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.*,

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 AND DISTRICT OF COLUMBIA CIRCUITS

BRIEF OF THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION AND IMMIGRATION LAW SCHOLARS AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICI CURIAE[1]

Amici curiae include an association of more than 18,000 practicing immigration attorneys and 77 individual law scholars who bring complementary practical and scholarly perspectives to the legal questions presented in this case.

The brief is joined by the American Immigration Lawyers Association ("AILA"). Founded in 1946, AILA is a national, nonpartisan, nonprofit association with more than 18,000 members throughout the United States and abroad, including lawyers and law school professors who practice and teach in the field of immigration and nationality law. AILA seeks to promote justice, advocate for fair and reasonable immigration law and policy, and advance the quality of immigration and nationality law and practice. AILA's members practice regularly before the Department of Homeland Security, immigration courts, and the Board of Immigration Appeals, as well as before the federal courts. AILA has participated as amicus in numerous cases before the U.S. Courts of Appeals and the U.S. Supreme Court.

This brief is also joined by law scholars across the country who focus their research, scholarship, and teaching on U.S. immigration law. *See* Appendix for List of Amici. Amici scholars include experts on Temporary Protected Status ("TPS"), asylum, and other forms of humanitarian relief, as well as on executive power and administrative law in the immigration context. Amici

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

scholars submit this brief in their individual capacities and reference their university affiliations for identification purposes only.

Collectively, amici have studied, taught, or practiced immigration law, including the TPS statute, for hundreds of years. Through that work, they have developed a strong professional interest in the proper administration and faithful interpretation of the TPS statute, and in ensuring that statutory humanitarian protections function as Congress intended.

SUMMARY OF ARGUMENT

Temporary Protected Status ("TPS") is a statutorily authorized humanitarian program that grants the Executive a specified measure of discretion at the designation stage, while strictly cabining the Executive's discretion to terminate a designation. Once a country is designated,[2] the Secretary of Homeland Security must conduct periodic review and may terminate a TPS designation only upon determining that the statutory conditions that warranted designation no longer persist. Absent such determination, the statute mandates continuation. The TPS statute therefore reflects Congress's intent to replace prior unpredictable and opaque safe-haven decisions with a regime that offers clarity, stability, and predictable administration.

In defending the Secretary's decisions to terminate Haiti's and Syria's TPS designations, the government

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[2] The TPS statute authorizes designation of a "foreign state (or any part of such foreign state)." 8 U.S.C. § 1254a(b)(1). For purposes of brevity, this brief refers to designations of a country or "country-wide" conditions, without intending to suggest that the statute excludes region-based designations or region-wide conditions.

leans heavily on the Secretary's invocations of "national security" and "public safety" concerns. The government misreads the TPS statute. For one, the statute references "national interest" only as a narrow limitation on one of the three designation grounds, not as a freestanding basis for termination. Separately, Congress addressed any potential public safety concerns through the statute's strict, individualized vetting, continuous monitoring, and mandatory disqualification of any TPS holder who poses a risk—not through authorization for categorical termination of a country-level designation.

The government's contention that long-standing TPS designations have "outstripped" the statute's criteria because they have lasted "many years or even decades" misunderstands the TPS framework. Congress could have made duration itself a factor for termination, but it did not. Instead, the statute ties continuing designation to a single substantive inquiry: whether the conditions in the foreign country justifying designation under the statute continue to exist. Long-running designations made under the TPS statute are not a loophole; they are the expected consequence of a statutory scheme that makes protection contingent on country conditions rather than elapsed years.

The government's suggestion that other humanitarian protections can substitute for TPS ignores the designation's purpose and function. Unlike asylum or withholding of removal, TPS provides protections to nationals of a designated country who are present in the United States in response to enumerated, country-wide crises—even when they cannot show individualized past persecution or a well-founded fear of persecution on one of the five protected grounds. The statute promotes stability through specific forms of protection, including

protection from removal and detention, as well as work authorization. TPS holders and their families, employers, and communities accordingly have structured their lives around the statute's promise of continued protection and employment authorization absent a lawful determination that conditions have changed.

BACKGROUND

TPS is a statutorily authorized humanitarian program that allows foreign nationals already present in the United States to stay, live, and work when conditions in their home countries make return unsafe. Enacted in 1990, TPS was designed to replace the Executive's prior ad hoc practice of granting nationality-based safe haven, such as Extended Voluntary Departure ("EVD"), with a structured legislative framework that authorizes country designations based on armed conflict, natural disasters, or extraordinary conditions, and grants protection to nationals of that country who are physically present in the United States at the time of designation. 8 U.S.C. § 1254a.

