

IN THE
Supreme Court of the United States

MARKWAYNE MULLIN, SECRETARY,
DEPARTMENT OF HOMELAND SECURITY, *et al.*,
Petitioners,

v.

DAHLIA DOE, *et al.*,
Respondents.

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

v.

FRITZ EMMANUEL LESLY MIOT, *et al.*,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SECOND CIRCUIT AND THE UNITED STATES
COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

**BRIEF OF *AMICUS CURIAE* FEDERATION
FOR AMERICAN IMMIGRATION REFORM
IN SUPPORT OF PETITIONERS**

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March 27, 2026

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INTEREST OF *AMICUS CURIAE*¹

Amicus curiae Federation for American Immigration Reform (“FAIR”) is a nonprofit corporation and membership organization that was founded in 1979 and has its principal place of business in Washington, D.C. FAIR’s mission is to advocate for immigration policies that are in America’s best interest. In pursuit of this mission, FAIR regularly participates in litigation involving immigration law enforcement, border integrity, and the scope of executive authority over the entry of aliens into the United States. Because the courts below overrode core executive prerogatives to conduct foreign affairs and control the border, FAIR has a strong interest in these cases.

SUMMARY OF ARGUMENT

These cases involve Secretary Noem’s determinations to terminate the temporary protected status (TPS) designations for Haiti and Syria. The orders of the courts below staying or postponing these TPS terminations conflict with both the text of the TPS statute and the President’s constitutional authority. Secretary Noem’s terminations of TPS for citizens of Haiti and Syria were not only permitted under the TPS statute but were exercises of inherent Executive power under Article II of the Constitution. Indeed, because Secretary Noem’s actions were at the behest of the President, they are unreviewable under the Administrative Procedure Act (APA). The lower

1. Pursuant to Rule 37.6, counsel for *amicus* authored this brief in whole, no party’s counsel authored this brief in whole or in part, and no person or entity—other than *amicus*, its members, or its counsel—contributed monetarily to its preparation or submission.

courts' conclusions that it may review "*how* the Secretary went about making her determination," *Miot v. Trump*, 2026 U.S. Dist. LEXIS 21504, at *28 (D.D.C. Feb. 2, 2026) (emphasis in original), or "the Secretary's compliance with [the TPS] statute's procedural requirements," *Dahlia Doe v. Noem*, 2026 U.S. App. LEXIS 5989, at *3 (2d Cir. Feb. 17, 2026), intrude on the President's inherent authority, in overseeing foreign affairs, to exclude aliens from the United States.

Additionally, the plain text of the TPS statute deprives courts of judicial review of any determination with respect to a termination decision. Accordingly, whether Secretary Noem's termination determinations are viewed as exercises of inherent presidential authority or as exercises of delegated power under the TPS statute, the courts below erred in subjecting them to judicial review. This Court should reverse.

ARGUMENT

There is no question that the United States has a right inherent in its sovereignty to defend itself from foreign dangers by controlling the admission of aliens. "It is an accepted maxim of international law that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe." *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892). The President's authority over immigration and naturalization stems from his constitutional authority to superintend foreign relations and national security. *See, e.g., Hernandez v. Mesa*, 589 U.S. 93, 103-04 (2020)

(declining to create a new *Bivens* remedy for the behavior of border patrol because it is a matter “relating to the conduct of foreign relations” and the Executive Branch “has the lead role in foreign policy”); *Trump v. Hawaii*, 585 U.S. 667, 702 (2018) (acknowledging that immigration related decisions “implicate relations with foreign powers or involve classifications defined in the light of changing political and economic circumstances”); *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-589 (1952) (“[A]ny policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government”); *Chicago & Southern Air Lines, Inc. v. Waterman S.S. Corp.*, 333 U.S. 103, 109 (1948) (“The President . . . possesses in his own right certain powers conferred by the Constitution on him as Commander-in-Chief and as the Nation’s organ in foreign affairs”); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542-43 (1950) (“The exclusion of aliens is a fundamental act of sovereignty . . . inherent in [both Congress and] the executive department of the sovereign”); see also *id.* at 542 (“When Congress prescribes a procedure concerning the admissibility of aliens, it is not dealing alone with a legislative power. It is implementing *an inherent executive power.*”) (emphasis added); *United States v. Melgar-Diaz*, 2 F.4th 1263, 1268 (9th Cir. 2021) (holding that the exclusion of aliens is a “fundamental act of sovereignty” and is “inherent in the executive power.”).

Indeed, Congress has acknowledged the President’s inherent authority to exclude aliens in the nation’s interest in 8 U.S.C. § 1182(f), where it implemented the President’s authority, in the interests of the United States, to “suspend

the entry of all aliens or any class of aliens” or “impose on the entry of aliens any restrictions he may deem to be appropriate.” Granted the President’s constitutional authority, “as Commander-in-Chief and as the Nation’s organ in foreign affairs,” *Chicago & Southern Air Lines, Inc., supra*, to exclude aliens, it is far from a nullity even if exercised outside of the precise form of its implementation by Congress in 8 U.S.C. § 1182(f).

By reason of this power, as explained below, the courts below erred in overriding the terminations of TPS for Haiti and Syria, and this Court accordingly should reverse the orders staying or postponing agency action.

I. Secretary Noem’s TPS termination determinations were exercises of presidential authority and are therefore unreviewable under the APA.

On January 20, 2025, in exercise not only of his supervisory powers over the Executive Branch, but of his power to exclude aliens committed to him by the Constitution, President Trump directed Secretary Noem to “rescind the policy decisions of the previous administration that led to the increased or continued presence of illegal aliens in the United States,” including “ensuring that designations of Temporary Protected Status are consistent with the provisions of section 244 of the INA (8 U.S.C. § 1254a), and that such designations are appropriately *limited in scope* and *made for only so long as may be necessary* to fulfill the textual requirements of that statute.” Executive Order 14159 at § 16, “Protecting the American People Against Invasion,” 90 Fed. Reg. 8443, 8446 (Jan. 29, 2025) (emphasis added).

