Nos. 25-1083 and 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.

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

BRIEF FOR PETITIONERS

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QUESTIONS PRESENTED

The Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.*, authorizes the Secretary of Homeland Security to designate countries for Temporary Protected Status (TPS) if he finds that certain conditions for designation are met. 8 U.S.C. 1254a(b)(1). When a country is designated, certain aliens from that country generally may not be removed from the United States and are authorized to work here. The Act provides that "[t]here is no judicial review of any determination of the [Secretary] with respect to the designation, or termination or extension of a designation, of a foreign state under this subsection." 8 U.S.C. 1254a(b)(5)(A). The questions presented are:

1. Whether 8 U.S.C. 1254a(b)(5)(A) precludes judicial review of respondents' Administrative Procedure Act (APA) claims challenging the Secretary's termination of TPS designations for Syria and Haiti.

2. If reviewable, whether respondents' APA claims fail on the merits.

3. Whether respondents' equal-protection challenge to the Secretary's termination of Haiti's TPS designation fails on the merits.

PARTIES TO THE PROCEEDING

Petitioners in No. 25-1083 (defendants-appellants below) are Markwayne Mullin, in his official capacity as Secretary of Homeland Security,* United States Department of Homeland Security, United States Citizenship and Immigration Services, and the United States of America.

Respondents in No. 25-1083 (plaintiffs-appellees below) are Dahlia Doe, Sara Doe, Nesma Doe, Laila Doe, Waleed Doe, Mustafa Doe, and Ahmad Doe.

Petitioners in No. 25-1084 (defendants-appellants below) are Donald J. Trump, in his official capacity as President of the United States of America, the United States of America, United States Department of Homeland Security, and Markwayne Mullin, in his official capacity as Secretary of Homeland Security.

Respondents in No. 25-1084 (plaintiffs-appellees below) are Fritz Emmanuel Lesly Miot, Rudolph Civil, Marlene Gail Noble, Marica Merline Laguerre, and Vilbrun Dorsainvil.

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* Respondents in both cases sued Kristi Noem, in her official capacity as Secretary of Homeland Security. Secretary Mullin has been automatically substituted in her place. See Sup. Ct. R. 35.3.

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BRIEF FOR PETITIONERS

OPINIONS BELOW

In No. 25-1083, the court of appeals' order denying a stay (J.A. 38-40) is available at 2026 WL 544631. The district court's order granting postponement (J.A. 36-38) is available at 2025 WL 4477179.

In No. 25-1084, the court of appeals' order denying a stay (J.A. 719-731) is available at 2026 WL 659420. The district court's order denying a stay (J.A. 715-718) and memorandum opinion (J.A. 632-715) are available at 2026 WL 544434 and 2026 WL 266413.

JURISDICTION

In No. 25-1083, the district court issued its order granting postponement on November 19, 2025. Petitioners filed a notice of appeal on November 25, 2025. The court of appeals' jurisdiction rests on 28 U.S.C. 1292(a)(1). Petitioners applied to this Court for a stay on February 26, 2026. On March 16, 2026, the Court treated the application as a petition for a writ of certiorari before judgment and granted the petition. The Court's jurisdiction rests on 28 U.S.C. 1254(1) and 2101(e).

In No. 25-1084, the district court issued its order granting postponement on February 2, 2026. Petitioners filed a notice of appeal on February 5, 2026. The court of appeals' jurisdiction rests on 28 U.S.C. 1292(a)(1). Petitioners applied to this Court for a stay on March 11, 2026. On March 16, 2026, the Court treated the application as a petition for a writ of certiorari before judgment and granted the petition. The court's jurisdiction rests on 28 U.S.C. 1254(1) and 2101(e).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent constitutional and statutory provisions are reproduced in the appendix. App., *infra*, 1a-17a.

INTRODUCTION

Throughout the latter half of the twentieth century, various Administrations granted temporary, discretionary relief from removal to nationals of certain countries based on ad hoc considerations of foreign policy, country conditions, and immigration trends. Courts deemed those discretionary exercises of inherent Article II power unreviewable, carving out only the possibility of constitutional challenges. See *Hotel & Rest. Emps. Union* v. *Smith*, 846 F.2d 1499, 1501, 1510 (D.C. Cir. 1988) (opinion of Mikva, J.).

In 1990, Congress codified a version of this relief by enacting the Temporary Protected Status (TPS) statute, which authorizes the Secretary of Homeland Security to provide temporary, country-specific relief to foreign nationals who cannot safely return to their home country due to armed conflict, natural disaster, or "extraordinary and temporary conditions." 8 U.S.C. 1254a(b)(1)(C). To keep designations temporary, Congress cabined their duration but allowed the Secretary to authorize extensions. 8 U.S.C. 1254a(b)(3)(C). At a high level, Congress also codified longstanding Executive Branch considerations—requiring the Secretary to assess country conditions and, in specific circumstances, the national interest, see 8 U.S.C. 1254a(b)(1)(A)-(C)—and imposed procedures, like consultation with "appropriate" agencies, 8 U.S.C. 1254a(b)(1) and (3). Throughout, however, Congress recognized the discretionary, foreign-policy and national-security-laden nature of those decisions.

Given all of this, Congress unsurprisingly codified the unreviewability of those decisions as well. Indeed, Congress barred judicial review in sweeping terms: "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." 8 U.S.C. 1254a(b)(5)(A). Congress, in short, prescribed substantive and procedural guardrails to keep TPS designations temporary—but left further accountability to the political process, not federal courts.

The last 12 months illustrate the problems with subverting Congress's choice. The decisions below disregarded the judicial-review bar to indefinitely postpone then-Secretary Noem's decisions to terminate TPS designations for Syria and Haiti—decisions that rested on multiple foreign-policy and national-security determi-

nations.[1] The district courts second-guessed virtually every aspect of the Secretary's decisionmaking, from her supposed failure to adequately consult the Department of State, to her putative misapprehension of country conditions and the national interest, to her supposedly preordaining outcomes. Other lower courts have employed similar moves to attempt to indefinitely halt TPS terminations for Venezuela, Honduras, Nicaragua, Nepal, Burma, and South Sudan.

Those lower-court decisions are erroneous. "[N]o judicial review" means what it says. That prohibition not only covers the final determination to designate, terminate, or extend TPS, but also "any" subsidiary "determination" "with respect to" those decisions. Congress forbade federal courts to second-guess TPS determinations, no matter whether courts would cavil with the final outcome, the Secretary's decisional process, the substantive reasoning, or something else. Any contrary approach would reduce Congress's robust judicial-review bar to a minor speedbump while installing district courts as the ultimate foreign-policy superintendents of temporary status.

This Court should respect Congress's choice to leave quintessential Executive Branch decisions to the Executive Branch and hold that all of respondents' Administrative Procedure Act (APA) claims are unreviewable (or, barring that, meritless). The only conceivably reviewable claim in this case, under the special reviewability rules for constitutional claims, is the equal-protection challenge to Haiti's termination. But the notion that this TPS termination rested on racial animus—as opposed to the weighty foreign-policy and national-

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[1] See 90 Fed. Reg. 45,398 (Sept. 22, 2025) (Syria); 90 Fed. Reg. 54,733 (Nov. 28, 2025) (Haiti).

security considerations that the Secretary invoked—is a legal and factual nonstarter. This Court should reverse the district courts' orders.

STATEMENT

A. Statutory Background

In 1990, Congress established a discretionary program to provide temporary shelter in the United States for eligible nationals of countries experiencing certain temporary conditions. 8 U.S.C. 1254a(b)(1); see Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978.

Initial TPS designations are discretionary. The Secretary of Homeland Security, "after consultation with appropriate agencies of the Government," "may" designate countries for "temporary protected status," if the Secretary finds that certain conditions for designation are met:

> (A) * * * that there is an ongoing armed conflict within the state and, due to such conflict, requiring the return of aliens who are nationals of that state to that state (or to the part of the state) would pose a serious threat to their personal safety;
>
> (B) * * * that—(i) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected, (ii) the foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state, and (iii) the foreign state officially has requested designation under this subparagraph; or
>
> (C) * * * that there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning

> to the state in safety, unless the [Secretary] finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.

8 U.S.C. 1254a(b)(1).[2]

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

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

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

eign state is extended for an additional period of 6 months (or, in the discretion of the [Secretary], a period of 12 or 18 months)." 8 U.S.C. 1254a(b)(3)(C).

The TPS statute bars judicial review of the Secretary's TPS determinations: "There is no judicial review of any determination of the [Secretary] with respect to the designation, or termination or extension of a designation, of a foreign state under this subsection." 8 U.S.C. 1254a(b)(5)(A).

B. Factual And Procedural Background

Since the TPS statute's enactment, every Administration has designated countries for TPS or extended those designations.[3] For example, the first Trump Administration extended TPS designations for South Sudan, Syria, Yemen, and Somalia.[4] Secretaries across Administrations have also terminated designations.[5] In 1993, for example, Lebanon's TPS designation was terminated based on reports that "the security situation for Lebanese citizens is steadily improving." 58 Fed. Reg. 7582, 7582 (Feb. 8, 1993). And in 2004, Montserrat's designation—which had been based on volcanic eruptions—was terminated. 69 Fed. Reg. 40,642, 40,643 (July 6, 2004). "Although the conditions in Montserrat continue[d] to warrant concern," the Secretary determined that "the volcanic eruptions can no longer be con-

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[3] See U.S. Gov't Accountability Office, GAO, Report to Cong. Requesters, *Temporary Protected Status* 11 fig. 2 (Apr. 2020), https://gao.gov/assets/gao-20-134.pdf.

[4] 82 Fed. Reg. 44,205 (Sept. 21, 2017) (South Sudan); 83 Fed. Reg. 9329 (Mar. 5, 2018) (Syria); 83 Fed. Reg. 40,307 (Aug. 14, 2018) (Yemen); 83 Fed. Reg. 43,695 (Aug. 27, 2018) (Somalia).

[5] See, *e.g.*, 62 Fed. Reg. 33,442 (June 19, 1997) (Rwanda); 81 Fed. Reg. 66,064 (Sept. 26, 2016) (Guinea).

sidered temporary," because "the volcano could continue to erupt sporadically for decades." *Ibid.*

Until the first Trump Administration, such terminations went unchallenged. At issue here are then-Secretary Noem's determinations to terminate TPS designations for Syria and Haiti.

1. Mullin v. *Doe* (Syria)

a. In 2012, then-Secretary Napolitano designated Syria for TPS, citing "extraordinary and temporary conditions" resulting from former President Bashar al-Assad's "brutal crackdown." 77 Fed. Reg. 19,026, 19,027 (Mar. 29, 2012). Secretary Napolitano found that the designation would not be "contrary to the national interest of the United States." *Id.* at 19,028. Syria's designation was extended on the same basis plus a second condition: the existence of an "ongoing armed conflict." 90 Fed. Reg. at 45,399 (listing extensions).

