

In the Supreme Court of the United States

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

Petitioners,

v.

DAHLIA DOE, ET AL.,

Respondents.

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

Petitioners,

v.

FRITZ EMMANUEL LESLY MIOT, ET AL.,

Respondents.

**On Writs of Certiorari Before Judgment
to the United States Courts of Appeals for the
Second Circuit and the District of Columbia**

**BRIEF OF AMICI CURIAE
MEMBERS OF CONGRESS
IN SUPPORT OF RESPONDENTS**

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INTEREST OF THE AMICI CURIAE¹

Amici are 187 members of the One Hundred Nineteenth Congress, whose full names and titles are listed in Appendix. Many of the *amici* have served in the House and Senate through the implementation of Temporary Protected Status (TPS) under Democratic and Republican Administrations.

As members of Congress, *amici* have a strong and unique interest in ensuring that the Executive Branch faithfully executes the laws Congress enacts and does not usurp Congressional or Judicial authority. *Amici* offer their perspectives and expertise to assist this Court in resolving questions related to the scope of what Congress delegated to the Executive Branch in the TPS statute. *Amici* call the Court's attention to the bipartisan congressional support for TPS programs the Executive Branch seeks to terminate. *Amici* include senators and congresspeople in whose states and districts TPS holders live and work. *Amici* have a special interest in ensuring that the TPS statute is faithfully followed because of the severe and substantial economic and social impacts that the unlawful revocation of TPS for hundreds of thousands of people would have on their districts and the communities they represent in Congress.

¹ No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici curiae or its counsel made a monetary contribution to its preparation or submission.



INTRODUCTION

Amici, as members of Congress, are keenly aware of the critical role that separation of powers plays in our constitutional democracy as a means to safeguard against the concentration of power within a single government branch. Separation of powers requires that the Executive Branch not usurp Congress's power to make laws; it mandates that the Executive Branch not override the Judiciary's power to declare what the law is; and it obligates the Judiciary to not shy from its duty to prevent Executive Branch overreach that upsets the carefully calibrated role each co-equal branch plays in our constitutional democracy.

Moreover, the Executive Branch's actions contradict the bipartisan opposition to terminating TPS programs. Members of Congress on both sides of the aisle have long supported temporary protected status for foreign nationals who fled dangerous conditions in their countries. The Executive Branch's unlawful actions in terminating TPS programs runs counter to positions expressed by members of Congress on both sides of the aisle.

The United States District Court for the District of Columbia properly determined that the plain text of the TPS statute does not bar judicial review of the plaintiffs' claims and that the Executive Branch's actions in terminating TPS violated the law. *Amici* Members of Congress join Respondents in urging the Court to affirm.



ARGUMENT

I. Congress Intended TPS to Fill an Important Gap in Our Immigration and Refugee Laws.

Congress enacted TPS as part of the Immigration Act of 1990, a statute that “recognizes the fundamental importance and historic contributions of immigrants to our country.” Presidential Statement on Signing the Immigration Act of 1990 (Nov. 29, 1990). Congress specifically designed TPS to provide a statutory framework allowing relief to individuals facing serious but generalized forms of harm as opposed to the targeted persecution necessary to receive asylum. The TPS program therefore provides temporary protection to individuals unable to return to their country of origin because of ongoing armed conflict, natural disaster, or other extraordinary circumstances. 8 U.S.C. § 1254a. The drafters of the TPS statute recognized that “not everyone who needs protection meets the strict standard of asylum.” *See* 136 Cong. Rec. (House) 27130 (*Statement of Rep. William H. Gray*). One of the TPS statute’s key architects, Rep. Joe Moakley, emphasized: “[W]e have an opportunity to uphold our country’s commitment to provide safe haven for the innocent victims of war. We also have an opportunity to act upon our deep moral obligation to protect innocent victims.” *See* 136 Cong. Rec. (House) 27131 (*Statement of Rep. Joe Moakley*).

