Nos. 25-1083, 25-1084

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 Courts of Appeals for the Second and D.C. Circuits

Brief *Amicus Curiae* of America's Future, Citizens United, and Conservative Legal Defense and Education Fund in Support of Petitioners

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INTEREST OF THE *AMICI CURIAE*[1]

Amici Curiae America's Future, Citizens United, and Conservative Legal Defense and Education Fund are nonprofit organizations, exempt from federal income tax under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code. These *amici* participate in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law.

These *amici* filed two *amicus* briefs supporting the Trump Administration's revocation of Temporary Protected Status for Venezuela, and have filed numerous immigration-related *amicus* briefs.

- *Noem v. National TPS Alliance*, Supreme Court of the United States, No. 24A1059, Brief *Amicus Curiae* of America's Future, Citizens United, and Conservative Legal Defense and Education Fund (May 8, 2025); and
- *National TPS Alliance v. Noem*, U.S. Court of Appeals for the Ninth Circuit, No. 25-2120, Brief *Amicus Curiae* of America's Future, Citizens United, and Conservative Legal Defense and Education Fund (May 20, 2025).

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[1] It is hereby certified that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

STATEMENT OF THE CASE

The Immigration Act of 1990 established the Temporary Protected Status ("TPS") program. *See* 8 U.S.C. § 1254a. That program authorizes the Secretary of the Department of Homeland Security ("DHS") to grant "temporary protected status" to citizens of countries where: (1) "there is an ongoing armed conflict," where "requiring the return" of nationals "would pose a serious threat to their personal safety"; (2) there has been an "environmental disaster in the state," or (3) "there exist extraordinary and temporary conditions in the foreign state that prevent [its nationals] from returning to the state in safety." 8 U.S.C. § 1254a(b)(1).

Even if one or more of these preconditions are met, the DHS Secretary need not grant a nation's citizens TPS if "the [Secretary] finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States." *Id.* As the program's name makes clear, TPS designations are only temporary for a **maximum** of 18 months (§ 1254a(b)(2)(B)), and they can be extended for **a maximum** of 18 months at a time. *Id.* at § 1254a(b)(3)(C).

Additionally, there is a provision of this law which mandates TPS be terminated under certain circumstances. If the "[Secretary] determines that a foreign state ... no longer continues to meet the conditions for designation the [Secretary] shall terminate the designation by publishing a notice in the Federal Register." *Id.* at § 1254a(b)(3)(B).

The statute provides that "**[t]here is no judicial review** of any **determination** of the [Secretary] **with respect to** the designation, or **termination** or extension of a designation, of a foreign state under this subsection." *Id*. at § 1254a(b)(5)(A) (emphasis added).

These two consolidated cases arise out of an injunction issued by the district court for the District of Columbia against the Secretary's termination of TPS for Haiti, and from an injunction issued by the district court for the Southern District of New York against the Secretary's termination of TPS for Syria.

Termination of Haiti TPS

In January of 2010, after a major earthquake struck Haiti, President Obama's DHS Secretary, Janet Napolitano, designated Haiti for TPS. *See Miot v. Trump*, 2026 U.S. Dist. LEXIS 21504 at *11 (D.D.C. 2026) ("*Miot I*"). That status was extended by the Obama administration, and again extended for six months in the first Trump administration by DHS Secretary John Kelly. *Id.* at *14. In January 2018, acting DHS Secretary Elaine Duke announced that she would terminate the TPS designation for Haiti, a status that had persisted for eight years. *Id.* at *15. That determination was tied up in the courts for three full years — the entire remainder of President Trump's first term. Upon coming into office, the Biden administration withdrew the termination of Haiti's TPS designation. *Id.* at *15-16.

In late 2025, then-DHS Secretary Kristi Noem announced that she would terminate Haiti's TPS

designation effective February 2026. Five Haitian immigrants sought injunctive relief from the D.C. district court to block the termination. *Id.* at *3-4.