Congress preserved the Executive's ability to respond quickly to humanitarian crises, while simultaneously imposing standards, procedures, and oversight lacking in EVD. In particular, the TPS statute sets forth objective eligibility criteria, mandatory consultation and review requirements, and reporting obligations to Congress and the public. 8 U.S.C. § 1254a(b)(1), (b)(3), (c)(2)(B), (c)(3)(C), (i)(1).

While in effect, TPS confers on its recipients three mandatory protections: protection from removal, protection from detention based on immigration status, and authorization to work. 8 U.S.C. § 1254a(a)(1)(A), (a)(1)(B), (d)(4).

ARGUMENT

I. TEMPORARY PROTECTED STATUS IS A CAREFULLY STRUCTURED, STRICTLY REGULATED STATUTORY MECHANISM

A. Congress Expressly Constrained The Executive Branch's Discretion To Terminate A TPS Designation

TPS is not an amorphous humanitarian policy, but instead a carefully designed statutory mechanism. The TPS statute draws a deliberate distinction between the Secretary's authority to designate a country for TPS and his authority to extend or terminate an existing designation. At the designation stage, the Secretary retains substantial discretion to decide whether to act at all. Once a designation has been made, however, Congress significantly curtailed that discretion through mandatory procedures and a presumption of continuation.

Designation. Section 1254a(b)(1) governs designation. That provision authorizes the Secretary, after consultation with appropriate government agencies, to designate a foreign country for TPS if the Secretary finds the existence of any one of three statutorily defined, alternative grounds for designation: (1) an ongoing armed conflict posing a serious threat to the personal safety of returning nationals; (2) an environmental disaster resulting in "substantial[] but[] temporary disruption," such that the foreign state cannot adequately receive returning nationals and has officially requested designation; or (3) "extraordinary and temporary conditions in the foreign state" preventing safe return, unless the Secretary finds that permitting the noncitizens to remain temporarily in the

United States "is contrary to the national interest of the United States." 8 U.S.C. § 1254a(b)(1)(A)-(C).

Even when any of these grounds for designation is found to exist, the statute does not require designation. Instead, the statute provides that the Secretary "*may* designate" a foreign state for TPS, if one of the three enumerated findings is made. 8 U.S.C. § 1254(b)(1) (emphasis added). As this Court has explained, the word "may" ordinarily confers discretion. *United States* v. *Rodgers*, 461 U.S. 677, 706 (1983). Congress thus afforded the Secretary broad latitude at the front end of the program, allowing him to respond quickly—or to decline to act at all—to developing crises in foreign countries, even where conditions are severe.

Extension and termination. Once a country has been designated, however, the statute expressly narrows the Secretary's discretion and creates a presumption of continuation.

In particular, at least 60 days before a designation expires, the Secretary, in consultation with appropriate agencies, "*shall* review" conditions in the foreign state and "*shall* determine whether the conditions for such designation … continue to be met." 8 U.S.C. § 1254a(b)(3)(A) (emphases added). Termination is authorized only if the Secretary, after the mandatory periodic review, determines the country "no longer continues to meet the conditions for designation[.]" *Id.* § 1254a(b)(3)(B). Compared to the designation stage, the change in statutory language is critical. "Unlike the word 'may,' which implies discretion, the word 'shall' usually connotes a requirement." *Kingdomware Techs., Inc.* v. *United States*, 579 U.S. 162, 171 (2016).

If the Secretary fails to make a timely determination—because he concludes that conditions

persist or because he does not act at all—the statute mandates an automatic six-month extension (or 12 or 18 months in the Secretary's discretion). 8 U.S.C. § 1254a(b)(3)(C).

* * *

The TPS statute's bifurcated allocation of discretion was not happenstance. Congress enacted TPS to replace the "ad hoc" and unpredictable EVD program with a carefully crafted statutory framework that offers clarity and stability. *See Temporary Safe Haven Act of 1987: Hearing Before the Subcomm. on Immigration, Refugees, and International Law of the H. Comm. on the Judiciary*, 100th Cong. 2 (1987) (statement of Rep. Mazzoli) (noting decisions under EVD were "being made on an ad hoc basis without proper guidelines or standards"); 135 Cong. Rec. 25811, 25837 (1989) (statement of Rep. Richardson) (precursor to TPS statute would provide beneficiaries with certainty about "what [their] rights are, how the Justice Department determines what countries merit EVD status [and] how long they will be able to stay").

