

No. 25-1084

IN THE
Supreme Court of the United
States

Donald J. Trump,
President of the United States, et al.,

Petitioners,

v.

Fritz Emmanuel Lesly Miot, et al.,

Respondents.

On Writ of Certiorari Before Judgment
to the United States Court of Appeals for the
District of Columbia Circuit

**BRIEF OF *AMICI CURIAE* NAACP LEGAL
DEFENSE AND EDUCATIONAL FUND, INC.
AND THE NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE IN
SUPPORT OF RESPONDENTS**

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INTEREST OF *AMICI CURIAE*¹

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) and the National Association for the Advancement of Colored People (the “NAACP”) submit this brief as *amici curiae* in support of Respondents.

LDF is the nation’s first and foremost civil rights law organization. Since its founding by Thurgood Marshall in 1940, LDF has fought in the Supreme Court and lower courts to advance racial justice and eliminate racial discrimination in our legal system by challenging state and federal laws, policies, and practices that target Black people and other communities of color in America. The NAACP is a non-profit civil rights organization founded in 1909. Its mission is to ensure the political, educational, social, and economic equality of all persons and to eliminate racial hatred and racial discrimination.

Amici work to combat illegal and unconstitutional racial discrimination in our legal system, including our immigration system, and regularly litigate issues related to discrimination against Black people and other people of color in the United States. *See, e.g., Afr. Cmty. Together v. Noem*, No. 26-cv-11201-ADB, 2026 WL 710666, at *1 (D. Mass. Mar. 13, 2026) (LDF representing Temporary Protected Status—TPS—recipients and applicants from Somalia); *NAACP v. U.S. Dep’t of Homeland Sec.*, 364 F. Supp. 3d 568 (D. Md. 2019) (LDF

¹ Pursuant to Supreme Court Rule 37.6, counsel for *Amici Curiae* state that no counsel for a party authored this brief in whole or in part and that no person other than *Amici Curiae*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

representing the NAACP in a challenge to President Trump's first attempt to end TPS for Haitian nationals).

INTRODUCTION AND SUMMARY OF ARGUMENT

In its opinion, the District Court extensively detailed President Donald Trump’s long history of making “derogatory statements about Haitians” and his years’ long effort to expel them from the country based on race and national origin. *See* J.A. 698–704. The evidence revealed the President’s consistent denigration of Haitian nationals spanning years. As recently as December 2025, he falsely accused Haitian immigrants in Springfield, Ohio of “eating the pets of the people” that live there. *Id.* at 698. And, during his first term in 2017, President Trump maligned Haiti as a “shithole country.” *Id.* He also wrongly disparaged Haitian Temporary Protected Status (TPS) holders as “illegal” immigrants who are “poisoning the blood” of America and baselessly postulated that Haitians “probably have AIDS.” *Id.*

In November 2025, Secretary Kristi Noem announced termination of Haiti’s TPS designation, effective February 3, 2026. *See id.* at 633 (citing 90 Fed. Reg. 54733 (Nov. 28, 2025)). Respondents, Haitian TPS holders, filed a class action lawsuit in December 2025. J.A. 769–860. The District Court later postponed the termination of Haiti’s TPS designation because Respondents demonstrated a substantial likelihood of prevailing on the merits. J.A. 674–704. The D.C. Circuit denied the Government’s request for a stay. J.A. 719–24. The Government appealed, arguing that the TPS statute bars judicial review and, in the alternative, that Respondents’ Administrative Procedure Act (APA) claim fails on the merits. *See* Br. of Pet’rs at 4–5. This Court

should decline the Government's requests and affirm the relief granted to Haitian TPS recipients below.

President Trump's overt racially-motivated opposition to Haitian nationals remaining in America, regardless of their immigration status, led him to direct the Department of Homeland Security (DHS) to end the protections of TPS for Haitian nationals in 2025. This determination contravenes the clear procedural requirements of the TPS statute. *See* 8 U.S.C. § 1254a. The TPS statute requires the federal government to engage in a fact-based and race-neutral review to determine whether foreign nationals residing lawfully in America may remain here given the circumstances in their home countries. Yet President Trump has repeatedly and persistently directed his Administration to exclude Haitians from the United States based on unfounded, derogatory, and stereotype-based concerns about Haitian immigrants. The President's and other federal officials' comments all constitute direct evidence of the discriminatory intent that dictated the end of TPS for Haitians. This ample record of overt statements supports the District Court's conclusion that the Administration was motivated by race or national origin discrimination when it engaged in the periodic review of the termination TPS for Haitians.

The termination of TPS would have devastating consequences for Haitians, their American families, and the communities they live in here. Rather than continuing to live, work, and pay taxes as lawful residents, the end of TPS protections would expose Haitian recipients to deportation to a

homeland that unquestionably remains devastated by the catastrophic 2010 earthquake and the resulting economic and political upheaval, and very dangerous to its inhabitants. Here, the uncontroverted evidence, credited by the courts below, is that the Administration's decision to end TPS was motivated by intentional discrimination in violation of the Constitution and the APA, rather than a rational review of the present-day conditions in Haiti or any other considerations permissible under the TPS statute.