On September 22, 2025, Secretary Noem terminated Syria's TPS designation, effective November 21, 2025. 90 Fed. Reg. at 45,398-45,399. "[A]fter consulting with appropriate U.S. Government agencies," she "reviewed country conditions in Syria." *Id.* at 45,399. The Secretary found that Syria "no longer meets the criteria for an ongoing armed conflict that poses a serious threat to the personal safety of returning Syrian nationals." *Id.* at 45,400. The Assad regime fell in December 2024; since then, a "national-level war" had shifted to "localized clashes," then lessened to "sporadic, isolated episodes of violence." *Ibid.* The Secretary cited improvements undertaken by Syria's interim President, including establishing a caretaker cabinet and initiating the National Dialogue Conference—underscoring the Syrian government's efforts to "move the country to a stable

institutional governance, not a perpetuation of armed conflict." *Ibid.*

The Secretary separately found that no "extraordinary and temporary conditions" justified Syria's continued designation. She found that, while most Syrians required some humanitarian assistance, the United Nations estimated that over 1.2 million Syrians had returned to Syria since 2024. 90 Fed. Reg. at 45,400. Further, "even assuming" that conditions remained "'extraordinary'" and "'temporary,'" she determined that termination was required because Syria's designation "is contrary to the national interest." *Ibid.* She highlighted "significant public safety and national security risks" from a continued designation, including the U.S. government's inability to reliably vet Syrians given the lack of a U.S. embassy in Syria. *Id.* at 45,401. She also found "compelling foreign policy reasons" for termination. *Ibid.* For instance, extending Syria's designation would "complicate the administration's broader diplomatic engagement with Syria's transitional government." *Id.* at 45,402. President Trump had met with the interim President of Syria and announced that the United States "would be lifting sanctions and normalizing relations with Syria." *Id.* at 45,400. And the Administration committed to assist Syria "in the post-Assad era" by encouraging Syrian nationals to return. *Id.* at 45,401.

The Secretary thus determined that "Syria no longer meets the statutory basis" for TPS and that termination was required. 90 Fed. Reg. at 45,402.

b. Respondents in No. 25-1083 (*Doe* respondents)—seven Syrian nationals who have TPS or pending TPS applications—brought APA and Fifth Amendment equal-protection challenges to the Secretary's termina-

tion of Syria's designation and moved to postpone the termination under 5 U.S.C. 705. J.A. 41-103, 587-624.

Two days before the termination was set to take effect, the district court granted postponement in a bench ruling. J.A. 1-35; see J.A. 36-37. The court held that respondents' claims were all reviewable notwithstanding Section 1254a(b)(5)(A), which the court read as barring "jurisdiction to review the Secretary's substantive (and discretionary) analysis of specific TPS determinations," but not "collateral agency patterns and practices that impact those determinations." J.A. 10-11.

On the merits of the APA claims, the district court considered *Doe* respondents likely to succeed in showing that the Secretary failed to engage in a "good-faith review of country conditions" because, in the court's view, "armed conflict remains widespread." J.A. 15, 18. The court also held that the Secretary did not "engage[] in the requisite interagency consultation," despite the notice's contrary statement, because the court viewed the Secretary's determinations as inconsistent with consultation. *Ibid.* The court further deemed the Secretary's reliance on the "national interest" "contrary to the statute." J.A. 18-21. And the court condemned the termination as motivated by "undue political influence." J.A. 24; see J.A. 15-18, 24-25.

After rejecting *Doe* respondents' equal-protection claim and other challenges, the district court found that the equitable factors weighed in their favor, indefinitely postponed the termination, J.A. 33, and denied the government's motion for a stay pending appeal, J.A. 34-35.

c. The Second Circuit denied the government's motion for a stay pending appeal in a three-page order. J.A. 38-40. The court stated that Section 1254a(b)(5)(A) "does not bar judicial review of the Secretary's compli-

ance with [the TPS] statute's procedural requirements." J.A. 39. The court further held that the government was unlikely to succeed in arguing that "the Secretary engaged in the required inter-agency consultation," J.A. 39-40 (citing 8 U.S.C. 1254a(b)(3)(A)), but did not endorse the district court's other APA holdings. The Second Circuit finally held that the equities favored respondents. *Ibid.*

***2. Trump* v. *Miot* (Haiti)**

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

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

Then-Secretary Mayorkas redesignated Haiti for TPS in 2021 after finding "extraordinary and temporary

conditions" based on a presidential assassination, "a deteriorating political crisis, violence, and a staggering increase in human rights abuses." 86 Fed. Reg. 41,863, 41,864 (Aug. 3, 2021). He twice extended that designation; the latest extension was set to expire on February 3, 2026. 90 Fed. Reg. at 54,734.

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

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

Further, the Secretary determined, "even if" extraordinary and temporary conditions persisted, "termination of [TPS for] Haiti is still required because it is contrary to the national interest of the United States to permit Haitian nationals * * * to remain temporarily

in the United States." 90 Fed. Reg. at 54,735. She highlighted that large numbers of Haitians illegally arrived in the United States in recent years and that "extremely high numbers [were] seen around the time of and following the latest new designations of [TPS]," suggesting that TPS serves as a "'pull factor[ ]'" for illegal immigration. *Id.* at 54,737. She further found that "Haiti lacks a functioning central authority capable of maintaining or sharing" critical law-enforcement or security information, which "severely limit[s] the U.S. government's ability to screen and vet Haitians in the United States with [TPS]." *Ibid.* She considered that information void particularly concerning because "Haitian gangs—such as those designated by the State Department as Foreign Terrorist Organizations—pose a serious threat to U.S. interests." *Ibid.*

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

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

b. Respondents in No. 25-1084 (*Miot* respondents)—five Haitian TPS holders—filed an amended class-action complaint challenging the Secretary's termination of Haiti's TPS designation and moved to postpone the termination under 5 U.S.C. 705. See 25-cv-2471 Am. Compl. 9-13, 81-84; 25-cv-2471 D. Ct. Doc. 81 (Dec. 12, 2025). On February 2, 2026, the day before the termination was to take effect, the district court granted that

motion and stayed consideration of the motion to certify a class. J.A. 632-714.

The district court held that *Miot* respondents' APA and equal-protection claims were reviewable, despite Section 1254a(b)(5)(A). J.A. 651-658. The court interpreted Section 1254a(b)(5)(A) as limited to challenges to "the Secretary's *determination*"—not challenges to "*how* the Secretary went about making her determination," including respondents'. J.A. 651.

The court then found a panoply of APA violations:

- The Secretary purportedly failed to adequately "consult appropriate agencies." J.A. 672; see J.A. 672-677. The court acknowledged that DHS requested and received the Department of State's views: that "State believes that there would be no foreign policy concerns with respect to a change in the TPS statu[s] of Haiti." J.A. 673 (citation omitted). But the court deemed that exchange not sufficiently "meaningful" to qualify as consultation. J.A. 674 (citation omitted).

- The court found the termination likely arbitrary and capricious by disagreeing with the Secretary's determination that "conditions in Haiti permit safe return." J.A. 680. The court deemed Haiti "a nation deep in crisis," *ibid.*; see J.A. 680-689, and faulted the Secretary's national-interest assessment for failing to focus on Haitian TPS holders and their economic impact, J.A. 690-693.

- The court considered the Secretary's termination of "every TPS designation that crosses her desk" so "unprecedented" as to "strongly suggest[ ]" that each decision "'shrug[ged] off'" required "individualized review of the conditions of each

country." J.A. 678-679 (citation omitted). The court further concluded that "nearly everything" in its analysis indicated that "the Secretary preordained the result." J.A. 695; see J.A. 694-695.

On the equal-protection claim, the district court held that the Secretary's termination decision was likely motivated by racial animus. J.A. 695-704. Applying heightened scrutiny instead of the deferential standard of *Trump* v. *Hawaii*, 585 U.S. 667 (2018), J.A. 696-697, the court found that racial animus infected the termination decision by invoking statements by President Trump dating to 2017, J.A. 698; see J.A. 798, and a handful of Secretary Noem's statements, J.A. 703.

After finding that the equitable factors favored *Miot* respondents, the district court indefinitely postponed the Haiti termination, J.A. 714, and denied the government's motion for a stay pending appeal, J.A. 718.

c. The D.C. Circuit rendered a 2-1 decision denying the government's stay request. J.A. 719-731. The majority bypassed the merits, "focus[ing] on irreparable harm and the weighing of the equities," and denied a stay solely on that basis. J.A. 720.

Judge Walker dissented. J.A. 725-731. He would have granted a stay, "[a]s the Supreme Court and the Ninth Circuit have done in extraordinarily similar cases." J.A. 725. On the merits, he explained that the government was "likely to prevail" because Section 1254a(b)(5)(A) precludes judicial review. J.A. 727-728.[6]

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[6] The lower courts in both cases also rejected the government's argument that 8 U.S.C. 1252(f)(1) prohibited the requested relief by precluding lower courts from "enjoin[ing] or restrain[ing] the operation of" provisions including Section 1254a. See J.A. 33-34, 39-40, 659-665. That provision does not limit this Court's authority, as it applies to courts "other than the Supreme Court." 8 U.S.C. 1252(f)(1).

SUMMARY OF ARGUMENT

The lower courts erred in postponing the Secretary's TPS terminations. Section 1254a(b)(5)(A)'s judicial-review bar forecloses all of respondents' APA challenges, which are meritless in any event. And their equal-protection challenge to the Haiti termination fails under any applicable standard.

I. Section 1254a(b)(5)(A) precludes "judicial review of any determination of the [Secretary] with respect to the designation, or termination or extension of a designation" of TPS. 8 U.S.C. 1254a(b)(5)(A). That provision unambiguously bars review of the Secretary's ultimate decisions to "designat[e], or terminat[e] or exten[d]" TPS designations. But Congress cut broader still, shielding "*any* determination * * * *with respect to*" the Secretary's ultimate TPS determinations. Congress thus covered the waterfront, barring judicial review not only of the Secretary's designations, terminations, and extensions, but also of challenges to antecedent steps in those decisions, whether framed as procedural or substantive defects.

The lower courts and respondents would eviscerate that review bar and exert jurisdiction over every challenge in this case, even as they lack any plausible textual basis or agreed-upon interpretation of Section 1254a(b)(5)(A). Meanwhile, their approaches would allow litigants to end-run any barriers to judicial review through artful pleading. And while they invoke the presumption of reviewability, that lacks force where, as here, Congress erects an express judicial-review bar.

And it likewise "poses no obstacle to jurisdiction in this Court," even "where the lower court entered a form of relief barred by that provision." *Biden* v. *Texas*, 597 U.S. 785, 798, 801 (2022). Accordingly, the Court need not address the reach of that provision in this case.

