No. 25-1083

IN THE

Supreme Court of the United States

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

—v.—

DAHLIA DOE, ET AL.,
Respondents.

ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS

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QUESTIONS PRESENTED

The Temporary Protected Status ("TPS") statute, 8 U.S.C. 1254a, authorizes the Secretary of the Department of Homeland Security to "designate" countries for TPS under one or more of three different sets of criteria. 8 U.S.C. 1254a(b)(1)(A) (armed conflict); 1254a(b)(1)(B) (natural disaster); 1254a(b)(1)(C) ("extraordinary and temporary conditions"). It also requires "periodic review" of such designations, under which, "after consultation with appropriate agencies, the [Secretary] shall review the conditions in the foreign state…for which a designation is in effect…and shall determine whether the conditions for such designation…continue to be met." 8 U.S.C. 1254a(b)(3)(A). "If the [Secretary] determines" that the country "no longer continues to meet the conditions for designation…[the Secretary] shall terminate the designation." *Id.* 1254a(b)(3)(B). "If the [Secretary] does not determine" that the country "no longer meets the conditions for designation" then "the period of designation…is extended." *Id.* 1254a(b)(3)(C).

The statute also provides that "[t]here is no judicial review of any determination of the [Secretary] with respect to the designation, or termination or extension of a designation, of a foreign state." 8 U.S.C. 1254a(b)(5)(A).

The questions presented are:

1. Whether the district court erred in concluding that Section 1254a(b)(5)(A) allows review of Respondents' three claims: that the Secretary failed to comply with the statutory obligation to "consult[] with appropriate agencies";

misread the statute to permit termination based on consideration of the "national interest"; and relied on extra-statutory political considerations and "contrived" justifications in her termination decision. *Dep't of Com. v. New York*, 588 U.S. 752, 784-85 (2019).

2. Whether the district court erred in finding Respondents likely to succeed on the merits of those claims.

3. Whether the district court abused its discretion in finding the balance of equities and public interest warranted preliminary relief postponing the termination of TPS for Syria while the litigation proceeds.

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INTRODUCTION

Petitioners seek a massive expansion of power for the Secretary of Homeland Security. They ask this Court to immunize from judicial review virtually any decision made under color of the TPS statute. Although in this case they seek that power to end TPS in contravention of the rules Congress established, the power they seek would be equally immune from review when used to serve other agendas. Under Petitioners' view the Secretary could designate Mexico or China for TPS for fifty years—explicitly to accomplish mass legalization, and in direct defiance of the statute—and courts would be powerless to intervene. A former senior immigration staffer once suggested something similar, claiming the TPS statute grants "unreviewable discretion to the president [to] help almost all of the undocumented individuals…on day one."[1]

That is wrong. This Court should reject Petitioners' radical position. Congress enacted the TPS statute to constrain unbridled Executive power. The scheme affords the Secretary substantial discretion to make *initial* designations so long as the Secretary finds statutory conditions are met. But it tightly constrains decision-making after designation has occurred. It establishes a process for periodic review of the conditions in every designated country; *requires* the Secretary to consult with the State Department about country conditions prior to any review; and *mandates* that protection be extended

[1] *See* Leon Fresco, *Temporary Protected Status solution for undocumented immigrants*, The Hill (Nov. 21, 2020), https://perma.cc/Q8DT-S7UH.

where conditions in a designated country remain unsafe.

Under the statute's text, Respondents' claims—that the Secretary failed to consult about country conditions, erroneously relied on the "national interest" to justify termination, and provided contrived reasons for her decision—are clearly reviewable. Section 8 U.S.C. 1254a(b)(5)(A) bars review of "any determination with respect to the designation, or termination or extension of a designation…under [subsection (b)]." Throughout subsection (b), Congress used the words "determine[s]" and "determination" to refer exclusively to the Secretary's country-conditions assessments—*i.e.*, the conclusion that a previously-designated country does or does not remain unsafe. Section 1254a(b)(5)(A) therefore forecloses challenges asserting that TPS must be extended because a country remains unsafe, but not claims that the Secretary violated the statute's procedural mandates and failed to utilize its specified decision-making criteria. That reading comports with decades of settled administrative law, including how this Court interpreted the same key term—"determination"—in other immigration statutes.

On the merits, Respondents are likely to prevail on three claims. First, the statute unambiguously mandates consultation about country conditions. Yet the only evidence of consultation Petitioners offered below was their boilerplate statement in the termination notice, even though it blatantly contradicted the State Department's assessment that "[n]o part of Syria is safe from violence" due to "active armed conflict," J.A.447. Now Petitioners offer a two-

sentence email from the State Department, Pet.Br.38-39, but it confirms there was no consultation *about country conditions*, as the statute requires.

Second, the Secretary also erred by interpreting the statute to permit termination in the "national interest." The plain text permits consideration of that factor at the initial designation phase in one instance, but makes clear that blanket "national interest" assessments have no role thereafter. Congress did not permit wholesale termination of protected status on "national interest" grounds—as this would require the forcible expulsion of thousands of people who have done nothing wrong to countries that remain unsafe. Instead, Congress established a mechanism for withdrawal of status on a person-by-person basis where their criminal activity or other individual circumstances warrant.

Third, the district court did not commit clear error in concluding the Secretary's termination rested on contrived reasons infected by undue political influence wholly untethered from the statutory criteria. The President promised to "revoke" TPS because it is "not legal," J.A.281-83, and targeted it explicitly in his first Executive Order on the immigration "[i]nvasion." J.A.598. Then-Secretary Noem explained her very first TPS decision to the public by saying she was "follow[ing]" the President's "directive" to "paus[e] th[e] program," J.A.519-20, and duly terminated TPS for all thirteen countries she considered. It was not clear error to credit the Secretary's public explanations for her decisions.

Finally, Petitioners entirely ignore the preliminary posture of this case. They never dispute

that the district court acted within its discretion to preserve the status of approximately 7,000 Syrians for a few months while the litigation proceeds. Respondents are highly qualified doctors, journalists, students, teachers, researchers, business owners, caretakers, and others who were vetted before they arrived on visas and have been repeatedly vetted by DHS ever since. They seek to preserve their right to live and work here because they could be killed if forced back to Syria. Most have lived here lawfully for years—in many cases more than a decade—and would suffer irreversible harm if they lose status while this case proceeds, even if they eventually win at final judgment. Given that Petitioners have not even tried to show harm from the court's order temporarily preserving the status quo, the district court did not abuse its discretion by granting preliminary relief.

STATEMENT

A. The TPS Statute

1. Congress created TPS in 1990 to constrain executive discretion in pre-existing humanitarian relief programs, particularly "extended voluntary departure" ("EVD"). *See* Immigration Law Scholars Amicus Br. Pts. I & III. Because EVD lacked any specific criteria, it resulted in arbitrary, overtly political decisions. *Id.* Congress reformed the system after the D.C. Circuit upheld the Attorney General's refusal to grant EVD for Salvadoran refugees in *Hotel & Restaurant Employees Union, Local 25 v. Smith*, 846 F.2d 1499, 1510-11 (D.C. Cir. 1988) (Mikva, J.) (EVD decisions are largely unreviewable).

Congress designed TPS to (1) limit executive discretion and ensure future decisions would be based

on identifiable conditions rather than "the vagaries of our domestic politics," *Nat'l TPS All. ("NTPSA") v. Noem*, 150 F.4th 1000, 1009-11 (9th Cir. 2025); (2) replace EVD's "ad hoc, haphazard...procedures," *id.* at 1010; and (3) provide beneficiaries with certainty about "what [their] rights are, how the Justice Department determines what countries merit [protected] status [and] how long they will be able to stay," 135 Cong. Rec. H25811, 25837 (daily ed. Oct. 25, 1989) (debating precursor to TPS statute). Congress did what executive branch officials had refused to do: it established criteria and processes to govern country-based humanitarian protection. It also directly mandated TPS for El Salvador, thereby effectively overruling the D.C. Circuit's *Smith* decision. Immigr. Act of 1990, Pub. L. 101-649, § 301 (1990).

2. The TPS statute gives the Secretary authority to provide humanitarian relief to people from countries stricken by armed conflict, natural disaster, or other "extraordinary and temporary conditions." 8 U.S.C. 1254a(b)(1)(A)-(C). Beneficiaries receive employment authorization and protection from immigration detention and removal. *Id.* 1254a(d)(4), (a)(1).

Congress set strict limits on who qualifies. TPS protects only people already in the United States at the time of designation; it provides no right for others to enter from the designated country. Nor does a TPS designation protect anyone who arrives *after* the designation. Even for those who qualify, TPS provides no pathway to permanent residence; it is in that sense "temporary." *Sanchez v. Mayorkas*, 593 U.S. 409, 412 (2021).

When a country is designated, the statute requires DHS to make individualized determinations about applicants' eligibility. Applicants submit biometrics for identity verification and background checks, which are rerun each time beneficiaries re-register for TPS. American Immigration Lawyers Association & Immigration Law Scholars Amicus Br. (*hereinafter* "AILA/Academics Amicus Br."), Pt. I.D. Applicants are ineligible, *inter alia*, if they have been "convicted of any felony or 2 or more misdemeanors," 8 U.S.C. 1254a(c)(2)(B)(i); could reasonably be regarded as a danger to national security, *id.* 1254a(c)(2)(B)(ii); 1158(b)(2)(A)(iv); have ties to designated terrorist organizations, *id.* 1254a(c)(2)(A)(iii)(III); 1182(a)(3)(B); or are otherwise inadmissible under certain grounds. *Id.* 1254a(c)(1)(A)(iii); 1254a(c)(2)(A). The Secretary "shall withdraw" the status of any recipient who becomes ineligible. *Id.* 1254a(c)(3).