The Fifth Amendment's Due Process Clause "contains an equal protection component" that protects all people in the United States from intentional racial discrimination by the federal government. *Washington v. Davis*, 426 U.S. 229, 239 (1976). Intentional discrimination based on race or national origin can never justify administrative or other government decision-making: "racial discrimination is not just another competing consideration. When there is a proof that a discriminatory purpose has been a motivating factor in the decision, [] judicial deference [to government officials] is no longer justified." *Vill. of Arlington Heights v. Metro. Hous. Corp.*, 429 U.S. 252, 265–66 (1977). Thus, a governmental decision or priority based on "bad faith or improper behavior" is not entitled to usual deference given to governmental decision-making. *Dep't of Com. v. New York*, 588 U.S. 752, 781 (2019) (quoting *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971)), *overruled on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977).

Respondents present a straight-forward, well-supported Fifth Amendment claim, and the Court should reject the Government's suggestions to deviate from well-established equal protection principles in this case.

First, the framework outlined by this court in *Davis*, 426 U.S. 229 at 239, and *Arlington Heights*, 429 U.S. at 265–68, applies to claims of intentional discrimination brought by non-citizen residents of the United States. Under this framework, direct or other contemporaneous statements by government decision-makers—including the President of the United States—are compelling evidence of intent. The record in this case is replete with direct evidence of intentional discrimination directed at Haitian immigrants by President Trump, Secretary Noem, and other federal officials. On this record, as the District Court concluded, Respondents made a strong showing that they are likely to succeed on the merits of their equal protection claim.

Second, *Trump v. Hawaii*'s application of a more deferential standard of review is inapposite here. 585 U.S. 667, 702–10 (2018). *Hawaii* concerned the exercise of presidential power expressly recognized by Congress in statute against non-citizens outside the United States and seeking entry. *Id.* at 683–84, 694–97. This case, in contrast, concerns the exercise of congressional authority delegated to an executive agency, not the president, against non-citizens already living—in some cases, for decades—in the United States. These distinctions render *Hawaii*'s analysis inapplicable.

However, even if rational basis review were applied to the Government's TPS termination determination (and it does not), there is significant evidence that the Government's decision was based on the wholly irrational desire to exclude all Haitian nationals whether lawful residents or not. *Plyler v. Doe*, 457 U.S. 202, 227–30 (1982). The record indicates that intentional discrimination—a bare desire to expel lawful residents from Haiti based on their race and national origin—motivated the Government to terminate Haiti's TPS designation. The decision was not rationally related to the factors the Government is required to consider under the TPS statute.

Amici respectfully urge this Court to affirm the District Court's order.

ARGUMENT

I. Under the Fifth Amendment, Haitian Nationals in the U.S. Can Rely on the *Arlington Heights* Standard to Subject Discriminatory Federal Policies to Strict Scrutiny Review.

The Fifth Amendment’s Due Process Clause prohibits intentional discrimination by the federal government against *all persons*, citizens and non-citizens alike. *See Plyler*, 457 U.S. at 213 (recognizing the equal protection claims of undocumented immigrant children); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (emphasizing that the Constitution’s equal protection guarantees “are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws”). “The Equal Protection Clause was intended to work nothing less than the abolition of all caste-based and invidious class-based legislation.” *Plyler*, 457 U.S. at 213. Under this Court’s longstanding precedent, the *Arlington Heights* framework applies to claims of intentional discrimination raised under the Fifth Amendment. *See Reno v. Bossier Par. Sch. Bd.*, 520 U.S. 471, 488 (1997) (recognizing the *Arlington Heights* framework as the prevailing analysis for intentional discrimination under the equal protection clause). Applying this framework, statements by government officials denigrating Haitian Americans serve as direct evidence of intentional discrimination. *See Arlington Heights*, 429 U.S. at 267–68.

Intentional discrimination need not be based on a racist motive. *See, e.g., Exodus Refugee Immigr., Inc. v. Pence*, 838 F.3d 902, 904–05 (7th Cir. 2016) (Posner, J.); *Garza v. Cnty. of Los Angeles*, 918 F.2d 763, 778 & n.1 (9th Cir. 1990) (Kozinski, J., concurring). “This fundamental ‘distinction between motive and intent runs all through the law.’” *Hassan v. City of New York*, 804 F. 3d 277, 297 (3d Cir. 2015) (citation omitted). Indeed, “a prosecutor who strikes a juror on the basis of race discriminates intentionally even if motivated by a sincere desire to win” *Id.* (citing *Georgia v. McCollum*, 505 U.S. 42, 59 (1992)).

Based on the volume, severity, and close temporal nexus between government officials’ comments disparaging Haitians and termination of Haiti’s TPS designation, the District Court correctly concluded Respondents were likely to succeed on their claims and appropriately ordered the postponement of Haiti’s TPS designation. J.A. 695–704, 713–14. The Court of Appeals denied the Government’s request for a stay. J.A. 719. This Court should affirm the District Court’s determination.