II. Even if reviewable, respondents' APA claims fail.

First, the lower courts faulted the Secretary for failing to "consult[] with appropriate agencies." 8 U.S.C. 1254a(b)(3)(A). But she sought and considered advice from the State Department for both terminations. Respondents' and the lower courts' contrary view rewrites the consultation requirement into an invitation for courts to referee interagency discussions, demand agency verbosity, and gauge how much consultation is enough.

Second, the *Doe* district court deemed the Secretary's consideration of the national interest contrary to the TPS statute. But the statute mandates that inquiry: The Secretary must assess whether a country "no longer continues to meet the conditions for designation." 8 U.S.C. 1254a(b)(3)(B). One such condition for the designations here is that "permitting the aliens to remain temporarily in the United States" is not "*contrary to the national interest*." 8 U.S.C. 1254a(b)(1)(C) (emphasis added).

Third, the lower courts held that the Secretary's reasons for terminating TPS were arbitrary and capricious, but they failed to apply the appropriate deferential standard. The Secretary reasonably determined that terminations were justified based on post-Assad developments in Syria, signs of improvement in Haiti, and national-security and foreign-policy concerns for both. Here too, the lower courts substituted their own views for the Secretary's conclusions—just what the APA prohibits, particularly for foreign-policy judgments entrusted to the political branches.

Finally, the lower courts erroneously condemned the terminations as predetermined, politically motivated, and part of a broader pattern and practice of terminating TPS. That the Secretary terminated multiple TPS designations reflects the Secretary's consistent view

that the designations cannot satisfy statutory requirements—not presumptive malfeasance.

III. The *Miot* district court further erred in holding that the termination of Haiti's TPS designation violates the Due Process Clause's equal-protection component. The rational-basis standard set out in *Trump* v. *Hawaii*, 585 U.S. 667 (2018), applies and dooms that claim. The termination is plausibly related to the national-interest and foreign-relations justifications the Secretary provided.

Even under a heightened standard, the allegations of purported racial animus manifestly fail. The extrinsic statements from the President and the Secretary advocating for policies that curb immigration do not suffice. None involves race. Few are connected to the TPS decisions at issue. None remotely justifies an inference that the Secretary was motivated by an "invidious discriminatory purpose." *Village of Arlington Heights* v. *Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977).

ARGUMENT

I. THE JUDICIAL-REVIEW BAR PRECLUDES REVIEW OF RESPONDENTS' APA CLAIMS

The TPS statute unambiguously bars judicial review of claims that attack the Secretary's TPS determinations, including the procedures and analysis underlying those determinations. That bar encompasses all APA claims at issue. Respondents' and the lower courts' contrary interpretations are atextual and would effectively nullify the review bar.

A. Section 1254a(b)(5)(A) Bars Review Of All Aspects Of Specific TPS Designation, Termination, Or Extension Decisions

Section 1254a(b)(5)(A) precludes "judicial review of any determination of the [Secretary] with respect to the designation, or termination or extension of a designation" of TPS. 8 U.S.C. 1254a(b)(5)(A). By its plain terms, that bar covers challenges to the Secretary's ultimate determinations to designate, terminate, or extend TPS and all subsidiary decisional steps, whether procedural or substantive. If the challenge is directed at a specific TPS designation, termination, or extension—as respondents' APA claims are—the challenge is unreviewable.

1. a. Section 1254a(b)(5)(A)'s text is capacious: "There is *no* judicial review of *any* determination of the [Secretary] *with respect to* the designation, or termination or extension of a designation, of a foreign state" for TPS. 8 U.S.C. 1254a(b)(5)(A) (emphases added). "[N]o judicial review" means no judicial review. And the scope of that bar is equally pellucid. A "determination" is "the resolving of a question by argument or reasoning," "[t]he decision arrived at or promulgated," or "a determinate sentence, conclusion, or opinion." *EPA* v. *Calumet Shreveport Ref., L.L.C.*, 605 U.S. 627, 643 (2025) (quoting *Webster's Third New International Dictionary* 616 (1976), and 4 *Oxford English Dictionary* 548 (2d ed. 1989)). As used in Section 1254a(b)(5)(A), "determination" clearly covers the Secretary's ultimate "decision" or "conclusion" to designate, terminate, or extend a TPS designation. The *Miot* district court acknowledged that "all agree" on that point. J.A. 652.

Had Congress simply barred judicial review of the "determination" to designate, terminate, or extend TPS, that alone would ordinarily sweep in antecedent deci-

sionmaking steps, whether framed as process fouls or substantive defects. See pp. 21-22, 27-28, *infra*. But Section 1254a(b)(5)(A)'s text removes any doubt by expressly barring review of "*any* determination * * * with respect to" the ultimate decision to designate, terminate, or extend TPS, not just the final determinations. 8 U.S.C. 1254a(b)(5)(A) (emphasis added). "As this Court has 'repeatedly explained,' '"the word 'any' has an expansive meaning,"'" *Patel* v. *Garland*, 596 U.S. 328, 338 (2022) (citation omitted), and captures determinations "of whatever kind," *ibid.* (citation omitted). The judicial-review bar "does not restrict itself to certain kinds of" determinations, *ibid.*, but includes the Secretary's "resolving of" subsidiary questions, as well as her intermediate "conclusion[s]" or "opinion[s]," *Calumet*, 605 U.S. at 643 (citations omitted).

Congress's coupling of "any determination" with the phrase "with respect to" reinforces its "broadening effect." See *Patel*, 596 U.S. at 339. Here, the full phrase "any determination * * * with respect to" TPS designations, terminations, or extensions, 8 U.S.C. 1254a(b)(5)(A), "ensur[es] that the scope of [the] provision covers not only its subject but also matters relating to that subject," *Patel*, 596 U.S. at 339 (citations omitted). This formulation tracks Congress's stripping a court of jurisdiction "'in respect to'" particular claims, which this Court construed as a "broad prohibition" encompassing related and not merely identical claims. *United States* v. *Tohono O'odham Nation*, 563 U.S. 307, 312 (2011). Section 1254a(b)(5)(A) similarly extends to any subsidiary determination "*relating to*" the ultimate designation, termination, or extension, whether the subsidiary decision addresses procedural or substantive issues. *Patel*, 596 U.S. at 339. The plain language overwhelmingly de-

notes breadth. Cf. *United States* v. *Miller*, 604 U.S. 518, 533-534 (2025).

b. Fundamental administrative-law principles confirm that interpretation. Under the APA, only "final agency action" is reviewable. 5 U.S.C. 704. Agency actions that are "preliminary, procedural, or intermediate" are "subject to judicial review" only on "review of the final agency action." *Ibid.* Challenges to such intermediate decisionmaking steps can only be brought in a challenge to the agency's final decision; they are not standalone claims. See *United States Army Corps of Eng'rs* v. *Hawkes Co.*, 578 U.S. 590, 597 (2016).

In keeping with that principle, even when statutes merely bar review of a particular decision, courts have held that those judicial-review bars necessarily foreclose attacks on antecedent decisionmaking steps too. "If a no-review provision shields particular types of administrative action, a court may not inquire whether a challenged agency decision is arbitrary, capricious, or procedurally defective." *Amgen Inc.* v. *Smith*, 357 F.3d 103, 113 (D.C. Cir. 2004). Any other interpretation "would eviscerate the statutory bar, for almost any challenge to [a determination] could be recast as a challenge to its underlying methodology." *DCH Reg'l Med. Ctr.* v. *Azar*, 925 F.3d 503, 506 (D.C. Cir. 2019).

Applying that whole-includes-the-parts principle, courts have held that the judicial-review bar on "'[a]ny estimate of the [HHS] Secretary'" used for certain purposes also precludes review of statutory claims challenging "the *methodology* used to make the estimates." *DCH*, 925 F.3d at 505 (quoting 42 U.S.C. 1395ww(r)(3)(A)); see *id.* at 505-507. Likewise, a judicial-review bar providing that "'[t]he decision of the Secretary shall be final and shall not be subject to judicial review'" also bars chal-

lenges to the agency's "procedure[s]" and "methods" for reaching that final decision. *Skagit County Pub. Hosp. Dist. No. 2* v. *Shalala*, 80 F.3d 379, 385-386 (9th Cir. 1996) (quoting 42 U.S.C. 1395ww(d)(10)(C)(iii)(II)).

Separation-of-powers principles regarding foreign-affairs and national-security judgments reinforce that Section 1254a(b)(5)(A) insulates the whole decisionmaking process. In those discretion-heavy areas, judicial review is the exception, not the norm. Considered judgments "implicat[ing] sensitive and weighty interests of national security and foreign affairs" and based on an "evaluation of the facts" are the province of the Executive Branch, not courts. *Holder* v. *Humanitarian Law Project*, 561 U.S. 1, 33-34 (2010). The TPS statute checks all of those boxes: It uses "may" to denote the Secretary's ultimate discretion over designations, 8 U.S.C. 1254a(b)(1), and Congress throughout recognized that the Secretary would be making sensitive judgments about the national interest, the type and degree of foreign hostilities, and on-the-ground conditions abroad. Given that virtually every aspect of TPS decisionmaking implicates traditional areas of unreviewability, Section 1254a(b)(5)(A) sensibly and unmistakably covers all bases.

c. The historical backdrop of the TPS statute further confirms Section 1254a(b)(5)(A)'s breadth. Before the statute's enactment, the Executive Branch had long exercised inherent authority to afford temporary immigration relief based in part on its assessment of conditions in foreign states. See *Hotel & Rest. Emps. Union* v. *Smith*, 846 F.2d 1499, 1501, 1510 (D.C. Cir. 1988) (opinion of Mikva, J.); see also Jill H. Wilson, Cong. Rsch. Serv., *Temporary Protected Status and Deferred Enforced Departure* (Aug. 28, 2025). That discretionary

authority was primarily exercised through "Extended Voluntary Departure" (EVD), *Hotel & Rest. Emps. Union*, 846 F.2d at 1501, which Presidential "administrations granted * * * on an *ad hoc* basis without 'any specific criterion or criteria,'" *Ramos* v. *Wolf*, 975 F.3d 872, 879 (9th Cir. 2020) (citation omitted), reh'g en banc granted, opinion vacated, 59 F.4th 1010 (9th Cir. 2023). Those features of EVD prompted courts to view the Executive's decisions to withhold EVD status as "discretionary" and "unreviewable." *Hotel & Rest. Emps. Union*, 846 F.2d at 1510 (opinion of Mikva, J.); see *id.* at 1511, 1519-1520 (opinion of Silberman, J.) (same).