Congress designed this structure to ensure predictability and to insulate humanitarian protection from shifting political considerations. Referring to disputes in the 1980s between Congress and the Executive over whether to protect Central Americans fleeing armed conflict, one representative cautioned that "[o]ur recent domestic political squabble over the relative merits of Salvadorans and Nicaraguans as political refugees should never be repeated." 135 Cong. Rec. 25838 (1989) (statement of Rep. Levine). The TPS statute was to address the concern that "[t]he current procedure for extended voluntary departure is so arbitrary and discretionary that aliens are reluctant to

come forward." 136 Cong. Rec. 27130 (1990) (statement of Rep. Oakar). The proposed regime was lauded because it "establishe[d] a statutory framework for future uses of safe haven protection" and "end[ed] the current ad hoc approach to dealing with people in need." 136 Cong. Rec. 27132 (1990) (statement of Rep. Moakley). In short, Congress replaced EVD with TPS so that humanitarian protection would no longer be contingent on opaque and unpredictable Executive decision-making. The limits Congress imposed on TPS termination decisions are integral to that design.

B. The "National Interest" Inquiry Is Narrowly Confined

In defending the Secretary's termination decisions, the government relies heavily on the purported "national interest" or "national security" concern. *See* U.S. Br. 3-5, 9, 12-13, 17-18, 22, 39-42. That reliance, however, is misplaced for two independent reasons.

1. "National interest" has no role at the termination stage

First, the statutory text makes clear that "national interest" has no role at all in the periodic review and termination of a TPS designation. This is because Congress sharply limited the Secretary's discretion during periodic review and termination by confining the inquiry to conditions in the foreign state. In particular, before a designation expires, the Secretary "shall review the conditions *in the foreign state* … for which a designation is in effect" and determine whether those conditions continue to be met. 8 U.S.C. § 1254a(b)(3)(A) (emphasis added). And termination is authorized only if the Secretary "determines under subparagraph (A)" that the foreign state no longer satisfies those conditions. *Id.* § 1254a(b)(3)(B). Because "national

interest" necessarily turns on considerations *within* the United States, it falls outside the scope of a review confined to conditions "in the foreign state."

That limitation is deliberate. Indeed, Congress expressly referred to both "conditions in the foreign state" and "national interest of the United States" considerations in the designation provision itself. 8 U.S.C. § 1254a(b)(1)(C). Instead of folding national interest into the assessment of conditions abroad, that provision treats "national interest" as a separate, additional inquiry for one of the three designation grounds.

By contrast, Congress directed that periodic review and termination focus exclusively on "conditions in the foreign state," and it omitted any reference to national interest from subsections (b)(3)(A) and (B). Reading "national interest" back into these subsections would collapse the distinction Congress carefully drew. *Polselli* v. *IRS*, 598 U.S. 432, 439, 441 (2023) ("We assume that Congress 'acts intentionally and purposely' when it 'includes particular language in one section of a statute but omits it in another section of the same Act.'").

2. Even if national interest could be considered at termination, its relevance is limited

Second, even if the statute permitted consideration of "national interest" at the periodic review and termination stage, its relevance should be limited to circumstances where it constituted the grounds for designation. As discussed above (*supra*, I.A), the statute authorizes the Secretary to designate a country for TPS if any one of three distinct, alternative grounds for designation is satisfied. The "national interest"

language appears only under the third ground, operating as a limiting proviso: the Secretary may designate under subsection (b)(1)(C) "unless [he] 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). Under settled principles of statutory interpretation, "a limiting clause or phrase should be read to modify only the noun or phrase that it immediately follows." *Barnhart* v. *Thomas*, 540 U.S. 20, 21 (2003). The "national interest" proviso therefore qualifies only the extraordinary-conditions pathway, not the other two designation grounds.

That structure carries forward into periodic review. The statute provides that, before a designation expires, the Secretary "shall review the conditions in the 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." 8 U.S.C. § 1254a(b)(3)(A) (emphasis added). The phrases "for which" and "for such designation" are limiting: read together, they clearly require the Secretary to review the specific conditions that justified the designation in the first instance, not to conduct a free-ranging reassessment under alternative designation grounds that were not invoked. Courts "ordinarily aim to give effect to every clause and word of a statute," *Polselli*, 598 U.S. at 441, and the "for which" language would be stripped of meaning if periodic review could pivot to unrelated grounds.

Likewise, termination decisions are expressly tethered to that same condition-specific review as explained above. 8 U.S.C. § 1254a(b)(3)(B); *supra*, I.B.1. Read together, subsections (b)(3)(A) and (B) establish a coherent rule: termination must rest on the

determination that the same statutory conditions supporting designation no longer exist. Thus, where a country was designated based on armed conflict or natural disaster, the Secretary may not terminate that designation by invoking "national interest," a consideration that played no role in the original designation.