A. Non-Citizens Can Bring Equal Protection Claims Challenging TPS Determinations.

All actions undertaken by the federal government must comport with the Constitution, including the equal protection component of the Due Process Clause. *See Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 217–18 (1995). The Fifth Amendment’s Due Process Clause prohibits intentional race discrimination by the federal government. *Bolling v. Sharpe*, 347 U.S. 497, 500

(1954). This includes executive actions concerning non-citizens. *See Plyler*, 457 U.S. at 213. While “certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders,” the moment that “an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (quoting U.S. Const. amend. V). This is so because all “persons” within the United States enjoy a right to equal protection under the law. U.S. Const. amend. V; *see also Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 (1953) (recognizing an immigrant residing in the United States as a “person” within the meaning of the Fifth Amendment). The Government’s arguments run contrary to the text of the Fifth Amendment and are therefore meritless. Unquestionably, TPS recipients—as lawful residents—enjoy the Constitution’s protection. *See Sessions v. Morales-Santana*, 582 U.S. 47, 52 (2017) (enjoining a federal immigration law under the Fifth Amendment’s equal protection component).

Contrary to the Government’s suggestion, governing law does not permit the Government to insulate its decision to terminate the Haitian TPS designation from an equal protection challenge. *See Br. for Pet’rs* at 45–49. Congress did not—and indeed, could not—expressly disclaim application of the protections of the Fifth Amendment to the Government’s implementation of the TPS statute when it was enacted in 1990. *See, e.g.*, 8 U.S.C. §

1254a. “[T]hough Congress has great authority to design laws to fit its own conception of sound national policy, it cannot deny the liberty protected by the Due Process Clause of the Fifth Amendment.” *United States v. Windsor*, 570 U.S. 744, 774 (2013). Nothing in the TPS statute forbids any court from hearing Respondents’ Fifth Amendment claim.

B. The *Arlington Heights* Framework Applies to Respondents’ Intentional Discrimination Claims.

This Court has long recognized the *Arlington Heights* inquiry “as the framework for examining discriminatory purpose in cases brought under the Equal Protection Clause.” *Reno*, 520 U.S. at 488. “This Court’s approach to Fifth Amendment equal protection claims has always been precisely the same as to equal protection claims under the Fourteenth Amendment.” *Weinberger v. Wiesenfeld*, 420 U.S. 636, 638 n.2 (1975); *see also Buckley v. Valeo*, 424 U.S. 1, 93 (1976) (“Equal protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment.”). Thus, this Court’s equal protection precedent requires the application of the *Arlington Heights* framework to analyze the Respondents’ equal protection claim.

Under the Fifth Amendment, a facially neutral law violates equal protection when it is motivated at least in part by intentional discrimination based on race or national origin. *Davis*, 426 U.S. at 241. “Demonstrating discriminatory intent, [the Court] ha[s] long held, ‘does not require a plaintiff to prove that the challenged action rested *solely* on racially

discriminatory purpose[.]” *Allen v. Milligan*, 599 U.S. 1, 37 (2023) (quoting *Arlington Heights*, 429 U.S. at 265) (emphasis in original). Evidence that a decision was motivated only “in part” by intentional discrimination is sufficient to prove a violation. See *Pers. Admin. of Mass. v. Feeney*, 442 U.S. 256, 279 (1979).

To identify intentional discrimination, a court conducts a “sensitive inquiry into such circumstantial and direct evidence as may be available,” undertaking a comprehensive review of the decision-making process to determine whether such invidious discrimination produced the challenged action. *Arlington Heights*, 429 U.S. at 266. Relevant evidence includes “[t]he historical background of the decision . . . , particularly if it reveals a series of official actions taken for invidious purposes”; “[t]he specific sequence of events leading up to the challenged decision”; “[d]epartures from the normal procedural sequence”; and “[t]he legislative or administrative history,” “especially where there are contemporary statements by members of the decisionmaking body.” *Id.* at 267–68; see also *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 34–35 (2020). An examination of “the history of [a federal law’s] enactment and text” is necessary to determine whether it discriminates in violation of the Fifth Amendment. See *Windsor*, 570 U.S. at 770–71.

Furthermore, “the impact of an official action is often probative of why the action was taken in the first place” because “people usually intend the natural consequences of their actions.” *Reno*, 520 U.S. at 487. Other evidence includes the use of pretextual

justifications, the Government’s “misrepresentations of the record” when defending its challenged actions, disparate treatment, and any “other relevant circumstances” that “bear upon the issue of racial discrimination.” *Flowers v. Mississippi*, 588 U.S. 284, 302 (2019).

Finally, intentional discrimination does not require proof that governmental officials acted based on racism, hostility, hatred, or malice toward a group. Discriminatory intent is different from motive. “While motive is the inducement to do some act, intent is the mental resolution or determination to do it. When the intent to do an act that violates the law exists, motive becomes immaterial.”² *Intent*, *Black’s Law Dictionary* (12th ed. 2024). Moreover, unconstitutional discrimination can be motivated by stereotypes, *Morales-Santana*, 582 U.S. at 57–58; *Buck v. Davis*, 580 U.S. 100, 121 (2017); assumptions about how particular groups will behave, *Flowers*, 588 U.S. at 299; or even the benign desire to help, *Adarand*, 515 U.S. at 226.

