now that it
24 has begun to exist to some extent. I would still say I don't
25 know what the Gang Suppression Force has completed or what

1 they've been able to do in the time that it's been in exist --

2 THE COURT: But if we don't know, then that's a
3 problem too, because we don't know whether or not Haiti is
4 safe because of the Gang Suppression Force. We just don't
5 know one way or the other.

6 MR. SAMPAT: I can't say one way or the other, Your
7 Honor.

8 THE COURT: Right. I mean, it would be different,
9 right, if the Gang Suppression Force had come into being in
10 September 2024, and we were able to say this Gang Suppression
11 Force came into being in 2024 and look at all this progress
12 they've made in the last year. That would be one thing. That
13 would support a current or backward looking assessment of
14 whether or not Haiti is safe today. But that's totally
15 different than saying one is going to be put into place and do
16 things in the future; right?

17 MR. SAMPAT: Not necessarily, Your Honor. I
18 think --

19 THE COURT: You think those two things are equal?

20 MR. SAMPAT: So I would say I think the statute
21 provides the secretary with the discretion to decide --

22 THE COURT: Putting -- I'm just talking about -- I'm
23 not talking right now about discretion and about blah blah,
24 blah blah blah. I get it. Believe me, I understand what I'm
25 constrained and what I'm not constrained. I'm just trying to

1 get to we are all on the same facts. The Gang Suppression
2 Force is something that was authorized September 30th, 2025,
3 yes?

4 MR. SAMPAT: When it was authorized -- my
5 understanding is this is the announcement saying the Gang
6 Suppression Force now exists.

7 THE COURT: Okay. Exists, September 2025; right?

8 MR. SAMPAT: Yes. Along with the UN support office
9 in Haiti.

10 THE COURT: Okay. And remind me when the secretary
11 made her decision, November something, November 5th?

12 MR. SAMPAT: November 28th is when it was
13 published.

14 THE COURT: Okay. So as of November 28th, the
15 secretary thinks it's safe for Haitians to return to Haiti;
16 right? We talked about --

17 MR. SAMPAT: Based on the Federal Register notice,
18 yes.

19 THE COURT: Okay. The Gang Suppression Force
20 doesn't tell us anything about whether or not Haiti is safe as
21 of November 28th to return to Haiti, because the Gang
22 Suppression Force hasn't done anything within that two-month
23 period; right?

24 MR. SAMPAT: Well, Your Honor. I would say that the
25 notice talks about articles that the secretary had before her

1 at the time she made the decision. And we don't know what's
2 happened obviously since then --

3 THE COURT: Okay. Well, there's no article in the
4 administrative record that says that this Gang Suppression
5 Force was able to in two months turn things around so that now
6 Haiti is safe; right?

7 MR. SAMPAT: I in review in the car, I will say I
8 cannot remember necessarily.

9 THE COURT: Okay. Well, let's start a list of
10 questions that we need answered. And one of them is whether
11 there's something in the administrative record about what the
12 Gang Suppression Force did between September 30th and November
13 28th, okay?

14 MR. SAMPAT: Sure.

15 THE COURT: And just let me know if there is the
16 cite, and if there isn't that there isn't, all right?

17 MR. SAMPAT: Well, Your Honor, on that point,
18 though, I would say that that information obviously wasn't
19 before the secretary --

20 THE COURT: I just want to know in the
21 administrative record. What I mean is in the administrative
22 record, is there anything that talks about what the Gang
23 Suppression Force has done as of the date the secretary made
24 her decision. If there is please give me the cite. And if
25 there isn't, let me know that there isn't. Does that make

1 sense?

2 MR. SAMPAT: Yes, Your Honor.

3 THE COURT: Okay. And then the same article, the
4 same document cited at Footnote 20 notes that Haiti is facing
5 nearly 1.3 million internally displaced people, rising
6 kidnappings, widespread sexual violence, and gangs that
7 control large areas of the capital; right?

8 MR. SAMPAT: I believe Your Honor correctly quoted
9 that paragraph in the article, yes.

10 THE COURT: Okay. That's not indicating that Haiti
11 is a particularly safe place to return to right now; right?

12 MR. SAMPAT: It's certainly acknowledging that there
13 are ongoing issues in Haiti.

14 THE COURT: And serious issues.

15 MR. SAMPAT: I think some people may disagree on
16 serious, but I can certainly --

17 THE COURT: Who -- who -- do you really think -- is
18 there any -- maybe there are, people who think internally
19 displaced -- over a million people, internally displaced
20 people, rising kidnappings, widespread sexual violence, and
21 gangs that control large areas of the capital, is there anyone
22 who wouldn't think that was serious really.

23 MR. SAMPAT: There may be people, Your Honor.

24 THE COURT: All right. Well, I guess people can
25 think all kinds of things.

1 MR. SAMPAT: Again, I'm not a foreign policy
2 expert.

3 THE COURT: Okay. All right. The Federal Register
4 notes that Secretary Rubio and Ambassador Mike Waltz, he's our
5 representative to the UN, applauded the creation of the Gang
6 Suppression Force and that's Footnote 21; right?

7 MR. SAMPAT: So I found Footnote 21, Your Honor.
8 And what was the quote?

9 THE COURT: It was -- it cites -- it's supporting
10 Secretary Rubio and Ambassador Mike Waltz, that they applauded
11 the created of the Gang Suppression Force And it provides a
12 citation to their two statements.

13 MR. SAMPAT: So it cites the one document. Let me
14 just make sure that it's -- that is correct, it does cite to
15 Secretary Rubio and Ambassador Waltz's statements.

16 THE COURT: Okay. And then if we look at Secretary
17 Rubio's involvement or discussion, his statement is also
18 forward looking, right? He says, "We will work closely with
19 others to ensure the swift deployment of a GSF. This force
20 will address Haiti's immediate security challenges." Right?

21 MR. SAMPAT: There's also, "We commend the efforts
22 of Kenya and all countries deployed under the MSS mission,"
23 that would be backward looking.

24 THE COURT: Right. That's the MSS mission from 2023
25 that we talked about just recently; right?

1 MR. SAMPAT: Yes. I'm just going through the
2 statement, Your Honor.

3 THE COURT: Yeah. Sure. Okay. And he acknowledges
4 that there are immediate security challenges in Haiti; right?
5 "This force will address Haiti's immediate security
6 challenges."

7 MR. SAMPAT: This force will, yes, address immediate
8 security challenges and lay the groundwork for --

9 THE COURT: So Secretary Rubio we know believes as
10 of, and I think this was of September as well 2025, that there
11 were immediate security challenges in Haiti; right?

12 MR. SAMPAT: That -- that is --

13 THE COURT: That's what he says. We're going to
14 take him at his word; right?

15 MR. SAMPAT: -- a logical reading of that statement,
16 yes.

17 THE COURT: And we don't know how that would impact
18 his assessment as to whether or not to end TPS protections for
19 Haiti, because no one asked him, so far as we know.

20 MR. SAMPAT: I'm sorry, Your Honor, I kind of
21 lost that. And the only reason is that because it's not
22 Secretary Rubio, obviously, that's making --

23 THE COURT: No, no, but he -- you were supposed to
24 consult with State; right? And we talked about whether or not
25 anyone asked Secretary Rubio. And -- because the 2020 GAO

1 report says the Secretary of State typically does a memo to
2 the Department of Homeland Security Secretary, right, remember
3 that?

4 MR. SAMPAT: I do remember the --

5 THE COURT: And then we had a conversation back and
6 forth about there's no -- there's no -- we're unaware that
7 Secretary Rubio was asked this question specifically about
8 Haiti TPS. And you said there were other things in the
9 administrative record about what Secretary Rubio believes;
10 right?

11 MR. SAMPAT: Yes, I said there was.

12 THE COURT: Okay. And one of the things we now have
13 in the record in front of us, at least with respect to the
14 citation to the Federal Register, is this statement by
15 Secretary Rubio discussing what the Gang Suppression Force
16 will do forward looking, and also his assessment that Haiti is
17 facing immediate security challenges; right?

18 MR. SAMPAT: From my reading of this article, this
19 force will address Haiti's immediate security challenges, it
20 seems to suggest that there are ongoing security challenges.

21 THE COURT: Yeah. All right. And that Rubio thinks
22 that because he said it? Secretary Rubio thinks that because
23 he said it.

24 MR. SAMPAT: Yes. Yes.

25 THE COURT: Okay. And we don't know what Rubio

1 thinks about those security challenges with consideration of
2 extending the TPS status in Haiti because no one asked him,
3 that we're aware of.

4 MR. SAMPAT: That we're aware of, certainly, but
5 what I would, you know, Your Honor, the 409, 410 email are
6 representations from the Department of State.

7 THE COURT: Well, it's a one sentence email from a
8 guy at State, who happens to be in migration. But there's a
9 reason I went through all this earlier, so that we wouldn't
10 have this very fight.

11 MR. SAMPAT: No, understood, Your Honor.

12 THE COURT: So Secretary Rubio has stated in public,
13 in a statement, cited by the Secretary in the Federal
14 Register, right, he has said that Haiti presents immediate
15 security challenges; right?

16 MR. SAMPAT: That -- again, that is my understanding
17 of the statement.

18 THE COURT: And we don't know how Secretary Rubio
19 would weigh those challenges in giving advice or consultation
20 to the secretary of DHS, because no one ever asked him; right?
21 That we're aware of; right?

22 MR. SAMPAT: That we're aware of.

23 THE COURT: Okay.

24 MR. SAMPAT: But I would refer Your Honor back to
25 the responses that we filed, which is there's nothing to

1 indicate that the Secretary of State disputes or has any
2 concern --

3 THE COURT: Well, there is something to indicate;
4 right? We now know that there is something to indicate,
5 something indicates that he might dispute it because he's
6 saying that there's a immediate security challenge that
7 requires a Gang Suppression Force that is not yet in place.

8 MR. SAMPAT: No, Your Honor, what I would say on
9 that is that, again, the phrase used was foreign policy
10 concerns, and this is --

11 THE COURT: So -- I'm sorry, you -- we can't say
12 that Secretary Rubio -- we can't say with a hundred percent
13 certainty that Secretary Rubio thinks that the Haiti TPS
14 should be ended, and that that's what he would consult the
15 secretary about, that's what he would say to her, because no
16 one asked him about weighing his views on the immediate
17 security challenges, because no one asked him at all; right?

18 MR. SAMPAT: From our understanding nobody asked
19 him, but again the State Department weighed in. So I
20 recognize --

21 THE COURT: I understand that a low-level person,
22 within 53 minutes on a Friday afternoon said in a
23 nonresponsive email that there are foreign -- that there are
24 no foreign policy concerns. And I understand that you think
25 that that's responsive. And I understand that you think no

1 foreign policy can include all manner of issues on Haiti on
2 the ground. What we do know is that Secretary Rubio as of
3 September 30, 2025, mere months ago, weeks ago really, said
4 that Haiti created or has immediate security challenges. And
5 what we do know is that no one has asked him with respect to
6 anything in the record about his weighing of that in
7 consideration with Haiti TPS status; right?

8 MR. SAMPAT: That is my understanding. And I'll
9 just note one thing.

10 THE COURT: Sure.

11 MR. SAMPAT: On the low-level staffer, he was a
12 senior bureau official, I don't --

13 THE COURT: Fair enough.

14 MR. SAMPAT: On the grand scheme of things I don't
15 know --

16 THE COURT: Fair enough. All right.

17 Now, Ambassador Waltz statements also had the same
18 issue; right?

19 MR. SAMPAT: When you say issue, Your Honor?

20 THE COURT: Well, when I look at his quotes from the
21 text that was cited, I get -- and this was an earlier
22 statement, so this was from April of 2025, that was cited.

23 MR. SAMPAT: I have it as an October 22nd, 2025,
24 statement, maybe --

25 THE COURT: I might have found the wrong one. The

1 one that I have says "From the quarterly secretary general
2 report and the statements that the counsel has heard just now,
3 it is clear that there are harrowing trends of increased
4 deaths, reports of sexual violence, and recruitment of
5 children into gangs, and that Haiti continues to face serious
6 challenges in both security and governance."

7 MR. SAMPAT: That's not the one I have in Footnote
8 21, Your Honor.

9 THE COURT: Okay. Can you just hand me up which one
10 you have, because I might have pulled the wrong --

11 MR. SAMPAT: Sure. It's in administrative record
12 494 is the Bates stamps. So it is -- what would that be,
13 501.

14 THE COURT: I may have pulled the wrong thing.
15 Sorry.

16 Okay. So then if we look at Ambassador Waltz's
17 security council briefing, that's at administrative record
18 page 501, and this is what's cited in Footnote 21.

19 MR. SAMPAT: That's -- it starts with, "Thank you,
20 Mr. President."

21 THE COURT: Right.

22 MR. SAMPAT: "Thank you, special representative."

23 THE COURT: Right.

24 MR. SAMPAT: Yeah, I have that.

25 THE COURT: Okay. And it says, U.S. council

1 applauds adoption of the resolution transitioning the MSS
2 mission to a Gang Suppression Force that's supported, he says
3 that going forward; right?

4 MR. SAMPAT: I'm sorry, I'm trying to find that.

5 THE COURT: It's the second paragraph.

6 MR. SAMPAT: Second paragraph.

7 THE COURT: The U.S. applauds.

8 MR. SAMPAT: Yes, applauds the council's adoption of
9 the resolution transitioning the MSS mission to a Gang
10 Suppression Force.

11 THE COURT: Right.

12 MR. SAMPAT: That's supported by now what will
13 become a UN support office in Haiti, as well as the renewal of
14 sanctions regime on those leaders.

15 THE COURT: Right. So they're going to start a UN
16 support office in Haiti, there's not one there now; right?

17 MR. SAMPAT: Or there wasn't one on October 22nd,
18 2025, that's what I interpret that statement to be.

19 THE COURT: Okay. And then it says U.S. is working
20 closely with others in the standing group of partners on the
21 Suppression Force's swift expansion; right?

22 MR. SAMPAT: That is the next sentence, yes.

23 THE COURT: And it says this force will, and that's
24 future looking; right?

25 MR. SAMPAT: I would agree on that.

1 THE COURT: This force will concentrate on Haiti's
2 immediate critical security challenges; right?

3 MR. SAMPAT: That is an accurate quote.

4 THE COURT: And our ambassador to the United Nations
5 and Mr. Waltz was appointed by President Trump, yes?

6 MR. SAMPAT: That is my understanding. I didn't do
7 my research on that, so I apologize.

8 THE COURT: It's fine. We can look at that in the
9 record, he was. So the current, in any event, as of October
10 22nd, 2025, ambassador with respect to the Gang Suppression
11 Force that's cited at Footnote 21, is talking about what the
12 Gang Suppression Force will do forward looking; right?

13 MR. SAMPAT: That the Gang Suppression Force -- yes,
14 will concentrate on the immediate challenges along with the
15 support office, which will bolster Haiti's immediate security
16 response.

17 THE COURT: Right. So what the Gang Suppression
18 Force is forward looking. And what the ambassador, our
19 ambassador to the UN, Waltz, also confirms or believes is that
20 there's an immediate critical security challenge in Haiti;
21 right?

22 MR. SAMPAT: That is what the statement says, but I
23 will also note on the going forward, the Gang Suppression
24 Force and the support office will bolster Haiti's immediate
25 security response, but long-term recovery will depend on the

1 Haitian people.

2 THE COURT: Yeah. Fair enough.

3 MR. SAMPAT: Yeah.

4 THE COURT: It's forward looking. What the Gang
5 Suppression Force is going to do is forward looking.

6 MR. SAMPAT: As is the recognition that Haiti's
7 future is in the hands of the Haitian people, yes.

8 THE COURT: Yeah. Okay. Totally fair. My point is
9 that when we look at what Secretary Rubio and Secretary Waltz
10 said in the statements quoted in the Federal Register, they're
11 saying that there's an immediate crisis, security crisis in
12 Haiti. And they're happy that there's a Gang Suppression
13 Force which will in the future, going forward, try to address
14 that; right?

15 MR. SAMPAT: For the Gang Suppression Force, sure.
16 What is unclear from the record and the footnotes and as of --
17 I was trying to discern this as I was going through the
18 certified administrative record, is did the MSS and Gang
19 Suppression Force coexist.

20 THE COURT: Well, we know it didn't coexist, because
21 it was just created as of September or October of 2025.

22 MR. SAMPAT: So in that, like, was there a
23 transitional period where the MSS would continue to operate
24 while the Gang Suppression, like, those are things I don't
25 know.

1 THE COURT: That I don't care. My only point is,
2 whatever the Gang Suppression Force is doing, it's as of the
3 dates in the statements attributed to the secretary and
4 ambassador in the Federal Register, at Footnotes 20 and 21,
5 that Gang Suppression Force whatever they're doing, is going
6 to be doing in the future as of that date.

7 MR. SAMPAT: As of October 22nd, 2025, that is
8 forward looking, I can --

9 THE COURT: Great. And what we also know is that
10 Secretary Rubio and Ambassador Waltz believe that immediately,
11 that Haiti -- by immediate they mean right now, September
12 2025, October 2025 -- faces a serious security challenge;
13 right?

14 MR. SAMPAT: On the September point, I would just
15 note that Secretary Rubio's statement was from October 1st.

16 THE COURT: Oh, October. Great.

17 MR. SAMPAT: So October 2025, they're talking about
18 the Gang Suppression Force as it moves forward. October 1st
19 is the day after the Gang Suppression Force was announced.
20 And then this was three weeks later.

21 THE COURT: Okay. And so one, what they're looking
22 at is not yet in place or has just been authorized. And what
23 both of them believe is that as of October 2025, October 1st,
24 and October 22nd, 2025, Haiti is facing an immediate security
25 crisis challenge; right?

1 MR. SAMPAT: I'm trying to find the quote
2 immediate --

3 THE COURT: I'm sorry, so an immediate critical
4 security challenge with respect to Mr. Waltz and immediate
5 security challenges with respect to Mr. -- Secretary Rubio;
6 right?

7 MR. SAMPAT: I'm having trouble locating it
8 specifically, because I have other notes in here, but if those
9 are in the notice --

10 THE COURT: Well, I just -- I just want this to be
11 clear. So let's go back to Secretary Rubio. I think we
12 already went through this, but let's just be clear again. The
13 second sentence --

14 MR. SAMPAT: I apologize.

15 THE COURT: Yeah, it's the second sentence of the
16 second paragraph, the Force will address Haiti's, quote,
17 immediate security challenges; right?

18 MR. SAMPAT: Yes.

19 THE COURT: And we just went over Secretary Waltz,
20 who says the Force will concentrate on Haiti's immediate
21 critical security challenges; right?

22 MR. SAMPAT: Yes. Yes, that is what it says.

23 THE COURT: Okay. So let's just do this one more
24 time all at once now that we have all the pieces of the
25 puzzle. The Federal Register cites, as a positive development

1 in Haiti, the Gang Suppression Force, which is forward
2 looking, it had not been put in place as of -- and cites for
3 that Secretary Rubio and Ambassador Waltz's October 2025
4 statements; right?

5 MR. SAMPAT: Yes.

6 THE COURT: And as of October 2025, Secretary Rubio
7 and Ambassador Waltz, with respect to their statements on the
8 Gang Suppression Force was about what it will do going
9 forward. It's future looking; correct?

10 MR. SAMPAT: That the force will address the
11 immediate security challenges and that --

12 THE COURT: And what we know is that currently, as
13 of October 2025, Secretary Rubio and Ambassador Waltz, they
14 both describe an immediate security challenge, and Ambassador
15 Waltz went on to say critical security challenge in Haiti;
16 right?

17 MR. SAMPAT: That is -- yes, that is accurate.

18 THE COURT: Okay. All right. We've been going
19 another hour. I'm inclined to break for lunch, because I'm
20 going to move on to the modest GDP growth. So is that good
21 for you guys? What do you guys want?

22 MR. PIPOLY: It's fine for us.

23 MR. SAMPAT: Works for us.

24 THE COURT: Let's come back, I don't want to go too
25 long, let's come back at 1:30. Okay. Thank you, everyone.

1 (The morning proceedings were concluded at 12:45
2 p.m.)

3 I, Christine Asif, RPR, FCRR, do hereby certify that
4 the foregoing is a correct transcript from the stenographic
5 record of proceedings in the above-entitled matter.

6 /s/
Christine T. Asif
7 Official Court Reporter
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

* * * * *)
FRITZ EMMANUEL LESLY MIOT, et al.,) Civil Action
) No. 25-02471
Plaintiffs,)
)
vs.)
)
DONALD J. TRUMP, et al.,) Washington, D.C.
) January 6, 2026
Defendants.) 1:30 p.m.
) **AFTERNOON SESSION**
* * * * *)

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE ANA C. REYES
UNITED STATES DISTRICT JUDGE

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United States District Court for the

District of Columbia

333 Constitution Avenue, Northwest

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Washington, D.C. 20001

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1 THE COURT: Go ahead.

2 MR. SAMPAT: All right, your Honor.

3 THE COURT: So I want to go to the part now of the
4 Federal Register that discusses that one of the positives in
5 Haiti is projected modest GDP growth by 2026.

6 MR. SAMPAT: What footnote are we looking at?

7 THE COURT: Footnote 22.

8 MR. SAMPAT: 22. Okay. Further, according to the
9 World Bank, modest GDP growth is projected by 2026 as
10 investment increases from low baseline, assuming
11 improvements on political and security fronts.

12 THE COURT: All right. You didn't have to get all
13 that. I think he was talking to himself.

14 So the Federal Register -- you were just talking
15 way too low for her to hear. So I don't want her stressing
16 out.

17 MR. SAMPAT: Okay.

18 THE COURT: So the Federal Register says that
19 according to the World Bank, quote, "Modest GDP growth is
20 projected by 2026 as investment increases from a low
21 baseline, assuming improvements on the political and
22 security fronts," end quote. Right?

23 MR. SAMPAT: That is correct.

24 THE COURT: And that is a citation to the World
25 Bank website. And the footnote reads "World Bank and

1 Haiti." Right?

2 MR. SAMPAT: Yes.

3 THE COURT: And then the link it provides -- and
4 we talked about this over the weekend on a minute order or
5 email; I can't remember -- the World Bank's country webpage
6 for Haiti, the overview. Right?

7 MR. SAMPAT: Yes, your Honor. That's -- that is
8 the website that I think your Honor referred to in the
9 minute order.

10 THE COURT: Right. And then when I went to that,
11 the overview has a link to a bunch of websites. And so what
12 I found -- I found the World Bank's Haiti MPO report, which
13 is the macro-poverty outlook, which has the quoted language.
14 And so do you agree that that's the report that we're
15 looking at?

16 MR. SAMPAT: So no. That's not the report that's
17 cited.

18 THE COURT: Okay.

19 MR. SAMPAT: When your Honor issued the minute
20 order, I took a look.

21 So on the website, when you're on the website, if
22 you go to Overview and then click on the Economy tab on the
23 website, you actually get the quote that's in the Federal
24 Register.

25 THE COURT: All right. Let me go to that, then.

1 Now I'm at Economy. The Read More one, maybe?

2 MR. SAMPAT: So the way I was able to pull it up
3 was --

4 THE COURT: I see. Okay. I have it here.

5 MR. SAMPAT: Yes.

6 THE COURT: And again, the citation in the Federal
7 Register is to the World Bank organization's report on
8 Haiti, and the economy one specifically?

9 MR. SAMPAT: Yes.

10 THE COURT: And the World Bank is a credible
11 source of information for the secretary?

12 MR. SAMPAT: Because it's cited in the Federal
13 Register, I would think so. Yes.

14 THE COURT: All right. And it does say that in
15 2025, GDP is forecast to contract by 2.2 percent as
16 political uncertainty and gang violence depress private
17 investment and high inflation dampens private consumption.
18 Right?

19 MR. SAMPAT: That is what -- that is what it says,
20 yes.

21 THE COURT: Modest GDP growth is projected by 2026
22 as investment increases from a low baseline, assuming modest
23 improvements on the political and security fronts. Right?

24 MR. SAMPAT: Yes. I believe that's --

25 THE COURT: So that projection is not a certainty;

1 it's, We think in 2026 there is going to be some modest GDP
2 growth, but certain things have to happen for that to occur.
3 Right?

4 MR. SAMPAT: It is -- it is exactly that. A
5 projection. Sure.

6 THE COURT: It's a projection. So it's not
7 talking about what is going on in Haiti right now. Right?

8 MR. SAMPAT: Well --

9 THE COURT: Let me say, if you look up -- and
10 this, by the way, must have been written in 2024, because it
11 discusses what -- that in 2025, GDP is forecast to contract
12 by 2.2 percent. Right?

13 MR. SAMPAT: That's what it says.

14 I will just refer the Court to the paragraph
15 before where it talks about inflation moderating from 44.2
16 percent in 2023 to -- that inflation moderated from 44.2
17 percent in 2023 to 25.8 percent in 2024.

18 I understand there's stuff that follows. But I
19 want to say that there's more to the GDP, which I assume
20 also includes inflation.

21 THE COURT: I understand. But in terms of the GDP
22 is forecast to contract by 22 percent, that was -- that must
23 have been written sometime either late 2024 or early 2025,
24 given that it talks about what happened in 2024 in the
25 phrase that you just read.

1 MR. SAMPAT: I think that's a reasonable
2 assumption, your Honor. I will just note that there isn't a
3 date on the article. And I don't think the one -- that the
4 version in the certified administrative record has a date
5 either. But I could be wrong about that.

6 So I --

7 THE COURT: In any event, we know it was not
8 written in 2026.

9 MR. SAMPAT: Yes. That is correct. So that we
10 know.

11 THE COURT: So this again is another projection.
12 It's something that will happen in the future. It's a
13 projection.

14 MR. SAMPAT: Yes.

15 THE COURT: And it's based on important
16 assumptions. Right? That -- assuming modest improvements
17 on the political and security fronts. Right?

18 MR. SAMPAT: I think they're based on assumptions,
19 I think, like any projections are based on. Right.

20 THE COURT: But this indicates there's insecurity
21 on political insecurity fronts as of the time of this
22 projection. Right?

23 MR. SAMPAT: I'm sorry. Could you repeat the
24 question, your Honor?

25 THE COURT: Yes. If it's based on an -- if it's

1 based on an assumption that there's going to be improvements
2 in the political and security fronts, that indicates that
3 there is something to improve on those fronts.

4 MR. SAMPAT: Yeah. I wouldn't contest that.

5 THE COURT: And then if we go to the About column
6 on that webpage --

7 MR. SAMPAT: So I don't have that. Not on this
8 one. If you'd give me one moment, your Honor.

9 THE COURT: Sure.

10 MR. SAMPAT: I think I have the About portion.
11 I'm referring to the version that's in the certified
12 administrative record right now.

13 THE COURT: If you want me to look at that, what's
14 the CAR?

15 MR. SAMPAT: The Bates stamp is 1478, so that puts
16 it at 1485.

17 THE COURT: This is in the administrative record.
18 Right?

19 MR. SAMPAT: This is the one in the administrative
20 record. That's correct.

21 THE COURT: And it starts -- and it says -- sorry.
22 The version -- I have a blackout on that version.

23 MR. SAMPAT: I do, too.

24 THE COURT: The part that's blocked out is:
25 Haiti's development continues to be hindered by political

1 instability, increasing violence and unprecedented levels of
2 insecurity, which exacerbate fragility.

3 MR. SAMPAT: Okay.

4 THE COURT: Do you take my word for it that that's
5 what's on the webpage?

6 MR. SAMPAT: I have no reason to doubt that, your
7 Honor. But I'll just say I don't have that version in front
8 of me, so I'm not sure what it says.

9 THE COURT: Do one of you have the internet so
10 that you can pull it up?

11 MR. TAUBER: Yes, I do, your Honor.

12 THE COURT: Can you just show it to him so we can
13 confirm that language?

14 MR. TAUBER: Yes. Let me back out of where I was.

15 MR. SAMPAT: And I -- thank you, Andy.

16 MR. TAUBER: Of course.

17 THE COURT: I want to make sure we're clear on the
18 record that this is the language. The language is, the
19 first two lines: Haiti's development continues to be
20 hindered by political instability, increasing violence and
21 unprecedented levels. Right?

22 MR. SAMPAT: "Of insecurity." Yes.

23 THE COURT: So if we go back to the CAR:
24 "insecurity, which exacerbate fragility." Right?

25 MR. SAMPAT: Yes.

1 THE COURT: Haiti remains the poorest country in
2 Latin America and the Caribbean. Right?

3 MR. SAMPAT: That's an accurate representation of
4 what's in the document.

5 THE COURT: Among the poorest countries in the
6 world?

7 MR. SAMPAT: That's also accurate.

8 THE COURT: And Haiti's human development index
9 places the country in the medium human development category,
10 ranking 166 out of 193 countries?

11 MR. SAMPAT: That is correct, meaning, if I'm
12 doing my math right, there's 27 countries that fall below
13 Haiti.

14 THE COURT: And 165 that fall above it?

15 MR. SAMPAT: Yes.

16 THE COURT: And in 2024, the economy contracted by
17 4.2 percent, a sixth consecutive year of decline?

18 MR. SAMPAT: Yep. Got that.

19 THE COURT: In 2025, GDP was also forecast to
20 contract by 2.2 percent. Right?

21 MR. SAMPAT: Yes. And then just to finish the
22 sentence off: As political uncertainty and gang violence
23 depress private investment and high inflation increases --
24 sorry -- and high inflation dampens private consumption.

25 THE COURT: And then it says: And Haiti remains

1 one of the most vulnerable countries worldwide to natural
2 hazards, mainly hurricanes, floods and earthquakes?

3 MR. SAMPAT: Yep. That's the first sentence in
4 the following paragraph.

5 THE COURT: And it says: Despite some signs of
6 progress, Haiti continues to face critical security
7 challenges. Right?

8 MR. SAMPAT: Yes. That's what the document says.

9 THE COURT: And that's consistent with what we saw
10 from Secretary Rubio and Ambassador Waltz?

11 MR. SAMPAT: I'm not sure whether the World
12 Bank -- whether Secretary Rubio and Ambassador Waltz all
13 have the same definition of the word "critical security."
14 But --

15 THE COURT: Well, we can assume that they're all
16 in the same neighborhood. Right?

17 MR. SAMPAT: I think that would be a fair -- that
18 would be fair.

19 THE COURT: It's neither here nor there, really.

20 And it says that 5,600 people were killed in 2024
21 and more than a million people are now internally displaced
22 in Haiti. Right?

23 MR. SAMPAT: More than a -- yes.

24 THE COURT: Then: As the country's security
25 crisis continues, 5.4 million Haitians struggle daily to

1 find enough to eat. On the human development front, Haiti
2 currently has a total of 88,782 suspected cases of cholera.
3 As of March 9, 2025, improvement in human capital have
4 stalled and in some cases deteriorated. Infant mortality
5 remains at high levels and coverage of prevention measures
6 is stagnating or declining, especially for the poorest
7 households.

8 Is that right?

9 MR. SAMPAT: That's a fair quotation of -- an
10 accurate quotation, I should say, of that.

11 THE COURT: And this indicates that this was
12 updated April 28, 2025?

13 MR. SAMPAT: That is correct.

14 THE COURT: And again, this is in the
15 administrative record and something that the secretary
16 considers sufficiently credible to rely on?

17 MR. SAMPAT: As -- because it's cited in the
18 notice. Yes.

19 THE COURT: And again, what we have with this
20 document is a projection of what will happen in the future
21 with a discussion of what has actually happened in the
22 present?

23 MR. SAMPAT: It is. I agree that it is
24 forward-looking, which is the same thing as the TPS
25 termination, which is that it doesn't take effect for 60

1 days.

2 THE COURT: Okay. And then if we look at the
3 administrative record at Page 183 --

4 MR. SAMPAT: 183?

5 THE COURT: Yes. This is part of the USCIS
6 decision memo.

7 MR. SAMPAT: I am at 183.

8 THE COURT: And this is part of the USCIS decision
9 memo. Right?

10 MR. SAMPAT: This is the policy consideration.
11 That USCIS decision memo, I think, is found at 195.

12 THE COURT: I misspoke. You're right. I'm wrong.
13 USCIS policy considerations memo. It starts at 182, and 183
14 is a part of that memo. Right?

15 MR. SAMPAT: That is correct.

16 THE COURT: And that memo -- I'm sorry. I don't
17 know where on the page -- it notes that in September 2025,
18 the Federal Aviation Administration has extended the ban on
19 U.S. commercial flights flying into the main Haiti airport
20 through March 7, 2026.

21 MR. SAMPAT: Can you repeat that?

22 THE COURT: Sure. In September, the FAA has
23 extended the ban on U.S. commercial flights flying into the
24 main Haiti airport through March 7, 2026.

25 MR. SAMPAT: Oh, okay. Yeah. Okay. Got it.

1 THE COURT: And that is because of the risk that
2 powerful gangs might attack flights with drones and small
3 arms. I'm not sure if that's in the decision memo or the
4 MPO report.

5 MR. SAMPAT: So the domestic -- --

6 THE COURT: Actually, I can look at it.

7 MR. SAMPAT: If we go to 182, the paragraph talks
8 about the control of gangs over Port-au-Prince and then the
9 effect that's had on transportation. So I think, based on
10 that, I guess the aviation -- oh, no. This is our Federal
11 Aviation Administration. I believe that was based on there
12 being a shooting on the tarmac or American planes being shot
13 at.

14 THE COURT: Well, yes. Not singular.

15 MR. SAMPAT: Multiple planes. Yeah.

16 THE COURT: So currently, as you and I are talking
17 today, U.S. commercial flights cannot go into the main
18 Haitian airport in Port-au-Prince?

19 MR. SAMPAT: Yes. My understanding is that
20 American airlines and the FAA wouldn't allow travel there,
21 yes.

22 THE COURT: Because it's not safe?

23 MR. SAMPAT: Because -- what their reason is, I
24 don't have that before me. I don't know if they have
25 different reasons for their decision. I can't say.

1 THE COURT: Well, then, let's look at what the FAA
2 said.

3 MR. SAMPAT: Okay.

4 THE COURT: So the CAR cite, do you see that at
5 183 they cite Footnotes 8 and 9?

6 MR. SAMPAT: Yes.

7 THE COURT: And 9 is to an AP News report?

8 MR. SAMPAT: Yes. That's correct.

9 THE COURT: And I did not expect you to be
10 prepared to talk about everything in the footnotes to the
11 things in the administrative record, but that's what I do.
12 So I looked at it, because I had the same question. Why
13 would they stop the flights? And the article -- can you
14 find it?

15 Can you show him the article?

16 MR. TAUBER: Yeah. I have it.

17 THE COURT: Can you show it to him, please?

18 MR. TAUBER: Certainly, your Honor.

19 THE COURT: Can you just read along with me when
20 he shows this to you?

21 MR. TAUBER: (Shares personal computer with
22 Mr. Sampat.)

23 MR. SAMPAT: Thanks.

24 THE COURT: Do you see it?

25 MR. SAMPAT: I do.

1 THE COURT: It starts with: A Federal Aviation
2 Administration ban on U.S. commercial flights to Haiti's
3 capital that expired Monday -- and this is -- the article is
4 dated September 8, 2025 -- has been extended to March 7th,
5 2026, because of the risk that powerful gangs might attack
6 flights with drones and small arms.

7 Right?

8 MR. SAMPAT: That's what the first paragraph says.

9 THE COURT: So it's not safe for U.S. commercial
10 flights to go to Haiti because they might be attacked with
11 flights -- with drones and small arms. That's the
12 determination by the Federal Aviation Administration?

13 MR. SAMPAT: I think this article represents what
14 it -- a reporting that that's what the Federal Aviation
15 Administration -- the Federal Aviation Administration did.
16 I don't think it reflects the Federal Aviation
17 Administration's belief on whether it's safe or not. It's
18 a -- so a risk doesn't necessarily mean it's not entirely
19 safe.

20 THE COURT: Well, let's go down. It says: The
21 FAA noted that Haitian gangs now control 90 percent of
22 Port-au-Prince as well as nearby strategic routes and border
23 areas.

24 And it says, quote: Haitian foreign terrorist
25 organizations maintain access to small arms and unmanned

1 aircraft systems capable of reaching low-altitude phases of
2 flight, the FAA said in a statement on Friday. Right?

3 And why don't we just go to the main source, even
4 though that's not what the memo cited. Let's just go to the
5 FAA statement.

6 MR. SAMPAT: Sure.

7 THE COURT: By any chance do you have the actual
8 statement?

9 MR. SAMPAT: I don't have the FAA statement. I
10 found the article in the administrative record so Mr. Tauber
11 could get his laptop back.

12 THE COURT: What page is that?

13 MR. SAMPAT: In the CAR, it's Bates-stamped 603,
14 so the PDF is 610.

15 THE COURT: Thank you.

16 Can you go to the FAA's webpage and then search
17 for Haiti?

18 MR. TAUBER: Excuse me?

19 THE COURT: You're our web browser today. Could
20 you please go to the Haiti --

21 MR. TAUBER: I am a surfer, after all.

22 THE COURT: Could you please go to the faa.gov
23 website and then put in Haiti in the search term?

24 MR. TAUBER: Yes, ma'am. I'll pull it up this
25 second.

1 THE COURT: Go to the second link, the September
2 2025 update.

3 MR. PIPOLY: I've got it.

4 THE COURT: Can you show it to him, please? It
5 says Unclassified, FAA.

6 MR. PIPOLY: Yes.

7 THE COURT: Can you look at the URL and confirm
8 for me, please, that we're now looking at the actual FAA
9 statement?

10 MR. SAMPAT: That is correct.

11 THE COURT: And this was the statement that was
12 quoted in the article that's in the administrative record?

13 MR. SAMPAT: Yes. It is the last -- it's in the
14 last sentence of the second paragraph in the notice.

15 THE COURT: And -- but the article with the other
16 quotes is in the administrative record and you, you know,
17 rightfully said, Well, we don't know that this was correctly
18 quoted. So we're going to the source.

19 MR. SAMPAT: Yes.

20 THE COURT: The FAA says: The FAA continues to
21 prohibit U.S. civil aviation operations under 10,000 feet
22 MSL and specified portions of Haiti's aerospace in response
23 to security forces' continued inability to prevent attacks
24 against aircraft in Port-au-Prince and the surrounding
25 regions.

1 Do you see that?

2 MR. SAMPAT: Unfortunately, Mr. Pipoly -- I gave
3 Mr. Pipoly the computer back.

4 THE COURT: Sorry. Can he have it while we do
5 this, please?

6 MR. PIPOLY: Yes.

7 THE COURT: I hope you don't have any embarrassing
8 emails pop up.

9 MR. PIPOLY: I do not.

10 THE COURT: There was a criminal trial -- I don't
11 know if you guys heard about this. There was one of those,
12 like -- let's just say the person was found not guilty.
13 It's one of those -- the protester throwing the sandwich
14 guy. It wasn't that case, but something similar.

15 And the Government was cross-examining somebody,
16 and he had his laptop up to -- you know, for something. It
17 was in front of the jury and it was being screened. It
18 was -- I think it was actually one of the -- oh, no. It
19 wasn't one of those cases. It was something different. It
20 was a different case. It was actually a more substantive
21 case. And I think one of the defendants was actually on the
22 stand being cross-examined by the Government attorney.

23 And one of the Government attorneys at the table
24 wrote something like, "This guy's a total idiot or moron."
25 And that, like, pops up on the screen, right? So the jury's

1 looking at it. And it was Judge Walton. So he actually had
2 to take a break and figure out what to do about it.

3 MR. SAMPAT: On that, your Honor, I would just
4 in -- assuming it's 2025?

5 THE COURT: Yes.

6 MR. SAMPAT: They would all realize that emails
7 can travel pretty quickly.

8 THE COURT: Yes. And so then let me just read it
9 again.

10 MR. SAMPAT: Yes.

11 THE COURT: The FAA continues to prohibit U.S.
12 civil aviation operations in specified portions of Haiti's
13 air space in response to security forces' continued
14 inability to prevent attacks against aircraft in
15 Port-au-Prince and the surrounding regions.

16 Right?

17 MR. SAMPAT: That is the first sentence of that
18 statement. Yes.

19 THE COURT: Within the last six months, Haitian
20 FTOs -- FTO is a foreign terrorist organization -- expanded
21 their area of operations to control nearly 90 percent of
22 Port-au-Prince and the immediately surrounding strategic
23 routes and border areas.

24 Did I read that correctly?

25 MR. SAMPAT: Yes, you did, your Honor.

1 THE COURT: Throughout this region, Haitian FTOs
2 maintained access to small arms and unmanned aircraft
3 systems capable of reaching low-altitude phases of flight.

4 Do you see that?

5 MR. SAMPAT: Yes. Yes, your Honor. I see that.

6 THE COURT: Haitian and internal security forces,
7 which experienced persistent personnel and equipment
8 shortages, have a limited ability to counter FTO activities
9 in and around Port-au-Prince. Additionally, these
10 organizations' uncoordinated actions against FTOs, to
11 include conducted USA strikes against FTO leaders in
12 Port-au-Prince, reduce their operational effectiveness and
13 further complicate low-altitude air space deconfliction
14 efforts.

15 Do you see that?

16 MR. SAMPAT: I do.

17 THE COURT: So at least the Federal Aviation
18 Administration does not think it is currently safe to -- for
19 U.S. commercial flights to enter Haiti?

20 MR. SAMPAT: At the time of the issuance of this
21 notice, that --

22 THE COURT: Well, through to March 6, 2026.

23 MR. SAMPAT: It was a forward-looking decision
24 that was made. Right? So -- and it seemed that -- and
25 it's -- in its exercise of authority, it just said that

1 we're going to suspend flights until March 2026 because of
2 these issues.

3 THE COURT: And this had been something that had
4 been ongoing. Right? There had been a bar on the flights.
5 This extends the bar into 2026?

6 MR. SAMPAT: Yes. That is correct.

7 And what I also would note is that the -- and I
8 didn't see a date on the FAA's notice. But the article is
9 dated September 8, 2025, which is before the gang
10 suppression forces came into being. Let's say that.

11 THE COURT: Was authorized?

12 MR. SAMPAT: Was authorized.

13 So how that affects the FAA going forward, can it
14 go back and do anything? I don't know. But --

15 THE COURT: As of today, the FAA hasn't revoked
16 it, right?

17 MR. SAMPAT: That is my understanding.

18 THE COURT: And as of when they first entered this
19 ban, which was -- I don't know if I have that on top of my
20 head, but it was -- I don't want to take the time to look
21 for when it first went into effect. Maybe the Plaintiffs
22 can find it. But at least in 2025, the FAA did not think it
23 was safe to fly into Haiti. Right?

24 MR. SAMPAT: Without knowing when the first notice
25 came out about the ban -- there may have been periods of

1 time in 2025 where it was and when it went into effect after
2 that. So...

3 THE COURT: Well, somehow we'll find when the ban
4 started. And we can confirm that there weren't times when
5 it was lifted.

6 But at least as of September 2025, with respect to
7 what's in the administrative record for the secretary, it
8 was that the Federal Aviation Administration does not think
9 it is safe to fly into Haiti and has banned commercial
10 flights into Port-au-Prince because they're worried about
11 those flights getting attacked by foreign terrorist
12 organizations?

13 MR. SAMPAT: I haven't -- I would need the notice
14 again, your Honor. If the FAA doesn't use the word -- the
15 words that "it is not safe," I would disagree with the
16 characterization that it says -- when the FAA says that it
17 is not safe. There could be different reasons. It could
18 say --

19 THE COURT: Well, let me ask you this: Do you
20 think that one of the reasons the FAA might stop commercial
21 flights from going into Port-au-Prince and Haiti, given
22 concerns about directing small-arms fire at low-flying
23 aircraft, do you believe that that's at a minimum something
24 regarding it's not safe to go in there?

25 MR. SAMPAT: Some source of risk that may be posed

1 by flights coming into Haiti. Sure.

2 THE COURT: A sufficiently high risk that the FAA
3 is stopping commercial flights into Haiti?

4 MR. SAMPAT: Yeah. I think that would be fair.

5 THE COURT: Can you explain to me how it's safe to
6 live in a country or to return to a country when it's not
7 even safe to fly into that country?

8 MR. SAMPAT: Your Honor, again, I'm not a foreign
9 policy expert.

10 THE COURT: I'm just saying as a matter of, like,
11 logic.

12 I mean, by the way, how are the Haitians going to
13 get back? They're going to not take commercial flights from
14 the U.S., because that's not safe. So how are they going to
15 get to Haiti?

16 MR. SAMPAT: I read somewhere in the record that
17 deportation flights were continuing.

18 THE COURT: Oh, so we're okay to risk the lives of
19 people on deportation flights; but on commercial flights,
20 it's not safe?

21 MR. SAMPAT: There could be a whole host of things
22 about which airports are open, which ones are not. That was
23 also part of the record. Again, without having a full
24 understanding of this decision-making and how that goes, I
25 can't say that.

1 THE COURT: Fair enough.

2 At a minimum, conditions on the ground at
3 Port-au-Prince and surrounding regions are sufficiently
4 unsafe that the FAA has banned commercial flights from
5 entering through to March 6th, 2026.

6 MR. SAMPAT: I can say that the FAA has extended
7 its ban on flying into Port-au-Prince until March 2026.

8 THE COURT: And surrounding regions.

9 MR. SAMPAT: I'm sorry?

10 THE COURT: And surrounding regions.

11 MR. SAMPAT: I'm looking at the article. I'm not
12 looking at the notice.

13 THE COURT: It says: continued inability to
14 prevent attacks against aircraft in Port-au-Prince and the
15 surrounding regions.

16 MR. SAMPAT: So the ban -- the FAA's ban is into
17 Port-au-Prince. Again, I'm not a geography expert. So
18 where things are --

19 THE COURT: Neither am I.

20 MR. SAMPAT: Yeah.

21 THE COURT: Because of flights getting shot at and
22 the possibility of flights getting shot down?

23 MR. SAMPAT: That is what this article seems to
24 represent.

25 THE COURT: Making it unsafe to travel into Haiti?

1 MR. SAMPAT: No, your Honor. I wouldn't say it's
2 necessarily unsafe.

3 THE COURT: Making it unsafe to travel into
4 Port-au-Prince?

5 MR. SAMPAT: Sure. Maybe that's as far as we can
6 go.

7 THE COURT: And surrounding regions?

8 MR. SAMPAT: What surrounding -- what those
9 surrounding regions are, we don't know. But there are other
10 airports that are open, according to the record.

11 THE COURT: There are other -- this is the only --
12 the main commercial airport in Haiti. Right?

13 MR. SAMPAT: I don't think that's accurate, your
14 Honor. I think there's others. If I'm remembering the
15 record correctly, I think there were a couple airports
16 that -- at least one airport that was open. I can't
17 remember if it took commercial flights.

18 THE COURT: That's my point.

19 MR. SAMPAT: What I'm saying is, I can't remember
20 if they took them. They may. I just don't know.

21 THE COURT: Okay. So let's go to whether other
22 parts of Haiti are safe.

23 MR. SAMPAT: Give me one moment, your Honor. Let
24 me just pull that up.

25 I have pulled up the other notice -- sorry -- the

1 termination notice.

2 THE COURT: I think somewhere in 436 after it
3 talks about the GDP growth in 2026, it says, quote: The
4 data surrounding internal relocation does indicate parts of
5 the country are suitable to return to.

6 Right?

7 MR. SAMPAT: Your Honor, 436, your Honor?

8 THE COURT: I think so. Unfortunately, I don't
9 have the cite. I'm sorry.

10 MR. SAMPAT: I don't have it in 436. Is it still
11 on the World Bank?

12 THE COURT: No. We're on the Federal Register.

13 MR. SAMPAT: Oh, I apologize.

14 THE COURT: We've moved on.

15 MR. SAMPAT: It's on 435, your Honor.

16 THE COURT: I'm sorry.

17 MR. SAMPAT: No. It's --

18 THE COURT: It's: The data surrounding internal
19 relocation does indicate parts of the country are suitable
20 to return to?

21 MR. SAMPAT: Yes.

22 THE COURT: There's no citation after that
23 sentence. Can you point me to the administrative record,
24 what data it's referring to?

25 MR. SAMPAT: I can't point you to that, your

1 Honor.

2 THE COURT: Can we add that to your list of --
3 this is an important one, because I went through the
4 administrative record, and I'll tell you what I found. And
5 it was a multi- -- it was, like, a 1,400-page record, so I'm
6 not going to represent to you that I read the whole thing.
7 I'm going to give you guys time to either find for me in the
8 administrative record the data that supports that or tell me
9 that there isn't.

10 But certainly, you agree with me there's no
11 citation in the Federal Register for that sentence?

12 MR. SAMPAT: All the citations have been relegated
13 to footnotes. There is no footnote there. So there is no
14 citation.

15 THE COURT: And the next sentence, I believe, does
16 not talk about internal relocation. Right?

17 MR. SAMPAT: I'm sorry?

18 THE COURT: What's the next sentence?

19 MR. SAMPAT: There seem to be other -- sorry. It
20 says: There have also been some other positive
21 developments.

22 THE COURT: So it's not -- whatever gets cited
23 next in the next sentence isn't about whether it's safe to
24 return to other parts of Haiti. Right?

25 MR. SAMPAT: Not in the sentence that immediately

1 follows. But if I may just look down.

2 THE COURT: Sure. Yes.

3 MR. SAMPAT: From a quick cursory review, I don't
4 have anything, your Honor.

5 THE COURT: So let's add that to your list. I
6 think we now have two.

7 MR. SAMPAT: Yes.

8 THE COURT: If it is in the CAR, the areas, I
9 would like to know what areas in Haiti it's safe to return
10 to.

11 MR. SAMPAT: Okay.

12 THE COURT: And I went through the administrative
13 record. If you go to the country -- the Haiti Country
14 Conditions Report.

15 MR. SAMPAT: Could you give me a Bates number,
16 your Honor?

17 THE COURT: Yes. 214.

18 MR. SAMPAT: 214, you said?

19 THE COURT: 214.

20 MR. SAMPAT: I'm there, your Honor. Thank you.

21 THE COURT: You'll see that -- I think maybe at
22 the very bottom it says Freedom of Movement.

23 MR. SAMPAT: I'm there.

24 THE COURT: That's just the title. If you go to
25 the next page.

1 MR. SAMPAT: Okay.

2 THE COURT: And it says -- and this is the Haiti
3 Country Conditions Report that went to the secretary from
4 USCIS. Correct?

5 MR. SAMPAT: This is in the --

6 THE COURT: I want to make sure we're on the same
7 page.

8 MR. SAMPAT: -- country of origin information
9 considerations memo from USCIS.

10 THE COURT: Okay. And just confirm for me that
11 I'm reading this correctly. It's the 2023 annual report on
12 human rights released in April 2024. The U.S. Department of
13 State discussed freedom of movement in Haiti. It says: The
14 law provides for internal movement. And then it says: The
15 government's capacity to ensure the freedom of internal
16 movement and repatriations was weakened by gang violence in
17 the capital.

18 Do you see that?

19 MR. SAMPAT: Oh, yes. Which is that block
20 paragraph right after Freedom of Movement.

21 THE COURT: Yes. I read this correctly, right?

22 MR. SAMPAT: Yes.

23 THE COURT: It goes on to say: Gang violence had,
24 quote, "expanded into previously unaffected regions," end
25 quote. And then, quote, "Kidnappings for ransom by armed

1 gangs increased and affected all parts of society," end
2 quote.

3 Did I read that correctly?

4 MR. SAMPAT: Yes, your Honor.

5 THE COURT: This is all from citing a U.S.
6 Department of State report?

7 MR. SAMPAT: That is my understanding, your Honor,
8 based on the citation found at Footnote 47.

9 THE COURT: Then it says: In addition, the United
10 States Department of State reported that, quote, "Armed
11 gangs are also responsible for conflicts resulting in
12 killings, brutal attacks on citizens, targeted instances of
13 sexual violence, mutilation of human remains, widespread
14 displacement and the destruction of homes and property."

15 Did I read that correctly?

16 MR. SAMPAT: Yes, you did, your Honor.

17 THE COURT: All right. And then if you go down
18 back to the memo, it says: On March 18, 2025, the Internal
19 Organization For Migration noted that more than 60,000
20 people were displaced in Port-au-Prince in the preceding
21 month and more than 1 million people were displaced in Haiti
22 overall.

23 Did I say that correctly?

24 MR. SAMPAT: Yes. That's correct, your Honor.

25 THE COURT: Then it goes on to cite a Human Rights

1 Watch report from 2025 covering events in 2024 that the
2 total number of displaced people, quote, "is more than
3 double the 2022 figure, making Haiti the country with the
4 highest global displacements per capita due to crime-related
5 violence."

6 Did I read that correctly?

7 MR. SAMPAT: You read that correctly, your Honor.
8 The only thing that I will say is that that sentence refers
9 to the Human Rights Watch report. To the extent your Honor
10 was referring to the prior sentence, that cites to something
11 else that I am not really familiar with.

12 THE COURT: Fair enough.

13 MR. SAMPAT: Okay.

14 THE COURT: But fair enough. But -- so the Human
15 Rights Watch report that this memo is citing, so someone at
16 USCIS thinks it's credible, because otherwise they wouldn't
17 rely on it, says what I just said. Right?

18 MR. SAMPAT: Yes.

19 THE COURT: And the March 2025 report by the U.S.
20 Institute of Peace noted that, quote, "As armed groups
21 extend their control into new territories, major roads are
22 impassable," end quote.

23 Did I read that correctly?

24 MR. SAMPAT: Yes, you did, your Honor.

25 THE COURT: And then it goes on: United Nations

1 news quoted independent security expert Robert Muggah
2 regarding control of roadways around Port-au-Prince by gangs
3 in an April 2024 article.

4 It quotes -- and I'm going to skip the first
5 paragraph -- "Gangs are, in fact, controlling very strategic
6 areas of the capital in the main roads connecting
7 Port-au-Prince to the ports and the land borders as well as
8 coastal towns and areas where we see a lot of trafficking
9 happening."

10 Did I read that correctly?

11 MR. SAMPAT: Yes. I believe you did, your Honor.

12 THE COURT: Again, I'm going to let you find, you
13 know, other things. But just looking at that, does that
14 support or contradict the notion that there are safe places
15 in Haiti to relocate to?

16 MR. SAMPAT: Again, because neither one of us are
17 geography experts, as we admitted, I don't know where all
18 this is happening in terms of -- in relation to other places
19 in Haiti. So maybe this is about Port-au-Prince and those
20 areas in Haiti where things are problematic. But there
21 could be other places to return to.

22 THE COURT: And at a minimum, we're talking about
23 ports to land borders as well as coastal towns and areas.
24 Right?

25 MR. SAMPAT: That's my understanding. But I would

1 just note that the two paragraphs your Honor was referring
2 to does start with: United Nations quoted independent
3 security expert Robert Muggah regarding the control of
4 roadways around Port-au-Prince.

5 So the paragraphs seem to be related to
6 Port-au-Prince specifically and maybe the surrounding areas,
7 not the entire country of Haiti.

8 THE COURT: Well, we can talk about how the USCIS
9 determined what it was.

10 But let me make a different point, which is, at
11 least the USCIS report with respect to country conditions,
12 which is one of the reports -- one of the main reports that
13 the secretary relied on, does not support the proposition --
14 it may not negate it in your view; it may not cover the
15 entire country -- but certainly it does not support the
16 notion that there are areas that are safe to return to, does
17 it?

18 MR. SAMPAT: Just on those things, I can't say,
19 your Honor. But I will refer your Honor to Pages 213 and
20 214 on the Bates stamps, which is -- which starts with the
21 Return to Haiti heading, which is right above the Freedom of
22 Movement section.

23 THE COURT: Let me get there. Sorry. I'll have
24 to pull it up.

25 MR. SAMPAT: If it would be helpful, it's 221 in

1 the PDF.

2 THE COURT: Sorry. I needed to pull the CAR. I
3 screwed up. I am not a web surfer.

4 Tommie, if you find it before I do, can you send
5 me the link to the CAR?

6 THE LAW CLERK: Yes.

7 THE COURT: Sorry about that. Can you ask
8 Catherine to send a link to the full thing?

9 THE LAW CLERK: Yes.

10 THE COURT: Imagine if you were in private
11 practice. I was doing this at \$200 every six minutes.

12 MR. SAMPAT: I may be in the wrong line of work,
13 your Honor.

14 THE COURT: I'm definitely in a less -- a line of
15 work that pays me a lot less, at a minimum.

16 Here we are. I've got it now. I'm sorry. Tell
17 me again what page.

18 MR. SAMPAT: So it will be Bates-stamped 214, but
19 in the PDF it will be 221, I believe.

20 THE COURT: Okay.

21 MR. SAMPAT: So I'll just go two paragraphs above
22 Freedom of Movement: The vast majority, 93 percent, of
23 deported individuals plan to return to their home or stay
24 with relatives after deportation. Only 1 percent were
25 unsure where they would go upon their arrival in Haiti.

1 Transportation to areas of origin were -- was
2 most -- was the most frequently immediate need asked for --
3 or need mentioned by deported Haitians, followed by food and
4 a place to stay overnight.