Congress legislated against that backdrop in enacting the TPS statute. See *Ramos*, 975 F.3d at 879. The TPS statute enshrines "a 'more formal and orderly mechanism' for group-based grants of humanitarian protection," *ibid.* (citation omitted), by setting forth statutory criteria and procedures. But Congress deliberately preserved Executive Branch discretion throughout—not only by codifying the Secretary's "discretion *not* to designate a country for TPS" even if the statutory criteria are met, *id.* at 890 (discussing 8 U.S.C. 1254a(b)), but by continuing to shield all TPS determinations from judicial review. Here as elsewhere, Congress effectively insulated discretion-laden judgments from judicial review. See *Bouarfa* v. *Mayorkas*, 604 U.S. 6, 13-15 (2024) (describing other review bars on discretionary determinations).

d. That Congress barred courts from reviewing TPS determinations hardly invites a "range of lawless agency behavior." 25A952 Br. in Opp. 21-22. Regardless of the availability of judicial review, courts owe to Executive agencies a "presumption of regularity" and assume that they will follow Congress's statutory commands.

United States v. *Chemical Found., Inc.*, 272 U.S. 1, 14 (1926). Besides, this Court ordinarily construes judicial-review bars to exclude constitutional claims—like respondents' equal-protection claim. See p. 28, *infra*. And, while Section 1254a(b)(5)(A)'s judicial-review bar expansively covers every subsidiary decision culminating in designation, termination, or extension of TPS, the bar does not apply to other, unrelated decisions. For instance, a rulemaking that prescribed procedures for individual aliens to register for TPS would be subject to challenge.

More broadly, Congress imposed different checks on TPS determinations than judicial review. Congress limited the duration of designations and required the Secretary to review them at regular intervals. See 8 U.S.C. 1254a(b)(2) and (3)(A). Terminations do not happen automatically; instead, the Secretary must affirmatively find that the "conditions for designation" are no longer met. 8 U.S.C. 1254a(b)(3)(B). Congress required the Secretary to elaborate the basis for designation, termination, and extension decisions in the Federal Register, exposing those decisions to public scrutiny and political accountability. See 8 U.S.C. 1254a(b)(1), (3)(A), and (B). And, of course, the political process provides an ultimate check. See *NTPSA* v. *Noem*, No. 25-5724, 2026 WL 687355, at *10 (9th Cir. Mar. 11, 2026) (Bumatay, J., dissenting from the denial of rehearing en banc). As the history of the TPS program amply illustrates, changes of Administrations have prompted different decisions about TPS designations based on different policy perspectives. That Congress opted to allow future administrations to "reapprais[e] * * * the costs and benefits of [government] programs" and adjust their priorities accordingly in this foreign-policy-laden

area is hardly surprising. See *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 59 (1983) (Rehnquist, J., concurring in part and dissenting in part).

2. Section 1254a(b)(5)(A) clearly bars respondents' APA claims, all of which directly attack the Secretary's specific termination decisions. Those claims challenge every aspect of the Secretary's ultimate termination decisions, from her decisionmaking process to the substance of her analysis. Indeed, the lower courts' reasoning reflects just what Congress sought to foreclose: district courts substituting their own views for those of the Executive as to procedures, country conditions, and foreign-policy objectives.

a. The claims that Secretary Noem purportedly violated Section 1254a(b)(3)(A)'s interagency consultation requirement are illustrative. The *Miot* district court found a likely APA violation because State's views were too terse. J.A. 673-674. And the *Doe* district court found that "it confounds logic" that adequate consultations happened (notwithstanding the Secretary's unrebutted affirmations that they occurred) based on a series of TPS terminations. J.A. 17-18. Whatever their label, those claims seek judicial review of the Secretary's final termination decisions—and demand their indefinite postponement—by attacking the adequacy of the decisionmaking process.

The same goes for the *Doe* district court's conclusion that the Syria termination was purportedly unlawful because the Secretary could not rely on "the national interest divorced from an analysis of country conditions." J.A. 19. Again, the argument that the final decision rested on an improper consideration is an attack on the final decision itself. The court's additional reasoning—that "the administration's America First policy," the

prevalence of "criminal cases," and "foreign policy objectives" are "not appropriately considered" as part of TPS "periodic review or termination inquiries," *ibid.*—underscores that opening the door to such claims upends the statutory scheme Congress enacted, where the Secretary is vested with the discretion to consider relevant factors and courts lack jurisdiction to freelance in foreign policy.

Respondents' arbitrary-and-capricious claims likewise directly attack the final terminations by faulting the Secretary's subsidiary findings. As to Haiti, the argument goes, the Secretary's country-conditions determination inadequately considered "overwhelming evidence of present danger," J.A. 689, that suggested Haiti is "a nation in deep crisis," J.A. 680, while her national-interest analysis purportedly "failed" to focus on "Haitian TPS holders," J.A. 689, and their effect "on our economy," J.A. 693. As to Syria, the challenge targets the Secretary's supposed error in finding no "ongoing armed conflict" when the district court adjudged that "armed conflict remains widespread" based on (*inter alia*) "intervening" evidence of "Israeli incursions." J.A. 18. But "a claim challenging the Secretary's failure to" consider certain facts "is essentially an attack on the substantive considerations underlying the Secretary's specific TPS determinations, over which the statute prohibits judicial review." *Ramos*, 975 F.3d at 893.

For the same reasons, respondents' criticisms that the terminations were predetermined, politically motivated, or part of a suspect pattern or practice of terminations are barred. See J.A. 16, 24-25; J.A. 678-679, 694-695. Again, those claims contend that the Secretary's termination decisions themselves are illegal—and subject to judicial review, postponement, and even-

tual vacatur—because of underlying process fouls or purportedly improper considerations. Again, those challenges end-run the bar on challenging the final decisions themselves. And again, those criticisms underscore why Congress imposed this judicial-review bar to start with: to shield discretion-infused Executive Branch decisionmaking implicating core areas of Article II authority against judicial intervention.

b. The conclusion that Section 1254a(b)(5)(A) bars review of all those challenges tracks how courts have applied other judicial-review bars on specific agency actions—even when some bars lack Section 1254a(b)(5)(A)'s comprehensive language. When Congress places a particular agency decision off-limits for judicial review, challenges to the "inextricably intertwined" inputs to that decision are equally unreviewable. *Florida Health Scis. Ctr., Inc.* v. *Secretary of Health & Hum. Servs.*, 830 F.3d 515, 521 (D.C. Cir. 2016) (citation omitted).

So too, when Congress renders an agency decision judicially unreviewable, that bar does not blink in and out of existence depending on how a challenge is framed —procedural or substantive, statutory or arbitrary-and-capricious. When Congress forecloses judicial review of a particular decision, that bar extends to claims that an agency acted "beyond its statutory authority" in rendering that decision. *City of Rialto* v. *West Coast Loading Corp.*, 581 F.3d 865, 876 (9th Cir. 2009). If the claim hinges "on the facts of any given individual agency action"—like "whether the [agency action] met the substantive requirements of the statute"—that claim is barred. *Ibid.* (emphasis omitted). Similarly, if review of an agency decision is barred, so are "inherently substantive challenge[s]," where plaintiffs challenge "the *reasons* for" that decision. *Nouritajer* v. *Jaddou*, 18 F.4th

85, 89 (2d Cir. 2021) (per curiam), cert. denied, 143 S. Ct. 442 (2022). And a claim that a particular decision was "'pretextual is no different from arguing that it was wrong'" because "'[b]oth arguments challenge the validity of the grounds for" the decision. *Ibid.* (citation omitted). Nor can challengers end-run a review bar by casting their claims as process challenges; "judicial review is not permitted 'when a procedure is challenged solely in order to reverse an individual . . . decision' that [courts] otherwise cannot review." *Florida Health*, 830 F.3d at 521-522 (citation omitted); see *Skagit*, 80 F.3d at 386 (similar). Just as other review bars on particular agency actions foreclose all of those subsidiary attacks, Section 1254a(b)(5)(A)'s even broader review bar does, too.

* * *

The judicial-review bar disposes of all of respondents' APA claims. However, this Court has presumed that even expansive judicial-review bars nonetheless permit judicial review of constitutional claims, based on "the 'serious constitutional question' that would arise if a federal statute were construed to deny any judicial forum for a colorable constitutional claim." *Webster* v. *Doe*, 486 U.S. 592, 603 (1988). Respondents' equal-protection claims fail on the merits in all events. See pp. 45-51, *infra*.

B. Counterarguments Lack Merit

The lower courts and both sets of respondents would apparently deem all claims at issue reviewable, yet cannot agree on what Section 1254a(b)(5)(A) actually means:

- It bars no APA claims whatsoever, because Section 1254a(b)(5)(A) postdates and cannot displace

APA review (per *Miot* respondents, 25A999 Br. in Opp. 27-28).

- It narrowly bars challenges to the Secretary's ultimate "*determination*" to designate, terminate, or extend TPS, but not challenges to "*how* the Secretary went about making her determination" (per the *Miot* district court, J.A. 651, and *Miot* respondents' backup, 25A999 Br. in Opp. 28-32).
- It precludes "jurisdiction to review the Secretary's substantive (and discretionary) analysis of specific TPS determinations," but not "collateral agency patterns and practices that impact those determinations," J.A. 10-11, or the Secretary's compliance with "procedural requirements," J.A. 39 (per the *Doe* district court and Second Circuit).
- It only forecloses review of "country conditions determinations," but apparently not any other subsidiary components of TPS determinations or the final decision itself (per *Doe* respondents, 25A952 Br. in Opp. 23).

Those interpretations share similar fatal flaws: None engages with the text, none supplies workable lines, and all would render the judicial-review bar an easily-evaded nullity.

1. To interpret Section 1254a(b)(5)(A)'s judicial-review bar as inapplicable to APA claims because it "does not even mention let alone explicitly supersede or modify the APA," 25A999 Br. in Opp. 27 (discussing 5 U.S.C. 559), is indefensible. "The APA explicitly does not apply 'to the extent that . . . statutes preclude judicial review,' as the [statute] does in this instance." *Delgado* v. *Quarantillo*, 643 F.3d 52, 55-56 (2d Cir. 2011) (per curiam) (quoting 5 U.S.C. 701(a)(1)); see 5 U.S.C.

702 (right-of-review provision stating that "[n]othing herein * * * affects other limitations on judicial review"). "[T]he APA cannot be used as the sole basis for conferring justiciability over what would otherwise be [an] unreviewable claim." *Ramos*, 975 F.3d at 894. Any other view "would render section 1254a(b)(5)(A) virtually meaningless and would contradict the APA's express language on the limits of the statute's applicability." *Ibid.* (citing 5 U.S.C. 701(a)).

2. Interpreting Section 1254a(b)(5)(A) to foreclose judicial review of only the Secretary's *final* designation, termination, or extension of TPS, but not "*how*" she reached those decisions, is equally untenable. See J.A. 651 (*Miot* district court).

That reading contravenes Section 1254a(b)(5)(A)'s text, which expressly bars judicial review not only of the ultimate "determination" to designate, terminate, or extend TPS, but also "*any* determination * * * with respect to" those final decisions. Under no plausible reading of that text did Congress insulate final decisions from judicial review while authorizing review of all those decisions' underpinnings. Indeed, Congress's reference to "any determination * * * with respect to" a TPS designation, termination, or extension would be inexplicable surplusage had Congress wanted to single out final decisions alone as unreviewable. See *Loughrin* v. *United States*, 573 U.S. 351, 358 (2014). Rather, Congress did the opposite: It grouped together the final decision and its antecedent parts, and in doing so left no doubt that the whole decisionmaking process is unreviewable.