Because Respondents raise a claim of intentional racial discrimination under the Fifth Amendment, the *Arlington Heights* framework applies. *See Adarand*, 515 U.S. at 217.

² Rarely, this Court has used the phrase “discriminatory animus.” *Cf. Ash v. Tyson Foods, Inc.*, 546 U.S. 454, 456 (2006) (per curiam). But “animus” also simply means intent. *See Animus*, *Black’s Law Dictionary* (12th ed. 2024) (defining “animus” as a “prejudicial disposition” or, in Latin, “intention”).

C. Strict Scrutiny Applies to the Intentional Discrimination Challenge of Non-Citizen U.S. Residents to Federal Policies that Touch on Issues of Immigration and National Security.

“It is well established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders.” *Zadvydas*, 533 U.S. at 693.³ Indeed, “[t]he distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law.” *Id.* Although there is “no constitutional right to entry,” *Hawaii*, 585 U.S. at 703, this Court has long recognized that all individuals within the bounds of the United States do possess a right to equal protection under the law, rooted in the Constitution, such that the federal government cannot discriminate against individuals on the basis of race or national

³ The term “alien” is used throughout the Immigration and Nationality Act to describe non-citizens, but it and the related term “illegal alien” are considered by some to be derogatory when used to vilify and dehumanize non-White immigrants without lawful status (or people perceived as such). *See, e.g.*, Kai Wei et al., *The Role of Language in Anti-Immigrant Prejudice: What Can We Learn from Immigrants’ Historical Experiences?*, 8 Soc. Scis. 1, 10–11 (2019), available at <https://www.mdpi.com/2076-0760/8/3/93>. Notably, the Trump Administration uses this term as a matter of policy. *See, e.g.*, Todd Lyons, Acting Director, U.S. Immigr. & Customs Enforcement, Updated Terminology for Communications Materials and Internal and External Communications (Mar. 31, 2025), https://www.ice.gov/doclib/foia/policy/memo_CommsTerminology_03.31.2025.pdf.

origin. See *Morales-Santana*, 582 U.S. at 52; *Zadvydas*, 533 U.S. at 694; *Plyler*, 457 U.S. at 213.

Once the Court determines that a challenged policy was the product of unlawful racial discrimination, that policy is subject to strict scrutiny. See *Adarand*, 515 U.S. at 236–37; see also *Morales-Santana*, 582 U.S. at 52 (applying heightened scrutiny to sex-based discrimination in the immigration context).

Nonetheless, the Government contends that *Hawaii*'s rational basis review rather than strict scrutiny applies because “[t]here, as here, the Executive action was ‘facially neutral’ and involved ‘national security.’” See Br. for Pet’rs at 46–47 (quoting *Hawaii*, 585 U.S. at 702). However, *Hawaii* concerned President Trump’s executive order prohibiting foreign nationals from seven predominantly-Muslim countries from entering the United States. *Hawaii*, 585 U.S. at 676.

First, although the *Hawaii* case involved national security and foreign affairs more generally, it specifically concerned a “policy denying certain foreign nationals the privilege of *admission*,” *id.* at 710 (emphasis added), premised on “*preventing entry* of nationals who cannot be adequately vetted and inducing other nations to improve their practices.” *Id.* at 706 (emphasis added). Those circumstances are plainly distinct from the facts surrounding the termination of Haiti’s TPS designation.

Second, *Hawaii* centered on “a national security directive regulating the *entry*” of non-citizens. *Id.* at

702 (emphasis added). The standard of review considered “whether the entry policy [was] plausibly related to the Government’s stated objective to protect the country and improve vetting processes.” *Id.* at 704–05. In stark contrast, TPS beneficiaries and applicants are individuals already in the United States, whom the Government subjects to detailed and rigorous vetting and screening in order to receive TPS. Put another way, in *Hawaii*, this Court adopted rational basis review to assess the “entry policy” for individuals not yet in the United States in light of the government’s national security interest. 585 U.S. 667, 704–05 (2018). Now, the Government seeks to strip away lawful status from individuals who have already undergone stringent vetting and approval to obtain that lawful status in the United States. This distinction has implications for the constitutional protections afforded each group.

The presidential power invoked in *Hawaii* is also distinct from the delegated congressional power at issue here. *Hawaii* concerned the President’s Proclamation, which he issued pursuant to his own executive powers, as well as the executive powers recognized by Congress in statute. *Id.* at 677–79. “When the President acts pursuant to an express . . . authorization of Congress”—in *Hawaii*, Sections 1182(f) and 1185(a) of the Immigration and Nationality Act, *see* 8 U.S.C. §§ 1182(f), 1185(a)—“his authority is at its maximum,” encompassing “all that he possesses in his own right plus all that Congress can delegate.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring).