The same logic applies where a country such as Syria has been designated or re-designated on more than one ground. 25A952 Opp. 6. In that circumstance, a designation supported by multiple qualifying conditions cannot be terminated based on only one condition, so long as another continues to warrant protection. Rather, periodic review must assess whether each of the conditions "for which" the designation is in effect continues to exist, and termination is authorized only if the Secretary determines that none of those conditions remains satisfied.

This reading is reinforced by longstanding agency practice. Prior to 2025, the "sole rationale cited to justify termination of TPS has been an end to the temporary country conditions *which authorized the initial designation*." J.A. 296 (Ex. 7) (emphasis added). In short, the text, structure, and historical application of Section 1254a foreclose the government's attempt to use "national interest" as a roving blanket justification for termination. To hold otherwise would permit precisely the kind of discretionary, post-hoc decision-making Congress enacted TPS to prevent.

C. The TPS Statute Imposes No Limit On The Total Duration Of A TPS Designation

The government appears to take the position that TPS designations are necessarily of limited duration. *See* U.S. Br. 44 (noting it is "unremarkable" that the Secretary found "a series of 'temporary' designations that have lasted many years or even decades" "have outstripped the TPS statute's criteria"). That is not what the statute requires or envisions. The plain text of the statute and legislative history confirm that Congress intended TPS designations to continue for as long as the statutory conditions persist, not to lapse after some implicitly limited period of time.

The TPS statute contains no provision capping the total length of time a TPS designation may remain in effect; nor does it impose any limit on the number of extensions the Secretary may grant. Instead, continuation of TPS turns on a single substantive inquiry: whether the designated country continues to experience the conditions for which it was designated. *Supra*, I.A. Where Congress wished to impose temporal constraints within TPS, it did so expressly—by fixing the duration of each discrete designation period or extension and by requiring periodic review at specified intervals. *Id.* Congress's choice to regulate the *timing* of review and the *length* of each individual designation, while declining to limit the number of extensions or the total period of protection, must be given effect. *See supra*, p.10 (citing *Polselli*, 598 U.S. at 439).

Indeed, when Congress intends to limit the maximum duration of an immigration status or program, it does so expressly. For example, Congress generally limited the maximum allowable period a noncitizen may live and work in the United States pursuant to an H-1B

visa. *See* 8 U.S.C. § 1184(g)(4) (providing that H-1B status "may not exceed 6 years").[3] Congress likewise capped the duration of Q-1 cultural-exchange visas and R-1 religious-worker visas. *See id.* § 1101(a)(15)(Q) ("for a period not to exceed 15 months"); *id.* § 1101(a)(15)(R) ("for a period not to exceed 5 years"); *Washington All. of Tech. Workers* v. *DHS*, 50 F.4th 164, 178 n.3 (D.C. Cir. 2022) (recognizing 8 U.S.C. § 1101(a)(15)(Q) and (a)(15)(R) "state the maximum allowable time of admission for that class"). In each instance, Congress used unmistakable language—"may not exceed"—to impose a maximum temporal limit.

The statute's use of the term "temporary" does not suggest otherwise. As reflected in the statutory design and legislative history, the word "temporary" describes both the time-limited nature of each discrete designation period and the non-permanent character of the relief itself. Courts have recognized that TPS does not confer lawful permanent status and provides no independent pathway to permanent residence. *See, e.g.*, *Kewayfati* v. *Bondi*, 165 F.4th 342, 348 (5th Cir. 2026); *National TPS All.* v. *Noem*, 150 F.4th 1000, 1010 (9th Cir. 2025). The TPS statute itself further requires that a supermajority of the Senate is required to grant permanent resident status to TPS holders. 8 U.S.C. § 1254a(h)(2). TPS remains "temporary" even when extended repeatedly because its protection is contingent on continuing country conditions.

Where the statutory text establishes a clear rule, legislative history may properly be consulted to confirm

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[3] Later, Congress explicitly amended this limitation by extending the maximum period for specific groups of individuals. American Competitiveness in the Twenty-First Century Act of 2000, Pub. L. No. 106-133, 114 Stat. 1251, 1253, 1254.