District Judge Ana Reyes issued the requested injunction, supported by a voluminous opinion. The court recognized that Congress had attached a jurisdiction-stripping provision to the Immigration and Nationality Act ("INA"), but believed that provision was overridden by "the presumption favoring judicial review of administrative action." *Miot I* at *27. The court asserted that it was not actually engaged in a review of Secretary Noem's **determination** to terminate Haiti's TPS, but only the **process** by which she reached that determination. *See id.* at *28. The court declared that 8 U.S.C. § 1254a(f)(1), another jurisdiction-stripping statute under the INA, would not apply because vacatur of the TPS termination neither "'enjoins' [n]or 'restrains' an actor" under the statute. *Id.* at *45.

Turning to Plaintiffs' Administrative Procedure Act ("APA") claims, the district court noted that under 5 U.S.C. § 701(a)(2), "[t]he APA excludes from its own purview cases where the 'agency action is committed to agency discretion by law.' ... This exception, however, applies only where a statute offers 'absolutely no guidance as to how [an agency's] discretion is to be exercised.'" *Id.* at *49. The court then found that the Secretary had not properly weighed the factors in the TPS statute, and accordingly, claimed that this exception to APA review did not apply. *Id.* at *51.

The court then rejected this Court's conclusion in *Noem v. Nat'l TPS All.*, 145 S. Ct. 2728 (2025) ("*NTPSA I*") and *Noem v. Nat'l TPS All.*, 146 S. Ct. 23 (2025) ("*NTPSA II*") that the government is likely to succeed on the merits solely because this Court's ruling was not accompanied by a written opinion. Thus, the district court wrote that it "decline[d] the invitation to try its hand at divination." *Id.* at *53.

The court ruled that Plaintiffs were likely to be able to prove that Secretary Noem acted contrary to law by failing to adequately consult other agencies before making the Haiti termination. The court declared that a single email to the State Department for comment did not qualify as "consultation with appropriate agencies of the Government." *Id.* at *55.

The district court declared that, in finding that the "national interest" supported the termination, Noem "failed to apply the standard to the relevant population: Haitian TPS holders." *Id.* at *80.

With respect to Plaintiffs' Equal Protection claim, the district court ruled that, "[t]aken 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." *Id.* at *100. Thus, the court believed Plaintiffs were likely to prevail on their Equal Protection claim.

The court further found that the Plaintiffs suffered irreparable injury because TPS termination "would instantaneously strip them of lawful immigration

status" and they would "face the ever-present risk of detention and removal." *Id*. at *104-05.

After conducting a lengthy review of the benefits it believes Haitian immigrants bring to America, the district court declared that the public interest and balance of the equities likewise favored Plaintiffs. *Id.* at *114-15.

The D.C. Circuit, declining to stay the district court's decision, likewise refused to follow this Court's prior decision in *NTPSA*, but for a different reason. The D.C. Circuit asserted that because that case involved Venezuela — a country with which the government was "engaged in complex and ongoing negotiations" at the time — the situation with Haiti was not analogous, and the government could not show irreparable harm. *Miot v. Trump*, 2026 U.S. App. LEXIS 6778 at *6 (D.C. Cir. 2026) ("*Miot II*").

In dissent, Judge Walker quoted from this Court's ruling in *Trump v. CASA, Inc.,* 145 S. Ct. 2540, 2562 (2025), that "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." *Id.* at *12, n.6 (Walker, J., dissenting). Judge Walker argued that *NTPSA* and *Miot* are "too similar to distinguish — the legal equivalent of fraternal, if not identical, twins," and thus the government is likely to prevail on the merits. *Id.* at *15.

Termination of Syria TPS

In the case coming from the Second Circuit, seven Syrian immigrants had challenged the termination of Syria's TPS in the Southern District of New York. *Doe v. Noem*, 2025 U.S. Dist. LEXIS 275263, at *1-3 (S.D. N.Y. 2025) ("*Doe I*").

The district court in New York granted the Plaintiffs a temporary injunction which it described as an "Order of Postponement" of the termination. *Id.* at *4. On appeal, the Second Circuit denied the government's request for a stay of the district court's decision pending appeal. *Doe v. Noem*, 2026 U.S. App. LEXIS 5989 (2d. Cir. 2026) ("*Doe II*").