In fact, at the time, Congress noted that despite the severe conditions in El Salvador, the asylum approval rate for Salvadorans averaged less than five percent. H.R. Rep. No. 244, 101st Cong., 1st Sess. pt. 1, at 11 (1989). Congress therefore intended the TPS

statute to “fill[] an important gap in our immigration and refugee laws.” 135 Cong. Rec. H7501 (daily ed. Oct. 25, 1989) (*Statement of Rep. Hamilton Fish*).

II. The Executive Branch Intrudes on Congressional and Judicial Power by Contending That the Secretary’s Decision Is Unreviewable.

The Executive Branch argues that 8 U.S.C. § 1254a(b)(5)(A) bars judicial review of the plaintiffs’ claims. But as the United States District Court of the District of Columbia, *Miot v. Trump*, __F.Supp.3d__, No. 25-CV-02471 (ACR), 2026 WL 266413 (D.D.C. Feb. 2, 2026), properly concluded, that is incorrect. Instead, the Executive Branch’s position violates the separation of powers because it claims an authority to prevent judicial review that was never granted to it by Congress. *See Gundy v. United States*, 588 U.S. 128, 168 (2019) (“[W]hen the separation of powers is at stake,” the Court does not “throw up [its] hands.”) (Gorsuch, J., dissenting).

“Congress expects courts to handle technical statutory questions.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 402 (2024). “Courts interpret statutes, no matter the context, based on the traditional tools of statutory construction, not individual policy preferences.” *Id.* at 403. This Court “recognize[s] a ‘strong presumption in favor of judicial review’ in interpreting statutes, ‘including statutes that may limit or preclude review.’” *Cuozzo Speed Techs. v. Com. for Intell. Prop.*, 579 U.S. 261, 273 (2016). This presumption may be overcome only “by ‘clear and convincing indications, drawn from ‘specific language,’ ‘specific legislative history,’ and ‘inferences of intent drawn from the

statutory scheme as a whole,’ that Congress intended to bar review.” *Id.* (quoting *Block v. Cmty. Nutrition Inst.*, 467 U.S. 340, 349-50 (1984)); *see also Kucana v. Holder*, 558 U.S. 233, 251-52 (2010) (“[T]he Court assumes that ‘Congress legislates with knowledge of the presumption’ favoring interpreting statutes to allow judicial review of administrative action (citation omitted)).

A. Section 1254a(b)(5)(A) Does Not Preclude Judicial Review of the Plaintiffs’ Claims

Section 1254a(b)(5)(A) states, “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.” 8 U.S.C. § 1254a(b)(5)(A). The Executive Branch argues that this statute bars judicial review of the plaintiffs’ claims. This Court should reject that argument.

The district court properly concluded that Section 1254a(b)(5)(A) does not preclude judicial review because the plaintiffs “challenge . . . how the Secretary went about making her determination”—not the Secretary’s determination itself. *See Miot*, ___ F.Supp.3d ___, 2026 WL 266413, at *10 (emphasis in opinion). Interpreting a similar provision, this Court in *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479 (1991), distinguished between “a single act” and “a group of decisions or a practice or procedure employed in making decisions.” *McNary*, 498 U.S. at 491–492. Here, the district court ruled that, under *McNary*, the plaintiffs’ APA claims may proceed because they “challenge purported deficiencies in Secretary Noem’s ‘group of decisions,’ ‘practice,’ and ‘procedure’ in reviewing Haiti’s TPS designation.” *Miot*, No. 25-CV-02471 (ACR), 2026 WL

266413, at *10 (quoting *McNary*, 498 U.S. at 492). That conclusion is correct.

Moreover, the district court was also correct that the TPS statute’s jurisdiction-stripping provision is narrow. *See Miot*, ___F.Supp.3d___, 2026 WL 266413, at *11-12. A narrow reading of Section 1254a(b)(5)(A) to allow limited judicial review is consistent with the understanding that “Congress acts intentionally and purposely.” *Russello v. United States*, 464 U.S. 16, 23 (1983). If Congress intended to limit judicial review in all instances, Congress could “easily have used broader statutory language.” *McNary*, 498 U.S. at 494; *see also Reno v. Catholic Soc. Servs., Inc.*, 509 U.S. 43, 53-56 (1993) (finding 8 U.S.C. § 1255a(f) only barred judicial review of “the denial of an individual application” while broader challenges not tied to such denials were not barred from judicial review).