Congress also established both procedural rules and decision-making criteria governing the initial designation. The Secretary must consult with "appropriate agencies," after which she "may designate" a country for a period of between six and 18 months. *Id.* 1254a(b)(1)-(2). The Secretary may designate only in response to an "armed conflict," natural disaster, or other "extraordinary and temporary conditions." *Id.* 1254a(b)(1). To designate on armed conflict grounds, the Secretary must find there is "an ongoing armed conflict" which "would pose a serious threat to the[] personal safety" of that country's nationals. *Id.* 1254a(b)(1)(A). To designate on "extraordinary conditions" grounds, the Secretary must find that "conditions in the foreign state"

prevent nationals "from returning…in safety[.]" *Id.* 1254a(b)(1)(C). The extraordinary conditions ground for designation also includes a "national interest" exception: the Secretary may decline to designate on this ground if they find that permitting a country's nationals "to remain temporarily in the United States is contrary to the national interest[.]" *Id.*

The TPS statute strictly limits the Secretary's discretion after designation, specifying the process and precise country-conditions criteria for assessing whether to extend or terminate TPS protection. *Id.* 1254a(b)(3)(A). It directs the Secretary to conduct "periodic review[s]" prior to the end of each designation period. *Id.* "[A]fter consultation with appropriate agencies," the Secretary "shall review the conditions in the foreign state" and "determine whether the conditions for such designation...continue to be met." *Id.*; *see also* J.A.14-15.

Unless the Secretary determines the country "no longer meets the conditions for designation," the statute mandates that designation "is extended" automatically for 6 months or "in [the Secretary's] discretion...12 or 18 months." 8 U.S.C. 1254a(b)(3)(C). The statute thus "provides extension as a default." *NTPSA v. Noem*, 773 F. Supp. 3d 807, 851 (N.D. Cal. 2025). It places no cap on the number of subsequent extensions; the statute permits TPS designations to last for years if conditions remain unsafe.[2]

Whenever conditions require extension, the Secretary also has discretion to designate again, or "redesignate" a country for TPS, thereby allowing

[2] *See* AILA/Academics Amicus Br. Pt. I.C.

later-arriving nationals to apply and expanding the pool of eligible TPS recipients. J.A.114.

If, and only if, the Secretary determines the country "no longer continues to meet the conditions for designation," she "shall terminate the designation." 8 U.S.C. 1254a(b)(3)(B).

B. Syria's TPS Designation

DHS first designated Syria for TPS in 2012 on extraordinary conditions grounds. 77 Fed. Reg. 19026, 19027 (Mar. 29, 2012). The designation followed "consultation with the Department of State" and "other appropriate Government agencies," and was based on brutal government repression, violent conflict, and large-scale internal displacement stemming from the outbreak of a civil war. *Id.* In 2013, DHS extended that designation *and* redesignated Syria based on worsening "extraordinary and temporary conditions" and, separately, "ongoing armed conflict." 78 Fed. Reg. 36223, 36225 (June 17, 2013). DHS subsequently extended and redesignated TPS for Syria on both grounds as the civil war escalated. J.A.597. Throughout this period, Syrians suffered from a severe humanitarian crisis, compounded by a major earthquake in 2023. *Id.*

In January 2024, then-Secretary Mayorkas issued the latest extension and redesignation of TPS for Syria based on both extraordinary conditions and armed conflict grounds, citing ongoing armed conflict, dire economic and humanitarian conditions, and continued effects of the 2023 earthquake. 89 Fed. Reg. 5562, 5565 (Jan. 29, 2024).

C. Petitioners' TPS Actions

In an October 2024 interview, then-candidate Trump stated he intended to "revoke" TPS if elected because "it's not legal." J.A.281-82. On the day he took office, President Trump issued an Executive Order characterizing immigration as an "invasion" and directing DHS to "promptly take all appropriate action" to rescind policies that "increased or continued [the] presence of illegal aliens in the United States." J.A.598. By definition, TPS holders are lawfully present; and the statute does not condition eligibility on manner of entry or prior possession of lawful status. Nevertheless, the Order specifically called for review of TPS designations, and mandated that they be "limited in scope" to ameliorate the "continued presence of illegal aliens." *Id.*

At her confirmation hearing, then-Secretary Noem claimed "this [TPS] program has been abused and manipulated by the Biden Administration and that will no longer be allowed." J.A.196. In her first month in office, she issued orders purporting to "vacate" prior extensions of TPS for Venezuela and Haiti—despite the lack of any statutory mechanism for "vacatur." *See NTPSA v. Noem*, 166 F.4th 739, 751-52 (9th Cir. 2026). She explained her Venezuela decision in a CNN interview the next day, stating: "When the president gives a directive, [DHS] will follow it.…[W]e are getting direction on how [TPS] works from the direction of the President of the United States. And he is pausing the program to re-evaluate." J.A.519-20.

Over the next year, Secretary Noem terminated TPS for every country she reviewed—Venezuela,

Haiti, Afghanistan, Cameroon, Nepal, Nicaragua, Honduras, Syria, South Sudan, Burma, Ethiopia, Somalia, and Yemen. *Aung Doe v. Noem*, 2026 WL 184544, at *16 n.6 (N.D. Ill. Jan. 23, 2026); 91 Fed. Reg. 10402 (Mar. 3, 2026). Her termination decisions repeatedly concluded TPS holders could safely return to countries the State Department deems too dangerous even to visit. *See infra* 47. And for every designation based on extraordinary conditions, the Secretary found the "national interest" an independent basis warranting termination. *See Aung Doe*, 2026 WL 184544, at *16 n.6.

On September 19, 2025, she announced Syria's termination, effective November 21, 2025. 90 Fed. Reg. 45398 (Sep. 22, 2025). The notice first concluded that an armed conflict no longer exists in Syria. It stated she "consult[ed] with appropriate U.S. Government agencies," *id.* but did not acknowledge the State Department's July 2025 "Do Not Travel" advisory warning "No part of Syria is safe from violence" due to "terrorism, civil unrest, kidnapping, hostage taking, and armed conflict." J.A.447.

The notice next stated that although "most Syrians require some form of humanitarian assistance," nothing prevents the safe return of Syrian nationals, citing only one source—a U.N. press release on refugees returning from neighboring states—which post-dated the termination-decision deadline. 90 Fed. Reg. at 45400, n.22. Ultimately, the Secretary found termination was "required because it is contrary to the national interest" to allow Syrians to remain in the U.S., regardless of conditions in Syria. *Id.* at 45400. In support, she cited purported difficulties in accessing records in Syria to vet Syrian nationals already here,

and the criminal investigations of two Syrians, neither of whom is identified as a TPS recipient. *Id.* The termination also pointed to "foreign policy reasons" for ending TPS, citing a directive instructing the State Department to "put American citizens first." *Id.* at 45401.

D. Procedural History

Respondents are Syrians affected by the ongoing crisis in Syria. Respondent Laila Doe fled Syria in 2013 after her daughter's daycare was bombed. J.A.548-49. She works as a behavioral technician for children and adults with disabilities, relying on her TPS work authorization. She is the only caregiver for her teenage daughter—also a TPS holder, who has lived here since the age of 3—and her U.S.-citizen mother. J.A.548-50. To this day airstrikes and violence continue in her family's neighborhood. J.A.549-50. Respondent Dahlia Doe is a Christian with no family in Syria. She fears persecution as a religious minority. J.A.530-32. Respondent Dr. Sara Doe is a pediatrician who fled Syria in 2014 after two of her brothers were tortured and killed by the Syrian regime and she was targeted for her medical work. She now practices medicine here, but will lose work authorization if TPS is terminated. J.A.537-38. Other Respondents fear ongoing violence, persecution of minorities, and lack of medical care. *See* J.A.531-66.

Respondents filed suit and moved for preliminary relief to postpone the termination while litigation continues under 5 U.S.C. 705. They also sought the administrative record, but Petitioners refused, arguing "preliminary injunction rulings are virtually always based on incomplete records." Letter at 3, *Doe*

v. Noem, No. 25-cv-8686 (S.D.N.Y Nov. 3, 2025), Dkt.37 (citation modified). The district court did not compel production at that time. Memo Endorsement, *Doe v. Noem*, No. 25-cv-8686 (S.D.N.Y Nov. 4, 2025), Dkt.38.

The district court ruled for Respondents. J.A.1-35. It held the jurisdiction-stripping provision of 8 U.S.C. 1254a(b)(5)(A) does not preclude review, citing the "chorus" of other TPS decisions relying on *McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479 (1991). J.A.10.

On the merits, the district court did not "opin[e] on the substance of the Secretary's termination decision," but held Respondents likely to succeed on their claims that the termination violated the TPS statute for three reasons. J.A.15. First, it held the termination likely did not result from the requisite consultation and country-conditions review where the termination notice was "internally inconsistent" and omitted conflicting evidence from other government agencies. It also credited evidence showing the Secretary had a practice of terminating TPS for other countries without consultation. J.A.15-18, 21-24. Second, it held Respondents unlawfully relied on a bare assertion of "national interest, divorced from an analysis of country conditions [in the foreign state]," which was unprecedented and "contrary to [] statute." J.A.18-21. Finally, it held the termination was motivated by "political considerations...not relevant under the TPS statute." J.A.24-25.

The court held the remaining preliminary relief factors favored Respondents. J.A.29-31.

The court of appeals denied Petitioners' request for a stay pending appeal. J.A.39. After Petitioners sought this Court's intervention, it granted certiorari before judgment.