Not so here. Instead, the TPS statute reflects Congress's intent to delegate its authority to an executive official. *See* 8 U.S.C. § 1254a. TPS determinations depend on congressional, not presidential, power. Congress set out policies and procedures for this exercise of congressional authority. *Id.* The termination of Haiti's TPS designation directly contravened these policies and procedures. *Compare* 8 U.S.C. § 1254a(3)(A)–(B) (outlining the required review and notice process for termination of a TPS designation) *with* 90 Fed. Reg. 54733 (purporting to terminate Haiti's TPS designation without engaging in the decision-making process required by statute). “[W]hen the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.” *Youngstown Sheet & Tube Co.*, 343 U.S. at 637. This “lowest ebb,” *id.*, falls well below the exercise of presidential power “squarely within the scope of Presidential authority under the INA” in *Hawaii*, 585 U.S. at 697. *See also id.* at 684–85, 688, 697.

Third, and finally, the Government attempts to sidestep Respondents' racial discrimination claim by urging that its decision to terminate Haiti's TPS designation is driven by national security concerns, not race or national origin, and thus, *Arlington Heights* does not apply. *See* Br. for Pet'rs at 46–49.

This argument is nonsensical. Indeed, there is an unfortunate and centuries-long history of our country relying on “national security” to justify the most

horrendous race-based discrimination against lawful residents. *See, e.g., Korematsu v. United States*, 323 U.S. 214, 223–24 (1944) (justifying the mass internment of Japanese Americans as “proper security measures”); *The Chinese Exclusion Case*, 130 U.S. 581, 606 (1889) (justifying the exclusion of Chinese nationals seeking to return to the U.S. as necessary to “give security against foreign aggression”). In its briefing, the Government merely asserts without evidence that the continuation of Haiti’s TPS designation endangers national security. This bald assertion cannot overcome the Fifth Amendment’s command that race-based discrimination—when uncovered through *Arlington Heights*—is unconstitutional.

As discussed *infra* Section II, government officials have espoused countless racially coded statements and tropes that supply probative evidence of racial and national origin discrimination. The Government erroneously suggests that because “virtually every country” designated for TPS is located outside of Europe with predominantly non-White populations, “virtually any generally applicable immigration policy could be challenged on equal protection grounds.” *See* Br. for Pet’rs at 50 (quoting *Ramos v. Nielsen*, 709 F. Supp. 3d 871, 898 (N.D. Cal. 2023) and *Regents*, 591 U.S. at 34). “[I]llegal immigration,” not racial animus, the Government urges, drove the decision to terminate Haiti’s TPS designation. *Id.* at 49.

This reasoning cannot be reconciled with the Fifth Amendment’s mandate that intentional discrimination has no place in this country.

Persuasive evidence demonstrates that the termination was motivated by stereotypes and opposition to Haitian immigrants and Black or non-European people more generally rather than a fair review of the actual conditions in Haiti. Nothing about Respondents' argument means that every decision that affects a particular country is inherently tainted by racially discriminatory intent or triggers strict scrutiny. Instead, Respondents argue, based on ample contemporaneous statements by the relevant government actors about their TPS and immigration-related decision-making process, that the TPS termination here was discriminatory.

Regrettably, Haitians have borne the brunt of the federal government's anti-Black immigration policies for over a century.⁴ Because "racial discrimination is not just another competing consideration" for legislators, administrators, and executive officials to consider, "[w]hen there is proof that a discriminatory purpose has been a motivating factor in the decision," then "judicial deference" to that legislative, administrative, or executive decision "is no longer justified." *Arlington Heights*, 429 U.S. at 265–66. Applying rational basis review in this context is inappropriate and would distort the Court's equal protection jurisprudence.

⁴ Raymond Audain, *Not Yet Forgiven for Being Black: Haiti's TPS, LDF, and the Protean Struggle for Racial Justice*, 52 *Loy. L.A. L. Rev.* 409, 419–422 (2019) (summarizing the Federal Government's anti-Haitian and anti-Black immigration policies over many decades).

Although “[t]he President has vital power in the field of foreign affairs, so does Congress, and the President does not have the authority to override immigration laws enacted by Congress,” such as by making immigration decisions based on racial discrimination. *Biden v. Texas*, 597 U.S. 785, 830 (2022) (Alito, J., dissenting). Under this Court’s presidential powers precedents, *Hawaii* is distinct from, and its analysis is inapplicable to, the instant case.

II. The President’s and the DHS Secretary’s Contemporaneous Comments Denigrating Haitians and Other Black Immigrants Are Significant Direct and Circumstantial Evidence of Illegal Discriminatory Intent.

Contemporaneous statements made by government agents overseeing a challenged program or action are probative of discriminatory intent. *See, e.g., Ramos v. Louisiana*, 590 U.S. 83, 88 (2020) (considering statements that “frankly acknowledged that race was a motivating factor” in adopting laws); *Foster v. Chatman*, 578 U.S. 488, 511 (2016) (considering direct statements of discriminatory intent to rebut a state actor’s pretextual justifications). Though not dispositive, the use of racially charged language can be powerful evidence that an action is racially motivated and that other justifications are mere pretexts. *Cf. Ash v. Tyson Foods, Inc.*, 546 U.S. 454, 456 (2006) (per curiam).