Congress's design. *See Loper Bright Enters.* v. *Raimondo*, 603 U.S. 369, 393 (2024) ("The text of the APA means what it says. And a look at its history if anything only underscores that plain meaning."). In debating legislative fixes to EVD that eventually became the current TPS statute, legislators repeatedly noted their frustrations that "the process by which EVD grants are made, extended, or terminated" were "utterly mysterious," due to the lack of "statutory criteria to guide the administration in its actions." 136 Cong. Rec. 19560 (1990) (statement of Rep. Mazzoli). TPS was drafted to address congressmembers' concerns that the EVD determination process had "no criteria … which specifie[d] when extended voluntary departure c[ould] be granted." 136 Cong. Rec. 19559 (1990) (statement of Rep. Fish). By establishing extensions as the statutory default and strictly limiting the grounds for termination, Congress ensured that a TPS designation—unlike EVD—would remain in place so long as the designated country continues to meet the statutory conditions.

Thus, repeatedly renewed TPS designations—such as those for Syria and Haiti—are not anomalies or loopholes, but the expected product of the statutory scheme Congress enacted. Since Haiti was first designated in 2010 and Syria in 2012, successive administrations have repeatedly conducted the mandatory reviews required by the statute and concluded that the conditions supporting re-designations and extensions continue to exist. *See* 25A952 Opp. 5-6; J.A. 638-643. Extensions followed not because of inertia or administrative indulgence, but because the statute required them once the relevant conditions were found to persist.

D. TPS Holders Are Strictly Vetted And Continuously Monitored On An Individual Basis

The government also attempts to justify the Secretary's termination of TPS for Syria and Haiti by pointing to "public safety" concerns, specifically, the purported difficulty of reliably vetting applicants from those countries. *See* U.S. Br. 9, 13. This administration has repeatedly and baselessly accused TPS holders of posing threats to public safety. *See, e.g.*, J.A. 280-293 (Ex. 6) (detailing statements made by the President against Haitian TPS holders in Springfield, Ohio); J.A. 305-306 (Ex. 8) (X post by former Secretary Kristi Noem in which she suggests TPS is an "immigration scheme[] that make[s] Americans less safe"). The TPS statute, however, leaves no room for such a generalized rationale. This is because Congress addressed public safety risks through individualized safeguards: TPS holders are subject to exhaustive vetting at the outset, continuous individualized review thereafter, and mandatory termination or disqualification if they pose a danger. Nothing in the statute authorizes the Secretary to treat an entire country designated for TPS as a public safety risk in lieu of those individualized determinations.

First, the TPS statute imposes rigorous disclosure and screening obligations as part of the application process. Applicants must provide detailed information regarding criminal and immigration history in both the United States and abroad, including arrest reports, statements of charges, indictment information, and certified court dispositions when applicable. *See* 8 U.S.C. § 1254a(c)(1)(A)(iv); USCIS, Form I-821, *Application for Temporary Protected Status*. They must also disclose personal identifying information concerning their spouses, former spouses, and children,

including—where relevant—immigration statuses, alien registration numbers, addresses, birth dates, marriage dates, and dates and grounds for dissolution. *Id.* After submitting these materials, applicants must appear for biometrics appointments, during which their fingerprints, photographs, and signatures are collected for identity verification and security screening. USCIS, *Temporary Protected Status*; DHS, Office of Biometric Identity Management, *Biometrics*. Applicants must further establish continuous physical presence in the United States since the effective date of the most recent designation, and they must apply within the designated registration window. 8 U.S.C. § 1254a(c)(1)(A). USCIS thus receives a comprehensive account of each applicant's identity, background, and residence history. Failure to satisfy these requirements results in denial of eligibility. *Id.*

Second, Section 1254a requires ongoing vetting of TPS holders to ensure continued eligibility and to identify any emerging security concerns. TPS holders must re-register at the end of each 12-month period of protected status. 8 U.S.C. § 1254a(c)(3)(C). Re-registration requires renewed biometrics collection and background checks. USCIS, *Temporary Protected Status*. It also requires continued confirmation of physical presence, subject only to narrow allowances for brief, casual, and innocent absences that are authorized or compelled by emergency circumstances. 8 U.S.C. § 1254a(c)(4). If a TPS holder fails to re-register, or if the Secretary determines that the TPS holder is no longer eligible, the statute mandates revocation of the TPS status. *Id.* § 1254a(c)(3).