Respondents subsequently renewed their request for the administrative record, which the district court granted over Petitioners' objection. Order, *Doe v. Noem*, No. 25-cv-8686 (S.D.N.Y Mar. 31, 2026), Dkt.71. Petitioners have now produced what they claim is the full administrative record and it confirms Respondents' claims. The sole correspondence from the State Department to DHS in the record is a two-sentence email concerning the TPS designations of four countries. The email never references country-conditions. Admin. R. Ex. at 156, *Doe v. Noem*, No. 25-cv-8686 (S.D.N.Y Apr. 3, 2026), Dkt.72-2. Meanwhile, DHS's researchers found there was "hardly…an end to the armed conflict"; Syria was on the verge of "potential collapse and a full-scale civil war of epic proportions" (quoting Secretary of State Rubio); the "humanitarian situation...continued to deteriorate"; and "conditions...remain unfit for safe and dignified returns." *Id.* at 17, 19, 61, 67 (citation modified). DHS also found that virtually no Syrian TPS holders or applicants (0.2%) had records indicating fraud or public safety concerns. *Id.* at 164.

SUMMARY OF ARGUMENT

"[T]he President does not have the authority to override immigration laws enacted by Congress." *Biden v. Texas*, 597 U.S. 785, 830 (2022) (Alito, J., dissenting). Yet that is precisely what the Secretary did here. The district court correctly concluded it had jurisdiction; that the termination was likely unlawful;

and that preliminary relief was appropriate to prevent irreparable harm while this case proceeds.

Jurisdiction. Petitioners' jurisdictional position ignores the statute's text and this Court's precedent construing its key term—"determination"—in the immigration context. More fundamentally, their view is irreconcilable with basic principles of administrative law.

Petitioners read Section 1254a(b)(5)(A) to preclude review of any challenge "directed at a specific TPS designation, termination, or extension," and any "antecedent decision-making steps" regarding such decisions. Pet.Br.19-20. But that ignores the statute's *eight* other uses of "determination" and "determine[s]" in that same subsection. Those uses make clear the term "determination" in subsection (b) refers to a distinct set of acts—the Secretary's country-conditions assessments. The Secretary's conclusions about whether country conditions remain unsafe play a central role in the statutory scheme, as they dictate whether to terminate or extend TPS, and whether discretionary redesignation is permissible. Congress barred review of all such "determinations." But it preserved review to ensure compliance with other statutory requirements—which Congress did not describe as "determinations." *Infra* Section I.A.

Concluding otherwise would contravene this Court's precedent interpreting "determination" in immigration cases and elsewhere. This Court construed the same operative language—"any determination"—in *Bowen v. Michigan Academy of Family Physicians*, 476 U.S. 667 (1986), shortly before Congress enacted the TPS statute. It construed

"determination" again in two immigration cases, *McNary, supra*, and *Reno v. Catholic Social Services* ("*CSS*"), 509 U.S. 43 (1993). Those cases read bars on reviewing "determination[s]" to preserve review of claims challenging the agency's compliance with procedural requirements and its interpretation of statutes, while barring review of claims that necessarily compelled the agency to make any particular decision—as would a claim directly challenging a country conditions assessment here. Congress repeatedly amended the immigration laws against the background of those cases, often adopting broader preclusive language. But it left Section 1254a(b)(5)(A) intact. *Infra* Section I.B.

Adopting Petitioners' position would dangerously expand the Secretary's power in contravention of the strong presumption favoring judicial review of agency action and core tenets of administrative law. It would allow Petitioners to expand and contract the rights of millions of people by executive fiat, subverting the framework Congress established to constrain executive discretion. This Court should exercise some measure of "common sense" as to the "manner in which Congress would have been likely to delegate such power to the agency," *West Virginia v. Env't Prot. Agency*, 597 U.S. 697, 722-23, 764 (2022) (citation modified). Nor can the Secretary invoke "foreign-policy and national-security" concerns to evade judicial review. Pet.Br.3-5. Even in cases involving such concerns, when DHS acts pursuant to Congressional mandates, its "exercise of discretion within that statutory framework must be reasonable and reasonably explained." *Biden*, 597 U.S. at 806-07. *Infra* Section I.C.

Merits. The Secretary violated Section 1254a(b)(3)(A)'s requirement to consult the State Department about "conditions in the foreign state" before deciding whether to terminate TPS. Below, Petitioners submitted no evidence to rebut Respondents' evidence strongly indicating no such consultation occurred. The two-sentence email Petitioners now offer confirms as much; it states the State Department has no "foreign policy concerns," but never even mentions conditions in Syria. *Infra* Section II.A.

In addition, the Secretary misread the statute by relying on the "national interest" to justify terminating Syria's designation. The statute permits the Secretary to decline to make an "extraordinary and temporary conditions" designation *in the first instance* if it would be contrary to "national interest"; but because "national interest" is not a "condition[] in the foreign state," termination on that basis is impermissible. 8 U.S.C. 1254a(b)(3)(A). Rather, the statute mandates extension whenever the "*foreign state*...continues to meet the *conditions* for designation." *Id.* 1254a(b)(3)(B)-(C) (emphasis added). Thus, while Congress required the Secretary to terminate the TPS status of individuals who commit crimes, present a security threat, or otherwise become ineligible for TPS, *id.* 1254a(c)(3), it does not permit blanket cancellation of protection for thousands of people whose countries remain unsafe. *Infra* Section II.B.

The district court did not clearly err in finding the Secretary offered contrived reasons for termination driven by undue political influence. Overwhelming evidence, including her public statements explaining

her TPS decisions, make clear she acted to effectuate the President's stated objective of ending TPS wholesale, regardless of country conditions. That is what she said she would do; and what, in fact, she did. This Court is "not required to exhibit a naiveté from which ordinary citizens are free." *Dep't of Com. v. New York*, 588 U.S. 752, 785 (2019). *Infra* Section II.C.

Equities. Although one might miss it in Petitioners' brief, the question at this stage is not whether Respondents have proven their claims. It is whether they should be forced to return to a country in the midst of war prior to full consideration of the merits. The answer should be obvious. Respondents "should receive preliminary relief while this lawsuit proceeds." *Mahmoud v. Taylor*, 606 U.S. 522, 569 (2025). *Infra* Section III.

ARGUMENT

I. SECTION 1254a(b)(5)(A) PERMITS REVIEW OF RESPONDENTS' CLAIMS.

Respondents claim the Secretary disregarded the statutory mandate to "consult[] with appropriate agencies," 8 U.S.C. 1254a(b)(3)(A); erroneously considered the "national interest" criteria when deciding to terminate Syria's designation, *id.* 1254a(b)(1)(C), (b)(3)(B); and failed to "offer genuine justifications for [these] important decisions," *Dep't of Com.*, 588 U.S. at 785.

The TPS statute permits review of these claims. Petitioners' contrary view contravenes both the statute's text and this Court's precedent construing its key term "determination." Their view also leads to results Congress could not have intended by giving the

agency near-limitless power both to grant and to terminate the status of millions of people entirely free from judicial review.

A. Section 1254a (b)'s Text Forecloses Petitioners' Interpretation.

1. Section 1254a(b)(5)(A) provides:

> "There is no judicial review of any determination of the [Secretary] with respect to the designation, or termination or extension of a designation, of a foreign state under this subsection [*i.e.*, subsection (b)]."

The parties agree that "determination" means "the resolving of a question by argument or reasoning," "[t]he decision arrived at or promulgated," or "a determinate sentence, conclusion, or opinion." Pet.Br.19 (quoting *Env't Prot. Agency v. Calumet Shreveport Ref., L.L.C.*, 605 U.S. 627, 623 (2025) (citation modified)). But the dictionary alone cannot answer the jurisdictional question here: namely, *which* questions (or decisions, conclusions, or opinions) the term "determination" refers to in Section 1254a(b).

To answer that question, the Court must consider the statutory text in light of neighboring language in the same subsection. "In textual interpretation, context is everything." *Biden v. Nebraska*, 600 U.S. 477, 511 (2023) (Barrett, J., concurring) (quoting Antonin Scalia, *A Matter of Interpretation* 37 (1997)).

Section 1254a(b) uses "determine[s]" or "determination" *eight* times before the term appears in Section 1254a(b)(5)(A). Each use unambiguously refers to the Secretary's conclusion about whether a

country's conditions meet the requirements for designation, extension, or termination. Section 1254a(b)(3)(A) requires the Secretary to "*determine* whether the conditions for [] designation…continue to be met" and publish "*such determination* (including the basis for *the determination*, and, in the case of *an affirmative determination*, the period of extension of designation.)." (emphases added). Section 1254a(b)(3)(B) also uses "determination" to refer to a conclusion about country conditions, directing that if the Secretary "*determines*…that a foreign state…no longer continues to meet the conditions for designation under paragraph (1)," she "shall terminate the designation by publishing notice in the Federal Register of the *determination* under this subparagraph (including the basis for the *determination*)." (emphases added). And 1254a(b)(3)(C) does the same, providing that if the Secretary "does not *determine*…that a foreign state…no longer meets the conditions for designation under paragraph (1)" TPS "is extended." (emphasis added); *see also id.* 1254a(d)(3) (referring to "the *determination*" that country conditions require termination) (emphasis added).

As those uses make clear, "determination" within subsection (b) refers specifically to the Secretary's conclusion about whether the country-conditions requirements for designation, extension, or termination are satisfied. As one court explained, "the government gives short shrift to how the word 'determination' or 'determine' is used in the TPS statute. When 'determination' or 'determine' is used in connection with periodic review, the term describes the *substantive assessment of country conditions in*

reaching a decision on whether to extend or terminate TPS." *NTPSA v. Noem*, 798 F. Supp. 3d 1108, 1135 (N.D. Cal. 2025) (emphasis in original). *Cf. NTPSA v. Noem*, 169 F.4th 796, 800 (9th Cir.2026) (Bumatay, J., dissenting from the denial of rehearing en banc) (never analyzing the other uses of "determination" in subsection (b)). Thus, when Section 1254a(b)(5)(A) says "There is no judicial review of any determination…with respect to the designation, or termination or extension of a designation" of TPS, it bars challenges to any of the Secretary's "determinations" regarding whether a particular country satisfies applicable conditions requirements.