5 That seems to me that there are some places that
6 are safe in Haiti to go to. If an --

7 THE COURT: Well, no. It says there are places
8 where people who are forcefully deported to Haiti go. But
9 it says nothing about whether or not those places are safe.

10 So, for example, when it says the vast majority of
11 deported individuals plan to return to their home or stay
12 with relatives after deportation, I think we can all agree
13 that at a minimum Port-au-Prince is not safe; and if they
14 have individuals with families in Port-au-Prince, it doesn't
15 mean they're safe just because they have friends and family.

16 MR. SAMPAT: I know your Honor is not hearing
17 legal argument on this. We're talking about facts. But
18 this is the crux of our jurisdictional arguments about
19 reasonable people can seem to have disagreements or
20 different opinions on what's safe and what's not.

21 THE COURT: Well, no. For sure.

22 MR. SAMPAT: Right. So --

23 THE COURT: I mean, I don't know. I think
24 probably it's not safe going to a country that has one of
25 the worst humanitarian crises that we've seen and people are

1 getting killed left and right and children are starving to
2 death. I realize it's not my call.

3 What is my call is trying to ensure that there are
4 facts in the administrative record that support the
5 decision. And I know that you don't agree fully with that,
6 but part of my call. And just as -- in terms of the English
7 language, a sentence that says, "Deported persons when they
8 go back live with family and friends" does not say anything
9 one way or the other about whether it's safe to be in those
10 areas. Right?

11 MR. SAMPAT: That's not the only thing I'm
12 focusing on, your Honor. I would say only 1 percent were
13 unsure of what they would return to -- where they would go
14 upon arrival in Haiti.

15 THE COURT: Well, yeah. That also doesn't say if
16 where they end up is safe or not.

17 MR. SAMPAT: Well, I think the number says
18 something. 1 percent of people feeling as being unsure
19 where they would go to. I think that number would be a lot
20 higher if there was -- if there was a tremendous amount of
21 uncertainty if areas were safe. I think that's a
22 reasonable -- that can be reasonably discerned from that
23 statement.

24 THE COURT: Do you think that something that is
25 maybe far more reasonable to discern and actually the

1 correct understanding of this is that people when they're
2 deported back to a country try to stay in the houses that
3 they had or with family? That only 1 percent didn't do
4 that?

5 MR. SAMPAT: That's possible. But my -- but my
6 reading can also be possible. And again, that's --

7 THE COURT: I'm not sure we can agree to disagree
8 on that. But all right.

9 In any event, again, I just want the record
10 citation in the AR for the uncited statement that the data
11 surrounding internal relocation does indicate parts of the
12 country are suitable to return to.

13 MR. SAMPAT: That is the request, your Honor. And
14 we'll do that.

15 THE COURT: You would at least agree with me that
16 where people go is not data surrounding internal relocation?
17 It's describing when people leave the U.S., where they go
18 into Haiti. But it's not talking about whether people
19 within Haiti can relocate into areas that are suitable to
20 return to.

21 MR. SAMPAT: Maybe not explicitly. But I think it
22 could be -- I think it could be six of one, half a dozen of
23 the other.

24 THE COURT: All right. I mean, you and I just
25 have a different understanding of the English language,

1 apparently. But that's totally fine.

2 But let me ask you this, then: With respect to
3 internal relocation, at least the section of the USCIS memo
4 that discusses freedom of movement or internal relocation
5 says that that's impossible or difficult or unsafe. Right?

6 MR. SAMPAT: I would disagree that it says it's
7 impossible.

8 THE COURT: I take away impossible.

9 MR. SAMPAT: Okay. I think it acknowledges
10 certain concerns about relocation. Sure.

11 THE COURT: Armed gangs?

12 MR. SAMPAT: I'm sorry?

13 THE COURT: Armed gangs and their violence.

14 MR. SAMPAT: I --

15 THE COURT: And we're about to get to armed gangs
16 because the secretary is really concerned about those.

17 MR. SAMPAT: So that -- yes. Gangs have caused
18 issues that have led to displacement. I'm not disputing
19 what that -- that the memo acknowledges that.

20 THE COURT: And I do -- so I want to turn to the
21 national interest.

22 MR. SAMPAT: Sure.

23 THE COURT: I do want a little bit of argument on
24 this before we get into the facts. But I have some specific
25 questions to set up the argument.

1 MR. SAMPAT: Okay.

2 THE COURT: Maybe we'll let Plaintiffs talk for a
3 while.

4 MR. SAMPAT: I'm sorry, your Honor. Do you have
5 factual questions?

6 THE COURT: No. I mean, I will later. But for
7 right now, I mainly have more theoretical questions.

8 MR. SAMPAT: Okay.

9 MR. PIPOLY: Your Honor, if I could real quick,
10 are you going to want to hear argument from us on this?

11 THE COURT: Yes.

12 MR. PIPOLY: Mr. Tauber will be able to handle
13 that.

14 THE COURT: Oh, he's going to do some work
15 finally.

16 Your last name is Tauber?

17 MR. TAUBER: Tauber.

18 THE COURT: I thought you said "Talbott." And my
19 trans military decision is *Talbott*.

20 MR. TAUBER: No worries.

21 THE COURT: So I am trying to get my head around
22 what standard the secretary used to assess the national
23 interest prong of the statute.

24 MR. SAMPAT: There is none, your Honor, because
25 it's a discretionary decision that's not reviewable.

1 THE COURT: Well, let's put reviewability aside
2 for a moment.

3 I'm trying to address an APA issue and an equal
4 protection issue, which is: When the secretary was
5 determining whether it was in the national interest for
6 Haitians to return to Haiti, how did she approach that
7 issue? She must have had some standard by which she was
8 judging that determination.

9 MR. SAMPAT: If I may, your Honor.

10 THE COURT: Yes.

11 MR. SAMPAT: So as the register -- the Federal
12 Register notice said it's an expansive standard that
13 encompasses broad considerations -- and I'm quoting --
14 "including foreign policy, public safety" -- I won't go into
15 the parens there -- "national security, migration factors,
16 immigration policy and economic considerations."

17 So --

18 THE COURT: So this broad thing that she
19 considered?

20 MR. SAMPAT: Those are broad factors that can make
21 up national interest and what that constitutes. But that's
22 exactly why judicial review and judicial questioning of,
23 like, what standard should be applied when considering
24 national interest is -- Congress clearly put that beyond the
25 purview of courts.

1 THE COURT: Well, you and I going to agree to
2 disagree on that. But -- because she had to -- she had a
3 factor that she was weighing against. Right? If the
4 secretary came in and said, I don't believe Haitians being
5 in the U.S. is in our national interest because I don't like
6 vanilla ice cream, that wouldn't count. Right? I mean,
7 clearly that would not count.

8 MR. SAMPAT: In terms of --

9 THE COURT: If the secretary said, I think that we
10 should end TPS for Haitians because I don't like vanilla ice
11 cream, and so therefore it's in the national interest for us
12 to end TPS for Haitians, that would clearly not be what was
13 contemplated by the statute. Right?

14 MR. SAMPAT: Your Honor, I don't know.

15 THE COURT: I'm sorry. Are you saying on behalf
16 of the United States government as an officer of this Court
17 that if the secretary made a determination that we should
18 end Haitian TPS standards because it's in the national
19 interest, and the reason I think it's in the national
20 interest is because I don't like vanilla ice cream, that
21 that could plausibly be an acceptable response?

22 MR. SAMPAT: I think it's a broad definition
23 that --

24 THE COURT: Just answer my question. Yes or no?

25 MR. SAMPAT: Yes, your Honor.

1 THE COURT: Well, then --

2 MR. SAMPAT: Because --

3 THE COURT: No, no. Then you think words have no
4 meaning. I mean, at this point, if that's the argument, if
5 that's really how far you think the discretion goes, that
6 the secretary can determine something's in the national
7 interest with respect to Haitians because she herself
8 doesn't like vanilla ice cream, if you think that the text
9 is that broad, then you and I are just not speaking the same
10 language.

11 MR. SAMPAT: But, your Honor, I'm answering --

12 THE COURT: Put aside whether I can review it.
13 I'm just saying about whether or not that would be within
14 the national -- that would be a factor.

15 MR. SAMPAT: There could be issues about vanilla
16 ice cream.

17 THE COURT: Her personal view? You think there's
18 any conceivable issue about the secretary's personal views
19 as to vanilla ice cream that could bear on whether it's in
20 the national interest to extend or not extend TPS status for
21 Haitians?

22 MR. SAMPAT: Based upon your hypothetical, it's --
23 I understand hypotheticals are always incomplete. So I
24 would have a lot more questions about it.

25 THE COURT: Well, ask away. I'll complete the

1 hypothetical for you.

2 MR. SAMPAT: So is that the -- is it just --

3 THE COURT: That's the only reason. That's the
4 only reason.

5 MR. SAMPAT: Does --

6 THE COURT: That's the only thing she's
7 considering.

8 MR. SAMPAT: I would want to know about what's
9 going on with vanilla ice cream in the country. I would
10 have to -- I would have to --

11 THE COURT: "There's a lot of vanilla ice cream,
12 and I don't like it. I don't want to eat it. So therefore,
13 Haitians have to leave."

14 MR. SAMPAT: That sounds like an economic
15 consideration to me.

16 THE COURT: Are you kidding me right now? Listen
17 to yourself.

18 MR. SAMPAT: Well, your Honor --

19 THE COURT: You actually have done a fabulous job
20 today. You really have. I understand that you're in a
21 tough spot. But just take a breath and listen to yourself.
22 It cannot be an economic consideration, an actual economic
23 consideration, that because the secretary doesn't like
24 vanilla ice cream Haitians can no longer be in the United
25 States.

1 MR. SAMPAT: But this goes to the reviewability.
2 I think your Honor --

3 THE COURT: Put aside reviewability.

4 MR. SAMPAT: I understand.

5 THE COURT: If the answer is, "I'm not going to
6 answer the question," fine.

7 MR. SAMPAT: So --

8 THE COURT: That's a better response than, "Yes,
9 that could be a national interest."

10 MR. SAMPAT: So if your Honor's not satisfied with
11 the answer, then there's nothing else to say.

12 THE COURT: I'm just trying to ask. Just take a
13 beat. You're an officer of the Court. You're a lawyer.
14 Just take a beat on this. I'll ask you one more time. If
15 the answer is, "I can't answer that question," I understand
16 and I'll move on.

17 If the answer is, "That constitutes national
18 interest considerations that are valid under the statute,"
19 then you and I are going to have some issues.

20 The question is: If the secretary has a Federal
21 Register notice and says, I think it's safe to go back to
22 Haiti and gives all the reasons, or it's not safe to go back
23 to Haiti or whatever, and I think it's in the national
24 interest to end TPS for all Haitians, 360,000 people,
25 because I don't like vanilla ice cream, could that -- and

1 that's the only reason, and there's not a vanilla ice cream
2 shortage, there's not a vanilla ice cream -- too much of it,
3 Haitians don't eat a disproportionate amount of vanilla ice
4 cream, but I just don't like it, and therefore I think all
5 Haitians have to leave, and putting aside whether it's
6 reviewable, would that actually be something that the
7 secretary could rely on in saying it's not in the national
8 interest for Haitians to stay in the United States?

9 MR. SAMPAT: Because you've asked me to put aside
10 the reviewability portion, I don't have an answer, because
11 it's all hooked to one -- all hooked up to one another.

12 THE COURT: All right. Let's go back to our
13 hypothetical Yankee country. Instead of saying that it's in
14 the national interest on immigration with respect to
15 Haitians, the secretary says the following. She says: I
16 think it's in the national interest to deport as many
17 Catholics as possible, and all people from Yankee are
18 Catholics. So I'm ending TPS status for Yankee, the
19 country.

20 Would she have discretion to do that?

21 MR. SAMPAT: Could your Honor repeat the basis the
22 secretary articulated?

23 THE COURT: She says: I think it's in the
24 national interest to deport as many Catholics as possible.
25 All people from Yankee are Catholic. And therefore, I find

1 it's in the national interest to end TPS status for Yankee.

2 Is that an acceptable exercise of her discretion?

3 MR. SAMPAT: I don't know. And I would say that
4 there would -- based on your Honor's hypothetical, there
5 seems to be a potential constitutional hook to this,
6 obviously.

7 THE COURT: Yeah. There's a big First Amendment
8 hook. Right? You can't just get rid of all Catholics
9 because we don't like them.

10 MR. SAMPAT: Sure. But what I would say is on
11 maybe -- in that sort of circumstance, it would be that the
12 district court doesn't have the authority to review. But in
13 terms of removal proceedings, somebody could raise a
14 constitutional claim and say, I am being targeted based on
15 this and that -- and constitutional questions under -- I
16 think it's 1252(a)(2)(D) are preserved. They could get
17 reviewed through --

18 THE COURT: So even though it's a blatant,
19 unquestionable First Amendment violation, a district court
20 has no role, can't review it under the APA, can't review it
21 on a constitutional claim that's brought before the Court by
22 the Haitians?

23 MR. SAMPAT: I think there's plenty of case law
24 that talks about, you know, dressing up a constitutional
25 claim --

1 THE COURT: No. This isn't dressing it up. I'm
2 saying -- this isn't dressing it up. This is flat-out
3 discrimination. "I don't like Catholic people, and I think
4 that it's not in the national interest for there to be
5 Catholic people in this country. I want them all deported.
6 Everyone from Yankee is Catholic, and therefore I am ending
7 the TPS for Yankee."

8 That is a constitutional violation, square center.
9 I guarantee you that would be a 9-0 Supreme Court decision
10 under any Supreme Court ever existing in this country.

11 MR. SAMPAT: I --

12 THE COURT: Now, of course my question to you is:
13 Is it the Government's position that the district court has
14 no role whatsoever in reviewing the secretary's discretion
15 even if there's a blatant constitutional violation involved?

16 MR. SAMPAT: I think for that, it would be that
17 the question of -- the constitutional question would be
18 preserved for a petition for review. So there would be --
19 there can be review at some point.

20 THE COURT: By whom?

21 MR. SAMPAT: By a Court of Appeals on a petition
22 for review.

23 THE COURT: Why can the Court of Appeals do it but
24 not me?

25 MR. SAMPAT: Because that's -- that's what

1 Congress contemplated.

2 THE COURT: Where is it that Congress can do it on
3 a petition for review, but I can't do anything?

4 MR. SAMPAT: 1252(b)(9).

5 THE COURT: That's the jurisdiction-stripping
6 statute?

7 MR. SAMPAT: These are the removal -- the
8 proceedings --

9 THE COURT: Oh, removal proceedings?

10 MR. SAMPAT: Removal proceedings stripping the
11 statute.

12 I would say in that context, those issues can be
13 preserved. And if it's -- if an individual was being -- if
14 Yankee was being targeted and a Yankee national had an
15 argument that I'm being targeted because of my religion, the
16 way I imagine this playing out would be, they would go in
17 front of -- they would be subject to removal proceedings.
18 They would raise their defenses. They would then go up on a
19 petition for review on -- to the appropriate Court of
20 Appeals. And the Court of Appeals can talk about the
21 constitutional issue.

22 THE COURT: With respect to each individual
23 Haitian. So there would be 350,000 removal proceedings.
24 And those 350,000 people are all going to individually raise
25 a religious constitutional claim, and then those all go up

1 to the Court of Appeals?

2 MR. SAMPAT: So there -- a policy and practice
3 claim could be brought under (b) (9). So I would say that
4 one person could bring a policy and practice claim. I don't
5 know how to --

6 THE COURT: By the way, if your visa ends, you're
7 not automatically put in removal proceedings. Right?

8 MR. SAMPAT: That is correct.

9 THE COURT: You're -- the presumption is that
10 you're going to leave the country.

11 MR. SAMPAT: The presumption is that you will
12 voluntarily leave or depart or whatnot.

13 THE COURT: I can't just put myself in removal
14 proceedings. Right?

15 MR. SAMPAT: One could certainly ask. But
16 obviously, the executive has prosecutorial discretion
17 whether to initiate them in the first place.

18 THE COURT: So it could be that I don't have an
19 avenue for relief. It could be that I just have to stay in
20 the country illegally or leave voluntarily even though
21 there's a massive constitutional violation afoot.

22 MR. SAMPAT: It would be that as -- remaining in
23 the United States because of -- remaining in the United
24 States unlawfully without any status that, you know, there
25 may just not be a district court review of it. One would

1 have to wait until proceedings are commenced.

2 THE COURT: Until. Right? In the meantime, I
3 don't have work authorization. In the meantime, there's all
4 kinds of problems that I have because I'm not in the country
5 legally.

6 MR. SAMPAT: Yeah. I think that's all
7 contemplated by the letter T in TPS.

8 THE COURT: I'm talking about reviewability. I
9 just want to make sure. So the Government's -- what is the
10 best case for the proposition that if there is a blatant
11 constitutional violation, the jurisdiction-stripping statute
12 also strips the Court of the ability to consider whether or
13 not Catholics have been discriminated against in the
14 hypothetical I just gave you?

15 MR. SAMPAT: So I don't have an exact case on
16 point.

17 THE COURT: Or any case.

18 MR. SAMPAT: Any case on point.

19 But what I will say is, I'll cite to *Tazu v.*
20 *Attorney General*, 975 F.3d --

21 THE COURT: Sorry. If you could slow down and say
22 that again.

23 MR. SAMPAT: Sure. It's *Tazu versus the Attorney*
24 *General*, 975 F.3d 292, Third Circuit, 2020.

25 MR. TAUBER: I'm sorry. One more time.

1 MR. SAMPAT: 975 F.3d 292.

2 MR. TAUBER: Thank you.

3 THE COURT: Are you sure?

4 MR. SAMPAT: I believe it's 292.

5 THE COURT: Can you sing a few bars of that case
6 for me?

7 MR. SAMPAT: Sure. The name is *Tazu*, T-A-Z-U,
8 *versus the Attorney General of the United States*. I think
9 the opening line is something like the path matters -- the
10 path in the law matters just as much as in life.

11 THE COURT: 975 F.3d what?

12 MR. SAMPAT: 292.

13 THE COURT: What part are you quoting me?

14 MR. SAMPAT: I don't know -- have a pincite to
15 this. But there's a cite, I believe, to 1252(a)(2)(D) in
16 the decision.

17 THE COURT: (2)(D)?

18 MR. SAMPAT: (A)(2)(D). Yes. It may be down near
19 the end of the decision, where it says something to the
20 effect of constitutional issues and questions are all
21 preserved, and that can be reviewed by a Court of Appeals in
22 a PFR.

23 THE COURT: Oh, yeah. Okay. I did read this one.

24 But this was a due process violation with respect
25 to -- a claimed due process violation with respect to one

1 individual. And the Court doesn't say that -- as I
2 understand it, the district court doesn't have the right to
3 review it, the constitutional review. All it's saying is
4 that he does have review through the removal process.

5 MR. SAMPAT: So yes.

6 THE COURT: It's not saying that the district
7 court doesn't have the ability to consider a constitutional
8 claim under the circumstances I just gave you.

9 MR. SAMPAT: So it doesn't specifically say that.
10 But I think what -- I think the crux of that decision is to
11 say -- if you have issues of -- if you have constitutional
12 claims that arise from the act of removal itself, which is
13 exactly what would really happen here --

14 THE COURT: From the -- no. It's not from the act
15 of removal. It's a constitutional claim based on a Federal
16 Register being unconstitutional, a notice being
17 unconstitutional. In fact, there is no removal in the
18 statute because all the statute does is have visas expire.

19 MR. SAMPAT: Your Honor, I thought the
20 hypothetical had -- your hypothetical had contemplated
21 removal.

22 THE COURT: My hypothetical is now in the world of
23 the TPS world and the Federal Register.

24 MR. SAMPAT: So if the Federal Register on its
25 face said, "I simply want to deport all Yankees" and it

1 doesn't say anything else about Catholicism or anything like
2 that, I think under different -- the standard of review that
3 we're articulating, we think that's sufficient and there's
4 no review of that.

5 But to the extent that there could be some review,
6 maybe it can -- there is a hole through which the Court
7 could exercise authority. I don't think it -- I think the
8 stripping provisions are strong. I think it covers
9 constitutional claims and APA claims.

10 THE COURT: So the Government's position -- and if
11 you want to, like, talk to your colleagues and tell me in
12 the morning. But so far as I understand the Government's
13 position is that in my hypothetical, the secretary says, "I
14 think it's in the national interest to deport as many
15 Catholics as possible. All Yankees are Catholics, and
16 therefore I'm ending the TPS for Yankees."

17 The Government's position is that not only can the
18 Court not look at that because of jurisdiction stripping,
19 not only -- and that includes APA, so the Court can't look
20 at the process by which the secretary got there and can't
21 consider whether or not that's in the national interest, yes
22 or no, and also the district court can't take up a claim
23 that that is a clear equal protection or First Amendment
24 violation in the district court, putting aside removal
25 proceedings.

1 MR. SAMPAT: So I would say because of the way
2 your Honor framed the hypothetical, I would say yes, because
3 you said the secretary --

4 THE COURT: Can or cannot?

5 MR. SAMPAT: Cannot. Because as your Honor put
6 it, the secretary wants to deport all Catholics. So that
7 would be a removal issue.

8 THE COURT: But she's not -- okay. I mean, I
9 don't know. I mean, it feels like we're splitting hairs.
10 "I don't like Catholics. All Yankees are Catholic. And
11 therefore, I'm ending the TPS designation for the country
12 Yankee." Is there a constitutional review of that
13 assessment?

14 MR. SAMPAT: On just that hypothetical, I can't
15 say one way or another, your Honor.

16 THE COURT: All right. Now, with respect to
17 national -- let's just go back to national interest for a
18 moment. With respect to national interest, does -- let's
19 say that the secretary wants to get rid of all Yankees fans.
20 This is where we started with this and this is why the
21 country is called Yankee. She wants to get rid of all
22 Yankees fans. She says, "I want to get rid of Yankees fans,
23 and so I'm ending TPS for Yankee country."

24 There are ten total countries in my hypothetical
25 that have a TPS extension coming up and that have TPS in the

1 U.S. at that time. Right?

2 MR. SAMPAT: Right.

3 THE COURT: Can the secretary say, "I don't like
4 Yankees. I think we should deport as many Yankees as
5 possible, and so therefore I'm ending all TPS," because
6 that's in the national interest for each country? Or does
7 the secretary have to make an individualized determination
8 on a country-by-country basis?

9 MR. SAMPAT: I apologize. I lost your Honor's
10 hypothetical.

11 THE COURT: So --

12 MR. SAMPAT: Go ahead, your Honor.

13 THE COURT: Maybe it'll be easier to go back to
14 Catholics. Let's not do that.

15 There are ten countries in my hypothetical that
16 are designated as TPS countries. One of them is Yankee. We
17 have a Federal Register for Yankee in which the secretary
18 says, "I don't like Yankees fans. And so therefore, I'm
19 ending the TPS for Yankees coming out of Yankee country."

20 MR. SAMPAT: Okay.

21 THE COURT: And then the secretary says the same
22 thing for the other nine countries: "I don't like Yankees
23 fans. So therefore, I'm ending TPS for every country."

24 Does that make sense right now?

25 MR. SAMPAT: It does.

1 THE COURT: Can the secretary just do that? Or
2 does she have to make an individualized determination with
3 respect to each country and the national interest of keeping
4 Yankees or not Yankees and how many Yankees fans there might
5 be in that country and whatnot?

6 MR. SAMPAT: So all ten countries have been
7 designated for TPS --

8 THE COURT: Yes.

9 MR. SAMPAT: -- terminated TPS for Yankees. And
10 then based on that -- based on just the feeling that the
11 secretary doesn't like Yankee fans and she wants to
12 terminate the other nine -- and there's no hook whatsoever
13 to the Yankees on the other nine?

14 THE COURT: There's no what?

15 MR. SAMPAT: No hook. Look --

16 THE COURT: We don't know. That's my question,
17 actually.

18 Can the secretary just say, I assume -- there's at
19 least -- let's say it's a fact that there's at least one
20 Yankees fan in every country. Can the secretary -- can the
21 secretary say, "Because I want to get rid of Yankees fans,
22 I'm just going to end TPS for all of these countries"?
23 Or -- because that's in the national interest.

24 Or does she have to go through each country, A, B,
25 C, D, and say, Country A has enough Yankees fans that it's

1 in the national interest to end TPS for Country A. Country
2 B doesn't have enough Yankees fans. They've only got one
3 out of 3 million people, so it doesn't really matter to the
4 national interest.

5 Does she have to do that analysis for every
6 country? Or can she just say, "I don't like Yankees fans.
7 They are bad for the economy, bad for the national interest,
8 so we're getting rid of them, so we're ending TPS for all
9 countries"?

10 MR. SAMPAT: From the way the statute's written, I
11 think the latter is permissible.

12 THE COURT: She can just say, "We don't like
13 Yankees fans. They hurt the economy. And so for every
14 single country, without doing any individualized
15 determination, we can stop TPS"?

16 MR. SAMPAT: I think the statute certainly allows
17 for it.

18 THE COURT: Where are you getting that reading in
19 the statute?

20 Time is flying. I'm having fun with you today.
21 Hopefully not that I'm playing with you today, but I enjoy
22 this back-and-forth.

23 MR. SAMPAT: I share that sentiment, your Honor.
24 I'm up here. I have to say that.

25 So again, the termination subprovision in TPS, 8

1 USC 1254a(b) (3) (B). Right? If the attorney general
2 determines under Subparagraph (a) that a foreign state no
3 longer continues to meet the conditions for designation --

4 THE COURT: A foreign state.

5 MR. SAMPAT: A foreign state. So -- which goes
6 back to the designation. If --

7 THE COURT: But that's my point.

8 MR. SAMPAT: Yeah.

9 THE COURT: Instead of going state by state and
10 making a determination, she can just say, "I don't like
11 Yankees fans, so we're ending TPS for each of those ten
12 countries"?

13 MR. SAMPAT: So I think that's right. And I will
14 also say, like, it also presumes that those other countries
15 were all designated under the same -- under (C).

16 THE COURT: That was going to be my next question.
17 All right. So that's the Government's position.

18 MR. SAMPAT: Yes.

19 THE COURT: Got it.

20 I am going to want to hear argument from
21 Plaintiffs on this, but we've been going for about an hour
22 and 20 minutes.

23 We got back at 1:30, right?

24 THE COURTROOM DEPUTY: Yes, your Honor.

25 THE COURT: Wow. Time is really flying today.

1 We're definitely going to be back here tomorrow.

2 Let's come back at 3:05.

3 Thank you.

4 MR. SAMPAT: Thank you, your Honor.

5 (Thereupon a recess was taken, after which the
6 following proceedings were had:)

7 MR. SAMPAT: Your Honor, before we begin, I assume
8 you want to hear from Plaintiffs on this?

9 THE COURT: Yes.

10 MR. SAMPAT: Before we do, do we have any idea or
11 do you have a time at which we're trying to end by? The
12 only reason I ask is co-counsel and I have issues with
13 childcare, dog care.

14 THE COURT: Of course. What time do you need to
15 be done by?

16 MS. TORRES: By 5:00, your Honor, if that would be
17 possible.

18 THE COURT: Oh, yes. Yes. We'll be done by 5:00.

19 MS. TORRES: Thank you.

20 THE COURT: Would 4:45 be better? I don't want
21 people to be rushed for childcare or for anything.

22 MS. TORRES: Actually, your Honor, 5:00 should be
23 fine. Thank you.

24 THE COURT: If we're at a natural stopping point
25 before 5:00, we'll stop early. But either way, we'll be out

1 by 5:00.

2 MS. TORRES: Thank you, your Honor.

3 MR. SAMPAT: Childcare is a little bit different
4 than dog care.

5 THE COURT: No, it's not. Dog care is far more
6 important to me.

7 MR. SAMPAT: I have to coordinate.

8 THE COURT: I have a dog and no kids. It's more
9 important. Kids can feed themselves.

10 MR. SAMPAT: I, too, have a dog and no kids.

11 THE COURT: What kind of dog?

12 MR. SAMPAT: A Shih Tzu-poodle-Lhasa Apso mix.

13 THE COURT: What's her name?

14 MR. SAMPAT: I'm sorry?

15 THE COURT: What's her name?

16 MR. SAMPAT: Sonia Elena Ginsburg.

17 THE COURT: If my dog was named that, I would have
18 never been confirmed. That's awesome.

19 Go ahead.

20 MR. TAUBER: For the record, I'd just like to note
21 that my rescue mutt, Max, is very jealous of that name.

22 THE COURT: I thought it was cool because I had
23 Scout from *To Kill a Mockingbird*. But man.

24 I just want to start with a little bit of the sort
25 of what your understanding is of what the national interest

1 standard is or what the secretary is using against it --

2 MR. TAUBER: Sure.

3 THE COURT: -- or what she's supposed to and then
4 have some discussion on this reviewability issue. I don't
5 want to get into the full jurisdictional argument, because
6 we're going to do that tomorrow. But obviously, we can't
7 talk about this without touching on it.

8 MR. TAUBER: Certainly, your Honor.

9 Is there someplace you specifically want me to
10 start? So national interest. Let's take national interest.

11 First, I know your Honor expressed deep skepticism
12 at the beginning of today's hearing as to our nondelegation
13 argument. But all of the questions your Honor was asking
14 the Government about the vanilla ice cream hypothetical,
15 about the Catholic animus hypothetical, goes to: What is
16 the scope of national interest under the TPS statute?

17 And I think both the secretary's definition of
18 national interest in the termination notice and the answers
19 we've gotten here today show very clearly that the statutory
20 phrase, "national interest," is boundless and has no
21 intelligible principle. And that is precisely what makes it
22 unconstitutional under the nondelegation doctrine.

23 THE COURT: So what's your best case for that?

24 MR. TAUBER: I'm sorry?

25 THE COURT: There are lots of statutes that

1 reference national security, national interest, and give
2 discretion to an agency head to assess those. I mean, it
3 seems like that is sort of classically what can be delegated
4 to an agency. We have this process. Under the process, we
5 need to determine whether a substantial group of people are
6 going to be allowed into the country or not. You have the
7 discretion to figure out the national interest.

8 MR. TAUBER: Yes. There certainly are statutes
9 that direct an agency head to act in the national interest.
10 But as we explain in our briefing -- and I unfortunately
11 don't have all the cases at my fingertips right now -- the
12 cases that the Government cites all are cases in which the
13 relevant statute, though it used "national interest" or some
14 analog of that concept, all of those statutes provided
15 guidance to the agency head on how to use that discretion,
16 either by a paragraph-long statement of the intention of
17 Congress or through the provision of guidelines, you know,
18 to guide that exercise of discretion.

19 I don't believe any of the cases that the
20 Government has cited to this Court involve a statute that,
21 like TPS, as to the phrase "national interest," there is
22 absolutely no guiding principle.

23 And I would point your Honor to the recent
24 decision from Judge Howell of this district in the *Perkins*
25 *Coie* case, where she said -- and I quote -- "National

1 interest" --

2 THE COURT: The *Perkins Coie* case.

3 MR. TAUBER: Yes.

4 THE COURT: Williams & Connolly stepped up and
5 actually defended Perkins Coie. The only law firm to do so.
6 I'm just noting.

7 MR. TAUBER: Yes, your Honor. But there, Judge
8 Howell said: National interest is so broad that its scope
9 appears to be essentially unlimited.

10 And that's --

11 THE COURT: That was used as an executive order,
12 not a congressional statute.

13 MR. TAUBER: Well, here, it's even -- yes. Yes,
14 your Honor.

15 But it's the phrase and the lack of guidance to
16 the phrase. And I would say that applies equally well here.

17 But that's a nondelegation argument. Your Honor
18 understands it. It will buy it or not. I get that.

19 But further things to be said about the national
20 interest --

21 THE COURT: We can talk about that more tomorrow.
22 I'm not cutting you off.

23 MR. TAUBER: No, no, no. We've presented the
24 briefing. I'm happy to -- I just want to --

25 THE COURT: Of course, if you want to talk about

1 it or brief more.

2 MR. TAUBER: Sure. So that's the first thing to
3 observe.

4 The second thing to observe is that as a matter of
5 statute, national interest is simply an irrelevant factor
6 when it comes to the periodic review under 1254a --
7 1254a(b) (3) (A) .

8 THE COURT: This is under (C) .

9 MR. TAUBER: No, your Honor. The designation --
10 now I'm distinguishing between the original designation,
11 which is governed by (b) (1) in this instance (C) and the
12 periodic review process under (b) (3) (A) . That's what we're
13 here about today, your Honor, because --

14 THE COURT: Right. But, look, you're not going to
15 get anywhere with me on that argument, because I just cannot
16 imagine that the statute is not written in a way that
17 allows -- that demands, really, that the secretary do a
18 national interest consideration with respect to designating
19 the country that way, but it should not be read as to also
20 say that -- give the secretary the power to undertake that
21 with respect to extending the designation. That just
22 doesn't make any sense.

23 MR. TAUBER: Let me quibble with the premise
24 there --

25 THE COURT: You can quibble as much as you want.

1 MR. TAUBER: -- which is that in (b) (1) (C), which
2 is the basis for designation here, she is not required to
3 consider the national interest. She may. I'm not saying
4 she couldn't at the initial designation period. She may.
5 It's optional.

6 So it's not --

7 THE COURT: My guess is he's going to say --

8 MR. TAUBER: -- so surprising that Congress would
9 have erected a different standard for either the extension
10 or termination for very good reason; namely, once a country
11 is designated, so once the decision has been made under
12 (b) (1) (C), then the designation runs for the period
13 described in the Federal Register notice and it cannot be
14 terminated prematurely.

15 Why? Congress understood and courts have
16 recognized in *HECA*, for example, from the Eastern District
17 of New York earlier this year and other cases that the
18 designation of a country creates reliance interest on the
19 part of the TPS holders who have structured their lives
20 based on the grant of TPS.

21 So once the country is designated, there's a
22 different consideration that comes into play as opposed to
23 the initial designation. Obviously, there are no reliance
24 interests before a designation. But upon the designation,
25 reliance interests do arise.

1 And so this is expressed in the statutes in two
2 ways.

3 First, under -- I'm flipping because I have the
4 words -- under (b) (3), 1254a(b) (3) (A), the periodic review
5 portion of the statute, it says: At least 60 days before
6 end of the initial designation and any extend --

7 THE COURT: You need to slow down when you're
8 reading.

9 MR. TAUBER: I'm sorry. I was going over the
10 fluff. But at least --

11 THE COURT: Just forget the fluff.

12 MR. TAUBER: At least 60 days before end of the
13 initial period of designation and any extended period of
14 designation of a foreign state...under this section, the
15 secretary, not the attorney general, after consultation with
16 appropriate agencies of government, shall review the
17 conditions in the foreign state.

18 And that is to be the basis of her determination,
19 is the conditions in the foreign state.

20 U.S. national interests is not a condition in the
21 foreign state.

22 So under this plain language of the statute, it is
23 to be restricted to the conditions in the foreign state.

24 THE COURT: But it says "whether the conditions
25 for such designation" under this subsection. I would take

1 the "for such designation" as to be with respect to (C),
2 which is the (C) above, which is the temporary conditions
3 and national security -- national interest.

4 MR. TAUBER: Well, your Honor, first of all, as
5 you know, we have an argument that the secretary by the
6 statute which refers to the subsection is not permitted to
7 restrict her review to just the basis for the current
8 designation, but must consider all -- that's obviously a
9 different point -- consider all of the potential bases for
10 designation under 1254a(b)(1).

11 But as far as the language that your Honor points
12 to "and shall determine whether the conditions for" --

13 THE COURT: I think -- you're just reading way too
14 fast.

15 MR. TAUBER: I'm sorry, your Honor. It's a bad
16 habit.

17 THE COURT: And you're also kind of mumbling
18 because you're trying to get over fluff. If you don't want
19 to -- I have it in front of me. You don't have to quote the
20 fluff.

21 MR. TAUBER: I apologize, your Honor.

22 THE COURT: You're fine.

23 MR. TAUBER: When it refers to such designation, I
24 think it's just referring to a designation under (b)(1),
25 because it refers then to the subsection.

1 THE COURT: Under (b) (1) --

2 MR. TAUBER: All of it. (B) (1) has the three
3 possible bases for designation.

4 THE COURT: Right. The one that we're dealing
5 with is (C).

6 MR. TAUBER: Well, that's the basis for the
7 current designation. But we argue based on (b) (3) (A) the
8 secretary must consider the other potential bases when
9 reviewing the conditions in the country.

10 And in this instance --

11 THE COURT: That doesn't make any sense to me.
12 What's the specific words in (b) (3)?

13 MR. TAUBER: The words that we're relying on here
14 is "shall determine whether the conditions for such
15 designation under this subsection."

16 This subsection is a reference to (b) -- to
17 Subsection (b).

18 THE COURT: That makes no sense as a reading,
19 because you could have a situation where you designate a
20 country under (C) where there's no ongoing armed conflict;
21 there never was an armed conflict. So why would they be
22 reviewing whether there's an ongoing armed conflict? That
23 was never the basis for the designation.

24 MR. TAUBER: Surely, if, for example, there's no
25 armed conflict, it wouldn't take much at all. It would be

1 just, like: No. There's no armed conflict. We've
2 reviewed. We're done. But they'd at least have to look at
3 whether there was an armed conflict there.

4 And here, in the case of Haiti, it's not
5 hypothetical. There is an armed conflict. There's an armed
6 conflict between various gangs, amongst themselves --

7 THE COURT: Is there any case that says --

8 And I take it you don't read the statute this way?

9 MR. SAMPAT: Absolutely not, your Honor.

10 THE COURT: See how --

11 MR. TAUBER: It's been a few days since I've
12 reviewed the transcript, but I believe in the *Dahlia Doe*
13 case the Court made --

14 THE COURT: *Dahlia Doe* is a California or New York
15 case?

16 MR. TAUBER: *Dahlia Doe* is Syria out of the
17 Southern District of New York. That's the oral transcript
18 of the ruling. There's no written ruling yet that I'm
19 familiar with.

20 THE COURT: Okay.

21 MR. TAUBER: But the --

22 THE COURT: I'm going to have to disagree with my
23 colleagues on this. I mean, I just -- that just seems like
24 an odd and expansive reading of it. I'm not sure it matters
25 to your argument.

1 MR. TAUBER: Well, it matters to one argument. It
2 doesn't matter to our fundamental argument nor the bottom
3 line.

4 So moving on from that --

5 THE COURT: But my main point is that when we get
6 to (b) (3) (C), that extension of designation, if the attorney
7 general does not determine under Subparagraph (a) that a
8 foreign state or part of such state no longer meets the
9 conditions for designation under Paragraph 1, the period of
10 designation of the foreign state is extended for an
11 additional six months or, in the discretion of the
12 secretary, for 12 or 18 months. Right?

13 MR. TAUBER: Yes. Exactly, your Honor.

14 THE COURT: Okay. But your argument is that that
15 does not include a reference to the secretary considering
16 national interest because it's referring to Subparagraph
17 a(b) (1) (A) and not to (b) (1) (C), which is what contains the
18 national interest prong?

19 MR. TAUBER: No, your Honor.

20 THE COURT: I got that wrong.

21 MR. TAUBER: Let me just back up. I'm not sure I
22 understood. Let me give you my understanding.

23 So 1254a(b) (3) (C) is the default rule.

24 THE COURT: Extension for designation.

25 MR. TAUBER: Yes. Exactly. So under the default

1 rule that Congress established, a TPS designation is
2 automatically extended by default unless the secretary makes
3 an affirmative finding pursuant to the process outlined in
4 1254a(b) (3) (A) .

5 So these --

6 THE COURT: Well, why a(b) (3) (A)? It's only
7 discussing (A) .

8 MR. TAUBER: Well, (b) (3) (A) is the periodic
9 review procedure. That's what directs the secretary to
10 conduct the periodic review and to review the conditions in
11 the designated state.

12 THE COURT: Oh, so (A) here is referring to
13 (3) (A) --

14 MR. TAUBER: Yes, your Honor.

15 THE COURT: -- not (1) (A) .

16 MR. TAUBER: Correct.

17 THE COURT: But nonetheless, your contention is
18 that (3) (A) does not include any reference to anything that
19 references national interest?

20 MR. TAUBER: To the contrary, its reference is
21 very specific. It says: shall determine -- shall review
22 the conditions in the foreign state. That's the critical
23 passage there. "In the foreign state." The U.S. national
24 interest is not a condition in the foreign state.

25 THE COURT: All right.

1 MR. TAUBER: So --

2 THE COURT: You all disagree with that?

3 MR. SAMPAT: Yes.

4 MR. TAUBER: You can assume they disagree with
5 what I say.

6 So then your Honor had --

7 THE COURT: Actually, we had a partner at
8 Williams & Connolly -- I won't say his name -- who was like
9 an old-school criminal defense lawyer that some might call
10 combative. And he went to the hilt for his client. He
11 would fight you tooth and nail on every single argument.
12 And he was part of an ongoing, very complex criminal
13 proceeding in front of the same judge against the Government
14 that I think had been going on over a year, maybe even two.
15 And at one point during argument -- I'll just say his last
16 name is Smith.

17 The Government is like, Mr. Smith has conceded.

18 The judge interrupted and said, Counsel, Mr. Smith
19 has not conceded anything, a single thing in this entire
20 case. I don't know what you're going to say next, but he
21 didn't concede it.

22 But anyway, go ahead.

23 MR. TAUBER: I don't think you can accuse either
24 party here of conceding too much.

25 So let's just talk about the Catholics. It seems

1 easier because that's an obvious constitutional claim
2 notwithstanding the fact that someone from Boston
3 understands exactly why --

4 THE COURT: You're talking fast and mumbling --

5 MR. TAUBER: It's the Catholics.

6 THE COURT: -- because it's a tangential -- you
7 don't really care about it. And I wouldn't care. I think
8 there are very interesting, except I get stressed for her.

9 MR. TAUBER: Certainly, your Honor.

10 So let's take the Catholic example. The
11 Government suggests this Court lacks jurisdiction to review
12 even that outlandish -- the determination of that --

13 THE COURT: I don't think he was suggesting; I
14 think he flat-out said that. I don't think he was
15 suggesting.

16 MR. TAUBER: Very well. The Government has said
17 that the Court lacks jurisdiction to consider even that
18 outlandish hypothetical.

19 The Supreme Court --

20 THE COURT: That individuals if they're put in
21 removal proceedings can do that through removal proceedings.

22 MR. TAUBER: Let's put a pin in that so we have
23 something to say on that, too, your Honor.

24 The Supreme Court has said the Government is wrong
25 in *McNary*. The Supreme Court specifically held --

1 THE COURT: Actually, we were talking to my clerks
2 yesterday and talking about my thoughts on jurisdiction. I
3 was talking about the cases I wanted to talk about, you
4 know, in an opinion when we get there. I was like, Well, we
5 have to cite *McNary*. And Catherine is like, We're
6 definitely citing *McNary*.

7 Go ahead.

8 MR. TAUBER: Yes. It's absolutely central to the
9 issues before this Court. *McNary* --

10 THE COURT: Catherine is on it.

11 MR. TAUBER: It squarely held that constitutional
12 claims are reviewable even if individual determinations are
13 not.

14 That's where we are. We're raising a
15 constitutional claim as well as an APA claim. And of course
16 our APA claim does not go to an individual determination; it
17 goes to the process by which the determination was made.

18 THE COURT: But what if -- this is going to be
19 important when we talk about sort of just what I can and
20 can't do under the APA. Put aside the discussion. This is
21 going to be a discussion for tomorrow. We're going to focus
22 on that a great deal.

23 What if the secretary did everything right,
24 consulted all the agencies, weighed all the data, you know,
25 process-wise did everything she was supposed to do and came

1 to the conclusion that getting rid of Catholics is in the
2 national interest and therefore -- and therefore we're
3 ending TPS for Haiti because they're all Catholics?

4 It's a fine line between what's attacking a
5 process and what's attacking a decision, which is
6 certainly -- I think at a minimum you would agree that
7 there's jurisdiction-stripping of the ultimate decision.

8 MR. TAUBER: Well, to be careful, your Honor,
9 remember that tension or extension under the statute is a
10 ministerial act. The decision-maker must as a matter of
11 fact make the determination required under (b) (3) (A).

12 And if the result of that determination is that
13 the conditions in the country are still such that the
14 conditions for designation are met, she is obligated to
15 extend. Conversely, if in going through the process as a
16 matter of fact she determines that they do not exist, she's
17 obligated to terminate.

18 So it's really the -- the play is in how she
19 reaches the determination because the ultimate extension --

20 THE COURT: But let's say she reached the
21 determination using full and appropriate process and came to
22 the conclusion in her discretion that getting rid of all
23 Catholics was in the national interest.

24 MR. TAUBER: Well, if everything was procedurally
25 proper, presumably our APA claim would vanish except to the

1 extent that the APA as well as simply the Fifth Amendment's
2 equal protection guarantee independently provide that racial
3 animus is not a permissible basis of government action.

4 THE COURT: So I mean, here's what the problem is
5 going to be when we sort of talk tomorrow, just as a spoiler
6 alert for everybody. If you don't want to hear what's going
7 on tomorrow, close your ears. But -- and this has always
8 been a problem with the APA. We can't second-guess the
9 secretary's decision but we can strike something down
10 there's contrary to law. And clearly, a decision that says
11 "We're basing a deportation decision on getting rid of all
12 Catholics" would be contrary to law.

13 MR. TAUBER: Yes.

14 THE COURT: But it's also -- or arguably instead
15 is a merits decision on the secretary issuing her discretion
16 as to whether or not to extend the TPS for Haiti.

17 MR. TAUBER: Your Honor, there are plenty of
18 decisions. I think maybe even *Arlington Heights* -- and the
19 facts are a little fuzzy in my head -- where the
20 decision-maker, the governmental decision-maker, seems to go
21 through the right processes, the zoning hearings and all
22 that, engages in what you'd imagine would be engaged in and
23 then reaches a conclusion that might be consistent with what
24 they've done, but nevertheless is animated by racial animus.
25 And the Supreme Court has held in *Arlington Heights* that

1 that's simply not permissible.

2 So it's the same thing here, too. It's a
3 fundamental --

4 THE COURT: The problem is that we didn't have a
5 jurisdiction-stripping requirement under *Arlington Heights*,
6 as I recall.

7 And I'm just getting back to what is going to be
8 the scope of this jurisdiction-stripping statute and what it
9 allows me under the APA -- they say nothing under the APA,
10 but let's say I disagree with that and I can do something
11 under the APA -- what that exactly allows me to do in the
12 context of an administrative record that, charitably stated,
13 does not support and in fact I think contradicts in all
14 cases the secretary's decision, arguably.

15 But I'm not allowed to second-guess how she reads
16 the administrative record.

17 And so that's where sort of the rubber is going to
18 meet the road when we get into this tomorrow in greater
19 depth. And I think Mr. Kurzban is agreeing with me because
20 he's shaking his head yes. But I mean, I think that's why
21 we're going to have the rubber hit the road. And that's why
22 I want to be very careful when I'm considering the record,
23 when I'm considering the citations, to not be in the lane
24 I'm clearly not allowed to be in. And that is
25 second-guessing the way the secretary read the

1 administrative record, which is why Mr. Sampat repeatedly
2 said to me, Well, different people can read that
3 differently.

4 He was saying that because he's a very good lawyer
5 and he knows that that sets up his argument that even if I
6 read the administrative record as someone reading the
7 English language would, that it's reasonable to read it a
8 different way and my view doesn't count, that it's the
9 secretary's views that count, and I can't do anything about
10 that.

11 Did I get that right?

12 MR. SAMPAT: Yes, your Honor.

13 MR. TAUBER: Well, as the D.C. Circuit has said,
14 quoting -- I believe it was Judge Friendly from the Second
15 Circuit -- "This Court need not engage in naïveté that the
16 general public does not have to engage in."

17 THE COURT: I know. But, look, I'm just -- with
18 respect to my decision, with respect to these other TPS
19 decisions, with respect to appellate review, the rubber is
20 going to hit the road at some point on that question. And
21 putting aside, obviously, on the APA question. But there
22 are other issues.

23 MR. TAUBER: We'll have further argument on this,
24 I believe, tomorrow. But I would just note right now that
25 no court has accepted the Government's argument.

1 THE COURT: Well, you know, the Supreme Court
2 didn't stay the Venezuela decision. So --

3 MR. TAUBER: It's a tea leaf. Who knows what it
4 means?

5 THE COURT: It means very little right now because
6 we've taken over Venezuela, at least temporarily.

7 MR. TAUBER: Yeah.

8 THE COURT: Actually, I don't know if we've taken
9 it over. We've gone into it and taken their president. I
10 should say that, right now, that's all I know.

11 MR. TAUBER: And I note --

12 THE COURT: It doesn't matter. Go ahead.

13 MR. TAUBER: Again, I presume we're going to go to
14 more in-depth discussion tomorrow, so I'm not sure whether
15 the Court wants me to go there or no. But we certainly have
16 arguments specifically in the first instance under 5 USC
17 Section 559 why none of these provisions deprive the Court
18 of the authority --

19 THE COURT: No. Let's save that. I was really
20 focused on national interest for right now.

21 MR. TAUBER: The one thing that your Honor
22 mentioned that probably is worth commenting on is -- or I
23 guess the Government raised this -- the possibility of
24 asserting constitutional claims in immigration court. We've
25 presented you in our briefing case law standing squarely for

1 the proposition that the immigration judges in the Board of
2 Immigration Appeals cannot, will not consider constitutional
3 claims, do not have the institutional mechanisms by which to
4 develop the record for constitutional claims. So it's
5 entirely illusory.

6 And the notion that someone should put themselves
7 into removal hearings just to test it is cruel.

8 THE COURT: You know, he has a job. He's doing
9 it. Okay.

10 MR. TAUBER: Thank you, your Honor.

11 THE COURT: And we are going to get back into the
12 facts unless you wanted to say anything before we get to
13 tomorrow. Maybe tomorrow or later today or whatever. Maybe
14 addressing his nondelegation argument would be useful.
15 Maybe if you want more -- if you want time on that because
16 you want more briefing, of course you can do that.

17 MR. SAMPAT: So on the nondelegation issue, your
18 Honor, I think it's in our briefing. We had raised it as an
19 alternative. We can certainly take that up tomorrow if your
20 Honor would want.

21 THE COURT: Okay.

22 MR. SAMPAT: Are we still going through the
23 termination notice and the footnotes, your Honor?

24 THE COURT: Yes. And as I understand it -- and we
25 can go through this -- the secretary identified three

1 reasons that it's in the national interest to end TPS
2 protection for Haitians. One is immigration issues, which
3 we'll get into. Two is adding strain on local communities.
4 And third is this pull factor with respect to immigration.
5 That's basically it, right?

6 MR. SAMPAT: That is my understanding. If you'll
7 give me one minute, your Honor.

8 THE COURT: Sure.

9 MR. SAMPAT: Thank you.

10 THE COURT: So let's start with immigration. At
11 4376, the Federal Register says, quote, "Haiti lacks a
12 central authority with sufficient availability and
13 dissemination of law enforcement information necessary to
14 ensure its nationals do not undermine the national security
15 of the United States."

16 I read that right, right?

17 MR. SAMPAT: Is there a footnote associated with
18 that?

19 THE COURT: Footnote 27.

20 MR. SAMPAT: 27.

21 I'll read it back into the record. It says: In
22 addition, as is widely known, Haiti lacks a central
23 authority with sufficient availability and dissemination of
24 law enforcement information necessary to ensure its
25 nationals do not undermine the national security of the

1 United States.

2 THE COURT: Correct?

3 MR. SAMPAT: That's correct.

4 THE COURT: Then she cites to that Footnote 27,
5 which is an executive order signed by President Trump in
6 June of 2025.

7 MR. SAMPAT: That is correct, your Honor.

8 THE COURT: And that is an executive order that is
9 aimed at preventing persons from certain countries,
10 including Haiti, from entering the United States. Right?

11 MR. SAMPAT: Yes. I believe that was the 212(f)
12 order.

13 THE COURT: The executive order does not undertake
14 an assessment of whether Haitian TPS holders who are
15 presently in the United States create a national risk.
16 Right?

17 MR. SAMPAT: If I may. If you'd give me one
18 moment, your Honor.

19 THE COURT: Sure.

20 MR. SAMPAT: Let me just make sure.

21 Your Honor, I unfortunately don't have the
22 executive order in front of me.

23 THE COURT: Maybe be ready to answer that
24 tomorrow.

25 My understanding of the executive order that's

1 cited there is bans aimed at preventing persons from certain
2 countries, including Haiti, from entering the United States.
3 So whatever it's saying about its central authority being
4 able or unable to vet nationals before they come into the
5 country, that wouldn't impact people who are already here in
6 Haiti under the TPS. Right?

7 MR. SAMPAT: Yeah. I think that's right. And --
8 but I will -- it was the June 10th, right? Never mind.

9 THE COURT: My favorite DOJ lawyer just walked in.
10 He's great.

11 MR. SAMPAT: He had intended to join me at counsel
12 table to avoid me making Yankee references.

13 THE COURT: Do you want to come up? Are you on
14 this case? No? You're good.

15 MR. SAMPAT: So I am looking at the June 10th
16 notice, which I believe is the proclamation -- I have it in
17 the certified administrative record, your Honor.

18 THE COURT: It's the executive order aimed at
19 preventing people from coming into the country.

20 MR. SAMPAT: Yes, it does.

21 But I will note that it does actually talk
22 about -- it does talk about individuals from Haiti present
23 in the United States.

24 THE COURT: Illegally present in the United
25 States?

1 MR. SAMPAT: Yes.

2 THE COURT: The Haitian TPS holders are not
3 illegally in the United States. They're legally in the
4 United States. Right?

5 MR. SAMPAT: Well, they may have entered
6 unlawfully and then gotten TPS.

7 THE COURT: If they have TPS, they are in the
8 country legally. They have a visa.

9 MR. SAMPAT: Well, it's not a visa, your Honor.
10 It's just that they are --

11 THE COURT: Temporary status. Sorry.

12 MR. SAMPAT: They're temporarily protected from
13 enforcement decisions, sure. But I think this -- they would
14 still be covered in the statistics that are cited here.

15 THE COURT: So it's the Government's view that
16 Haitians who are here under a TPS status who entered the
17 country illegally are in the country illegally right now?

18 MR. SAMPAT: Is that they have temporary protected
19 status but that they may be covered by the statistics that
20 are cited in the proclamation that talk about individuals
21 who overstayed their visas.

22 THE COURT: Do we have any information as to how
23 many TPS holders entered illegally or overstayed their
24 visas?

25 MR. SAMPAT: I don't believe that's in the record

1 in that fine of a detail, your Honor.

2 THE COURT: Well, that's important detail, right?
3 Because when we're talking about the national interest of
4 keeping Haitians under TPS status, a vast majority of the
5 discussion is with respect to illegal immigrants who have
6 overstayed their visas.

7 MR. SAMPAT: That's one way to look at it.

8 I think another way to look at it is a little bit
9 more broadly, which is individuals who may have entered the
10 United States on a visitor visa and then overstayed but then
11 received TPS were -- entered unlawfully, and then that was
12 part of the consideration that went into the --

13 THE COURT: But in order to understand that, we
14 need to know what percentage of Haitian TPS holders that
15 represents. Right?

16 MR. SAMPAT: I --

17 THE COURT: It might be one person; it might be
18 all 360,000 of them.

19 MR. SAMPAT: I think maybe for you and I, your
20 Honor, we may say that sort of minutia would be important.

21 THE COURT: It's not minutia; it's an important
22 point. It goes to the scope of the problem --

23 MR. SAMPAT: It --

24 THE COURT: -- if there is one.

25 MR. SAMPAT: It goes --

1 THE COURT: Right now, can you say with certainty
2 that there are any Haitian TPS holders that are here
3 illegally?

4 MR. SAMPAT: That they have TPS, so, like, I --

5 THE COURT: I'm just saying: Based on the
6 administrative record, is there anywhere in the
7 administrative record from which I could deduce that there
8 are -- for sure their status supports at least one Haitian
9 individual who is here illegally, has overstayed a visa or
10 entered illegally and never had one?

11 MR. SAMPAT: I don't know if that's in the record,
12 your Honor.

13 THE COURT: Well, add that one to your list.

14 MR. SAMPAT: I would defer to the record.

15 But what I will say is, again, if someone had a
16 visa, came here, overstayed and received TPS after that,
17 that was an unlawful entry to begin with.

18 So --

19 THE COURT: Well, those, too. I mean, the notice
20 talks about how individuals who overstay their visas are
21 harder to locate, monitor and increasing vulnerabilities
22 within immigration enforcement systems.

23 So that -- in order for that to apply, that has to
24 assume that there are some individuals who have Haiti TPS
25 status who overstayed their visas. Right? Otherwise, it

1 would be totally irrelevant.

2 MR. SAMPAT: I think we're assuming that they
3 would have Haiti TPS status and then overstayed their visas.
4 I'm talking about a situation in which somebody had a visa
5 that expired and then obtained TPS.