Third, based on the information collected in the vetting process, the TPS statute imposes categorical eligibility bars excluding noncitizens with criminal

records or other security concerns. Individuals convicted of any felony or more than one misdemeanor in the United States are ineligible for TPS. 8 U.S.C. § 1254a(c)(2)(B)(i). Individuals convicted of or involved with certain serious crimes in the United States or abroad, including any involvement with terrorist activity or persecution of others, as well as those for whom there are "reasonable grounds for regarding [them] as a danger to the security of the United States," are not eligible for TPS. *Id.* § 1158(b)(2)(A) (cross-referenced and incorporated by § 1254a(c)(2)(B)(ii)); *id.* § 1254a(c)(1)(A)(iii) (citing *id.* § 1254a(c)(2)(A)); *id.* § 1254a(c)(2)(A)(iii)(III) (citing *id.* § 1182(a)(3)(B)). The TPS statute further limits the Secretary's ability to waive certain disqualifying conduct, including crimes involving moral turpitude and other grounds of inadmissibility tied to threats to the United States. *Id.* § 1254a(c)(2)(A)(iii) (citing *id.* § 1182). As the relevant congressional record made clear, the TPS program was designed to "den[y] protection to anyone convicted of criminal activity, or who would be inadmissible to the United States under our immigration laws." 136 Cong. Rec. H8687 (daily ed. Oct. 2, 1990) (statement of Rep. Moakley). Against that backdrop, generalized claims about unreliable vetting in particular countries cannot justify terminating a TPS designation wholesale. Vetting under TPS is individualized and continuous, and the statute provides individualized mechanisms to deny or withdraw status where an applicant or recipient presents a risk. *See* 8 U.S.C. § 1254a(c)(2), (c)(3). By contrast, once a country has been designated, the statute authorizes termination of that country-level designation only on limited grounds tied to enumerated statutory conditions. *See supra*, I.A & B.

The flaw in the government's reasoning is especially evident given that most TPS holders have already undergone re-registration based largely on verifiable, U.S.-based conduct and records developed during their period of authorized presence. The government offers no coherent explanation why those individuals nonetheless are dangerous or why they cannot continue to re-register under the existing system, subject to renewed background checks and mandatory revocation if they become ineligible. In sum, the statute already requires what the government claims to seek: a rigorous, individualized screening mechanism excluding those that pose safety and security risks to the United States.

II. TPS Is An Important And Irreplaceable Humanitarian Protection

A. The Potential Availability Of Asylum Or Other Protections Does Not Diminish The Critical Importance Of TPS

The government has taken the position that other forms of humanitarian relief, such as asylum, are available to TPS holders and can substitute for TPS. *See* No. 25A999, U.S. Stay Application 35-36, No. 25A952, U.S. Stay Application 31. That argument ignores the TPS statute's express, controlling purpose and in any event is belied by the reality confronting TPS holders.

Congress enacted TPS with recognition of existing humanitarian protections—including asylum, withholding of removal, and the Executive's prior use of EVD—and with a clear understanding that those mechanisms did not adequately address the range of dangers or conditions noncitizens may face. Asylum and withholding of removal, codified in the Refugee Act of 1980 and its subsequent amendments, protect

noncitizens who can demonstrate *individualized* fear of persecution on account of their race, religion, nationality, political opinion, and/or membership in a particular social group. *See* 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3)(A). To obtain asylum, a noncitizen must establish either past persecution or a well-founded fear of future persecution in her home country based on at least one of these protected grounds. *Id.* § 1158(b)(1)(A) (citing *id.* § 1101(a)(42)). To obtain withholding of removal, a noncitizen must satisfy an even more demanding standard by demonstrating that she *will* be persecuted in her home country on account of a protected ground. *Id.* § 1231(b)(3)(A). Those forms of relief, by design, impose demanding and individualized evidentiary standards and are therefore limited in scope.

TPS was enacted precisely to fill the gap left by those regimes. In enacting TPS, members of Congress acknowledged the fact that "not everyone who needs protection meets the strict standard of asylum." 136 Cong. Rec. 27130 (1990) (statement of Rep. Gray). TPS therefore addresses a different category of risk: *country-wide* conditions that endanger entire populations, even when individualized persecution on account of one of the five protected grounds cannot be shown. Because TPS was designed to address a different category of risk than asylum or withholding of removal, those forms of relief are not substitutes for TPS. *See FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (it is a "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme"); *King* v. *Burwell*, 576 U.S. 473, 498 (2015) (looking to congressional intent when examining the Affordable Care Act, stating, "Congress passed [it] to improve health insurance

markets, not to destroy them. If at all possible, we must interpret the Act in a way that is consistent with the former, and avoids the latter.").

Moreover, even for noncitizens who may be eligible for—and who have applied for—asylum or withholding of removal, TPS provides distinct and irreplaceable protections that those statutory frameworks do not offer.