Separating out the final decision and its ingredients for judicial-review purposes also defies bedrock APA principles. See p. 21, *supra*. Only *final* agency action

is generally reviewable—and review of the final decision encompasses review of the antecedent procedures and substantive reasoning behind it. It would be passing strange to interpret Section 1254a(b)(5)(A)'s more explicit language to exclude antecedent decisional steps when courts have interpreted other judicial-review bars on a particular agency actions to bar review of its inputs. See pp. 27-28, *supra*.

At bottom, this misinterpretation of Section 1254a(b)(5)(A) rests not on statutory text but on a misreading of *McNary* v. *Haitian Refugee Center*, 498 U.S. 479 (1991). *McNary* interpreted a statute that barred judicial review "of a determination respecting an application for adjustment of status" under 8 U.S.C. 1160(e), except in deportation proceedings. 498 U.S. at 491-492. Each plaintiff had unsuccessfully sought amnesty under Section 1160, but none "contest[ed] the denial of their * * * applications" for relief. *Id.* at 488; see *id.* at 487-488. Instead, they claimed that the agency's global procedures for adjudicating who receives amnesty violated procedural due process (for instance, by denying applicants any ability to challenge evidence or present witnesses). *Id.* at 487-488. This Court deemed that challenge reviewable because Section 1160(e)'s "reference to 'a determination' describes a single act"—the denial of a particular "application" for relief. *Id.* at 492. The limitation on review thus insulated "the process of direct review of individual denials of [amnesty] status," but not "general collateral challenges to unconstitutional practices and policies used by the agency in processing applications." *Ibid.*

Nothing in *McNary* supports slicing "the 'single act' of designating a country or terminating or extending its designation thereafter" away from the antecedent

choices leading up to that final action. Contra J.A. 652 (*Miot* district court quoting *McNary*, 498 U.S. at 492). Quite the contrary, *McNary* stands for a different proposition: that prescribing a specific process for "judicial review of a determination respecting an application for adjustment of status" does not bar district courts from exercising general federal-question jurisdiction over cross-cutting constitutional challenges to agency rules or policies governing how all amnesty applications are processed (*e.g.*, whether applicants can present witnesses). 498 U.S. at 492 (citation omitted). Were that statute on all fours with Section 1254a(b)(5)(A), the analogy would be to constitutional challenges to agency rules governing how aliens should apply for TPS—not to anything undergirding particular TPS designations, terminations, or extensions themselves.

McNary meaningfully differs in other ways, too. The *McNary* statute subjected "a determination respecting an application" for amnesty to limited review in prescribed fora, 498 U.S. at 493-494 (describing 8 U.S.C. 1160(e)(3)(B))—but the TPS statute broadly bars judicial review of "*any* determination * * * with respect to" the Secretary's TPS decision, 8 U.S.C. 1254a(b)(5)(A) (emphasis added). *McNary* "addressed a constitutional claim against an agency's practices"—but respondents attack "an individual agency determination," *i.e.*, TPS termination decisions. *NTPSA*, 2026 WL 687355, at *9 (Bumatay, J., dissenting from the denial of rehearing en banc). *McNary* relied on the apparent inability to bring the challengers' cross-cutting constitutional claims within the limited-review scheme for individual amnesty applications as evidence that the limited-review provision did not cover the claims at issue. 498 U.S. at 493-494. But the TPS statute lacks any

comparable statutory context. And the *McNary* challengers sought to enjoin the allegedly unconstitutional interview procedures, not to directly vacate the individual orders denying applications for adjusted status (or, as here, to postpone and vacate the actual termination decisions). See *id.* at 488, 495-496.

3. Reading Section 1254a(b)(5)(A) to bar review of *final* TPS designations, terminations, or extensions, but not "collateral" or "procedural" claims, is equally problematic. See, *e.g.*, J.A. 10-11, 39 (*Doe* district court and Second Circuit). That reading rests on the same mistaken distinction between final agency actions and their underpinnings while adding further line-drawing confusion about what claims are truly "collateral" (versus central) or "procedural" (versus substantive). Compounding the confusion, the *Doe* district court, at least, conceived of virtually every type of APA claim as reviewable under this approach, from the Secretary's purported failures to consult the State Department or engage in a "good-faith and objective review of country conditions," J.A. 18, to alleged "undue political influence" spurring the termination, J.A. 24. Whatever their label, those challenges directly attack the Secretary's termination decisions and their underlying analysis and procedure.

4. Finally, interpreting Section 1254a(b)(5)(A) to prohibit review *only* of the Secretary's country-conditions findings—and perhaps to allow review of even final designation, termination, or extension decisions and all of their other subsidiary parts, see 25A952 Br. in Opp. 22-25—is meritless.

Doe respondents read (25A952 Br. in Opp. 23) the broad term "determination" to refer exclusively to Section 1254a(b)(3)'s instruction to the Secretary to "*deter-*

mine whether the conditions" for designation are still met when considering whether to extend or terminate a designation, 8 U.S.C. 1254a(b)(3)(A) (emphasis added). But Section 1254a(b)(5)(A) refers to "*any* determination * * * with respect to" TPS designation, termination, or extension, 8 U.S.C. 1254a(b)(5)(A), not just one specific "determin[ation]" within that process, 8 U.S.C. 1254a(b)(3)(A). This Court has rejected such a "term of art" construction of "determination"—which is "'hardly a rarely used word'"—when "nothing in the [statute's] context suggests that Congress meant for its use * * * to reach only [statutory] provisions that happen to use some variant of that word." *Calumet*, 605 U.S. at 648-649 (citation omitted).

Doe respondents' reading of "determin[ation]" also fails on its own terms. While Section 1254a(b)(3) refers to a "determin[ation]" regarding country conditions, that simply refers to an evaluation of whether the "findings" about country conditions and other statutory conditions under Section 1254a(b)(1) remain valid. Whether described as "findings" or "determinations," those decisions—along with other subsidiary determinations and the ultimate decision whether to designate the country, terminate the designation, or extend it—are unreviewable. Each falls within the ambit of "*any* determination * * * with respect to" a TPS designation, termination, or extension. 8 U.S.C. 1254a(b)(5)(A) (emphasis added).

5. Respondents' and the lower courts' last interpretive resort—the presumption favoring judicial review—has no purchase here. Contra, *e.g.*, J.A. 9-10, 39, 650-651, 723. That presumption "'may be overcome by specific language' in a provision or evidence 'drawn from the statutory scheme as a whole'"—and "a jurisdiction-stripping statute" is dispositive evidence on that score.

Patel, 596 U.S. at 347 (citation and internal quotation marks omitted); see *Bouarfa*, 604 U.S. at 19. Here, Congress negated the presumption by expressly providing that "*[t]here is no judicial review*" of "any" determination related to a TPS termination. 8 U.S.C. 1254a(b)(5)(A) (emphasis added).

At bottom, respondents and the lower courts seek to rewrite that provision from a judicial-review bar into an all-suits-welcome invitation. It is anyone's guess what claims (if any) would ever be barred under any of those contrary interpretations, or why clever litigants could not sidestep the bar by relabeling their claims. The judicial-review bar would cover nothing if every element comprising the determination were subject to challenge. This Court should decline to "create[ ] a roadmap for the complete evasion of [Section] 1254a(b)(5)(A)" with artful pleading, allowing any plaintiff to "receive an automatic ticket into federal court"—"[a]ll contrary to Congress's will." *NTPSA*, 2026 WL 687355, at *9 (Bumatay, J., dissenting from the denial of rehearing en banc).

II. RESPONDENTS' APA CLAIMS FAIL ON THE MERITS

Even if reviewable, respondents' APA challenges lack merit. The lower courts' contrary holdings defy the APA's prohibition on courts fashioning procedural hurdles for agency decisionmaking. See *Garland* v. *Ming Dai*, 593 U.S. 357, 365 (2021). And the APA demands that courts' "scope of review" of arbitrary-and-capricious challenges reflects "appropriate deference to agency decisionmaking"—yet the lower courts impermissibly "substitute[d] their own judgment for that of the agency." *FDA* v. *Wages & White Lion Investments, L.L.C.*, 604 U.S. 542, 568 (2025).

A. The Secretary Consulted With Appropriate Agencies

First, the lower courts faulted the Secretary for purportedly failing to "consult[] with appropriate agencies of the Government" before terminating Syria's and Haiti's designations. 8 U.S.C. 1254a(b)(3)(A); see J.A. 17-18, 39-40, 672-677.[7] The *Miot* district court acknowledged that DHS solicited and received the State Department's views, but it deemed that exchange insufficiently "meaningful." J.A. 674 (citation omitted). Meanwhile, the *Doe* district court refused to credit *any* consultation, even though the Federal Register notice expressly stated that consultation occurred and no evidence suggested otherwise. J.A. 18, 21; see J.A. 39-40 (Second Circuit finding respondents likely to succeed on consultation claim). But the statutory consultation requirement does not invite district courts to sit in judgment of when agencies have communicated enough.

All the statute requires is that DHS solicit and receive other agencies' views; Congress left the Executive Branch to resolve how that process happens and how much detail other agencies provide. In mandating "consultation with appropriate agencies," Section 1254a(b)(3)(A) does not define "consultation" or specify the "appropriate" agencies. "Consultation" ordinarily means "the act of consulting," and "consult" means "to seek advice or information from; ask guidance from." *The Random House Dictionary of the English Language* 437 (2d ed. 1987); see *The American Heritage Dictionary* 405 (3d ed. 1992) ("[t]o seek advice or information of"). And by us-

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[7] See, *e.g.*, *African Communities Together* v. *Noem*, No. 25-cv-13939, 2026 WL 395732, at *11-*12 (D. Mass. Feb. 12, 2026); *Aung Doe* v. *Noem*, No. 25-cv-15483, 2026 WL 184544, at *13-*15 (N.D. Ill. Jan. 23, 2026); *NTPSA* v. *Noem*, No. 25-cv-5687, 2025 WL 4058572, at *23 (N.D. Cal. Dec. 31, 2025).

ing the term "appropriate," Congress gave the Secretary "'flexibility'" as to which agencies to consult. *Loper Bright Enters.* v. *Raimondo*, 603 U.S. 369, 395 (2024) (citation omitted). Congress thus made clear that the Secretary must seek views from some agencies—but let the Executive Branch determine which views, from which agencies, in which form, would be most useful.