Contrary to the Government’s argument, discriminatory statements by the President and

members of his cabinet constitute probative evidence under the *Arlington Heights* framework. *See* Br. for Pet’rs at 49–50 (arguing that the district court erred in considering the President’s and the Secretary’s statements when it determined that the Respondents were likely to succeed on their equal protection claim). Neither the Constitution nor this Court’s precedents make an exception for, or prohibit consideration of, statements of the President or other executive officials when assessing the motivation behind their actions. Courts are “not required to exhibit a naiveté from which ordinary citizens are free.” *U.S. Dep’t of Com.*, 588 U.S. at 785 (citation omitted). The constitutional analysis tracks common sense: a government official’s contemporaneous statements regarding a particular group shed light on why that official or his agents pursued a particular action aimed at that group.

This case is distinct from *Regents*. There, this Court determined that “critical statements about Latinos” President Trump made during the 2016 Presidential Campaign were too “remote in time and made in unrelated contexts” to qualify as “contemporaneous statements” under *Arlington Heights*. *See Regents*, 591 U.S. at 35 (citation omitted). But here, President Trump’s contemporaneous remarks about Haitians were directly related to the termination of Haiti’s TPS designation. In September 2024, just before his February 2025 attempt to prematurely end TPS for Haitians,⁵

⁵ *See Haitian Evangelical Clergy Ass’n v. Trump*, 789 F. Supp. 3d 255, 264 (E.D.N.Y. 2025) (postponing the Trump

President Trump employed overtly racist rhetoric and plainly stated he wanted Haitians in the United States to return to Haiti.⁶ That is the precise outcome of terminating Haiti’s TPS designation. After his reelection, the President again in December 2025 (even closer in time to his actions) reaffirmed that he sought “a permanent pause on Third World migration, including from hellholes like Afghanistan, Haiti, [and] Somalia.”⁷ At the time, the President restated his disgust that the United States accepted immigrants from “shithole countries” like Haiti and Somali, rather than “nice” Scandinavian countries.⁸

These direct statements are explicit expressions of President Trump’s overtly hostile attitude towards Haitians and desire to expel them from the United States, and serve as “graphic direct evidence” that intentional discrimination drove the termination of Haiti’s TPS designation. *See Bos.*

Administration’s February 2025 effort to prematurely end TPS for Haitians before the review period).

⁶ Irie Sentner, *Trump Uses Harsher Rhetoric to Describe Haitians in Ohio*, Politico (Sept. 13, 2024, 4:18 PM), <https://www.politico.com/news/2024/09/13/trump-haitians-ohio-pets-00179147> (President Trump claiming that “[i]llegal Haitian immigrants have descended upon a town of 58,000 people”—Springfield, Ohio—“destroying their way of life” and threatening mass deportations).

⁷ Jonathan J. Cooper, *Trump Once Denied Using this Slur About Haiti and African Nations. Now, He Boasts About It*, Associated Press (Dec. 9, 2025, 10:36 PM), <https://apnews.com/article/trump-slur-haiti-africa-immigration-28aa0785d6f3c68fd4d9e823b6397429>.

⁸ Daniel Dale, *Almost Eight Years Later, Trump Confirms He Used the Phrase ‘Shithole Countries’*, CNN, <https://www.cnn.com/2025/12/10/politics/donald-trump-shithole-countries-phrase> (updated Dec. 10, 2025).

Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for the City of Bos., 145 S. Ct. 15, 17–18 (2024) (Alito, J., dissenting) (citing similar statements from officials as evidence of discrimination).

Here, unlike in *Regents*, 591 U.S. at 34–35, the Secretary of DHS who is statutorily charged with designating countries for TPS also made statements evincing direct or circumstantial evidence of her intent to expel all Haitians based on race or nationality. The Secretary has explicitly stated about Haitians and other non-European TPS recipients that “WE DON’T WANT THEM. NOT ONE.” J.A. 703. A mere three days after her termination of TPS for Haitians, the Secretary recommended that the President “ban anyone from Haiti coming into the U.S.” *Id.* And she has referred to Haitians as “leeches,” “entitlement junkies,” and “foreign invaders” who “suck dry our hard-earned tax dollars.” *Id.* Her explicit comments reflect “powerful racial stereotype[s]” about Black people as “violence prone” and predisposed to criminality and government dependency.⁹ *Cf. Buck*, 580 U.S. at 121. Certain terms like “welfare queen,” “terrorist,” “thug,” “illegal alien” can invoke racialized stereotypes that are “already

⁹ See Camille Gear Rich, *Reclaiming the Welfare Queen: Feminist and Critical Race Theory Alternatives to Existing Anti-Poverty Discourse*, 25 S. Cal. Interdisc. L.J. 257, 268, 277, (2016) (recounting recent use of the trope of “the welfare queen construct to demonize poor and newly immigrated Asian and Latino mothers who allegedly have ‘anchor babies’” alongside the history of the stereotype of “welfare queens” as “a ‘public identity’ . . . to politically isolate poor black women” in order “to stigmatize and distance recipients of public assistance from other Americans for decades”).

planted in the public consciousness.” *Lloyd v. Holder*, No. 11 Civ. 3154(AT), 2013 WL 6667531, at *9 (S.D.N.Y. Dec. 17, 2013); *accord Ash*, 546 U.S. at 456.