First, TPS confers affirmative protection against removal (8 U.S.C. § 1254a(a)(1)(A)), which the asylum and withholding statutes do not categorically provide. Indeed, the government has forced both affirmative and defensive asylum applicants into rushed, truncated proceedings that foreclose meaningful preparation and judicial review, detaining them far from their counsel and family. *See* Silva, *Asylum-Seekers Increasingly Face Detention While Their Cases Proceed, in a Departure from the Past*, NBC News (Mar. 13, 2026); Chishti & Bush-Joseph, *Trump Administration's Expansion of Fast-Track Deportation Powers is Transforming Immigration Enforcement*, Migration Pol'y Inst. (Sept. 25, 2025); AILA, *Policy Brief: USCIS's Unlawful Asylum Dismissals Increase Government Inefficiency and Harm Asylum Seekers* (Sept. 22, 2025). The government has also used so-called Asylum Cooperative Agreements to remove noncitizens to third countries where they have no ties, without allowing the merits of their asylum claims to be heard in the United States. *See Matter of C-I-G-M & L-V-S-G-*, 29 I&N 291 (BIA 2025); Sullivan, *Asylum-Seekers Stuck in Limbo As U.S. Orders Them to Countries They've Never Been To*, PBS News (Apr. 2, 2026). As for those noncitizens who have been granted withholding of removal or Convention Against Torture relief, the government is engaging in the practice of removing them to third

countries in which they face torture or immediate illegal rendition to their home countries. *See D.A.* v. *Noem*, 800 F.Supp.3d 43 (D.D.C. 2025); U.S. Immigr. & Customs Enf't, *Directive* (Feb. 18, 2025) (excerpted copy of email sent by ICE directing agents to determine the viability of removing noncitizens granted withholding of removal or Convention Against Torture relief); 8 U.S.C. § 1231(b)(3)(A). By contrast, the government is statutorily prohibited from removing TPS holders from the United States while their protected status remains in effect. *See* 8 U.S.C. § 1254a(a)(1)(A).

Second, TPS also provides categorical protection from detention (8 U.S.C. § 1254a(d)(4)), another protection not afforded to individuals with pending asylum or withholding claims, who may be subject to mandatory detention or, if denied bond, discretionary detention (*see* 8 U.S.C. §§ 1226(a), 1231(a)(2)).

Third, TPS holders receive automatic work authorization throughout the protected period. 8 U.S.C. § 1254a(a)(2). By contrast, individuals seeking asylum or withholding of removal are not statutorily guaranteed work authorization and must wait 180 days before they can receive work authorization. *Id.* § 1158(d)(2). USCIS claims authority to further delay work authorization for asylum applicants for various reasons unrelated to an applicant's ability and need to work. *See* USCIS, Form I-765, *Instructions for Application for Employment Authorization*, at 22 (delay for those who reschedule their asylum interviews, relocate to a different asylum office or interview location, submit additional evidence after their interview, or fail to provide a competent interpreter). Most recently, the Department of Homeland Security has proposed a rule change designed to severely limit asylum seekers' access to work permits. *See Employment Authorization Reform for Asylum*

Applicants, 91 Fed. Reg. 8616 (Feb. 23, 2026). If finalized, the rule would pause any issuance of work permits to asylum applicants indefinitely—for "as long as 173 years," according to Department of Homeland Security estimates. *See id.* at 8650. The proposed rule would also impose new, more demanding requirements on asylum applicants whenever review begins again. *See id.* (considering increasing the pre-application waiting period, increasing the application processing period, and imposing additional eligibility requirements).

Even setting aside this proposed rule, the difference between TPS and asylum status is already pronounced given the length and futility of the asylum process. As of March 2025, cases before immigration judges took an average of 636 days to resolve. TRAC, *Immigration Court Backlog: Overall Down, Asylum Backlog Up* (Mar. 20, 2025). That protracted wait increasingly yields no relief at all: asylum grant rates have plummeted to just 7% as of February 2026, the lowest rate in all years for which data is available. Nehamas et al., *How Trump Purged Immigration Judges to Speed Up Deportations*, N.Y. Times (Apr. 9, 2026). Unlike TPS holders—who are eligible for statutory protections, including work authorization, while their applications are pending upon a prima facie showing of eligibility (8 U.S.C. § 1254a(a)(4)(B))—asylum applicants receive no comparable interim protection and must endure a lengthy and uncertain process before any relief is granted.

In addition, USCIS has paused adjudications of asylum applications for individuals from 39 nations, including Syria and Haiti. *See* Proclamation No. 10988, *Restricting and Limiting the Entry of Foreign Nationals to Protect the Security of the United States*, 90 Fed. Reg. 59,717 (Dec. 19, 2025). This means that

thousands of asylum seekers from Syria and Haiti have had both their asylum applications—and their lives—put on hold indefinitely. TPS provides these individuals a measure of stability in the United States while their asylum cases remain pending.