The Secretary plainly satisfied the consultation requirement because DHS sought "advice" and "information" from State, and State provided its views. As to Haiti, a DHS official contacted State, noted that DHS was "re-reviewing country conditions in Haiti" for the TPS designation, and asked State to "advise on State's views on the matter." J.A. 763. State relayed "that there would be no foreign policy concerns with respect to a change in the TPS status of Haiti." *Ibid.* The Secretary considered that input, along with the Country Conditions Memo and Decision Memo she received from U.S. Citizenship and Immigration Services, see J.A. 738-762, and determined that terminating Haiti's TPS designation was appropriate, see 90 Fed. Reg. at 54,735.

Nonetheless, the *Miot* district court deemed DHS and State's "exchange of information" insufficiently "meaningful," J.A. 674 (citation omitted), suggesting that State should have provided DHS with a formal "recommendation letter and final country conditions report" on Haiti, J.A. 676. *Miot* respondents likewise call the exchange "perfunctory" and assert that State has previously provided memos and a "formal recommendation." 25A999 Br. in Opp. 32. But when a statute simply requires one agency to consult others, supposed shortcomings in other agencies' responses is not a failure to consult. See *Philip Morris Prods. S.A.* v. *International Trade Comm'n*, 63 F.4th 1328, 1338 (Fed. Cir. 2023)

("We do not conclude that the Commission failed to perform its duty [to consult] simply because the FDA chose not to submit any additional information.").

Judicial micromanagement of the form and length of agencies' input is especially inappropriate because courts are "'generally not free to impose' additional judge-made procedural requirements on agencies that Congress has not prescribed and the Constitution does not compel." *Ming Dai*, 593 U.S. at 365 (quoting *Vermont Yankee Nuclear Power Corp.* v. *Natural Res. Def. Council, Inc.*, 435 U.S. 519, 524 (1978)). Congress knows how to impose more specific consultation requirements. See, *e.g.*, 8 U.S.C. 1157(e) (defining "appropriate consultation" to require "discussions in person" involving particular information); 16 U.S.C. 1536(b)(3)(A) (Secretary of the Interior, when consulted, must provide a "written statement setting forth the Secretary's opinion, and a summary of the information on which the opinion is based"); 33 U.S.C. 2321a(b) (Secretary of Army must "provide affected State, tribal, and Federal agencies with a copy of the proposed determinations" and "respond in writing to any objections" raised). Where, as here, Congress does not impose such requirements, courts cannot impose their own. See *Vermont Yankee*, 435 U.S. at 524.

As to Syria, while the administrative record has not yet been produced, the Federal Register notice affirmed that the Secretary consulted with appropriate agencies, 90 Fed. Reg. at 45,399-45,402, and documents produced in other TPS cases show that the Secretary requested and received State's advice as to Syria's designation, see *Aung Doe* v. *Noem*, No. 25-cv-15483, 2026 WL 184544, at *13 (N.D. Ill. Jan. 23, 2026) (summarizing email exchange in which State informed DHS that

State "has no foreign policy concerns" with ending Syria's TPS designation and noted that "sanctions on Syria have recently been lifted") (citation omitted). The district court's conclusion (J.A. 17-18) that consultation must not have occurred lacks evidentiary support and contradicts the "presumption of legitimacy" of agency action. *National Archives & Records Admin.* v. *Favish*, 541 U.S. 157, 174 (2004).

B. The Secretary Rightly Assessed The National Interest

The *Doe* district court found another APA violation by reasoning that the Secretary's consideration of the "national interest" in terminating Syria's designation was "contrary to the statute." J.A. 19, 21. *Doe* respondents similarly contend (25A952 Br. in Opp. 34) that the statute requires consideration of the national interest only when designating a country based on extraordinary and temporary circumstances, not when terminating that designation.

That is wrong. The statute plainly mandates consideration of the same factors whether the Secretary is designating or terminating TPS. Section 1254a(b)(3)(B) provides that the Secretary "shall terminate" a designation if she determines that the country "no longer continues to meet the conditions for designation under paragraph (1)." 8 U.S.C. 1254a(b)(3)(B). Paragraph (1), in turn, elaborates three alternative conditions for designation; the third is when "there exist extraordinary and temporary conditions in the foreign state," unless the Secretary "finds that permitting the aliens to remain temporarily in the United States is *contrary to the national interest* of the United States." 8 U.S.C. 1254a(b)(1)(C) (emphasis added).

Then-Secretary Napolitano invoked that third ground as one basis for Syria's TPS designation; she de-

termined that "Syrian nationals cannot return to Syria in safety due to extraordinary and temporary conditions" *and* that "[i]t is not contrary to the national interest of the United States to permit Syrian nationals" to remain in the United States temporarily. 77 Fed. Reg. at 19,028. Thus, when Secretary Noem assessed whether Syria "no longer continues to meet the conditions for designation," 8 U.S.C. 1254a(b)(3)(B), that assessment necessarily included both the "extraordinary and temporary conditions" and the "national interest," 8 U.S.C. 1254a(b)(1)(C). And when she found that Syria's continued designation was "contrary to the national interest," that necessarily meant that a "condition[] for designation" "no longer continue[d] to [be] me[t]." 8 U.S.C. 1254a(b)(1)(C) and (3)(B).

C. The Secretary's Actions Were Not Arbitrary And Capricious

The lower courts next deemed arbitrary and capricious the Secretary's reasons for terminating the TPS designations—for Haiti, her determinations regarding country conditions and the national interest, and for Syria, her view as to the existence of an ongoing armed conflict. J.A. 18, 680-695. But the Secretary's determinations were "reasonable and reasonably explained." *FCC* v. *Prometheus Radio Project*, 592 U.S. 414, 423 (2021). The lower courts inappropriately transformed deferential arbitrary-and-capricious review into de novo judicial scrutiny of Executive-Branch decisionmaking, contrary to this Court's precedent. *E.g.*, *Wages & White Lion*, 604 U.S. at 567. Such flyspecking is particularly inappropriate here, where the Secretary is "assess[ing] practices in foreign countries" and "determin[ing] national policy in light of those assessments"—matters

entrusted to "the political branches, not the Judiciary." *Munaf* v. *Geren*, 553 U.S. 674, 700-701 (2008).

Haiti. The *Miot* district court wrongly second-guessed the Secretary's assessment of country conditions to conclude that Haiti "[i]s a nation deep in crisis." J.A. 680; see J.A. 680-689. The Secretary acknowledged that Haiti still faces significant challenges, including gang violence and internal displacement. 90 Fed. Reg. at 54,735. She nevertheless found sufficient signs of improvement, through "data * * * indicat[ing] parts of the country are suitable to return to"; evidence that Haiti's government would more effectively combat gang violence; and projections that Haiti's economy would grow. *Ibid.* The APA required the district court to give those "predictive judgments" a "wide berth"—not to form its own foreign-policy judgments based on its read of the administrative record. See *Board of County Comm'rs* v. *United States Dep't of Transp.*, 955 F.3d 96, 99 (D.C. Cir. 2020).

The district court separately faulted the Secretary's determinations about the national interest for "fail[ing] to focus on Haitian TPS holders" or their economic impact. J.A. 690 (capitalization and emphasis omitted); see J.A. 689-694. That criticism was equally inappropriate. The Secretary *did* consider Haitian TPS holders and their economic significance—just not in the way the court preferred. The Secretary emphasized the government's inability to adequately vet TPS holders, the "added strain" TPS holders place on public resources and "an already limited job market," and foreign-policy objectives. 90 Fed. Reg. at 54,736-54,738. That the court disagreed with those conclusions provided no warrant for it to redefine what the "national interest" entails. Determinations of the national interest are the

last place for courts to fault agency judgments, given that what serves the national interest offers "no meaningful standard against which to judge the agency's exercise of discretion." *Lincoln* v. *Vigil*, 508 U.S. 182, 191 (1993) (citation omitted); accord *Trump* v. *Hawaii*, 585 U.S. 667, 685-686 (2018); *Webster*, 486 U.S. at 600.

Syria. Similarly, the *Doe* district court rejected the Secretary's conclusion that Syria no longer satisfied the "ongoing armed conflict" criterion for designation, citing State Department advisories warning against travel to Syria and "intervening events," such as "Israeli incursions," that in the court's view "make[] plain that the armed conflict remains widespread." J.A. 18. But the Secretary weighed the evidence and determined that "while some sporadic and episodic violence occurs in Syria," "the nature of violence in Syria has significantly changed" after a regime change. 90 Fed. Reg. at 45,400. Noting the return of "displaced populations," the Secretary explained that the change in the nature of the violence no longer "poses a serious threat to the personal safety of returning Syrian nationals." *Ibid.* The APA and background separation-of-powers principles demand deference to those conclusions, if they are reviewable at all.

Even on its own terms, the district court's contrary conclusion is flawed. The State Department advisories are an "assessment of threats only insofar as they may impact U.S. citizens, nationals, and legal residents," U.S. Dep't of State, *Travel Advisories* (last updated Aug. 11, 2025), https://perma.cc/K5GK-NNWV, and refer to the same violence that the Secretary considered but found outweighed by other facts. As for the court's fleeting reference (J.A. 18) to Israeli incursions that are unconnected to the basis for Syria's designation, the "Secretary possesses full and unreviewable discretion

as to whether to consider [such] intervening events." *Ramos*, 975 F.3d at 899. The Secretary's periodic review evaluates whether "the conditions for [a country's TPS] designation * * * continue to be met," 8 U.S.C. 1254a(b)(3)(A), not whether a new event has given rise to conditions that could warrant a new, discretionary designation.

D. The Terminations Were Not Predetermined

Finally, the lower courts erroneously found APA violations because they deemed the terminations predetermined products of political influence and part of a broader pattern of consistently terminating TPS designations. See J.A. 16, 24-25, 678-679, 694-695. The district courts accused the Secretary of "'shrug[ging] off'" statutory requirements, J.A. 679 (citation omitted), and accused the President of "pa[ying] lip service to the TPS statute while *sub silentio* calling for its demise," J.A. 25. Those objections invent hitherto unrecognized categories of APA violations that are legally and factually unsound.

Legally, claims of preordained decisionmaking require "a strong showing of bad faith or improper behavior." *Citizens to Preserve Overton Park, Inc.* v. *Volpe*, 401 U.S. 402, 420 (1971). But the lower courts identified nothing like that here, for good reason: The Secretary followed the statutory process, considered the statutory factors, and reached an appropriate conclusion based on her determinations as to country conditions and the national interest. Allowing the district courts to infer preordination under those circumstances would circumvent the limits on "inquir[ing] into the mental processes of administrative decisionmakers" that *Overton Park* imposed. *Ibid.*

Likewise, claims of political influence are APA non-starters. "[A] court may not set aside an agency's policymaking decision solely because it might have been * * * prompted by an Administration's priorities." *Department of Commerce* v. *New York*, 588 U.S. 752, 781 (2019); see also *State Farm*, 463 U.S. at 59 (Rehnquist, J., concurring in part and dissenting in part). The President and the Secretary "c[a]me into office with policy preferences and ideas," but the Secretary adhered to the statutory process and "substantiate[d] the legal basis for a preferred policy." *Department of Commerce*, 588 U.S. at 783. That is "hardly improper." *Ibid.*

Nor is a pattern of consistency an APA problem. Contra J.A. 677-679. "[T]he fact that the agency appears to be exercising its * * * discretion consistently is a virtue, not a vice." *Bouarfa*, 604 U.S. at 17. Facing a series of "temporary" designations that have lasted many years or even decades, it is unremarkable that the Secretary found them to have outstripped the TPS statute's criteria.