6 THE COURT: Yes. I get you. But how many people
7 are there like that in the country?

8 MR. SAMPAT: I don't know off the top of my head.

9 THE COURT: Does the administrative record know?

10 MR. SAMPAT: There are plenty of statistics in
11 here.

12 THE COURT: I can assure you it does not have
13 that.

14 MR. SAMPAT: So I remember looking at the numbers.
15 I know they were sort of -- I was doing my best. But, you
16 know --

17 THE COURT: Well, I'm going to give you a chance
18 to tell me.

19 MR. SAMPAT: Okay.

20 THE COURT: So that's one of the things I want you
21 to look up. Because you would agree with me at a minimum
22 that if we're talking about one person out of 560,000, that
23 wouldn't really present a national security concern.

24 MR. SAMPAT: No. But I just very quickly pulled
25 this up. It's 164 in the certified administrative record.

1 It's an email from Alicia Ward to Andrew Block, Sarah Miller
2 and Brian Baker that talks about nonimmigrants who
3 overstayed their visas and arrived since June 3rd, 2024.
4 That's at 700 people.

5 Then there is a breakdown of numbers of
6 individuals.

7 THE COURT: Can you give me that again?

8 MR. SAMPAT: Sure. It's -- the Bates stamp is
9 164, so 171 in the PDF.

10 THE COURT: Well, you have a problem now, because
11 for me that's withheld as privileged unless you guys gave
12 that to us --

13 MR. SAMPAT: The numbers -- the numbers are?

14 THE COURT: It might be in something you've since
15 redacted. Hold on. I'm looking at -- I think I'm looking
16 at it. No. Sorry. I'm looking at the wrong CAR.

17 MR. PIPOLY: Your Honor, I'm being told that our
18 version of that has redactions as well.

19 MR. SAMPAT: There are some redactions. But the
20 numbers are not redacted.

21 MS. TORRES: Your Honor, may I approach counsel?

22 THE COURT: Sure.

23 MS. TORRES: (Tenders document to co-counsel.)

24 MR. SAMPAT: So --

25 THE COURT: I'm looking at the wrong one. I'm

1 sorry. I'm looking at the wrong one. Where are you? Where
2 are you? I need to get to the right one.

3 MR. SAMPAT: In our -- in the certified
4 administrative record before the Court --

5 THE COURT: Just give me a moment. I just need to
6 get there. I closed it again.

7 MR. SAMPAT: Sure.

8 THE COURT: Now I have it. Hold on one second.
9 It's Docket Entry 78-5.

10 MR. PIPOLY: I'll show you what I've got here.

11 MR. SAMPAT: Do you mind if I come around?

12 MR. PIPOLY: No. Go ahead.

13 MR. SAMPAT: I see. Thank you.

14 THE COURT: This says as of September -- I'm
15 sorry -- as of June 3rd, 2024, nonimmigrants in valid status
16 who arrived since then is 3,000?

17 MR. SAMPAT: 3,000, yes.

18 THE COURT: And nonimmigrants who overstayed and
19 arrived since [indiscernible] --

20 THE COURT REPORTER: Sorry, Judge. I missed that
21 last part.

22 MR. SAMPAT: I'll say it. The first one is
23 nonimmigrants in valid status who arrived since June 3rd,
24 2024. That number is 3,000.

25 Then nonimmigrants who overstayed and arrived

1 since June 3rd, 2024, that number is 700.

2 THE COURT: These are estimates of people who
3 might become TPS holders?

4 MR. SAMPAT: Those are estimates, yes.

5 THE COURT: You mean potentially eligible, given
6 the new designation with a continuous residence date of
7 4-14-2025.

8 MR. SAMPAT: Yes. Per the email, that's right.
9 But that is -- but it goes to the point that I'm trying to
10 make, which is individuals who overstayed their visas may
11 still get TPS. That doesn't -- that they have protected
12 status, as they remain. That's one thing. But --

13 THE COURT: I understand. But the question is:
14 How many are there?

15 MR. SAMPAT: I don't know if that's in the record.

16 THE COURT: That's my question.

17 MR. SAMPAT: We have that.

18 But again, this is -- I will continue making this
19 point about numbers can mean things different.

20 THE COURT: I understand.

21 It says -- the Federal Register goes on to say:
22 Elevated overstay rates present potential risk to U.S.
23 national security and public safety as aliens who overstay
24 their visas may be harder to locate and monitor, increasing
25 vulnerability within immigrant enforcement systems.

1 Did I read that correctly?

2 MR. SAMPAT: I believe you did. I caught your
3 Honor about halfway down. So everything after "as aliens
4 who overstay" is correct. But I think that's right.

5 THE COURT: Elevated overstay rates present
6 potential risk to U.S. national security and public safety.

7 MR. SAMPAT: Yes.

8 THE COURT: Okay. And as aliens who overstay
9 their visas may be harder to locate and monitor, increasing
10 vulnerabilities within immigration enforcement systems.
11 Right?

12 MR. SAMPAT: That is correct.

13 THE COURT: So a couple questions on that.
14 There's no citation to that. Right?

15 MR. SAMPAT: There is no footnote, which is how
16 the register notice has been routinely citing to sources.
17 No.

18 THE COURT: Okay. Now, what are the normal
19 overstay rates that the secretary compared against to say, I
20 assume -- it's not spelled out exactly -- that Haitian TPS
21 holders have elevated overstay rates?

22 MR. SAMPAT: I believe that's in the Congressional
23 Report.

24 THE COURT: If you'd just give me a citation.

25 MR. SAMPAT: Give me one moment, your Honor.

1 I believe it's cited at Footnote 28. So that puts
2 it at Bates stamp 268, meaning PDF 725.

3 MR. PIPOLY: 268?

4 MR. SAMPAT: Bates stamp 268, yes.

5 MR. PIPOLY: Thank you.

6 THE COURT: My Bates stamp 264 has a report called
7 entry/exit overstay report.

8 MR. SAMPAT: I'm sorry. I didn't catch that, your
9 Honor.

10 THE COURT: My 264 is the start to -- the cover
11 page.

12 MR. SAMPAT: Sorry. It's 268.

13 THE COURT: 278, did you say?

14 MR. SAMPAT: 268 is the Bates stamp, so 275 in the
15 PDF.

16 THE COURT: 275. My Haiti 275 is a table of
17 contents.

18 MR. SAMPAT: I think you're in the right document,
19 though, your Honor. So if you'd give me one moment, I'll
20 find the exact page that we're looking at.

21 It's Haiti 290.

22 THE COURT: 290?

23 MR. SAMPAT: 290, yes. So it's Page 15 at the
24 bottom of the Congressional Report that shows that
25 Haiti's -- I believe their overstay rate is 24.84 percent

1 and their suspected overstay rate is 24.44 percent.

2 THE COURT: This is for nonimmigrants admitted to
3 the U.S. for business or pleasure via air and seaport of
4 entry for non-visa waiver program.

5 MR. SAMPAT: It's one of the numbers I believe
6 cited in the termination notice.

7 But this goes to show that Haiti's overstay rates
8 are higher than countries like Burma, Laos and Suriname.

9 THE COURT: Well, those would include people who
10 are here under TPS status. Right? Potentially. We don't
11 know.

12 MR. SAMPAT: I don't remember if -- I don't
13 recall. I don't think they do.

14 THE COURT: It does not.

15 MR. SAMPAT: No.

16 THE COURT: So you would agree with me if someone
17 came into the U.S. on a visa and, while they were legally
18 here under the visa, got TPS protection status, those people
19 were never here illegally?

20 MR. SAMPAT: If they arrived on a valid visa,
21 their visa authorization never lapsed, they didn't go commit
22 a crime or anything like that, I have no reason to say that
23 their presence in the United States is then unlawful at that
24 point.

25 THE COURT: And when the secretary says aliens who

1 overstay their visas may be harder to locate and monitor,
2 she's not talking about TPS holders, because of course TPS
3 holders report their whereabouts to the government. Right?
4 They're required to notify the government of their address
5 and any address change. Right?

6 MR. SAMPAT: Yes.

7 THE COURT: So when she says, Elevated overstay
8 rates present potential risk to U.S. national security and
9 public safety, as aliens who overstay their visas may be
10 harder to locate and monitor, increasing vulnerabilities
11 within immigration enforcement systems, she's not talking
12 about people who have overstayed their visas and are now
13 under TPS protection because people under TPS protection, we
14 know where they are. We're keeping track of them.

15 MR. SAMPAT: I don't know what that --

16 THE COURT: I'm just talking about the English
17 language here.

18 MR. SAMPAT: I understand that, your Honor.

19 THE COURT: I'm saying as a matter of logic,
20 aliens who overstay their visas may be harder to locate and
21 monitor. That's because if they overstayed their visas, we
22 don't know where they are potentially. They could have
23 moved. They have no obligation to. I mean, they have the
24 obligation to leave the country. But if there's no --
25 they're not telling the country -- the government where they

1 are because now they're here illegally. Right?

2 Potentially.

3 MR. SAMPAT: But it can cover -- it can cover
4 individuals that could potentially apply for TPS that
5 haven't yet but are overstays and haven't --

6 THE COURT: But, see, here's the thing. Here's
7 where you and I are going to have a conversation. Because
8 all of this assumes that the secretary not only extends the
9 Haiti designation, the Haiti TPS for current people already
10 in the country; the argument that you've just started to
11 make and are about to make in more depth assumes that the
12 secretary also redesignates Haiti. Right?

13 Because we went -- that's why I was very careful
14 to go over this this morning. I did that very carefully for
15 this very reason, because I knew we were going to get right
16 to that argument that you just made, which is: The
17 secretary, you said this morning, has the ability to extend
18 the designation for people already in the country but not
19 redesignate. Correct?

20 MR. SAMPAT: That is what I said this morning.
21 Yes.

22 THE COURT: And that is correct, right? You
23 weren't lying this morning? You weren't wrong?

24 MR. SAMPAT: I have no reason to.

25 THE COURT: You're very good at what you do.

1 MR. SAMPAT: One would -- I would hope so.

2 THE COURT: You are.

3 MR. SAMPAT: I appreciate that.

4 THE COURT: Take my word for it.

5 The people who are already in the country, it
6 can't be talking about them who are TPS holders today,
7 because we know where they are.

8 MR. SAMPAT: I would say, your Honor, I think
9 based on the fact that they've -- that the secretary relied
10 on statistics on overstays and things like that also and --

11 THE COURT: We don't know that she did, because
12 she didn't cite to anything here. My guess is she didn't
13 cite to anything here because there's -- I mean, what you're
14 going to tell me is there's nothing in the administrative
15 record that tells me how many people on TPS status were at
16 some point here on an expired visa.

17 MR. SAMPAT: So I don't know if it's in the
18 record.

19 THE COURT: I know. You're going to tell me.

20 MR. SAMPAT: I do my best to --

21 THE COURT: As a matter of logic, this concern
22 about elevated overstay rates, the concern when someone
23 overstays their visa, according to the secretary, is aliens
24 who overstay their visas. Right? That's the concern.

25 MR. SAMPAT: That is the concern based on the

1 termination notice. Yes.

2 THE COURT: All right. That category cannot as a
3 matter of logic include current TPS holders, because we know
4 where current TPS holders are because they're required to
5 send the government their addresses and change of addresses.
6 And we know it can't -- it doesn't need to refer to people
7 coming into the country because the secretary has the
8 discretion of extending the designation without
9 redesignating. So we know that whatever this is, it cannot
10 as a matter of logic concern, does not apply to, current
11 Haitian TPS holders.

12 MR. SAMPAT: I think that presumes that current
13 TPS holders are updating their addresses and whatnot with
14 the government as required.

15 So --

16 THE COURT: But I mean, that's a major assumption.
17 I mean, it doesn't say individuals who are here on TPS visas
18 don't update the government as they're required to.

19 MR. SAMPAT: No. But it --

20 THE COURT: This is talking about individuals who
21 overstay their visas.

22 MR. SAMPAT: In that case, I think we're starting
23 to slice the bread a little thin.

24 THE COURT: No, we're not. We're slicing it right
25 down the middle of the bagel because this is -- there's no

1 onion. There's one big loaf of bread and we are making one
2 cut.

3 MR. SAMPAT: With that, your Honor, I would say
4 it's got to be viewed in the context of the entire notice.

5 THE COURT: I know. That's why I'm going through
6 every part of the notice. I'm just talking about this
7 particular part.

8 MR. SAMPAT: So I --

9 THE COURT: I'm just talking -- I've been very
10 careful to go over this entire notice with you, and that's
11 why I'm doing it. But I'm just talking about this part of
12 the notice, this specific concern, that we cannot say that
13 current Haitian TPS holders are presenting an overstay
14 problem with respect to location monitoring because TPS
15 holders -- in order to get TPS in the first place, we had to
16 know where they were. In order to continue work benefits,
17 we have to know where they are. And we have access to their
18 addresses because they're supposed to tell us about changes
19 of addresses.

20 We also have -- presumably, we'll get to this much
21 later -- their tax information, if we need to actually track
22 them down and they haven't updated us. So what I'm saying
23 is as a matter of logic, this issue cannot possibly apply to
24 Haiti TPS holders.

25 Now, it might apply to the decision whether to

1 redesignate Haiti for new people coming in. Then yes. As a
2 matter of logic, this could apply to that.

3 But we've already assessed that the secretary
4 doesn't have to end the TPS for that -- to keep that out.
5 She can just not new-designate, but continue to extend.

6 MR. SAMPAT: I'm not going to go that far, your
7 Honor, only because I know there are other data tables in
8 this.

9 THE COURT: Well, add it to your list. I want to
10 know what the data says in the administrative record about
11 the number of TPS holders who don't alert the government as
12 to their locations as required to by numerous government
13 forms.

14 MR. SAMPAT: I apologize, your Honor. But I
15 thought the inquiry was about TPS holders who are here
16 unlawfully.

17 THE COURT: That's one. This was another one.
18 Your argument is, Well, even if they have TPS, we might not
19 know where they are because maybe they don't update the
20 government as they're supposed to.

21 I'm saying that's rank speculation and that
22 there's no evidence of that anywhere. But I'm going to give
23 you a chance to prove me wrong.

24 MR. SAMPAT: So the first one is data in the admin
25 record for TPS holders who are not updating their addresses.

1 The second one is the data for TPS holders --

2 THE COURT: Who overstayed their visas before they
3 got TPS.

4 MR. SAMPAT: Okay.

5 THE COURT: Okay?

6 MR. SAMPAT: Got it.

7 THE COURT: Now, let me just ask you this
8 question. Right now, TPS holders are required to update the
9 government on where they are. Right?

10 MR. SAMPAT: Yes, ma'am.

11 THE COURT: And there's, like, 368,000 of them or
12 something?

13 MR. SAMPAT: I think that's a ball-bark figure.
14 But I think that's right.

15 THE COURT: Let's say that this lapses in February
16 of 2026. Right?

17 MR. SAMPAT: Uh-huh.

18 THE COURT: So if they're not here on some other
19 valid visa, those TPS individuals are no longer protected
20 legally in the country. Right?

21 MR. SAMPAT: They would no longer have Temporary
22 Protected Status. Yes. That's correct.

23 THE COURT: They would no longer -- if they
24 stayed -- but they wouldn't be put into removal proceedings.
25 Right? They would be told to leave?

1 MR. SAMPAT: I think that applies regardless of
2 whether somebody has TPS or not if they're here unlawfully.
3 But once they lose TPS status, the enforcement proceedings
4 can take place. They can be put into removal proceedings.
5 But nothing requires the government to put them into removal
6 proceedings.

7 THE COURT: Right. And so let's say that I'm a
8 Haitian TPS holder and I've been here in the country legally
9 under this TPS standard for -- I don't know -- when was this
10 first designated? 2011?

11 MR. PIPOLY: 2010.

12 THE COURT: Let's say I've been here since 2011.
13 Let's say that this ends in February of 2026. And I decide,
14 you know what? They've said I have to leave the country,
15 but I think if I leave the country I'll go to Haiti and I'm
16 going to die. And I would rather take the risk of being put
17 in removal proceedings than know I'm going to go to Haiti
18 and die. So I'm just going to stay in the country.

19 At this point, the government has lost track of
20 these individuals. Right? Because these people are no
21 longer obligated to tell the government where they are.
22 Right?

23 MR. SAMPAT: Your Honor, I will just note that I
24 know there is a registration requirement for other
25 individuals. I just know this. And talking to a colleague

1 of mine, I don't remember the specific context and things
2 like that. But there is a statute that requires
3 registration. And how that's applied, who --

4 THE COURT: For people who are here in the country
5 illegally? Do you think illegal immigrants register their
6 whereabouts?

7 MR. SAMPAT: I think there is -- I think there is
8 a statute that requires it. And I think there --

9 THE COURT: I'm sorry. There's a statute that
10 requires individuals who are here illegally in the country
11 and trying to stay here in the country illegally to register
12 their information with the government?

13 MR. SAMPAT: I think the requirement in the
14 statute is that they have -- there's an obligation to update
15 the government as to their whereabouts, including address or
16 whatnot, and --

17 THE COURT: For illegal immigrants.

18 MR. SAMPAT: So the statute is broad. So I think
19 the statute is --

20 THE COURT: Let's put -- if you want to cite me a
21 statute, cite me a statute. But let's all assume -- make
22 the reasonable assumption that if I'm in the country
23 illegally, I'm not going to tell the government where I am
24 because I want to stay in the country illegally; and if I
25 tell the government where I am, ICE is going to knock on my

1 door potentially. Right?

2 MR. SAMPAT: That -- potentially. But I would say
3 if the entire purpose is to get into removal proceedings to
4 raise a fear claim, then that's --

5 THE COURT: No, no, no. My point is I want to not
6 be in removal proceedings.

7 MR. SAMPAT: Oh, sure.

8 THE COURT: I want to stay.

9 MR. SAMPAT: To -- which incentivizes -- that
10 incentivizes actors to not register their addresses with the
11 government. Sure. I would agree.

12 THE COURT: So what do you think will
13 exasperate -- if this is actually a problem, as the
14 secretary states, right now logically the individuals who
15 are here on Haiti TPS status aren't a part of this problem
16 because they're updating the government on where they are
17 because they're required to do so. Right? I mean, let's
18 just assume that for a moment as a hypothetical, a valid
19 hypothetical.

20 And now all of a sudden my visas have been taken
21 away -- I mean, my protected status has been taken away.
22 I'm no longer in the country legally and now I'm
23 incentivized not to tell the government where I am. Right?

24 MR. SAMPAT: I think that's painted with a broad
25 stroke. But I'm not going to dispute what the general

1 premise is. Sure.

2 THE COURT: So what do you think is better or
3 worse for the problem of not being able to track immigrants
4 in the United States? Having them here on a TPS-protected
5 status, where they're required to report their whereabouts
6 to the government, or saying, We're taking your visas away;
7 we're taking your protected status away; leave the country?

8 MR. SAMPAT: Your Honor, I'm not a policymaker.
9 So as a matter of policy, I don't know.

10 THE COURT: I'm talking about as a matter of
11 logic, because at a minimum, you would want to -- that's
12 something that you would want to look at. Right? If you're
13 saying it's a problem, people overstaying their visas,
14 something that you would have to consider is, would the
15 problem be worse if we end this program?

16 MR. SAMPAT: I would just say, there's nothing I
17 have -- that I would have to consider. It's a question of
18 whether I would.

19 THE COURT: Hold on. Hold on.

20 MR. SAMPAT: I'm sorry.

21 THE COURT: Assume for me I'm allowed to do an APA
22 review. One of the things the APA says is the secretary has
23 to consider important aspects of the problem. Right?

24 MR. SAMPAT: I think it's --

25 THE COURT: I can cite you the exact language.

1 MR. SAMPAT: Yes, please.

2 THE COURT: I'm getting this from *State Farm*. The
3 agency -- an agency rule would be arbitrary and capricious
4 if the agency has relied on factors which Congress has not
5 intended it to consider -- for example, whether or not
6 someone likes vanilla ice cream -- entirely failed to
7 consider an important aspect of a problem, offered an
8 explanation for its decision that runs counter to the
9 evidence before the agency or is so implausible that it
10 cannot be ascribed to a difference in view or the product of
11 agency expertise.

12 I want to focus right now on "entirely failed to
13 consider an important aspect of the problem."

14 If the concern is people overstaying their visas
15 and not being able to keep track of them, I would have to
16 consider how many of those people actually exist in the
17 Haiti TPS population. And then I would have to consider, I
18 think, both sides of the equation. There's a problem that
19 people who have overstayed visas because we don't know where
20 they are.

21 If we get rid of TPS for Haitians, is that going
22 to decrease the number of people who we don't have contact
23 information for or is it going to increase the number of
24 people who we don't have contact information for? Right?
25 That's an important part of assessing the problem.

1 MR. SAMPAT: I think you and I can look at that
2 and say, yeah, maybe this is how you and I -- your Honor and
3 I would look at the issue.

4 But another policymaker, decision-maker, might be
5 like, It's too narrow of an inquiry and wants to say, We
6 want to just talk about broad overstays generally, and
7 that's how we want to analyze the problem.

8 THE COURT: Well, then, they would say overstays
9 generally is a national interest problem. But that's not
10 what this says. This says there's an overstay problem
11 because aliens who overstay their visas may be harder to
12 locate and monitor.

13 MR. SAMPAT: But right before that it talks about
14 the general overstay numbers. So again, I think we have
15 to --

16 THE COURT: But the clause is saying what -- this
17 says: Elevated overstay rates present potential risks to
18 U.S. national security and public safety, as aliens who
19 overstay their visas may be harder to locate and monitor.

20 So it's saying: Here's the problem. And then
21 it's saying why it's a problem.

22 MR. SAMPAT: Right.

23 THE COURT: Why it's a problem is that we can't
24 keep track of people who are on overstayed visas.

25 And so wouldn't as a matter of logic to anyone

1 considering an important aspect of this problem -- wouldn't
2 an important aspect of the problem, as that phrase is used
3 in the English language that you and I have been talking in
4 all day, wouldn't an important aspect of that problem be, if
5 we get rid of TPS status for Haiti, is that going to
6 increase or decrease the number of Haitians here who we
7 don't have contact information for? It's just information
8 you would need to know. Right?

9 MR. SAMPAT: Again, I think there are --
10 reasonable people can differ on how they're going to look at
11 it. But I would go back --

12 THE COURT: You and I, I guess, have a
13 disagreement on what reasonableness is. Fair enough.

14 Now, the secretary also determined -- this is at
15 54736 -- that those who overstay their visas are, quote, "an
16 added strain on local communities by increasing the demand
17 for public resources, contributing to housing and healthcare
18 pressures and competing in an already limited job market."

19 I got that right?

20 MR. SAMPAT: Yes, your Honor.

21 THE COURT: I think she actually says it twice in
22 the Federal Register.

23 MR. SAMPAT: I thought I was having déjà vu. But
24 I think that's right.

25 THE COURT: I looked at both places. There's not

1 a citation in either sentence to that assertion. Right?
2 There's no footnote citation.

3 MR. SAMPAT: Definitely not one here, your Honor,
4 and I don't recall there being one. But if there is, it's
5 in the record. But I don't think so. I can certainly take
6 your Honor's word for it that it's not there.

7 THE COURT: Okay. Where am I going to find that
8 in the administrative record? Let's start with that those
9 who overstay their visas increase demand for public
10 resources.

11 MR. SAMPAT: I can't remember if that was in one
12 of the proclamations issued by the president in the
13 executive orders issued on January 20th, 2025, or if there
14 were -- if there was also mention of it in the June 10th
15 travel ban proclamation.

16 But it may be that --

17 THE COURT: There has to be some data to support
18 that somewhere, right?

19 MR. SAMPAT: I think --

20 THE COURT: I mean, if the president says the
21 earth is flat, the secretary can't say the earth is flat and
22 the data I have to support it is what the president says.
23 She actually needs to have data that the earth is flat; and
24 she actually won't find it, because the earth is not in fact
25 flat.

1 MR. SAMPAT: I think if it's going to comport with
2 administration policies and things like that, I think it can
3 track that there can be strains on local economies and
4 whatnot.

5 THE COURT: I mean, you point to me in the record
6 where there's data -- point to me in the record where this
7 is said and point to me in the record where there's data
8 supporting it. You can add that to your list.

9 MR. SAMPAT: Just to make sure I have this right,
10 you want the citation to the record where there's data on
11 added strain on local communities, increased demand on
12 public resources, contributing to healthcare and housing
13 pressures and competing in the limited job market?

14 THE COURT: Yes.

15 MR. SAMPAT: Okay.

16 THE COURT: If there's another sentence that says
17 that somewhere in the record, that's totally fine with me.
18 But also, point me to where there's data to support that.

19 Again, this was with respect to individuals that
20 overstay their visas. Correct? That was the population
21 we're dealing with in the Federal Register.

22 MR. SAMPAT: Aliens who overstay nonimmigrant
23 visas.

24 THE COURT: So I guess we also need to know how
25 many Haitian TPS holders overstayed their nonimmigrant

1 visas. Right? To see if they're a problem.

2 MR. SAMPAT: I think that may be in the record.

3 THE COURT: Okay. Totally fine. That's one of
4 the things I've already asked you to look at.

5 MR. SAMPAT: Yeah.

6 THE COURT: All right. Now, let me ask you this:
7 If we're going to talk about what strains individuals place
8 on a society, an important part of the aspect about whether
9 they create a strain or not is what benefits they bring to
10 the country. Right?

11 MR. SAMPAT: I think those could be two binary --
12 I think they can be binary. So contributions to the society
13 don't necessarily mean they're not strains on --

14 THE COURT: Of course. But you would have to look
15 at them to offset each other. Right? Because if Haitians
16 overall contribute more to society than they take out, then
17 actually ending the Haiti TPS status would be against the
18 national interest.

19 MR. SAMPAT: Well, perhaps. It's weighing the
20 evidence.

21 THE COURT: Right. But you would have to have the
22 evidence. Right?

23 MR. SAMPAT: So I think --

24 THE COURT: You would have to know what
25 contributions they make before you can say that they're

1 overall net strains.

2 MR. SAMPAT: I don't think that's necessarily -- I
3 don't think -- I don't think so, your Honor. I think
4 especially in light of the travel ban proclamation and
5 things like that where, if we suspend entry, like if -- then
6 a categorical approach to a certain country is absolutely
7 permissible.

8 THE COURT: But we're not talking about -- we're
9 not talking about preventing entry from a country. We're
10 talking about extending a designation of people already in
11 the country.

12 MR. SAMPAT: Right.

13 THE COURT: I'm just -- that where I'm focused
14 right now.

15 MR. SAMPAT: No, your Honor. My point is more --
16 is broader than that, which is that if an incoming
17 presidential administration decided to take Action A as it
18 relates to a country, they can take an action and then take
19 consistent action -- actions that are consistent with its
20 policy priorities.

21 THE COURT: Of course.

22 MR. SAMPAT: Yep.

23 THE COURT: You and I are eye to eye on that.

24 MR. SAMPAT: Okay.

25 THE COURT: But let's talk about what we're

1 talking about today, which is people already in the country.
2 And one of the reasons -- the national interest reasons that
3 the secretary assessed is that those who overstay their
4 visas have an added strain on local communities by
5 increasing demand for public resources, contributing to
6 housing and healthcare pressures and competing in an already
7 limited job market. Right? There are important parts of
8 that problem to consider. And so one is whether there are
9 in a local community housing and healthcare pressures.
10 Right?

11 MR. SAMPAT: I think there are many factors that
12 could go into what this means. I understand, your Honor.
13 I'm just --

14 THE COURT: Hold on. I want yes's or no's.

15 MR. SAMPAT: Sure. Go ahead.

16 THE COURT: If you're discussing that there's a
17 strain on local communities by increasing housing and
18 healthcare pressures, that assumes that in that local
19 community there's housing and healthcare pressure. Right?
20 That's just an assumption in the statement.

21 MR. SAMPAT: I think that's a fair reading of it.

22 THE COURT: Can you and I both agree that not
23 every single local community in the United States of America
24 is currently facing housing and healthcare pressures?

25 MR. SAMPAT: The answer is never all or none. So

1 I think that's fair.

2 THE COURT: You would also need to know that for
3 the local communities in which there are Haitian TPS
4 holders. Right?

5 MR. SAMPAT: But again, I think the statement is
6 meant to be read broadly where it's not --

7 THE COURT: I understand. I understand it's meant
8 to be read broadly.

9 I'm just talking about what parts -- what things
10 you would need to consider to be able to make the statement.
11 You would need to consider if you're saying that someone is
12 a strain on housing and healthcare pressures that there are
13 in fact housing and healthcare pressures. That's just one
14 of the things you would have to think about. Right?

15 MR. SAMPAT: As a listed -- as a listed factor, I
16 think it seems like it was considered. How that -- how the
17 secretary went about considering it, again, I'm not a
18 policymaker.

19 THE COURT: But the secretary can't just pull it
20 out of thin air. Right? Under the APA. She has to get the
21 data from somewhere. I'm just talking about what kind of
22 evidence somebody would have to look at in my pretty simple
23 question.

24 If you're going to say that people are adding to a
25 problem, you first have to say and find support evidence for

1 that there's a problem. Right? That would be an important
2 part of the consideration. I'm saying people contribute to
3 that problem. One of the things I would have to think about
4 is whether there's a problem.

5 MR. SAMPAT: Yeah. I think generally speaking,
6 sure.

7 THE COURT: Great. Okay.

8 The same thing with respect to an already limited
9 job market. Because you and I agree that not every single
10 local community faces a limited job market. Right?

11 MR. SAMPAT: Your Honor, I'm not an economist.
12 I'm not a policymaker. I'm not a foreign policy expert.
13 I'm not an economist. I'm a lot of not's today.

14 THE COURT: Well, at least evidence that you would
15 need to consider is whether in the local communities in
16 which Haiti TPS people live is whether in those communities
17 there's a limited -- already limited job market.

18 MR. SAMPAT: But I would say --

19 THE COURT: Before you say -- you can say whatever
20 you want. I'm going to let you. But just answer the
21 question first.

22 MR. SAMPAT: So the reason I'm not answering it
23 right away is simply to note that that presumes that there
24 are just communities that have only Haitian TPS holders.
25 Right?

1 THE COURT: Indeed. They might have other people.

2 MR. SAMPAT: Right.

3 THE COURT: Yeah. It's something you would want
4 to think about. How many Haitian TPS holders are in a
5 community? But we're going to get to that.

6 But just again, before you can say that people who
7 overstay their visas are straining local communities who
8 already have limited job markets, you first have to consider
9 whether where those individual are, whether those local
10 communities have already limited job markets. It's just
11 logic. Right? That's evidence that would have to be
12 considered.

13 MR. SAMPAT: I think -- I think it -- the record
14 shows that the secretary thought about it and came to --

15 THE COURT: That's not my question, about whether
16 the secretary thought about it. My question is different.

17 My question is what evidence someone would need to
18 look at to make the determination and think about it in a
19 way that's more than -- what word do I want? -- pretextual.
20 So one of the things that someone would want to look at,
21 would need to look at, to determine if Haitian TPS holders
22 are a strain on a local community's limited job market is
23 whether there's a limited job market in the local community
24 in which those people are. Right? You would have to look
25 at that.

1 Now, how you looked at it, how you weighed it,
2 that's not the question. The question is just you would
3 have to look at that part of the problem.

4 MR. SAMPAT: As a -- as a stated reason, I would
5 say that it certainly seems it was contemplated.

6 THE COURT: But you're not answering my -- forget
7 the Federal Register.

8 MR. SAMPAT: Sure.

9 THE COURT: Forget the Federal Register. Forget
10 all of it.

11 We can go back to Yankee land. All right.
12 Catholics in local communities who overstay their visas are
13 a strain on already limited job markets, and therefore we're
14 going to end the TPS designation for Yankee country. Okay?

15 MR. SAMPAT: Uh-huh.

16 THE COURT: Now, before I say that, before I
17 consider that, as a basis to say that keeping them in here
18 is contrary to our national interest, isn't one aspect that
19 I have to look at whether there is in fact a limited job
20 market?

21 MR. SAMPAT: Generally speaking, I would say
22 probably.

23 But what I would say --

24 THE COURT: Come on. "Generally speaking,
25 probably"? How can I say that they're straining a limited

1 job market if I don't know that there's a limited job
2 market? This is just literally logic.

3 MR. SAMPAT: So --

4 THE COURT: Literally we're in Socrates land right
5 now. That's literally logic. Zeno, Plato, we're in that
6 world. We're not talking, like, quantum physics here.

7 MR. SAMPAT: I understand that, your Honor. I
8 think it's -- you know, "job market" again is broad enough
9 to be like, what are the geographic boundaries? Things like
10 that. But sure. Like, I think contemplating or considering
11 what's in the notice -- or let's just keep it to Yankee
12 land. Like if there's a strain, I would think, yes, you
13 have to consider this.

14 But what I would -- what I will add to that is
15 simply that if we're limiting the review to, well, how many
16 Yankee TPS holders are -- or are Yankee TPS holders causing
17 a strain on the local job market, I think that may be
18 narrow.

19 I think in a termination notice, you know, founded
20 on, yes, it's country-specific, but I think overall
21 immigration policy, I think it's absolutely fair to look at
22 the big picture and say: How is this working?

23 THE COURT: Sure. Look away.

24 I'm just talking about the things that you would
25 need to look at while you're looking -- however it is you

1 want to look. First of all, you need to look at evidence
2 that there's a problem. Right?

3 MR. SAMPAT: Sure.

4 THE COURT: And secondly, you need to look at
5 evidence about whether there's a strain. Right?

6 MR. SAMPAT: But again, this goes to -- I know
7 this goes to the national interest and the jurisdictional
8 stuff. I'm not going to --

9 THE COURT: I'm just talking about if you're doing
10 an analysis with respect to whether an individual considered
11 important aspects of a problem, an important aspect of
12 whether or not individuals are a strain on local
13 communities' limited job markets, an important aspect of
14 that is whether there is in fact a limited job market.
15 Right?

16 MR. SAMPAT: I would say you're -- there has to be
17 a decision on whether there's a problem first. Sure.

18 THE COURT: You have to look at evidence on that.
19 Right?

20 MR. SAMPAT: Yes.

21 THE COURT: And then you have to look at evidence
22 establishing that there's a strain. Right?

23 MR. SAMPAT: Well, I would say again, because it's
24 a national interest inquiry, I would say no, because it's in
25 their discretion. It's a discretionary decision.

1 Understanding your Honor may not want to go there or
2 disagrees with the Government on that.

3 THE COURT: I'm not saying that they can't decide
4 that they're a strain. I'm just saying that you would need
5 to consider that. And in order to consider it, you can't
6 just sort of think of things out of thin air. You have to
7 have some evidence to support that analysis. Right?

8 MR. SAMPAT: Well, because, again, national
9 interest is supposed to be broad, it can be a gut feeling
10 sort of thing. And I --

11 THE COURT: If the government's position is that
12 the secretary can have a gut feeling of something and that
13 is sufficient under the APA then, yes, you and I are never
14 going to agree.

15 MR. SAMPAT: Sure.

16 THE COURT: Now, let me say this: Another
17 important aspect of the issue is whether these Catholic
18 Yankee TPS holders, whether they're net contributors or a
19 net strain on a job market. Right? Because you're aware --
20 or you should be aware; you might not be aware -- but that
21 in fact immigrants in this country are responsible for
22 billions, if not trillions, a year in created jobs because
23 they open businesses.

24 So, for example, my personal gym right now, the
25 personal gym that I go to, was started by an immigrant. And

1 he now has three locations in D.C. and is employing over 30
2 people. Now, yes, he took a job as a manager. He started
3 off as a manager of a gym. And now he has contributed over
4 50 jobs to the American economy. He is a net gain of 49
5 jobs to the American economy, and he's an immigrant. Right?

6 So just an example. Obviously, I'm not saying
7 that you need to know that or it's a great -- if you guys
8 want a personal trainer, I highly recommend mine.

9 If you're considering whether or not individuals
10 are a strain on a local community's limited job market, you
11 have to consider -- an important aspect of that
12 consideration is whether those individuals are net
13 contributors of jobs by creating jobs or a net strain on
14 jobs by taking away job opportunities. Right?

15 MR. SAMPAT: I would disagree, your Honor, because
16 in that case somebody may be a net positive or a net
17 negative when it comes to contributions. But they both have
18 positive and negative -- let's call them factors that go
19 into that analysis. If -- if somebody has negative factors,
20 that is -- that can be construed as a strain by itself. And
21 that's -- and that can be enough to say, that's a strain on
22 the local --

23 THE COURT: So the government's position is in
24 making an assessment of an issue with respect to national
25 security, with respect to whether there's a strain on a

1 local community's job market, the secretary does not need to
2 consider at all what contribution the individuals make. She
3 can just look at the strain and not consider at all whether
4 or not they also contribute?

5 MR. SAMPAT: Yes, your Honor. And I think that
6 dovetails nicely with our jurisdictional arguments as to why
7 they're not subject for review. But those -- the national
8 interest determination is not subject for review.

9 THE COURT: Okay. So you guys are going to have
10 homework over the weekend -- or over tonight. We're going
11 to give you or going to email you a BIA, Board of
12 Immigration Appeals, decision which discusses how the
13 national interest is used in another part of the INA. And
14 that actually creates a standard, the BIA decision does,
15 which requires a balancing of net positives versus net
16 negatives.

17 And my friend Tommie here is going to give you the
18 cite right now if she has it.

19 THE LAW CLERK: Yes. It's *Matter of Dhanasar*,
20 D-H-A-N-A-S-A-R. That's the name. And it's 26 I&N Dec.
21 884.

22 THE COURT: I want to email that to you tonight or
23 today.

24 MR. SAMPAT: I'm sorry. You said 884?

25 THE LAW CLERK: 884.

1 THE COURT: And that decision is interpreting --
2 in fact, there was an earlier interpretation of the standard
3 of national interest in the INA in the provision that the
4 BIA overruled.

5 This was, like, 2015 or something?

6 THE LAW CLERK: This is a 2016 decision.

7 THE COURT: And it says: We have a new standard,
8 and the standard requires some balancing.

9 Now, this is in a section of the INA that
10 discusses whether or not the attorney general can waive a
11 requirement for a job listing for an individual who wants to
12 come in on a work visa. So it's not this part of the INA.
13 And I'm not suggesting that it is. I'm suggesting this
14 might be informative. It's something at least to think
15 about.

16 And it's an area in which there is vast discretion
17 with the attorney general and now the secretary on this
18 issue.

19 The BIA did not come to the determination that
20 national interest is a standardless standard and it can be
21 whatever the secretary wants it to be. There's actually a
22 test that they use. And I understand it's not for this
23 national interest.

24 But I do want to talk about this case after you
25 guys have a chance to look at it. I'm not saying it's

1 dispositive. I'm not saying it's anything other than
2 there's a phrase "national interest" in a different part of
3 the INA; and at least one court, the BIA, in a precedential
4 decision, has discussed that there is a standard. All
5 right?

6 MR. SAMPAT: I appreciate that, your Honor. I
7 kind of remember the case because I believe it's actually in
8 the administrative record.

9 THE COURT: Go.

10 MR. SAMPAT: But I will say, if you give me
11 tonight to refresh on it, I appreciate it. But my gut --

12 THE COURT: If it's in the administrative record,
13 I missed it.

14 MR. SAMPAT: Yes. It is.

15 MR. PIPOLY: Yes, it is. Sorry.

16 MR. SAMPAT: No. Go ahead.

17 MR. PIPOLY: It starts at AR 461.

18 THE COURT: Well, Tommie, it wasn't as good a find
19 as I thought it was.

20 But in fairness, she only had yesterday to look
21 for it. So 461.

22 MR. SAMPAT: So I am happy to take your Honor's
23 invitation to refresh my recollection on the case.

24 THE COURT: I'll tell you the part I'm looking at
25 in particular.

1 MR. SAMPAT: Maybe Bates-stamp 468.

2 THE COURT: I'm just trying to find where Tommie
3 sent it to me.

4 MR. SAMPAT: 467 to 468. But 890 to 891 in the
5 decision.

6 THE COURT: Tommie, can you resend me whatever you
7 sent me on the language?

8 I have it here. Hold on one second.

9 The factor that I'm looking at is at 890 and 891.

10 MR. SAMPAT: The United States would still benefit
11 from the foreign --

12 THE COURT: Yes. We emphasize in each case the
13 factors considered must, taken together, indicate that on
14 balance it would be beneficial to the United States to waive
15 the requirements of a job offer and thus of a labor
16 certification.

17 I'll give you tonight to --

18 MR. SAMPAT: I can give you just a quick 30-second
19 overview of my gut instinct --

20 THE COURT: Sure.

21 MR. SAMPAT: -- which is this is the executive
22 defining its own discretion and how it's going to decide its
23 discretion. But that is permissible under the statute.
24 It's judicial review and judicial standards.

25 So if -- this does nothing to displace the *iTech*

1 and *Zhu* decisions from the D.C. Circuit that say there is no
2 review of national interest. And --

3 THE COURT: Well, they don't say that.

4 MR. SAMPAT: I believe *iTech* is pretty broad, your
5 Honor.

6 THE COURT: We can talk about *iTech* in that
7 tomorrow, because this is not that broad. If it were that
8 broad, I would not be having this conversation with you.
9 But I understand your point about the executive making its
10 own determination as to how -- but they're interpreting
11 language. Right?

12 MR. SAMPAT: They're absolutely interpreting
13 language. But, you know, I would say that at least --

14 THE COURT: I guess post-*Chevron*, we don't care
15 what the agency thinks. But at least here, they were
16 interpreting this language.

17 MR. SAMPAT: I will be better prepared on this
18 point tomorrow, but I wanted to give you my 30-second
19 overview.

20 THE COURT: Okay. So it would not matter to
21 you -- it is not an important aspect of the problem for the
22 government to consider how much TPS workers generated for
23 the economy in one year? That wouldn't matter?

24 MR. SAMPAT: No.

25 THE COURT: Are you interested?

1 MR. SAMPAT: Am I interested?

2 THE COURT: Yes. Just personally. Do you want to
3 know?

4 MR. SAMPAT: If your Honor has a number, I --

5 THE COURT: I have lots of numbers.

6 MR. SAMPAT: I'm curious to hear it.

7 THE COURT: A study by Penn Wharton School found
8 that TPS workers generated 35.9 billion -- that's with a
9 B -- in GDP in 2023 with 10.7 billion from Florida alone,
10 followed by Texas, 4.3 billion; California, 3.6 billion; and
11 New York, 2.8 billion. That's a lot of money.

12 MR. SAMPAT: It sure sounds like a lot of money.
13 But --

14 THE COURT: Do you think it's in Florida's
15 national interest to get rid of these people who are
16 bringing in over \$10 billion a year? Because again,
17 remember, we're de-designating -- or the government has
18 de-designated every single TPS country.

19 MR. SAMPAT: Sure. I would say Florida and
20 national interest are sort of contradictory because
21 Florida -- because Florida doesn't get to define national
22 interest.

23 THE COURT: If you're a U.S. citizen who lives in
24 Florida, would you have thoughts about whether we should
25 send all TPS holders home?

1 MR. SAMPAT: Perhaps.

2 THE COURT: Yeah. Okay.

3 MR. SAMPAT: But what I would also say is that,
4 you know, I believe you said -- your Honor said it was Penn?
5 It was the Wharton School of Business that issued that
6 study?

7 THE COURT: Yes.

8 MR. SAMPAT: I don't recall that being --

9 THE COURT: Rest assured, it's not.

10 MR. SAMPAT: I wanted to make sure that was.

11 THE COURT: This goes back to what evidence should
12 be considered as an important aspect of this problem.
13 National interest, given what the secretary has laid out as
14 her standard.

15 MR. SAMPAT: Different studies have different
16 things.

17 THE COURT: I hear you. All right.

18 I want to go through one more issue. After that,
19 we only have a couple on the Federal Register, so we go to
20 argument tomorrow.

21 If you need to leave at any point before 5:00,
22 feel free.

23 MS. TORRES: Thank you.

24 THE COURT: Now, the Federal Register also states
25 the continuation of a devastating political, environmental,

1 social and economic situation in Haiti guarantees an
2 unbroken chain migration, particularly to the United States
3 and Canada, and when combined with already heavy back loads
4 [sic] in processing resident status changes, a large and
5 growing flow of Haitians will persist.

6 That's at 37?

7 MR. SAMPAT: Bottom of 36 to 37.

8 I would just say heavy backlogs. I heard "back
9 load."

10 THE COURT: Sure. That's at Footnote 35?

11 MR. SAMPAT: That is correct.

12 THE COURT: That cites a report from 2013?

13 MR. SAMPAT: That cites -- yes.

14 THE COURT: And basically what that report is
15 saying is that things are so devastating in Haiti that
16 people are forced to flee Haiti?

17 MR. SAMPAT: If I may pull up the document.

18 THE COURT: Sure.

19 MR. SAMPAT: Thank you.

20 Your Honor, I don't have it necessarily as a
21 study.

22 THE COURT: Well, it's a 2013 report. It's cited
23 at Footnote 35.

24 MR. SAMPAT: Yeah. But the document that I have
25 is a published almost academic article.

1 THE COURT: Whatever.

2 MR. SAMPAT: So it does have that. It does cite
3 to that. Yes.

4 THE COURT: Okay. That report that's being quoted
5 says that there's a continuation of a devastating political,
6 environmental, social and economic situation in Haiti that
7 guarantees an unbroken chain migration.

8 MR. SAMPAT: I believe that's a correct
9 characterization.

10 THE COURT: So that study from 2013 first of all
11 doesn't tell us anything about what the current situation is
12 in 2026. Right?

13 MR. SAMPAT: No. But I will point your Honor
14 to -- I don't have it in the CAR necessarily, although it is
15 at the ranges 1008 to 1021. But I have -- the bottom of the
16 page that says 69: The long road to development requires a
17 critical mass of full-time, highly skilled human capital as
18 the preferred in-country agents of growth and development.

19 So --

20 THE COURT: I'm sorry. Is that from the same
21 report?

22 MR. SAMPAT: That is from the same report.

23 THE COURT: The 2013 report?

24 MR. SAMPAT: Yes.

25 THE COURT: My question was a little bit more

1 specific. Can you agree that -- can you and I agree that
2 whatever this report says about the conditions in Haiti and
3 migration with respect to Haiti in 2013 has no bearing on
4 where we are today 13 years later in 2026?

5 MR. SAMPAT: I wouldn't say they have no bearing.
6 They may be precursors to some of this stuff that's going on
7 now.

8 THE COURT: But it doesn't tell us about what the
9 current condition in Haiti is.

10 MR. SAMPAT: Yes. It doesn't reflect a current
11 condition on January 6, 2026.

12 THE COURT: And it doesn't indicate what the
13 current migration pattern is from Haiti to the United States
14 or from the United States to Haiti as of today?

15 MR. SAMPAT: No. But it does -- again, the author
16 does talk about what is -- proposes what's required for
17 Haiti. And in the author's opinion, which is human capital,
18 return of Haitian nationals to help build out Haiti. That
19 is -- it's in the report. That's what was considered.

20 THE COURT: But we're not talking about what's
21 going to make Haiti better; we're talking about what -- the
22 situation Haiti is in today. My only point is that what
23 this report talks about as the conditions of Haiti today --
24 in 2013 has no bearing on what it is today.

25 MR. SAMPAT: Sure. But again, what I would say in

1 making Haiti better -- like this is -- the TPS termination
2 decision is about -- it's forward-looking in a lot of ways.
3 I agree with that.

4 But it seems to be that one of the considerations
5 based on my reading can be that the decision to terminate
6 TPS for Haiti is rooted in, we need Haitian nationals --
7 returning Haitian nationals to Haiti could be a good thing
8 for the country's future to develop --

9 THE COURT: Well --

10 MR. SAMPAT: -- based on this article.

11 THE COURT: The problem you run into is the World
12 Bank numbers that are cited in the Federal Register, which
13 talk about massive unemployment and massive poverty in
14 Haiti. But we don't have to get into that.

15 MR. SAMPAT: Sure.

16 THE COURT: My only point is, 2013 ain't telling
17 you what's happening in 2026.

18 MR. SAMPAT: I'm not going to contest that, your
19 Honor.

20 THE COURT: All right. That gets us to almost the
21 end of the Federal Register, but we don't have the time to
22 do the final thing, so we'll put that off until tomorrow.

23 So tomorrow we'll start at 738 with: DHS records
24 indicate that there are Haitian nationals who are TPS
25 recipients who have been the subject of administrative

1 investigations. So that's what we're going to go into
2 tomorrow.

3 MR. SAMPAT: Okay, your Honor.

4 THE COURT: Okay. When I asked people to put
5 together binders of key cases for me so that we all have a
6 manageable list of cases that we're all dealing with and
7 we're not having to review 300 cases for an argument, you
8 guys were a little overzealous, which is totally fine.

9 But given that we're going to have argument
10 tomorrow that's going to focus on jurisdiction, A, and this
11 APA issue on sort of what's contrary to law versus looking
12 at the secretary's decision, which bleeds into
13 reviewability, you guys get to give me homework. What are
14 the cases that I should be most familiar with? Your top
15 three or four, five each. The ones you really want me to
16 focus on. I'm not going to say you're going to be limited
17 to talking about those. I'm not going to spend all night
18 with you guys. I have more to read from the book. So what
19 cases would I focus on tonight?

20 MR. SAMPAT: On the jurisdiction pieces
21 specifically, I would say *Ramos v. Wolf* from the Ninth
22 Circuit. I would also -- on 1252a(2) (B) (ii), I would say
23 *Zhu versus Gonzalez* from the D.C. Circuit. And *iTech*, the
24 *iTech versus Renaud* case from the D.C. Circuit. That's what
25 I have on those. I don't have anything available on the

1 other ones. I'll take a look at our briefing again.

2 THE COURT: If as you're preparing, if you
3 prepare -- you guys might not -- you certainly deserve a
4 Scotch --

5 MR. SAMPAT: I appreciate that.

6 THE COURT: -- if more cases come to you that I
7 should look at tonight, you guys can feel free to email
8 chambers. Just copy the other side.

9 MR. SAMPAT: Thank you, your Honor.

10 THE COURT: Sounds good.

11 Plaintiffs?

12 MR. TAUBER: If I could have a moment, please.

13 THE COURT: Sure.

14 MR. PIPOLY: Your Honor, while he's looking at
15 that, can I address a few housekeeping things?

16 THE COURT: Yes.

17 Ma'am, you can take off whenever you want.

18 MS. TORRES: Thank you, your Honor.

19 MR. PIPOLY: So first of all, any objection by the
20 Court to -- we've got quite a setup here.

21 THE COURT: There's going to be a cleaner in here
22 tonight. But other than that, it'll be locked up.

23 MR. PIPOLY: So you're okay with us leaving our
24 stuff here?

25 THE COURT: As long as there's not a bomb in

1 there, you're fine.

2 MR. PIPOLY: There is not.

3 THE COURTROOM DEPUTY: They'll need to stack it
4 neatly in the middle of the table or bench because they need
5 to clean the tables.

6 MR. PIPOLY: Oh, sure. I'm fine moving it. I
7 don't want to have to drag it through security tomorrow.

8 THE COURT: Sure.

9 MR. PIPOLY: Second of all, I just wanted to put
10 this on the Court's radar because the Court indicated
11 earlier that we might end up talking about some of these
12 discovery issues tomorrow.

13 THE COURT: We will be discussing -- unless we
14 bleed into Thursday, which I'm hoping we won't -- but yes.
15 That's going to happen before we leave here.

16 MR. PIPOLY: I just wanted to alert the Court so
17 there's no surprise tomorrow that we got -- we learned today
18 that Judge Chen in the *NTPSA I* case ordered extra record
19 discovery on the Haiti termination.

20 I am not --

21 THE COURT: He's a day ahead of me.

22 MR. PIPOLY: I am not entirely sure what the scope
23 of that is. We'll try to wrap our heads around that
24 tomorrow.

25 THE COURT: If you could send that around. When

1 you find the decision or the transcript or whatever, if you
2 could send it around to everyone as soon as you get it.

3 MR. PIPOLY: Absolutely. The order on the docket
4 doesn't really specify. We're trying to suss out exactly
5 what was said. I'm not --

6 THE COURT: By the way, why are Judge Chen and I
7 both looking at this?

8 MR. PIPOLY: I couldn't tell you that, your Honor.
9 We did *Saget* back in the day and we were asked to do it
10 again. And they did *Ramos* back in the day. They were asked
11 to do it again.

12 THE COURT: It's the problem with no nationwide
13 injunction. We're not even at a nationwide injunction.
14 We're at -- whatever. Fine.

15 MR. PIPOLY: They have slightly different theories
16 than we do, for one thing.

17 THE COURT: Okay.

18 MR. PIPOLY: So key cases.

19 THE COURT: Can we all start tomorrow at 10:00
20 a.m.?

21 MR. PIPOLY: Yes.

22 THE COURT: And then just as an FYI, I have to be
23 at a lunch at 12:15, so we're going to have a
24 longer-than-usual lunch tomorrow, because I don't think
25 we'll be done by 12:00. So just FYI.

1 Okay. And was there some other housekeeping --

2 MR. PIPOLY: Just the key cases.

3 MR. TAUBER: I was just going to give you the key
4 cases, your Honor. Sorry. I lost my page right now.

5 So I think one of the jurisdictional issues that
6 we raise is the issue under 5 USC Section 559, where a
7 displacement of the APA must be express. I would say the
8 key cases are *Shaughnessy*, which we cite. I can give you
9 that cite.

10 THE COURT: That's okay. What circuit?

11 MR. TAUBER: I know that --

12 THE COURT: Is that the D.C. Circuit?

13 MR. TAUBER: No. That's the United States Supreme
14 Court.

15 THE COURT: Look at that.

16 MR. TAUBER: And I know the Government in response
17 cites to the *Marcelo* case. You'd probably want to read
18 those as a pair.

19 THE COURT: Thank you.

20 MR. TAUBER: Moving on to the arguments under
21 1254a(b) (5) (A), I would say that the central Supreme Court
22 case on the issue will be *McNary*.

23 And then we have a list of cases specifically in
24 the TPS context that -- and the *TPSA* case, the *HECA* case,
25 the *Saget* case --

1 THE COURT: You're not understanding the --

2 MR. TAUBER: They have discussions there.

3 THE COURT: So you've got *Shaughnessy*, *Marcelo*,
4 *McNary*?

5 MR. TAUBER: Yes. Those are probably the three
6 most important cases from the Supreme Court there.

7 Then on 1252a(2)(B)(ii), I would in fact point the
8 Court to the *HECA* case out of the Eastern District of
9 New York, which cites *Department of Homeland Security versus*
10 *Regents of the University of California*.

11 THE COURT: Okay.

12 MR. TAUBER: And on 1252(f)(1), the critical
13 cases -- and I would say there are -- there will be several
14 here.

15 THE COURT: I'm starting to understand why your
16 binder was so long.

17 MR. TAUBER: There are lots of issues.

18 THE COURT: Give me your top one on that section.
19 Just give me a Supreme Court or D.C. Circuit case. That's
20 really all I care about.

21 MR. TAUBER: The Supreme Court case? Well, I have
22 a Fifth Circuit case.

23 THE COURT: I don't care. I'm not reading a Fifth
24 Circuit case tonight.

25 MR. TAUBER: Then I will say to the Court -- we

1 have the dissenting opinion in *Biden v. Texas*.

2 THE COURT: I'm not reading *Biden v. Texas* tonight
3 either.

4 MR. TAUBER: And a concurring-in-part and
5 dissenting-in-part opinion in *Aleman González*.

6 THE COURT: Anything else on the APA?

7 MR. PIPOLY: No, your Honor.

8 THE COURT: Do you have a case on the
9 nondelegation that you really want me to focus on?

10 MR. TAUBER: There are several.

11 THE COURT: Okay. You get to pick one.

12 MR. TAUBER: *Schechter*.

13 THE COURT: Which one?

14 MR. PIPOLY: *Schechter Poultry*.

15 THE COURT: Okay. I have no idea if there's -- do
16 you have more?

17 MR. SAMPAT: I will just add a couple cases on the
18 1252(f)(1). *Aleman González* from the Supreme Court.

19 THE COURT: Which one?

20 MR. SAMPAT: *Garland versus Aleman González* from
21 the Supreme Court. And *N.S. versus Dixon* from the D.C.
22 Circuit.

23 THE COURT: *Dixon*?

24 MR. SAMPAT: D-I-X-O-N.

25 THE COURT: Okay. I have no idea if there was any

1 press on the phone. If there's still press on the phone, if
2 they're going to be reading the transcript, if there is, I
3 would like to say, anytime I critique a lawyer it gets a lot
4 of press. I have complimented you all day. I will do it
5 again. Hopefully, it gets picked up. Because you deserve
6 it. You have done a phenomenally good job. It's very
7 impressive.

8 My clerks, who only deigned to come to the last
9 half of this, said so. I've said so. I think you've been
10 excellent. Every time you've been in front of me, it's been
11 very impressive.

12 MR. SAMPAT: Thank you, your Honor. If I may just
13 make one point for the record.

14 THE COURT: Sure.

15 MR. SAMPAT: This goes back to our exchange this
16 morning about our discussion about consulting with Secretary
17 Rubio and DHS consulting.