Moreover, the Secretary has been explicit that, rather than making an independent determination, DHS takes direction from the President on immigration. On January 29, 2025, the Secretary stated that “[w]hen the President gives a directive, the [DHS] will follow it.” J.A. 702. A month later, on February 22, 2025, the President stated that “[t]his week *I* also cancelled temporary protected status for migrants from Haiti, they are pouring into this country, pouring in.” *Id.* (emphasis in original). Days later, the Secretary made her first attempt to end TPS for Haitians. *Id.*

Accordingly, President Trump’s and the Secretary of DHS’s statements vilifying Haitians and other Black immigrants provide powerful and direct evidence that termination of the Haitian TPS designation stemmed from an impermissible intent to discriminate. President Trump’s statements clearly directed the actions of DHS, and the DHS Secretary’s own statements reveal the same nationality-based and racially-motivated intent to terminate TPS for Haitians.

Official actions stemming, even in part, from a racially discriminatory motive are inherently unsound. *Milligan*, 599 U.S. at 37. Just as “the very integrity of the courts is jeopardized when a prosecutor’s discrimination ‘invites cynicism respecting the jury’s neutrality’”; *Miller-El v. Dretke*, 545 U.S. 231, 238 (2005) (citation omitted); so too does

discrimination by the President compromise the integrity of agency action.

That logic holds particular force here. The Secretary tasked with overseeing the TPS designations, ratified and advanced President Trump's discriminatory purpose and made her own comments revealing her own race-based motives. The Secretary, like the President, desired to expel Haitians from the United States; both the Secretary and President repeatedly and luridly conveyed this desire through rhetoric steeped in race-based stereotypes. Termination of Haiti's TPS designation marked the fulfillment of this express, public, shared desire. "At a minimum, President Trump influenced [the Secretary's] decision through his many public statements, which [the Secretary] has acknowledged. Indeed, the Government concedes that DHS communicated and met with White House officials to discuss Haiti's TPS designation." J.A. 703.

On these bases, the District Court correctly concluded that the Secretary's statements, even considered on their own, also supported postponement.

"Stereotyping on the basis of race or country of origin can never form the basis of 'reasoned decision making' nor can it provide a 'rational connection between the facts found and the choice made.'" *Nat'l TPS All. v. Noem*, 166 F.4th 739, 775 (9th Cir. 2026) (Mendoza, J., concurring) (citation omitted); *see also Flowers*, 588 U.S. at 299–300 (emphasizing that the equal protection clause prohibits prosecutors from striking Black jurors based on the stereotype that

Black jurors will favor Black defendants). This Court “cannot ignore” the myriad of “extraordinary statements by direct decision-makers” evidencing hostility to Haitian immigrants and other immigrants from predominantly non-White countries. *Id.* at 775.

Nor could the District Court disregard the Administration’s past intentional discrimination against Haitian TPS recipients in 2018, J.A. 701 (collecting cases), or the Administration’s pattern of terminating TPS for all non-European countries based on the President’s and the Secretary’s explicit and racially-motivated or nationality-based hostility to lawful and unlawful immigrants from Haiti and other non-White countries, J.A. 698–99. It is “unprecedented in the thirty-five years since the establishment of the TPS program for a DHS Secretary to terminate every TPS designation that crosses her desk for review.” *Id.* at 678–79. These “terminations strongly suggest[] that each decision sprang from a ‘*de facto* policy’ and ‘shrug[ed] [sic] off’ the ‘statutory command’ that she engage in an individualized review of the conditions of each country.” *Id.* at 679 (emphasis in original) (citation omitted). “We cannot ignore that history. We cannot take that history out of the case.” *Flowers*, 588 U.S. at 306–07 (considering a state’s historical pattern of similar acts of discrimination against Black individuals).

Here, Respondents produce ample examples of overtly discriminatory statements, revealing an intent to discriminate based on race and nationality. *See, e.g.*, J.A. 698–704. These are properly considered in the equal protection claim. As the District Court

concluded, weighed alongside other considerations, such as the irregularities in the TPS termination process, the repeated expressions of bald racial hostility made by President Trump and the Secretary—and other members of the cabinet¹⁰—make it likely that Respondents will succeed on the equal protection claim.

III. Even If Rational Basis Did Apply, Respondents Are Still Very Likely to Succeed on the Merits.

It is well-established that, where government action is based on race, strict scrutiny applies. *See supra* Section I.C. Nevertheless, the Government attempts to circumvent this Court’s settled precedent by arguing that rational basis review applies because *Hawaii*, a case involving a policy about non-citizens seeking entry into the United States, applies to a case involving a statute about non-citizens already living in the United States. *See* Br. for Pet’rs at 45–49. It does not.