Factually, the materials the lower courts invoked as evidence of predetermination further refute their conclusions. The Executive Order they cited, see J.A. 16, merely instructs the Secretary to "ensur[e] that designations of [TPS] are consistent with the provisions" of the TPS statute "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." Exec. Order No. 14,159, 90 Fed. Reg. 8443, 8446 (Jan. 29, 2025). An instruction to comply with the statute hardly evidences statutory evasion. Nor do the President's statements questioning the "legality of the TPS program" as previously administered somehow

doom the Secretary's fact-laden analysis of the statutory criteria. J.A. 25.

The record also belies the district courts' treatment (J.A. 677-679) of the Secretary's repeated termination of designations as evidence of slipshod decisionmaking. For example, the designation of South Sudan was extended for six months because the Secretary "only had a non-current record from [the] Department of State" regarding the country conditions and that "record did not contain a meaningful national interest discussion." 90 Fed. Reg. 19,217, 19,218 (May 6, 2025). Only after receiving and considering the information that she deemed necessary did the Secretary act. See 90 Fed. Reg. 50,484 (Nov. 6, 2025). Here too, the Secretary consulted with appropriate agencies, reviewed country conditions, and concluded that Syria and Haiti no longer meet the conditions for designation. See 90 Fed. Reg. at 45,399-45,400; 90 Fed. Reg. at 54,735. The district courts erred by conducting a review that bears no resemblance to the deferential approach the APA requires.

III. THE HAITI TERMINATION DECISION DOES NOT VIOLATE EQUAL-PROTECTION PRINCIPLES

Finally, the notion that the Secretary's termination decision as to Haiti reflects unconstitutional racial animus fails under any standard of scrutiny. J.A. 695-704. The *Miot* district court erred in refusing to apply the *Trump* v. *Hawaii* standard, which asks whether the governmental action "plausibly relate[s] to the Government's stated objective," 585 U.S. at 704-705—here, the government's concerns with protecting national security and aligning TPS designations with its foreign policy. But even under a heightened standard, neither President Trump's out-of-context quotations dating

back to 2017 nor Secretary Noem's statements raise any plausible inference that racial animus motivated any TPS terminations.

A. The Termination Is Constitutional Under *Hawaii*

1. *Hawaii* supplies the relevant equal-protection framework and prescribes a form of rational-basis review that the Haiti TPS termination easily passes.

a. *Hawaii* applied rational-basis review to uphold the constitutionality of the President's proclamation imposing entry restrictions on nationals of certain countries. 585 U.S. at 704. There, like here, the challengers invoked extrinsic campaign statements and in-office quotes from the President as proof that unconstitutional animus infected official action. See *id.* at 699-701. The Court held that the proclamation passed constitutional muster because it "plausibly related to the Government's stated objective to protect the country and improve vetting processes." *Id.* at 704-705.

The Court applied that form of rational-basis review after citing "various aspects" of the plaintiffs' challenge that "inform[ed] [the] standard of review"—many of which recur here. There, as here, the Executive action was "facially neutral" and involved "national security." *Hawaii*, 585 U.S. at 702. There, as here, the plaintiffs "ask[ed] the Court to probe the sincerity of the stated justifications for the policy by reference to extrinsic statements—many of which were made before the President took the oath of office." *Ibid.* There, as here, the challenged action addresses "a matter within the core of executive responsibility." *Ibid.* Indeed, immigration policy is "vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations" that are "exclusively entrusted to the po-

litical branches of government." *Harisiades* v. *Shaughnessy*, 342 U.S. 580, 588-589 (1952).

Most crucially, there, as here, the relevant Executive Branch actions "may implicate 'relations with foreign powers,' or involve 'classifications . . . defined in the light of changing political and economic circumstances'"—judgments that are "'frequently of a character more appropriate to either the Legislature or the Executive.'" *Hawaii*, 585 U.S. at 702 (quoting *Mathews* v. *Diaz*, 426 U.S. 67, 81 (1976)). And "when it comes to collecting evidence and drawing inferences on questions of national security, the lack of competence on the part of the courts is marked." *Id.* at 704 (citation and internal quotation marks omitted).

The Haiti termination decision is replete with such judgments. The Secretary made findings about how TPS termination would advance foreign-policy objectives and fulfill diplomatic undertakings, and she expressed national-security concerns about the inability to effectively "screen and vet Haitians in the United States with [TPS]" due to the "inability to access reliable law enforcement or security information" from Haiti. 90 Fed. Reg. at 54,737. Similar national-security concerns animated the proclamation in *Hawaii*: "preventing entry of nationals who cannot be adequately vetted and inducing other nations to improve their practices." 585 U.S. at 706. Thus, the same reasons for viewing the judicial inquiry as "highly constrained" in *Hawaii* all apply here. *Id.* at 704.

b. The *Hawaii* rational-basis standard is fatal to the racial-animus claim here. This Court "hardly ever strikes down a policy as illegitimate under rational basis scrutiny." *Hawaii*, 585 U.S. at 705. The only exceptions involve laws that "lack any purpose other than a 'bare . . .

desire to harm a politically unpopular group.'" *Ibid.* (citation omitted). The Secretary's termination decision "does not fit th[at] pattern." *Id.* at 706. It expressly hinges on facially legitimate justifications: that country conditions no longer prevent Haitian nationals from returning in safety and that the termination will promote national security and foreign policy. 90 Fed. Reg. at 54,735-54,738. The termination also adduces bona fide factual bases for those justifications, identifying "positive developments" that informed the Secretary's country-conditions assessment, screening and vetting limitations that informed her national-security concerns, and foreign-policy goals of expressing a vote of confidence in advancing Haiti's democratization. *Id.* at 54,735, 54,737-54,738. The termination, in sum, was "expressly premised on legitimate purposes" and "plausibly related to the Government's stated objective[s]." *Hawaii*, 585 U.S. at 704-706. The district court's cursory conclusion (J.A. 696) that *Miot* respondents would likely succeed even under the *Hawaii* standard could only be reached "by refusing to apply anything resembling rational basis review." *Hawaii*, 585 U.S. at 706.

2. The district court and *Miot* respondents would cabin *Hawaii*'s standard to entry restrictions, not to "claims brought by foreign nationals already here." 25A999 Br. in Opp. 37; see J.A. 696-697. That cramped reading is untenable given the Court's recognition in *Hawaii* that rational-basis review applies "across different contexts and constitutional claims," especially in "immigration cases." 585 U.S. at 703-704 (citation omitted).

Further undermining that reading, the Court drew the rational-basis standard from cases involving "the constitutional rights of a U.S. citizen," *Hawaii*, 585 U.S. at 703 (citing *Kleindienst* v. *Mandel*, 408 U.S. 753, 756-

757 (1972)), "expulsion after long residence," *Harisiades*, 342 U.S. at 587 (cited by *Hawaii*, 585 U.S. at 702); and the benefits available to "Cuban refugees" already in the country, *Mathews*, 426 U.S. at 81 (cited by *Hawaii*, 585 U.S. at 702). And *Hawaii* approvingly cited the application of rational-basis review in *Rajah* v. *Mukasey*, 544 F.3d 427, 438 (2d Cir. 2008)—a case, like this one, involving equal-protection challenges to an Executive Branch action brought by aliens within the United States. See *Hawaii*, 585 U.S. at 704. This Court sensibly did not distinguish those cases from entry-restriction cases because "the power to expel" aliens in the United States is just as "fundamental [a] sovereign attribute" as the power to "exclude" aliens before entry. *Fiallo* v. *Bell*, 430 U.S. 787, 792 (1977). Both types of cases can equally implicate foreign-policy and national-security considerations, as this case illustrates.

B. The Termination Is Constitutional Under *Arlington Heights*

The *Miot* district court and respondents would instead apply a heightened standard of scrutiny—but even then, respondents must raise a plausible inference that an "invidious discriminatory purpose was a motivating factor" in the termination. *Village of Arlington Heights* v. *Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977). The extrinsic statements from President Trump and the Secretary that *Miot* respondents and the district court invoke cannot clear that bar. See J.A. 698-703; 25A999 Br. in Opp. 38-40.

A foundational problem for the racial-animus theory is that the President's and Secretary's statements nowhere invoke race; they simply advocate for curbing illegal immigration, including from particular countries. The district court tried to bridge that gap by inferring ra-

cial animus from the fact that the populations of Haiti and other countries mentioned in those statements and at issue in TPS terminations are "predominantly nonwhite." J.A. 699 (citation omitted). But where a particular race "make[s] up a large share of the" relevant alien population, "one would expect them to make up an outsized share of recipients of any cross-cutting immigration relief program." *DHS* v. *Regents of the Univ. of Cal.*, 591 U.S. 1, 34 (2020) (opinion of Roberts, C.J.). That certainly holds for TPS, where "virtually every country that has been designated for TPS since its inception has been 'non-European' * * * and most have majority 'nonwhite' populations." *Ramos*, 975 F.3d at 898. Were that fact "sufficient to state a claim, virtually any generally applicable immigration policy could be challenged on equal protection grounds." *Regents*, 591 U.S. at 34.

Even on their own terms, many cited statements are not "probative of the decision at issue" because they are "remote in time and made in unrelated contexts." *Regents*, 591 U.S. at 35 (opinion of Roberts, C.J.). Some occurred on the campaign trail, "before the President took the oath of office." *Hawaii*, 585 U.S. at 702; see J.A. 698, 801-803, 806. Others date to the first Trump Administration—which *extended* TPS designations for Somalia, South Sudan, Syria, and Yemen. See J.A. 631, 798; see also p. 7, *supra*. And most "occurred primarily in contexts removed from and unrelated to TPS policy or decisions." *Ramos*, 975 F.3d at 898. Indeed, the district court identified only two statements that actually involve TPS; both sharply criticize prior program implementation but involve no racial hostility.[8]

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[8] See J.A. 699 (quoting President Trump referring to TPS as a "certain little trick" and asserting that TPS holders "are illegal immigrants as far as [he is] concerned"); J.A. 703 (quoting Secretary

The district court further erred by focusing on the *President's* statements to evaluate a determination by the *Secretary*. See *Regents*, 591 U.S. at 35 (opinion of Roberts, C.J.) (finding the President's statements insufficiently probative where "[t]he relevant actors were most directly" the Acting Secretary and the Attorney General). That the Secretary's actions aligned with Administration policies "does not in itself support the conclusion that the President's alleged racial animus was a motivating factor in the TPS decisions." *Ramos*, 975 F.3d at 898. That "cat's-paw" approach would invite impermissible intrusion on privileged Executive Branch deliberations, *id.* at 897; see *United States* v. *Nixon*, 418 U.S. 683, 708 (1974), and potential litigant-driven discovery that would disrupt the President's execution of the laws, see *Nixon* v. *Fitzgerald*, 457 U.S. 731, 749-750 (1982).