18 Our position and our responses were that DHS
19 directly -- or indirectly -- or didn't directly consult with
20 Secretary Rubio. And that doesn't have anything to do or
21 that doesn't talk about internal deliberations within the
22 State Department that may have happened with Secretary
23 Rubio.

24 THE COURT: Right. Okay. Thank you.

25 MR. TAUBER: Thank you, your Honor.

1 MR. SAMPAT: Thank you, your Honor.

2 THE COURTROOM DEPUTY: All rise.

3 (Proceedings concluded.)

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CERTIFICATE

I, LISA EDWARDS, RDR, CRR, do hereby
certify that the foregoing constitutes a true and accurate
transcript of my stenographic notes, and is a full, true,
and complete transcript of the proceedings produced to the
best of my ability.

Dated this 7th day of January, 2026.

/s/ Lisa Edwards, RDR, CRR
Official Court Reporter
United States District Court for the
District of Columbia
333 Constitution Avenue, Northwest
Washington, D.C. 20001
(202) 354-3269

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

FRITZ EMMANUEL LESLY MIOT,) CIVIL NO.:
) 25-2471-ACR
Plaintiff,)
vs.)
DONALD J. TRUMP, et al.,)
) January 7, 2026
Defendant.) Washington, D.C.
) 10:00 a.m.

Transcript of Motions Hearing
Before the Honorable Ana C. Reyes
United States District Judge

APPEARANCES:

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Proceedings recorded by machine shorthand; transcript produced
by computer-aided transcription

P R O C E E D I N G S

THE CLERK: This is civil action 25-3471, Fritz Emmanuel Lesly Miot, et al. versus Donald J. Trump, et al.

Will the parties please identify themselves for the record.

MR. PIPOLY: Jeffrey Pipoly for the plaintiffs.

THE COURT: Hello.

MR. TAUBER: Andrew Tauber for the plaintiffs.

THE COURT: Hello. Good morning.

MS. INGOLIA: Brooke Ingolia for the plaintiffs.

MS. HARRELL: Kaitlyn Harrell for the plaintiffs.

MR. SAMPAT: Dhruvan Sampat on behalf of the United States.

MS. TORRES: Amanda Torres for the United States, Your Honor. Thank you.

THE COURT: Good morning.

MS. GONZALEZ-HOROWITZ: Good morning, Your Honor. Brenda Gonzalez-Horowitz on behalf of the United States. I've not entered an appearance in this case. I'm just --

THE COURT: You have to leave.

MS. GONZALEZ-HOROWITZ: -- subbing in for Mr. Simon who was here previously.

THE COURT: That's fine. You're better than him anyway.

MS. GONZALEZ-HOROWITZ: I won't tell him you said

1 that.

2 THE COURT: It's on the record; right?

3 Before we get started, one housekeeping issue. I
4 was able to get Judge Chen's order on discovery. I don't know
5 if you all were able to get it.

6 Do you guys have the opinion and order? It's also
7 on the docket.

8 THE CLERK: It's on the docket.

9 MR. PIPOLY: So we communicated a little bit last
10 night with the NTPSA litigators just to get a sense of what
11 exactly was going on there, because if you saw the minute
12 entry on the docket, it wasn't very specific about what was --
13 what exactly he ordered produced.

14 THE COURT: Oh, I don't care what he ordered -- I
15 mean, I care, but I care more that he ordered it.

16 MR. PIPOLY: Yes, he did.

17 THE COURT: Do you guys have that opinion? Do you
18 guys have it?

19 MR. SAMPAT: We do have a minute order, Your Honor.

20 THE COURT: There's an opinion also that was an
21 earlier opinion.

22 MR. SAMPAT: We don't have the opinion.

23 MR. PIPOLY: Nor do we. We didn't know that was out
24 there.

25 THE COURT: It was on the docket. Do you guys

1 already have that earlier opinion?

2 MS. HARRELL: The one from May 2025?

3 MR. SAMPAT: Your Honor, we may have seen it. I
4 just can't remember. But it's not coming to mind.

5 MS. HARRELL: Yes, we do.

6 THE COURT: Okay. We are going to send you the
7 order and the opinion, just so that we all know what we're
8 doing. Apparently, I also have a transcript that was not
9 docketed publicly. But I have not looked at it yet. Before I
10 look at it, I'll figure out if I'm allowed to send it to you
11 guys. If I'm not, I won't look at it. All right.

12 MR. PIPOLY: Thank you, Your Honor.

13 THE COURT: Anything from you all?

14 MR. PIPOLY: Just a couple of quick housekeeping
15 things, if we could before we get started.

16 THE COURT: Sure.

17 MR. PIPOLY: In terms of the sequencing today,
18 Ms. Harrell has two kids at home back in New Orleans, and --

19 Two; right? Okay. That's what I thought.

20 THE COURT: It's the same, two, three, who cares.
21 Although when you go to three, you can no longer play
22 man-to-man. Speaking of which, my Patriots are doing awesome
23 this year.

24 MR. PIPOLY: They are. Drake May, who would have
25 thunk.

1 But anyway, just in terms of the sequencing, because
2 she's sort of our discovery guru, has a plane to catch to get
3 home to see her kids. We were sort of hoping we could maybe
4 not save that until the very end.

5 THE COURT: What time do you need to be out of here
6 by?

7 MS. HARRELL: The end of the day. There's an 8:30
8 flight tonight.

9 THE COURT: I don't want you on the last flight.
10 What's an earlier flight? What's like the 5:00 or 6 o'clock
11 flight?

12 MS. HARRELL: It's at 3:20, which is going to be
13 hard.

14 THE COURT: We can do it this morning. We can do
15 the argument this morning and then I can do an order later in
16 the afternoon or tomorrow morning. I was probably going to
17 have to call you all back just on video to do it just because
18 I want to have an oral order. So why don't we just have the
19 argument now and then you can take off whenever you want.

20 And then if I feel like I'm ready today, I'll --
21 I'll wait till you're back. We'll -- what I'll do is, let's
22 just get together tomorrow morning by video just so I can read
23 the order in. And then we'll just plan on that. Does that
24 make sense? It will have to be 11:00, 11:30.

25 MR. PIPOLY: That works for us, Your Honor.

1 THE COURT: Does that work for you?

2 MR. SAMPAT: That works for us.

3 MR. PIPOLY: And -- sorry.

4 THE COURT: Go ahead.

5 MR. PIPOLY: Just similar lines, I've got a family
6 obligation and a plane to catch at about 5:00 from Dulles, but
7 my plan was to leave here about 3:00, 3:15 and then Zoom in
8 and just follow along from the car or something.

9 THE COURT: By all means.

10 MR. PIPOLY: Thank you, Your Honor.

11 THE COURT: Okay. Don't let me get in the way of
12 your-all's plane schedules.

13 All right. Who wants to go first on the argument?

14 MR. PIPOLY: On discovery?

15 THE COURT: Yeah.

16 MR. PIPOLY: I suppose it should be us.

17 THE COURT: I'm sorry, is someone going?

18 So just talk to me about why -- well, first of all,
19 I mean, obviously, let me just put on the record that I do
20 find I have jurisdiction on the constitutional claims. So I
21 have jurisdiction to order discovery. And I have not yet made
22 a decision on the APA claims. But I have jurisdiction to
23 determine my jurisdiction.

24 And I also, I think, given the jurisdiction I have
25 to order discovery on the constitutional claims, I want to

1 make sure that what I do comports with the APA in case that's
2 the standard we are going to be using.

3 So talk to me about why I'm allowed -- or Mr. Sampat
4 or whoever -- can tell me why I'm not allowed to order extra
5 record discovery.

6 MS. HARRELL: Well, Your Honor, we believe that it's
7 appropriate for the Court to order extra record discovery in
8 this case for -- I guess we can start with equal protection.
9 We believe that we're entitled to do discovery on the
10 constitutional claims, so we should get extra record discovery
11 to --

12 THE COURT: I mean, for the constitutional claim,
13 it's not really extra record discovery. It's just discovery.

14 MS. HARRELL: It's just discovery. Right.

15 THE COURT: Yeah, so but I want to -- I want to
16 focus us on the APA claim, because whatever discovery -- I'm
17 not going to give you wide-ranging discovery, because we are
18 here on an administrative action at the end of the day.
19 Whether it's an unconstitutional one or one that violates the
20 APA, I'm just not going to let you all run loose in the
21 Department of Homeland Security.

22 So can you just sort of talk about sort of the
23 bad-faith standard and the standard for discovery and then we
24 can have an argument on that. And then I want to have an
25 argument on the scope of discovery.

1 MS. HARRELL: Okay. Well, Your Honor --

2 THE COURT: One second.

3 Okay. Go ahead. Sorry.

4 MS. HARRELL: So, Your Honor, I just sort of heard
5 you mentioning the Census decision, and I think that here
6 that's really a good --

7 THE COURT: I guess I don't whisper as quietly as I
8 thought. Go ahead.

9 MS. HARRELL: I think it's the microphone that's
10 getting you.

11 So it's our position, okay, we read the *Department*
12 *of Commerce* case and go through that. I recognize the Supreme
13 Court, in that case, found that while the district court was
14 premature in ordering the extra record discovery, ultimately,
15 that was the right decision based on what was borne out by the
16 extra record discovery, because they did find evidence of bad
17 faith there. And --

18 THE COURT: It was a little bit of a chicken-egg
19 problem, right, because once the discovery was ordered, the
20 discovery revealed that the secretary had allegedly supporting
21 the contention that the secretary had been acting in bad
22 faith.

23 MS. HARRELL: Yes, Your Honor.

24 THE COURT: And so I think at the end of the day, my
25 view of the case -- and I'm sure Mr. Sampat has a different

1 view, but my view of the case was that the indicia of bad
2 faith is sort of sufficient to allow extra record discovery,
3 but that extra record discovery has to go in a narrow, you
4 know, scope that I think the Court was particularly concerned
5 about.

6 I think there was the order of the deposition of the
7 secretary or something to that effect. And I think that that
8 was maybe a concern that the Court had that the district court
9 had gone too far. But you tell me what you think.

10 MS. HARRELL: Well, I see the Court's point on this
11 chicken-and-egg problem here. But we don't know what's in
12 there until we get it and, you know, so I do recognize that
13 issue.

14 THE COURT: I don't think we have a chicken-egg
15 problem here. I think we know that there's an egg. But I
16 think that that was sort of the Court had the reasoning of,
17 well, maybe the district court shouldn't have done this but
18 now that they did it, it bears out, you know, the allegations.

19 And my understanding of the case is that the Supreme
20 Court has thus said to district courts, if you have indicia of
21 bad faith, then you can step outside of the extra record --
22 you can step outside of the record for discovery, but it has
23 to be, you know, really bad faith and it has to be narrow
24 discovery, is sort of my takeaway.

25 MS. HARRELL: And, Your Honor, we would submit that

1 there is sufficient indicia of bad faith to be at that point
2 at this point. And I think that our discovery letter, at
3 pages 8 through 10, really -- that gives you all of the really
4 specific examples of what we're -- what we would submit are
5 examples of bad faith.

6 And so we'd submit that we're there. We think that
7 the case law is in support of that. We think that the
8 *Department of Commerce* case is really helpful here, because it
9 does kind of instruct, okay, this is the sequencing of things
10 here. We think that we've met the standard for bad faith
11 based on what we brought out in our discovery letter. So we
12 think that we're entitled to -- entitled to the extra record
13 discovery based on the evidence of conduct and bad faith.

14 THE COURT: Okay. Mr. Sampat, or whoever's going to
15 be arguing.

16 MS. TORRES: Good morning, Your Honor.

17 THE COURT: Hi. Good morning.

18 MS. TORRES: As Your Honor mentioned previously, the
19 standard for -- well, discovery is rare in APA cases; right?

20 THE COURT: I mean, it was before 2025, I guess.

21 MS. TORRES: Right. And here we are, plaintiffs --
22 the basis for their bad-faith claim for extra record discovery
23 are statements -- public statements made by officials, that we
24 know, in *Trump v. Hawaii*, are permissible. And so I
25 understand their contention that we don't know what's there,

1 so we need to conduct discovery to determine what's there.

2 THE COURT: Well, let me just like -- let me just
3 break that sentence up or those two sentences. The first,
4 Trump -- I know Trump v. Hawaii well. I can recite Trump v.
5 Hawaii in my sleep. Trump v. Hawaii did not say that it was
6 permissible for individuals to just tweet whatever they want
7 and that can have no impact on the Courts.

8 The issue in Trump v. Hawaii was that the initial
9 tweets were months and months and months removed from what was
10 the revised executive order. And it also was by the
11 President, not by the individual in office who was supposed to
12 exercise objective discretion in executing a congressional
13 order.

14 So I think, you know, you and I can probably agree
15 about what President Trump said as a candidate. I don't think
16 that courts should be -- you know, at least based on what I've
17 seen in this case, it would be rare, I think, for a Court to
18 say, well, presidential candidate said X, so therefore, that's
19 bad faith, because that's what the voters voted for. Maybe
20 not for that particular, but they voted for that candidate
21 because that person became the President.

22 So -- but I think we're dealing with a separate
23 situation here, and that is, is that we have Secretary Noem
24 who made tweets about TPS decisions before she made the
25 decisions while she was the secretary. And I think that that

1 sort of squarely goes to their contention that this was a
2 preordained result and bad faith.

3 And I don't think that we just have, here, the
4 tweets. So I mean, I have a list. You know, I find it, I
5 think, incredibly concerning, in terms of a preordained
6 bad-faith result, that there were 12 countries with TPS
7 designations and all of them have been not extended. I just
8 do not see how, in good faith, we can say the secretary did an
9 individual, not preordained result as to each country.

10 Now, I understand that the government's response is
11 well, okay, well, then maybe -- okay, she doesn't have to make
12 an individualized determination. She can just say we just
13 think it's not in the national interest to have any people
14 under TPS, and so, therefore, we are just going to deny all
15 TPS. I mean, I think you have a serious issue there with the
16 separation of powers and not what they're doing being contrary
17 to law. But I also think, given the other indicia, that that
18 supports a bad-faith finding.

19 The TPS review here did not follow in any way,
20 shape, or form what had been followed with respect to previous
21 administrations and set out in the 2020 GAO report. And I
22 find the contention that there was consultation with the State
23 Department because there was an email that was responded to on
24 a Friday night, if not patently in bad faith, certainly is a
25 strong showing of bad faith. Or if not bad faith, a

1 preordained assessment, and we're just going to try to paper
2 this so that the district courts can see that we actually,
3 quote/unquote, consulted.

4 I think that even -- I mean, I think that that is a
5 strong showing of bad faith. I don't think -- I don't know
6 that it is bad faith, haven't made that determination yet, but
7 is it a strong showing of bad faith? It sure is. It's a
8 strong showing of a preordained result and that you're just
9 trying to paper it, I think it's a showing of that.

10 I think that the fact that there was a decision in
11 the summer which clearly did not follow the APA and then the
12 Court said you guys have to follow the APA. And then people
13 tried to paper it over, allegedly, I'm like what the
14 plaintiffs are saying, and have the exact same result with
15 almost the exact same reasoning is a strong showing of bad
16 faith.

17 I think that the -- I understand, I'm fully aware
18 that I cannot second-guess the secretary's weighing of
19 evidence, but I think the -- what we went over yesterday as to
20 how there were cherry-picked statements from -- to support
21 that things are safe in Haiti when all of those cherry-picked
22 statements are talking about what will happen in the future.
23 There was not a single statement that what was happening in
24 Haiti right now, today, is safe.

25 I think that, at a minimum -- now, I will say for

1 the Federal Register and for the secretary and the fair
2 responses, the Federal Register did lay out in some detail the
3 problems in Haiti right now. That is fair and that is right.
4 So I think this is sort of less of a showing than some of the
5 other issues, but I think once you get them all together, they
6 start to paint -- they start to paint a picture of a showing
7 of bad faith.

8 And let me just make sure I -- so here's -- I mean,
9 here's the bottom line, is that I think that even requiring a
10 very, very high bar for extra record discovery of agency
11 decision-making, I think we are there.

12 And I've just said a lot, I realize. And I realize
13 that, you know -- I'm going to let you now talk and stop
14 talking, but I just want to be sort of transparent about what
15 I'm seeing. And I have to say that one of my biggest concerns
16 here is I think it's unquestionable that a decision was made
17 to end TPS, end stop. Because there's no other explanation
18 for having 12 countries come up and having them all not
19 extended. There is no other explanation.

20 Now, maybe that is within the secretary's
21 discretion. Maybe the secretary has the discretion to say it
22 is not in the national interest to have any TPS holders and,
23 therefore, I'm going to deny all extensions. And then we can
24 have a very long conversation about whether or not that's
25 contrary to law. We can have that conversation, and you can

1 say, well, that's not bad faith, that is just the secretary
2 acting contrary to law or not.

3 And if that's all we were dealing with, I'm not sure
4 that would get them there, although it would get them pretty
5 far. But I just think, in combination of everything else,
6 including Secretary Noem saying this is what we're going to do
7 before she did the assessment under the APA and the agency
8 doing what they said they were going to do before they made an
9 assessment under the APA and then doing the APA assessment
10 because they were ordered by courts and coming to the same
11 conclusion, I think we're there.

12 But go ahead.

13 MS. TORRES: And, Your Honor, I appreciate that
14 analysis regarding bad faith. I think if we -- if Your Honor
15 has found that we are at that point, I think the scope should
16 be extremely limited --

17 THE COURT: Well, yes, I agree with you on that.

18 MS. TORRES: And as to -- you know, plaintiffs do
19 rely on *Saget*. And I understand, you know, there was -- there
20 was tons of discovery ordered there. But I think here, we
21 need to be mindful that we're in this circuit. We should not
22 order some, you know, wide-ranging discovery. And I think
23 that --

24 THE COURT: They're not going to get wide-ranging
25 discovery.

1 MS. TORRES: Yes, Your Honor.

2 The prudent thing would be perhaps for the parties
3 to meet and confer about what would be appropriate here. And
4 I think -- there's a case we found last night, Your Honor.
5 It's *Ziglar v. Abbasi*. It's a Supreme Court case. And it's
6 from 2016.

7 THE COURT: I'm sorry, what is it? Let me just pull
8 it up. What is it?

9 MS. TORRES: *Ziglar*, Z-I-G-L-A-R, v. *Abbasi*. And in
10 Justice Breyer's dissenting --

11 THE COURT: What's the cite?

12 MS. TORRES: Yes, Your Honor. It is a slip opinion,
13 Your Honor -- oh, 582 U.S. -- I -- let me make sure.

14 THE COURT: I have it, 120.

15 MS. TORRES: Okay, you have it.

16 On page 22 of Justice Breyer's decision -- and Your
17 Honor can control F discovery, and there's a whole discussion
18 on page 22 of Justice Breyer's dissent.

19 THE COURT: Dissent?

20 MS. TORRES: Yeah.

21 And so, Your Honor, he talks about how, you know,
22 discovery, in essence, should be limited when it's dealing
23 with public officials; right. And the deterrent effect that
24 wide-ranging discovery might have on policy making. And I
25 think that's prudent to think about here.

1 And our position, Your Honor, is that because the
2 705 is still outstanding, that before the parties engage in
3 this discovery, perhaps Your Honor could rule on the 705.

4 THE COURT: Well, the problem is that part of the
5 discovery is going to, I think, inform the 705. No? I mean,
6 that's I guess what the plaintiffs are going to tell me.

7 MS. TORRES: I understand that, Your Honor.

8 THE COURT: I mean, my -- I could be wrong, but my
9 guess is that whatever I do is going to get appealed; right?
10 I mean, I would be stunned -- I would be happy, but stunned if
11 I issued -- if I denied the 705 or if I granted the 705 and
12 there wasn't an immediate appeal on that. I don't know if
13 it's appealable. I assume it is. So I want to make sure we
14 have as complete a record as possible.

15 Now, I don't think all the discovery's going to be
16 done in a month. I just don't think that's possible. But
17 I -- you know, I think what we need to do is have very narrow
18 discovery and take this in steps. And it might be we do the
19 first step this month, if we can, and then steps to follow as
20 necessary. I hear you on that.

21 I didn't mean to cut off your argument on whether
22 there's bad faith. I mean, I know I sound like there's bad
23 faith showing, but I didn't mean to cut you off on the
24 argument.

25 MS. TORRES: No, I understand, Your Honor. I think

1 in the first hearing we had several weeks ago, I talked about
2 supplemental discovery and how it wasn't appropriate here.
3 But now we're talking about the high standard of bad faith.
4 It's a narrow exception to the APA. They have to overcome a
5 lot. Your Honor has pointed out several facts that the Court
6 considers in finding bad faith. We -- our position is that
7 there is no bad faith.

8 And particularly, I just want to clear up the record
9 for -- on page -- let's see, page 10 of plaintiff's request
10 for discovery, Your Honor. They do cite to Secretary Noem's
11 December 1st, 2025, statement. And I just want to be clear,
12 that's not regarding TPS. That was in the context of the
13 National Guard shooting.

14 THE COURT: Sure.

15 MS. TORRES: So again, that's our position, is that
16 it should be narrow, we should meet and confer, and if Your
17 Honor can rule on the 705 -- our position is rule on the 705
18 and then we can move to discovery, Your Honor.

19 THE COURT: Okay. All right.

20 MS. TORRES: Thank you.

21 THE COURT: You can be seated.

22 MS. TORRES: Oh, thank you.

23 THE COURT: Did you guys -- so there was -- there
24 was like a viral TikTok. I don't know if it was last year or
25 the year before. It was about a woman who had been scammed by

1 her husband, and he like had this, like, 49-part TikTok about
2 all the crazy things this guy did and how insane it was, and
3 everyone thought this could not get more insane and then it
4 got more insane. And if you haven't seen it, it is phenom- --
5 I mean, it was like hours long and I was riveted. And --
6 that's what I do when I'm not playing Candy Crush.

7 She had these great phrases. Like one of the phrase
8 was like, "He lit me up like Georgia Gas Electric. She was in
9 Atlanta." And then at the very beginning, she's like, look, I
10 get that there were red flags everywhere. I get that I missed
11 a lot. She's like, there was a United Nations of red flags.
12 And I was like that's a great phrase. So I looked it up and
13 apparently, it's a phrase, like United Nations of red flags.
14 That means there's a situation with so many red flags that
15 you'd have one for every country.

16 This is a United Nations of bad-faith flags. I
17 mean, there is bad faith showing at least with respect to
18 strong showing in this record. And plaintiffs have certainly
19 alleged as much. And what I have so far bears it out. It at
20 least bears it out with respect to ordering extra record
21 discovery.

22 I -- you know, does it bear it out for a final
23 determination of bad faith? That's to be seen. We are not
24 there yet. But I do think that we're there sufficiently for
25 me to order extra record discovery.

1 But I do agree with the government that we need take
2 this in a very narrow fashion and very slowly. And we're
3 going to do this step-by-step. So let me just --

4 You can come up.

5 Let me start with how I think we should proceed and
6 then you all can tell me.

7 First of all, I'm not going to order the discovery
8 that the plaintiffs have requested. Entirely overbroad. I
9 mean, it's asking for basically arguably every document ever
10 created under the TPS from the Department of Homeland
11 Security, and we're not going to do this.

12 So here's what I think is -- here's where I think we
13 should start. I think we should start with limited document
14 and email discovery from some of the key decision-makers.
15 Right now that is not going to include the secretary. If I
16 find that there's cause to search her emails, we'll get to
17 that if we get to that, but I'm not there yet.

18 I think that that would include, at a minimum,
19 Mr. Law, Mr. Cretien -- oh, I don't know if you all -- I don't
20 know if I can order discovery from the State Department, since
21 they're not a defendant. You guys can tell me. But at a
22 minimum, Mr. Law, the -- I forget her name, the woman who sent
23 the initial email, and the person that she sent the email to.
24 And I want that discovery going back to the inauguration date,
25 January whatever, 2025.

1 I want limited search terms. And also the
2 individual who signed the decision memo and the individual or
3 individuals who signed the USCIS memos. I want to start with
4 discovery limited to Haiti. But we may get to the point where
5 I'm going to order broader discovery on communications about
6 not every TPS country, but about whether there was a decision
7 to end TPS generally. I haven't figured out a way to do that
8 that's narrow, so I'm not going to get there yet. So I think
9 we're just going to stick with Haiti for now.

10 And I'm not going to order any depositions at this
11 point. I don't know that I will order depositions. I think
12 even in a context of a strong showing of bad faith, I think
13 deposing administration officials is something I would have to
14 give a lot of thought to before I ordered. I think there's a
15 lot of good reasons not to order depositions of administration
16 officials. And I agree with the government on that. I'm not
17 ruling it out, but I don't think we're anywhere close to that.

18 And so here's what I want. I want, by Friday, for
19 the plaintiffs to send defendants a short list of custodians.
20 Now, yesterday when I asked for a short list of cases to look
21 at overnight, I got like 10 or 15. So I think my idea of the
22 word "short" and your idea of the word "short" are different.
23 Accept my idea of the word "short." I am like -- we're
24 talking like a handful. We're not talking, you know, tens of
25 people here.

1 Now, I don't know how many -- I mean, we already
2 have Mr. Law as one, the individual who wrote the decision
3 memo, the individual or individuals who wrote the UN country
4 conditions memo, or the main UN memo, the individual who sent
5 the email asking for the consultation and, you know, maybe two
6 or three other people you all see from the record. But we're
7 starting narrow.

8 And I want a narrow list of search terms. TPS, by
9 itself, is not a search term that's narrow. You know, only
10 Haiti and TPS within three is obviously too narrow. So I want
11 you to send them a list of custodians and narrow, defined
12 search terms by Friday.

13 I want you all to get back to them by Tuesday. I
14 want you guys to hammer this out. I do not want to deal with
15 you people on figuring this out. Because I will be very
16 unhappy if I'm spending my time policing people on what I
17 think is pretty clear instructions from me. All right. And
18 if you have any questions now, I'll answer them. If the
19 government thinks something is too broad, plaintiffs, we can
20 take this in steps, all right? This isn't like your last
21 chance at this. And then I want a -- I want a time line from
22 defendants as to when these searches can get made.

23 I want DOJ to appoint a civil servant, experienced
24 DOJ attorney on discovery issues to oversee this discovery.
25 Because let me be very clear about something. I did this for

1 22 years. I can spot discovery that has not been made in good
2 faith or that has not been diligently completed from a mile
3 away, even if we're talking about millions of pages. There
4 are ways to do it, it's very simple.

5 If I find that there has been any shenanigans, a
6 hint of shenanigans on these productions, there will be
7 serious consequences. And I want to know who the DOJ attorney
8 is going to be, and I don't want someone two years out of law
9 school. I want somebody who has experience overseeing
10 discovery. I want to know who that person is.

11 And I want the attorneys on this case who have
12 appeared in front of me, I guess, you know, the person who has
13 not yet entered notice of appearance is free, but you guys are
14 on the hook, and that attorney is going to be on the hook, A,
15 we told DOJ, DHS, to do X, and this is what we got, I'm sorry
16 they didn't do it is not going to fly. You are on the hook.
17 You guys are officers of the Court, and you are going to say
18 to me that this discovery was done completely.

19 Now, obviously, things get missed in discovery, even
20 if someone's acting in guilty good faith. I'm not saying you
21 have to be perfect. I'm saying --

22 You guys are going to want to listen to this.

23 I am saying that you guys are on the hook for making
24 sure this gets done in good faith. Am I clear on that?

25 MR. PIPOLY: Yes, Your Honor.

1 MR. SAMPAT: Yes, Your Honor.

2 THE COURT: I want the name of whoever's going to be
3 overseeing this and their experience by Tuesday as well.

4 All right. Any questions?

5 MS. HARRELL: Yes.

6 THE COURT: Just give them a moment.

7 Okay. Go ahead.

8 MS. HARRELL: Thank you, Your Honor.

9 THE COURT: Also, by the way, I'm going to be
10 equally annoyed with you people, if not more so, if they come
11 back and say these guys have asked for a gazillion things even
12 though I have been very clear that I want this to go
13 step-by-step and narrowly. I can get equally annoyed,
14 bipartisan annoyance.

15 MS. HARRELL: The Court's admonition is noted and
16 will be followed as to the narrow scope that's been
17 required.

18 Now, I do have two follow-ups for the Court. We
19 would also submit that it's appropriate for the government to
20 produce to us the -- just clone discovery of what's produced
21 in the NTPSA case.

22 THE COURT: That what case -- sorry, the what
23 discovery?

24 MS. HARRELL: The discovery -- okay, so the emails
25 that are produced in the NTPSA case.

1 THE COURT: Which case is that, the Judge Chen case?
2 Okay.

3 By the way, Judge Chen was in baby school with me.
4 He was in judge baby school with me. Oh, the senior Judge
5 Chen?

6 MS. HARRELL: There's two. I have a case in front
7 of the Seattle Judge Chen, but then there's also the
8 California one.

9 THE COURT: As it turns out --
10 So I'm sorry about that. I didn't know there were
11 two. I apologize.

12 It turns out that Judge Chen's clerk had the same
13 first grade teacher that I did. Isn't that crazy?

14 MS. HARRELL: It is a small world.

15 THE COURT: It's a very small world. She and her
16 sisters.

17 MS. HARRELL: Well, I would -- we would request that
18 the government -- because the government's already got to
19 prepare those productions and gather those documents, we would
20 request that the government go ahead and produce the documents
21 in this case that are already going to be produced in that
22 case.

23 THE COURT: Can you all do that?

24 MR. SAMPAT: Your Honor, we don't know the scope of
25 what's been produced there, so we'd want --

1 THE COURT: Can you guys just meet and confer on
2 that? I mean, if the scope of what was produced there is
3 similar to the scope I'm discussing, I mean, maybe that does
4 it for now. But you guys figure that out amongst yourselves.
5 I mean, obviously, if you're already producing it, there's not
6 going to be added burden; right? It might take your burden
7 off this production.

8 MR. SAMPAT: Understood, Your Honor.

9 And if I may, Your Honor, I just wanted to note that
10 whatever's happening in NTPSA 2 is being dealt with under
11 9th Circuit law and things like that.

12 THE COURT: Yeah. Sure.

13 MR. SAMPAT: I think Your Honor was very clear today
14 about like how limited the discovery's supposed to be.

15 THE COURT: Yeah. I mean, look, if you guys want to
16 parse what is limited and what's -- you know, whatever -- I
17 mean, if it's going to get produced in some case somewhere,
18 it's going to come up. So I don't see a problem. But you
19 guys do you. I've told you whey want. You guys meet and
20 confer on it.

21 MS. HARRELL: Understood, Your Honor.

22 One other point. We do want to make sure that the
23 privilege log is produced by the government here, which --

24 THE COURT: Look, a privilege log is a ton of work.
25 And I am inclined to trust the government that they're not

1 going to be hiding documents and then later claim privilege.
2 If we get to a point -- you know, maybe if you guys can just
3 say there are about X number of documents that we're
4 withholding and then we can -- or some broad category. I'm
5 not going to make them do a priv log right now. It's going to
6 take a ton of time, energy, and effort. It's not going to get
7 us very far.

8 I mean, I guess if we're talking about deliberative
9 privilege as opposed to attorney-client privilege, then maybe
10 just segregate those documents and we can talk to them in
11 groups. We have a hearing on it. But I'm not going to make
12 them do a log. At least not now.

13 I mean, again, we have a month here, and I just want
14 to get something efficiently done. And then this case is
15 going to, I imagine, continue either -- whatever I do on the
16 705, the case is going to continue, because, spoiler alert,
17 I'm going to deny the motion to dismiss. So --

18 MS. HARRELL: All right, Your Honor. So am I
19 understanding you correctly that the government needs to
20 indicate documents that have been withheld based on
21 deliberative --

22 THE COURT: Just segregate those documents and then
23 we can have a different discussion. We can just have -- and
24 maybe we can have a ex parte discussion about what they are
25 and then I can decide whether a priv log is necessary. I

1 don't want to put them through the work of it right now. I
2 find priv logs create far more work than they're worth, and
3 I'm just not going to make them do that right now.

4 MS. HARRELL: Understood, Your Honor. All right.
5 Thank you.

6 THE COURT: Okay.

7 MS. TORRES: Yes, Your Honor. So we're less than a
8 month away and --

9 THE COURT: I mean, maybe in terms of like what you
10 want this month, you might want to pick one or two custodians
11 and we just start there, in terms of what we're going to do
12 now. I mean, I know what I would do if I was litigating the
13 case, but I'm not litigating the case.

14 MS. TORRES: And, Your Honor, the short list that
15 Your Honor mentioned, you know, given the history between the
16 par- -- okay, we're just asking that plaintiffs actually send
17 us a short list.

18 THE COURT: Yeah, okay. Here's what I want. For
19 one month -- you can send them the list. I want it to be six
20 or less people. And I want the -- I want you to star the one
21 or two people that you want them to focus on this month. I
22 know who I would pick. You pick whoever you want to pick.
23 That's how we're going to start. Because if we do more, then
24 they're not going to get me anything useful, and they're not
25 going to get you anything useful in time for me to do anything

1 with. All right. I'm not going to make them work 24/7 on
2 this.

3 MS. HARRELL: Understood, Your Honor.

4 It is my understanding, based on your order -- it is
5 my understanding, based on your order, that we have a pretty
6 limited scope in time here; right? We're going from the
7 inauguration until --

8 THE COURT: Yeah, we're not going into Trump 1.

9 MS. HARRELL: Well, no, understood. I just wanted
10 to make sure I was understanding the scope of time --

11 THE COURT: Yeah. I don't imagine there's going to
12 be a gazillion emails here. I mean, I imagine we're talking
13 in the hundreds or low thousands.

14 MS. TORRES: And, Your Honor --

15 THE COURT: I mean, if there are, then, oof.

16 MS. TORRES: And Your Honor is aware that --

17 THE COURT: You need to go to the mic.

18 MS. TORRES: Sorry, Judge.

19 THE COURT: You just need the mic.

20 MS. TORRES: Your Honor is aware that DHS is under,
21 obviously, tremendous pressure in the other TPS case here as
22 well, and --

23 THE COURT: That's what happens when you get rid of
24 everything in one fell swoop.

25 MS. TORRES: I understand, Your Honor. I'd just

1 ask, you know, there are real people on the other side --

2 THE COURT: I hear you. Look, I hear you. Like I
3 totally hear you. If you come back to me and say, Judge, we
4 can't do this, you know, even one or two people is going to
5 take us four weeks, I'd have a lot of questions because that's
6 not my experience, but if you come back and say we just can't
7 do it, I'm not -- look, we have a lot of time in this case
8 left, and I'm just going to -- I'm going to protect you and
9 your people from being overburdened. I promise you. I've
10 been in your shoes.

11 MS. TORRES: Thank you, Your Honor.

12 THE COURT: But it will help me protect you better
13 if we were able to get them something in time for them to do
14 something with it; right?

15 MS. TORRES: Yes, Your Honor. Thank you.

16 THE COURT: Okay.

17 MS. HARRELL: Thank you, Your Honor.

18 THE COURT: Okay. Mr. Sampat.

19 MR. SAMPAT: Yes, Your Honor.

20 THE COURT: My bite is considerably worse than my
21 bark, and my bark is not known to be subtle. Please do not
22 make me, please do not make me have to question you guys about
23 the legitimacy of this search and the process. Okay? I don't
24 want to be there. I don't want you to be there. I take
25 this -- I take discovery, especially government discovery, as

1 you well know from all of your AUSA prosecutors, exceedingly
2 seriously. All right?

3 MR. SAMPAT: Understood, Your Honor.

4 THE COURT: Okay. All right. Anything else on
5 discovery?

6 MR. PIPOLY: No, Your Honor.

7 THE COURT: Okay. All right.

8 Mr. Sampat.

9 MR. SAMPAT: Your Honor, just as -- are we starting
10 with the termination notice again?

11 THE COURT: Yeah. Okay. I think we're in the last
12 we're in the home stretch. We're in the ninth inning, at
13 which point the Red Sox usually blow their lead. So we'll see
14 how we go.

15 MR. SAMPAT: I think there are a couple closers.

16 THE COURT: We need hitters, closers, and pitchers,
17 unfortunately. What we do have is a quarterback.

18 Let me start at the end, at 54738. And the
19 termination notice says, "DHS records indicate that there are
20 Haitian nationals who are temporary protected status
21 recipients who have been the subject of administrative
22 investigation for fraud, public safety, and national security.
23 These issues underscore a conflict with the national interest
24 of the United States."

25 Do you see that?

1 MR. SAMPAT: Could you let me know which column
2 you're looking at?

3 THE COURT: I could if I had --

4 MR. SAMPAT: Oh, sorry.

5 THE COURT: Oh, by the way, I forgot to mention
6 this. I'll mention this when Tommie comes back.

7 Do you know what column it's in? It's -- well, it
8 doesn't really matter. I'm going to point you to a USCIS
9 document in the administrative record. It's 185. I don't
10 think that there was a Footnote to this sentence, but I went
11 into the administrative record and looked at where they could
12 have derived it from and I found 185. It's part of the USCIS
13 memo, I think.

14 MR. SAMPAT: The redacted memo, Your Honor --

15 THE COURT: No, no, the unredacted, I think.

16 MR. SAMPAT: Okay. I have 185. It's complete --

17 THE COURT: Okay. 185 is -- it's not 185. Oh, 186,
18 I'm sorry. Sorry, I wrote something down wrong. I'm looking
19 for the chart that has the Haiti TPS population where the
20 record of fraud was found.

21 MR. PIPOLY: I think that's in the 160s, Your Honor,
22 if we're thinking of the same chart.

23 MR. SAMPAT: Is this the data point?

24 THE COURT: You know, paralegals are the unsung
25 heroes of the legal world because when I was in litigation, I

1 would have had a paralegal actually double-check all this.

2 MR. SAMPAT: As a former paralegal myself, I very
3 much appreciate that.

4 THE COURT: It does not surprise me you're a former
5 paralegal because you're incredibly careful. Paralegals are
6 trained to be careful.

7 So it's, I think, from the USCIS memo, and it's --

8 Thank you, Katherine.

9 -- Haiti temporary protected status TPS results.

10 Are you there?

11 MR. SAMPAT: Do you have the Bates stamp there, Your
12 Honor?

13 THE COURT: Oh, I'm sorry. Yeah. It's 258.

14 Tommie's here. So apparently, I'm the only person
15 who didn't read the Federal Register because when Tommie sent
16 me the VIA decision yesterday, she did actually put in the
17 body of the email this is from the Federal Register citation.
18 And I had just gone straight to the analysis of the decision
19 without actually reading the headers that she carefully put in
20 there for me. So Tommie was on top of that. I was the only
21 one not on top of it. I explained to her, and for all young
22 lawyers, the partners don't actually read the full emails.
23 They just focus on what they need to focus on and then move
24 on.

25 But thank you, Tommie.

1 Okay.

2 MR. SAMPAT: I am there, Your Honor. I have the
3 numbers up.

4 THE COURT: Okay. So, first of all, I wasn't -- the
5 numbers aren't mathing for me, because this says that it -- it
6 looked at TPS recipients provided by TPS country. And I don't
7 know if the "by" means that this was limited to Haiti. That's
8 what I assumed it was.

9 But then it says that the database searched 568,000
10 -- oh, wait, I did it put it down right. I do have AR 258.
11 It says that the database searched 568,545 people, so
12 568,000 people. But the Federal Register notes that there are
13 approximately 352,959 nationals of Haiti who have TPS status.
14 So there's like a delta of more than 200,000 people. So do we
15 know what accounts for that delta?

16 MR. SAMPAT: I don't know, Your Honor. Could you --
17 do you have the cite to the Federal Register?

18 THE COURT: That would be helpful; right?

19 MR. SAMPAT: Yeah, just to make sure I'm tracking
20 the numbers.

21 THE COURT: I don't.

22 Can you -- do you have it up? Can you do a search?
23 It's 352. 959. It's probably in 738 or 739.

24 The bottom of the second column -- thank you -- of
25 738, "DHS estimates there are approximately 352,959 of Haiti

1 who hold TPS status under Haiti's designation," and that's a
2 citation to -- well, there's just additional information in
3 the citation.

4 MR. SAMPAT: I believe that was a data pull.

5 THE COURT: So do you see the number?

6 MR. SAMPAT: I do see the number.

7 THE COURT: So my question is: We're looking at a
8 database of 568,000 people, but there's only 352,000 Haitian
9 nationals. So clearly, there's some delta going on. And I'm
10 just wondering, just so you know where I'm going with this,
11 is, you know, there's fraud found, and what fraud we can get
12 into in a moment, because we're not talking like stolen bank
13 fraud. It's 2,000 -- 327,000 people. But we don't know if
14 those people are within the 352,000 people currently in the
15 United States or if they're within the 200,000 people that we
16 don't know who they are or if there's some combination
17 thereof, and that, obviously, impacts the numbers.

18 MR. SAMPAT: I understand Your Honor's point.

19 THE COURT: If you want some time to track that
20 down, I'm happy to give it to you.

21 MR. SAMPAT: Yeah, I think that will be helpful.
22 But what I will note is, if we look at the chart on 258.

23 THE COURT: Sure.

24 MR. SAMPAT: And the source, it says, the FDNS
25 NexGen as of 8/7/2025; whereas, the number represented in

1 Footnote 48 -- or in the Federal Register, sorry, at the
2 352,000 is from November 10th. So it is quite possible
3 that --

4 THE COURT: I don't think we're going to have a
5 200,000 person delta in a couple months. I mean, I
6 understand.

7 MR. SAMPAT: Yeah, I'm just noting like the dates
8 are different; right. So I obviously don't know what was used
9 for the data pull itself.

10 THE COURT: Yeah. I just want to understand,
11 because it impacts -- and again, if we have a situation where
12 we have numbers and we can't actually tie the TPS holders
13 currently, then, you know, that's something different.

14 Okay. Then let's just go through the numbers we do
15 have for the moment.

16 MR. SAMPAT: So back on 258?

17 THE COURT: Yeah. So can I ask, you know, the
18 secretary says there's 2,500 -- 2,326 people, the Haitian TPS
19 population had a record of fraud. Was there a standard that
20 was used to determine if that's a low number, a medium number,
21 a high number, in comparison to any other population? So, for
22 example, if I took 568,000 Americans, do we know what
23 percentage of those people would have some fraud or fraud-like
24 finding?

25 MR. SAMPAT: Not to my knowledge, Your Honor.

1 Again, it's not exactly clear from this document or --

2 THE COURT: At least the document doesn't tell us if
3 there's any comparison made; right?

4 MR. SAMPAT: No, because I think the document,
5 because it's titled "Haiti Temporary Protected Status
6 Results," I think it is meant to just talk about Haitian
7 nationals.

8 THE COURT: Yeah. I'm talking more about the
9 Federal Register; right. So if we're deciding there's a
10 national interest concern because 2,326 Haitian people have
11 had some fraud finding, we need to know if that's an actual
12 material number; right?

13 MR. SAMPAT: I -- whether it's material or whether
14 we should be getting into that, go to the jurisdictional and
15 threshold arguments.

16 THE COURT: But you would -- but just putting aside,
17 let's just do math.

18 MR. SAMPAT: Sure.

19 THE COURT: First of all, database searched 568,545
20 people; right?

21 MR. SAMPAT: Yes, or it searched, and those were the
22 amount of hits that they got. So I don't --

23 THE COURT: Whatever.

24 MR. SAMPAT: Whatever it was.

25 THE COURT: Let's just go take the chart on its

1 merits, right, on its face.

2 MR. SAMPAT: Sure.

3 THE COURT: All right. So I did math, but again,
4 there's a reason I'm a lawyer and not a scientist, and one of
5 those is because I can't math very well, but what I got was
6 that 2,326 of 568,545 people means that 0.4 percent of Haitian
7 TPS holders had some sort of fraud determination. And again,
8 we don't know what that fraud is. Is that --

9 MR. SAMPAT: So just to make sure, so the fraud
10 found constitutes .04 or .4?

11 THE COURT: 0.4 percent.

12 MR. SAMPAT: 0.4.

13 THE COURT: Is that what you guys got? I'm sure you
14 guys did this.

15 MR. SAMPAT: I'm sorry, so the fraud --

16 THE COURT: Can someone double-check me? Because I
17 actually don't trust my math.

18 MR. SAMPAT: My father was an accountant, and he
19 would -- he did not enjoy my math grades, so --

20 THE COURT: My father once, when I was in middle
21 school -- I'll never forget this -- it was high school. It
22 was like a trade class. And he was an engineer and was
23 brilliant. He was -- really smart dude. And he tried to help
24 me with my homework and I just couldn't get it. I just wasn't
25 getting it. And then he's just like -- he got up and was like

1 you're hopeless and he just walked off. I was like, all
2 right. I won't be a mathematician.

3 MR. SAMPAT: Growing up in a south Asian household,
4 it was a little different.

5 THE COURT: Has anyone done it? Does anyone know?

6 Okay. That was Katherine.

7 MR. PIPOLY: Yeah. I've got .0409. So I guess if
8 you wanted to round up to .41, you could.

9 MR. SAMPAT: Sure. We'll grab the --

10 THE COURT: So 0.4 percent of TPS holders have had
11 some sort of fraud determination. And again, we're going to
12 get into what fraud actually constitutes, because this isn't
13 fraud on a bank; right. This is more like there was something
14 in their application or some document somewhere.

15 MR. SAMPAT: I don't know that, Your Honor, so it --

16 THE COURT: These aren't misdemeanors or felonies.

17 MR. SAMPAT: I would -- if Your Honor would give me
18 a moment, let me just --

19 THE COURT: Yeah, sure.

20 THE COURT: I will note that at 186, it says some
21 have been under administration investigation so -- for risk to
22 national security or public safety, or for attempting to
23 obtain immigration benefits through fraud or
24 misrepresentation. So that's why I think it's related to
25 administrative issues, like paper issues.

1 MR. SAMPAT: Yeah. I'm looking at Footnote 1 at
2 259, the next page, which seems -- which mirrors that
3 language. So it seems like that's what it may be talking
4 about. But I'm not sure how they defined fraud when they ran
5 this data.

6 THE COURT: Okay. And by the way, this data on 259,
7 it's different data, but I don't know if they used the same
8 the database, because in the data for 259, footnote 1 -- and I
9 did want to talk to you about this -- it says, "TECS is an
10 information-sharing platform which can assist authorized users
11 to access different databases to identify individuals who pose
12 a risk to national security or public safety, and individuals
13 attempting to obtain immigration benefits through fraud or
14 misrepresentation."

15 And then I actually looked up TECS and what it is,
16 and TECS is actually a -- the principle system used by
17 officers at the border to assist with screening and
18 determinations regarding admissibility of arriving persons. I
19 don't expect you to have done that, because I followed the
20 trail. But I think we discussed yesterday that dangers posed
21 or potentially posed by people coming into the system is
22 certainly different than any alleged national interest
23 concerns from people already in the country; right?

24 MR. SAMPAT: Well, that's where you and I agreed to
25 disagree, where I would say the TPS decision can consider both

1 and that they --

2 THE COURT: Well, I think we agree to consider both
3 if the decision is whether to extend and/or whether to
4 redesignate. But given that if the only decision is to extend
5 and not to redesignate, I just can't possibly understand how
6 whatever people are already doing in the U.S. -- or how people
7 who aren't in the U.S. and aren't going to come in under the
8 U.S. under TPS decision can impact the situation.

9 MR. SAMPAT: So the ongoing situation with Haitian
10 TPS holders that are present in the United States can still
11 have an impact depending on how these numbers were run and
12 whatnot.

13 THE COURT: But I'm saying that these numbers
14 concern people who didn't get -- who either got into the U.S.
15 because it was found that there wasn't a problem, or there was
16 a problem so they weren't allowed into the U.S. I mean, if
17 what we're talking about is people being screened at the
18 border, if they're let in, then the people at the border, who
19 are presumably competent to do their jobs, said there's no
20 issue, let them in; and if at the border they were like, oh,
21 there is an issue, then they don't come in.

22 MR. SAMPAT: Well, there could be other reasons to
23 let someone in. Sometimes it can be facilitating --
24 facilitating someone's entry for some other reason,
25 humanitarian parole, something like --

1 THE COURT: Do you know I had a humanitarian parole
2 case?

3 MR. SAMPAT: I'm sorry?

4 THE COURT: I had a case involving humanitarian
5 parole when I was litigating. I won't go into the whole
6 thing, but I had to get humanitarian parole for young women
7 from Nigeria, and we got them the humanitarian parole. And
8 it's such a rare Visa that at Dulles International Airport,
9 which is an international airport, the immigration officers
10 had never heard about it before. They actually had to get
11 their managers and contact DHS and confirm that it was an
12 actual Visa.

13 MR. SAMPAT: So the parole document itself isn't a
14 Visa necessarily. It just allows the entry. But humanitarian
15 parole, understood, high bar, obviously subject to discretion.
16 But there are times where parole authorities also use if we're
17 trying to prosecute a criminal in the United States, and I --

18 THE COURT: I'm going to bite my tongue right now.

19 MR. SAMPAT: I have heard of that being done.

20 THE COURT: Those aren't people that we're worried
21 about as TPS holders. I mean, we're not giving TPS to people
22 that we bring in to try for criminal activity.

23 MR. SAMPAT: Sure, but at that point, once they're
24 in the United States, there's certain rights that can attach
25 in terms of being able to seek asylum and things like that,

1 and during that time they may get apply for TPS --

2 THE COURT: Well, I don't think people we bring into
3 the U.S. to face criminal prosecution can apply for asylum,
4 because, obviously, they would have a bar to asylum. Okay. I
5 hear you.

6 But let's go back to the numbers. So we don't know,
7 based on the administrative record or the Federal Register,
8 whether 0.4 percent of Haitian TPS holders having been
9 found -- or not even having been found, having been flagged
10 for a potential fraud issue affects the national interest in
11 an objective manner in the sense of in comparison to other
12 populations of people. We just have the secretary's
13 subjective view that that's a national interest concern. Is
14 that fair?

15 MR. SAMPAT: I think it's fair to say that the
16 record doesn't talk about the percentage and -- the percentage
17 and how that maybe impacts the broader picture of Haitian
18 TPS.

19 THE COURT: So let me just ask you this: If -- I'm
20 just trying to understand the scope of the government's
21 argument with respect to the secretary's discretion. So if
22 the secretary were to say, we have 568,000 Haitian TPS
23 holders. One of those holders, I don't know, spray-painted on
24 the Federal Court house, "Judge Reyes sucks." And Secretary
25 Noem says, well, that's a national interest problem now with

1 Haitian TPS holders so we're not extending TPS. Would I
2 have -- do you think that that's is within her discretion?

3 MR. SAMPAT: Yes, Your Honor, I think that is within
4 her discretion, because the statute doesn't define it, it's
5 broad, and we have cases that we've cited --

6 THE COURT: Even though people tweet every day about
7 what a moron I am, which they do.

8 MR. SAMPAT: Well, I have not seen such tweets, but
9 I think absolutely, it matters --

10 THE COURT: Even if Secretary Noem could care less
11 about me. I'm not saying she does care either way. I
12 shouldn't use me. Like Judge Smith.

13 MR. SAMPAT: Understood, Your Honor. I think
14 because of the way Congress delegated this authority to the
15 secretary, it is supposed to be a discretionary issue, a
16 discretionary decision on extraordinary circumstance -- sorry,
17 extraordinary conditions, temporary conditions, and the issues
18 of national interest.

19 THE COURT: So I actually -- when I was reading --
20 and this is maybe for later argument, but when I was reading
21 one of the cases you gave me to look at, because I do pay
22 attention, and I think it was the *Wolf* decision out of the
23 9th Circuit -- which, by the way, has not been vacated but
24 mooted; right?

25 MR. SAMPAT: It was mooted, yes.

1 THE COURT: So in that decision, when they were
2 talking about the word "determination" and distinguishing it
3 from, I think, the *Gotlieb* decision -- so this was in the
4 majority opinion, and they said -- they actually -- if you go
5 to page 891. I don't know if you have it in front of you?

6 MR. SAMPAT: You said 891, Your Honor?

7 THE COURT: Yeah. So if you look at *Ramos* at 891 --
8 and this is a justiciability issue, and *Ramos* did hold -- it
9 did agree with the government's reading of the statute, so I'm
10 not trying to claim otherwise. But I was struck, because
11 we've been talking about this, by something else that the
12 Court had said.

13 By the way, how often in your career as a government
14 immigration attorney have you relied on a 9th Circuit
15 decision?

16 MR. SAMPAT: I can say few and far between, Your
17 Honor.

18 THE COURT: All right.

19 I'm just trying to find where it was. Oh, it was
20 distinguish -- I'm on page 20 of 51 on the Lexus you all gave
21 me.

22 MR. SAMPAT: Yes, 20 of 51.

23 THE COURT: And it discusses the *Gebhardt*
24 decision.

25 MR. SAMPAT: Yes.

1 THE COURT: Okay. And in the *Gebhardt* decision,
2 that was a 9th Circuit decision talking about the secretary's
3 discretion or Attorney General's discretion with respect to a
4 different INA determination and -- under 1252(a)(2)(B). And
5 if you look at towards the bottom of the first column, it said
6 that under that statute, it quotes the statute as saying, "The
7 secretary's sole and unrevealed discretion in making no risk
8 determinations under the Adam Walsh Act."

9 Do you see that?

10 MR. SAMPAT: We considered -- sorry, could you just
11 repeat the question.

12 THE COURT: Sure. It's right -- the sentence is
13 broken up by, star, star 40. It says that the statute
14 granted, quote, The secretary's sole discretion and
15 unreviewable discretion in making no risk determinations under
16 the Adam Walsh Act.

17 MR. SAMPAT: Yeah, I see that, Your Honor.

18 THE COURT: Okay. Then it goes on to say, "We," the
19 9th Circuit, "found that the language of these provisions
20 clearly demonstrate Congress's intent to prevent us from
21 reviewing how the secretary exercises his or her sole and
22 unreviewable discretion to make no risk assessments."

23 Do you see that?

24 MR. SAMPAT: I do.

25 THE COURT: Then it goes on, at headnote 11, and

1 says, "Unlike the provisions in *Gebhardt*, Section
2 1254a(b) (5) (A) does not expressly grant the secretary's sole
3 and unreviewable discretion in her TPS decision-making, or
4 even refer to the discretionary nature of the TPS
5 determinations. In fact, the statute sets forth at least
6 some," in italics, "limitations on the secretary's discretion
7 to make TPS decisions.

8 "For instance, it specifies the three situations
9 under which the secretary may designate a country for TPS and
10 imposes a number of procedural requirements such as
11 interagency consultation and a periodic review process under
12 which the secretary shall consider conditions in the foreign
13 state and determine whether the conditions for TPS designation
14 continue to be met.

15 "Thus, unlike decisions in which Congress has
16 expressly granted the secretary's sole and unreviewable
17 discretion,' the secretary's discretion to make TPS determines
18 is not wholly unfettered. The fact that Congress enacted the
19 TPS statute to curb and control the executive's previously
20 unconstrained discretion under the EBD process also supports
21 this conclusion."

22 Now, I grant you I've taken this wholly out of
23 context, because the 9th Circuit goes on to say, agree with
24 you on the jurisdictional issue. But putting justiciability
25 aside, it did strike me that -- you know, because we were

1 talking yesterday a lot about your view of the secretary's,
2 you know, discretion and that I can't review it and that she
3 likes vanilla ice cream or she doesn't. And, you know, one
4 person says Judge Reyes sucks and, therefore, we get rid of
5 all Haitians. It seems to me that that's an analysis. And if
6 you think through it, that does indicate that Congress did
7 intend to impose some limitations on the secretary's
8 discretion.

9 So it's not maybe as unfettered as we were
10 discussing yesterday. Let me see if I can guess what you're
11 going to say next. I always like to play this party game.
12 You're going to say, maybe with respect to the overall
13 determination, but with respect to the national interest
14 prongs, that is in the secretary's full discretion. So we
15 have to focus consultations on what we're talking about here,
16 and what we're talking about is the national interest.

17 MR. SAMPAT: So that's certainly one part of my
18 response, Your Honor.

19 THE COURT: See how I do this? See how I think
20 things through?

21 MR. SAMPAT: But we have -- I'll start with the
22 broader argument, which is that it is -- it is a discretionary
23 decision to designate a country in the first place.

24 THE COURT: Right. But, I mean, the point that
25 Ramos made is like it's not unfettered discretion. The

1 secretary can't just say I'm going to end Haitian TPS because,
2 you know, I want to go to the Taylor Swift Eras tour.

3 MR. SAMPAT: Well --

4 THE COURT: I mean, putting aside she doesn't
5 discuss national interest, she's just like I want to go to
6 Taylor Swift's Eras tour and so, therefore, I'm ending Haitian
7 TPS status. She can't do that. There's some discretion.
8 There's some limitations imposed, is what the *Ramos* case was
9 saying.

10 MR. SAMPAT: Yeah. It seems like what *Ramos* is
11 saying is maybe sort of like an ultra virus ask, challenge
12 that could be reviewable. We would say that's not before the
13 Court, obviously, and that, you know -- but we would say the
14 jurisdictional bars certainly extend to that. However --

15 THE COURT: One second.

16 MR. SAMPAT: Oh, sure.

17 THE COURT: Actually, can we just -- this is a good
18 time for a break. Can we come back a little bit early? Can
19 we come back at 11:20? And again, we're going to have to have
20 a long lunch break because I have a luncheon. But let's come
21 back at 11:20. We'll come back to I think 12 or 12:10. I
22 mean, let's come back now at 11:20.