The Second Circuit declined to follow this Court's prior stays of injunction against TPS terminations in *NTPSA I* and *NTPSA II* because they involved "a TPS designation of a different country, with different factual circumstances, and different grounds for resolution by the district court." *Id.* at *2. Accordingly, the circuit court stated that these orders were "not dispositive of our analysis of the merits in this dispute." *Id.*

The circuit court asserted what appears to be a new rule of law, that because the "postponement" ordered did not order the Secretary to take a particular action, it was not actually an injunction. *Id.* at *3. It ruled that the government had failed to show either likelihood of success on the merits or irreparable harm. *Id.* at *3-4. Finally, the court found that the balance of equities and public interest favored the plaintiffs

because they would face the potential of being immediately deportable to Syria. *Id*. at *5.

STATEMENT

The decisions of the lower courts now under review cannot properly be viewed in isolation, but rather as the latest chapter in a war being waged by components of the federal judiciary to prevent both the first and second Trump Administrations from exercising its lawful authority, given by Congress, over the TPS program.

Within the first year of President Trump's first term (between September 2017 and January 2018), the Secretary of the Department of Homeland Security terminated TPS for Haiti, Sudan, Nicaragua, and El Salvador, but that was enjoined by a district court. *See Ramos v. Nielsen*, 336 F. Supp. 3d 1075, 1082-84 (N.D. Cal. 2018).[2] In President Trump's second term, the DHS Secretary acted to terminate TPS designations for Haiti (again) and for Syria. Neither of these terminations for Haiti or Syria have gone into effect due to actions of lower federal courts.

These lower court decisions have violated many of the core principles which undergird our Constitutional Republic. These judges have operated:

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[2] Overturned on appealed by *Ramos v. Wolf*, 975 F.3d 872 (9th Cir. 2020), which was vacated by a grant of rehearing *en banc*, *Ramos v. Wolf*, 59 F.4th 1010 (2023). That appeal was voluntarily dismissed after President Biden took office. *Ramos v. Mayorkas*, 2023 U.S. App. LEXIS 16518 (9th Cir. 2023).

- to freeze in place determinations made by Presidents no longer in office;
- to usurp the authority of the Secretary of Homeland Security appointed by a duly elected President to make TPS termination decisions;
- to illegally exercise authority denied to the courts by Congress; and ultimately
- to frustrate the will of the People as manifested in two Presidential elections.

These actions by federal courts date back over a seven-year period, and are so egregious that they could provide the basis for a determination that they violate the "good behavior" standard required for federal judges set out in the Constitution.[3] If they are ignored by this Court, they will contribute mightily to the diminishing lack of public confidence in the federal judiciary.

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[3] In 1803, Congress impeached Judge John Pickering, specifically for entering judicial decisions that violated statutory law. The articles of impeachment charged Pickering with issuing judicial decisions "the said act of Congress not regarding, but with intent to evade the same," an act "contrary to his trust and duty of judge of the district court, against the laws of the United States, to the great injury of the public revenue, and in violation of the solemn oath which he had taken to administer equal and impartial justice." For that, plus habitual drunkenness to which much of his judicial behavior was attributed, he was impeached, convicted and removed from office. *See* III Hinds' Precedents 690-691 (1907).

SUMMARY OF ARGUMENT

The Immigration Act of 1990 bars judicial review of TPS determinations made by the DHS Secretary in the clearest of terms. Yet, the district and circuit courts below appointed to themselves the authority to conduct a type of judicial review which actually is better described as a policy review. Not surprisingly, these judges preferred their own policies to the policies of the DHS Secretary, who was appointed by the President of the United States, who was elected by the People. These judges badly misused their judicial authority to tie the hands of our current President by keeping in place determinations made by a President who left office at noon on January 20, 2025. The decisions under review are not just wrong; they are *ultra vires.*

The rationale advanced by District Judge Reyes, that she was not engaged in a review of the determination of termination, but the process that led to the determination of termination, is baseless. The court states that the "determination" is "a 'single act'" (*Miot I* at *33), and thus all that led to that determination is fair game for the courts to review. If we are to slice and dice the issuance of a determination in such a fashion, perhaps that "single act" is the signing of the determination, and thus the writing of the order should be fair game for judicial review. This so-called "grammatical" analysis creates a distinction where there is none, and proves nothing other than the truth of the old saying that "where there is a will, there is a way."