Because Presidents must always act through subordinates, whether an action is that of the President or the head of an agency, for purposes of APA reviewability, hinges not on whether agency personnel help perform a given action, but on whether the authority to take that action is entrusted to the President, whether by statute or in the Constitution, or delegated by Congress to an agency. *See, a fortiori, Dalton v. Specter*, 511 U.S. 462, 477 (1994) (“Where a statute ... commits decisionmaking to the discretion of the President, judicial review of the President’s decision is not available.”). Here, Secretary Noem terminated the TPS designations for Haiti and Syria pursuant, at least in part, to the President’s executive order allowing TPS designations only as necessary to fulfill the textual requirements of the TPS statute. *See Termination of the Designation of Haiti for Temporary Protected Status*, 90 Fed. Reg. 54733, 54736 (Nov. 28, 2025) (citing Executive Order 14159 and the importance of national security and public safety in support of the termination decision); *Termination of the Designation of Syria for Temporary Protected Status*, 90 Fed. Reg. 45398, 45402 (Sept. 22, 2025) (“[T]he Secretary has determined that Syria no longer meets the statutory basis for Temporary Protected Status.”); *see also id.* at 45401 n. 27 (citing Executive Order 14161 of January 20, 2025, *Protecting the United States From Foreign Terrorists and Other National Security and Public Safety Threats*, 90 Fed. Reg. 8451 (Jan. 30, 2025), with respect to vetting of aliens from nations with identified security risks). As the U.S. District Court for the District of Columbia has explained:

[A]n unreviewable presidential action must involve the exercise of discretionary authority vested in the President; an agency acting on

behalf of the President is not sufficient by itself. Since the Constitution vests the powers of the Executive Branch in one unitary chief executive officer, *i.e.*, the President, an agency always acts on behalf of the President. Nonetheless, there is a difference between actions involving discretionary authority delegated by Congress to the President and actions involving authority delegated by Congress to an agency. Courts lack jurisdiction to review an APA challenge in the former circumstances, regardless of whether the President or the agency takes the final action. However, “[w]hen the challenge is to an action delegated to an agency head but directed by the President, a different situation obtains: then, the President effectively has stepped into the shoes of an agency head, and the review provisions usually applicable to that agency’s action should govern.” Elena Kagan, *Presidential Administration*, 114 Harv. L. Rev. 2245, 2351 (2001).

Detroit Int’l Bridge Co. v. Gov’t of Can., 189 F. Supp. 3d 85, 101-04 (D.D.C. 2016). *See also*, *Franklin v. Massachusetts*, 505 U.S. 788, 800-801 (1992) (“The President is not explicitly excluded from the APA’s purview, but he is not explicitly included, either. Out of respect for the separation of powers and the unique constitutional position of the President, we find that textual silence is not enough to subject the President to the provisions of the APA.”); *Detroit Int’l Bridge Co. v. Gov’t of Canada*, 883 F.3d 895, 903 (D.C. Cir. 2018) (holding that the court lacks a standard of review “[i]n the foreign affairs arena”); *Tulare Cty. v. Bush*, 185 F. Supp. 2d 18, 28 (D.D.C. 2001) (“A court has

subject-matter jurisdiction to review an agency action under the APA only when a final agency action exists. Because the President is not a federal agency within the meaning of the APA, presidential actions are not subject to review pursuant to the APA.”) (citing *Dalton*, 511 U.S. at 470) (other internal citations omitted).

It is, of course, not to the prejudice of the unreviewability of the Secretary’s actions that they were pursuant to an order that the President had inherent constitutional authority to give. Obviously, if actions committed to the President’s discretion by a statute are unreviewable under the APA, actions he takes pursuant to his authority under the Constitution are at least equally so.

Here, Secretary Noem acted at the direction of the President and implemented his executive order when she terminated TPS designations for Haiti and Syria. Accordingly, her actions were presidential actions, and the courts below lacked jurisdiction to review them under the APA.

II. This Court should harmonize the TPS statute with the President’s inherent constitutional authority

A reviewing court should seek to harmonize Congress’s enactments with the President’s inherent constitutional authority to exclude aliens. *See United States v. Hansen*, 599 U.S. 762, 781 (2023) (“When legislation and the Constitution brush up against each other, our task is to seek harmony, not to manufacture conflict.”). “When ‘a serious doubt’ is raised about the constitutionality of an Act of Congress, ‘it is a cardinal principle that this Court will first ascertain whether a construction of the statute

is fairly possible by which the question may be avoided.” *Jennings v. Rodriguez*, 583 U.S. 281, 296 (2018) (quoting *Crowell v. Benson*, 285 U.S. 22, 62 (1932)).

Of course, the “canon of constitutional avoidance comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one construction.” *Id.* (internal quotation omitted). Here, there is in fact no tension between the TPS statute and the unreviewability of presidential actions. As the government has persuasively argued, the TPS statute itself precludes judicial review of Secretary Noem’s decisions to terminate TPS designations. *See* Application for a Stay (25A952) at 15-21; Application for a Stay (25A999) at 17-22. Thus, whether the Secretary’s actions are viewed as exercises of the President’s inherent constitutional authority to protect the nation from foreign threats or an exercise of power delegated in the TPS statute, the courts below clearly erred in concluding that the APA permitted review of those actions.

CONCLUSION

For the reasons stated herein, the lower courts' orders staying or postponing the effective date of agency actions should be reversed.

DATED: March 27, 2026

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