23 MR. SAMPAT: At 11:20.

24 THE COURT: Okay. Thank you.

25 (A recess was taken from 11:09 a.m. to 11:23 a.m.)

1 THE COURT: Okay. You were responding to a question
2 I had asked about discretion.

3 MR. SAMPAT: Yes, and the 9th Circuit's decision in
4 *Ramos*. So I hear Your Honor's point on, you know, the
5 9th Circuit has indicated that there may be some openness of
6 discretion issue. We obviously disagree with that part of the
7 decision.

8 THE COURT: Okay. All right. Fair enough.

9 MR. SAMPAT: But I will say that the way the TPS
10 statute is written, the way it's structured seems to say it's
11 the secretary of Homeland Security that gets to make a
12 decision in his or her discretion, and it kind of goes all the
13 way down. And if they decide to designate a country, then
14 maybe they have to -- there are certain things, prerequisites,
15 but like I think it all kind of flows back to the original
16 decision-making process.

17 THE COURT: Okay.

18 MR. SAMPAT: Or original decision, I should say.

19 THE COURT: Fair enough. We'll get into that more,
20 maybe.

21 Okay. And so I want to -- so then I want to turn a
22 little bit to the Federal Register's discussion of gangs in
23 Haiti.

24 MR. SAMPAT: Sure. Could you let me know, Your
25 Honor, what page we're talking about?

1 THE COURT: Sure. So I don't know the page, but
2 it's Footnote 39, is the end of the sentence.

3 MR. SAMPAT: Okay. Got it.

4 THE COURT: And it says, "Secretary Rubio noted" --
5 and for the nonproverbial record, for the actual record, he
6 noted this publicly, not in consultation with DHS on this TPS
7 issue.

8 But the Federal Register quoted Secretary Rubio as
9 stating, "Haitian gangs, including the Viv Ansanm Coalition
10 and Gran Grif, are the primary source of instability and
11 violence in Haiti. They are a direct threat to U.S. national
12 security interest in the region," dot, dot, dot.

13 "Their ultimate goal is creating a gang-controlled
14 state for illicit trafficking and other criminal activities,
15 operate freely, and terrorize Haitian citizens." Then it
16 cites to a statement by Secretary Rubio.

17 And I think either later in the Federal Register or
18 in Secretary Rubio's statement, there's a quotation,
19 "Widespread gang violence in Haiti is sustained by the
20 country's lack of functional government authority. This
21 breakdown in governance directly impacts U.S. national
22 security interest, particularly in the context of uncontrolled
23 migration."

24 Is that from the Federal Register, or is that --

25 MR. SAMPAT: I wasn't sure if you were reading off

1 the Federal Register. I was trying to pull up Secretary
2 Rubio's statement.

3 THE COURT: I might have been talking from his
4 statement. Well, let's just stick with what's in the Federal
5 Register for a moment.

6 MR. SAMPAT: Okay.

7 THE COURT: I just have -- I understand the
8 secretary's point is it's safe to go back to Haiti. But even
9 if it weren't safe to go back to Haiti, it doesn't matter
10 under the statute because I don't think it's in the national
11 interest to extend the TPS. So I get that. I understand.
12 But let's stick with the safety of Haiti issue, because the
13 secretary did make a determination that it was safe to
14 return.

15 MR. SAMPAT: Yes.

16 THE COURT: Okay. It just seems odd to me to say,
17 on the one hand, it's perfectly safe to return to Haiti and
18 then, in the same breath, say that there are gangs running
19 rampant in Haiti that create instability and violence and that
20 they are creating or have created a state where criminal
21 activities operate freely and terrorize Haitian citizens.

22 It just seems to me that, you know, they're
23 diametrically opposed conclusions. I mean, how could it be
24 safe to return to Haiti if we're also making the determination
25 that it does not have a functioning government -- and I can

1 get the quote on that -- and the gangs terrorize the citizens
2 and there's violence in the country.

3 MR. SAMPAT: So I understand Your Honor's point of
4 perhaps it's contradictory, but I would say that there are
5 other parts of Haiti that could be safe. I think there's some
6 stuff in the record -- I wasn't able to get it, but if Your
7 Honor will give me one moment, I think I have --

8 THE COURT: Sure.

9 MR. SAMPAT: I seem to have misplaced my cheat
10 sheet.

11 THE COURT: No, go ahead. Take a look.

12 By the way, we're going to take a break at 12:10 and
13 then we'll take a break until 2:00.

14 MR. SAMPAT: So this is just brief cites to the
15 record, Your Honor. So we have at the administrative record
16 182 to 194.

17 THE COURT: One second.

18 MR. SAMPAT: Sure. Oh, sorry, that would be the
19 Bates stamp.

20 THE COURT: I have it. Okay.

21 MR. SAMPAT: There's mentions in that document about
22 airports being -- opening up. We have conversations about
23 elections being scheduled. We have con- -- we have discussion
24 about a new draft constitution in the country, along with, I
25 believe, it's new prisons that were being built and were also

1 operational; that there were aggressive prosecutions related
2 to ongoing corruption in Haiti. So all of which --

3 THE COURT: Right, but -- go ahead. I'm sorry.

4 MR. SAMPAT: No, no, just that's part one of like
5 things seem to be trending in the right direction. And then
6 on top of that, we have --

7 THE COURT: Well, things are projected to trend in
8 the right direction. But go ahead.

9 MR. SAMPAT: I would disagree on that just --

10 THE COURT: Okay.

11 MR. SAMPAT: But there is -- there's UN remarks at
12 491 to 492 about decisive steps being taken in the right
13 direction.

14 THE COURT: I think those are with respect to the
15 Gang Suppression Force, but I think -- I mean, look, I think
16 we can all agree that the UN does not currently think it's
17 safe to go back to Haiti, given that the secretary of --
18 secretary general has said as much.

19 MR. SAMPAT: I don't think that's exactly what the
20 secretary general said.

21 THE COURT: Well, I'm not going to go over all of it
22 before, but the poorest country in South American and a severe
23 humanitarian crisis is not, like, a tourist advertisement.

24 MR. SAMPAT: That, I certainly -- but I don't
25 think the secretary general explicitly --

1 THE COURT: Go ahead.

2 MR. SAMPAT: -- said it is not safe to go back, is
3 my point.

4 THE COURT: Fair enough. He didn't say those
5 words.

6 MR. SAMPAT: There's -- there were articles in the
7 record about six million new voters being registered for the
8 upcoming elections.

9 We -- so again, I think the standard is about can
10 the secretary's decision be reasonably discerned from the
11 record. And whether projected out whatever -- there's steps
12 being taken. And I think it can be reasonably discerned from
13 that that things can get better and, based on that, I'm not
14 going to find extraordinary and temporary conditions, the
15 prong of TPS.

16 But I think the other thing that underscores that
17 is, you know, extraordinary and temporary at some point
18 becomes ordinary and permanent too. So, you know, it seems
19 that there has to be some sort of end point to it as well.

20 So, now, what the secretary has said is saying I
21 don't find extraordinary and temporary conditions prong is
22 met, so we can go right off of that.

23 THE COURT: Okay. All right. But let me -- so I
24 did find the Rubio -- the Secretary Rubio statement that was
25 cited by the Federal Register, and I -- you might not have it

1 in front of you.

2 MR. SAMPAT: I do.

3 THE COURT: Oh, you do. Okay. So -- it's in the
4 administrative record?

5 MR. SAMPAT: It is. I have it noted as 446 to 448,
6 so just add 7.

7 THE COURT: Okay. I spent all this time Googling
8 this stuff. I could have looked at the record.

9 MR. SAMPAT: Your Honor, I'll admit, I did the same
10 thing after I received your minute order.

11 THE COURT: We both need a paralegal.

12 All right. So this is the statement that is quoted.
13 And this is at AR 446. "Haitian gangs are the primary source
14 of instability and violence in Haiti. They are a direct
15 threat to U.S. national security interest in our region.
16 These gangs have killed and continue attacking the people of
17 Haiti, Haitian security forces, and Multinational Security
18 Support mission personnel, and are committed to overthrowing
19 the government of Haiti. They are -- their ultimate goal is
20 creating a gang-controlled state where illicit trafficking and
21 other criminal activities operate freely and terrorize Haitian
22 citizens."

23 Hold on one second. First of all, that's -- I read
24 that correctly; right?

25 MR. SAMPAT: Yes, Your Honor. And I'll just note,

1 the only thing that we submitted was the -- including the
2 Ansanm Coalition and Gran Grif. But that's in the Register so
3 we're okay.

4 THE COURT: Okay. And then if we -- and then if we
5 continue in the Federal Register, it discusses Ambassador
6 Waltz's interview of October 2025, where he had discussed
7 the -- creating the Gang Suppression Force. And then -- I'm
8 in the bottom of the middle column in 737.

9 MR. SAMPAT: Yup, I have it. It starts with, "In
10 October 2025, Ambassador Waltz said in an interview"?

11 THE COURT: Yeah, "In October" -- hold on. Let me
12 just start. "Ambassador Waltz said, in October 2025, 'These
13 gangs are in coordination with all of these transnational
14 groups. They're shipping drugs, money, weapons. They're
15 destabilizing the entire region.'"

16 Then it says -- then the Federal Register says,
17 "Widespread gang violence in Haiti is sustained by the
18 country's lack of functional government authority. This
19 breakdown in government directly impacts U.S. national
20 security interest, particularly in the context of uncontrolled
21 migration."

22 Now, one, again, we have Ambassador Waltz saying
23 that these gangs are destabilizing the entire region and the
24 Federal Register saying that the gang violence is sustained by
25 a lack of functional government authority. And that, again,

1 calls into question this idea that there is some safe havens,
2 you know, where these 400,00 people can go in Haiti. I mean,
3 it does seem like the Federal Register is saying this is a
4 problem in the country, like widespread problem.

5 MR. SAMPAT: So it certainly can be read that way.
6 Again, these are broad statements made in an interview. I
7 think -- I can't remember who that -- it was Martha McCullum,
8 so I'm not sure who Ms. Martha McCullim is, if she's a
9 reporter or --

10 THE COURT: But whoever it is, at least the
11 secretary trusts because she quoted them and relied on them.

12 MR. SAMPAT: Sorry. It was the ambassador, Your
13 Honor. I apologize. Not the secretary.

14 THE COURT: Yeah, yeah, Ambassador Waltz.

15 MR. SAMPAT: Ambassador Waltz, yeah. So, again --

16 THE COURT: These are statements that are in the
17 Federal -- I mean, I'm not making these up. They're in the
18 Federal Register.

19 MR. SAMPAT: They're in the Federal Register,
20 they're in the certified administrative record.

21 THE COURT: I guess my point -- I guess my point,
22 Mr. Sampat, is -- and I know you can't say yes to this
23 question. I understand you can't say yes. But isn't what's
24 happening here, even putting aside whether this is preordained
25 in good faith or in bad faith, that no one really thinks it's

1 safe to go back to Haiti. But at the end of the day, the
2 secretary's made a decision that it's in our national interest
3 to end this TPS status because it's in the national interest
4 to end all TPS statuses. I mean, this is Federal Register, if
5 you just read it on its face and you actually read what it
6 cites, cannot possibly stand, to any reasonable person, as a
7 proposition for it's safe to return to Haiti.

8 MR. SAMPAT: I understand Your Honor's point, but
9 what I will say is that that argument sounds to me to be in
10 fear of return, fear of persecution and things like that, and
11 there's a process for all that. The asylum process, removal
12 proceedings, all of that is there.

13 THE COURT: Well, you don't want 368,000 Haitians
14 applying for asylum. I mean -- by the way, they would have
15 far better protections if they applied and obtained asylum. I
16 mean, we might be in a different situation if the secretary
17 makes a decision that we're ending TPS status for Haitians,
18 but we understand that they might have asylum claims and we're
19 going to say that the statute -- the one-year statute of
20 limitation, which runs from the date you enter the country or
21 a date of changed conditions, will apply from the date of
22 changed conditions as of February 2026, because the changed
23 condition is you no longer have TPS status. But I'm going to
24 take a wild guess that Secretary Noem is not going to say
25 that. In fact, I'm going to take a wild guess that the

1 government will oppose any applications for asylum from
2 Haitian TPS holders.

3 MR. SAMPAT: So I can't say anything on the record
4 of what we will or won't do, what the secretary will or won't
5 say about that. But what I will say, my concern with Your
6 Honor's question and the framing of it, is that it turns the
7 burden on its head, which is that the burden is now on the
8 government to say, if you want the file for asylum, here are
9 the protections we're going to provide or here are some of the
10 concessions. Whereas, if you're defensively filing for
11 asylum, the burden is on the individual. Right, so --

12 THE COURT: I hear you, but here's where I'm getting
13 at, just totally transparent with you. I think the evidence
14 is quite clear that the secretary, maybe also the President,
15 wanted to end TPS status for countries in the United States.
16 That's what they wanted to do, and that's what they have done.

17 Now, I don't think that they did that because they
18 think it's now safe to return to these countries. I don't
19 think -- I can't speak for every country. I don't know. I
20 can speak for Haiti, because I -- just looking at the record.
21 And I think the record reflects that it's not safe to return
22 to Haiti. I think the Federal Register, on its face, reflects
23 that it's not safe to return to Haiti.

24 And I understand that I can't second-guess the
25 secretary's decision. But what that indicates to me is that

1 this is a, in the plaintiff's allegations, a preordained
2 bad-faith result. Taking it -- and I think what your real
3 argument is, what the real argument from the secretary is, no,
4 we were acting in good faith. We think it's in the national
5 interest to end TPS.

6 And that, I think, is actually a much harder thing
7 for the plaintiffs to discuss. Because then what we're
8 talking about is, is it contrary to law to make a decision
9 that whatever country is going to come before us, we think
10 it's in the national interest to not have TPS statuses in our
11 country. Is that a pattern and practice that the plaintiffs
12 can attack under the APA? And I think *Ramos* would say yes.

13 Is that contrary to law in the sense that the law
14 must be read that the secretary must make individualized
15 determinations per country? Or is that the discretion that
16 the secretary has? And/or is that too much discretion,
17 because what she's basically doing is taking over the role of
18 Congress and saying you, Congress, have enacted this statute,
19 I don't like the statute, I don't think that Congress was
20 right in thinking that we should have these TPS protections
21 for any country, because I think it's in the national interest
22 that we don't. So, therefore, I'm going to drive a truck
23 through this, you know -- I'm not going to call it loophole,
24 through this discretion on national interest.

25 It seems to me that if we're having an actual

1 legitimate, real conversation about this case, that's what we
2 would all be focused on, because I don't think that the
3 secretary thinks, I don't think that the record supports that
4 it's safe to return to Haiti.

5 But when I'm dealing with that, that does raise
6 questions in my mind, I think legitimate questions in my mind
7 about whether this is a preordained bad-faith result. Because
8 I don't think it's acting in good faith if I were to make the
9 finding, and we're still -- I'm just telling you what my
10 thinking is. I haven't made a final decision transparent. I
11 just want to make that absolutely clear for the record. I'm
12 just being very transparent with you, so you can respond to my
13 head, because I think that that -- that doing that, as opposed
14 to saying, it may or may not be safe to return to Haiti, we
15 can't say, it looks like it's getting better, it's still
16 really bad, we can't really say, but it doesn't matter because
17 it's in the national interest to get rid of this, as opposed
18 to, it's totally safe to go back to Haiti, no worries; oh,
19 it's also in the national interest in this.

20 I realize I've just thrown a lot at you, but that's
21 sort of where my head is right now.

22 MR. SAMPAT: I certainly appreciate that, Your
23 Honor. And before the Court right now, we have a Federal
24 Register notice that talks about both issues, right, the
25 extraordinary temporary conditions and the national interest.

1 So I've been addressing both, defending the Register and
2 defending --

3 THE COURT: No, I understand. I'm not criticizing
4 you in any way, shape or form. I'm just trying to think
5 through why I think that there are indicia of bad faith. And
6 one of the things that the case law says is indicia of bad
7 faith, or is actually an APA violation, is that the record
8 just blatantly does not support the decision.

9 MR. SAMPAT: So the problem with that is that we
10 have some evidence, and there are some cites in the record
11 that I mentioned about potential -- you know, the positive
12 gains made in the country. Your Honor may disagree with it.
13 If I was looking at it, maybe I may even disagree with it.
14 Whatever it may be, right, the question is can the secretary
15 weigh what's before her and in that way.

16 So the problem with framing it as a bad-faith
17 analysis is that it almost starts to invite challenges that
18 are just -- these decisions were made in bad faith and
19 whatnot, and now we've created basically what's a loophole
20 around the APA and the discretionary decision.

21 THE COURT: I have to tell you, I would
22 wholeheartedly agree with you but for the fact that the
23 secretary said what she wants to do, that there was at least a
24 result that did not go -- I think we can all -- I know you
25 can't agree publicly on the record, but there was a reason the

1 initial decision was stayed by a number of courts and that,
2 you know, there was a new process that went through. And that
3 we have 12 countries and every single country has been
4 determined to end TPS status.

5 And I'm sorry, but I just cannot believe that there
6 was an individualized, not preordained decision that
7 objectively looked at every country as to whether or not it
8 should be designated, and the result was all 12 should not be
9 designated. Because that would be the first time in humankind
10 where something like that had been found for 12 countries that
11 have been found, as recently as 2023 and 2024, to be the exact
12 opposite.

13 And I do think that there can be an argument. And
14 so if we were just looking at the Federal Register, I would
15 wholeheartedly agree with you. And this would be not a simple
16 case, but it would be a different case. But that's not what
17 we have here, unfortunately.

18 MR. SAMPAT: So if I may, Your Honor.

19 THE COURT: Sure.

20 MR. SAMPAT: Just on the point that a systematic
21 sort of determination involved TPS, and if it was this -- a
22 scam thing that maybe, as -- you know, that was a preordained
23 thing, I don't think we get a voluminous record like this.
24 Right. Like if it was a we're just going to terminate TPS,
25 over 1500 pages in an administrative record seems to say, we

1 considered a lot of things to do this. So those records are
2 entitled to the presumption of regularity.

3 THE COURT: Well, I mean, I don't know that that
4 remains the case. That's actually a question I have in my
5 head. But I don't want to get into that now. But even if we
6 presume that, it certainly -- I can take judicial notice. I
7 mean, even putting aside discovery, I can certainly take
8 judicial notice of what's uncontested, that all 12 countries
9 have been designated -- have been undesignated. I don't know
10 what the right terminology is. I mean, that's not something
11 I'm just like not allowed to consider, or that isn't facts
12 that we all agree on. It's not fake news.

13 MR. SAMPAT: Even if we agreed on it, I mean, we're
14 talking about an APA claim. If it wasn't before the
15 secretary, we're taking judicial notice.

16 THE COURT: But it was before the secretary, because
17 she's the one who made all these -- I mean, certainly, the
18 secretary had before her whatever she was using to determine
19 that all 12 of these were going to be denied. We're sort of
20 in the land of -- I don't know what land we're on. Go
21 ahead.

22 MR. SAMPAT: I was going -- I thought you were going
23 to talk about Yankee land again. But what I'm talking about
24 is the administrative record that's before this Court, right,
25 is -- it is the documents that were directly or indirectly

1 before the secretary. None of it has to do with other
2 countries and things like that. So there's nothing to suggest
3 that other countries' determinations bled into this one.

4 So I understand that's what they've alleged, but we
5 have an administrative record that shows -- like so with all
6 of that, I would just say if we start entertaining the idea
7 that just certain allegations can start rising to bad faith, I
8 think we're going to get to a world where we create a
9 carve-out and say, you allege bad faith, you get around the
10 APA's differential standard of review, you get to start
11 discovery into the administrative record. You could do all
12 that. And I don't think D.C. Circuit law supports that. I
13 don't think that's what Congress intended with the TPS
14 designations to begin with.

15 THE COURT: I also don't think Congress intended
16 that there would be no TPS designations, which is what's
17 happening right now.

18 MR. SAMPAT: So I disagree in that Congress never
19 contemplated that there would be no TPS designations, because,
20 again, the initial decision to inquire or review country
21 conditions to decide whether to designate a country for TPS is
22 all discretionary in the first place.

23 THE COURT: Yeah, it's discretionary in the sense
24 that per country, but certainly, Congress created an avenue
25 that it meant -- that it wanted it to be looked at and

1 followed to some degree, because, otherwise, it would have
2 been like, eh, no TPS.

3 MR. SAMPAT: Sure, but it's about like -- was -- if
4 I may say it this way.

5 THE COURT: Sure.

6 MR. SAMPAT: It was a tool for the Attorney General,
7 when he was the Attorney General and INS making decisions and
8 now the secretary of Homeland Security, to decide whether or
9 not there were conditions in certain countries that rose to a
10 certain level that, in the decision-maker's discretion -- that
11 person decided we don't want to send people back to that
12 country right now, and we're going to -- we're going to put a
13 temporary pause on enforcement operations against
14 individuals -- excuse me, those individuals.

15 I think it was just a tool. It was just a toolbox
16 that -- just a tool that Congress afforded the secretary and
17 the decision-maker. I don't think Congress ever said once you
18 designate, it's a perpetual designation, or said, but there
19 should always be at least one country.

20 THE COURT: I don't think Congress meant that, but I
21 do think Congress would -- that Congress who passed that law,
22 I don't know about today's Congress, that that Congress would
23 think, what we certainly didn't mean was to give the secretary
24 authority to say, just as a -- my view is, as a national
25 interest, not to have any TPS holders, because that is

1 basically doing -- I mean, Congress has legislated that it's
2 in the national interest to have some TPS holders, right, or
3 it wouldn't have done this. I mean, that's actually -- we're
4 getting into a discussion more for argument.

5 But I hear you, and I just -- when we talk about the
6 actual law, this is what I want to focus on in some part, so
7 just a spoiler on that.

8 MR. SAMPAT: Sure.

9 THE COURT: But let me finish up, before we break
10 really quickly, the rest of the Federal Register. So the
11 Federal Register discusses two individuals by name that
12 collaborated, I think, with Haitian gangs. One is the
13 sentence that ends with Footnote 41, is, "ICE apprehended a
14 member of a violent Haitian street gang who had been arrested,
15 charged, and convicted for 17 crimes between 2022 and 2024."

16 First, it appears that he was here in the U.S. for
17 nine years without any arrests. But more to the point, I did
18 not see in the record that he was a TPS holder.

19 MR. SAMPAT: So I pulled up the article in
20 Footnote 41. I don't see any mention of that in the article,
21 I can say that.

22 THE COURT: And it's not in the Federal Register
23 that he was -- so we can have TPS or not have TPS, and we'd
24 still have this Haitian individual who committed these crimes.
25 Yeah?

1 MR. SAMPAT: Right. But, again, I think the logical
2 or reasonably discerned part of this is, you know, if TPS is a
3 pull factor for unlawful migration and things like that, that
4 this individual may not be here but for the pull factor of
5 TPS.

6 THE COURT: Okay. Well, that's gazillion leaps of
7 logic. But also, again, we have the issue of people are going
8 to be coming into the United States whether it's TPS or not.
9 Certainly, it's not a pull factor if what we're doing is
10 extending as opposed to extending and redesignating; right?

11 MR. SAMPAT: I hear your point, Your Honor. I think
12 even extending, it could be a pull factor in a lot of ways.

13 THE COURT: Okay. And then, again, the State
14 Department has said -- the Federal Register says that, "There
15 are certain individuals with U.S. lawful permanent resident
16 status that have supported and collaborated with Haitian gang
17 leaders." Again, it doesn't indicate that those individuals
18 have TPS designations?

19 MR. SAMPAT: Your Honor, is there a footnote
20 associated with that statement?

21 THE COURT: I think that might be -- well, let me
22 put it to you this way, because I think that might have been a
23 document in a footnote that I looked at. But at least in the
24 Federal Register, it doesn't say that there are TPS holders
25 who were convicted of crimes and/or associated with these

1 gangs; right?

2 MR. SAMPAT: Well, I think the second individual
3 that's mentioned in -- I believe he's mentioned in the
4 Register that we were talking about?

5 THE COURT: Right, right, that second individual.

6 MR. SAMPAT: He was a TPS holder. And I believe the
7 plaintiffs have even conceded that by that alleging it in
8 their complaint by saying he was a typical TPS holder.

9 THE COURT: You were right about that. My
10 question -- you named one. You got one. My guess is that
11 there was a careful review for others. But let me say this,
12 doesn't this sort of prove the plaintiff's point that there is
13 a way to address if we have problems with individuals in this
14 country, which is we are able to withdraw their TPS status and
15 deport them.

16 MR. SAMPAT: Potential --

17 THE COURT: Sort of proves -- I mean, it's sort of
18 the exception that proves plaintiff's point.

19 MR. SAMPAT: So, again, those are prosecutorial
20 discretionary decisions that, you know, how we go about doing
21 that is one thing. I don't think an exercise of discretion
22 on -- on prosecutorial discretion, I should say, lends itself
23 to say, you know, this path exists. As you and I discussed
24 yesterday, Your Honor, whether somebody's put into removal
25 proceedings or not may or may not happen. So do we catch

1 these individuals? A lot of these individuals may not be
2 registered.

3 THE COURT: Well, they're registered. They're TPS
4 holders.

5 MR. SAMPAT: Or they may not have updated their
6 addresses; right. There could be a whole host of things. So
7 I think all that supports the fact that there are concerns.
8 And as -- I believe it was Justice Breyer who said -- that
9 wrote the majority opinion in *Zadvydas v. Davis*, it's okay for
10 the nation to speak with one voice when it comes to issues of
11 national security and immigration. So -- and this seems to be
12 speaking with one voice as it pertains --

13 THE COURT: I agree that we're speaking with one
14 voice. I just don't know that one voice is contrary to law or
15 not. I agree that we're speaking with one voice, no question,
16 loud and clear.

17 MR. SAMPAT: So I think if we're speaking with one
18 voice, I mean, this is exactly what Congress would have
19 permitted when it comes to this.

20 THE COURT: Well, I guess that will be the subject
21 of this afternoon's discussion.

22 Why don't we go ahead and break now.

23 MR. PIPOLY: Your Honor?

24 THE COURT: Do you guys have anything else?

25 MR. PIPOLY: I just have a couple things.

1 THE COURT: Okay. Come on up. I have a few more
2 minutes.

3 MR. PIPOLY: I can be very brief.

4 THE COURT: You have 10 minutes. 15, if
5 necessary.

6 MR. PIPOLY: I hope I don't need that long.

7 THE COURT: I hope you don't need that long too, but
8 you guys are long-winded.

9 MR. PIPOLY: Just a couple points for context,
10 because a couple of things that came up in that conversation
11 prompted some thoughts.

12 On the point about whether or not a bad-faith
13 standard would drive a hole through congressional intent, I
14 think it's worth noting that there's allegations and facts,
15 undisputable facts just in the world, that it's actually the
16 secretary that's trying to drive a hole in the statute. And
17 what I mean by that is --

18 THE COURT: Well, yeah, you know, that's obviously
19 where you two -- this is where the rubber hits the road with
20 respect to what we're dealing with.

21 MR. PIPOLY: I have a specific example in mind.

22 THE COURT: By all means.

23 MR. PIPOLY: The HECA case, and NTPSA 1, though with
24 Venezuela, not Haiti, both dealt with an attempt by the
25 secretary not to terminate TPS by following the statutory

1 requirements, not by even purporting to do the statutory
2 process, but by saying I have inherent authority to vacate.
3 So we would argue that those attempts to vacate, as opposed to
4 terminate TPS, is an attempt to bypass the statutory process
5 altogether.

6 THE COURT: Well, yeah, but that's what we've been
7 talking about, what they did first, and then the Court said
8 no, you actually have to follow the APA, and they're okay,
9 okay, we'll paper this and here's your APA analysis.

10 MR. PIPOLY: Certainly. But I think certainly from
11 our perspective, this indicates a desire on the part of
12 Secretary Noem, and possibly the administration more broadly,
13 that, if they had their druthers, they would disregard the
14 statutory process altogether. So I think it's --

15 THE COURT: Well, yeah, I mean, I don't -- if I was
16 the secretary of an agency and I could avoid the APA and just
17 do whatever I want, that's what I would want too.

18 MR. PIPOLY: I'm sure.

19 THE COURT: I would want to do whatever I want as a
20 district court judge, but I'm actually constrained by a lot of
21 things.

22 MR. PIPOLY: Absolutely.

23 I just wanted to sort of flag that as the broader
24 context if we're getting into a discussion about, you know,
25 what drives a hole through what Congress intended. Do with

1 that information what you will. I'm sure you're already
2 well --

3 THE COURT: It'll the subject of -- I mean, I am
4 really quite interested in this question of, you know -- I
5 can't, obviously, second-guess the secretary's determination,
6 but even if I don't make the bad-faith assessment, if what we
7 have is not a decision with respect to Haiti individualized to
8 Haiti, but what we have is a policy of no TPS designations for
9 any country, because it's in the national interest, I think
10 that is something I can review under the APA, because that --
11 and under -- this gets to jurisdiction, because I'm not --
12 under the jurisdiction-stripping statute, because it's not --
13 I'm not second-guessing what the secretary did vis-a-vis
14 Haiti. I'm looking at a determination that this is just what
15 we're going to do writ large.

16 So I think that that's a way that the jurisdiction
17 stripping of -- and -- which, in other ways, I think, doesn't
18 actually strip the ability to review this.

19 MR. PIPOLY: Sure. And part of that discussion or
20 part of that thought process, I think, is sort of informed.
21 You asked yesterday why there are multiple cases. I think
22 part of it is --

23 THE COURT: Yeah, there are a lot smarter judges
24 than me out there in the world that you would rather be in
25 front of. Judge Chen being one of them.

1 MR. PIPOLY: I think you've been --

2 THE COURT: That's fine. I wasn't fishing for a
3 compliment.

4 MR. PIPOLY: Well, I'll give credit where it's due,
5 Your Honor.

6 What I'll say is, is that certainly -- and again,
7 this takes us back to the first administration. We, in *Saget*,
8 certainly focused -- you know, we focused on one country, they
9 focused on multiple countries. There's different legal
10 theories that might attach to those. When I mentioned
11 yesterday that there's different legal theories and different
12 legal arguments, that's part of what I meant.

13 THE COURT: Well, what legal argument are they
14 making that you're not making?

15 MR. PIPOLY: Well, just the idea that you can do --
16 the idea of a cross-cutting termination versus -- in *Ramos*,
17 they had like five countries, we just had one in *Saget*, so it
18 implicates different facts.

19 THE COURT: I'm telling you where I'm focused on,
20 and that's 12.

21 MR. PIPOLY: I understand. I understand. I didn't
22 want to necessarily go too far down this road.

23 THE COURT: Sure.

24 MR. PIPOLY: I just wanted to flag that the vacatur
25 itself is an attempt to bypass the statute altogether.

1 THE COURT: Okay.

2 MR. PIPOLY: The second thing I'll note is, to the
3 extent that the government is invoking the asylum process as a
4 mechanism, as an alternative mechanism for these folks to
5 raise arguments, get protections, put aside all the stuff that
6 Mr. Tauber said yesterday about how --

7 THE COURT: Yeah, yeah.

8 MR. PIPOLY: Putting aside all of that, as a factual
9 matter, right now, Haiti is on a list of countries that, as I
10 understand it, can't even apply for affirmative asylum. Now,
11 I understand -- due to executive action by the agency. Now, I
12 understand the government's going to make a distinction
13 between affirmative asylum and defensive asylum.

14 THE COURT: I don't know how that -- I assume --
15 well, okay, I'll just keep my --

16 MR. PIPOLY: And the way I know that is that I have
17 a client from Haiti.

18 THE COURT: Yeah, yeah, okay. I don't disbelieve
19 you.

20 MR. PIPOLY: Anyway, I just -- so to me, the idea
21 that you can invoke at least affirmative asylum as an
22 alternative remedy to this, at least standing here today, I
23 would argue, is illusory. That's all.

24 THE COURT: Okay. All right. We will be back at --
25 well, I am hopeful to be back by 1:45, but I don't want to

1 keep you all waiting. Can you guys all check in with my
2 courtroom deputy around 1:40 or so, and I will let you know
3 whether we're going to be back at 1:45 or 2:00? As you all
4 know, I'm a stickler for being on time, and I hold myself to
5 the same standard. So I don't want to keep you all waiting.
6 So maybe just check in with Ms. White around 1:40, and she'll
7 tell you whether to be back at 1:45 or 2:00. Does that make
8 sense?

9 MR. TAUBER: One question. Since the courtroom will
10 likely be closed --

11 THE CLERK: I'll be in here. I will open the
12 door.

13 THE COURT: She'll open the door at 1:40 and she'll
14 let you know. Or you can email my clerk too if you're not
15 back.

16 THE CLERK: I'll be here.

17 THE COURT: Oh, by the way, guys, I have -- instead
18 of doing an oral ruling tomorrow morning, I'm just going to
19 put the ruling into whatever decision I make overall, since --
20 I've already told you what I'm doing. I've already made the
21 ruling. But I'll put, like, the reasons for it like more
22 formally in whatever opinion I issue on the Rule 705. So we
23 won't need to come back tomorrow by video. I'm really hoping
24 to get done today with argument. But if not, we'll have to
25 finish it tomorrow morning. We can do that by video or

1 whatever. Okay.

2 (A recess was taken at 12:03 p.m. to 2:05 p.m.)

3 THE COURT: Sorry I'm a little bit late. So for
4 this afternoon, I would really like to finish today. And I
5 realize I'm the reason we're going long, not you. This is
6 more comment to me than you all. I'm sure you guys would like
7 to be rid of me.

8 So I really -- I think in a lot of ways, the APA
9 analysis, you know, it sort of dovetails into the
10 jurisdictional analysis. So what I want to do is focus on
11 jurisdiction. Then to the extent there's anything additional
12 you all want to talk about, by all means. I don't want to
13 have just have you talk about jurisdiction and you talk about
14 jurisdiction. I want to actually go sort of statute by
15 statute, argument by argument.

16 So, Mr. Sampat, since this is really your argument,
17 you can start.

18 And so when I was -- any young associates are
19 listening? When I was a young associate, and even in law
20 school where they taught me some law, unlike at Yale Law
21 School -- oh, speaking of which, speaking of which, I
22 forgot -- I wanted to -- I forgot, I meant to mention that
23 when we were talking earlier about how stressful privilege
24 logs are, Katherine, who's phenomenal, went to Yale Law
25 School, and I always joke that no one actually learns law at

1 Yale Law School. And Katherine is the exception that proves
2 the rule.

3 But the example I always give is when I was a
4 partner, I had a young associate who was in charge of a
5 privilege log, and he gave me the privilege log and he did
6 attend Yale Law School. And I was looking at it, and it had
7 entries. And one of the entries was like red well, and I said
8 what does this mean? Because, you know, it says, name, date,
9 whatever, and just had red well. I was like, what does this
10 mean? He was like, well, I saw a red well with some documents
11 and some of them were privileged. I was like, okay, we need
12 to maybe explain the privilege log and what these columns mean
13 to the Yale law student. But I recalled that on the way over
14 to lunch.

15 Anyway, so --

16 MR. SAMPAT: That would be the easiest privilege --

17 THE COURT: Wouldn't that be awesome? Actually
18 would have given you guys. Maybe he was smart after all. Why
19 was I talking about a privilege log? Oh, I was talking about
20 Yale, not a privilege log. Okay. So was sort of take the
21 other side's best argument and make it your best argument.
22 That's -- the most successful lawyers are able to do that.

23 So I think with respect to the first section, the
24 jurisdiction-stripping section, sort of your best -- the
25 plaintiff's best case is clearly *McNary*. And so I spent a lot

1 of time with *McNary* yesterday, because it was one of my
2 homework assignments. And I've spent a lot of time overall.
3 And I thought, you know, if I was defense counsel, how would I
4 turn *McNary* into the best case for me? And here's what I
5 would do if I were doing it, and then you can either say no,
6 it's -- that's not right or yes, that is right, plus -- or you
7 can just say that's perfect, I can sit down.

8 So if I -- and when I say if I were, I don't mean to
9 suggest that I'm looking at it through plaintiff's eyes. I'm
10 just, you know -- I actually have to decide what the best
11 reading of the statute is, so I'm just sort of taking both
12 sides of it. And if I were you, this is what I would argue.
13 I would point me to the part of the decision that says -- that
14 basically defines determination under the statute, which is a
15 different statute than the one you're dealing with here, and I
16 would say, the Court, you know, clearly thought that this
17 judicial stripping language did not strip out all of
18 jurisdiction even though, you know, the determination,
19 quote/unquote, was left to the secretary under the statute.
20 But the Court was -- let me just find it. Sorry, one
21 second.

22 MR. SAMPAT: Not at all, Your Honor.

23 THE COURT: Oh, so it's 491, 492. It's at the very
24 end of 491, at the start of 492.

25 MR. SAMPAT: One moment.

1 THE COURT: Sure.

2 MR. SAMPAT: You said 491?

3 THE COURT: At the end of 491, at the beginning of
4 492. It's "the critical words" is the bottom of 491.

5 It says, "The critical words in 210(e)(1), however,
6 describe the provision as referring only to review of a
7 determination respecting an application for status."

8 And the Court has emphasized, through italics, a
9 determination and application.

10 Significantly, the reference to a determination
11 describes a single act rather than a group of decisions or
12 practice or procedure employed in making decisions. And I
13 would say that's actually very informative of what we have
14 here, because here, we don't have a determination. The
15 statutory language says any determination. And that involves
16 a plurality of determinations potentially.

17 And the Court goes on, and I won't read on, to
18 discuss how a lot of its discussion was because this -- the
19 jurisdictional-stripping language was limited to a
20 determination as opposed to any determination which indicates
21 a plurality, potentially, of determinations.

22 And then I would point to the language, I think at
23 495, where they're discussing *Heckler* at the beginning of 495.
24 And it says, "With respect to three respondents who have had
25 the surgery concluded, that it makes no sense to construe

1 their claims as anything more than, at bottom, a claim that
2 they should be paid for their surgery, since success in their
3 challenge to the secretary's policy would have the practical
4 effect of also deciding their claims for benefits on the
5 merits."

6 And I would say the -- that's what the plaintiffs
7 want here. They're claiming they don't want, you know, a
8 final decision. They just want the secretary to do an
9 objective, not preordained analysis that follows the APA and
10 does not create a constitutional violation, but the practical
11 effect of what they want is to extend the designation.

12 So if I were you, that's what -- well, if I were in
13 your shoes, that's what I would argue. And, A, is that -- do
14 you agree with that analysis, or is that wrong somehow, and do
15 you want to change to it or add -- more importantly, do you
16 want to add to it.

17 MR. SAMPAT: So I do have something to add to it. I
18 don't dispute Your Honor's characterization of what *McNary*
19 says. What I would say is my friends are -- really are
20 challenging a determination, and what matters is the relief
21 that's sought.

22 THE COURT: I'm sorry, the matter's what?

23 MR. SAMPAT: The relief that is sought.

24 THE COURT: The relief that is sought.

25 MR. SAMPAT: And that is in *Federal Law Enforcement*

1 *Officer's Association* versus -- I apologize for butchering
2 this name -- *Ahuja*, or *Ahuja*, at 62 F.4th 551.

3 MR. PIPOLY: Again?

4 MR. SAMPAT: 65 --

5 THE COURT: One second. Let me get in here. Okay.
6 What is it?

7 MR. SAMPAT: 62 F.4th 551.

8 THE COURT: Why don't you just --

9 MR. SAMPAT: So there, the D.C. Circuit said the
10 relief sought in the action is what matters. And here, my
11 friends on the other side, they're seeking vacatur of the
12 termination decision. They're not seeking relief that goes to
13 other countries' TPS determination.

14 So because of that, the D.C. Circuit said it falls
15 on the *Heckler* side of the analysis rather than the *McNary*
16 side. So I think that's --

17 THE COURT: Well, do we all -- before we continue
18 going, are we all on the same page as to what plaintiffs are
19 requesting?

20 Plaintiffs, what's your view as to what relief your
21 requesting?

22 MR. TAUBER: What are we requesting? We are
23 requesting, in 705 motion, a postponement of the
24 termination --

25 THE COURT: Yeah, I mean, like ultimately.

1 MR. PIPOLY: Ultimately, we would like to have
2 the -- ultimately, we would like to have the termination set
3 aside as unlawful under the APA. And also declaratory
4 judgment with respect to the issues raised.

5 THE COURT: But let's say I give you everything that
6 you dream of, and the Supreme Court agrees with me, which
7 would be lovely to have the Supreme Court agree with me.

8 MR. TAUBER: We would welcome it too.

9 THE COURT: I don't know if I'll ever get up there
10 or if one of my decisions will get up there, but let's just
11 assume that I was really persuasive. So Supreme Court -- so
12 the termination notice is set aside, and there's a declaratory
13 judgment that says what?

14 MR. TAUBER: That the Constitutional rights have
15 been violated.

16 THE COURT: Okay. What can the secretary do next to
17 actually end Haiti --

18 MR. TAUBER: The secretary would merely have to
19 restart a lawful periodic review process. She doesn't even
20 have to wait for this Court to rule. She could do that
21 today.

22 THE COURT: But that's what she did last time and
23 now you guys are complaining that she didn't do it right.

24 MR. TAUBER: Well, that's -- yes, that's certainly
25 true.

1 THE COURT: But what else -- whatever she does, if
2 she comes back with anything other than a designation of
3 extending the status, you guys are going to come back and say
4 it was a preordained bad-faith -- like what would she actually
5 have to do?

6 MR. TAUBER: Your Honor, I mean, I don't think
7 that's true. I mean, two things could well change that could
8 make a determination -- you know, a termination lawful. So,
9 for example, conditions on the ground could change.

10 THE COURT: The conditions on the ground aren't
11 going to change in three years so something else.

12 MR. TAUBER: President could have a change of heart.
13 We've seen other elected leaders come in with racially --
14 policies motivated by racial animus and ultimately change
15 their views. Perhaps the administration will have a change in
16 its views.

17 THE COURT: No, no, I mean, what could the secretary
18 do to reassess whether the -- Haiti's TPS should be extended
19 and determine, at the end of the day, after this lawful
20 process, that it should not be extended? And are you going
21 to, no matter what she does, come in here and say this is a
22 preordained decision?

23 MR. TAUBER: Your Honor, I just don't accept the
24 premise of "no matter what she does." We'd have to wait, see
25 what's in the termination notice, and see what's --

1 THE COURT: Well, first of all, you can reject the
2 premise all you want, but I'm the one asking the questions
3 citing the premise. So you're going to accept it for purposes
4 of answering my questions. Okay?

5 MR. TAUBER: Certainly, Your Honor.

6 THE COURT: So, second, the we'll just wait to see
7 what she does is not an answer to the question, because that's
8 what we did last time and here we are again. And I'm not
9 saying we shouldn't be here, but he's going to make an
10 argument, he is making an argument, and is going to make an
11 argument, and not a bad argument that, in effect, what you're
12 asking for is for the TPS not to be -- to always be extended
13 at least during the term of this presidency. And that's
14 obviously not something that I can do.

15 So what is it, what would the secretary be able to
16 do that would show that she was doing something without being
17 accused of having a preordained result?

18 MR. TAUBER: Well, for example, she could go back
19 and actually examine the Visa overstay issue using the proper
20 data, look at the criminality data, all sorts of things, which
21 we identified in our original complaint filed back either --

22 THE COURT: Okay. Well, just list them off for me.
23 I mean, assumedly she could actually consult with Secretary
24 Rubio.

25 MR. TAUBER: Yes, that was going to be the top, a

1 fulsome consultation with the secretary.

2 THE COURT: She could consult with the FAA about why
3 they closed down. That's an agency.

4 MR. TAUBER: Presumably, that would be an
5 appropriate agency.

6 THE COURT: What else could she do?

7 MR. TAUBER: The consultation with State would
8 obviously, we would think, have to have some form of the
9 serious memoranda and discussion within State to be a valuable
10 consultation. And if she chooses, for whatever reason, not to
11 do that, at minimum, explain the reasons for the departure
12 from past practice.

13 As you know, one of our allegations in the complaint
14 is that she has departed from past practice without
15 explanation. Certainly, the secretary could give an
16 explanation for her departure from past practice. That's
17 something that could happen.

18 THE COURT: But aren't the plaintiffs always going
19 to have the argument that even if she did this all objectively
20 and anew and did all these things, she's going -- the
21 allegation today is that she has a preordained result. So
22 what could she make you do to satisfy that whatever she has
23 done now does not have a preordained end point?

24 MR. TAUBER: On the facts today, with the
25 President's statements and policies, that she has vowed to

1 follow, she may well just be died in the wool opposed to this,
2 and no matter what the facts are, will oppose it. That's
3 true. And maybe we will be here another time if this is set
4 aside --

5 THE COURT: But this is actually important for this
6 conversation, because what he's arguing is that, in, effect
7 what you're arguing for is that this TPS be extended through
8 the Trump administration. I mean, and *McNary* supports him on
9 the fact that we can't -- if there's a jurisdiction-stripping
10 statute, it can't allow jurisdiction where the practical
11 effect of what the plaintiff is asking for is to get the
12 relief that they want on the merits; right.

13 And -- now, we could have a different
14 decision-maker; right? The secretary can say I'm going to
15 recuse myself from this decision, so someone else in DHS is
16 going to make the decision. That's something she could do;
17 right?

18 MR. TAUBER: She could, yes.

19 THE COURT: So that would take that out potentially,
20 Certainly, it would take out her prior views; right? And she
21 could even have a career DHS person and not a political
22 appointee do it; right?

23 MR. TAUBER: It's certainly possible, yes.

24 THE COURT: All right.

25 MR. SAMPAT: I will say, I'm not sure, because we

1 haven't briefed this. I don't know if the statute would
2 permit that, because it refers to the Attorney General by
3 title.

4 THE COURT: Yeah, but she can always -- she can
5 always -- yes, obviously, you can brief this, but my strong
6 suspicion is that she could say, clearly, I'm conflicted on
7 this, I've been found to be biased, the Courts have found
8 that, and I'm going to appoint, in my discretion, an objective
9 career person at DHS and then I'm going to follow that
10 person's recommendation.

11 MR. SAMPAT: So without granting the --

12 THE COURT: Yeah.

13 MR. SAMPAT: Without conceding the point that that
14 would be permitted under the statute. And maybe that's the
15 thing. But I think it goes to the crux of what the challenge
16 is, which is to the meat of the TPS designation, which is what
17 the statute is meant to foreclose judicial review on.

18 THE COURT: But it's not, because that's why this is
19 really -- I mean, I'm sorry. You argue.

20 MR. SAMPAT: No, no, so I -- you know, I think
21 *McNary's* -- I think *McNary* was a wonky statute, right, to put
22 it mildly.

23 THE COURT: You like that word. Didn't you use that
24 word about something yesterday? Was that you yesterday?

25 MR. SAMPAT: Oh, maybe.

1 THE COURT: It's a good word. I'll probably adopt
2 it.

3 MR. SAMPAT: So, you know, I think it's important to
4 realize --

5 THE COURT: By the way, I don't know, do you know
6 where that word comes from? Is that some spin-off of *Willy*
7 *Wonka*?

8 Can you look it up?

9 She's good at that. Statutory interpretation for
10 cultural references, is what they do at Yale Law School.

11 MR. SAMPAT: It does go to the meat of the actual
12 underlying decision. I think what's important is we have to
13 take plaintiff's complaint and their 705 motion on their face
14 and what they're requesting. So asking them to amend at this
15 point and -- about the relief they seek, that's not what they
16 sought in their complaint. I don't think we should be
17 reviewing that. I don't think we should --

18 THE COURT: I think what they sought in their
19 complaint is based on a -- I mean, they didn't say what we
20 want is a determination that this can never be terminated
21 during the pendency of the Trump administration. I'm saying
22 is that the practical effect of what you're asking for. And
23 there's an argument that it is and there's an argument that it
24 isn't.

25 So I don't think they have to amend the complaint to

1 make the argument that it isn't. But go ahead.

2 MR. SAMPAT: I think they do, because I think what
3 we learned from the *Federal Law Enforcement Association* is
4 that it's the relief that is actually requested in the
5 complaint.

6 THE COURT: Okay. By the way, I was going to -- I
7 got us off on a tangent. I don't remember how that happened.
8 But give me the pincite you want me to look at.

9 MR. SAMPAT: Give me one moment. Your Honor, may I
10 just consult my --

11 THE COURT: Yeah, sure. Of course.

12 MR. SAMPAT: Your Honor, I believe it's the end of
13 561, beginning of 562.

14 THE COURT: Okay. I'm there.

15 MR. SAMPAT: So it says right -- I lost my original
16 copy so --

17 THE COURT: It's fine. Take your time.

18 MR. SAMPAT: So it's -- so I have the Lexus
19 version --

20 THE COURT: Yeah, you guys are Lexus fans. Is
21 that --

22 MR. SAMPAT: So I'll say this, I am not.
23 Unfortunately, my Westlaw is not working.

24 THE COURT: Yeah, because that's what -- all your
25 printed cases were Lexus.

1 MR. SAMPAT: Yeah. So it says -- the paragraph
2 starts with, "Second, the Association's substantive claims are
3 not --

4 THE COURT: You're going to have to slow down. Just
5 start again.

6 MR. SAMPAT: I apologize. Sorry.

7 The paragraph starts with, "Second, the
8 Association's substantive claims are not wholly collateral to
9 the CSRA system of review."

10 THE COURT: Okay.

11 MR. SAMPAT: "It is not wholly collateral if the
12 plaintiff aims to obtain the same relief it can seek through
13 the statutory regime."

14 So I think in that moment what the D.C. Circuit is
15 saying is if there's another avenue by which the plaintiffs
16 can get relief and get review, you can't go there. So they're
17 seeking termination of the -- they're seeking background of
18 the termination by way of saying we're -- our clients or the
19 class members are going to be removed. Those are challenges
20 that can be raised through a removal process, and they could
21 bring policy and practice claims through there.

22 THE COURT: All right. But then I think it was
23 maybe *McNary* or one of the cases I read last night that
24 said -- putting aside whether they have removal process --

25 MR. SAMPAT: Uh-huh.

1 THE COURT: No, not putting it aside. I think the
2 Court -- I can't remember if it was *McNary* or something else,
3 but the Court said saying that you can just go to removal
4 doesn't answer the question, because -- oh, I think it was
5 *McNary*, because you wouldn't -- that the appellate court would
6 not have the benefit of fact finding from a district court
7 judge. In all of our wisdom and abilities of being able to
8 create or set out a factual record and our analysis of case
9 law, et cetera, et cetera, they would not have -- are you
10 going to tell me it's a different case?

11 MR. PIPOLY: No, that's the right case.

12 THE COURT: You were looking like you were about to
13 interject.

14 MR. PIPOLY: I would try not to interject. I have
15 something to say.

16 THE COURT: Okay. Just quickly.

17 MR. PIPOLY: Well, I think this might have been what
18 you're on to, between 496 and 497 --

19 THE COURT: Okay. Everyone has to slow down, for
20 her.

21 MR. PIPOLY: Yes, Your Honor.

22 And in *McNary*, between 496 and 497, she said -- it
23 said that in order to raise their claims, the plaintiffs would
24 have to, quote, voluntarily surrender themselves for
25 deportation. And then the Court went on, quite obviously,

1 that, quote, that price is tantamount to a complete denial of
2 judicial review.

3 THE COURT: That's what I was thinking.

4 MR. SAMPAT: So I'm not disputing what the Supreme
5 Court said there. But in *McNary*, the Supreme Court actually
6 advised Congress, basically, and said if you use certain --
7 you could have created a statutory scheme that would allow for
8 these sorts of challenges. Because, again, *McNary*'s principle
9 is there's the presumption of judicial review. That
10 presumption being --

11 THE COURT: And the presumption, you agree, applies
12 even with respect to express jurisdiction-stripping statutes
13 or subsections.

14 MR. SAMPAT: To certain things, yes. And the D.C.
15 Circuit has said that, so I'm not going to go too far afield
16 on that point.

17 But I think what's important in *McNary* is that the
18 Supreme Court said if Congress uses certain kinds -- use
19 certain words, all questions of law and fact, and I think
20 there was one or two suggestions that they had proposed, that
21 if the statute used these words, then the
22 jurisdiction-stripping provisions would apply. Because now
23 you have told the immigration courts, right, in that process,
24 that they could entertain these sorts of challenges that
25 culminate in a PFR.

1 Congress did exactly what the Supreme Court told
2 them to. They added those words to 1252(b)(9), to bring up --

3 THE COURT: Okay. What were the words?

4 MR. SAMPAT: I believe it's "all questions of law
5 and fact."

6 THE COURT: With respect to what?

7 MR. SAMPAT: "All questions of law and fact that
8 arise out of removing an alien or a proceeding to remove an
9 alien." I think that's --

10 THE COURT: Okay. But that doesn't answer the
11 question because we're not in removal proceedings.

12 MR. SAMPAT: My point being is -- I understand we're
13 not in removal proceedings here. My point is that they can
14 get the review -- if they want to bring a policy and practice
15 claim, all of which hinges on their own allegation that
16 they're going to be removed from the country because of it,
17 and it's based on animus and whatnot, that sounds in removal,
18 so they can challenge it.

19 THE COURT: Oh, I don't think anyone's questioning
20 that they can challenge it. Yes, obviously.

21 MR. SAMPAT: Right.

22 THE COURT: If they are put in removal proceedings
23 and they get wonderful counsel who, you know, are diligently
24 doing their jobs, and most immigration attorneys, and
25 obviously the pro bono work of Williams and Connolly, give

1 them a -- five thumb's up for their pro bono efforts in this
2 regard. They're experts in this by now. They can make
3 challenges.

4 But there's a different point, and I think the point
5 the Supreme Court was making in *McNary* was that saying that
6 you could only bring this up in a process where you have to
7 give yourself over to the government to say I'm not leaving,
8 deport me, put me into removal proceedings, is not -- and this
9 is the language I was looking for -- is not actual judicial
10 review.

11 And we still have the problem of -- with respect
12 especially to constitutional claims, of -- and APA claims, of
13 the immigration judges who are -- any immigration judge I've
14 ever been in front of is incredibly hardworking and diligent,
15 most of them very smart that I've been in front of, but they
16 just don't have the expertise that district courts have in
17 doing what we do, in terms of having two-day-long hearings and
18 going -- you know, and being able to have three clerks dig
19 into complicated issues and think about these issues. I mean,
20 these aren't issues they're typically faced with thinking
21 about.

22 MR. SAMPAT: So I don't have the memo cite offhand,
23 Your Honor.

24 THE COURT: Sure.

25 MR. SAMPAT: I believe there was a memo that was

1 circulated by the Executive Office of Immigration Review
2 instructing immigration judges about their duties on
3 addressing and entertaining constitutional challenges.

4 THE COURT: Okay.

5 MR. SAMPAT: So -- and I certainly concede that, you
6 know, it -- an immigration judge could not determine the
7 Constitutionality of a statute; right. I think that's -- a
8 Court --

9 THE COURT: But could they determine an equal
10 protection claim?

11 MR. SAMPAT: I think they could develop the -- I
12 think they have the authority to develop the record and get
13 that over to the petition for review -- Court of Appeals
14 review. And then if in the very limited circumstances, if
15 additional fact finding is required, there is a limited remand
16 option under 28 U.S.C., I think it's 2347(b), that allows a
17 Court of Appeals to remand for fact finding to a district
18 court, at which point an individual could avail themselves of
19 the --

20 THE COURT: Okay. But in order for an individual to
21 avail themselves at this point of judicial review, they'd have
22 to break the law; right? Because let's presume -- going to go
23 out on a bender here or limb here and say that the Haitian TPS
24 holders are, say -- I don't know, let's just pick a number out
25 of thin air -- 99.6 percent people who follow the law. And if

1 TPS is denied, the only way they can be put in removal
2 proceedings is if they're here in the country illegally;
3 right? Because 99.6 of them, we can presume, if TPS is
4 stopped, will leave the country voluntarily. Right?

5 The only people who are in removal proceedings are
6 people who violate U.S. law by staying in the country
7 illegally. And it cannot be that what Congress intended or
8 what makes sense or what's lawful, is that in order to get
9 judicial review of an APA claim or a Constitutional claim, you
10 first have to break the law. That just makes zero sense.
11 And, by the way, I'm quite confident is not what the secretary
12 would encourage.

13 I mean, the secretary wouldn't say, by all means,
14 TPS holders, it's over February 3rd, but stay an extra month
15 so that 368,000 of you can file individual -- can be illegally
16 in the United States. We're going to create 369,000 illegal
17 immigrants and after we do that, then we're going to allow
18 360,000 of those to say to, you know, their nearest ICE
19 official, hey, hey, I'm in the country illegally, please put
20 me in removal proceedings. And even if they did all that,
21 it's not clear all of them would be put in removal
22 proceedings, because, again, it's prosecutorial discretion.
23 The prosecutor's like, you know what, we're not going to deal
24 with it, you guys can stay in the country illegally until
25 maybe some other prosecutor determines otherwise. That's not

1 meaningful judicial review.