The district court apparently believed that if it could provide a persuasive critique of the numerous policies reflected in DHS Secretary's determination, that critique would provide the justification for exercising a power the court did not have. However, it simply does not matter what the district court believed about those policies. It was not the district court's place to express any opinion whatsoever. It was the district court's role to respect the limitations established by Congress on the court's authority and to dismiss the complaint.

The allegation that the determination violates the equal protection component of the Fifth Amendment imbues the court with no greater authority. The district court's effort to racialize the determination falls flat. This Court has been clear that courts will not look behind Executive Branch policies regarding the exclusion of aliens.

Even more troubling is where the district court's rationale would lead. If judges are now to be empowered to negate immigration determinations based on motives imputed to the Executive Branch, then why would it not be fair game for the Executive Branch to do the same to the Judicial Branch?

ARGUMENT

Because the Second Circuit's denial of a motion for stay pending appeal in *Doe v. Mullin* was accompanied only by a short opinion, these *amici* will focus their attention on the district and circuit rulings in *Miot v. Trump*. However, it is hoped that the legal

arguments presented will help the Court resolve both cases.

I. DISTRICT COURTS HAVE NO AUTHORITY WHATSOEVER TO REVIEW THE SECRETARY'S TPS DETERMINATIONS.

A. The Courts Below Implicitly Rejected the Authority of Congress to Limit Federal Court Jurisdiction.

In crafting the Immigration Act of 1990, Congress erected a complete bar to any judicial review of any aspect of the DHS Secretary's decisions relating to TPS designation:

> 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 under this subsection [TPS]. [8 U.S.C. § 1254a(b)(5)(A) (emphasis added).]

District Judge Reyes' opinion below purports to reject **the process** by which the Secretary reached her decision to terminate but not **the determination** itself. In reality, the decision to vacate (or in the case of *Doe*, to "postpone") the DHS Secretary's actions constituted nothing less than a judicial usurpation of the unreviewable authority Congress granted to the Executive Branch in 8 U.S.C. § 1254a(b)(5)(a).

Congress could not have been more plain. It did not say there is no judicial review "except" or "but."

There is no judicial review, period. There is no review "with respect to" "any" such "determination." Thus, as properly applied here, the statute provides that the district court had "no" authority and "no" jurisdiction to hear and rule on "any" challenge brought by Plaintiffs to the Secretary's decision. Thus, Plaintiffs' challenges should have been dismissed out-of-hand by the courts below. With the lower courts having failed to honor the "no judicial review" statute, and blithely dismissing this Court's rulings in *NTPSA I* and *II*, this Court should both stay the lower courts' actions and reverse the judgments. The risk of such *ultra vires* rulings could be minimized by an unequivocal declaration from this Court that 8 U.S.C. § 1254a(b)(5)(a) renders all aspects of any TPS termination wholly unreviewable by the judiciary.

The linchpin of the district court's decision, as the court itself pointed out, was the belief that a court can somehow review an administrative agency's decision-making process behind its decision, and declare that the decision cannot stand because an improper process was followed, and still somehow engage in "**no** judicial review of **any** determination of the [Secretary]...." 8 U.S.C. § 1254a(b)(5)(A) (emphasis added). The district court understood that "[t]his distinction between decision and process is the ballgame." *Miot I* at *28. True enough. And because the distinction is a false one, what the court described as a "ballgame" is over — and the decision of the Secretary, and the limitation imposed by Congress, wins.

In an effort to provide some foundation for its faux "distinction" between the making of a decision and the

decision, the district court devoted significant time to explaining away the statute's use of the phrase "with respect to" a TPS termination:

> 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.... 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.... Here, "determination" is the jurisdiction-stripping provision's key word. And "determination" means a "single act." [*Id.* at *32-33 (bold added).]

The district court's explanation is unpersuasive for several reasons.