The district court suggested that the President in fact "influenced" the Secretary's decision. J.A. 701-703; accord 25A999 Br. in Opp. 39. But the President's use of first-person pronouns when describing Administration actions in speeches does not transform the Secretary's statutory determinations into the President's. Nor does an Executive Order instructing the Secretary to follow the TPS statute change the calculus. See 90 Fed. Reg. at 8446. The district court's and respondents' approach would vitiate *Hawaii* and render every campaign speech or press statement about immigration restrictions fodder for across-the-board racial-animus challenges to virtually every immigration policy of this Administration and future ones. Equal-protection principles do not require that implausible result.

Noem referring to TPS holders as "'poorly vetted migrants' who include 'MS-13 gang members [and] known terrorists and murderers'").

CONCLUSION

The orders of the district courts postponing the effective date of the Secretary's TPS terminations should be reversed.

Respectfully submitted.

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APPENDIX

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APPENDIX

1. U.S. Const. Amend. V provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

2. 8 U.S.C. 1254a provides:

Temporary protected status

(a) Granting of status

(1) In general

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

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

(B) shall authorize the alien to engage in employment in the United States and provide the al-

ien with an "employment authorized" endorsement or other appropriate work permit.

(2) Duration of work authorization

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

(3) Notice

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

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

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

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

(4) Temporary treatment for eligible aliens

(A) In the case of an alien who can establish a prima facie case of eligibility for benefits under paragraph (1), but for the fact that the period of regis-

tration under subsection (c)(1)(A)(iv) has not begun, until the alien has had a reasonable opportunity to register during the first 30 days of such period, the Attorney General shall provide for the benefits of paragraph (1).

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

(5) Clarification

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

(b) Designations

(1) In general

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

(A) the Attorney General finds that there is an ongoing armed conflict within the state and,

due to such conflict, requiring the return of aliens who are nationals of that state to that state (or to the part of the state) would pose a serious threat to their personal safety;

(B) the Attorney General finds that—

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

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

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

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

A designation of a foreign state (or part of such foreign state) under this paragraph shall not become effective unless notice of the designation (including a statement of the findings under this paragraph and the effective date of the designation) is published in the Federal Register. In such notice, the Attorney General shall also state an estimate of the number of nationals of the foreign state designated who are (or within the effective period of the designation are

likely to become) eligible for temporary protected status under this section and their immigration status in the United States.

(2) Effective period of designation for foreign states

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

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

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

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

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

(A) Periodic review

At least 60 days before end of the initial period of designation, and any extended period of designation, of a foreign state (or part thereof) under this section the Attorney General, after consultation with appropriate agencies of the Government, shall review the conditions in the foreign state (or part of such foreign state) for which a designation is in effect under this subsection and shall determine whether the conditions for such designation under this subsection continue to be met. The

Attorney General shall provide on a timely basis for the publication of notice of each such determination (including the basis for the determination, and, in the case of an affirmative determination, the period of extension of designation under subparagraph (C)) in the Federal Register.

(B) Termination of designation

If the Attorney General determines under subparagraph (A) that a foreign state (or part of such foreign state) no longer continues to meet the conditions for designation under paragraph (1), the Attorney General shall terminate the designation by publishing notice in the Federal Register of the determination under this subparagraph (including the basis for the determination). Such termination is effective in accordance with subsection (d)(3), but shall not be effective earlier than 60 days after the date the notice is published or, if later, the expiration of the most recent previous extension under subparagraph (C).

(C) Extension of designation

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

(4) Information concerning protected status at time of designations

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

(5) Review

(A) Designations

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

(B) Application to individuals

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

(c) Aliens eligible for temporary protected status

(1) In general

(A) Nationals of designated foreign states

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

nated state), meets the requirements of this paragraph only if—

(i) the alien has been continuously physically present in the United States since the effective date of the most recent designation of that state;

(ii) the alien has continuously resided in the United States since such date as the Attorney General may designate;

(iii) the alien is admissible as an immigrant, except as otherwise provided under paragraph (2)(A), and is not ineligible for temporary protected status under paragraph (2)(B); and

(iv) to the extent and in a manner which the Attorney General establishes, the alien registers for the temporary protected status under this section during a registration period of not less than 180 days.

(B) Registration fee

(i) In general

The Attorney General may require payment of a reasonable fee as a condition of registering an alien under subparagraph (A)(iv) (including providing an alien with an "employment authorized" endorsement or other appropriate work permit under this section). The amount of any such fee shall not exceed $500, subject to the adjustments required under clause (ii). In the case of aliens registered pursuant to a designation under this section made after July 17, 1991, the Attorney General may impose a separate,

additional fee for providing an alien with documentation of work authorization. Notwithstanding section 3302 of title 31, all fees collected under this subparagraph shall be credited to the appropriation to be used in carrying out this section.

(ii) Annual adjustments for inflation

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

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

(II) the product resulting from the multiplication of the amount referred to in subclause (I) by the percentage (if any) by which the Consumer Price Index for All Urban Consumers for the month of July preceding the date on which such adjustment takes effect exceeds the Consumer Price Index for All Urban Consumers for the same month of the preceding calendar year, rounded to the next lowest multiple of $10.

(iii) Disposition of temporary protected status fees

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

(iv) No fee waiver

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

(2) Eligibility standards

(A) Waiver of certain grounds for inadmissibility

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

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

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

(iii) the Attorney General may not waive—

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

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

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

(B) Aliens ineligible

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

(i) the alien has been convicted of any felony or 2 or more misdemeanors committed in the United States, or

(ii) the alien is described in section 1158(b)(2)(A) of this title.

(3) Withdrawal of temporary protected status

The Attorney General shall withdraw temporary protected status granted to an alien under this section if—

(A) the Attorney General finds that the alien was not in fact eligible for such status under this section,

(B) except as provided in paragraph (4) and permitted in subsection (f)(3), the alien has not remained continuously physically present in the United States from the date the alien first was granted temporary protected status under this section, or

(C) the alien fails, without good cause, to register with the Attorney General annually, at the end of each 12-month period after the granting of such status, in a form and manner specified by the Attorney General.

(4) Treatment of brief, casual, and innocent departures and certain other absences

(A) For purposes of paragraphs (1)(A)(i) and (3)(B), an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States, without regard to whether such absences were authorized by the Attorney General.

(B) For purposes of paragraph (1)(A)(ii), an alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence described in subparagraph (A) or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

(5) Construction

Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for temporary protected status under this section.

(6) Confidentiality of information

The Attorney General shall establish procedures to protect the confidentiality of information provided by aliens under this section.

(d) Documentation

(1) Initial issuance

Upon the granting of temporary protected status to an alien under this section, the Attorney General shall provide for the issuance of such temporary doc-

umentation and authorization as may be necessary to carry out the purposes of this section.

(2) Period of validity

Subject to paragraph (3), such documentation shall be valid during the initial period of designation of the foreign state (or part thereof) involved and any extension of such period. The Attorney General may stagger the periods of validity of the documentation and authorization in order to provide for an orderly renewal of such documentation and authorization and for an orderly transition (under paragraph (3)) upon the termination of a designation of a foreign state (or any part of such foreign state).

(3) Effective date of terminations

If the Attorney General terminates the designation of a foreign state (or part of such foreign state) under subsection (b)(3)(B), such termination shall only apply to documentation and authorization issued or renewed after the effective date of the publication of notice of the determination under that subsection (or, at the Attorney General's option, after such period after the effective date of the determination as the Attorney General determines to be appropriate in order to provide for an orderly transition).

(4) Detention of alien

An alien provided temporary protected status under this section shall not be detained by the Attorney General on the basis of the alien's immigration status in the United States.

(e) Relation of period of temporary protected status to cancellation of removal

With respect to an alien granted temporary protected status under this section, the period of such status shall not be counted as a period of physical presence in the United States for purposes of section 1229b(a) of this title, unless the Attorney General determines that extreme hardship exists. Such period shall not cause a break in the continuity of residence of the period before and after such period for purposes of such section.

(f) Benefits and status during period of temporary protected status

During a period in which an alien is granted temporary protected status under this section—

(1) the alien shall not be considered to be permanently residing in the United States under color of law;

(2) the alien may be deemed ineligible for public assistance by a State (as defined in section 1101(a)(36) of this title) or any political subdivision thereof which furnishes such assistance;

(3) the alien may travel abroad with the prior consent of the Attorney General; and

(4) for purposes of adjustment of status under section 1255 of this title and change of status under section 1258 of this title, the alien shall be considered as being in, and maintaining, lawful status as a nonimmigrant.

(g) Exclusive remedy

Except as otherwise specifically provided, this section shall constitute the exclusive authority of the Attorney General under law to permit aliens who are or may become otherwise deportable or have been paroled into the United States to remain in the United States temporarily because of their particular nationality or region of foreign state of nationality.

(h) Limitation on consideration in Senate of legislation adjusting status

(1) In general

Except as provided in paragraph (2), it shall not be in order in the Senate to consider any bill, resolution, or amendment that—

(A) provides for adjustment to lawful temporary or permanent resident alien status for any alien receiving temporary protected status under this section, or

(B) has the effect of amending this subsection or limiting the application of this subsection.

(2) Supermajority required

Paragraph (1) may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members duly chosen and sworn. An affirmative vote of three-fifths of the Members of the Senate duly chosen and sworn shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under paragraph (1).

(3) Rules

Paragraphs (1) and (2) are enacted—

(A) as an exercise of the rulemaking power of the Senate and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the matters described in paragraph (1) and supersede other rules of the Senate only to the extent that such paragraphs are inconsistent therewith; and

(B) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner as in the case of any other rule of the Senate.

(i) Annual report and review

(1) Annual report

Not later than March 1 of each year (beginning with 1992), the Attorney General, after consultation with the appropriate agencies of the Government, shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate on the operation of this section during the previous year. Each report shall include—

(A) a listing of the foreign states or parts thereof designated under this section,

(B) the number of nationals of each such state who have been granted temporary protected status under this section and their immigration status before being granted such status, and

(C) an explanation of the reasons why foreign states or parts thereof were designated under subsection (b)(1) and, with respect to foreign states or parts thereof previously designated, why the des-

ignation was terminated or extended under subsection (b)(3).

(2) Committee report

No later than 180 days after the date of receipt of such a report, the Committee on the Judiciary of each House of Congress shall report to its respective House such oversight findings and legislation as it deems appropriate.