2 MR. SAMPAT: I would disagree, only because if the
3 issue is that individuals that lose TPS would now be here
4 unlawfully, that's an issue of their own making.

5 THE COURT: No, it's not an issue -- no, no, no, no.
6 No, hold on. It is not -- well, yes, if they remained here
7 illegally, yes, of course, that part of it would be an issue
8 of their own making. But the part of they have to be here
9 illegally to get into removal proceedings to assert their
10 Constitutional claims is certainly not of their own making.
11 And I don't think it's of Congress's making, is my point, is
12 the bigger point.

13 MR. SAMPAT: So I think --

14 THE COURT: That point is precisely why it makes no
15 sense. I'm sorry. Go ahead.

16 MR. SAMPAT: No, I apologize, Your Honor. I think
17 with how long Haiti's TPS designations have gone on, going
18 back to 2010 and the extensions and whatnot, there has been
19 over -- what now amounts over 15 years of time to try to
20 legitimize one's status in this. Country nothing has stopped
21 them -- stopped individuals from trying to say I want to get a
22 green card, whether it's through marriage, family, through
23 employment, affirmatively seek asylum, do all those things.

24 So I think what Congress intended with TPS, and I
25 think what -- let me rephrase. What Congress intended was for

1 all of these statutes to work together, and to say -- I
2 understand, there's some people here that may be here
3 unlawfully, but we recognize some of those people here
4 unlawfully may be able to legitimize their status. So that's
5 a certain process. If you remain here unlawfully and you
6 haven't done that, then we always have the discretion to put
7 you into removal proceedings, at which point you can avail
8 yourself of whatever relief or removal you would like to seek
9 defensively.

10 THE COURT: But you can't avail yourself of removal
11 proceedings. You can say here I am, ICE, I'm here illegally,
12 please put me into removal proceedings. But you can't just
13 show up to immigration court and say, hello, I want to start a
14 removal proceeding against myself.

15 MR. SAMPAT: No -- or, I mean, one could register
16 with DHS, as I think as required now.

17 THE COURT: But that doesn't mean DHS is going to
18 follow up with you and put you in removal proceedings.

19 MR. SAMPAT: Yeah, no, but that's always subject to
20 discretion. I understand that, absolutely. But when
21 individuals came here, they could have affirmatively sought
22 asylum within the one-year bar. There are processes in place,
23 and that's what Congress intended. There are multiple
24 processes in place that individuals can avail themselves of.
25 The backdrop right now very much seems to be we've never

1 availed ourselves of those processes, so now this is the only
2 challenge we have. And I --

3 THE COURT: Well, hold on. I'm confident there are
4 some, if not the majority -- I have no idea how many -- of TPS
5 holders who didn't avail themselves of something available to
6 them.

7 MR. SAMPAT: Sure.

8 THE COURT: But you don't have available to you a
9 way to stay legally in the United States a process to become a
10 lawful resident just because you have TPS status. I mean,
11 sure, you can marry someone in the U.S., but you actually have
12 to fall in love and marry someone in the U.S. Doesn't always
13 work out well, tell you from firsthand experience. Doesn't
14 always work out well. Sometimes it doesn't work out at all.
15 Maybe asylum, but my guess is the individual would be told
16 that -- well, I don't know actually what the law is on whether
17 you can obtain asylum -- well, I guess they can obtain asylum
18 beforehand. They can't now. I don't know that every TPS
19 member would automatically have an asylum claim, because not
20 only do you have to say that you would be prosecuted or
21 persecuted if you return to your country, that the government
22 can't control the gangs. You have to say you specifically
23 would be persecuted; right.

24 So not every TPS holder, in fact, the vast majority
25 of TPS holders would not be eligible for asylum, because, yes,

1 if they go back, they could potentially get caught up in this,
2 but that's not sufficient under asylum law. If the government
3 wants to take the position it is, wonderful, but you're not
4 going to, I promise you.

5 And then with respect to employment, I don't know
6 what that avenue is, but they have work authorization. And I
7 don't think -- I don't know if that allows them to apply for
8 residency alone. I doubt it.

9 So my point being is like yes, of course there would
10 be some people who didn't avail themselves of opportunities.
11 But I don't know how extensive the opportunities actually are.
12 And that doesn't answer the question, the fundamental question
13 of is there meaningful judicial review of their constitutional
14 claims? When we go back to they were here and they didn't
15 avail themselves of legal mechanisms, that goes to the merits
16 of whether, you know, they have -- well, I don't know if it
17 goes to the merits of whether they have a constitutional claim
18 or not. Whatever it is, it goes to the merits. It certainly
19 doesn't go to whether the judicial stripping clause applies.

20 MR. SAMPAT: So on the TPS statute itself, I think
21 it has to apply. Because it's --

22 THE COURT: Give me the specific subsection and why
23 and the language.

24 MR. SAMPAT: Sure. Give me one second. Give me one
25 moment, Your Honor.

1 THE COURT: Take your time.

2 MR. PIPOLY: Your Honor, while --

3 THE COURT: No, no, unless it's just -- if it's
4 substantive, I want them to be able to hear you.

5 MR. PIPOLY: Yes. Absolutely. I'll wait.

6 THE COURT: Okay. Can you convey to your people
7 working on this, I do appreciate their work. I think we all
8 recognize there are a lot of civil servants in DHS right now,
9 as was alluded to earlier, working around the clock on these
10 cases. So please thank them.

11 MR. SAMPAT: Will do. Thank you, Your Honor.

12 The judicial review bar talks about --

13 THE COURT: Oh, can you just give me the specific
14 citation.

15 MR. SAMPAT: It's --

16 THE COURT: Just because we're dealing with so many
17 subsections.

18 MR. SAMPAT: So 1254a(b)(5)(A).

19 THE COURT: And speak slowly.

20 MR. SAMPAT: "There is no judicial review of any
21 determination of the Attorney General with respect to the
22 designation or termination or extension of a designation of a
23 foreign state under this subsection."

24 So the phrase "with respect to" reads broadly, and
25 that similar language doesn't appear in the statute in *McNary*.

1 So with that being said, it's clearly that Congress intended
2 with the TPS designation in foreclosing judicial review, they
3 meant it more broadly.

4 THE COURT: Okay. Is there anything else you want
5 to say on this subsection -- this part of the argument before
6 I get to plaintiffs?

7 MR. SAMPAT: On the TPS statute itself, no, Your
8 Honor. But I know Your Honor wants to hear from them as well,
9 but I do also have arguments on 1252(a)(2)(B)(ii).

10 THE COURT: Let's get to that one. Let's do this
11 one and then we'll get to that one.

12 MR. SAMPAT: Sure.

13 MR. TAUBER: It will take me just a second.

14 THE COURT: Sure. Take your time.

15 (A discussion was held off the record.)

16 MR. TAUBER: Your Honor, may I start where the
17 government ended --

18 THE COURT: You can start wherever you would like.

19 MR. TAUBER: -- with the availability of
20 alternatives avenues of relief? It doesn't exist today. This
21 administration has stopped processing asylum claims, at least
22 with respect to Haitians, has stopped processing change of
23 status applications. And -- did I hit asylum? Yes.

24 THE COURT: But that's not -- the point isn't
25 whether or not they can stay legally in the United States with

1 respect to judicial review. The question is with respect to
2 their APA and constitutional claims with respect to this
3 statute, when they are put in removal proceedings, do they
4 have a defense in their removal proceedings.

5 MR. TAUBER: Let me preface this answer with the
6 caveat that I'm not an expert in immigration law. However, as
7 we cite to the Court --

8 THE COURT: Well, you're talking about someone who
9 was in a lot of removal proceedings. Not personally but --

10 MR. TAUBER: I'm sorry, I'm hard of hearing.

11 THE COURT: You're talking to someone who was
12 actively in removal proceedings, and then I said not
13 personally. I was never put in removal proceedings, probably
14 to the chagrin of many people, but --

15 MR. TAUBER: The case law -- and we point at pages
16 23 to 24 of our reply in support of our 705 motion. That's
17 ECF 100 -- cites three cases to Your Honor standing for the
18 proposition that aliens cannot effectively raise
19 constitutional claims in immigration proceedings.

20 Perhaps most pointedly, the BIA itself, so the
21 Bureau -- the Board of Immigration Appeals, says, *In Re:*
22 *Salazar, Re: Gino 23, and I and N Decision 233*, that, quote --
23 and I believe it began with, "We have long held," but the
24 quote we have here is, "We lack authority to rule on the
25 constitutionality of the statutes we administer."

1 And I --

2 THE COURT: But again, at the end of the day, it's
3 the Court of Appeals who's going to make the decision; right?

4 I mean, I think what you said yesterday, Mr. Sampat,
5 they can make an advisory opinion or they can just create the
6 facts or whatnot?

7 MR. SAMPAT: Yes. So our understanding is
8 individuals can build their record out in immigration court.
9 And even if an immigration judge and the Board of Immigration
10 Appeals can't rule on a constitutional question, whether it's
11 the constitutionality of a statute or something else, the
12 Court of Appeals will --

13 THE COURT: You need to slow down and talk into the
14 mic.

15 MR. SAMPAT: I'm sorry.

16 THE COURT: You can be seated.

17 MR. SAMPAT: Okay. If they cannot rule on the
18 constitutionality itself, the Court of Appeals can on a
19 petition for removal.

20 THE COURT: Okay. See how I actually listen to you
21 when you talk? When I let you talk, I listen.

22 MR. SAMPAT: I appreciate that.

23 MR. TAUBER: In response, Your Honor, I point the
24 Court again to page 24 of ECF 100, our 705 reply, and point
25 the Court specifically to the *Khalil* case, which is *Khalil v.*

1 *Joyce*, 780 F.Supp.3d 476 at 512, where it collects a whole
2 slew of cases, explaining --

3 THE COURT: What court is that? Sorry.

4 MR. TAUBER: I'm sorry?

5 THE COURT: What court?

6 MR. TAUBER: Which court? The District of New
7 Jersey. I apologize, Your Honor.

8 THE COURT: District of New Jersey?

9 MR. TAUBER: Yes, from 2025. It's all dealing with
10 this administration's immigration. And they point out, that
11 court points out that the immigration courts do not have the
12 capacity to do the fact finding and record review and indeed,
13 because in the proceedings it's limited to the record in front
14 of them, they don't -- it doesn't have a place to come in and,
15 therefore, any judicial review is ineffective even if raised
16 in the immigration proceedings.

17 THE COURT: Okay.

18 MR. TAUBER: So that's on the availability of
19 alternative relief.

20 THE COURT: Okay. Can you talk about sort of, you
21 know, what your response was to my discussion of *McNary*, that
22 I think Mr. Sampat agreed with, and then also, in particular,
23 his discussion that Congress did what the Supreme Court told
24 them to do by adding language "any question of law and fact
25 arising under the decision" and adding the "with respect to"

1 language.

2 MR. TAUBER: Yes, Your Honor. Very good response to
3 that, in fact.

4 THE COURT: Great. I'm sure Mr. Sampat has a great
5 response too.

6 MR. TAUBER: The government cited to, I believe both
7 in its papers and Mr. Sampat --

8 THE COURT: I'm sorry, you need to slow down.

9 It's really interesting, you speak out like footnote
10 tangents in your head, I think, but then you actually say
11 them, but you're not actually wanting to talk them because
12 it's just like a tangent in your head. So then you mumble
13 them very quickly, which I don't mind hearing the tangents,
14 totally fine with me, I don't care. I have plenty of
15 tangents, but it makes her life really difficult.

16 MR. TAUBER: I apologize.

17 THE COURT: No, no need to apologize.

18 MR. TAUBER: I try to do better each time, Your
19 Honor.

20 THE COURT: We all do. I will say, I'm an
21 incredibly fast speaker. But now because I'm so sensitive --
22 not that I do much about it, but because I'm so sensitive to
23 Christine and court reporters, in my personal life, when I'm
24 not in a courtroom, if someone is talking fast, I start
25 getting really nervous, because I think the court reporter's

1 going to get mad. So she's trained me well.

2 MR. TAUBER: Certainly. So the government pointed
3 to 8 U.S.C. 1252(g). I'm scrolling down to that now. Was it
4 (g)?

5 MR. SAMPAT: The subprovision that contains the
6 language from *McNary* is (b)(9).

7 THE COURT: Thank you.

8 MR. TAUBER: Thank you. Yes, (b)(9).

9 Two things to point out here, Your Honor. First, I
10 note that the (b)(9) provision that the government relies on
11 explicitly calls out certain statutes whose operation is
12 suspended; namely, the habeas statutes. And similarly, with
13 1252(a)(2)(B)(ii) --

14 THE COURT: I'm sorry, so is the argument that
15 (g)(b)(9) doesn't apply except where the statute it lists, and
16 this isn't one of the statutes it lists?

17 MR. TAUBER: We have the threshold argument under
18 5 U.S.C. Section 559 that says that, "Any subsequent statute,
19 in order to displace the APA, must expressly do so." So
20 inasfar as the statute -- none of the provisions that they
21 rely on expressly displace the APA.

22 THE COURT: I got it. Okay.

23 MR. TAUBER: And the contrast is stark in 1252,
24 because in 1252, various provisions, including in 1252 --
25 gosh, I can't get it straight -- 1252(a)(2)(B), which is the

1 provision they rely on, the prefatory language is,
2 "Notwithstanding any other provision of law, statutory or
3 nonstatutory," this is the key, "including Section 241 of
4 Title 28, or any other habeas provision, and Sections 1361 and
5 1651 of this Title," comma, blah, blah, blah. So this
6 explicitly is calling out the statutes that the provision
7 displaces.

8 THE COURT: No, no, it's saying -- notwithstanding
9 says the opposite. No? Maybe I'm not following --

10 MR. TAUBER: No, no, it says, "Notwithstanding
11 statute or common law, including," and then it explicitly
12 lists, by name, the statutes that are being displaced.

13 THE COURT: Hold on. I'm not following you. One
14 second. Let me just get to the -- let me get the language in
15 front of me.

16 MR. TAUBER: Yeah.

17 THE COURT: You're in 52?

18 MR. TAUBER: Yes, Your Honor, 8 U.S.C.
19 1252 (a) (2) (b) .

20 THE COURT: Sorry. Give me one second. Is it 54 or
21 52?

22 MR. PIPOLY: 1252.

23 THE COURT: All right. So 1252 -- oh, you were
24 saying 1252, parentheses, A, not 1252, not parentheses --
25 there's a 1252, nonparentheses, A.

1 MR. TAUBER: Oh, is there one of those as well?

2 THE COURT: Well, no longer, which is why I was
3 getting a blank screen.

4 Okay. I'm there, notwithstanding.

5 MR. TAUBER: Notwithstanding any other provision of
6 law, statutory or nonstatutory, comma, including Section 241
7 of Title 28, or any other habeas provision, and Sections 1361
8 and 1651 of such Title, no Court shall have jurisdiction. So
9 there --

10 THE COURT: Oh, so they don't list the APA.

11 MR. TAUBER: Correct. Exactly right, Your Honor.

12 THE COURT: Okay. I understand now.

13 MR. TAUBER: And now, the second thing I would point
14 the Court to in 8 U.S.C. 1252, is 8 U.S.C. 1252 sub A sub 2
15 sub A sub iv.

16 THE COURT: Hold on. 1252(a)(2) --

17 MR. TAUBER: (2)(A)(iv).

18 THE COURT: Got it.

19 MR. TAUBER: And there, we see that Congress, in
20 response to *McNary*, wants to exclude claims for procedures and
21 policies, and knows how to do so. And in this very statute
22 that the government relies on, there is a provision that
23 strips courts of jurisdiction to hear --

24 THE COURT: Hold on. Maybe you're getting to this.
25 Roman IV, what's the language there that's important to me?

1 MR. TAUBER: Right. That's what I'm trying to point
2 Your Honor to.

3 THE COURT: Got it.

4 MR. TAUBER: Yeah. So that Congress clearly knew
5 how to draft a statute that would strip courts of jurisdiction
6 to hear procedure and policy claims. It did not do so here
7 with respect to the provision that the government's relying
8 on. And it's the very same subprovision. They're relying on
9 sub A, sub 2, sub E, and this is a very -- right above it,
10 sub A sub 2 sub A.

11 So it's -- we're talking the very same subsection of
12 the statute, which clearly, in one instance, explicitly
13 prevents the courts from considering procedure and policy
14 claims, but, in the other section that the government relies
15 on, has not made that -- has not stripped the Courts of that
16 jurisdiction. And certainly, under the canons of
17 construction, when Congress will do something explicitly in
18 one subsection of a statute and then, in a very closely
19 aligned subsection, does something else, that difference is
20 significant.

21 THE COURT: Well, actually, Mr. Sampat, can you make
22 a note that I wanted to ask you about that, and particularly
23 that statutory construction, particularly with respect to, I
24 think, *ITECH*, at page 336, where the Court there does say --
25 it has a number of citations. I think one of them was an SEC

1 case, *Net Coalition versus SEC*, that says, "When Congress uses
2 particular language in one section of a statute but omits it
3 in another section of the same Act, we presume that Congress
4 acted intentionally," and I think this is going to be key for
5 their 1254 argument.

6 MR. SAMPAT: Okay.

7 THE COURT: Go ahead.

8 MR. TAUBER: So turning to *McNary*, perhaps?

9 THE COURT: Sure.

10 MR. TAUBER: Some of these cases overlap which
11 jurisdictional provision we're talking about, so it's a little
12 hard to keep it perfectly clear. But *McNary*, we're well
13 squarely within the *McNary* world. We do not challenge the
14 secretary's determination. We challenge the process by which
15 she reached that determination.

16 THE COURT: I mean --

17 MR. TAUBER: You know, every --

18 THE COURT: -- I think the problem with the case,
19 not with your argument or defense's argument, is that we
20 are -- we may be in the onion stage as opposed to the bagel
21 stage with respect to how fine we're -- I mean, arguably, I'm
22 sure what the defense would say is one person's attack on
23 procedure is another person's attack on the determination.
24 And when the practical effect is the same, we assume it's an
25 attack on the determination.

1 MR. TAUBER: Well, the Supreme Court disagrees with
2 the government in *McNary* where the government raised analogous
3 arguments, the Court rejected those. And in the course of
4 rejecting those, it discussed the difference between what I
5 presume was an injunction and what was being sought under the
6 APA in *McNary*. And it says --

7 THE COURT: What page?

8 MR. TAUBER: I think it's at 494. Let me just pull
9 it up to check.

10 THE COURT: Okay.

11 MR. TAUBER: Sorry. I was having computer issues
12 all morning.

13 THE COURT: No worries.

14 MR. TAUBER: Yes, it is at page 496, actually. I
15 misspoke. So that's 498 U.S. at 496. Oh, I'm sorry, Your
16 Honor, that's not the correct cite. It's right above it.
17 I'm sorry. So it's the bottom of 495. And it reads -- that
18 paragraph says, "Unlike the situation in *Heckler*, the
19 individual respondents in this action do not seek substantive
20 declaration that they're entitled to SAW status."

21 THE COURT: Yeah, but Mr. Sampat is going to come
22 back up here and say maybe that's not what they call it, maybe
23 they don't use those words, but that's what, in effect, they
24 want. That's the effect of what a decision in your favor
25 would do.

1 MR. TAUBER: Again, Your Honor, A, different legal
2 actions can have similar effects, but they're nevertheless
3 distinct actions. So, for example, with respect to
4 1252(f)(1), the provision with respect to injunctions that was
5 dealt with Elian Gonzalez, the Court clearly reserved on the
6 effect of that decision or its logic on the APA claims. And
7 so it clearly sees a distinction between injunctions and
8 set-aside. And the D.C. Circuit has certainly, time and time
9 again, most recently in the 2025, Make the Road decision, and
10 previously, distinguished between set-aside and injunction.
11 So I think the binding law here is that there is a real
12 distinction.

13 And let me just flesh that out a bit. We were
14 talking earlier when I was seated. We simply don't know what
15 the basis of any future termination notice would be should the
16 Court set aside this notice. I can't predict to you what it
17 is. I can't tell you what the bases of a potential challenge
18 would be. But I do note that over the history of the TPS
19 statute, various TPS designations have, in fact, been
20 terminated without legal challenge. And I think that's not
21 for a lack of lawyer, it's just because, okay, it's done.
22 It's fine, you did it correctly and on we go.

23 So it is possible for administrations to do things
24 lawfully. Facts on the ground may change. There are a host
25 of facts that we just don't know today. So there could well

1 be facts under which we would not have a legal basis to
2 challenge a future termination.

3 THE COURT: Okay. All right. That's fair.

4 MR. TAUBER: It's a legal objection on that. I was
5 just making sure I touched the notes.

6 THE COURT: Sure.

7 MR. TAUBER: Now, again -- and also I think the
8 Court noticed this already, but *McNary* certainly emphasizes
9 the importance of a forum for hearing these claims, and an
10 effective forum. And just to be clear, though, some of the
11 key sentences or people like to quote refers to constitutional
12 claims. The Court, at several points, refers to
13 constitutional and statutory claims.

14 THE COURT: No, I -- yeah, yeah.

15 MR. TAUBER: Okay.

16 THE COURT: They were clearly talking about the APA.

17 MR. TAUBER: I'm sorry?

18 THE COURT: They were clearly talking about the APA.

19 MR. TAUBER: Yeah.

20 THE COURT: By the way, I notice that Mr. Kurzban,
21 who, I guess, didn't want to stay for part 2, argued that
22 case.

23 MR. TAUBER: Yes, ma'am.

24 THE COURT: Yesterday, I was -- oh, he's done
25 Supreme Court cases, so yesterday, when I was reading *McNary*,

1 I was like, oh, yeah, he's done some.

2 MR. TAUBER: The picture you saw on his wall --

3 THE COURT: I'm sorry, which one?

4 MR. TAUBER: The picture you saw on his wall was
5 from the *McNary* argument, in fact.

6 THE COURT: You were going to say something?

7 MR. PIPOLY: I was going to say that.

8 MR. TAUBER: Does the Court have additional
9 questions about *McNary*? The last thing, before I move on from
10 *McNary*, I would note that notwithstanding the hard questions
11 from the Court, every district court, to have considered a TPS
12 statute, has considered this argument from the government, and
13 each and every one has rejected it. So --

14 THE COURT: Well --

15 MR. TAUBER: I understand -- I'm sorry.

16 THE COURT: We have 9th Circuit; right?

17 MR. TAUBER: Well, no, the government misspoke
18 earlier. *Ramos*, they point to the *Ramos* panel decision out of
19 the 9th Circuit. It says what it says. The Court obviously
20 can look at it for whatever persuasive value the Court finds.
21 However --

22 THE COURT: It's a little hard to get through, to be
23 honest, in terms of the --

24 MR. TAUBER: Well, the logic breaks down, so --

25 THE COURT: I'll just leave it at that. But go

1 ahead.

2 MR. TAUBER: Yeah. So, but it was not mooted by
3 subsequent events. It was vacated. It was vacated when the
4 9th Circuit voted to rehear the decision en banc. Then,
5 subsequently, the whole case became moot before any en banc
6 decision because of a change in administration. The Biden
7 administration reinstated --

8 THE COURT: But I think there's some rule -- because
9 I think we dealt with this or -- when I was at W and C on one
10 of our asylum cases where -- oh, it was Judge Moss, brilliant
11 judge, agreed with us, that case was appealed. And before the
12 Court took up the case, the government dropped their appeal.
13 And the question was if you drop it one way, then Judge Moss's
14 decision would stand for its persuasive value but if you
15 dropped it a different way, it just basically -- as if it
16 never existed. I just don't know if that applies at the
17 circuit -- it's not here or there. I mean, it is what it is.

18 MR. TAUBER: Your Honor, we're not suggesting you
19 can't look at the *Ramos* decision.

20 THE COURT: Yeah, okay.

21 MR. TAUBER: Again, take it for what it's worth. I
22 would suggest that, you know, it gets the analysis wrong. The
23 fact that the 9th Circuit had granted en banc hearing suggests
24 that large number of judges disagreed.

25 THE COURT: It suggests that some subset of 11

1 judges out of many, many California Circuit Court judges
2 decided to take it up en banc. But go ahead.

3 MR. TAUBER: Fair enough, Your Honor. But, you
4 know, to just give a flavor of where I think *Ramos* went wrong,
5 is it sort of assumes what needs to be proven. It says
6 that -- it basically says that because she's allowed --

7 THE COURT: What page?

8 MR. TAUBER: Give me a moment, Your Honor. Computer
9 problems.

10 THE COURT: Just go ahead. What was the quote?

11 MR. TAUBER: I have it paraphrased.

12 THE COURT: Or paraphrase.

13 MR. TAUBER: The paraphrase was that we, the *Ramos*
14 panel, see this as a completely discretionary decision because
15 she's allowed to do whatever she wants.

16 THE COURT: Well, that's not what they said. I
17 mean, she's allowed to do a lot.

18 MR. TAUBER: Yeah. They saw that as --
19 notwithstanding statements about the restraints --

20 THE COURT: Right.

21 MR. TAUBER: They went ahead and just said, oh,
22 wait, it's unrestrained. So it's really hard to square the
23 one with the other.

24 THE COURT: Yeah. I will say that when you read a
25 lot of the decision, based on the reasoning, you think they're

1 going to do X, and then you get to the conclusion and it's Y
2 and you're like, okay. But go ahead.

3 MR. TAUBER: So I assume that's sort of our
4 discussion of 1254a sub B sub 5.

5 THE COURT: I'm sorry, I thought we were on --

6 MR. TAUBER: Oh, are we on the 12 -- I mean, again,
7 these -- overlapping --

8 THE COURT: Oh, no, you're right, we were on 1254.
9 Go ahead. Sorry. Go ahead.

10 MR. TAUBER: So with respect to that provision, I
11 mean, that's what we have to say. Certainly happy to discuss
12 the other provisions that the government raises.

13 THE COURT: All right. Thank you.

14 Mr. Sampat, I'll give you a brief chance to respond
15 after a break. Let's come back at 3:25. Okay. Thank you.

16 (A recess was taken from 3:08 p.m. to 3:24 p.m.)

17 THE COURT: So I'll let you respond briefly to what
18 he just argued. And then I don't know if this is 54 or 52 or
19 some other statement or some other issue, but I really do want
20 to get into, for the last part of this argument, this issue
21 that I'm sort of focused on, which is the pattern or the
22 practice or the policy of ending all TPS, whether that is in
23 or outside the jurisdictional -- I'm sure you're going to say
24 it's not reviewable, but to whether that would be contrary to
25 law under the APA once -- I want to have that discussion.

1 MR. SAMPAT: Okay. So I'll start with their
2 threshold argument about Section 559.

3 THE COURT: Oh, and by the way, this thing that
4 we've been discussing with respect to the contrary to law and
5 overall policy to just end TPS, if, let's say, that's a
6 factual finding or whatnot, you just agree that that's what
7 happened, you all -- you haven't briefed it, so I'm going to
8 give you whatever time you want to brief that issue and then
9 I'll give the plaintiffs a response. I'm not going to stop
10 you all from making whatever arguments you want to make. If
11 you feel you need more time on something, just work it out
12 with plaintiffs and just, you know, I need it. Maybe,
13 ideally, like ten days before the 2nd, but, you know, you guys
14 do you.

15 MR. SAMPAT: Thank you, Your Honor. We'll certainly
16 take you up on it, and we'll work it out with plaintiffs.

17 THE COURT: Okay.

18 MR. SAMPAT: So if I may respond to their threshold
19 argument of 5 U.S.C. 559, I think it's expressly foreclosed by
20 *Marcello v. Bonds*, the Supreme Court decision, where the
21 Supreme Court said, "Unless we require that Congress employ
22 magical words in order to effectuate an exemption from the
23 Administrative Procedure Act, we must hold that the present
24 statute expressly supersedes the hearing provisions of that
25 Act."

1 So at that -- the Supreme Court, in that moment, is
2 recognizing there is no requirement to expressly cite to the
3 APA in jurisdiction-stripping provisions.

4 THE COURT: I thought you argued that there was? I
5 thought he was arguing that there was.

6 MR. TAUBER: I'm sorry, I was taking a note, Your
7 Honor. What was the question?

8 THE COURT: He's citing *Marcello* for the proposition
9 that the Supreme Court recognizes that there's no requirement
10 for there to be an express exemption of the APA in
11 jurisdiction-stripping statutes, and I thought you had just
12 argued the opposite to me.

13 MR. TAUBER: I did. And I don't want to take up
14 Mr. Sampat's time, but the counter to that is the case we
15 mentioned yesterday, *Shaughnessy*, which was decided about
16 three weeks before *Marcello*, and which *Marcello* cites.

17 THE COURT: All right. I'll look at both.

18 MR. SAMPAT: So *Marcello* is just a start, Your
19 Honor. I will also point Your Honor to the Supreme Court's
20 decision in *Bouarfa* from 2024, *Elian Gonzalez* in 2022, *Biden*
21 *versus Texas*, the Supreme Court decision in 2022, *ITECH* from
22 the D.C. Circuit to 2021, and *N.S. v. Dixon* which is from
23 2025.

24 THE COURT: All right. That's a lot of cases.

25 MR. SAMPAT: Five cases in five years from binding

1 courts that have had the 1252 bars before it, and none of them
2 talked about this express language. And I believe *Biden*
3 *versus Texas*, *ITECH*, *Bouarfa* were all APA cases.

4 THE COURT: But at least one or more of them, and I
5 think *ITECH*, we're talking about an APA challenge or a
6 challenge that was, in fact, a challenge to the determination
7 and not an APA challenge. But I hear you and we'll look at
8 that.

9 MR. SAMPAT: Yeah. So my point being, in *ITECH* and
10 these other cases, claims were brought under the APA. It was
11 an APA cause of action, the courts reviewed that. I think
12 it's telling that none of them said, well, we don't really
13 think 1252 applies because there's no express mention or
14 pincite to the APA.

15 THE COURT: But I think they were also saying this
16 is an APA case at the end of the day. I mean, on the merits,
17 it failed as an APA claim, because the APA, I think we all
18 agree that you can't just second-guess the secretary's
19 decision in each of those. And I think *ITECH* in particular,
20 because that's the homework you gave me, so that's the one I
21 focused on, the Court said he is challenging -- he's not only,
22 in effect, he is actually challenging the decision as to
23 whether or not he should be allowed to stay. And that --
24 those cases are more black, white easier because you have one
25 person with an attack on a decision that's affecting only that

1 one person, I think is what his response would be.

2 MR. SAMPAT: So I certainly hear that, your point,
3 Your Honor. I would just say that if you bring an APA
4 challenge, it's just a broad APA challenge. The theory under
5 which you pursue that APA challenge could be different, but my
6 point is binding D.C. Circuit and Supreme Court law has looked
7 at APA challenges and never adopted their proposed argument
8 under 559.

9 THE COURT: Okay.

10 MR. SAMPAT: I did want to address Your Honor's
11 question on *ITECH* and 1252(a)(2)(b)(ii), where I think Your
12 Honor was talking about the SEC decision and the quote where
13 Congress includes a particular -- or includes particular
14 language in one section of the statute but omits it in another
15 section of the same Act. It's generally presumed that
16 Congress acts intentionally and purposefully in doing so.

17 I will say, I think, when we look at (b)(9) and we
18 look at the TPS statute, I think we have to realize, again,
19 these statutes work in concert together. So in that TPS
20 recognizes that an individual or individuals from a foreign
21 state will be in the United States under TPS. And if they
22 have challenges that go to their removal, which, again, is
23 what my friends are alleging in terms of the termination of
24 TPS will lead to removal, that those challenges can be broad.
25 So I think you have to read those in concert. So I think

1 that's how that works.

2 We cited a bunch of cases on (a)(2)(b)(2), so if you
3 have specific questions about that, I'm happy to address
4 those, but I did want to spend some time on 1252(f)(1).

5 THE COURT: Go ahead. Just do it slowly.

6 MR. SAMPAT: Sure. So 1252(f)(1) clearly bars the
7 relief that plaintiffs seek, which is --

8 THE COURT: Let me just look it up. Sorry.

9 MR. SAMPAT: Sure.

10 THE COURT: 1252, parentheses, F?

11 MR. SAMPAT: Parentheses F, parentheses 1.

12 THE COURT: This is why lawyers are like totally
13 nerds. Okay. Go ahead.

14 MR. SAMPAT: So it says, "Regardless of the nature
15 of action or claim, we think that includes the APA, no court,
16 except the Supreme Court, shall have jurisdiction or the
17 authority to enjoin or restrain the operation of a covered
18 provision."

19 I don't think that the issue of whether TPS is a
20 covered provision is at dispute anymore. I know we -- there
21 was some dispute about that during class certification. But I
22 think even plaintiffs have since come to see -- come to agree
23 with the government that it is at least covered by part 4.

24 THE COURT: Is that -- have you seen the light on
25 that?

1 MR. TAUBER: We have not done the necessary deep,
2 deep, deep dive into the legislative history to be comfortable
3 with making that concession, but we certainly acknowledge the
4 government has an argument there.

5 THE COURT: Okay.

6 MR. SAMPAT: I'll just point -- we have a docket
7 entry in our surreply. We attached the actual public law copy
8 that shows it under part 4.

9 THE COURT: Okay.

10 MR. SAMPAT: So now that we've dealt with the fact
11 that it is a covered provision, the question is whether the
12 relief sought enjoins or restrains. It absolutely does. A
13 court order telling the secretary that the termination
14 decision cannot go into effect would effect -- would enjoin or
15 at the very least restrain the secretary and the United States
16 Government from moving forward and terminating temporary
17 protected status as it pertains to Haiti.

18 THE COURT: Well, no. No. I mean, I wouldn't say
19 that to her. I would say the way that this was done violated
20 the APA and/or violated plaintiff's constitutional rights. Do
21 it in a way that doesn't do those things.

22 And that's why we were having sort of the discussion
23 earlier about the practical effects. And, you know, certainly
24 there is a way -- there's probably many, many ways to do this
25 in a way that plaintiffs couldn't or a court wouldn't accept

1 that it was done in violation of the APA or a constitutional
2 violation and potentially get to the same result. The
3 question is: Are you starting from a position of an open mind
4 and pursuing a process that is -- comports with the APA and
5 constitutional rights.

6 MR. SAMPAT: So I certainly hear your point on that,
7 Your Honor. My point is different, which is that the relief
8 that the Court would order, right, so it would be -- if the
9 Court is saying -- if Your Honor was saying that, you know, we
10 would be telling the secretary go back and do this again, it's
11 a coercive order. It affects -- it enjoins and restrains the
12 operation of a TPS statute.

13 THE COURT: Well, I mean -- no. No. The Court
14 would be saying operate away, you guys do you; when you do it,
15 just do it legally.

16 MR. SAMPAT: I think Elian Gonzalez and *N.S. Dixon*
17 completely foreclose that, because whether or not it's done
18 lawfully or unlawfully, Elian Gonzalez was pretty clear of
19 like that's just -- that would basically gut 1252(f)(1)
20 entirely.

21 THE COURT: But then this would also just gut
22 constitutional review of any provision of the INA that's
23 covered by this (f)(1).

24 MR. SAMPAT: So I just want to be very clear about
25 this. So we're not arguing that 1252(1) goes to subject

1 matter jurisdiction. We think *Biden versus Texas* closes
2 that --

3 THE COURT: Okay. So what's it going to?

4 MR. SAMPAT: It goes to the -- it goes to the relief
5 that Your Honor could order.

6 THE COURT: So what relief do you think I can order?

7 MR. SAMPAT: I think the only thing this Court could
8 order is pure declaratory relief that simply goes to the
9 effect of something like I find the secretary's decision
10 violates -- is unlawful, contrary to law, whatever it is, and
11 period, full stop. Like I think it would be that.

12 THE COURT: What do you think the chances are think
13 if I did that, Secretary Noem would say, eh, Judge Reyes has a
14 good point, yes, I will do something different.

15 MR. SAMPAT: Well, I think --

16 THE COURT: I think the chances are zero. Frankly,
17 I think zero might be overstating it.

18 MR. SAMPAT: Well, I think that's the entire point
19 of a declaratory judgment --

20 THE COURT: Meaningless -- then it's just a totally
21 meaningless decision. And it's not -- you still can't
22 actually raise a constitutional claim because the relief you
23 got would be a meaningless claim, and this would, in effect,
24 in practical effect, foreclose that.

25 But by the way, footnote, in Britain, their highest

1 court, their Supreme Court, can only do just that. The
2 British high court can say this act of parliament violates the
3 constitution, end stop. And the parliament can say thank you,
4 we agree, we'll do something different. Or it can say thank
5 you for your thoughts on the matter, and we're going to do
6 what we did. So they don't actually have a *Marbury v. Madison*
7 approach.

8 MR. SAMPAT: So that sounds to me like what
9 declaratory judgment is meant to be in our system, which is
10 noncoercive. It simply says, based on the lawsuit before me,
11 I am defining the rights as it pertains to the parties and
12 because it's noncoercive, there's no contempt issues. So,
13 unfortunately, this seems to be a -- I should strike
14 unfortunately. Congress seems to have contemplated a world in
15 which district courts and even appellate courts across the
16 country, the only thing they can do is affirm and talk about
17 declaratory judgments that do not effect the government's
18 ability to operate these statutes as it sees fit. And it's
19 only the Supreme Court at the end of the day that can issue
20 some sort of order or decision that says, government, you now
21 have to go follow --

22 THE COURT: So then they don't have a constitutional
23 claim because they just have no relief.

24 MR. SAMPAT: They phrased it constitutional claim,
25 but the relief Your Honor could order on the constitutional

1 issue is just say I think it violates --

2 THE COURT: Yeah, it would make it a nonclaim, in
3 effect.

4 MR. SAMPAT: I think that's what Congress sort of
5 intended in that --

6 THE COURT: Well, let me ask you this question -- I
7 had a good question, one second. Oh, so let's say I make --
8 and I have not made this finding. Don't everyone lose your
9 mind. But let's say I make -- well, let's just give a
10 hypothetical. We have a similar case, just a hypothetical in
11 Yankee land, and the secretary is Secretary Smith, a Red Sox
12 fan. And Secretary Smith, the Court finds -- I find -- was
13 acting in total bad faith, like totally just wanted to get rid
14 of all the Yankees fans because they were Catholic and she
15 doesn't like Catholics. Clear First Amendment violation, zero
16 question. Didn't do anything following the APA. In fact,
17 said I think that APA is just wonky, bonkers, and I'm not
18 going to follow it.

19 So express constitutional violation, unquestioned
20 violation of the APA. And your argument is no Court can do
21 that. The only thing a Court can do in response is say that's
22 not constitutional. And hopefully, the Supreme Court takes it
23 up, because of course, Supreme Court has no requirement to
24 take up anything.

25 MR. SAMPAT: Right. And a --

1 THE COURT: If Secretary Smith says that Judge
2 Reyes, super glad she's a Red Sox fan, I think she's a moron,
3 and I don't really care what she thinks, I'm just going to go
4 do my unconstitutional action, I'm just going to go ahead and
5 put forth a constitutional violation on all Catholics from
6 Haiti and there's nothing anyone can do, except for the
7 Supreme Court, maybe, if they take the case. That can't be
8 the law.

9 MR. SAMPAT: I think it is. I think *N.S. v. Dixon*
10 was a due process challenge about arresting individuals at
11 Superior Court. It was a challenge to due process, it was an
12 alleged constitutional violation, and the D.C. Circuit said,
13 you can't issue an order that affects the government's ability
14 to not detain people.

15 THE COURT: Sorry, was that on an emergency motion
16 or a panel decision?

17 MR. SAMPAT: That was a panel decision on the
18 merits, Your Honor.

19 THE COURT: Okay. Who was the panel?

20 MR. TAUBER: I'll tell you in a second.

21 MR. SAMPAT: That, I can't --

22 THE COURT: You claim that you were prepared.
23 Sorry.

24 MR. SAMPAT: I most certainly --

25 THE COURT: I'll look it up. I mean, it doesn't

1 matter. It is what it is. I have to follow it. So go
2 ahead.

3 MR. TAUBER: I can tell you. This is *N.S. v. Dixon*?

4 MR. SAMPAT: Yes.

5 MR. TAUBER: It was Judges Pillard, Walker, and
6 Ginsburg. The decision was written by Judge Ginsburg.

7 THE COURT: Okay. Go ahead.

8 MR. SAMPAT: And correct me if I'm wrong, it was
9 three zero?

10 MR. TAUBER: I believe so, yes.

11 THE COURT: Look at you.

12 MR. TAUBER: Concurring in part.

13 MR. SAMPAT: Okay. So two and a half.

14 THE COURT: I'll take a close look at it.

15 MR. SAMPAT: Yeah. So I think that's exactly what
16 Congress contemplated here in terms of the relief that's
17 afforded. But even -- that's about the merits, but the 705
18 motion itself has its own (f)(1) problems, which is that if
19 Your Honor were to stay the effect of the termination
20 decision, that clearly enjoins or restrains.

21 So putting aside the open question of vacatur,
22 staying the effect of the TPS termination decision would
23 enjoin or, at the very least, restrain the operation of TPS
24 statute as the secretary sees fit. So that relief just isn't
25 available.

1 And I know Mr. Tauber talked about the Make the Road
2 decision. I believe that was on the stay panel. That's a
3 stay panel decision that we've argued in our briefs. It is
4 not binding on this Court.

5 THE COURT: Which one?

6 MR. SAMPAT: Make the Road.

7 MR. TAUBER: To be clear, Your Honor, just so Your
8 Honor doesn't get confused, there are two Make the Road
9 decisions, one from 2020 and one from this year.

10 THE COURT: Was the road made in between? Okay. I
11 understand your argument. Can you just respond very briefly
12 to that.

13 MR. TAUBER: Yes, gladly, Your Honor.

14 THE COURT: Then I really do want to get to this
15 other question I have.

16 MR. TAUBER: If I could direct the Court to *N.S. v.*
17 *Dixon*, perhaps pull it up?

18 THE COURT: What's the cite?

19 MR. TAUBER: The cite is 141 F.4th 279.

20 THE COURT: 279.

21 MR. TAUBER: Yes. And I'll specifically direct Your
22 Honor to the very end of the decision.

23 THE COURT: Okay. What's the --

24 MR. TAUBER: The pincite there is 290. And when
25 Your Honor's there, I'll go further.

1 THE COURT: I'm there.

2 MR. TAUBER: So the very last sentence of this
3 decision -- and remember, the Court -- the district court in
4 this case had issued an injunction. The D.C. Circuit said
5 that was improper under 1252(f)(1).

6 THE COURT: Is this a panel decision?

7 MR. TAUBER: I'm sorry?

8 THE COURT: Is this a panel decision?

9 MR. TAUBER: Yeah, this is the same decision that --

10 THE COURT: Oh, that he just referenced. Okay. Go
11 ahead.

12 MR. TAUBER: Exact same decision. What I'm
13 suggesting to you is that it supports plaintiff's position,
14 not the government's position.

15 So again, just to recap, the panel found
16 unconstitutional action by the Marshal's service, but said
17 that the injunction entered by the D.C. -- by the district
18 court was improper given the problems with 1252(f)(1). But
19 then it remands to the district court -- and this is the key
20 thing, Footnote 7, literally appended to the last sentence of
21 the decision, which says, "We remand this case to the district
22 court to reconsider the appropriate remedy."

23 Then footnote 7 says, "This Court has stated, in
24 part" --

25 THE COURT: Hold on. Go ahead. Got it.

1 MR. TAUBER: The key thing is the very, very last
2 sentence of that footnote, where, having remanded to the
3 district court, the D.C. Circuit points out that at least one
4 Court of Appeals has held at 1252(f)(1) does not bar vacatur
5 under the APA. So clearly --

6 THE COURT: The circuit decision no less. Wow,
7 we're all like 9th Circuit's the 5th Circuit, and the
8 5th Circuit's the 9th Circuit today.

9 MR. TAUBER: Odd bedfellows, Your Honor.

10 THE COURT: Let me pull you one line or two lines up
11 and then ask about the issue on the motion to stay, which is
12 the district court was barred by 1252(f)(1) from entering a
13 class-wide injunction. Is the class-wide injunction doing any
14 work in this case with respect to the panel's concern about
15 the relief?

16 MR. TAUBER: Yes, Your Honor, the injunction was the
17 principal problem.

18 THE COURT: Was it the principal problem because it
19 was an injunction and that's not permitted by 1252(f)(1), or
20 was the concern that it was an injunction and it was an
21 inappropriate class-wide injunction? Do we know?
22 The decision might not speak to this.

23 MR. TAUBER: I honestly don't think it turned on the
24 class-wide nature, but it does cite to *Eliau Gonzalez*, which
25 clearly held that class-wide injunctions are improper. So --

1 at least in the background.

2 THE COURT: What about his view as to what I can do
3 on a stay?

4 MR. TAUBER: Yeah, certainly. I will point the
5 Court to -- you know, this is the 2025 decision, Make the
6 Road, 2025 Westlaw 356 --

7 THE COURT: Hold on.

8 MR. TAUBER: Sorry.

9 THE COURT: Okay.

10 MR. TAUBER: So again, Make the Road, 2025 Westlaw
11 356.

12 THE COURT: And this was on an emergency stay?

13 MR. TAUBER: Yes. But as Your Honor will see, it
14 was an extremely lengthy decision --

15 THE COURT: Well, you know what, there was an
16 extremely lengthy stay decision that came out a bit ago, and
17 notwithstanding its length, I thought the dissent had the
18 better argument. So length ain't going to do it.

19 MR. TAUBER: Fair enough. We encourage you to read
20 it all. But the majority --

21 THE COURT: Hold on. It says 225 Westlaw 356?

22 MR. TAUBER: 356, 3313.

23 THE COURT: Okay.

24 MR. TAUBER: And I'll point the Court to pincite 16
25 to 17.

1 THE COURT: Okay.

2 MR. TAUBER: And there, the Court says --

3 THE COURT: Hold. On I still don't have it. Is it
4 star 16?

5 MR. TAUBER: The language I'm looking for -- I
6 haven't quite found yet, Your Honor. Just a second. Right.
7 So at 16 to 17, it has a discussion of 1252(f)(1), and the
8 question is whether a stay, and this is specifically to a
9 stay, under the APA section 705, is permissible. And the
10 Court concludes that it is. The Court says --

11 THE COURT: Let me guess, was there a dissent?

12 Indeed, I was right about what I thought was going
13 to happen next. But go ahead. I'll just keep it to myself.

14 MR. TAUBER: So, you know, the Court says, in
15 contrast to an injunction here, A Section 705 stay operates
16 quite differently than an injunction. When a Court enters a
17 stay, it does not direct individuals to act or not act.
18 Instead, the order simply, quote, suspends the legal source of
19 authority to act, quote.

20 And there, the Court was quoting the Supreme Court
21 in *Nken* -- I'm not sure how you pronounce it properly, but the
22 *Nken* case, but the whole discussion by the D.C. Circuit in
23 this decision rests on Supreme Court precedent. It speaks of
24 what *Elian Gonzalez* does and what it doesn't do and then
25 points to *Biden v. Texas*, which I believe was cited by the

1 government, and it -- but it rests on *Reno versus American*
2 *Antidiscrimination* too.

3 THE COURT: Okay. But you agree with the government
4 that this isn't precedential.

5 MR. TAUBER: I'm not --

6 THE COURT: It's a panel decision on an emergency
7 stay. It's not precedent on the district court; right?

8 MR. TAUBER: If Your Honor's telling me -- I
9 honestly haven't gotten into that aspect --

10 THE COURT: Well, rest assured, the district court
11 judges here have had to get into it.

12 MR. TAUBER: No, I'm not disputing --

13 THE COURT: And the emergency stay panel is not --
14 well, okay, the next time you're --

15 MR. TAUBER: Even if it's not binding, I think it's
16 certainly persuasive about how at least these two judges of
17 the D.C. Circuit view it.

18 THE COURT: We know what two judges of the D.C.
19 Circuit think. But the next time we're all together, can you
20 just -- what I like to do in these hearings is get the things
21 that everyone agrees on set, so the less work I have to do.
22 So can you just do the necessary research to satisfy yourself
23 that a panel decision on an emergency stay in the D.C. Circuit
24 is not precedent. I mean --

25 MS. GONZALEZ-HOROWITZ: Yes, Your Honor.

1 THE COURT: -- of course, persuasive, blah, blah,
2 blah, but I think the government is right about that.

3 MR. TAUBER: As I say, I didn't --

4 THE COURT: Yeah. No, I'm not suggesting otherwise.

5 All right. I'll give you the last word on that, but
6 I really want to do -- you have literally two more
7 sentences.

8 MR. SAMPAT: So in that case, Your Honor, I'll just
9 say the *Nken v. Holder* case from the Supreme Court talks about
10 stays of removal and the effect a judicial order would have on
11 a stay; whereas, a 705 motion and a Court granting 705 relief
12 would actually operate on a decision made by the secretary.
13 So it acts in personam by telling the secretary this decision
14 can't go into effect. So it's not a stay the same way that
15 it's contemplated by *Nken*.

16 THE COURT: By the case he just cited.

17 MR. SAMPAT: Yeah.

18 THE COURT: What's your response to that, one
19 sentence?

20 And stay up.

21 MR. TAUBER: I'm sorry, Your Honor, I was looking at
22 another.

23 I apologize, Mr. Sampat.

24 THE COURT: He said that the decision that you just
25 pointed me to involved an in personam stopping as to, I guess,

1 what an immigration judge would be able to do on a removal
2 proceeding. What you're asking for here is for me to actually
3 tell the secretary what she can and cannot do.

4 MR. TAUBER: So two things, Your Honor. Confession
5 that I simply don't remember the facts of *Nken* well enough to
6 speak to that right now. I can give you something short after
7 the hearing.

8 And again, I would stress that the stay, while it
9 certainly would result in TPS designation for Haiti extending
10 past February 3rd, but it's not by order of the Court. That's
11 simply an automatic operation of law under 1254a(b)(3)(C). If
12 the secretary has not made a determination, we would say a
13 lawful determination, then the TPS designation is
14 automatically extended by default. Because that was
15 Congress's view what the default should be, extension rather
16 than termination.

17 THE COURT: Okay. I'm not -- I'll give you the last
18 word. You get one sentence and then I want to move on.

19 MR. SAMPAT: They are taking a leap from one step to
20 the other. The order would affect the current termination
21 decision, not the extension.

22 THE COURT: Okay. By the way, do I have in front of
23 me the ability to just make a merits decision? Can I just say
24 this violates the APA -- I'm not saying I'm going to. Do not
25 suggest -- do not take from this I'm going to make a final

1 determination by February 2nd. I just don't know if I'll have
2 it in front of me. But let's just say I for somehow get to
3 there, I was just like, oh, I can make a decision. Do I have
4 enough briefing for that, or do I not have enough briefing? I
5 mean, procedurally, can I do that?

6 MR. SAMPAT: Just to understand Your Honor's
7 question, to basically convert this to summary judgment, final
8 judgment, we just go up. I don't know enough. We haven't
9 looked into it, but -- so we'd reserve it.

10 THE COURT: Okay. If I need you to look into it,
11 I'll let you know, but right now I don't.

12 All right. So I want to get to this question of
13 either with respect to justiciability or call it contrary to
14 law or whatever you want to say. I want to get to this issue.
15 And again, let's say that I make the determination that
16 there's no bad faith here at all. And, you know, you guys get
17 your discovery and I look and I determine there's no bad faith
18 or there's no evidence of bad faith. And that what happened
19 instead was that the secretary reviewed the TPS statute, saw
20 that she has discretion to stop extensions based on a national
21 interest determination, it's in her broad discretion to do
22 that, and she determines that it's not in the national
23 interest to have any TPS designations of any country. And,
24 therefore, though she goes through the motions of papering
25 each country, she makes the decision that every country, 12

1 out of 12, which we know is undisputed fact, no longer has TPS
2 determination. Doesn't make any kind of individualized
3 determination whether individuals coming in from Venezuela
4 versus Haiti versus one of the other ten countries is a
5 problem, just says writ large, don't believe we should have
6 TPS holders in the country. I think it causes a national
7 interest concern.

8 One, would that be a violation of the statute on the
9 merits? And then if you want to talk about whether I can
10 review that or not, I just don't want to rehash the entire
11 jurisdiction argument. And, two, does her discretion with
12 respect to national interest work the same in that context?
13 So when I say is contrary to the statute, what I mean is the
14 statute just doesn't let her make a writ large determination
15 of TPS status as a policy matter. She can dress it up in
16 national interest all she wants, but the statute requires her
17 to make an individualized country-by-country analysis. And I
18 guess where jurisdiction comes up with at that point, we're
19 not -- we're definitely not making individualized designations
20 there because it applies to everyone, so I think that makes
21 the jurisdiction argument for plaintiffs much, much easier,
22 and for me much easier. But I don't really want to get into
23 all that.

24 So it's contrary to law in the sense that at this
25 point, we might have a nondelegation issue or assuming too

1 much delegation, in which Congress has clearly made, as a
2 policy decision, a decision that the country should be open to
3 individuals on a temporary basis from certain countries where
4 it's just unsafe to return to those countries. And yes, it
5 may be with respect to one country, it might not be in the
6 national interest for us to do that, but we think it is
7 overall in the national interest to have this option and to
8 exercise the option in good faith with respect to any
9 particular country. And to instead say, I just think it's in
10 the national interest not to have this availability is
11 basically saying I'm going to substitute my views for the
12 views of Congress; right?

13 So Congress could say, as a policy matter, we think
14 it's good to have this determination, because we know
15 immigrants come into the country, create trillions of dollars
16 added to our fisc and our economies, create hundreds, if not
17 millions of jobs yearly and, you know, we want these people
18 here giving us the money and creating jobs in our country as
19 opposed to elsewhere. Right. And that's like -- I'm just
20 saying, I don't know why Congress did what it did. We can
21 look -- let's just, in my hypothetical, that's what Congress
22 determined.

23 And yeah, it might not be in the national interest
24 for people from Yankee land to come, because people from
25 Yankee land, you know --

1 MR. SAMPAT: Can't stop talking about the 2000s?

2 THE COURT: Can't stop talking about --

3 MR. SAMPAT: 2004.

4 THE COURT: No, no, the Red Sox fan who can't stop
5 talking about 2003 and Pedro's giving up the home run to lose
6 the series. Fine. So yeah, so with respect to one country,
7 maybe there's a national interest in not having someone from a
8 particular country, but it's certainly not in the national
9 interest to have no people from any country where there are
10 some countries that we all agree to, let's say, that it's not
11 safe to return to. Does that -- I realize that's long.

12 MR. SAMPAT: I'm going to do my best to track Your
13 Honor. If I miss any points, please feel free to direct me --
14 direct me as needed. So I think --

15 THE COURT: Basically, it's not she made a
16 determine -- she made a good-faith determination to each
17 individual country and it just so happened that, after making
18 good-faith determination as to each individual country, it
19 comes out that all of them should be terminated. That's --
20 let's say she doesn't even say that that's what she's doing.
21 That she just says, I think it's in the national interest not
22 to have TPS, I'm going to deny all of these countries, and I
23 will paper why I think, you know -- I will say in each country
24 the individuals can't stop talking about the 2003 ALCS, but
25 it's all going to be the same, and I haven't made any

1 individualized determination as to any country. Does that
2 make sense?

3 MR. SAMPAT: I think it does, Your Honor. Again, if
4 I'm going off on a tangent, please bring me back in.

5 So I think what this underscores is the
6 jurisdictional nature, and I'm going to put that to the side,
7 right, is that national interest is supposed to broad, is
8 meant to be a broad phrase. And I think it's supposed to -- I
9 think Congress wanted to leave that to the secretary --

10 THE COURT: But so my question isn't her discretion.
11 Let's say that she would have -- let's say, if she looked at
12 Yankee land, she would determine that it's not in the national
13 interest for people to come from Yankee land because they
14 can't stop talking about the 2003 ALCS, but it is in the
15 national interest for the people from Red Sox lands not to
16 stop talking about 2003 ALCS.

17 So we're going to let the people from Red Sox land
18 in but not the people from Yankee land on this -- the same
19 issue, should we stop talking about the 2003 ALCS, yes; right.
20 Versus, I don't know if people from Yankee land talk about it,
21 I don't know if people from Red Sox land talk about it, I just
22 think, as a national interest, we shouldn't have people from
23 any land come in, because they -- because some people can't
24 stop talking about the 2003 ALCS.

25 MR. SAMPAT: So I --

1 THE COURT: So that's really the core of it. And
2 the question is: Does the statute allow her to make a
3 national interest determination writ large as opposed to with
4 respect to each country.