B. The Courts Below Impermissibly Rejected This Court's Precedents.

As the district court in *Miot I* did with *NTPSA I* and *II*, so its interpretation of "with respect to" defies this Court's precedents. This Court has previously interpreted identical language in the Gun Control Act. This Court stated that "§ 924(a)(1)(A) ... prohibits 'knowingly mak[ing] any false statement .... **with respect to** the information required by this chapter to

be kept in the records' of a federally licensed [firearms] dealer." *Abramski v. United States*, 573 U.S. 169, 191 (2014) (emphasis added). This Court explained the meaning of the phrase: "The false statement must **relate to** 'information required by this chapter to be kept in [a dealer's] records.'" *Id.* (emphasis added). This is the most logical reading of the phrase. So understood, the statute makes clear, "[t]here is no judicial review of any determination of the Attorney General **with respect to** the designation, or termination" of a nation's TPS. (Emphasis added.) So it is **not** only the final termination, but also the individual determinations made by the Secretary leading up to (and relating to) the termination, that are unreviewable.

Similarly, this Court has explained in a bankruptcy case that "[u]se of the word '**respecting**' in a legal context generally has a broadening effect, ensuring that the scope of a provision covers not only its subject but also matters relating to that subject." *Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 717 (2018) (emphasis added). The *Appling* Court treated "respecting" and "relating to" as largely synonymous. "'[R]elating to' ... is one of the meanings of 'respecting,' [and] this Court has typically read the relevant text expansively. *See, e.g., Coventry Health Care of Mo., Inc. v. Nevils*, 581 U.S. 87, 95-96 ... (2017) (describing "'relate to' as 'expansive' and noting that 'Congress characteristically employs the phrase to reach any subject that has "a connection with, or reference to," the topics the statute enumerates')." *Id.* at 717-18. This Court went on to note that "a statement is 'respecting' a debtor's financial condition

if it **has a direct relation to or impact on** the debtor's overall financial status." *Id.* at 720 (emphasis added).

The Secretary's termination determination was preceded by a number of steps, all of which were "with respect to" the termination. Her decision to send a single email to the State Department for information (*Miot I* at *56), her decision that conditions in Haiti had improved enough for TPS holders to return home (*id.* at *73-78), and her decision that the national interest was negatively impacted by "Haitian gang members" remaining in the United States (*id.* at *84-85) are just a few of the earlier decisions "with respect to" the termination that the district court in *Miot* both reviewed and rejected, in defiance of this Court's precedents.

C. The Courts Below Impermissibly Rejected the Constitution's Placement of Immigration Policy Choices in the Hands of the Political Branches.

Judge Reyes' opinion in *Miot I* took a blunt club to the Constitution's entrustment of immigration policy to the American people acting through the political branches. This Court has denied a superior role for the judiciary in asserting: "your guess is *better* than ours. In a functioning democracy, policy choices like these usually belong to the people and their elected representatives. They are entitled to weigh the relevant political and economic costs and benefits for themselves, ... and try novel social and economic experiments if they wish.... Judges cannot displace the

cost-benefit analyses embodied in democratically adopted legislation guided by nothing more than their own faith...." *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 382 (2023) (internal quotations omitted).

As a further protection of the rights of the people to make the laws under which they live, the Framers allowed Congress power to limit the jurisdiction of the federal courts:

> Congress' greater power to create lower federal courts includes its lesser power to "limit the jurisdiction of those Courts...." So long as Congress does not violate other constitutional provisions, its "control over the jurisdiction of the federal courts" is "plenary...." Thus, when Congress strips federal courts of jurisdiction, it exercises a valid legislative power no less than when it lays taxes, coins money, declares war, or invokes any other power that the Constitution grants it. [*Patchak v. Zinke*, 583 U.S. 244, 252-53 (2018) (internal citations omitted).]

The federal courts must respect limitations put on them by Congress:

> The essentials of the legislative function are the determination of the legislative policy and its formulation and promulgation as a defined and binding rule of conduct.... Congress [has] power to direct that an administrative officer properly designated for that purpose have ample latitude within which he is to ascertain

> the conditions which Congress has made prerequisite to the operation of its legislative command.... [T]he only concern of courts is to ascertain whether the will of Congress has been obeyed. [*Yakus v. United States*, 321 U.S. 414, 424-25 (1944).]