In contrast, nowhere in subsection (b) does Congress use "determine[s]" or "determination" to refer to the ultimate decision to designate, extend, or terminate TPS as to any particular country. *Contra* Pet.Br.19. Rather, the statute repeatedly refers to any "determination" regarding country conditions as distinct from the designation, termination, or extension that follows from such a determination. *E.g.*, Section 1254a(b)(3)(A) (the Secretary shall "*determine* whether the conditions for such *designation*…continue to be met") (emphases added); 1254a(b)(3)(B) (if the Secretary "*determines*…that a foreign state…no longer continues to meet the conditions for *designation*…[the Secretary] shall *terminate* the designation") (emphases added). While designation, extension, and termination orders must rest on country-conditions assessments, they are not themselves "determinations" as Congress used the term in subsection (b); the determination is a distinct

act from the ultimate designation, extension, or termination.[3]

Congress imposed other requirements on the Secretary in Section 1254a(b), including "consultation," "review [of country conditions]," "publication of notice," and more. It did not use "determine[s]" or "determination" to refer to those acts either.

Thus, giving the words their plain meaning, and understanding that "context is everything," *Nebraska*, 600 U.S. at 511 (Barrett, J., concurring), "determination" has the same meaning in Section 1254a(b)(5)(A) as elsewhere in subsection (b). By barring "judicial review of any *determination*…with respect to the designation, or termination or extension of a designation" of TPS status in a subsection that exclusively and repeatedly uses the term "determination" to refer to country-conditions assessments, Congress barred claims challenging the Secretary's conclusions about country conditions. Unlike asylum seekers, who consistently litigate such claims in individual removal cases, *cf. Urias-Orellana*

[3] The TPS statute uses "determination" or "determine" in two other contexts outside subsection (b). Both confirm Congress used the term as distinct from the ultimate decision to designate, extend, or terminate TPS. For instance, the Secretary makes a "determination" whether an individual is eligible for TPS benefits under subsections (a) and (c). Section 1254a(a)(4)(B), (c)(2)(A). The Secretary also may "determine" certain individuals have suffered "extreme hardship," and thus may count their time living with TPS status toward a period of lawful presence for other benefits. *Id.* 1254a(e). In both cases, Congress used "determine" or "determination" to refer to a predicate assessment of eligibility for some status or benefit, *not* the ultimate grant or denial, or other antecedent steps.

v. Bondi, 146 S. Ct. 845, 851 (2026), TPS holders cannot argue that a country conditions assessment is unsupported by substantial evidence. If Respondents had argued that the Secretary's conclusion that Syria is now safe lacks substantial evidence, Section 1254a(b)(5)(A) would bar that claim. But it does not bar review of claims challenging the Secretary's failure to comply with the statute's other requirements.

2. Petitioners recognize that when "Section 1254a(b)(3) refers to a 'determin[ation] regarding country conditions, that simply refers to an evaluation of whether the 'findings' about country conditions...under Section 1254a(b)(1) remain valid," Pet.Br.34. That concession ought to end the parties' jurisdictional dispute. But, alas, it does not, because Petitioners inexplicably argue for a far more expansive reading of the same term in neighboring Section 1254a(b)(5)(A).

Petitioners' argument focuses on a dictionary definition divorced from the statutory context. Petitioners claim that if "determination" means "the resolving of a question by argument or reasoning," then it "clearly covers the 'decision' to designate, terminate or extend" TPS and also "sweep[s] in antecedent decision-making steps." Pet.Br.19-20. But nothing in the definition itself makes that clear: the dictionary says only that a "determination" is *a* conclusion, not *which* conclusion. Only the statute's repeated use of the term provides a definitive answer: determinations are conclusions *about country conditions*. Respondents' attention to Congress' repeated choice does not render "determination" a

"term of art." *Contra* Pet.Br.34. It just gives the term its most natural meaning within its context.

Two interpretive canons confirm Respondents' common-sense reading. First, "the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 198 (2012) (citation modified). Applying that canon, this Court unanimously interpreted the term "any election" to refer to "an election for Governor or Lieutenant Governor" (and not to elections for other offices) because "the reference to 'any election' is preceded by two references to gubernatorial election and followed by four." *Gutierrez v. Ada*, 528 U.S. 250, 254-55 (2000). This Court could not reach any other conclusion given the "relentless repetition" of gubernatorial election surrounding "any election." *Id.*; *see also McLaughlin Chiropractic Assoc. Inc., v. McKesson Corp.*, 606 U.S. 146, 160 (2025) (applying *noscitur a sociis* to adopt narrow interpretation of "determine the validity of" in jurisdictional statute).

Second, "where the document has used one term in one place, and a materially different term in another, the presumption is that the different term denotes a different idea." Scalia & Garner, *supra*, at 170. If Congress thought the decisions to consult or conduct review were "determinations," it would have called them that.

Applying those two canons here, the "relentless repetition" of "determination" to refer to country-conditions assessment coupled with the use of *different* terms to refer to consultation and other steps

in the periodic review process confirms Respondents' common-sense interpretation.

3. Petitioners rely on *Calumet* in their cursory attempt to address the repeated use of "determination" in Section 1254a(b), Pet.Br.33-34, but *Calumet* supports Respondents. It acknowledged that "some statutes distinguish between considerations that inform a determination and the determination itself." 145 S. Ct. at 1753-54 (citation modified). Respondents agree: the TPS statute distinguishes between the consultation and review process, which inform the country-conditions assessment, and the determination itself. Indeed, *Calumet* cited *Commissioner v. Zuch*, 605 U.S. 422, 436 (2025), which drew the exact distinction Respondents advocate here, reading a tax statute to "distinguish[] between 'considerations' that inform the appeals officer's 'determination' and the 'determination' itself." *Id.* at 429. This Court has often read "determination" to establish such distinctions. *E.g.*, *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 370-71 (2018) (in patent context, bar on review of "initial determination" does not bar challenge to scope of review); *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 275 (2016) ("determination" whether to seek inter partes review unappealable, but would not preclude challenge to arbitrary agency action or acts "outside its statutory limits"); *UAW v. Brock*, 477 U.S. 274, 283-84 (1986) (in unemployment compensation context, limit on appeals of "adverse benefit determination[s]" does not cover challenge to interpretation of statute).

While *Calumet* construed "determination" more broadly, it did so because it read the words

"determination of nationwide scope or effect" "*in their context* and with a view to their place in the overall statutory scheme." *Id.* at 1750 (emphasis added); *see also id.* at 1753 (looking to other contextual clues). Thus, *Calumet* confirms this Court must look to context to ascertain what "determination" means in Section 1254a(b)(5)(A).

Petitioners also suggest that "determination" in Section 1254a(b)(5)(A) cannot have the same meaning as it does elsewhere in subsection (b) because the statute supposedly uses "determination" interchangeably with "finding." Pet.Br.34. Not so. Subsection 1254a(b) uses "finding" to refer only to the *initial* country-conditions assessment that supports designation in the first instance. *See* 8 U.S.C. 1254a(b)(1)(B). It then uses "determination" and "determine[s]" to refer to the Secretary's conclusions about whether the "findings" that supported the initial designation remain valid—*i.e.*, whether the country is *still* unsafe for purposes of periodic review. Congress made the decision *not* to designate based on such "findings" discretionary, and therefore effectively unreviewable. 8 U.S.C. 1254a(b)(1) (using "may"). But it did not, contrary to Petitioners' suggestion, equate "findings" and "determinations."

4. Petitioners also contend Section 1254a(b)(5)(A)'s use of "any" and "with respect to" sweep in antecedent actions not labeled "determinations" in subsection (b). *See* Pet.Br.20 (quoting *Patel v. Garland*, 596 U.S. 328, 336-40 (2022)). But "'any' cannot expand the reach of the noun it modifies," *City & Cnty. of San Francisco v. Env't Prot. Agency*, 604 U.S. 334, 348 (2025). It therefore cannot resolve what "determination" means.

Here, "the reference to 'any [determination]' is preceded by [eight] references" to determinations that assess country conditions. *Gutierrez*, 528 U.S. at 254.

Respondents' interpretation does not render these terms surplusage. Read in context, "any" and "with respect to" have clear meanings that cohere with the statute's use of "determination." "[A]ny" broadens "determination" to refer to the various potential determinations within Section 1254a(b)—country-conditions assessments supporting re-designation, extension, or termination for each of the three possible bases for a TPS designation (armed conflict, natural disaster, or "extraordinary and temporary conditions"). *See* 8 U.S.C. 1254a(b)(1)(A)-(C) (describing three bases for designation). "With respect to" distinguishes determinations pertaining to designation, extension, or termination from determinations concerning eligibility for benefits and physical presence. *See id.* 1254a(a)(4)(B), 1254a(c)(2)(A), 1254a(e) (all referring to other kinds of "determinations" authorized under the TPS statute).

Regardless, while *Patel* recognized the broadening effect of "any" and "regarding," it ultimately turned on contextual considerations which favor Respondents here. The statute in *Patel* used the term "judgment," not "determination." 596 U.S. at 339. And the Court held review barred for factual claims, not legal ones, *id.* at 347, and relied on statutory history, *id.* at 339; *cf. Wilkinson v. Garland*, 601 U.S. 209, 221 (2024) (question of law reviewable notwithstanding the same stripping provision). Similarly, *United States v. Tohono O'odham Nation*, 563 U.S. 307, 312 (2011), relied not only on the breadth of the phrase "in respect to," but also on "the statute's use of a similar

phrase"—which here cuts in Respondents' favor. And *United States v. Miller*, 604 U.S. 518, 533 (2025), *rejected* a broad reading of "with respect to" where the "surrounding context…cut[] decidedly against the broad reading."