5 MR. SAMPAT: So I think it does, and to that --

6 THE COURT: And just point me to where you think
7 that.

8 MR. SAMPAT: *Zadvydas v. Davis*, who I think Justice
9 Breyer wrote can the nation can -- should --

10 THE COURT: Can you cite that to me? Do you have
11 the cite?

12 MR. SAMPAT: I don't have the pincite. I just
13 remember the case.

14 THE COURT: Okay. Davis?

15 MR. TAUBER: Which case?

16 MR. SAMPAT: *Zadvydas v. Davis*.

17 THE COURT: Can you spell that?

18 MR. SAMPAT: Z-a-d-v-y-d-a-s, *v. Davis*.

19 THE COURT: Something like that.

20 MR. SAMPAT: Yeah.

21 THE COURT: Okay. Thank you.

22 Again, I am going to actually want briefing on
23 this.

24 MR. SAMPAT: Okay.

25 THE COURT: I mean, if you don't want to give the

1 briefing, that's fine, but I'll want to hear from both sides
2 more on this. And I do think it's covered by the amended
3 complaint.

4 Go ahead.

5 MR. SAMPAT: So I -- it's in the majority opinion
6 written by Justice Breyer, I believe, where he says, "It is
7 okay for the nation to speak with one voice."

8 THE COURT: Well, yeah, I'm not disagreeing with
9 that. My question is whether, under the TPS statute, it's
10 okay for the secretary to speak to one voice with respect,
11 overall, to TPS, as opposed to an individualized voice that
12 might come up to the same voice.

13 MR. SAMPAT: Yeah, so -- and I think it is, because
14 if the Supreme Court is recognizing we're allowed to speak
15 with one voice, the secretary, exercising her statutory
16 authority to say, in speaking with one voice, I'm terminating
17 TPS.

18 THE COURT: But that assumes that she has the
19 statutory authority to do that. I mean, that is actually like
20 the core of my question.

21 MR. SAMPAT: Okay.

22 THE COURT: The core of the question is: Does she
23 have the authority to say we are speaking with one voice, and
24 our one voice is that it's in the national interest not to
25 have TPS holders from any country, and so, therefore, I'm

1 going to not allow any country to have TPS holders. Versus,
2 going country by country by country to figure out whether it's
3 in the national interest to have Haiti TPS holders versus a
4 Venezuela TPS holder versus whatever.

5 MR. SAMPAT: My understanding, you know,
6 understanding Your Honor's asking for briefing on this, I'd
7 want to look more into it, but my gut instinct is to say yes.
8 And the reason is, is that, again, because national interest
9 is broad. I'm not going to talk about the judicial review
10 bars on that issue. But I think because of the phrase and how
11 broad it's meant to be, I think it is permissible for the
12 secretary to say, as a matter of speaking with one voice, I'm
13 exercising my authority to say in the national interest, it is
14 about terminating TPS and I can do that.

15 THE COURT: Okay. But let's look -- and I feel
16 like -- I mean, this is more actually just telling you what
17 I'm curious about so when you brief it -- you know, I'm not
18 expecting an answer right now. But let me just focus -- you
19 know, let's just focus on the language for a moment.

20 And of course, I know the plaintiffs have language
21 that the extension provision doesn't permit national interest
22 to be taken into account. So let's just assume we get over
23 that hurdle. Don't have a heart attack. I'm not --

24 MR. TAUBER: No, I understand, Your Honor.

25 THE COURT: Before I do that, I have an excellent

1 question here, that I did not come up with. With respect to
2 the one voice language, and I don't have the case in front of
3 me, is that about we can speak with one voice with respect to
4 foreign policy? Because I think we can all agree that's
5 usually committed to the President's discretion.

6 MR. SAMPAT: I -- I'm not --

7 THE COURT: You have a friend coming up here.

8 MR. SAMPAT: So I'll pull the actual quote.

9 "Without abdicating their responsibility to review the
10 potential use lawfulness, the Courts can take appropriate
11 account of such matters as the executive branch's greater
12 immigration-related expertise."

13 THE COURT: Okay. All right.

14 MR. SAMPAT: "And the immigration and naturalization
15 services administrative needs and concerns and the nation's
16 need to speak to one voice on immigration."

17 THE COURT: Okay. All right.

18 MR. SAMPAT: So I think the language is brought
19 there.

20 THE COURT: All right. So if we go to -- thank you.

21 And thank you. I guess I'll let file your notice of
22 appearance now.

23 MS. GONZALEZ-HOROWITZ: I don't think I want to,
24 Your Honor.

25 THE COURT: Good point. Stay out of it for a while.

1 Keep your bar card clean.

2 MR. SAMPAT: I don't think anyone's --

3 THE COURT: So if we go to the extension of
4 designation statute, which is the sub 3 sub C.

5 MR. SAMPAT: I'm there.

6 THE COURT: And it says -- oh, first of all, I think
7 both counsel weren't reading this correctly yesterday. My
8 understanding is the secretary doesn't have to make an
9 affirmative determination that the country continues to meet
10 the standards for the extension to apply. We were talking
11 about that yesterday. She could do nothing, and it would be
12 an automatic extension. In order to stop the extension from
13 going into effect, she has to make a finding that it no longer
14 applies. You agree with that?

15 MR. SAMPAT: That seems to be how --

16 THE COURT: I'll give you a chance to think about
17 it. The reason I raise it is that seems to go to what
18 Congress intended in terms of how Congress felt about wanting
19 the extensions to continue; right? If the default is even
20 after the first default, there has to be an express
21 determination that these conditions no longer apply to stop
22 it, versus the secretary has to make a determination one way
23 or the other, and if she doesn't do anything, then it ends. I
24 mean, those are two different operations of the law and two
25 different things that we can take from it. But I'll -- I'm

1 springing this on you.

2 MR. SAMPAT: Yeah.

3 THE COURT: So let me just stick with the first
4 thing I'm springing on you, which is -- the language is, "If
5 the Attorney General does not determine, under subparagraph A,
6 that a foreign state no longer meets the conditions for
7 designation," blah, blah, blah. And here, I think *McNary*
8 would support a reading of this that this text is talking
9 about one foreign state, not about TPS writ large and not
10 about states writ large.

11 And that's really why I've been struggling with this
12 question, because I am -- because I haven't determined that
13 there's bad faith. And if I've determined that there's not
14 bad faith, and I actually determine that I have jurisdiction,
15 I really sort of need to understand, you know, what the
16 government's view and what the plaintiff's view are of the
17 textual language, and what is uncontested is that 12 countries
18 went up, 12 countries were denied. So go ahead.

19 MR. SAMPAT: So I think the point is that because
20 all 12 were denied, all 12 have their own Federal Register
21 notice and whatnot, those were individualized determinations.
22 I understand Your Honor's point, which is that maybe it was
23 individualized determinations, but if you look at them
24 collectively, what we see --

25 THE COURT: Just let's say my hypothetical is, is

1 that, with our hypothetical Yankee land, Secretary Smith says
2 I made an individualized -- I have made a determination writ
3 large, and looking at this -- and let's just start there.
4 Would they be permitted to do that under the statute? And the
5 reason I keep harping on this is because when you do your
6 briefing, I really want an answer to that very specific
7 question. Because yes, of course you have the argument that
8 they did do an individualized determination. It just so
9 happened, low and behold, that notwithstanding well-known
10 bell-curve phenomena, all of them came up heads; right?

11 MR. SAMPAT: So if I'm understanding Your Honor's
12 question, could the secretary issue a notice that effectively
13 reads I'm just terminating TPS wholesale, across the board,
14 no -- and that's it.

15 THE COURT: Because -- because I think it's in the
16 national interest to do so, because I am worried about gangs
17 and I'm worried about pull factors. Using all the reasons
18 that, let's say, she used here, but just says -- yeah, that's
19 a much better way to ask the question. Thank you. You should
20 be a judge. You want to trade? I don't think your boss would
21 hire me.

22 But -- but yes, basically that. Could she make a
23 determination I'm ending TPS, end stop, extensions on all
24 current TPS, don't know what happens if someone applies anew,
25 but I'm ending them on all current ones because I think it's

1 in the national interest not to have it. A, would that be
2 acceptable or not acceptable under the statute? B, if she
3 does that, but then also goes and does the individualized
4 determination thereafter and is like, yeah, I was right,
5 that's really just -- that to me just seems like the easier
6 question of that she can do it, of course, one by one, but
7 that's really what I'm going to.

8 MR. SAMPAT: So the second thing I agree with is
9 like the one by one, yeah, she can absolutely do. Whether or
10 not she can actually issue just one notice --

11 THE COURT: Well, hold on. Just to make clear, I
12 have not determined that, one by one, she can do it and all
13 come up with the same 12. I haven't made the determination
14 that that's not, in effect, a policy. But yes, let's just say
15 under my hypothetical, that's what we have.

16 MR. SAMPAT: Right. Okay. So I would ask
17 permission to get into the briefing on that, because I
18 think -- I think it's an important question. I think --

19 THE COURT: Yeah, and the reason -- and just so you
20 know, the reason I'm sort of focused on getting it exact is
21 because in your briefing, when I get the briefing and when
22 you're thinking about it, I want you to know sort of precisely
23 what the core issue is.

24 And I -- you don't even have to give me a preview.
25 You haven't had a chance to think about this. I'm not going

1 to put you on the spot. I do want briefing on this sooner
2 rather than later. You guys work out maybe like a ten-day,
3 maybe simultaneous briefs on this, you know, not forever,
4 five. Maybe talk to your appellate folks, because my guess is
5 this is going to go on appeal one day. But I do want an
6 answer to that textual question.

7 MR. SAMPAT: Okay. We will -- we'll look into it,
8 but I appreciate the opportunity for us --

9 THE COURT: Okay. And I don't know -- actually
10 don't argue it now because it wouldn't be fair to him if you
11 have a response. Just you guys get me five-page -- if you
12 need ten, fine, but I think five should be more than
13 sufficient, within the next couple of weeks. You guys figure
14 out when and where and we'll take it from there. Okay?

15 MR. SAMPAT: Thank you, Your Honor.

16 THE COURT: Okay. So now, that was what I -- we
17 still have --

18 MR. TAUBER: I would just note for the record, I
19 certainly would have some responses to what Mr. Sampat said
20 but we'll hold it off. I just want to not let the
21 record suggest that --

22 THE COURT: Well, why don't you give me a short
23 preview, just so I know that you're actually thinking about
24 what I'm thinking.

25 MR. TAUBER: Some notes. I didn't have --

1 THE COURT: I'm sure they're doodles.

2 MR. SAMPAT: I'm sorry?

3 THE COURT: Are they doodles of your dogs?

4 MR. SAMPAT: I can certainly show Your Honor a
5 picture later, but it's just my cheat sheet for my different
6 folders.

7 THE COURT: Yeah, yeah.

8 MR. TAUBER: I think the answer to the Court's
9 question is whether she could do this across the board is,
10 quite clearly, no, and the statutory language tells us why.
11 Which is that under the periodic review process, which is what
12 we're dealing with, which is 1254a sub B, sub 3, sub A, the
13 secretary must consult with the appropriate agencies, must
14 review the information before her, or that's available to her,
15 and then must determine with respect to, it says here, "the
16 conditions in the foreign state."

17 Leaving aside our argument about national interest
18 verse foreign state being permissible, even accepting the
19 premise that national interest can be considered in the
20 periodic review process, it still must be, at the very least,
21 country specific. That's the only way it can get under
22 there.

23 THE COURT: All right. For purposes of the
24 hypothetical, let's not get -- let's say the change -- she
25 follows the APA and all of that with respect to the general

1 policy; right? She consults with the agencies, she does a
2 writ large assessment of just migration writ large.

3 MR. TAUBER: Yup.

4 THE COURT: So there's no other APA violation, other
5 than that this is how she approaches it with respect to the
6 core question for the briefing.

7 MR. TAUBER: Yeah. No, and I do believe that's --

8 THE COURT: Yeah, yeah. No. okay.

9 MR. TAUBER: I have other things to say with respect
10 to national interest. Perhaps that's best saved for the
11 briefing, whatever Your Honor wants at this point.

12 THE COURT: Quickly on national interest -- I mean,
13 the other thing I want to get to -- well, first of all, I'm
14 going to ask Mr. Sampat if there's anything he hasn't said yet
15 that he wants to get to. And then if we're done in the
16 next -- before the next 47 minutes, I want to get to his
17 response to your argument with respect to national interest
18 doesn't apply to the extension of designation, with --
19 particular with the case I cited to you about the subparagraph
20 issue.

21 Okay. Go ahead.

22 MR. TAUBER: Thank you, Your Honor.

23 One point I want to make. I understand the Court's
24 hypothetical isn't the question, but I do want to emphasize
25 that plaintiff's position is that there can still be a

1 procedures and policy challenge under *McNary* even if one
2 country is at issue --

3 THE COURT: Yeah, no, I understand.

4 MR. TAUBER: Okay. I just want --

5 THE COURT: Yeah. Yeah, I fully understand that.

6 MR. TAUBER: Very well.

7 THE COURT: I think it's a much easier call if it's
8 policy procedure as -- writ large, as opposed to
9 individualized by individualized. But I fully understand.
10 But thank you for putting it on the record, but I fully
11 understand that that is your main argument.

12 MR. TAUBER: Okay. Yeah.

13 THE COURT: On the facts and on the law.

14 MR. TAUBER: Yeah. And, you know, I think Your
15 Honor's been struggling yesterday and today trying to wrestle
16 with this tension between what she can and can't do under the
17 APA given the statute. Honestly, there are limits on both the
18 secretary and the Court, and the question is where are
19 those boundaries. I understand that's the struggle here.

20 I would submit at least -- I would submit this
21 proposition, that whatever discretion the secretary might have
22 with respect to the definition of the national interest, she
23 is not free to define that interest on the basis of racial
24 animus.

25 THE COURT: Fair.

1 MR. TAUBER: That takes that out.

2 THE COURT: She wouldn't be able to say it's in the
3 national interest to keep out all Catholics, clearly.

4 MR. TAUBER: Exactly, Your Honor.

5 THE COURT: You would agree with that, Mr. Sampat,
6 or would you? I don't know. Not with respect to the statute
7 but with respect to the Constitution and putting aside
8 reviewability.

9 MR. SAMPAT: I think that's a harder question under
10 Trump v. Hawaii, but I recognize there's some tension there.

11 THE COURT: I under- -- yeah. But again, because
12 Trump v. Hawaii is people coming in, excluding them, versus
13 kicking people out.

14 MR. SAMPAT: Right. But *DHS versus Regents* talks
15 about individuals that were here under DACA --

16 THE COURT: Okay. All right. I'm not -- I'm not
17 shutting you up. I understand. I just don't want to get
18 sideways.

19 MR. TAUBER: So we submit that the secretary cannot
20 define national interest on the basis of racial animus, but
21 also would suggest that the secretary cannot define the
22 national interest arbitrarily. So she could not take a coin
23 and flip it and decide, heads, it's in the national interest,
24 tails, it's not.

25 THE COURT: You would agree that she can do that

1 though; right, Mr. Sampat?

2 MR. SAMPAT: Yes.

3 THE COURT: Okay.

4 MR. TAUBER: And I would submit that is not allowED
5 by the statute, precisely because of 1254a(b) -- (b) (3) (A) .
6 Sorry, Your Honor.

7 THE COURT: (b) (3) (A) .

8 MR. TAUBER: The periodic review provision, so
9 (b) (3) (A) .

10 THE COURT: Got it. Okay. But I think Mr. Sampat
11 is making two arguments. One, he's saying whether or not she
12 has the discretion to do that, I can't review it. And then,
13 two, even if I can review it, she can do whatever she wants,
14 quite literally. Maybe not violate the Constitution, but she
15 can flip a coin.

16 I think his argument is, first of all, you can't
17 reach whether flipping a coin is permitted under the national
18 interest prong. Secondly, even if you agree you can reach it,
19 she can flip the coin. I think that's -- it's both parts, I
20 think.

21 MR. TAUBER: Yeah, you know, I obviously would
22 dispute both. And I think the statute supports our view in
23 that it's -- the national interest determination still has to
24 be done through the periodic review process. That's the only
25 way they can import national interest here, is to say it's a

1 consideration under the periodic review process.

2 So they're necessarily in the periodic review
3 process when it comes to determination of the national
4 interest. And that process, the congressionally mandated
5 periodic review process, requires consultation, review, and
6 then determination; all of which strongly suggests that
7 Congress expects a reasoned explanation, not an arbitrary flip
8 of the coin, reading that it's strengthened by the fact that
9 the sec- -- it says Attorney General, but the secretary must
10 publish her reasons for the determination in the Federal
11 Register.

12 THE COURT: I mean, he doesn't have a bad point.

13 Okay. Was that -- was there anything else?

14 MR. TAUBER: No, that was it.

15 THE COURT: Okay. Thank you.

16 I'll let you respond to that and then I'll let you
17 talk about anything that you want to talk about for as long as
18 you want up until 5:00. And then if we have time, I want to
19 get back to this subsection issue with respect to their
20 reading of the extension statute.

21 MR. SAMPAT: So in response to Mr. Tauber's point,
22 that seems to be an attack on the substance of the decision
23 which is not permitted, even under Roberts. That would be an
24 arbitrary and capricious review, which even *Ramos* says he
25 can't get.

1 THE COURT: Okay.

2 MR. SAMPAT: So I think that's an easy one.

3 I will talk about -- so I want to be mindful of the
4 Court's time.

5 THE COURT: No, it's -- we have 42 minutes.

6 MR. TAUBER: Your Honor, maybe this is an opportune
7 moment for me to interject. Could I have two minutes and come
8 back? Bathroom?

9 THE COURT: Oh. By all means.

10 MR. TAUBER: Thank you.

11 THE COURT: Let's all take a five-, six-minute
12 break.

13 Is that enough for you, Christine?

14 Let's come back at 4:30.

15 MR. TAUBER: Thank you.

16 (A recess was taken at 4:19 p.m. to 4:30 p.m.)

17 THE COURT: So the floor is yours.

18 MR. SAMPAT: Thank you, Your Honor. And I know
19 we've been going, so I'm going to be mindful. Unless Your
20 Honor has questions about our arguments on the APA claims and
21 our motion to dismiss and the constitutional stuff, I was
22 going to actually talk about the irreparable harm and public
23 interest issues for the 705 motion.

24 THE COURT: Sure.

25 MR. SAMPAT: The irreparable harm, on irreparable

1 harm, plaintiffs have not met their burden on doing so. I had
2 a feeling --

3 THE COURT: Mr. Sampat, we would be telling 360,000
4 people they would need to uproot their lives and go back to
5 Haiti. You need to say more than that.

6 MR. SAMPAT: I think if it's about uprooting their
7 lives and their fear of return to Haiti and whatnot, again,
8 because they sound in fear and asylum and withholding, another
9 process is available to them. And the D.C. Circuit, in
10 Chaplain C, says, if there's another process by which they
11 could get review of the harm that they're alleging, you cannot
12 demonstrate irreparable harm.

13 THE COURT: And what case was that? Sorry.

14 MR. SAMPAT: Chaplain C. Let me -- I don't have the
15 full pincite, Your Honor, in my outline, but it is cited in
16 our brief. I think we sent it over to you, to chambers.

17 THE COURT: We'll find it, don't worry.

18 MR. SAMPAT: So -- and that includes the fact that
19 they could get review of their constitutional claims. I know
20 Mr. Tauber talked about the Cleo case. I'll just say the Cleo
21 case was wrongly decided. It's up on appeal at the 3rd.

22 THE COURT: It's certainly annoying the district
23 court decisions are not precedential, but they are not,
24 certainly not in the 3rd.

25 MR. SAMPAT: They are not, but I will -- I think

1 what's also important about that is, you know, the argument
2 was held -- and there are plenty of 3rd Circuit precedential
3 decisions that the district court's decisions sort of went
4 through but wrongly interpreted.

5 THE COURT: Okay.

6 MR. SAMPAT: So I'll say that's why Cleo doesn't
7 have any persuasive authority here.

8 THE COURT: Okay.

9 MR. SAMPAT: The other point on irreparable harm is
10 the loss of employment does not constitute irreparable harm.

11 THE COURT: Trust me, I know that argument both ways
12 very, very, very, very well.

13 MR. SAMPAT: Yeah, so then I won't belabor that
14 point.

15 And also the third point I'll just make is that the
16 declarations that were submitted in support of their
17 705 motion are stale.

18 THE COURT: Are what?

19 MR. SAMPAT: Are stale.

20 THE COURT: How so?

21 MR. SAMPAT: They date back to August. They haven't
22 been updated in any way. There are no new allegations of any
23 fear of deportation or things like that.

24 THE COURT: Well, if you want them to update the
25 declarations, I mean, I don't mind them doing that.

1 MR. SAMPAT: I would just --

2 THE COURT: I mean, if the question is we don't know
3 if the thing stayed the same today, if you want to have them
4 update to say whether they stay the same today or not, that
5 seems fair.

6 MR. SAMPAT: I would say, Your Honor, they filed a
7 motion on a briefing schedule they agreed to. They should
8 have filed it with their opening papers. And I will note that
9 I believe in our -- it's in our opposition to class
10 certification, we alerted the Court that I believe three of
11 the putative class representatives are -- have affirmatively
12 sought relief from removal before USCIS.

13 THE COURT: Okay. Well, we'll look at that. But
14 let me just ask you this question: Do I need to find that
15 there's a class? I mean, my understanding is that putting
16 aside nationwide injunctions, because I understand no more
17 land of the nationwide injunctions. My understanding is still
18 that if I set aside -- if a district court sets aside a
19 regulatory action as violating the Constitution or the APA,
20 like that's it, it's set aside until it gets reviewed. It's
21 not just like -- it's not this like it gets only set aside for
22 those Haitians who happen to live in D.C. That's my -- could
23 be wrong but that's my understanding.

24 MR. SAMPAT: So I think the problem with that theory
25 is that it would effectively be an end-run around CASA, right,

1 which is that nationwide class actions -- sorry, nationwide
2 injunctions can't be ordered. I think vacatur is very much
3 the same thing, where it --

4 THE COURT: I thought -- I could be totally wrong
5 about this, I thought Kavanaugh went out of his way in a
6 concurrence to say either class action is still available or,
7 if there's a set-aside, it's a set-aside.

8 Do you know what I'm talking about, Katherine?

9 (Discussion off the record.)

10 THE COURT: Ha, I had some knowledge.

11 MR. SAMPAT: So that was Justice Kavanaugh's
12 concurrence, I believe, in CASA. So I certainly acknowledge
13 that's what Justice Kavanaugh said. It's a concurrence,
14 obviously, so it doesn't necessarily represent the state of
15 the law.

16 THE COURT: But basically, from plaintiff's
17 perspective, it's more like a belt and suspenders kind of
18 thing.

19 MR. TAUBER: Well, I mean, we believe that a
20 set-aside is, by its very nature, universal, as the D.C.
21 Circuit has repeatedly emphasized. So we don't think that we
22 need a class action, but recognizing the government --

23 THE COURT: So the answer is yes, this is belt and
24 suspenders.

25 MR. TAUBER: It's belt -- yes.

1 THE COURT: Great. Thank you.

2 MR. SAMPAT: So I'll just say, 705 tracks the
3 equitable principles that preliminary injunction tracks, so
4 they are the functional equivalent. And, you know, what I
5 would also say is that if preliminary injunctions are meant
6 for parties, then so should 705 relief and vacatur
7 generally.

8 THE COURT: I just think -- I mean, I just -- okay.
9 I understand that that's a question.

10 MR. SAMPAT: And I'll just -- if it may help, Your
11 Honor --

12 THE COURT: Sure.

13 MR. SAMPAT: -- there's a House report that went
14 along with the passage of the APA that said that relief would
15 be limited to the parties before the Court. So that is House
16 Report No. 1980, 79th Congress, Second Session, 43 at 277.

17 THE COURT: Okay. I understand. Okay.

18 MR. SAMPAT: And then on -- and on the balance of
19 the -- on the balance of the equities in the public interest,
20 a 705 stay here would interfere with the government's
21 ability -- government's role when it comes to foreign policy
22 and immigration enforcement, so that obviously tips in favor
23 of the government.

24 So unless Your Honor has questions about that, I'm
25 happy to turn to Your Honor's questions about

1 1252(a)(2)(B)(ii). May I just --

2 THE COURT: Go ahead. Oh, I was wrong. It's in the
3 majority, actually, not in the dissent. Footnote 10, Nothing
4 we say today resolves the distinct question whether the APA
5 authorizes Federal Courts to vacate federal agency action.
6 See 5 U.S.C. 7062 authorizing Courts to, quote, hold unlawful
7 and set-aside agency action, end quote.

8 MR. SAMPAT: So on that point --

9 THE COURT: I mean, I think the arguments are still
10 the same. I was just wrong that it was in the concurrence.
11 It's majority opinion.

12 MR. SAMPAT: Yeah, okay. So it certainly
13 acknowledges the fact that it's an open question, but I will
14 just also say the 1252(f)(1) does a lot of work here.

15 THE COURT: Yeah, yeah, no, I understand.

16 MR. SAMPAT: But on (a)(2)(B)(ii), you know, the
17 point for (a)(2)(B)(ii) is that it covers all decisions and
18 actions that are left at the discretion of the secretary. And
19 that's what *ITECH* recognizes. And I understand --

20 THE COURT: Right, but my more specific question is,
21 is the -- their argument that because Congress says in --

22 MR. TAUBER: (a)(2)(A)(iv).

23 MR. SAMPAT: 1252?

24 MR. TAUBER: Yes, 1252, sub A, sub 2, sub A,
25 sub Romanette iv.

1 MR. SAMPAT: Is that the extradited removal?

2 THE COURT: I'm sorry. 1254a(a)?

3 MR. TAUBER: No. What I would -- referred to
4 earlier in the argument was 8 U.S.C. 1252.

5 THE COURT: Oh, 52 again.

6 MR. PIPOLY: Yeah. Sub A, sub 1 -- excuse me,
7 sub A, sub 2, sub A, sub Romanette iv, which specifically
8 speaks about policy and procedure.

9 THE COURT: No, no, I'm not -- I'm talking about the
10 other case where you say the subparagraph C which says --
11 which was a Katie designation which was designated under --

12 MR. TAUBER: Oh, apologies.

13 THE COURT: -- safety and national interest. And
14 then with respect -- and I don't remember what subsection that
15 is. I know the ending is C. But then as I understand the
16 plaintiff's argument, that when we get to -- and that's for
17 designation purposes. My understanding of their argument is
18 when we get to 1254 --

19 MR. TAUBER: a(b)(3)(A).

20 THE COURT: a(b)(3)(A) or (C), extension of
21 designation, that does not discuss, and does not refer back
22 to, national interest. And so, therefore, national interest
23 is not even a part -- not only -- who cares what discretion
24 she has with respect to designating Haiti as -- or any country
25 as not in the national interest. There's a separate

1 subsection that involves extensions, and that says nothing
2 about national interest. And so that's not even something the
3 secretary is permitted to consider. Is my understanding of
4 your argument correct?

5 MR. TAUBER: Yes, Your Honor.

6 THE COURT: Okay. That's really -- that's the one I
7 think that the *ITECH* discussion or the whatever discussion I
8 said goes to.

9 MR. SAMPAT: So I think for that, we have to look at
10 the fact that the extension of the designation subsection
11 talks about like if the secretary hasn't made a decision to
12 begin with on termination, then it extends.

13 THE COURT: Right.

14 MR. SAMPAT: But we have a decision here, so like --
15 right. Now, Your Honor may think it's legally flawed. There
16 may be legal issues --

17 THE COURT: No, no, no, no. This is not about
18 our -- this is actually a pure textual question. Does the
19 periodic review subsection even include -- even give the
20 secretary the authority to consider national interest given
21 that national interest isn't one of the factors with respect
22 to the periodic review and extension of designation.

23 MR. SAMPAT: I think it does. And the fact is
24 that --

25 THE COURT: That's the question.

1 MR. SAMPAT: Yeah. So it refers back to
2 subparagraph 8.

3 THE COURT: To subparagraph?

4 MR. SAMPAT: Sorry, let me rephrase. So the
5 periodic review provision allow -- says that the attorney --
6 the secretary can review -- would review the conditions of the
7 foreign state, and a designation -- and for which a
8 designation is in effect under the subsection, it shall
9 determine whether the conditions of such designation under the
10 subsection continue to be met. So it allowed --

11 THE COURT: Well, the conditions for designation
12 under this subsection, which I think --

13 MR. SAMPAT: I think is --

14 THE COURT: Their argument is that this subsection,
15 which includes "see below," does not provide, as one of the
16 conditions, national security. Is that the point? Yeah. So
17 it's not referring back to the conditions for the initial
18 designation. It's creating its own separate set of
19 conditions, and its separate set of conditions does not
20 include national interest.

21 MR. SAMPAT: Well, I think the problem with that is
22 that the text of the statute refers us back to the original
23 designation to begin with.

24 THE COURT: And where's that?

25 MR. SAMPAT: It's that, for which a designation is

1 in effect and shall determine whether the conditions of such
2 designation under this subsection, which I believe means
3 parens B, subsection B, continue to be met. So --

4 THE COURT: Wait, wait. Under this subsection, so
5 far as I understand it, is the periodic review -- give me your
6 full cite with all the subsections of what you think this
7 subsection refers to.

8 MR. SAMPAT: Okay. So when the periodic review
9 subsection says that the secretary, after consultation with
10 appropriate agencies of the government, a designation in
11 effect under this subsection, meaning a designation under
12 1254a --

13 THE COURT: Hold on. 1254, parentheses, A or
14 regular A?

15 MR. SAMPAT: Regular A, parens B, parens 1.

16 THE COURT: Okay. Hold on a second.

17 Okay. So for -- so your -- in the same subsection
18 in the second part of the sentence?

19 MR. SAMPAT: Yes.

20 THE COURT: Okay. So the government's position is,
21 is that this subsection refers to the initial designation and
22 not to the periodic review termination extension subsection,
23 which is (B) (3).

24 MR. SAMPAT: Yes, that's correct. And the reason is
25 that --

1 THE COURT: Or (b) (C) (3) .

2 MR. SAMPAT: And the reason, Your Honor, is that it
3 talks about the designation, and the designation is made under
4 1254a, no parens, and then, parens, (b) (1), which talks about
5 the three grounds for --

6 THE COURT: Hold on. Let me just clarify the
7 record. And the reason I'm doing this is because when we go
8 back -- so the government's contention is that 1254a,
9 (b) (C) (3), when that (A) -- (b) (C) (3) (A), when that refers to
10 this subsection, is referring to 1254a, (b) (1) .

11 MR. SAMPAT: Yes.

12 THE COURT: Okay. And why is that?

13 MR. SAMPAT: So under -- you said (b) (3) --

14 THE COURT: (A), periodic review.

15 MR. SAMPAT: Periodic review. And the reason is, is
16 that --

17 THE COURT: Which is, for which a designation is in
18 effect under this subsection -- I still think the question
19 remains, does the designation mean, under this subsection,
20 does that mean there was designation in place and now that
21 designation is in place under (b) (C) (3), and so yes, this is a
22 designation we're talking about, but when we're talking about
23 what conditions, we're talking about the conditions under
24 (C) (3) (A) .

25 MR. SAMPAT: (C) (3) being the extension.

1 THE COURT: Yes, whatever.

2 MR. SAMPAT: We'll just call it the extension.

3 THE COURT: Yeah.

4 MR. SAMPAT: So the periodic review refers back to
5 the designation in 1, which is --

6 THE COURT: But that's the question.

7 MR. SAMPAT: Right.

8 THE COURT: I mean, yes, that's the question, then
9 that's your position. Designation is in effect under this
10 subsection. You're saying it's 1, and the text tells us
11 that.

12 MR. SAMPAT: Right.

13 THE COURT: But then --

14 MR. TAUBER: Your Honor, we agree with -- we agree
15 with that point. We agree that the subsection is referring
16 back to B, 1. That's not the dispute.

17 MR. SAMPAT: Okay.

18 THE COURT: Okay. Well, hold on. Then I'm totally
19 lost. Hold on one second. Okay. Well, then I don't
20 understand your textual argument.

21 MR. TAUBER: Yeah. So the argument is based not on
22 the reference back to this subsection, but the language which
23 directs the secretary, as --

24 THE COURT: And this is in the extension subsection?

25 MR. TAUBER: This is in -- yeah. 8 U.S.C. 1254a,

1 sub B, sub 3, sub A, the periodic review provision.

2 THE COURT: All right.

3 MR. TAUBER: And there, the secretary is directed
4 to, after consultation with appropriate agencies of the
5 government, review the conditions in the foreign state, which
6 is not -- does not include the national interest, and then
7 determine whether the conditions for such designation under
8 this subsection continue to be met.

9 THE COURT: Well, then the government's clearly
10 right on that argument because, clearly, they can't mean
11 conditions limiting it to -- I mean, I understand in the
12 foreign state. But it certainly can't be that, sub silentio,
13 what the Congress was saying was even though we're referring
14 to the designation provision, we are not referring to the part
15 of the designation provision that discusses national
16 interest.

17 MR. TAUBER: Well, Your Honor, I'll push back on
18 that, because if you look back at --

19 THE COURT: Well, why don't you -- you sit down.

20 MR. TAUBER: Okay. Sure.

21 THE COURT: You have a better argument than I
22 thought you did.

23 MR. SAMPAT: A good lawyer knows when to stop
24 talking.

25 THE COURT: Yeah, yeah. I wish there were better

1 good lawyers around here. I -- I did not mean that. The
2 D.D.C. bar is phenomenally good. That was a -- that was a
3 sometimes lawyers don't know when to sit down. The D.D.C. bar
4 is phenomenally good, as counsel in this case have proven.

5 Okay. Go ahead.

6 MR. TAUBER: Thank you, Your Honor. So, again, I'm
7 pushing back on the notion that (b) (3) (A) subsumes the
8 national interest consideration.

9 THE COURT: Okay. And how -- and what's the
10 argument there?

11 MR. TAUBER: There, the argument is, again, just
12 keeping in mind -- sorry. Keeping in mind that the periodic
13 review provision directs the secretary to review the
14 conditions in the foreign state, now we'd look back to --

15 THE COURT: So your view, conditions in the foreign
16 state excludes national interest.

17 MR. TAUBER: Yes, because national interest is not
18 anything in the foreign state, it's something else. It's not
19 in the foreign state. And then when we contrast the periodic
20 review provision with the original designation provision,
21 which is 8 U.S.C. 1254a, sub B, sub 1, and in this instance,
22 sub C, which is the basis for the current designation, one
23 sees that it says -- the preface is the Attorney General may
24 designate if the Attorney General finds that there exists
25 extraordinary contemporary conditions in the foreign state

1 that prevent aliens who are nationals of the state from
2 returning to the state, comma, unless the Attorney General
3 finds that permitting the aliens remain temporarily in the
4 United States is contrary to the national interest of the
5 United States.

6 So we see the original designation provision
7 separates conditions and national interest. The periodic
8 review provision refers only to conditions.

9 THE COURT: Okay. All right. I understand the
10 argument. Okay. I get it. We're definitely in the world of
11 the onion and not the bagel, but I get it.

12 Go ahead.

13 MR. SAMPAT: So and the problem with that argument,
14 Your Honor, is that --

15 THE COURT: Take your pick.

16 MR. SAMPAT: Is that it would make the statute make
17 no sense. So unless Your Honor has any questions about that,
18 there's nothing in the statute that requires --

19 THE COURT: I mean, that reading of the statute
20 would say that what Congress intended was the secretary has
21 discretion to not grant TPS if it's against the national
22 interest of the United States, but if it becomes against the
23 national interest of the United States, to keep the TPS going,
24 the secretary is powerless to act. And that cannot be a
25 sensible reading of the statute.

1 But you think it is, so -- I'll give you the last
2 word on this.

3 MR. TAUBER: I do, Your Honor. And I think the
4 distinction between the discretion afforded the secretary at
5 the initial designation period, and the restrictions on her
6 discretion in the periodic review process, are well explained
7 by Congress's concern for the reliance interest of people who
8 have been granted TPS, have been here, in this case, for
9 15 years and are suddenly having their lives potentially --

10 THE COURT: I assume that's in the -- I assume
11 you're citing to some part of legislative history?

12 MR. TAUBER: No, I'm citing to what the Court
13 pointed to earlier, which is the default position that
14 Congress established.

15 THE COURT: Okay. I mean -- I don't think we can
16 say that, clearly, Congress was concerned about reliance
17 interest if that's not the language of the statute or anywhere
18 in the congressional history. But I hear you. I got it.

19 Mr. Sampat, we have ten minutes -- we have nine
20 minutes. What would you like, if anything, to say?

21 MR. SAMPAT: Your Honor, we have nothing else. We
22 think everything else is captured in our briefs. But if Your
23 Honor has any questions, obviously we're here.

24 THE COURT: Okay. Mr. Tauber, anything for the
25 plaintiffs?

1 MR. TAUBER: Yes, Your Honor.

2 THE COURT: Okay. Go ahead.

3 MR. TAUBER: There was a discussion earlier about
4 5 U.S.C. 559. I didn't have an opportunity to fully respond
5 at that point.

6 THE COURT: Yeah. Go ahead.

7 MR. TAUBER: So the government urges the Court to
8 take *Marcello v. Bonds* as the binding decision. I would urge
9 the Court to look to *Shaughnessy* instead. And here's the
10 distinction between --

11 THE COURT: Are those D.C. Circuit cases?

12 MR. TAUBER: They're both United States Supreme
13 Court cases.

14 THE COURT: Which was later?

15 MR. TAUBER: *Marcello* was later by about three
16 weeks.

17 THE COURT: Oh, that's right. Okay. We had this
18 discussion. Okay. Go ahead.

19 MR. TAUBER: So *Marcello* addresses hearing
20 procedures; whereas, *Shaughnessy* addresses judicial review.
21 Clearly, this case sounds in judicial review, not hearing
22 procedures. *Shaughnessy*, which is cited by *Marcello*, is the
23 binding case there.

24 Then the government pointed to subsequent cases. I
25 didn't catch the full list, but *Biden v. Texas*, *ITECH*, and

1 *N.S. v. Dixon* were the ones that I did catch. And they said
2 these are binding cases. And Courts never discussed 559;
3 ergo, 559 can't be a problem I'll turn that on its head. The
4 Courts never discussed 559, so those decisions don't speak to
5 the issue, period. The Court doesn't say anything about it,
6 doesn't speak to it one way or the other.

7 The second -- or another thing I would note, Your
8 Honor, is that the government's reading of 559 is simply
9 impossible to square with the statutory language. The
10 statutory language says that for any subsequent statute to
11 displace the APA, it must do so expressly. On the
12 government's reading, they don't claim that it has expressly
13 displaced it. They say you should infer a displacement. But
14 that's not an express --

15 THE COURT: But he's sending me five -- I don't
16 know, 500 cases from the D.C. Circuit which basically -- even
17 if they didn't say that that's what was happening, none of
18 them said that the APA -- all of them didn't take up APA
19 challenges.

20 MR. TAUBER: Your Honor, I simply have no idea how
21 they were litigated by which parties under what
22 circumstances.

23 THE COURT: Well, all I know is that they're
24 precedent.

25 MR. TAUBER: But if they haven't specifically

1 addressed the question, does this statute displace the APA in
2 light of 5 U.S.C. 559, I don't think they're binding on this
3 question because they simply haven't --

4 THE COURT: Did I understand that right, that all
5 the cases you cited to me -- like your argument is
6 sub silentio, that's what we can infer they did because of the
7 actions they took?

8 MR. SAMPAT: That's correct, Your Honor. And just a
9 couple -- I'll just clarify for the record, not all of them
10 were APA cases.

11 THE COURT: Okay. Got it.

12 MR. SAMPAT: But *Bouarfa*, *ITECH*, and *Zhu* are APA
13 cases.

14 THE COURT: I mean, I think *ITECH* and *Zhu* are easily
15 distinguishable.

16 But go ahead.

17 MR. TAUBER: And just a final point --

18 THE COURT: In the sense of we already talked about,
19 which was those were relating to individual determinations for
20 individuals, which is sort of a different issue than what we
21 have here.

22 But go ahead.

23 MR. TAUBER: And specifically --

24 THE COURT: Yes.

25 MR. SAMPAT: I was just going to say, Your Honor,

1 understand Your Honor thinks those are distinguishable. We're
2 talking about *ITECH* and *Zhu* as they pertain to issue of 559
3 and applying jurisdiction-stripping provisions without
4 expressly citing to the APA.

5 THE COURT: Okay. All right.

6 MR. TAUBER: I would -- on that topic.

7 THE COURT: Okay. Just move on.

8 MR. TAUBER: Okay. And then finally, I just -- I do
9 want to note that *ITECH* and *Zhu* both dealt with visas and
10 entry --

11 THE COURT: I just said that that's what we dealt
12 with. Okay.

13 MR. TAUBER: Okay. Great.

14 And then just finally, on 559, reminding the Court
15 of our pointing to other provisions which expressly supersede
16 other --

17 THE COURT: Yep, I --

18 MR. TAUBER: Thank you.

19 THE COURT: Yes, I'm reminded of what you said.

20 Okay. I want to commend all parties. Mr. Sampat
21 was up the longest, but again, phenomenal job by him. Great
22 job by all of the litigants.

23 I don't know if you saw the *Bloomberg Law* article,
24 but they did quote me. They quoted me saying you're a
25 phenomenal lawyer. I'm super glad they did, because you

1 really are. Everyone has been great. He was just up here for
2 about 90 percent of the time and clearly knew this record
3 backwards and forwards, and the case law backwards and
4 forwards. And I know from being in your position just how
5 incredible -- the amount of time that that takes, I just think
6 cannot be overstated. And I just don't think unless you've
7 been through it, you have any concept of how long it takes and
8 what the stress is that's involved. So thank you. You did a
9 phenomenal job representing the government.

10 MR. SAMPAT: Thank you, Your Honor.

11 THE COURT: And I know that you also -- I should say
12 I've asked my clerks, my prior clerks like if someone says,
13 you know, what do you need do to appear in front of Judge
14 Reyes, all of them say the same thing: One is, be on time;
15 and two is, be prepared. All of you were on time, and all of
16 you were extensively prepared, and that's all I can hope for.

17 Mr. Tauber, you also clearly knew everything inside
18 and out with a lot of very difficult -- having to remember
19 five, six different subclauses and keep track of, I think,
20 literally over a hundred cases. So extremely well done on
21 your part too. Thank you.

22 So just a couple housekeeping matters from me. One
23 second.

24 All right. We if we've already done this,
25 government, just let me know. I think you -- I think I've

1 seen an unredacted version of 409 and 410; right? You showed
2 it me ex parte?

3 MR. SAMPAT: We did.

4 THE COURT: Okay. I don't think there's any
5 reason -- that's fine. You can keep that redaction. We
6 answered the termination issue.

7 Okay. I think we have everything covered except for
8 one thing. With respect to the White House, you were going to
9 get back to me on if you were able to find the names of the
10 people who were involved in the meeting or -- if you haven't
11 found it yet, that's fine, but if you have, I'd like to hear
12 it.

13 MS. TORRES: Yes, Your Honor. So we were able to
14 nail down at this point that DHS isn't aware of any responsive
15 documents. And DHS wants to advise the Court that we reserve
16 the right to supplement. That's all.

17 THE COURT: Okay. Here's the thing. I want to know
18 who was in the meeting.

19 MS. TORRES: Right.

20 THE COURT: Because the one issue -- whoever was in
21 the meeting or any meetings with the White House, putting
22 aside the secretary for now, I want their emails searched
23 very, very narrowly for any emails concerning that meeting.

24 MS. TORRES: To be clear, Your Honor, asking that as
25 part of the extra record discovery, that DHS's -- the person

1 who was in the meeting at the White House from DHS.

2 THE COURT: From DHS.

3 MS. TORRES: Okay.

4 THE COURT: No, not from the White House. I'm not
5 going to -- as fun as it may be, we're not going to look into
6 that right now.

7 MS. TORRES: Okay.

8 THE COURT: But if it's someone -- I said I want
9 this focused narrowly on Haiti with very small number of
10 people, with this very small exception of -- putting aside the
11 secretary, not her yet, maybe ever. If there was anyone else
12 from DHS in that meeting or helped prepare or was
13 communicating with the White House about that meeting, I want
14 their emails searched just for that very short time period,
15 you know, around the time of the meeting for TPS generally.
16 And I understand you guys are going to claim privilege.
17 Totally fine. Or that you have to go through the process of
18 determining whether claimed privilege. Segregate those
19 documents for now and then we can get into it. Does that make
20 sense?

21 MS. TORRES: That does, Your Honor.

22 THE COURT: Okay.

23 MS. TORRES: And just for the record, DHS is working
24 to track down that information, but that's just -- overnight,
25 that's just all we had.

1 THE COURT: Yeah, yeah, of course, of course. Yeah.
2 Okay.

3 I gave -- the government, you have a lot of homework
4 on like nitpicky stuff. I don't need anything immediately,
5 just, you know, you guys are slammed. Get it to me in, you
6 know, some good faith, just not the night before I need to
7 issue a decision.

8 MR. SAMPAT: Sure thing, Your Honor. We're working
9 on it, of course.

10 THE COURT: Okay. Anything else from anybody?

11 MR. TAUBER: Not at this time, Your Honor.

12 THE COURT: Okay. If anything comes up, please do
13 not spend hours or even minutes sending like emails back and
14 forth and letters back and forth, just either agree or reach
15 out to chambers, and we'll quickly get on the phone or video
16 to hammer it out. Everyone's too busy to start like spending
17 time proofreading letters. Okay? You guys are my top
18 priority this month. So if you guys need me for anything, I
19 will be here. Just raise it. I will not be annoyed. The
20 clerks might be annoyed but I will not be annoyed.

21 And then secondly, I have a strong suspicion that
22 once I get into actually making decisions and writing the
23 opinion, I might want to hear from you people again. If I do,
24 I'll try to give you at least 48 hours' notice, and I'll tell
25 you specifically what I want to discuss so that it won't be --

1 you won't have to like prep for everything again. Okay?

2 But again -- and please, thank your secretaries and
3 paralegals and assistants who, I know, do the yeoman's part of
4 the work on a lot of these things. So thank you.

5 MR. TAUBER: Thank you, Your Honor.

6 THE COURT: Have a good weekend, everyone.

7 (The proceedings were concluded at 5:02 p.m.)

8 I, Christine Asif, RPR, FCRR, do hereby certify that
9 the foregoing is a correct transcript from the stenographic
10 record of proceedings in the above-entitled matter.

11 /s/

12 Christine T. Asif
13 Official Court Reporter
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**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

	)	
	)	
Fritz Emmanuel Lesly Miot, <i>et al.</i> ,	)	
	)	
Petitioner-Plaintiff,	)	
	)	Civil Action No. 25-cv-02471-ACR
v.	)	
	)	
Donald J. Trump, President of the	)	
United States, <i>et al.</i> ,	)	
	)	
Respondents-Defendants	)	
	)	
	)	

DECLARATION OF LIANA J. CASTANO

I, Liana J. Castano, declare as follows:

1. I am the Assistant Director (AD) for Field Operations, within the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO). I have held this position on a temporary basis since July 14, 2025, and since November 2, 2025, on a permanent basis. I began my employment with ICE in 2006 and have held several leadership positions within ERO, including Interim Assistant Director for the Removal Division, Assistant Director for the Law Enforcement Systems and Analysis Division, and Field Office Director for the Washington Field Office. As the AD for Field Operations, I manage ERO's 25 field offices as well as programs and initiatives to identify, arrest, prosecute, and remove removable aliens nationwide.

2. I am aware of the above-captioned lawsuit and the District Court's Minute Order dated February 2, 2026. My declaration is based upon my personal and professional knowledge

and information, belief, reasonable inquiry, and review of information obtained from various records, systems, databases, and other ICE employees.

3. I am not aware of DHS having planned specific actions “to mobilize members of Immigration & Customs Enforcement to areas heavily populated with Haitian TPS holders” in anticipation of the termination of Haiti’s TPS designation on February 3, 2026, but ICE is engaged in daily enforcement activities across the country in various locations, including but not limited to Springfield, Ohio and South Florida. ICE operations are targeted to those who are removable from the country, regardless of nationality, with the end goal of enforcing the immigration laws to preserve the national security and public safety of the United States.

4. DHS did not take action to enforce the termination of Haiti’s TPS designation on February 3, 2026, because the termination was stayed. However, if the termination had not been stayed, DHS would have acted to enforce the immigration laws in light of the termination, just as it has acted to enforce the immigration laws against past TPS holders based on other terminations.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed in Washington, D.C. on February 10, 2026.



Digitally signed by LIANA J CASTANO
Date: 2026.02.10 05:04:51 -05'00'

Liana Castano
Assistant Director for Field Operations
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

FRITZ EMMANUEL LESLY MIOT,) CIVIL NO.:
) 25-2471-ACR
Plaintiff,)
vs.)
)
DONALD J. TRUMP, et al.,)
) February 12, 2026
Defendant.) Washington, D.C.
) 10:00 a.m.

Transcript of Motions Hearing
Before the Honorable Ana C. Reyes
United States District Judge

APPEARANCES:

For the Plaintiff: Geoffrey Pipoly, Esquire
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Proceedings recorded by machine shorthand; transcript produced
by computer-aided transcription

P R O C E E D I N G S

THE COURT: Ms. White, could you please call the case.

THE CLERK: Yes, ma'am.

Your Honor, this is civil action 25-2471, Fritz Emmanuel Lesly Miot, et al. versus Donald J. Trump, et al.

Will the parties please identify themselves for the record, beginning with plaintiff's counsel.

MR. PIPOLY: Geoffrey Pipoly for the plaintiffs.

MR. TAUBER: Andrew Tauber for the plaintiffs.

MR. AUDAIN: Raymond Audain for the plaintiffs.

MR. SAMPAT: Dhruvan Sampat on behalf of the United States.

MR. SIMON: Jeremy Simon on behalf of the United States.

MR. GEORGIEV: Good morning, Your Honor. Dimitar Georgiev for the United States.

THE COURT: Hello. Good morning, everyone.

All right. So we're here on the government's motion to stay my decision from last Monday.

Mr. Sampat.

So thank you for the declaration from the DHS individual. I have a number of questions about it. Ms. Liana Castano?

MR. SAMPAT: Yes, I believe that's how you pronounce

1 it.

2 THE COURT: Okay. Is she here by any chance?

3 MR. SAMPAT: She is not, Your Honor.

4 THE COURT: Okay. All right. My first question is
5 she says that she is the assistant director for field
6 operations within the U.S. Department of Homeland Security.
7 And then she says, in paragraph 3, I am not aware of DHS
8 having planned specific actions, quote, to mobilize members of
9 Immigration and Customs Enforcement to areas heavily populated
10 with Haitian TPS holders, end quote.

11 So my first question is: Would she be aware of this
12 if it were occurring?

13 MR. SAMPAT: My understanding is, yes, as she
14 oversees the different field offices in the different fields
15 and areas of the responsibility around the country. That is
16 my understanding, yes.

17 THE COURT: Okay. So it's not a situation where I
18 have someone in front of me who wouldn't be aware -- like
19 someone else is doing it, and you found someone for me who
20 wouldn't be aware of it?

21 MR. SAMPAT: Yeah, no, my understanding, given her
22 title and her supervisory responsibilities, is that she's
23 monitoring all the field offices around the country.

24 THE COURT: Okay. And so far as what I can take
25 from her declaration, it is -- hold on.

1 So far as I can tell from her declaration, basically
2 what she says is, no, we haven't done anything specific with
3 respect to Haitian TPS holders, but, in the areas where there
4 are Haitian TPS holders, we have a number of ICE operations,
5 including in Springfield, Ohio, and south Florida, and that
6 those operations are targeted to those who are removable from
7 the country.

8 Now, if I stay my decision, or the appellate court
9 does, then the termination goes into effect, yes?

10 MR. SAMPAT: Yes, that will.

11 THE COURT: And those individuals are automatically,
12 if they don't have any other legal status in the country,
13 removable; right?

14 MR. SAMPAT: So if they don't have any other legal
15 status, they would be removable. For those that already have
16 final orders of removal, they are still considered removable
17 just with a final order that can be executed.

18 THE COURT: Okay. And so -- and then she
19 reiterates, "DHS did not take action to enforce the
20 termination, because the Court stayed it." Thank you.
21 "However, if the termination had not been stayed, DHS would
22 have acted to enforce the immigration laws in light of the
23 termination."

24 And that's a polite way of saying, if the
25 termination was not stayed, ICE would have started arresting

1 individuals from Haiti who are here or had been here on TPS;
2 right?

3 MR. SAMPAT: So if I may, it would be that ICE
4 can -- would carry out its law enforcement operations and
5 immigration enforcement operations. If individuals that had
6 TPS from Haiti were caught up in those enforcements, then DHS
7 ICE would not be prohibited from initiating removal
8 proceedings, from executing outstanding removal orders --

9 THE COURT: Okay. But that's all a very legalistic
10 polite way of saying that ICE would pick up Haitian TPS
11 holders, put them into removal proceedings, and put them into
12 detention centers; right?

13 MR. SAMPAT: Not necessarily, because my -- my
14 objection to --

15 THE COURT: Well, how about -- oh, what's your
16 objection?

17 MR. SAMPAT: My objection to Your Honor's framing is
18 that it would -- it sounds like -- it sounds like DHS would be
19 targeting Haitian TPS holders. But from the declaration and
20 from my understanding, it is that DHS would go around carrying
21 out enforcement operations and, in the course of those
22 enforcement operations, if former -- if Haitian TPS holders
23 who no longer have TPS are caught up in that, then enforcement
24 actions can be taken.

25 THE COURT: Well, we know that ICE has the former

1 TPS holders' addresses; right?

2 MR. SAMPAT: It may have some addresses.

3 THE COURT: No, it has all of them, because the TPS
4 holders are required, to obtain their work authorizations and
5 to continue their TPS status, to give their addresses to DHS;
6 correct?

7 MR. SAMPAT: They are required to do that but --

8 THE COURT: Okay. So USCIS, DHS, and ICE have the
9 addresses of the individuals who currently, in Springfield,
10 Florida -- Springfield, Ohio, Florida, and places throughout
11 the country are Haitian TPS holders, yes?

12 MR. SAMPAT: They have some addresses, but what I
13 will say, Your Honor, is that those addresses are not
14 necessarily current.

15 THE COURT: Okay. Well, come on. Here's what we're
16 not going to do, okay? We're not going to prettify what's
17 happening here. All right? We're not going to pretend that
18 what's happening isn't happening or isn't about to happen.
19 So, yes, some might be outdated, but the vast majority are
20 not.

21 And, yes or no, ICE has those addresses, they can go
22 to the door, at 55 Main Street, and knock on the door -- and
23 maybe not even knock on the door. I don't know what the
24 current situation is, and without a warrant so far as I
25 understand -- arrest Haitian TPS holders the second that this

1 termination goes into effect; right?

2 MR. SAMPAT: So I would say, to the extent that they
3 have -- ICE has the accurate address information, and it turns
4 out that individual no longer has any other status in the
5 country, yes, nothing would prohibit DHS and ICE to show up
6 and say we are serving them with the notice to appear.

7 THE COURT: And because you and I both read the
8 news, can we assume that that's exactly what's going to
9 happen?

10 MR. SAMPAT: I can't. I can't go there.

11 THE COURT: You can't assume that, because you just
12 don't read the news?

13 MR. SAMPAT: Well, I do read the news, Your Honor,
14 but I think that there can be a whole host of things that go
15 into how DHS focuses --

16 THE COURT: Will you agree with me that this
17 administration seems uniquely focused on Haitian TPS holders?

18 MR. SAMPAT: No, Your Honor.

19 THE COURT: No? You don't agree with that?

20 MR. SAMPAT: I --

21 THE COURT: You don't think that this president and
22 this secretary have singled out, amongst maybe some others,
23 but certainly identified Haitian TPS holders as, I don't
24 know -- you know, we have all the adverbs or the adjectives in
25 the opinion, but you think that they're just indifferent to

1 Haitian TPS holders? You think the second this goes into
2 effect, they won't go after the Haitian TPS holders? They'll
3 just be like, oh, if we get some, we get some and if we don't,
4 we don't?

5 MR. SAMPAT: I don't know, Your Honor, on that
6 issue, but what I will also say is that because DHS has -- the
7 secretary of Homeland Security has decided to terminate TPS
8 for other countries, it would be no different from other
9 countries, I would think.

10 THE COURT: Okay. Now, I'm a little bit -- well,
11 let me ask you this: If a Haitian TPS holder is picked up --
12 let's say this determination goes into effect, or my decision
13 is stayed and a Haitian TPS holder is picked up by ICE, they
14 can be put into detention?

15 MR. SAMPAT: So they may. It depends on the
16 statutory basis for their detention. So if I may walk Your
17 Honor through it?

18 THE COURT: Sure.

19 MR. SAMPAT: So if there are individuals that are
20 subject to mandatory detention under 8 U.S.C. 1226(c), because
21 they have committed some sort of offense that makes them
22 subject to mandatory detention, they would be detained. There
23 would be no opportunity for a bond hearing at that point.

24 THE COURT: Okay. What if I'm just a regular
25 Haitian TPS holder, I've been paying my taxes, not collecting

1 Social Security or Medicare because I'm not entitled to either
2 of those, following the law, et cetera, et cetera, haven't
3 committed any crimes -- well, actually, let me put a pause on
4 that. If I'm a Haitian TPS holder and I've committed a crime,
5 I can be removed. I can be picked up and removed even if
6 there's no termination; right?