Rather than deferring to the political branches, the district court in *Miot I* spent much of its 117-page opinion impugning and denigrating the policy choices of the Secretary, offering contrary arguments to support its preferred policy choices, and in the end choosing and imposing the court's policy preferences over those of Congress and Congress' delegated agent, the Secretary. Again and again, the court's analysis was more fit for a debate in a congressional committee than a judicial opinion. The court's opinion was almost exclusively a policy argument, not an effort to discern and follow the interpretation of a statute.

To lay the foundation for elevating its own view, the district court began by seeking to impugn the integrity of the DHS Secretary. The court speculated that it was "substantially likely" that "Secretary Noem preordained her termination decision and did so because of **hostility to nonwhite immigrants**." *Miot I* at *4 (emphasis added). The court cherry-picked statements from the Secretary describing certain immigrants as "'leeches,' 'entitlement junkies,' and 'foreign invaders' who 'suck dry our hard-earned tax dollars,'" and then implying that those statements were racist rather than economic in nature, applying them to each of "eighteen ... nonwhite countries." *Id.* at *99. "Secretary Noem join[s] President Trump in

insisting that **nonwhite immigrants** be forced to leave the United States," the court insisted. *Id.* at *88 (emphasis added). Disagreeing with the Secretary's policy determination of which countries should receive TPS, the court imposed its own. "Secretary Noem's decision to terminate Haiti's TPS designation was motivated, at least in part, by **racial animus** ... [so] Plaintiffs are likely to prevail on their Equal Protection claim." *Id.* at *100 (emphasis added).

The district court usurped the role of the executive branch with its inch-deep and mile-wide tour of some of the many aspects of immigration policy. On every one of these policy matters there are disagreements, but the question is "who decides?" The district court's answer is simple — the court decides. However, Congress established a different rule — the DHS Secretary decides. Consider the following policy matters where the district court chose to impose one unelected district judge's view on the nation, overriding the selection of a President who ran on and was elected by the People because he advocated the opposing policies.

1. The court dismissed the Secretary's determination that conditions in Haiti were improved enough for immigrants to return safely. "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'" that the court believed to exist in Haiti. *Id.* at *5. Rejecting the Secretary's findings, the court instead credited those of UN Secretary General that "[t]he people of Haiti are in a perfect storm of

suffering," that "State authority is crumbling," that the "humanitarian toll is staggering," and that "[t]he rule of law has collapsed." *Id.* at *76.

2. The court rejected and disposed of the Secretary's determinations as to the economic effect of Haitian immigrants under the TPS program:

> Secretary Noem complains of strains unlawful immigrants place on our immigration-enforcement system. Her answer? Turn 352,959 lawful immigrants into unlawful immigrants overnight. [*Id.* at *6.]

3. The court also rejected the Secretary's determination that TPS beneficiaries who overstay their visas are a strain on the immigration enforcement system. "Secretary Noem's analysis also focused on those who 'overstay their visas' and so remain in the country unlawfully.... She claimed that these overstayers 'may be harder to locate and monitor,' increasing vulnerabilities in immigration enforcement systems." *Id.* at *80. But the court argued that "Secretary Noem provides no data to support the overgeneralization that those who overstay their visas are a strain on their local communities." *Id.* at *81.

4. Rejecting the Secretary's view that immigration from Haiti imposes economic costs on the United States, the court touted "the $1.3 billion [Haitian TPS beneficiaries] pay annually in taxes, among their many other contributions." *Id.* at *86. "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." *Id.* at *112.

5. The district court then pointed to the costs imposed on TPS beneficiaries by the termination as yet another policy reason to reverse the Secretary's decision.

> 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.... Without jobs, Haitian TPS holders and their families would lose employer sponsored health insurance — coverage held by fifty five percent of TPS holders. [*Id.* at *112.]

6. The court then turned to the impact of TPS termination on immigrant children.

> [T]ermination 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[4] with them to a dangerous country

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[4] This policy rationale illustrates the problems created by the constitutional error committed by prior administrations in bestowing citizenship on children of parents with no allegiance to America solely by accident of birth. Hopefully, in *Trump v. Barbara*, U.S. Supreme Court No. 25-365, this unconstitutional practice based on the British, not American, basis for citizenship,

> that the children do not know; or (3) staying in the United States without authorization." ... None of these options is acceptable. [*Id.* at *112-13.]