As these cases show, this Court has counseled against talismanic reliance on broad terms like "any" and "with respect to," particularly in the jurisdiction-stripping context. *See, e.g.*, *Bowen*, 476 U.S. at 673; *Jennings v. Rodriguez*, 583 U.S. 281, 293-94 (2018) (plurality op.) (construing statute barring district court review of "any other cause or claim arising from" removal proceedings to permit review of claims challenging detention pending removal, and collecting cases adopting narrow readings of "related to" and similar broad terms). *See also Nixon v. Mo. Mun. League*, 541 U.S. 125, 132 (2004) ("'any' can and does mean different things depending upon the setting"); *United States v. Alvarez-Sanchez*, 511 U.S. 350, 357 (1994) ("respondent errs in placing dispositive weight on…'any' without considering the rest of the statute").

B. This Court's Precedents, and Congress's Response, Confirm Respondents' Interpretation.

1. This Court's immigration cases construing "determination," and Congress's response to them, confirm Respondents' interpretation.

Congress wrote the operative jurisdiction-limiting phrase "any determination" into the TPS statute four years after *Bowen*, where this Court construed a statute barring review of "any determination…as to…the amount of" certain Medicare benefits as

permitting claims challenging the "method" by which benefits were calculated. 476 U.S. at 673-75.

One year later, this Court decided *McNary*, which involved individuals denied relief under a Special Agricultural Workers program. The government argued plaintiffs' claims—"constitutional and statutory challenges to INS procedures" for processing applications—were barred by a provision that prohibited "judicial review of a determination respecting an application for adjustment of status." 498 U.S. at 484, 491 (quoting 8 U.S.C. 1160(e)(1)). This Court, relying on *Bowen*, held the claim reviewable, explaining "the reference to 'a determination' describes a single act rather than a group of decisions or a practice or procedure employed in making decisions." *Id.* at 492. *McNary* also deemed significant that "the complaint…attacks the manner in which the entire program is being implemented." *Id.* at 488 (citation modified).

Two years later, this Court applied *McNary* in *Reno v. Catholic Social Services* ("*CSS*"). The plaintiffs there challenged, *inter alia*, the government's interpretation of the phrase "brief, casual, and innocent absences" in regulations implementing a different legalization program. *CSS*, 509 U.S. at 47 (quoting 8 U.S.C. 1255a(a)(3)(B)). Again, the government argued the claim was barred, citing a statute using the same language as in *McNary*. *Id.* at 55. And, again, this Court rejected the government's reading, construing "determination" not to bar claims challenging the agency's interpretation of the statute. *Id.* at 55-56.

2. Two features of these cases strongly support Respondents' position. *First*, in rejecting the government's restrictive reading of the judicial review provision in *McNary*, the Court effectively invited Congress to enact "broader statutory language" to foreclose judicial review—for example, if it wanted to bar review of "all causes...arising under" the statute, or "all questions of law and fact" in such suits, rather than merely review of "determination[s]." 498 U.S. at 494.

Congress responded in several immigration laws enacted after *McNary*, often using its proposed language. For instance, in 1996 Congress limited review of "determination[s]" *and* "other cause[s] or claim[s]" for operational challenges to expedited removal, *id.* 1252(a)(2)(A)(i); review of "procedures and policies" adopted to implement it, 8 U.S.C. 1252(a)(2)(A)(iv); and narrowed review of "any other decision or action" which Congress specified to be within the Secretary's discretion, *id.* 1252(a)(2)(B)(ii). It also restricted district court jurisdiction to review removal orders, by channeling review of "all questions of law or fact" arising from "any action taken or proceeding brought" to remove noncitizens, *id.* 1252(b)(9). Later, it amended several of those provisions to reference habeas review after *INS v. St. Cyr*, 533 U.S. 289 (2001).[4] It also limited judicial review through "deeming" provisions that provide near-unfettered discretion for certain actions. *See, e.g.*, *Bouarfa v. Mayorkas*, 604 U.S. 6, 13-14, 18 n.5 (2025) (no jurisdiction where provision authorized visa revocation for what Secretary "deems good and

[4] *See Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 231-33 (2020) (recounting statutory history).

sufficient cause"); *Gebhardt v. Nielsen*, 879 F.3d 980, 984-85, 987-88 (9th Cir. 2018) (construing 2006 statute giving Secretary "sole and unreviewable discretion" in immigration cases involving sex offenders to bar all but "predicate legal questions" and constitutional claims).

Yet Congress never amended the TPS statute. The statutory history is striking: Congress enacted TPS shortly after *Bowen* had narrowly construed "any determination"; declined to amend it after *McNary* and *CSS* again read "determination" narrowly; and subsequently amended neighboring jurisdictional provisions using broader language; but always left Section 1254a(b)(5)(A) intact. *Cf. Garcia v. USCIS*, 146 F.4th 743, 761 (9th Cir. 2025) (Bress, J., concurring) ("if Congress wanted to *limit* the strip of jurisdiction only to the review of individual applications for relief, it would have used the same statutory language from *McNary*") (emphasis in original). *See generally* Scalia & Garner, *supra,* at 32 ("In adopting the language used in the earlier act, Congress must be considered to have adopted also the construction given by this Court to such language, and made it a part of the enactment.") (citation modified).

Second, *Bowen*, *McNary* and *CSS* established a clear line between challenges to an agency's "determination" (which are barred) and "collateral" challenges (which remain reviewable). Under their approach, a claim does not challenge a "determination" unless it seeks relief that would *dictate the outcome* of the underlying decision. As *McNary* explained, a challenge is collateral where "the individual respondents…do not seek a substantive declaration that they are entitled to [immigration]

status." 498 U.S. at 495. It held the claims reviewable because, "if allowed to prevail in this action, [plaintiffs] would only be entitled to have their case files reopened and their applications reconsidered in light of the newly prescribed INS procedures." *Id.*; *see also Bowen*, 476 U.S. at 680; *CSS*, 509 U.S. at 55-56.

Respondents' claims are "collateral" under *McNary*. Had Respondents sought a ruling that country conditions compel the conclusion that Syria remains unsafe, that claim would be barred as challenging the Secretary's "determination" because it would compel extension. But Respondents have not asked for that. They only seek a ruling that she failed to follow process required by statute, misread the statutory decision criteria, and was motivated by extra-statutory political factors explained with contrived reasons. A ruling in Respondents' favor—for example, that the Secretary failed to consult with the State Department about country conditions— would not compel extension of TPS. It would simply wipe the slate clean of the procedurally-defective review, leaving the Secretary free to undertake a new one. Thus, Respondents' claims do not challenge any "determination" under *McNary*'s framework.

3. Petitioners ignore *Bowen* and *CSS*, and their attempt to distinguish *McNary* fails. Petitioners argue *McNary* does not support "slicing" agency action to distinguish antecedent procedural errors from the final decision. Pet.Br.31. But *McNary* did just that: it permitted claims challenging the "practice or procedure employed" in making a decision and "attacks [on] the manner in which the entire program is being implemented." 498 U.S. at 488, 492.

Such "slicing" is ubiquitous in administrative law. *See generally* Administrative Law Professors Cox, Hills, and Kaufman Amicus Br., Pt. I. For instance, in *Wilkinson*, this Court held "exceptional and extremely unusual hardship" rulings reviewable, even though antecedent factual findings are not. 601 U.S. at 225. There is no general administrative law doctrine that "judicial-review bars necessarily foreclose attacks on antecedent decision-making steps too." Pet.Br.21. Adopting Petitioners' "whole-includes-the-parts principle" would wreak havoc throughout administrative law.

Petitioners' other attempts to distinguish *McNary* are meritless. They would limit it to "constitutional challenges to agency rules," Pet.Br.32, but *McNary* also involved statutory challenges, *see* 498 U.S. at 484, and *CSS* involved primarily questions of statutory interpretation. *See* 509 U.S. at 47. They suggest *McNary*'s applicability turns on whether plaintiffs sue under the federal question statute rather than the APA. Pet.Br.32. Respondents sued under both. J.A.47. Regardless, what matters is whether Section 1254a(b)(5)(A) "preclude[s] judicial review" of Respondents' claims under 5 U.S.C. 701(a)(1), which in turn depends on the scope of "determination," not on which jurisdictional provisions Respondents invoked.

Petitioners also contend Respondents' challenges are unreviewable because they brought their challenge to a TPS termination decision rather than a "cross-cutting" challenge to agency practices. *Contra* Pet.Br.32. On Petitioners' view, the Secretary's underlying legal errors—*e.g.*, her illegal consultation practices, or her erroneous view that "national

interest" can justify termination—would be reviewable if written in regulations, but not if written in termination orders. Pet.Br.24.

That is wrong. How the agency "packages" its orders is irrelevant to jurisdiction. *Calumet*, 145 S. Ct. at 1747. *McNary* and *CSS* confirm this. The *McNary* "injunction requir[ed] the INS to vacate large categories of denials" of adjustment applications, 498 U.S. at 489, each of which was "an individual agency determination." Pet.Br.32. The underlying order in *CSS* required INS to extend the deadline for submitting adjustment applications, thereby ordering INS to accept thousands of applications it had previously rejected. 509 U.S. at 48-49, 52.