However, even if rational basis review were applied, Respondents still provide significant evidence sufficient to prevail. The Government’s

¹⁰ *See, e.g.*, Maggie Astor, *Vance Sticks by Pet-Eating Claims and Says He’s Willing to ‘Create Stories’*, N.Y. Times (Sept. 15, 2024), <https://www.nytimes.com/2024/09/15/us/politics/jd-vance-springfield-pets.html> (reporting that Vice President Vance “stood by the debunked claims” that Haitian immigrants in Springfield were kidnapping and eating other residents’ pets, and that he was willing “to create stories so that the American media actually pays attention” to President Trump’s anti-immigrant message).

determination regarding Haitian TPS holders was motivated by a bare desire to expel lawful United States residents based on their race and national origin rather than being rationally related to the factors detailed in the TPS statute.

Rational basis review is a deferential standard, but it is not a judicial rubber stamp of policies that “lack any purpose other than a ‘bare . . . desire to harm a politically unpopular group.’” *Hawaii*, 585 U.S. at 705 (quoting *Dep’t of Agric. v. Moreno*, 413 U.S. 528, 534 (1973)). Policies struck down under rational basis review fit a pattern in which “it is impossible to ‘discern a relationship to legitimate state interests’ or that the policy is ‘inexplicable by anything but animus.’” *Id.* at 706.

Here, even if this Court were to (wrongly) apply rational basis review, the challenged decision fits squarely within this pattern. In *Cleburne v. Cleburne Living Center, Inc.*, this Court invalidated a local zoning ordinance because the city’s “stated concerns” were merely a pretext for and rested on “an irrational prejudice” against people with intellectual disabilities. 473 U.S. 432, 448–450 (1985). Similarly, in *Romer v. Evans*, this Court overturned a state law that denied queer people the protection of antidiscrimination laws. 517 U.S. 620, 632, 635 (1996). In *Romer*, the “sheer breadth” of the amendment was “so discontinuous with the reasons offered for it” that it was deemed irrational. *Id.* The indisputable facts and evidence in this case are likewise textbook examples of simply irrational policies under any standard of review.

Here, too, the Government failed to explain how Haitian TPS holders impact border security or foreign relations interests. *See Nat'l TPS All. v. Noem*, 798 F. Supp. 3d 1008, 1035 (N.D. Cal. 2025), *appeal filed*, No. 25-4901 (9th. Cir. Aug. 4, 2025) (finding that TPS recipients were likely to succeed in a challenge to a termination even under a rational basis standard). Instead, the Government has invoked a generalized national security interest that sweeps all Haitians into a discriminatory dragnet. In *Romer*, the Court rejected this kind of pretextual governmental overreach. 517 U.S. at 632, 635. Here, too, the decision to terminate Haiti's TPS designation is untethered to any evidence-based logic and can only be explained by this Administration's intent to discriminate against Haitians. J.A. 697 (rejecting the Government's argument that termination of Haiti's TPS designation was rationally related to national security concerns).

The Government argues that the Secretary's termination decisions were rationally related to the government's legitimate interests in immigration, national security, and foreign policy. *See Br. for Pet'rs* at 46–49. However, it cannot be rational that the Secretary terminated Haiti's TPS designation while the State Department—with whom the Secretary traditionally consults during periodic review of TPS designations—simultaneously reissued the highest travel advisory warning that Americans “[d]o not travel to Haiti for any reason” because of the risks of kidnapping, crime, terrorist activity, civil unrest, and limited health care. J.A. 771.

Regarding national interest, the Government emphasizes the Secretary's finding that “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” raised national security concerns. Br. for Pet’rs at 47 (quoting 90 Fed. Reg. 54733, 54737 (Nov. 28, 2025)). Yet the Government also acknowledges “escalating violence and gang violence” in Haiti. *Id.* at 12 (internal citation omitted). Put another way, defying rationality, the Secretary declares that the conditions in Haiti are so dangerous that Haitians who have already been vetted and are present in the United States must return to Haiti. This reasoning is both illogical and turns the purpose of TPS—to provide status and protection for those whose home country is too dangerous and unstable to safely return—on its head.

Given the irrationality of the Secretary’s stated justifications, what remains is the Government’s bare desire to expel Haitians because they are Haitian and Black. That racially discriminatory intent drove this agency action is only made more manifest by the countless denigrating statements officials have made about Haitians and other non-Europeans. Just as in *Cleburne*, where the stated concerns driving the policy were a guise for irrational prejudice. 473 U.S. at 448–50. And, just like *Romer*, where the policy was “divorced from any factual context from which [this Court] could discern a relationship to legitimate state interests, *Romer*, 517 U.S. at 635, the Secretary’s policy to terminate Haiti’s TPS designation is inexplicable by anything but discriminatory intent.

The record supports Respondents’ Fifth Amendment equal protection claim under either strict

scrutiny or the more deferential test of rational basis review and this Court should affirm the postponement of the Secretary's Haitian TPS designation.

CONCLUSION

The Court should affirm the decisions below.

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