The "children" argument in particular negates the court's denial that it was attempting to set immigration policy. The court pretends to concede that "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." *Id.* at *30. "After changing her process to comport with the APA, the Secretary can determine to keep or end Haiti's TPS designation." *Id.* at *35. But how exactly would any different review process by the Secretary make it any more desirable for a child of a Haitian TPS holder to return from the United States to Haiti, or make any less costly the loss of U.S. employer health insurance for a TPS holder?

No, for its own reasons, the district court is adamantly opposed to terminating Haiti's TPS designation, adamantly opposed to the Trump administration's immigration policies in general, and utterly refuses to accept Congress' jurisdictional limitations or Congress' authority to make immigration decisions with which the court disagrees.

The court argued that "turning around 353,000 lawful immigrants into unlawful ones overnight will further burden the very immigration enforcement

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will be brought to an end in a matter of weeks.

system [the Secretary] claims is already overburdened." *Id.* at *85.

All these policy considerations are legitimate for members of Congress in enacting TPS legislation and for the Executive in carrying out its responsibilities, but they imbue the courts with no power of override on termination of TPS designations.

II. THE DISTRICT COURT ERRED IN FINDING A VIOLATION OF EQUAL PROTECTION PRINCIPLES.

A. Courts May Not Look behind Facially Legitimate Executive Justifications.

In *Bolling v. Sharpe,* 347 U.S. 497 (1954), solely to prevent racial discrimination from continuing in schools in the District of Columbia, this Court creatively appended an atextual "equal protection" component to the Fifth Amendment's "due process" clause. This Court stated that discrimination by the federal government cannot be "so unjustifiable as to be violative of due process." *Id.* at 499. However, the extent of the application of this equal protection "component" to executive enforcement of immigration law is exceedingly narrow:

> [P]lenary congressional power to make policies and rules for **exclusion of aliens** has long been firmly established.... Congress has delegated conditional exercise of this power to the Executive. We hold that when the Executive exercises this power negatively on

> the basis of a facially legitimate and bona fide reason, **the courts will neither look behind the exercise of that discretion,** nor test it by balancing its justification against [constitutional] interests.... [*Kleindienst v. Mandel*, 408 U.S. 753, 769-70 (1972) (emphasis added).]

In her determination to find a pattern of discrimination against "nonwhite" persons, District Judge Reyes completely failed to recognize that what she called "'nice' — predominantly white — countries like Norway, Sweden, and Denmark" are unlikely to receive a TPS designation. *Miot I* at *93. She disregards the fact that for whatever reason, few such countries have been engaged in "armed conflict" since the TPS program was created. Few have suffered "disaster ... resulting in a substantial, but temporary, disruption of living conditions" and been "unable, temporarily, to handle adequately the return to the state of aliens who are nationals...." Few have endured "extraordinary ... conditions ... that prevent aliens who are nationals of the state from returning to the state in safety." Accordingly, most nations with TPS, and thus most nations whose TPS will terminate, will necessarily be "non-white, non-European" nations. For this reason, a judicial finding of discrimination against "non-white" persons is a fabrication. A Ninth Circuit case recognized this reality in 2020:

> **[V]irtually every country** that has been designated for **TPS** since its inception has been "**non-European**" (with the exception of Bosnia and the Province of Kosovo) and most

> have majority "non-white" populations. Under the district court's logic, almost any TPS termination in the history of the program would bear "more heavily" on "non-white, non-European" populations and thereby give rise to a potential equal protection claim. **This cannot be the case**.... [*Ramos v. Wolf*, 975 F.3d 872, 898 (9th Cir. 2020) (emphasis added), reh'g en banc granted, opinion vacated, 59 F.4th 1010 (9th Cir. 2023).]