4. The lower court cases Petitioners cite neither construe "determination" nor endorse their novel rule. The provision in *Amgen, Inc. v. Smith*, did not use "determination," and the court read it to preserve review of some statutory claims, 357 F.3d 103, 111-13 (D.C. Cir. 2004). The statute in *DCH Regional Medical Center v. Azar* barred review of "estimates," and found a claim challenging the estimation methodology barred because, "[i]n [that] statutory scheme, a challenge to the methodology…[wa]s unavoidably a challenge to the estimates themselves." 925 F.3d 503, 506 (D.C. Cir. 2019). *Skagit County Public Hospital District Number 2 v. Shalala* held challenges to the agency's "regulations or procedures" would be reviewable. 80 F.3d 379, 386 (9th Cir. 1996). *See also Fla. Health Scis. Ctr., Inc. v. Sec'y Health & Hum. Servs.*, 830 F.3d 515, 521 (D.C. Cir. 2016) (similar); *City of Rialto v. W. Coast Loading Corp.*, 581 F.3d 865, 875 (9th Cir. 2009) (recognizing "distinction between precluded judicial review...and [permissible] judicial

review of 'methods' and other collateral issues") (citation modified).

In sum, *Bowen*, *McNary*, and *CSS* confirm Section 1254a(b)(5)(A) is not the all-encompassing judicial-review bar Petitioners want. Whether a claim challenges a "determination" in this context turns not on whether the complaint challenges a particular decision to designate, extend, or terminate TPS, let alone any actions antecedent to it. What matters is "the nature of the claim." *Axon Enter. v. FTC*, 598 U.S. 175, 194 (2023). Granting Respondents' claims would not compel the Secretary to extend TPS; it would only require a new decision consistent with the statute, and explained with genuine reasons. Therefore, Respondents' claims are reviewable.

C. Petitioners' Interpretation Leads to Perverse Results, Contrary to this Court's Administrative Law Doctrine.

1. Petitioners' imperial reading of Section 1254a(b)(5)(A) would leave the Secretary with extraordinary, unchecked control over the immigration status of millions of people. Congress is unlikely to have ceded such extraordinary power through the TPS statute. That "context is also relevant to interpreting the scope of [] delegation" under this statute. *Nebraska*, 600 U.S. at 513 (Barrett, J., concurring).

For example, under Petitioners' theory, the Secretary could unilaterally designate Mexico and China for TPS for fifty years, irrespective of country conditions. No court could review. *NTPSA*, 166 F.4th at 757 (describing and rejecting Petitioners' argument). Nor could any court review the Secretary's

decision to cancel already-issued employment authorization documents to thousands of TPS holders in violation of Section 1254a(d)(3), thereby wreaking havoc on the labor market. *But see Noem v. NTPSA*, 145 S. Ct. 2728, 2729 (2025) (suggesting that would be reviewable). The Secretary could also "vacate" an extension, effectively terminating it long before the statutorily-mandated period, *see NTPSA*, 798 F. Supp. 3d at 1144, make the termination effective immediately despite the statute requiring 60 days' notice, and even "sell TPS designations" (or terminations). *NTPSA*, 166 F.4th at 757.

In lower court litigation Petitioners have flip-flopped on whether these actions would be reviewable, but have never advanced any interpretation of the text that would preserve review in such situations but not here.[5]

No rational Congress would let an agency dictate the scope of its own authority in this way. It produces results "no sensible person could have intended," *Rodriguez*, 583 U.S. at 293-94 (Alito, J.) (citation modified), and "would lead to absurd results in light of the statute's structure." *Guerrero-Lasprilla,* 589 U.S. at 240 (Thomas, J., dissenting). This Court should exercise some measure of "common sense as to the manner in which Congress would have been likely to delegate such power to the agency," *West Virginia v. Env't Prot. Agency*, 597 U.S. 697, 722-23 (2022) (citation modified), and reject Petitioners' unbounded reading of the Secretary's authority.

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[5] *See, e.g.*, Oral Arg. 5:25-11:01, *NTPSA v. Noem*, No. 25-4901 (9th Cir. Aug., 19, 2025), https://perma.cc/FBY5-HXNU (arguing no review, but also suggesting exception for "extreme" cases).

2. This Court has applied rigorous judicial review even in immigration cases involving "foreign-affairs and national-security judgments." Pet.Br.22. In 2022, this Court held Texas could challenge a DHS policy governing discretionary admissions at the border. The Court afforded some deference to the government's foreign policy interests, but still applied rigorous review because "under the APA, DHS's exercise of discretion within that statutory framework must be reasonable and reasonably explained." *Biden*, 597 U.S. at 806-07; *see also id.* at 834 (Alito, J., dissenting) (district court on remand should review DHS policy for compliance with APA). If the APA's constraints governed that exercise of Executive discretion, they do here too. *See also DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 16-17 (2020) (applying presumption to hold rescission of DACA reviewable) (citation modified); *Judulang v. Holder*, 565 U.S. 42, 52-53 (2011) (policy governing exercise of discretion in removal cases was arbitrary under APA).

3. Should any doubt remain, this Court has "consistently applied the presumption of reviewability to immigration statutes." *Guerrero-Lasprilla*, 589 U.S. at 229 (citation modified). It applied the presumption in *Bowen* and *McNary*, *supra*, which forecloses Petitioners' argument that the terms "any" and "with respect to" alone can overcome it. 476 U.S. at 670.

Petitioners argue Congress's intent to codify unfettered executive power in the TPS statute overcomes the presumption. Pet.Br.22-23. However, the statute *mandates* both procedures and decision-making criteria throughout, particularly for the periodic review process. *See* 8 U.S.C. 1254a(b)(1),

(b)(3). Most important, it forbids termination if conditions remain unsafe, directly mandating that designation "is extended" unless the Secretary determines that country conditions warrant termination. *Id.* 1254a(b)(3)(C).

"The historical context in which the provision was adopted" confirms Respondents' interpretation. *Biden*, 597 U.S. at 804. Congress created TPS to *constrain* executive discretion in the EVD program. *See supra* Statement I.A. Petitioners rely on *Smith*, 846 F.2d 1499, *supra*, but Congress overruled *Smith* when it enacted the TPS statute, thereby eliminating the "unprincipled and largely unchecked power that presidents enjoyed through [EVD]." *NTPSA*, 166 F.4th at 749. *See also* Immigration Law Scholars Amicus Br. Pts. III-IV. A legislature concerned about "unbridled deference to the Executive branch," *NTPSA*, 150 F.4th at 1009, would not have created a system devoid of judicial review.

Petitioners contend "the political process" will check the Secretary, who "must affirmatively find" conditions are no longer met and "elaborate the basis" for termination in the Federal Register. Pet.Br.24. But if there is no judicial review for compliance with such requirements, the Secretary could terminate without giving reasons or publishing notice to shield her "decisions [from] public scrutiny and political accountability." Pet.Br.24. That is not how administrative law works.

Holder v. Humanitarian Law Project, 561 U.S. 1 (2010), Pet.Br.22, arose in an entirely different context—a First Amendment challenge to a criminal statute prohibiting material support to terrorist

organizations. There is no such allegation against Respondents, and the statute requires that status be revoked for crimes. Moreover, *Holder* deferred to a State Department declaration—an agency never consulted on country conditions here. 561 U.S. at 33. *Holder* underscores that fidelity to the statute's process constraints is crucial to ensuring appropriate decision-making.

* * *

For all these reasons, the federal courts remain available to ensure agency compliance with the rules Congress established governing the periodic review of TPS designations.

II. RESPONDENTS ARE LIKELY TO PREVAIL ON THE MERITS.

Petitioners' merits arguments fare no better, particularly given the preliminary posture. Congress required the Secretary to periodically review TPS designations. During a review, "the [Secretary], after consultation with appropriate agencies of the Government, shall review the conditions in the foreign state…for which a designation is in effect…and shall determine whether the conditions for such designation…continue to be met." 8 U.S.C. 1254a(b)(3)(A). Respondents established that the Secretary likely failed to comply with these requirements in three ways.

First, she failed to "consult[] with appropriate agencies" about "conditions in [Syria]." *Id.* The Secretary received some (extremely minimal) input from the State Department about the "foreign policy" implications of termination. But it is undisputed that

she did not consult with State (or any other agency) about *conditions in Syria*. This violated the statue. *See* Former Senior Government Officials Amicus Br.

Second, the Secretary based her termination on the U.S. national interest, an expansive category that includes an array of domestic concerns completely unrelated to conditions in Syria. This violated the statute's requirement that TPS decisions turn on "conditions in the foreign state." 8 U.S.C. 1254a(b)(3)(A). *See also id.* 1254a(b)(3)(C) (designation "is extended" if Secretary "does not determine...that a foreign state...no longer meets the conditions for designation"); AILA/Academics Amicus Br. Pt. I.B.

Finally, the district court did not clearly err in finding the termination was based on undue political influence, without regard for statutory factors, and that the reasons in the termination notice were contrived. The true reasons were likely the Secretary's preordained decision to end the TPS program *wholesale* pursuant to what she understood as the President's "directive" to "paus[e] th[e] program," J.A.519-20, despite Congressional limitations on her authority to do so.

A. The Secretary Failed to Comply with the Statute's Consultation Requirement.

1. Congress was clear: the Secretary must "consult[] with appropriate agencies" before deciding whether "conditions in the foreign state" continue to meet "the conditions for...designation." 8 U.S.C. 1254a(b)(3)(A). The parties agree "consult" means "to seek advice or information from" or "ask guidance from." Pet.Br.36. "Consultation" is the act of

consulting, *id.*, which requires "[d]eliberation of persons on some subject." *Consultation*, Black's Law Dictionary (6th ed. 1990); *see also Cal. Wilderness Coal. v. U.S. Dep't of Energy*, 631 F.3d 1072, 1085-89 (9th Cir. 2011) (Callahan, J.) ("consultation" requires "a meaningful exchange of information").