B. Legislative History Supports a Narrow Interpretation of the Bar on Judicial Review

Beyond the statutory text, a narrow interpretation of Section 1254a(b)(5)(A) is supported by this Court’s “well-settled” and “strong presumption” favoring judicial review of administrative actions. *McNary*, 498 U.S. at 496. This Court has long held that “when a statutory provision is reasonably susceptible to divergent interpretation, we adopt the reading that accords with traditional understandings and basic principles: that executive determinations generally are subject to judicial review.” *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 229 (2020) (citing *Kucana*, 558 U.S. at 251) (internal quotations marks omitted). This presumption can only be overcome by “clear and convincing evidence”

of congressional intent to preclude judicial review. *Abbott Labs. v. Gardner*, 387 U.S. 136, 141 (1967).

Despite the Executive Branch's argument that it has long exercised inherent authority in this arena, Congress expressly enacted TPS to address prior concerns about the lack of criteria guiding the Executive Branch and the lack of transparency in the then-existing ad hoc process. Although Congress recognized the Executive Branch's unique role in matters of foreign policy, it understood that the Executive Branch could not have unfettered discretion in TPS determinations. As Representative Richardson explained in discussion over a predecessor safe haven bill in 1989, the goal was to "establish an orderly, systematic procedure for providing temporary protected status for nationals of countries undergoing civil war or extreme tragedy, because we need to replace the current ad hoc, haphazard regulations and procedures that exist today." 135 Cong. Rec. H7501 (daily ed. Oct. 25, 1989) (*Statement of Rep. Bill Richardson*) see also 136 Cong. Rec. (House) 27130 (*Statement of Rep. Mary Rose Oakar*) ("An orderly, systematic procedure for providing temporary protected status for nationals of countries undergoing war, civil war, or other extreme tragedy is needed to replace the current ad hoc haphazard procedure.").

The Executive Branch's position in this case, by contrast, amounts to an assertion that Congress created a detailed statutory scheme but then eliminated any mechanism to ensure the process was followed. That is not the best reading of either the text or the relevant history. Instead, in Section 1254a(b)(5)(A) Congress preserved the Secretary's authority in matters uniquely within her purview while preserving judicial

review on procedural issues arising under the TPS statute. Acknowledgment of Executive authority in one respect does not equal an abdication of judicial authority in all.

Indeed, Congress enacted the TPS statute to prevent the types of actions that the Executive Branch has taken with respect to TPS terminations. For example, when the TPS statute was enacted, Representative Levin stated, “Perhaps the most important aspect of this bill is that it will standardize the procedure for granting temporary stays of deportation. Refugees, spawned by the sad and tragic forces of warfare, should not be subject to the vagaries of our domestic politics as well Our recent domestic political squabble over the relative merits of Salvadorans and Nicaraguans as political refugees should never be repeated.” 135 Cong. Rec. H7501 (daily ed. Oct. 25, 1989) (*Statement of Rep. Sander Levin*) (emphasis added). Similarly, Representative Brennan warned that the prior process of “extended voluntary departure” potentially sent migrants “mixed messages which result from a vague or arbitrary policy.” 135 Cong. Rec. H7501 (daily ed. Oct. 25, 1989) (*Statement of Rep. Joseph Brennan*).

In short, Congress, in enacting the TPS statute, recognized the need to regularize the process of awarding humanitarian protection based on enumerated criteria to protect the decision from political pressures. The contemporaneous statements of various members of Congress reflect clear legislative intent to constrain executive discretion and replace the prior practice of providing nationality-based humanitarian protection on an ad hoc and opaque basis. Precluding the plaintiffs’ procedural claims here from judicial review under

Section 1254a(b)(5)(A) runs counter to one of the critical purposes that underpins the TPS statute.

III. TPS Has Long Enjoyed Bipartisan Congressional Support

Members on both sides of the Congressional aisle have long recognized the ongoing interest in maintaining the TPS designations that have been terminated by the Executive Branch. In particular, the Executive Branch’s attempts to terminate Haiti TPS have not been popular.² In fact, many public officials—on both sides of the aisle—have underlined the substantial public interest in maintaining Haiti TPS instead of terminating it.