The Supreme Court has also rejected similar claims, noting that "because Latinos make up a large share of the unauthorized alien population, one would expect them to make up an outsized share of recipients of any cross-cutting immigration relief program," and this does not "establish[] a plausible equal protection claim." *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 34 (2020). This Court added, "[w]ere this fact sufficient to state a claim, virtually any generally applicable immigration policy could be challenged on equal protection grounds." *Id.*

According to U.S. Citizenship and Immigration Services, the following countries currently had TPS designations as of 2025: Afghanistan, Burma (Myanmar), Cameroon, El Salvador, Ethiopia, Haiti, Honduras, Lebanon, Nepal, Nicaragua, Somalia, South Sudan, Sudan, Syria, Ukraine, Venezuela, and Yemen.[5] The only remotely "white European" nation on the list is Ukraine.

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[5] U.S. Citizenship and Immigration Services, "Temporary Protected Status" (last updated May 6, 2025).

If racial "animus" were the motivating factor, Secretary Noem could have been expected to terminate all TPS designations, as virtually all involve nations with majority "non-white, non-European" populations. Instead, she has cited factors such as high crime levels and strains on U.S. resources created by aliens of specified countries, while leaving TPS designations in place for other countries — all but one of which are "non-white, non-European" nations.

B. The District Court Disregarded the Supreme Court's Instruction that Equal Protection Is Not a Basis for a Judicial Takeover of Immigration Law.

For all these reasons, equal protection is ill-suited as a basis to impede the Executive's enforcement of immigration law. This Court has recognized this reality:

> The fact that all persons, aliens and citizens alike, are protected by the Due Process Clause does not lead to the further conclusion that all aliens are entitled to enjoy all the advantages of citizenship or, indeed, to the conclusion that all aliens must be placed in a single homogeneous legal classification.... In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens. The exclusion of aliens and the reservation of the power to deport have no permissible counterpart in the Federal Government's power to regulate the conduct of

> its own citizenry. The fact that an Act of Congress treats aliens differently from citizens does not in itself imply that such disparate treatment is "invidious." [*Mathews v. Diaz*, 426 U.S. 67, 78-80 (1976).]

Equal protection jurisprudence is a poor fit as a metric for judging immigration law, precisely because the Constitution places authority for foreign relations and immigration exclusively with the political branches, not the courts:

> For reasons long recognized as valid, the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government. Since decisions in these matters may implicate our relations with foreign powers, and since a wide variety of classifications must be defined in the light of changing political and economic circumstances, such decisions are frequently of a character **more appropriate to either the Legislature or the Executive than to the Judiciary**. This very case illustrates the need for flexibility in policy choices rather than the rigidity often characteristic of constitutional adjudication.... Any rule of constitutional law that would inhibit the flexibility of the political branches of government to respond to changing world conditions should be adopted only with the greatest caution. The reasons that preclude judicial review of political questions also dictate a narrow standard of

> review of decisions made by the Congress or the President in the area of immigration and naturalization. [*Mathews* at 81-82 (emphasis added).]

Thus, "it is not 'political hypocrisy' to recognize that the Fourteenth Amendment's **limits on state powers** are **substantially different** from the constitutional provisions applicable to the **federal power over immigration** and naturalization." *Id.* at 86-87 (emphasis added).

Since the Secretary has provided facially legitimate reasons for vacating Haiti's TPS designation, Congress' delegation of authority is sufficient, and courts are not to "look behind" the determination in search of presumed illegitimate motivations:

> [U]pon due consideration of the congressional power to make rules for the exclusion of aliens, and the ensuing power to delegate authority to [an executive official] to exercise substantial discretion in that field. [*Kleindienst v.*] *Mandel* held that an executive officer's decision denying a visa that burdens a citizen's own constitutional rights is valid when it is made "on the basis of a facially legitimate and bona fide reason." ... Once this standard is met, "**courts will neither look behind the exercise of that discretion**, nor test it by balancing its justification against" the constitutional interests of citizens the visa denial might implicate. [*Kerry v. Din,* 576

U.S. 86, 103-04 (2015) (Kennedy, J., concurring) (emphasis added).]

Judge Reyes' equal protection finding is unauthorized, unmoored from the facts and the law, and should be reversed.

CONCLUSION

This Court should dissolve the injunctions entered below and return the cases with directions to dismiss both complaints.

Respectfully submitted,

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