Petitioners suggest they have virtually unfettered discretion as to the content and form of consultation, Pet.Br.37, but the statutory context imposes at least one requirement: the subject for consultation must be "conditions in the foreign state." 8 U.S.C. 1254a(b)(3)(A). The Secretary cannot just ask State about fantasy football, or whether termination would help in the mid-term elections. Secretaries have consulted the State Department on country conditions for decades. J.A.127-29. S*ee*, *e.g.* 65 Fed. Reg. 30438 (May 11, 2000) (extending TPS for Honduras based on State Department country-conditions assessment). *See also* Former Senior Government Officials Amicus Br. Pt. I. As Petitioners acknowledge, just months ago the Secretary deferred her decision about South Sudan—resulting in an automatic extension—because she "'only had a non-current record from [the] Department of State' *regarding the country conditions*." Pet.Br.45 (quoting 90 Fed. Reg. 19217, 19218 (May 6, 2025)) (emphasis added).

2. Here, the Secretary violated even those minimal constraints: she never consulted with State about conditions in Syria at all. Instead, Petitioners' only communication with the State Department is this email exchange:

Email 1 (from DHS Senior Counselor Rob Law to State Department Senior Bureau Official Spencer Chretien, sent July 21, 2026):

Spencer,

The following TPS designations are coming up for review:

Syria: Aug. 1 decision deadline

South Sudan: September 3 decision deadline

Burma: September 26 decision deadline

Ethiopia: October 13 decision deadline

Thanks,

RTL

Email 2 (response, sent July 22):

Dear Rob,

I confirm that State has no foreign policy concerns with ending these TPS designations on or before those dates. As you are aware, sanctions on Syria have recently been lifted, and we have partnered with South Sudan on immigration-related issues.

Spencer

Pet.Br.38-39; Admin. R. Ex. at AR156, *Doe v. Noem,* No. 25-cv-8686 (S.D.N.Y. Apr. 3, 2026), Dkt.72-2. *See also* Dkt.72-1 (Admin. R. Ex. Index) (describing this email exchange as "consultation with DOS for TPS Syria").

This exchange shows that although DHS officials communicated with someone at the State Department, the communication did not address

"conditions in the foreign state," as the statute requires. 8 U.S.C. 1254a(b)(3)(A). Petitioners never sought information about conditions in Syria, and the State Department did not provide any—only a conclusory disclaimer of "foreign policy concerns," and a reference to sanctions policy.

Petitioners suggest that Respondents attack this consultation as "insufficiently meaningful," Pet.Br.36, but the defect here is more fundamental: Congress required the Secretary to make a determination "after consultation" *about* "conditions in the foreign state." She never did. Whether terminating TPS raises foreign policy concerns is a distinct question from whether conditions in Syria permit the safe return of TPS holders. That sanctions were recently lifted may be relevant to the former, but says nothing about the latter.

3. The district court did not have the benefit of this email exchange when it issued its decision. But the emails—in combination with the recently-produced administrative record, which includes no other "consultation" with State or any other agency about conditions in Syria—confirm the court's holding on Respondents' likely success. Admin. R. Exs. 1-92, *Doe v. Noem,* No. 25-cv-8686 (S.D.N.Y. Apr. 3, 2026), Dkt.72. The district court found no consultation likely occurred in part because "[t]here is no way to square" the Syria termination notice with Petitioners' bald assertion of consultation. J.A.18. The notice claims "the situation [in Syria] no longer meets the criteria for an ongoing armed conflict that poses a serious threat to the personal safety of returning Syrian nationals" because any ongoing violence is "sporadic," "isolated," and "localized." 90 Fed. Reg. 45398, 45400.

Yet a contemporaneous State Department travel advisory states "[n]o part of Syria is safe from violence" due to "active armed conflict." J.A.447. The district court did not clearly err in treating this jarring discrepancy as powerful evidence of failure to consult.

The district court also considered records from other TPS cases showing the Secretary had adopted a contemporaneous practice of terminating TPS without consulting the State Department (or any other agency) on country conditions. J.A.18. As one DHS official explained, pursuant to this new practice "DOS will not provide country conditions anymore." *NTPSA v. Noem*, 2025 WL 4058572, at *5, *23 (N.D. Cal. Dec. 31, 2025) (addressing terminations for Honduras, Nicaragua, and Nepal).[6] *See also Miot v. Trump*, 2026 WL 266413, at *21 (D.D.C. Feb. 2, 2026) (similar two-sentence email for Haiti); *Aung Doe*, 2026 WL 184544, at *13 (Burma); *Afr. Cmtys. Together v. Noem*, 2026 WL 395732, at *12 (D. Mass. Feb. 12, 2026) (South Sudan); *NTPSA,* 798 F. Supp. 3d at 1151, *aff'd*, 166 F.4th 739 (9th Cir. 2026) (State Department input "failed to include any information on country conditions" in Venezuela); *CASA, Inc. v. Noem*, 792 F. Supp. 3d 576, 606-07 (D. Md. 2025) (similar for Cameroon).

As with Syria, the new practice has produced striking contradictions between DHS and State Department evaluations of country conditions. *Compare, e.g.,* 90 Fed. Reg. 50484, 50486 (Nov. 6, 2025) ("[T]here is no longer an ongoing armed conflict that poses a serious threat to [] personal safety" in South Sudan") *with* U.S. Dep't of State, *S. Sudan*

[6] *See* National TPS Alliance Amicus Br. Pt.I.B.

Travel Advisory (Nov. 13, 2025), https://tinyurl.com/2s32hp4f ("Armed conflict is ongoing"); 90 Fed. Reg. 53378, 53380 (Nov. 25, 2025) (finding "conditions no longer hinder the safe return" to Burma) *with* U.S. Dep't of State, *Burma Travel Advisory* (May 12, 2025), https://tinyurl.com/pfjeerxk ("Do not travel to Burma due to [*inter alia*] armed conflict"); 90 Fed. Reg. 9040, 9042 (Feb. 5, 2025) (finding that nationals can safely return to Venezuela) *with* U.S. Dep't of State, *Venez. Travel Advisory* (Jan. 31, 2025), https://tinyurl.com/3bf9wrd3 (advising against any travel to Venezuela).

4. Petitioners suggest the blame lies with the State Department for not providing country-conditions information. *See* Pet.Br.37-38. But, as their automatic extension for South Sudan shows, if the Secretary was unable to consult with State about country conditions, the statute *required* her to defer any decision, triggering an automatic six-month extension under Section 1254a(b)(3)(C). Regardless, the Secretary never even *requested* country conditions information. Instead, DHS simply announced the upcoming review deadlines—a sharp deviation from longstanding practice. These facts distinguish this case from *Philip Morris v. International Trade Commission*, 63 F.4th 1328, 1338-39 (Fed. Cir. 2023), Pet.Br.37-38, where the agency followed its typical consultation process and requested information on the relevant subject.

Petitioners accuse the district court of imposing "judge-made procedural requirements." Pet.Br.38 (quoting *Garland v. Ming Dai*, 593 U.S. 357, 365 (2021)). But *Congress* required the Secretary to "consult[] with appropriate agencies" before deciding

whether "conditions in the foreign state" continue to "meet[] the conditions for designation." 8 U.S.C. 1254a(b)(3)(A)-(C). The district court did not mandate that consultation take any particular form. But an email never mentioning country conditions simply does not suffice.

Petitioners also argue the district court was required to presume consultation occurred because the termination notice says so and agency action is presumed legitimate. Pet.Br.39. Even assuming the former Secretary should be afforded that presumption, *but see* Former Senior Government Officials Amicus Br. Pt. III, the unrebutted evidence more than overcomes it.

B. The Secretary Erroneously Based Her Decision on "National Interest."

Respondents also established likely success on their claim that the Secretary terminated TPS for Syria on an impermissible basis. The Secretary claimed "national interest" "required" termination "even assuming" extraordinary and temporary conditions remain. 90 Fed. Reg. 45398, 45400. But the statute permits termination only based on "conditions in the foreign state," not "national interest," 8 U.S.C. 1254a(b)(3)(A)-(B), which is "an expansive standard" that includes factors irrelevant to conditions in Syria, such as "adverse effects on U.S. workers [and] impact on U.S. communities." 90 Fed. Reg. 45398, 45400.

The TPS statute mentions "national interest" only once. At initial designation, where the Secretary has found "extraordinary and temporary conditions in the foreign state," the statute permits consideration of countervailing "national interest" concerns. 8 U.S.C.

1254a(b)(1)(C). Respondents conceded below that the statute does not identify national interest as a factor to be considered for a designation based on ongoing armed conflict or environmental disaster. Tr. at 96:10-17, *Doe v. Noem,* No. 25-cv-8686 (S.D.N.Y. Dec. 5, 2025), Dkt.57 ("the statute itself places the national interest criteria only with respect to extraordinary and temporary conditions"). But they err in arguing "national interest" can be considered to terminate an "extraordinary and temporary conditions" designation.

Petitioners contend "[t]he statute plainly mandates consideration of the same factors whether the Secretary is designating or terminating TPS," Pet.Br. 39. That is wrong. "National interest" is *not* a "condition" for designation, but rather a separate factor triggering an exception: "extraordinary and temporary conditions in the foreign state" permit designation "*unless* the [Secretary] finds that permitting the aliens to remain temporarily...is contrary to the national interest." 8 U.S.C. 1254a(b)(1)(C) (emphasis added). The text preceding "unless" concerns the "conditions" for designation. *See id.* In contrast, "national interest"— contained in the text that follows "unless"—functions not as a "condition" for designation but an exception to it. *See id.*

The periodic review criteria are different; they never mention "national interest." Review decisions must be based on "*conditions in the foreign state.*" 8 U.S.C. 1254a(b)(3)(A); *see also* 8 U.S.C. 1254a(b)(3)(C) (designation "is extended" if the Secretary "does not determine...that a foreign state...no longer meets the conditions for designation"). "National interest" is not

a "condition[] in [a] foreign state." It therefore cannot justify termination. *See* AILA/Academics Amicus Br. Pt. I.B.