On March 6, 2025, thirty-eight members of Congress urged President Trump and Secretary Noem to reverse the Haiti TPS decision, emphasizing that TPS “strengthens America’s workforce and economy,” and stressing that Haiti is experiencing unprecedented levels of economic collapse and political instability.³ Two weeks later, 62 members of the House of Representatives and 23 Senators demanded reinstatement

²See, e.g., Jack Royer and Kevin Boulandier, *7News/Suffolk poll: Majority of Miami residents oppose recent ICE raids, termination of TPS for Haitians but are split on the economy*, 7NEWS MIAMI (Jul. 14, 2025), <https://wsvn.com/news/politics/7news-suffolk-poll-majority-of-miami-residents-oppose-recent-ice-raids-termination-of-tps-for-haitians-but-are-split-on-the-economy/>.

³ Sheila Cherfilus-McCormick et al., *Letter to President Trump and Secretary Noem* (Mar. 6, 2025), <https://cherfilus-mccormick.house.gov/sites/evo-subsites/cherfilus-mccormick.house.gov/files/evo-media-document/final-haiti-tps-letter-to-president-trump-and-secretary-noem.pdf>.

of the Haiti TPS designation.⁴ These members stated: “Failure to extend and redesignate TPS would violate the INA’s requirement for data-driven decisions and abandon over 500,000 Haitians to a warzone the U.S. government has explicitly deemed unsafe. Congress intended TPS to be both a humanitarian tool and a pragmatic response to unstable conditions abroad. While DHS has discretion, that authority must be exercised with diligence, transparency, and fidelity to the law.”⁵

⁴ Congresswoman Ayanna Pressley, Press Release: *Pressley, Clarke, Van Hollen Lead Letter to the Administration Demanding Reinstatement of TPS for Haiti* (Mar. 18, 2025), <https://pressley.house.gov/2025/03/18/pressley-clarke-van-hollen-lead-letter-to-the-administration-demanding-reinstatement-of-tps-for-haiti/>.

⁵ *Id.*; see also Congresswoman Ayanna Pressley, Press Release: *Pressley Condemns Trump’s Cruel Termination of TPS for Haitians* (Jun. 28, 2025), <https://pressley.house.gov/2025/06/28/pressley-condemns-trumps-cruel-termination-of-tps-for-haitians/>; Congresswoman Frederica Wilson, Congresswoman Frederica Wilson, Press Release: *Statement on the Termination of TPS for Haitians* (Jun. 27, 2025), <https://wilson.house.gov/media/press-releases/congresswoman-frederica-wilson-statement-on-the-termination-of-tps-for-haitians>; Senator Ed Markey, Press Release: *Markey and Warnock Demand Answers From Secretaries Rubio and Noem on Contradictory U.S. Foreign and Immigration Policies Toward Haiti and Potential Illegal Arms Exports to Port-au-Prince* (Jul. 24, 2025), <https://www.markey.senate.gov/news/press-releases/markey-and-warnock-demand-answers-from-secretaries-rubio-and-noem-on-contradictory-us-foreign-and-immigration-policies-toward-haiti-and-potential-illegal-arms-exports-to-port-au-prince>; Congresswoman Yvette D. Clarke, Press Release: *Clarke, Haiti Caucus Co-Chairs Condemn Trump for Ending TPS for Haiti* (Feb. 21, 2025), <https://clarke.house.gov/clarke-haiti-caucus-co-chairs-condemn-trump-for-ending-tps-for-haiti/>.