7 MR. SAMPAT: Not necessarily. The convictions and
8 commitments of certain crimes that make someone removable
9 don't necessarily make someone eligible to be stripped of
10 their TPS. But for -- to answer Your Honor's questions on
11 individual who is a regular TPS holder or things like that, it
12 would all depend on what their charge of inadmissibility or
13 removability --

14 THE COURT: Well, the removability and admissibility
15 is I was a Haitian TPS holder, I have no other legal status,
16 and now Judge Reyes's opinion has been stayed and so the
17 termination is in effect.

18 MR. SAMPAT: So what I would say on that is if
19 somebody -- let's imagine if somebody had come over on a
20 visitor visa and then they got TPS that way. They overstayed
21 their Visa but got they TPS.

22 THE COURT: No, no, let's not do that. Let's say
23 someone came and had their Visa, and while they had their Visa
24 they got TPS status. Now they no longer have either the
25 visitor's Visa or the TPS status. They have had a job,

1 they've contributed to the economy, they have not taken from
2 the economy because they're not permitted to, and they have
3 committed no crimes. They have been lawful members,
4 participating members of their community. What happens to
5 them?

6 MR. SAMPAT: So under that theory, the --

7 THE COURT: It's not a theory. There's going to be
8 hundreds of thousands of people who fall into this category.
9 But go ahead.

10 MR. SAMPAT: Sure. So they can be detained.
11 8 U.S.C. 1226(a) gives broad discretion to the secretary of
12 Homeland Security to detain individuals. Those individuals
13 would be able to seek a bond -- it would be eligible to seek a
14 bond hearing before an immigration judge.

15 THE COURT: And how long until they can get a bond
16 hearing?

17 MR. SAMPAT: Unfortunately, Your Honor, I don't know
18 how --

19 THE COURT: There's no -- there's no time limit for
20 that.

21 Is there a time limit for when they can get a bond
22 hearing?

23 MR. PIPOLY: I'm frankly not sure, Your Honor.
24 Mr. Kurzban knows a heck of a lot more about this than I do,
25 and he is shaking his head no.

1 THE COURT: No, there's no time limit, Mr. Kurzban?
2 You're on mute, sir. Sir, you're on mute.

3 MR. KURZBAN: Your Honor, I'm sorry. Yes, Your
4 Honor, the answer is there is no time limit for a bond
5 hearing. And the Board of Immigration Appeals has issued a
6 whole series of decisions in the last three months that make
7 it extremely difficult, even for a person in the situation
8 that counsel is talking about, to get a bond.

9 THE COURT: Okay. So it is -- you're going to
10 quibble with my word "likely," but you're going to have to at
11 least say it's possible. I'm going to say it's likely. I'm
12 going to say anyone paying attention to the news would bet on
13 it. But it is at least possible that what happens, if this
14 decision is stayed, pending appeal or pending litigation, that
15 law-abiding individuals who have been contributing to our
16 economy and not taking from it, because they're not eligible
17 for Social Security and Medicare and other certain government
18 benefits, and who have contributed to their communities and
19 not committed any crimes and not presented any problem other
20 than they happen to be Haitian with TPS status in the country
21 right now, if that is a problem, could be picked up by ICE,
22 because ICE has their addresses.

23 There are ICE officials in Springfield, Ohio, and
24 Florida where these individuals are located. We're talking
25 about over 350,000 individuals, picked up by ICE, put into a

1 detention center, and maybe, one day, at some point
2 undetermined, get a bond hearing. And at that bond hearing,
3 likely won't get bond if Mr. Kurzban is correct, and I have no
4 reason to doubt him, but, of course, if the government wants
5 to look at that, they're welcome to correct him. And that's
6 what happens, possibly, if not likely, if this is stayed. And
7 I just want to, A, get your views on that.

8 MR. SAMPAT: So, I would say that it is possible
9 that individuals with Haitian -- with TPS from Haiti will be
10 detained, will be put into removal proceedings, as permitted
11 by the INA. They can -- some will be eligible to take a bond
12 hearing. Does not necessarily mean they will be granted bond.
13 But they can seek a bond hearing.

14 THE COURT: You left out the part where they will be
15 detained in detention centers pending the bond hearing,
16 whenever it may occur.

17 MR. SAMPAT: So, yes, they would be detained in
18 detention centers because that is permitted.

19 THE COURT: Okay. Have there been problems with
20 detention centers recently? I mean, are there issues with
21 detention centers, or are they totally great places to be
22 right now? Do you know?

23 MR. SAMPAT: I do not know, Your Honor.

24 THE COURT: Okay. Now, let's say that after they've
25 been put in detention and stayed there for however long they

1 are there, they go into removal proceedings. Do you know how
2 long removal proceedings take?

3 MR. SAMPAT: So that would depend on the kind of
4 proceedings that they go into. So it would depend on whether
5 they're subject to expedited removal, which some may be. I
6 don't know the number of that. If they are in full-blown
7 regular 240 proceedings or proceedings under 1229(a), then it
8 depends on whether they're on the detained docket or the
9 nondetained docket.

10 THE COURT: Well, let's say they're on the detained
11 docket.

12 MR. SAMPAT: It moves more quickly than the
13 nondetained docket, for obvious reasons, but I don't know what
14 those numbers are like. But I know general practice is
15 detained dockets will move swiftly and try to -- and a final
16 decision from the immigration judge is more likely to come
17 sooner than it is later.

18 THE COURT: Okay. Can one of you at counsel table
19 email whoever you people email to try to get us an answer as
20 to what the current wait times is for detained individuals?

21 Do these people automatically go to Texas detention
22 centers, or what detention centers do they go to?

23 MR. SAMPAT: That's left to the discretion of the
24 secretary of Homeland Security and DHS, where they're
25 detained.

1 THE COURT: Okay. Can you guys try to give me some
2 numbers on that, if you can? Not necessarily like for the
3 record to end all time. I'm just trying to get a sense of it.

4 MR. SAMPAT: And --

5 THE COURT: But -- hold on. And so -- I'm sorry.
6 Go ahead.

7 MR. SAMPAT: Your Honor, I was going to say, I
8 understand we're focused on the irreparable harm and all that,
9 but I can make this very simple. If Your Honor's not going to
10 rule for us on the likelihood of success on the merits, then
11 that's the end of the inquiry.

12 THE COURT: Yeah, it's not that simple.

13 MR. SAMPAT: Okay.

14 THE COURT: Because I want to make sure that
15 everyone understands precisely what's happening when
16 government makes arguments. And I want to make sure that
17 people understand, and I understand, precisely what's
18 happening when we talk about dealing with individual human
19 lives in a democratic society. So we are going to go through
20 this.

21 MR. SAMPAT: Certainly, Your Honor.

22 THE COURT: All right. Now, once they are put into
23 detention centers and removal proceedings, it's the
24 government's contention that the immigration judge does not
25 have the authority to review Secretary Noem's decision-making;

1 right?

2 MR. SAMPAT: So the immigration judge --

3 THE COURT: With respect to the TPS termination.

4 MR. SAMPAT: Yeah, so I would say that the
5 immigration judge probably can't review the termination
6 decision itself. However, the individual can develop a record
7 to get that reviewed in a petition for review eventually at
8 the Court of Appeals.

9 THE COURT: Okay. But the Court of Appeals can't
10 review the termination decision either; right?

11 MR. SAMPAT: Well, we would obviously --

12 THE COURT: What you guys keep telling me is the
13 secretary has unfettered discretion to do whatever she wants,
14 and there's no judicial review of that decision.

15 MR. SAMPAT: So we would certainly argue the
16 judicial review bar is on the PFR as well, is my
17 understanding. However, there is a path by which --

18 THE COURT: Well, I mean, it's a -- look, saying
19 that there's a path to see somebody who can't do anything for
20 you is not saying there's a path. It's like saying, yes, you
21 can go to the doctor, but you have a terminal illness and the
22 doctor's not going to be able to do anything, is not saying
23 that you have a path to get better.

24 MR. SAMPAT: Well, Your Honor, respectfully, I would
25 say the 3rd Circuit thought it was perfectly fine in the case

1 with Mr. Khalil.

2 THE COURT: Well, look, I'm not here talking about
3 the 3rd Circuit. I'm here talking about this case. All
4 right?

5 MR. SAMPAT: Sure.

6 THE COURT: And I'm in the D.C. Circuit. So let's
7 stick with my case and the facts that are before me right now.

8 Now, government's contention is, is that once they
9 go through this process, the appellate court, the Supreme
10 Court, there's nothing that they can do, there's no judicial
11 review; right?

12 MR. SAMPAT: We would argue that the judicial review
13 bars apply to the termination decision, yes.

14 THE COURT: Okay. All right. So if the government
15 is right on that, then -- or, well, if that's the government's
16 position, then let's say that the immigration judge agrees
17 with you and let's say that the person is removed. So we have
18 tens, if not hundreds of thousands of Haitians who are now
19 being removed to Haiti; right?

20 All right. Now, let's say that at the end of the
21 day there's a decision made by the Supreme Court, or whatever
22 final appellate court this goes to, that the decision is
23 reviewable, and that the termination was unlawful. I
24 understand, loudly and clearly, that the government disagrees
25 with me. And of course, you're entitled to do it, and of

1 course you're entitled to appeal. And if the appellate courts
2 think I'm wrong, then that's where we are. But let's just
3 assume for a second they think I'm right.

4 All right. Now, all those people who have been in
5 detention and then sent to Haiti are no longer in this country
6 when this decision comes down. Are those individuals who had
7 TPS unlawfully taken from them now eligible to come into the
8 country absent any other Visa?

9 MR. SAMPAT: You know, Your Honor, I -- I don't know
10 the answer to that specifically. However, what I can say is
11 there could be a path by which they could return not with --
12 given the Supreme Court's ruling. That's the *Nken v. Holder*
13 case where the Supreme Court even realizes like if individuals
14 prevail on a petition for review following their removal,
15 there could be a way to return.

16 THE COURT: But that's because they would have
17 unlawfully been denied an immigration right that would allow
18 them to come into the country; right? TPS doesn't allow
19 someone to come into the country. It only allows the
20 individual to stay in the country if they're already here;
21 right?

22 MR. SAMPAT: That's correct.

23 THE COURT: Okay. So that wouldn't apply to TPS
24 holders who have been removed to Haiti; right?

25 MR. SAMPAT: So I think it would -- again, I think

1 it would depend on where they are in their removal
2 proceedings.

3 THE COURT: Well, we talked about that. They are a
4 lawful individual who has done nothing wrong, who has had a
5 job, contributed to the economy, had TPS status, now no longer
6 has TPS status because my decision has been removed. They've
7 been put into a detention center for who knows how long.
8 They've been put in through removal proceedings. The
9 immigration judge, the appellate court, they think that the
10 termination was lawful. These individuals are removed to
11 Haiti. They are now in Haiti.

12 After they are put into Haiti, they have no other
13 Visas, they have no other immigration status. The Supreme
14 Court, an appellate court or another administration reverses
15 the decision, like who knows; right? They win the litigation,
16 but they're not in Haiti, and they don't have any Visa to get
17 into the country, do they get to come into the country?

18 MR. SAMPAT: So absent other permission -- other
19 lawful permission, I would say no. However, I just want to
20 caveat that by saying that there could -- not understanding
21 what that argument would be, but that individuals could still
22 file a motion to reopen and see if there's a way to get their
23 removal order undone --

24 THE COURT: But there's no legal way -- they can
25 move to reopen, but there's no legal avenue that would allow

1 them to come in.

2 MR. SAMPAT: So I --

3 THE COURT: And, in fact, isn't it the government's
4 contention, as I understand it, now that we're talking about
5 other cases, that once they're removed to another country, no
6 court can force the government to bring them back. That's the
7 government's position; right?

8 MR. SAMPAT: No court can force them to bring them
9 back, however, but there are different paths by which
10 individuals can come back, and I think --

11 THE COURT: Name them for me. Name a path that an
12 individual, given the circumstances I have just given you, a
13 concrete path, not just there is a path out there, not just
14 like there's some yellow brick road, like an actual concrete
15 statutory Visa path that they would have.

16 MR. SAMPAT: I can't think of one on the spot, Your
17 Honor.

18 THE COURT: Because there is not one; right?

19 MR. SAMPAT: I wouldn't want to say there isn't
20 one.

21 THE COURT: Well, let's do this. I'm going to not
22 issue my opinion in this until the 18th or the 19th, because I
23 don't want to slow up the appellate court, but I want to make
24 sure -- you know, give a recent decision -- I'm going to make
25 a decision today, but I'm not going to write an opinion until

1 the 18th or the 19th.

2 Here's what I would like the government to do. I
3 would like you all to identify for me, under the situation
4 that I've just identified, a legal path that an individual
5 would have to come back into the country, and whether or not a
6 court could order any judicial relief that would require the
7 government to allow them to come back into the country. Is
8 that a clear issue?

9 MR. SAMPAT: Again, Your Honor, I would simply say I
10 don't think it's necessary given the fact that if -- because
11 we're talking about irreparable harm and what that would look
12 like, whereas --

13 THE COURT: No, because you guys said in your -- you
14 guys say in your motions that there's no irreparable harm,
15 because it's totally speculative as to what might happen;
16 right? So there is irreparable harm. I mean, you would agree
17 with me, at a minimum, that if individuals are unlawfully
18 returned to Haiti, and have no avenue of coming back, even if
19 they win, under any definition of the term, that would be
20 irreparable harm; right?

21 MR. SAMPAT: Supreme Court has said removal by
22 itself is not irreparable harm.

23 THE COURT: I'm not saying removal by itself. I'm
24 saying being unlawfully sent to Haiti, being found to be
25 correct that you are unlawfully sent to Haiti, and then not

1 being able to return because TPS isn't an avenue to come into
2 the country. That would have to be irreparable harm, no?

3 MR. SAMPAT: Under the Supreme Court's ruling in
4 *Nkin*, I don't think so, because that would basically equate
5 removal itself being irreparable harm. So I can't say that it
6 would be irreparable --

7 THE COURT: All right. Plaintiffs, I assume you
8 have a view on that.

9 MR. PIPOLY: Yes, Your Honor. I mean, certainly for
10 the reasons we said in our brief, we think that irreparable
11 harm -- I don't want to regurgitate everything we said in our
12 brief.

13 The only other thing I would add as a practical
14 matter, Your Honor, is that there are practical barriers to
15 accomplishing all of this from Haiti in the hypothetical that
16 you're describing, where there is no working electricity in
17 many parts of the country, where there's no stable housing.
18 How do these folks get access to the lawyers even if there was
19 a path back in the hypothetical you described and on and on
20 and on.

21 So it's not just a function of whether there's a
22 legal path. As Your Honor is hinting at, part of the question
23 is how practical are those paths and how practical are those
24 paths from a country like Haiti undergoing what it's
25 undergoing.

1 THE COURT: All right. With respect to my request
2 for sort of the concrete harm the government is facing. So
3 far as I understand from your papers, you're not arguing that
4 there's any concrete harm that the government is facing. It's
5 in the like you have 10,000 ICE agents, you know, ready to go
6 on a plane that you're now having to feed somewhere not in
7 Springfield, Ohio.

8 MR. SAMPAT: No, we're not making that argument,
9 Your Honor.

10 THE COURT: Your argument, so far as I understand
11 it, is that the concrete harm is that the government can't do
12 what it wants.

13 MR. SAMPAT: In that the Court's order intrudes on
14 the secretary's authority to terminate TPS and then that would
15 stop us -- it is currently stopping us from enforcing the
16 immigration laws or currently stopping --

17 THE COURT: So basically, that -- the argument is,
18 is that anytime there's -- the government appeals, because
19 anytime the government appeals, of course it's going to claim
20 that it has a likelihood of success; right?

21 MR. SAMPAT: Of course.

22 THE COURT: All right. So basically, the argument
23 is, is that anytime the Executive appeals in an emergency
24 stay, that irreparable harm and the public interest
25 automatically favor the government.

1 MR. SAMPAT: Well, our argument there is that given
2 the Court's order and the effect of it, in this case, it does.
3 And you don't have to just take my word for it. We can take
4 the 9th Circuit's word for it, which stayed the vacatur
5 decisions -- the district court's decision related to
6 termination of three countries just earlier this week.

7 THE COURT: Yeah, no, I looked at it, and I don't
8 think that's what it said.

9 MR. SAMPAT: Okay.

10 THE COURT: But -- and we can get to that if we
11 want. But let me just ask you this: As a practical matter,
12 can you think of a situation, given your argument, in which
13 the government would concede that it did not face irreparable
14 harm given that the argument is we face irreparable harm every
15 time we're not allowed to do what we want? I mean, I guess
16 the nicer way to put it is, we face irreparable harm every
17 time the Executive can't carry out its administrative
18 policies.

19 MR. SAMPAT: Well, Your Honor, I would just say,
20 broadly speaking, I'm not aware of the full universe of cases
21 that the government has appealed, but if it hasn't sought a
22 stay in those cases, then that's a showing that they're
23 probably not being irreparable harmed in that moment --

24 THE COURT: So anytime the government seeks an
25 emergency stay, it is being harmed, its argument is, because

1 it's not being able to carry out its administrative policy;
2 right?

3 MR. SAMPAT: Well, Your Honor, we're just saying
4 what the Supreme Court says -- it says we have to establish to
5 obtain the stay. So we would have to say irreparable harm and
6 here's why we're being irreparably harmed.

7 THE COURT: Yeah, but I'm just trying to get to,
8 your irreparable harm argument isn't we're actually being
9 harmed in some concrete sense. We're not having to pay ICE
10 agents more. We're not, you know, having to pay immigration
11 judges more. In fact, all of those things will happen if
12 there is a termination, not if there's not; right? You're not
13 saying we're going to lose taxes if we terminate, if this
14 isn't stayed; right? In fact, you're going to lose taxes if
15 it's not terminated.

16 What I'm trying to get at is there's no concrete
17 harm to the government. We're talking about a harm to the
18 government in terms of its ability to execute on its policy
19 objectives.

20 MR. SAMPAT: In a sense, yes. But I would also just
21 point Your Honor to the *INS versus Legalization Assistance*
22 *Project* decision from Justice O'Connor in chambers, where
23 similar sort of fact pattern challenging INS policy, and she
24 found -- Justice O'Connor found irreparable harm because the
25 government would be prohibited from removing individuals that

1 had outstanding removal orders, would have to reauthorize work
2 permits.

3 THE COURT: Okay. Well, that's nothing here.

4 MR. SAMPAT: Well, I mean, it's the same sort of
5 thing.

6 THE COURT: You don't have individuals with
7 removable orders.

8 MR. SAMPAT: There may be individuals with removal
9 orders.

10 THE COURT: But you can remove them even without the
11 termination.

12 MR. SAMPAT: No --

13 THE COURT: You don't need to terminate them to
14 remove them.

15 MR. SAMPAT: No, we couldn't remove them because the
16 statute says they cannot be removed.

17 THE COURT: Well, you can certainly have their TPS
18 status taken away, right, if they have outstanding criminal --

19 You guys tell me if I'm wrong on this.

20 My understanding was that you can't just come into
21 the country and start robbing banks and say, oh, you can't
22 deport me because I have TPS status.

23 Plaintiffs?

24 MR. PIPOLY: That's correct, Your Honor. If there's
25 a conviction for a felony or more than one misdemeanor, then

1 they're not removable.

2 I think what Mr. Sampat --

3 THE COURT: Then they are removable.

4 MR. PIPOLY: Correct. They would lose their TPS and
5 then, to the extent they also had a removal order, they would
6 be removable. I think that's the distinction he was trying to
7 draw.

8 THE COURT: Okay. All right.

9 MR. PIPOLY: But just if you've got someone with
10 just a removal order that did not stem from a criminal
11 conviction or something like that, then, yes, that is what
12 TPS -- you can have someone with TPS with a removal order, and
13 the TPS stops the enforcement of that order. If they have
14 been convicted of a crime, then that's a separate issue for
15 which they lose their TPS, and that -- they are now
16 removable regardless.

17 THE COURT: So if they had a removal order because
18 they overstayed their Visa.

19 MR. PIPOLY: Correct. That would be the type of
20 removal order TPS would operate to stop the enforcement.

21 THE COURT: All right. Could you turn -- do you
22 have the government's motion in front of the appellate court
23 in front of you, or do you have access to it?

24 MR. SAMPAT: I can pull it up, Your Honor. I have
25 it.

1 THE COURT: All right. Can you turn to page 4,
2 please.

3 MR. SAMPAT: The ECF 4 or --

4 THE COURT: I'm sorry. No, page 8 of the ECF.

5 MR. SAMPAT: Okay. Yes.

6 THE COURT: All right. I'm going to read from it
7 and then I'm going to ask you a couple of questions about what
8 you represented to the appellate court. All right? And by
9 you, I don't know if you wrote this or not, I just mean the
10 government.

11 MR. SAMPAT: Sure.

12 THE COURT: All right.

13 "The district court merit -- court's merit analysis
14 is no better. As to the APA claim, the district court
15 substituted its own judgment for the secretary's. To grant
16 plaintiff's motion, the district court quibbled with the
17 secretary's assessment of Haiti's economy."

18 I think anyone who read my opinion would not say
19 that I quibbled with it, but, you guys, I won't quibble with
20 you on the use of the word "quibble."

21 "Disagreed with the secretary's view of conditions
22 in Haiti." And here's my key question that I'm going to focus
23 on. "Demanded that the secretary consult with some other
24 unnamed, quote/unquote, 'appropriate agency' in addition to
25 the State Department."

1 Okay. Where in my opinion did I say that? And I
2 will let you know that at pages 43 to 46 of my opinion is
3 where I discussed the legal analysis of the secretary's
4 consultation.

5 MR. SAMPAT: You said that was 43 to 46?

6 THE COURT: Uh-huh.

7 MR. SAMPAT: Well, Your Honor, if we just with start
8 the header it's that the secretary likely acted contrary to
9 law in failing to consult what properly -- consult properly
10 with, quote, appropriate agencies, so --

11 THE COURT: But that's -- that's not what this says.
12 This says, "Demanded that the secretary consult some other
13 unnamed appropriate agency in addition to the State
14 Department."

15 MR. SAMPAT: So on page 45, Your Honor cited to
16 other agencies like US AID.

17 THE COURT: In addition to the State Department. I
18 wasn't -- nothing in my opinion said that the government is at
19 fault for not consulting with agencies other than the State
20 Department. My opinion is that the government did not consult
21 with any agency, including not with the State Department.

22 And that is a critical, critical distinction,
23 because it is not that my view is that that secretary
24 consulted under the statute with the State Department but then
25 failed to consult with other agencies. The opinion is that

1 she did not consult with any agency.

2 And I have to say that, you know, there's no
3 citation to this sentence -- there's no citation to any of my
4 opinion in your brief, which is, you know, unfortunate. It
5 might have helped the appellate court for you all to actually
6 point to what I say.

7 But would you do me a favor, please, in your reply
8 brief, could you please make sure that that's clarified for
9 the Court? I just want to make it absolutely clear, as my
10 opinion did, that I was not saying that the secretary was
11 obligated to consult with other agencies even though she
12 consulted with the State Department. My opinion is that, and
13 it was clear, that she did not consult with any agency.

14 Now, I will grant you that the Congress said
15 appropriate agencies, plural, and that I'm confident that the
16 plaintiffs, if she only consulted with the State Department,
17 might raise the issue that that was also contrary to law. I
18 did not reach that question. I didn't have to reach that
19 question. I don't think the appellate courts have to reach
20 that question on this record. And I just want to make sure
21 that's absolutely clear when you all are arguing in front of
22 the appellate court, okay?

23 MR. SAMPAT: So just to make sure Your Honor's point
24 on that. So in the Court's point, Your Honor was not saying
25 that the secretary was required to consult with any other

1 agency.

2 THE COURT: I am saying that she did not consult
3 with any agency. She did not consult with the State
4 Department. Now, you all disagree with that. You all claim
5 that she did consult with the State Department. We all agree
6 that she didn't consult with anybody else; right?

7 MR. SAMPAT: I'm sorry.

8 THE COURT: We all agree she didn't consult with any
9 other agency.

10 MR. SAMPAT: Yes, if I remember the record
11 correctly, then, yeah.

12 THE COURT: Right. I don't want the misimpression
13 left, which is the misimpression I got reading this, that what
14 I said was she consulted with the agency but that wasn't
15 enough; she was also required to consult with other agencies.
16 I didn't reach that determination. My determination was that
17 the Congress required her to consult with appropriate
18 agencies, and she did not consult with any agency.

19 MR. SAMPAT: So if I may just read this back to make
20 sure I understand Your Honor's point. So the Court's holding
21 on this issue was that the secretary did not consult with any
22 agency, including the Department of State.

23 THE COURT: Correct.

24 MR. SAMPAT: Okay.

25 THE COURT: All right. Thank you.

1 By the way, when we get back -- I just want to get
2 back to irreparable harm for a moment. You agree that the
3 President is not being stopped from following his policy;
4 right? Because this was a determination made by the
5 secretary. We're not dealing with an executive order; right?

6 MR. SAMPAT: We're not dealing with the executive
7 order directly, but indirectly we are, because the secretary's
8 termination decision was in part motivated by the executive
9 order.

10 THE COURT: All right. So the secretary is
11 following what the President told her to do.

12 MR. SAMPAT: Well, we -- that -- it's following the
13 executive order which sets out the policies and whatnot, and
14 that is, I believe, in the termination decision itself, where
15 it cites --

16 THE COURT: Okay. I just want to make sure we
17 understand what the record is. Secretary Noem was not making
18 an independent determination as to Haiti's country condition.
19 She was following what the President told her to do.

20 MR. SAMPAT: Oh, that's not what I'm saying, Your
21 Honor.

22 THE COURT: That's not what you're saying.

23 MR. SAMPAT: That's not what I'm saying.

24 THE COURT: So you want to have your cake and eat it
25 too. She's acting totally independently except she was doing

1 exactly what the President told her to do in a executive
2 order.

3 MR. SAMPAT: Well, what we're saying is that the
4 executive order is out that govern the policy of this
5 administration and how they want to enforce immigration laws.
6 And with that executive order as a guide, the secretary
7 reached an independent determination in this case related to
8 Haiti's TPS designation.

9 THE COURT: I just don't understand how you reach a
10 totally independent decision if you're being guided by an
11 executive order. I'm not saying she was wrong to do it -- I
12 mean, I guess I am, but I'm just trying, right now, to
13 understand what the argument is.

14 MR. SAMPAT: Well, I forget what page it's on in our
15 brief, but about that when there are executive orders, the
16 secretaries are required to follow them. So --

17 THE COURT: So the secretary, if she has -- I just
18 want to understand the government's argument here. If a
19 secretary is confronted with an executive order from the
20 President, and a different congressional statutory scheme,
21 she's required to follow the executive order and ignore the
22 congressional statutory scheme.

23 MR. SAMPAT: No, that's not --

24 THE COURT: That's not what you're staying.

25 MR. SAMPAT: That is not what I'm saying. I am

1 saying that the executive order serves as a guide as to policy
2 decisions. In this case --

3 THE COURT: Well, how does it serve as a guide if
4 she's doing an independent analysis based on the statutory
5 factors? Why is she looking to any guide? Why is she not
6 just looking at the statute?

7 MR. SAMPAT: Well, she did. It --

8 THE COURT: So she's not being guided by the
9 executive order.

10 MR. SAMPAT: I can't say that, because I believe
11 this termination decision cites the executive orders.

12 THE COURT: So she is being guided by the executive
13 order. She is doing what the President told her to do. She
14 is taking that into consideration.

15 MR. SAMPAT: That is one of the things she's taken
16 into consideration as part of her --

17 THE COURT: Okay. Where in the statute does it say
18 the secretary should take into account the President's policy
19 objectives when deciding whether or not to terminate?

20 MR. SAMPAT: I don't have that cite specifically,
21 Your Honor.

22 THE COURT: Well, because it doesn't exist; right?
23 There's nothing in the statute that says that. In fact, the
24 statute was put in place in order to do the exact opposite.

25 MR. SAMPAT: If you give me one moment.

1 Well, the executive order helps guide national --
2 the national interest finding. So --

3 THE COURT: Okay. So that she's allowed, the
4 statute says, she can look to the President for?

5 MR. SAMPAT: So it's look to or be guided by it, but
6 at the end of the day that's -- I mean, I can't find the cite
7 offhand, Your Honor, but I know we cited a case that talks
8 about executive orders are to be followed.

9 THE COURT: That what, executive orders?

10 MR. SAMPAT: Are to be followed.

11 THE COURT: I'm just trying to figure out what she
12 did. She either followed the executive order and did what the
13 President told her to do, or she made an independent
14 determination irrespective of what the President thought. I'm
15 trying to figure out which it is.

16 MR. SAMPAT: But executive order doesn't say
17 terminate Haiti's TPS determination. That's the point,
18 is that --

19 THE COURT: No, it says -- okay. All right. I
20 think we're not going to get any further; right? We're just
21 going to continue to go back and forth. If I say she followed
22 the executive order, you're going to say she didn't. And if I
23 say, well, she didn't, you're going to say she did. That's
24 where we're going to be, you know, for the next few hours
25 here.

1 MR. SAMPAT: If I may, and we'll quibble a little
2 about that.

3 THE COURT: You're allowed to quibble. You're the
4 only one at government's table that's allowed to quibble.

5 All right. Sorry. I'm trying to find my notes on
6 the interim order. Here we go. All right. So we have two
7 interim orders here from the Supreme Court, not in this case;
8 right?

9 MR. SAMPAT: No, they both pertain to Venezuela.

10 THE COURT: They both pertain to Venezuela.

11 MR. SAMPAT: That's correct.

12 THE COURT: And you agree with me that there's no
13 discussion at all in the first order; right? It just stays
14 the decision?

15 MR. SAMPAT: If I remember it correctly, yes.

16 THE COURT: And you agree that the second one just
17 says for the reasons we decided last time, we're staying this
18 again?

19 MR. SAMPAT: Yeah.

20 THE COURT: But they didn't state the reasons.

21 MR. SAMPAT: Yes, I don't -- I think that's the --
22 that is an accurate characterization of the second order.

23 THE COURT: Okay. And you -- it's your contention
24 that the secretary did a country-by-country analysis; right?

25 MR. SAMPAT: Yes.

1 THE COURT: And presumably, that's how you briefed
2 it, because only Venezuela was briefed to the Supreme Court;
3 right?

4 MR. SAMPAT: Yes.

5 THE COURT: In fact, there was a Haiti decision that
6 was also made that was not -- that you did not seek a stay in;
7 correct?

8 MR. SAMPAT: In the -- if Your Honor --

9 THE COURT: In the Venezuela case?

10 MR. SAMPAT: We didn't seek it in the Venezuela
11 cases. But if Your Honor's talking about the HECA decision
12 out of the Eastern District of New York, we appealed but did
13 not seek a stay of that decision.

14 THE COURT: Right. Okay. So the Supreme Court has
15 only ever had before it the country conditions and the
16 secretary's review of country conditions and the secretary's
17 review of consultation with respect to Venezuela; right?

18 MR. SAMPAT: That has been -- yeah --

19 THE COURT: And it has never considered Haiti;
20 right?

21 MR. SAMPAT: Not --

22 THE COURT: The secretary's actions with respect to
23 Haiti.

24 MR. SAMPAT: That is my understanding, the Supreme
25 Court has not addressed Haiti specifically.

1 THE COURT: Okay. So what in what the Supreme Court
2 has said, or rather not said, about a different country,
3 Venezuela, should require me to find that the Supreme Court
4 says that the lower courts should stay the Haiti
5 determinations or any other TPS determination for that matter?

6 MR. SAMPAT: Your Honor, the arguments raised before
7 the Supreme Court, before the 9th Circuit on the stay motions
8 have been nearly identical.

9 THE COURT: But they can't be nearly identical.
10 They can't be because -- because -- there are discussions from
11 the government as to the secretary not acting arbitrarily and
12 capriciously with respect to Venezuela.

13 MR. SAMPAT: Right.

14 THE COURT: Right. So that's totally different;
15 right?

16 MR. SAMPAT: Yes, but --

17 THE COURT: We don't know whether that was guiding
18 the Supreme Court or whether something else was guiding the
19 Supreme Court; right?

20 MR. SAMPAT: Sure. But what I would say is the
21 9th Circuit, just on Monday, looked at three separate
22 countries and looked to the Supreme Court's decision in the
23 Venezuela cases to stay the district court's decision.

24 THE COURT: Okay. Well, that's the 9th Circuit, and
25 they gave little reasoning on that at all either; right? They

1 said, first of all, with respect to likelihood of success,
2 we're dealing with vacatur as opposed to termination.

3 MR. SAMPAT: I think it's the other way around, Your
4 Honor. They were dealing --

5 THE COURT: Termination, not vacatur.

6 MR. SAMPAT: Which is exactly what we have here.

7 THE COURT: But hold on. What they did not discuss
8 was the difference between a termination decision and the
9 process by which someone gets to termination. There was no
10 analysis of that done in the decision; right?

11 MR. SAMPAT: I don't recall --

12 THE COURT: There wasn't. It was a paragraph and
13 there wasn't; right?

14 MR. SAMPAT: Oh, sorry. I thought Your Honor was
15 referring to the district court's decision.

16 THE COURT: No, no, the 9th Circuit's.

17 MR. SAMPAT: The 9th Circuit's, yeah, I don't recall
18 that being in the stay order.

19 THE COURT: Okay. And the 9th Circuit's decision
20 did not address the issue of whether consultation happened or
21 did not, and was or was not contrary to law; correct? They
22 only discussed arbitrary and capriciousness; right?

23 MR. SAMPAT: So that is what they discussed. And in
24 our stay motions, we've said at the very least the arbitrary
25 and capricious findings are sufficient to warrant the stay.

1 In our filings here before Your Honor and at the D.C.
2 Circuit.

3 THE COURT: Okay. But you would agree with me that
4 if you lose on consultation, then you don't have a likelihood
5 of success.

6 MR. SAMPAT: I would say the consultation piece is
7 part and parcel of the arbitrary and capricious --

8 THE COURT: Okay. Well, that's where you and I part
9 ways.

10 MR. SAMPAT: I know we disagree --

11 THE COURT: But -- because my view is that
12 consultation is contrary to law, which is separate from
13 arbitrary and capricious. You understand that from my
14 opinion; right?

15 MR. SAMPAT: Yes.

16 THE COURT: I'm just trying to find out and get
17 clear as to what the 9th Circuit did and did not do in a
18 four-page or five-page stay order. They did not -- they did
19 not discuss consultation being contrary to law as outside the
20 scope of judicial review; right?

21 MR. SAMPAT: I don't recall that, Your Honor.

22 THE COURT: They didn't. And they don't discuss
23 whether or not what the consultation was or was not in those
24 three countries; right?

25 MR. SAMPAT: I don't recall that. I just -- I know,

1 looking at the circuit's order, it just says plaintiffs assert
2 statutory and constitutional challenges to the termination
3 decision. And the Court stayed the entirety -- I know the
4 district court never reached the constitutional issues in that
5 case.

6 THE COURT: And we have the constitutional issues
7 here, right, which the 9th Circuit also did not reach; right?

8 MR. SAMPAT: Yes, that is correct. That's what
9 differentiates the -- there is some differentiation on that,
10 but, nevertheless, the 9th Circuit thought to stay the
11 district's order in NTPSA.

12 THE COURT: But we don't know if they did that
13 because they found that the government had a likelihood of
14 success, reviewing only what happened with respect to those
15 three countries or not taking into account the many other
16 arguments that were addressed here with respect to judicial
17 review; right?

18 MR. SAMPAT: So I -- if I -- if Your Honor will give
19 me a moment.

20 I would say, Your Honor, one of the arguments that
21 the government raised in the stay motion and NTPSA was about
22 judicially created procedural requirements, which Your Honor
23 and I --

24 THE COURT: I'm just looking at the order.

25 MR. SAMPAT: Sure. But what I'm saying is that at

1 least before the 9th Circuit, the argument was presented.

2 THE COURT: Yeah, I understand that arguments are
3 presented. I'm just looking at what courts do.

4 MR. SAMPAT: Sure.

5 THE COURT: And the order doesn't say that.

6 MR. SAMPAT: It does not. And --

7 THE COURT: Okay. All right. So let's turn to, you
8 know, this idea that temporary means temporary. Now, help me
9 with this. I just want to make sure I got the statute
10 correct. Did Congress place a limit in the TPS statute as to
11 how many extensions could be granted?

12 MR. SAMPAT: It did not create a cap to which a
13 country could receive TPS designation --

14 THE COURT: Did it place like a year limit, like you
15 can't have more than five years or ten years or 15 years?

16 MR. SAMPAT: The statute doesn't create that sort of
17 limitation.

18 THE COURT: And if a secretary doesn't make a
19 determination, what happens? Does the -- if it does not make
20 a determination, when the statute is up for renewal, what
21 happens? Does it automatically terminate, or does it
22 automatically extend for six months?

23 MR. SAMPAT: The statutory scheme is that it is
24 extended if the secretary has not made a determination, and
25 here, we have a determination that was made.

1 THE COURT: Okay. So if the secretary had done
2 nothing, if she had not done anything at all, the statute
3 would have automatically renewed, right, and we wouldn't be
4 here?

5 MR. SAMPAT: I think there's still some procedural
6 requirements, because I think this what happened -- I forget
7 which country it was. Was it Sudan, the one where a decision
8 wasn't made, but there's still a Federal Register notice.

9 THE COURT: Maybe Somalia.

10 MR. SAMPAT: Maybe.

11 THE COURT: Maybe.

12 MR. SAMPAT: So that process exists. But the
13 statute would be that if there's no determination made, then
14 there's an extension.

15 THE COURT: Okay. So the Court isn't stopping a
16 termination decision -- well, the Court isn't -- let me make
17 sure I get the wording right.

18 It's not the case that the secretary could have done
19 nothing and the TPS automatically terminated and the Court
20 came in to unterminate it; right?

21 MR. SAMPAT: I'm sorry --

22 THE COURT: The secretary took actual action to
23 terminate the decision, and that's why we have litigation;
24 right?

25 MR. SAMPAT: That is correct.

1 THE COURT: If the secretary had done nothing, it
2 would have automatically renewed, and we would not have had
3 litigation; right?

4 MR. SAMPAT: If the secretary had not acted, then it
5 would be the extension through the statute.

6 THE COURT: Okay. And it's true that Haitian TPS
7 holders, or any TPS holders, do not, through the TPS statute,
8 gain legal residency in the country; right?

9 MR. SAMPAT: That is correct.

10 THE COURT: Okay. So they're not entitled to just
11 stay here indefinitely; right?

12 MR. SAMPAT: No.

13 THE COURT: No. They don't have any legal avenue
14 through the TPS statute to gain permanent legal residency;
15 right?

16 MR. SAMPAT: That -- so they could not adjust their
17 status in the United States and become green card holders.
18 That does not mean they cannot find a way to become --

19 THE COURT: A different way.

20 MR. SAMPAT: A different way.

21 THE COURT: They could marry an American, they could
22 do all the things.

23 MR. SAMPAT: Right. Like so there could be other
24 avenues by which they can --

25 THE COURT: I'm just talking about the TPS statute

1 itself, with nothing else, does not grant individuals a way to
2 adjust to permanent residency; right?

3 MR. SAMPAT: Yes, the TPS statute does not permit
4 that.

5 THE COURT: So when we talk about temporary in the
6 statute, we're not talking about temporary in the sense of two
7 weeks or two years. We're talking about temporary as in not
8 permanent.

9 MR. SAMPAT: I would say that's -- that is a reading
10 and -- it's a reading I agree with.

11 THE COURT: Okay.

12 MR. SAMPAT: But what I would also say is that
13 temporary also indicates a temporal indication, and I believe
14 this is -- when we were arguing about this at the merits
15 hearing, Your Honor, I think this is what I said then, is that
16 at some point temporary becomes permanent.

17 THE COURT: Well, it doesn't actually, as a matter
18 of law. Temporary never becomes permanent under the TPS
19 statute.

20 MR. SAMPAT: Well --

21 THE COURT: Because, for example, let's say,
22 tomorrow Haiti transforms -- let's say in a year Haiti
23 transforms -- let's say in five years Haiti transforms itself
24 and becomes an Eden. Then you could end TPS status at that
25 point; right? Let's say plaintiffs agree, they're not

1 bringing a lawsuit. The government can end TPS status, and
2 those individuals would be required to leave the country;
3 right?

4 MR. SAMPAT: But at the moment, we're -- it's a
5 decision being made in that time in that period. So if we
6 take Your Honor's Yankee land hypothetical from the merits
7 hearing, if Yankee land has had gangs and is in a state of
8 disarray and it's been 15 years, a decision-maker can come in
9 and at that moment and say it's been 15 years, they've had a
10 chance, it doesn't look like this is temporary conditions
11 anymore.

12 THE COURT: Okay. But that's not based on a
13 statutory understanding of the word "temporary," which is
14 clearly -- as opposed to permanent. That's based on some
15 sense that temporary means temporal short amount of time.

16 MR. SAMPAT: Well, I think it's both.

17 THE COURT: Compared to what? Temporary compared
18 to -- temporary compared to the 250 years this country has
19 been in existence? Temporary in comparison to the 4.5 billion
20 years the earth has been in existence? Temporary with respect
21 to the 26 years this century has been in existence? Temporary
22 in comparison to what?

23 MR. SAMPAT: In comparison to how the decision-maker
24 wants to define it.

25 THE COURT: However she wants to define it. So if

1 Kristi Noem -- if Secretary Noem thinks that by temporary,
2 Congress meant one year, then it's been more than one year so
3 these guys are out.

4 MR. SAMPAT: She certainly has the authority to do
5 that under the statute.

6 THE COURT: Okay. All right. A final issue and
7 then I'm going to take a short break, and then I'm going to
8 come back and give a ruling. And I know I have an 11 o'clock
9 and 11:30. I'm sorry. We're going to be delayed some -- a
10 bit.

11 The government made the point with respect to the
12 pattern and practice that if Secretary Noem's pattern and
13 decision to terminate all 12 TPS designations was a
14 preordained pattern and practice, then so was Biden's decision
15 to -- Biden's secretary's decision to reaffirm them.

16 MR. SAMPAT: To extend them all, yes.

17 THE COURT: To extend them. Okay. The Biden
18 decisions aren't in front of me; right?

19 MR. SAMPAT: They are not.

20 THE COURT: Okay. So we don't know what I would
21 have done had the Biden decisions been in front of me; right?

22 MR. SAMPAT: We don't. We're just drawing an
23 illustration, Your Honor.

24 THE COURT: Okay. But I'm just saying it's a false
25 equivalency, because we don't know -- you're assuming that I

1 would have determined, or a court would have determined that
2 Biden did not preordain his decisions, but we don't know that
3 because that was never litigated; right?

4 MR. SAMPAT: Well, I think the point we're trying to
5 make there, Your Honor, is the fact that we read Your Honor's
6 order and opinion to say that because every country that came
7 up for TPS was terminated, that shows a pattern and practice
8 that's motivated by animus and violates the APA.

9 So it would be the same theory under which the last
10 administration, by renewing or extending TPS designations for
11 every country that came before it, would now create a pattern
12 and practice of, like, no individualized determinations.

13 THE COURT: Well, yeah, and that may well have been
14 what occurred; right? We don't know because that was never
15 litigated.

16 MR. SAMPAT: Sure.

17 THE COURT: So what we also don't know, with respect
18 to what the Biden administration did, is whether there was any
19 evidence of animus that supported a view. Or antianimus. I
20 don't know what you want to call it.

21 MR. SAMPAT: Because those were never litigated? We
22 don't --

23 THE COURT: That's my point. Those were never
24 litigated, and they're not litigated in front of me, so
25 saying, ha, ha, Biden did the same thing, is maybe a

1 rhetorical flourish that someone not in a courtroom might say,
2 but, legally, is meaningless, because we don't know what a
3 court would have done. We don't have the record before us as
4 to whether or not Biden consulted with appropriate agencies
5 for each of the countries. We don't have the record in front
6 of us as to if the secretary had made comments like we love
7 all TPS holders, we want to keep them all in the country no
8 matter what. And we don't know what the record would have
9 shown with respect to the Biden's work with respect to TPS;
10 right? So would you agree with me that's just a false
11 equivalency as a legal matter?

12 MR. SAMPAT: I -- I would say the point of that
13 argument being made in the briefs was to illustrate that --
14 that the slippery slope that we think the Court was going down
15 when it ruled --

16 THE COURT: It's not a slippery slope. It's like
17 just saying here's what has happened. Twelve have come up, 12
18 have come down, there's been indications of animus everywhere,
19 you do the math.

20 But my only point is -- obviously, you guys should
21 make whatever arguments you want. I'm not going to stop you
22 from making arguments obviously. And by all means, you all
23 should appeal if you think I got it wrong. And you have
24 appealed, and you have every right to appeal. So I'm not, you
25 know, criticizing any of that.

1 My only point is that when a court makes a ruling
2 with respect to a case in front of it, and the case in front
3 of me is about Secretary Noem's TPS determination to say, oh,
4 but they did it too is not a legal response. In fact, it's a
5 misleading legal response, because it assumes that the Court
6 looked at what they did and said that was okay. That's my
7 only point.

8 All right. Plaintiffs, do you guys have anything?

9 MR. PIPOLY: Just a couple of things, Your Honor.

10 THE COURT: Okay. Come on up.

11 MR. PIPOLY: Yes, Your Honor.

12 I don't need even notes because I think I can be
13 relatively brief.

14 THE COURT: I mean, I would hope so.

15 MR. PIPOLY: The first thing -- and I just wanted to
16 get this into the record. I'm not necessarily asking the
17 Court to do anything with this, but I would like it in the
18 record. The -- I was in Springfield, Ohio, last Monday
19 meeting with clients. One of the things I learned is that TPS
20 holders in Springfield are, at present -- some of them, not
21 all of them -- making arrangements with foster care agencies
22 to potentially take their U.S.-born citizen children in the
23 event that TPS ends and the ICE raids begin. That was stated
24 at a press conference by one of the communities.

25 THE COURT: Well, that's not going to be in the

1 record per se that's in front of me or in front of any
2 appellate court for review because that's pure hearsay.

3 MR. PIPOLY: I understand, Your Honor. I just
4 wanted to say it.

5 THE COURT: Okay. Well, I suggest you say things
6 like that at a press conference.

7 MR. PIPOLY: Understood, Your Honor. The other
8 thing --

9 THE COURT: I mean, I actually don't think lawyers
10 should be having press conferences about cases. So I suggest
11 if you have a point to make, you make it through actual
12 record. But go ahead.

13 MR. PIPOLY: I agree. I didn't say it at the press
14 conference. I was simply there.

15 THE COURT: No, no, I hear you. Go ahead.

16 MR. PIPOLY: The other thing I would mention is
17 there is a potential issue with respect to compliance with the
18 705 order. We're still in the con- -- in the course of
19 discussing this with the government, but there are two
20 databases, the E-Verify database and the SAVE database.
21 E-Verify obviously goes to employers. The SAVE database does
22 a lot of things, as I understand it, but one of the things
23 that it does is allows state driver's license agencies to
24 access and understand the current status of a particular
25 person. I just wanted to flag that for the Court because

1 there might be an issue down the road in terms of --

2 THE COURT: I'm sorry. Is there anything happening
3 right now that's not supposed to be happening?

4 MR. PIPOLY: As I understand it, the E-Verify
5 databases and the SAVE databases have not been updated to
6 reflect compliance with the Court's order.

7 THE COURT: Were they updated to terminate?

8 MR. PIPOLY: They were -- when the -- when employers
9 and state DMVs try to figure out whether a particular person
10 is work authorized or --

11 THE COURT: What happens? What comes up?

12 MR. PIPOLY: Um -- that's right. It was updated,
13 but the database currently reflect TPSs expiring February 3rd.

14 THE COURT: All right. Mr. Sampat, I understand
15 that the DHS website does say that the termination has been
16 placed on hold. Could you please ensure that whatever
17 database they're talking about is appropriately updated by the
18 COB tomorrow? And if that does not happen, I'm not a judge
19 who's going to sit around and wait for you all to violate
20 court order after court order after court order. There will
21 be serious consequences immediately. So it seems like that
22 should be an easy fix. And for whatever reason it's going to
23 take longer than that, let me know and we'll talk about
24 additional time, but I can't imagine why it would.

25 MR. SAMPAT: So, Your Honor, I'm talking to my

1 client about it. Plaintiffs have -- counsel brought it to our
2 attention so we're conferring. The only thing I will say is
3 that if it's -- if the websites have been updated, and
4 people's work authorizations have been extended pursuant to
5 the Court's order and whatnot, which is what's reflected on
6 the USCIS website, we're in compliance with that part of it.
7 So --

8 THE COURT: Okay. Just update -- look, here's what
9 I don't want to have happen. I don't want something that can
10 get fixed in a few minutes to take weeks to fix. Okay? So
11 just get it done today or tomorrow. If, for whatever reason,
12 you actually need more time to get the technology done, you
13 let me know, you let plaintiffs know, and we can talk again.
14 Okay?

15 MR. SAMPAT: I will certainly report back on that,
16 Your Honor. I'll just add --

17 THE COURT: You don't have to report back. I'm
18 going to assume it gets done unless I'm told otherwise by the
19 plaintiffs. But please copy them on emails and please talk to
20 them before you email me.

21 MR. SAMPAT: On top of that, Your Honor, the one
22 thing I will say is that there could be -- with the posture of
23 the stays and whatnot, right, like there's also an interest in
24 maintaining -- avoiding mass confusion of --

25 THE COURT: No, I agree. I agree there's an

1 interest in avoiding mass confusion, which, you know, is up
2 for the appellate court to decide with respect to whether or
3 not to stay my decision. But I'm not staying my decision.
4 And so as of -- and I don't think the appellate court's going
5 to act before the 19th, because they've given you all to the
6 19th to reply; right?

7 MR. SAMPAT: That's correct.

8 THE COURT: Okay. So at least until the 19th, my
9 decision ain't being stayed.

10 MR. SAMPAT: That is absolutely --

11 THE COURT: Just please make sure. And if you guys
12 want to say, you know, appellate court might decide otherwise,
13 stay tuned, by all means. I'm not going to stop you. Okay.

14 MR. SAMPAT: Understood, Your Honor.

15 THE COURT: I want to take a break until 11:10.
16 Then I will come back with a ruling. And I have some comments
17 to make after the ruling.

18 (A recess was taken from 11:03 a.m. to 11:21 a.m.)

19 THE COURT: All right. We're back on the record.

20 A couple of things before we finish up. First, I
21 got a joint status report from you all on discovery. Thank
22 you. So far as I understand it, there's no big fight going
23 on; is that right?

24 MR. PIPOLY: That's right. Sitting here today,
25 that's correct, Your Honor.

1 MR. SAMPAT: That's correct.

2 THE COURT: All right. So thank you to the
3 government for that, for moving forward on that. I appreciate
4 it.

5 Secondly, I am denying the -- one second.

6 (Discussion off the record.)

7 THE COURT: All right. So let me start again. As I
8 understand it, the parties filed a joint status report
9 yesterday, with discovery, and you guys are getting along.

10 MR. PIPOLY: That's correct, Your Honor.

11 MR. SIMON: That's correct, yes.

12 THE COURT: All right. Please thank the people at
13 DHS for working on that. I know that they're very busy, and I
14 appreciate them doing it.

15 Secondly, I am denying the government's motion to
16 stay. I will issue a written decision on it before
17 April 19th. My understanding is that that's when the
18 appellate court has given the parties complete briefing on the
19 motion.

20 Is that right, Mr. Sampat?

21 MR. SAMPAT: February 19th, Your Honor?

22 THE COURT: Oh, what did I say?

23 MR. SAMPAT: April.

24 THE COURT: No, I will not be ruling by April 19th,
25 sorry.

1 MR. SAMPAT: I --

2 THE COURT: -- eagle eyes.

3 MR. SAMPAT: -- am just as excited for baseball
4 season.

5 THE COURT: Yes, yeah, me too.

6 All right. I don't want to slow down the appellate
7 court in any way. So if you guys hear something differently,
8 let me know and I'll get out something earlier. But I don't
9 think it's going to come as a galloping shock to everyone that
10 I'm going to deny the motion.

11 And then I do want to put something else on the
12 record. And I gave a lot of thought as to whether or not I
13 should say the following and how best to say it. And I got
14 some advice and talked to some of my colleagues about it. I
15 think it's important to do.

16 So, last night I moderated a debate at Georgetown
17 Law School that was put on by the Federalist Society. The
18 topic was, was *Dobbs* correctly decided. When I first agreed
19 to moderate this debate, I was a bit worried that I might
20 inadvertently say something controversial. Thankfully, I had
21 nothing to worry about, because apparently moderating a debate
22 about abortion is the least controversial thing I will do all
23 year.

24 After issuing the opinion to stay DHS termination of
25 Haiti's TPS designation last week, it became very clear that

1 many people have very strong opinions of me. Suffice it to
2 say, those opinions are not uniformly positive.

3 People are entitled to their views. I have
4 absolutely no problem with anyone disagreeing with me. But I
5 do feel compelled to clarify a couple misconceptions.

6 First, yes, I am an immigrant. No, I did not
7 successfully hide that fact from the President, the White
8 House Counsel's Office, the Federal Bureau of Investigation,
9 the Department of Justice, the Senate Judiciary Committee,
10 100 senators, or the American Bar Association. I think
11 someone somewhere along the line probably learned that I was
12 not born in the United States.

13 Second, people want to know how someone like me got
14 this job. That is a common question. By someone like me,
15 they write foreign-born lesbian. They do not write magna cum
16 laude Harvard Law graduate with 22 years experience handling
17 high-profile federal litigation matters at a premier trial law
18 firm. But it's a legitimate question. I got this job by
19 being nominated by the President of the United States, who was
20 popularly elected and confirmed by senators who were
21 themselves popularly elected.

22 If you want to educate yourself as to why federal
23 judges are not elected, I commend to you Federalist Numbers
24 78, 79, 80, and 81, by Alexander Hamilton. He's the one who
25 advocated the let's have these independent judges idea. And,

1 yes, I do think not having a song entitled, quote, for life
2 for good behavior, end quote, was a real missed opportunity
3 for the Hamilton musical, and I'm hopeful that it will be
4 included in the sequel.

5 Now, again, I don't mind criticism. I don't mind
6 people calling me illiterate for writing an opinion they don't
7 like. I don't even mind people calling me, as dozens, if not
8 hundreds have done recently, the C word. I don't mind that
9 except that calling a woman the C word is about the least
10 creative thing you can call her, and I would encourage people
11 to at least pick up a thesaurus.

12 But here's what I have also received, emails like
13 this one: Quote -- this was to my chambers, and I'm editing
14 it down for length. I hope you lose your life by lunchtime,
15 you worthless whore. Be prepared for more embarrassment as
16 you continue to slide down into the grave. I stand behind my
17 family in a continuance of civilization the way God intended,
18 not the way some demonic dike whore intended. God damn you
19 this day to an open and embarrassing grave, you filthy whore.
20 You don't want to keep my family safe. God damn you, I hope
21 you die today. Enjoy choking on your tongue, you filthy
22 four-leg beast.

23 And this one, which I've also edited down for
24 length: Quote, the best way you could help America is to eat
25 a bullet. I pray you do the right thing, because I will go to

1 church and thank their God. You and all the other pieces of
2 shit democrat judges, like I said, save America and bite down
3 on that slug.

4 Those are the ones I received in chambers along with
5 many, many others.

6 People on social media felt free to post things
7 like, "Hang the bitch. We need to start lynching judges. We
8 should axe," or, all caps, A-X-E, her wife." By the way, I'm
9 single. "Judge Ana Reyes's name has come up too often,"
10 followed by a couple of skull and crossbones emojis.

11 It is common these days for judges to receive these
12 kinds of threats. I have heard of them and others like them
13 from many of my colleagues. And in fact, many of my
14 colleagues have received even worse threats, many more
15 threats, and, more disturbingly, threats to their families.
16 Legitimate threats for judges' family members to be killed.

17 Last night a student asked me how I handled the
18 social media text and the threats, and it's a good question,
19 so here's my answer. To those who disagree with me, I say
20 please do. Judges should be questioned. Just as politicians
21 should be questioned. I welcome the government's appeal
22 because appellate courts are a necessary part of our
23 democratic system, as are the two other branches of
24 government.

25 To those who threaten judges, I say this: My

1 colleagues and I will continue to uphold our oath to act
2 without fear or favor. We do so because it is important to
3 get the law right. Not only for the rule of law but for the
4 communities that we live in. We will continue to do our jobs
5 as best as we know how. We will not be intimidated.

6 If the administrative record in this case teaches us
7 anything, it is, I hope, that when the rule of law craters,
8 chaos and humanitarian crisis follows.

9 We are adjourned.

10 (The proceedings were concluded at 11:28 a.m.)

11 I, Christine Asif, RPR, FCRR, do hereby certify that
12 the foregoing is a correct transcript from the stenographic
13 record of proceedings in the above-entitled matter.

14 /s/
Christine T. Asif
15 Official Court Reporter
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