B. TPS Has Enabled Deep Family And Workforce Ties

TPS designations are designed to remain in effect so long as the statutory conditions in the foreign country justifying designations persist. *Supra*, I.A & C. TPS holders have reasonably structured their lives around this statutory framework. They have affirmatively come forward, identified themselves to the government, and built families, careers, and community ties in this country on the understanding that the TPS designation would not be terminated arbitrarily or prematurely while conditions in their home countries remain dire.

First, many TPS holders—particularly those not already in removal proceedings or the asylum process—rendered themselves uniquely vulnerable to adverse immigration enforcement action by affirmatively participating in the TPS program. As discussed above, to obtain TPS, these individuals had to submit personal identifying information, including biometric data, and other sensitive personal information not just of themselves but also their immediate family members. *See supra*, I.D. In the ordinary course, the disclosure of such information to the Department of Homeland Security could expose a noncitizen to enforcement action. TPS holders nonetheless did so with the understanding, consistent with the legislative intent and plain statutory text, that their TPS would remain valid so long as their home country's dangerous conditions remained.

That vulnerability is not an inevitable feature of holding a temporary status. It is the direct consequence of the government's decision to solicit and collect enforcement-relevant information under a statutory promise of continued protection. If TPS status is terminated, the very disclosure the government required will now likely be used to subject TPS holders to detention, deportation, and family separation. *See supra*, II.A. Thus, participation in the TPS program itself has placed TPS holders in a uniquely precarious position where the very act of complying with the program's disclosure requirements has created the risk of severe adverse consequences if a TPS designation is terminated prematurely.

Second, TPS holders have built families in the United States during the extended periods in which Congress authorized them to live and remain present here. As of 2025, TPS holders live with more than 390,000 U.S. citizen children, and more than 410,000 U.S. citizen adults. FWD.US, *Temporary Protected Status Protects Families While Boosting the U.S. Economy* (Apr. 7, 2026). As courts below correctly noted, removal or detention following the revocation of TPS would expose those families to separation. J.A. 29, 706. While TPS holders understood that their status was not permanent, Congress designed TPS precisely to allow individuals to live, work, and remain present in the United States for as long as conditions in their home countries made return unsafe. Family formation over extended periods is therefore not an incidental byproduct of TPS; it is the foreseeable and intended result of a protection that may, and often does, last for decades.

Third, TPS holders have likewise built their careers pursuant to the work authorization expressly granted by

the statute. That authorization has enabled TPS holders to participate in the U.S. workforce at exceptionally high rates. In 2021, 94.6% of TPS holders nationwide were employed. American Immigr. Council, *The Contributions of Temporary Protected Status Holders to the U.S. Economy* 2 (Sept. 2023). Many TPS holders have built substantial careers, obtained professional licenses, and pursued long-term economic advancement in reliance on their lawful ability to work. In this very case, Respondents include a neuroscientist researching Alzheimer's disease, a software engineer at a national bank, a laboratory assistant in a toxicology department, a college economics major, and a full-time registered nurse. J.A. 633. TPS holders' deep integration into this country's workforce and society again reflects the statutory design, which encourages TPS holders to support themselves and integrate productively into American society while return to their home countries remains unsafe. The premature and unlawful termination of their TPS status would immediately force self-sufficient, fully authorized workers into unemployment and destroy careers built over decades, with cascading effects on their families, employers, communities, and local economies. Villero et al., *550,000 Workers Lose Status by End of 2025: Potential Impact by State and Industry*, Penn Wharton Budget Model (Nov. 19, 2025) (finding that "TPS workers are 5.4 times more likely to work in building and grounds cleaning, 3.2 times more likely work in construction, and twice as likely to work in transportation, making them critical to these sectors" and that "TPS workers generated $35.9 billion in GDP in 2023"); American Immigr. Council, *The Contributions of Temporary Protected Status Holders to the U.S. Economy* 3 (finding that, in 2021, TPS holder households generated $10.3 billion in total income, paid $1.3 billion in federal taxes and $966.5 million in state and

local taxes, and held $8 billion in consumer spending power).

Thus, when the government terminates a TPS designation despite the continued existence of the statutory predicates for protection, it does more than end a "temporary" benefit. It instead upends settled expectations the statute itself created and penalizes reliance Congress expressly encouraged. The severe, ensuing harms therefore are not an inevitable feature of TPS's temporary nature, but the predictable consequence of unlawful, premature agency action.

CONCLUSION

The text, structure, and history of the TPS statute confirm that Congress did not confer unbounded discretion on the Executive to terminate protections at will. The Court should affirm the orders of the district courts postponing the effective date of the Secretary's TPS terminations.

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APPENDIX

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