The concern is bipartisan. Republican Congressman Mike Lawler’s district north of New York City contains the largest Haitian diaspora constituency in the country. Together with Congresswoman Laura Gillen and Congresswoman Cherfilus-McCormick, Congressman Lawler introduced bipartisan legislation in March 2025 to require Secretary Noem to extend TPS protection for Haitians.⁶ Congressman Lawler “encourag[ed] the Administration to keep [TPS] in place for Haitian citizens,” and emphasized the ongoing need for Haiti TPS due to the “unprecedented instability” in Haiti where “armed gangs largely control the country.”⁷

Other officials have echoed the same sentiment. The Republican mayor of Springfield, Ohio, home to many Haitian TPS holders, also spoke out against the Trump Administration’s decision to terminate the Haiti TPS designation: “These individuals were given hope and a sense of security through the Temporary Protected Status policy, which has been embraced by several administrations. The United States must continue to be a beacon of hope and a torchbearer of democracy.”⁸ The mayor added that Haitian TPS

⁶ Congresswoman Laura Gillen, Press Release: *Gillen Introduces Bipartisan Legislation to Extend Temporary Protected Status for Haitians* (Mar. 3, 2025), <https://gillen.house.gov/media/press-releases/gillen-introduces-bipartisan-legislation-extend-temporary-protected-status>.

⁷ Congressman Mike Lawler, Image posted @repmikelowler: INSTAGRAM (Feb. 20, 2025), https://www.instagram.com/p/DGT-JB1JIbM/?igsh=NXRvbzJoanBxd213&img_index=1; see also Congressman Mike Lawler, message posted @RepMikeLawler, X (Jul. 12, 2025, at 15:47 ET), <https://x.com/RepMikeLawler/status/1944121452900368452>.

⁸ Billal Rahman, *Springfield’s Republican Mayor Calls Out Trump’s Immigration Move*, NEWSWEEK (Feb. 24, 2025),

holders “have strengthened our local economy by filling key roles in manufacturing and health care”⁹ The Republican Governor of Ohio, Mike DeWine, likewise highlighted the economic benefits that Haitian TPS holders bring to Springfield: “We talked to the management of those companies [in Springfield], and they basically said, look, if we didn’t have these Haitians, we couldn’t fill these slots, and we can’t produce what we need to produce.”¹⁰

Moreover, as of March 28, 2026, a discharge petition in the House calling for a resolution to require the Executive Branch to extend Haitian TPS has garnered 218 signatures.¹¹ Four Republican representatives have signed the Haiti TPS discharge petition.¹² The congressional support for continuing the Haiti TPS program is substantial and broad based.

<https://www.newsweek.com/rob-rue-springfield-trump-immigration-policy-hatian-tps-2035146>.

⁹ *Id.*

¹⁰ Danae King, *‘Death sentence’: Haitian migrants in Ohio must leave as Trump axes TPS protections*, Columbus Dispatch (Jul. 3, 2025), <https://www.dispatch.com/story/news/2025/07/02/columbus-springfield-haitians-end-of-temporary-protected-status-tps-a-death-sentence-donald-trump/84415492007/>.

¹¹ Sophie Brams, *House Discharge Petition on TPS for Haiti Secures Enough Signatures to Force Vote*, THE HILL (Mar. 28, 2026), <https://thehill.com/homenews/house/5806112-trump-haiti-tps-petition-vote/>.

¹² *Id.*

In addition, members on both sides of the aisle have expressed support for maintaining the Venezuelan TPS designation. On March 7, 2019, for example, then-Senator Marco Rubio, alongside Senators Durbin, Menendez, and Schumer, led a bipartisan group of 24 senators urging President Trump to designate Venezuela for Temporary Protected Status, highlighting the country's deteriorating security and humanitarian conditions.¹³

Not long afterward, on July 25, 2019, the U.S. House of Representatives passed H.R. 549, the Venezuela TPS Act of 2019. *See* H.R. 549, 116th Cong. (2019). Rep. Mario Diaz-Balart commented, "Today, the House of Representatives was able to gather the strong, bipartisan support needed to pass [the Act which would grant] temporary protected status in the United States until it is safe for them to return to Venezuela."¹⁴ Unfortunately, despite several efforts, the Senate was unable to pass the Act, and it was left to President Trump on his last day in office to provide temporary legal status through a different pathway, the Deferred Enforced Departure program. *Memorandum on Deferred Enforced Departure for Certain Venezuelans*, 86 Fed. Reg. 6845 (Jan. 19, 2021).

¹³ U.S. Sen. Dick Durbin, Press Release: *Durbin, Rubio, Menendez, Schumer Lead 24 Senators in Pressing President Trump to Designate Venezuela for TPS* (Mar. 7, 2019), <https://www.durbin.senate.gov/newsroom/press-releases/durbin-rubio-menendez-schumer-lead-24-senators-in-pressing-president-trump-to-designate-venezuela-for-tps>.

¹⁴ U.S. Rep. Darren Soto, Press Release: *Venezuela TPS Act Passes U.S. House of Representatives* (July 25, 2019), <https://soto.house.gov/media/press-releases/venezuela-tps-act-passes-us-house-representatives>.

In March 2021, the Department of Homeland Security granted TPS eligibility to Venezuelans. This grant received bipartisan acclaim, including from then-Senator Rubio, who underscored that it was President Trump who had first offered Venezuelans protection from deportation. Then-Senator Rubio further stated he was “glad the Biden administration share[d] that commitment” to Venezuelans.¹⁵ Along with then-Senator Bob Menendez, in March 2022 then-Senator Rubio urged Secretary Mayorkas to “redesignate Venezuela for Temporary Protected Status,” explaining that “[e]xtending this designation is absolutely essential for eligible Venezuelans currently in the United States who are unable to return to their homeland due to the dire conditions in that country.”¹⁶

Since then, members of Congress from both sides of the aisle have continued to support Venezuela TPS and the communities in this country where many Venezuelans have found temporary refuge.¹⁷ Shortly after President Trump took office in January 2025, three Republican representatives from Florida, Rep-

¹⁵ Sabrina Rodriguez, *Biden Administration Grants Venezuelans Temporary Protected Status*, POLITICO (Mar. 8, 2021), <https://www.politico.com/news/2021/03/08/biden-venezuelans-temporary-protected-status-474424>.

¹⁶ U.S. Sen. Marco Rubio and U.S. Sen. Robert Menedez, Letter to U.S. Department of Homeland Security (Mar. 31, 2022), <https://www.foreign.senate.gov/imo/media/doc/menendez-rubio-letter-to-dhs-re-venezuela-tps-april12022.pdf>.

¹⁷ *E.g.*, U.S. Rep. María Elvira Salazar, Press Release: *Reps. Salazar, Soto, and Wasserman Schultz Introduce Legislation to Designate TPS for Venezuelans* (May 9, 2025), <https://salazar.house.gov/media/press-releases/rep-salazar-soto-and-wasserman-schultz-introduce-legislation-designate-tps>.

representatives Mario Díaz-Balart (FL-26), Carlos A. Giménez (FL-28), and María Elvira Salazar (FL-27), released a joint statement in support of Venezuela TPS, observing that, as a result of the TPS designation, “many Venezuelans have arrived in our country and have integrated into our communities, respecting our laws and contributing to the prosperity of our great country.”¹⁸ As Venezuelan TPS litigation progressed, in May 2025, a bipartisan group of members of the House of Representatives introduced the Venezuela TPS Act of 2025, which proposed to designate TPS for Venezuelans to “protect approximately 600,000 Venezuelans in the United States from deportation.”¹⁹

In sum, *amici* Members of Congress have a strong interest in preserving the benefits that TPS holders bring to their constituents’ communities. *Amici* also have an interest in protecting the designation and termination process that is enshrined in the TPS statute from the arbitrary termination procedure undertaken by the Executive Branch here. *Amici* urge this Court to affirm.



¹⁸ U.S. Rep. Mario Díaz-Balart, Press Release: *Díaz-Balart, Giménez, and Salazar Stand in Solidarity with the Venezuelan People* (Jan. 29, 2025), English/Spanish <https://mariodiazbalart.house.gov/media-center/press-releases/englishespanol-diaz-balart-gimenez-and-salazar-stand-solidarity>.

¹⁹ *Salazar*, *supra* n.6.

CONCLUSION

Amici Members of Congress ask this Court to affirm.

Respectfully submitted,

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April 13, 2026

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List of Amici Curiae	
Members of Congress	1a

**LIST OF AMICI CURIAE
MEMBERS OF CONGRESS**

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