The statute still accounts for national interest concerns after designation has taken place, but it provides a different mechanism. The Secretary "shall" withdraw TPS from individuals with disqualifying criminal history, deemed "a danger," or otherwise inadmissible on certain grounds. 8 U.S.C. 1254a(c)(2), (3), 1158(b)(2)(A). Under this scheme, once beneficiaries have come to rely on TPS for protection from return to an unsafe country, national interest concerns are addressed on a person-by-person basis, rather than through wholesale termination. *See* AILA/Academics Amicus Br. Pt. I.D. The statute thus enacts Congress's baseline assumption that, while it may sometimes be contrary to national interest to provide TPS to a group of noncitizens in the first instance, a broadly defined "national interest" factor cannot justify stripping lawfully present and vetted noncitizens of status *en masse* while their countries remain unsafe.

Petitioners' reading contravenes this statutory structure. Congress gave the Secretary substantial discretion at the initial designation phase, 8 U.S.C. 1254a(b)(1), but imposed strict procedural constraints and decision-making criteria based on country conditions once designation has occurred, *id.* 1254a(b)(3). The "expansive" nature of the "national interest," 90 Fed. Reg. 45398, 45400, counsels against reading it to displace the strict statutory criteria focused on foreign country conditions applicable during periodic review. 8 U.S.C. 1254a(b)(3). Petitioners' interpretation would authorize

termination based *only* on domestic concerns, nullifying Congress's goal of insulating TPS holders from "the vagaries of our domestic politics." *NTPSA*, 150 F.4th at 1009-11.

That is precisely what the former Secretary did. She claimed "national interest" required termination, regardless of country conditions, for *ten* different countries. The district court correctly concluded this unprecedented action contravenes the statute.[7]

C. The Secretary Was Improperly Influenced by Extra-Statutory Political Considerations and Provided Pretextual Reasons for Her Decision.

Finally, the district court did not clearly err in finding it likely that "political pressure was intended to, and did, cause the agency's action to be influenced by factors not relevant under the controlling statute." J.A.24. The Secretary likely did not base her decision on "a good-faith and objective review of country conditions in Syria," as the statute requires, but

[7] Petitioners may argue the Secretary's error was harmless because she independently found the "extraordinary and temporary conditions" in Syria had abated, but nothing in the termination notice says this. While it notes that the continued need for humanitarian assistance has not stopped some refugees from safely returning, the ultimate reason given for terminating the "extraordinary and temporary conditions" designation is the Secretary's "comprehensive assessment of national interest factors." 90 Fed. Reg. 45398, 45402. The notice also states "national interest" was considered "individually and cumulatively" as to both bases for designation. *Id.* These legal errors justify affirmance, even if the agency might reach the same result anew. *Cf. FDA v. White Lion*, 604 U.S. 542, 590 (2025).

rather on "political considerations simply not relevant under the TPS statute." J.A.18, 25. It follows that the Secretary's explanation for her decision was likely pretextual.[8] "[A]n explanation for agency action that is incongruent with what the record reveals about the agency's priorities and decisionmaking process" does not satisfy the APA. *Dep't of Com.*, 588 U.S. at 785.

The district court's finding is amply supported. Most important, Secretary Noem explained her very first TPS decision to the public by saying "we are getting direction…[from] the President… [a]nd he is pausing this program." J.A.519-20. Other evidence of the Secretary's preordained decision to end TPS irrespective of the statute's requirements includes (1) additional statements from top officials committing to end TPS, coupled with "confirmatory action," J.A.16, terminating TPS for *every single country* that came up for review; (2) the Secretary's reliance on pretextual reasons for other countries' TPS terminations; and (3) "incongru[ities]" between the explanation provided in the Syria termination notice and what the record shows "about the agency's priorities and decision-making process."[9]

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[8] The district court distinguished claims of "undue political influence" from pretext claims, but outside the Second Circuit courts treat both as pretext analyzed under *Department of Commerce*. *See Doe v. Noem*, 2026 WL 184544, at *20 n.9 (N.D. Ill. Jan. 23, 2026).

[9] Petitioners cite the "strong showing of bad faith or improper behavior" standard from *Citizens to Preserve Overton Park, Inc. v. Volpe,* 410 U.S. 402, 420 (1971), Pet.Br.43. That standard concerns the conditions under which litigants can obtain evidence beyond the administrative record, which is not at issue here.

In response to this overwhelming evidence, Petitioners simply revert back to the statements in the termination notice itself, Pet.Br.42, but they cannot show clear error. Petitioners also offer still more *post-hoc* explanations, Pet.Br.42-44, but they contravene the record. The district court was not required to accept them.

1. *Petitioners' decision to end TPS for all countries regardless of country conditions*. The district court rightly considered the statements of President Trump, Secretary Noem, and other top officials committing to "revoke," J.A.281-82; "rescind," 90 Fed. Reg. 8443, 8446; "limit[]," *id*; and "paus[e]" the TPS "program," J.A.520, coupled with "confirmatory action," J.A.16, terminating TPS in country after country.

Even assuming, *arguendo*, Petitioners had legitimate reasons for wanting to limit TPS, terminating where a country still meets the conditions for designation is unlawful. So is terminating based on a perception that TPS holders are "illegal," given that Congress authorized TPS status and, by definition, TPS holders have legal status. *See* 90 Fed. Reg. 8443, 8446 (Jan. 29, 2025); J.A.263-64.

The district court did not clearly err in finding the terminations politically motivated and based on "sweeping and erroneous" statements about TPS holders. J.A.25. Petitioners described TPS as a means to allow "terrorists and murderers" "into this country," J.A.529, even though the statute only protects people already here and bars eligibility for anyone with more than a single misdemeanor conviction. 8 U.S.C. 1254a(c)(2)(B). And in termination after termination

they relied on criminal investigations of a few people among thousands from the designated country—usually, as with Syria, people not even identified as TPS holders—as evidence that TPS holders *in general* pose a security risk. *See* 90 Fed. Reg. 45398, 45401. As one district court found, "Secretary Noem's generalization of the alleged acts of a few…to the entire population of Venezuelan TPS holders…is a classic form of racism." *NTPSA*, 798 F. Supp. 3d at 1157.

Petitioners claim these statements simply reflect "policy preferences and ideas," Pet.Br.44, but the district court was not required to accept that implausible account rather than simply taking the Secretary's public remarks at face value. For example, Petitioners contend Executive Order 14,159 is simply "[a]n instruction to comply with the statute," Pet.Br.44, but the Secretary *said* she understood this "directive" as requiring her to "paus[e]" the TPS "program." J.A.519-20. And the Order addresses TPS in the context of a directive requiring the Secretary to "rescind the policy decisions of the previous administration that led to the increased or continued presence of illegal aliens in the United States." 90 Fed. Reg. 8443, 8446. The district court was not required to "exhibit a naiveté from which ordinary citizens are free." *Dep't of Com.*, 588 U.S. at 785.

2. *Petitioners' practice of providing pretextual reasons for termination.* The district court also considered other TPS termination decisions, which collectively reveal a pattern of pretextual justifications. J.A.17-18 (considering terminations for Nicaragua, Cameroon, Nepal, and Venezuela). The district court found "it confounds logic" that, "a group

of disparate countries, with disparate bases of designation, in different parts of the world...could resolve troubles that were so severe as to warrant TPS designation in the first instance...such that termination is appropriate." *Id.* Record evidence showed Petitioners consistently reverse-engineered the periodic review process, preparing termination decisions *before* reviewing country conditions, and only later searching for "improvements" to justify the predetermined terminations. J.A.450-63 (Nicaragua, Honduras, and Venezuela). *See also NTPSA v. Noem,* 163 F.4th 1152, 1159-61 (9th Cir. 2025) (as to Venezuela and Haiti evidence showed "preordained" decisions where "DHS made its vacatur and termination decisions first and searched for a valid basis for those decisions second"); *NTPSA*, 2025 WL 4058572, at *5, *23 (Honduras, Nepal, and Nicaragua); *Aung Doe*, 2026 WL 184544, at *16, *20 (collecting other recent cases).

Petitioners also included boilerplate language asserting TPS holders had been "subjects of administrative investigation for fraud, public safety[,] and national security concerns" in their termination notices. *Afr. Cmtys. Together*, 2026 WL 395732, at *3 (collecting notices, including Syria's). Remarkably, Petitioners included this language even where *not a single record of fraud or public safety concerns* had ever been found for TPS holders from the designated country, *id.* (South Sudan); *see also* Order at 24, *Afr. Cmtys. Together v. Noem*, No. 26-cv-10278 (D. Mass. Apr. 8, 2026), Dkt. 56 (same for Ethiopia, despite zero records of fraud), and also where fraud numbers were so "low" agency staff found them "laughable," *NTPSA*, 2025 WL 4058572, at *5 (Nepal); *see also* Admin. R.

Ex. at 164, *Doe v. Noem,* No. 25-cv-8686 (S.D.N.Y. Apr. 3, 2026), Dkt.72-2 (.04% of Syrian TPS holders had fraud records).

Petitioners defend the Secretary's mass terminations as "unremarkable" given the designations "ha[d] lasted many years or even decades." Pet.Br.44. But the Secretary never identified the length of designation as a reason for any termination, and the statute contains no time limit. *See* AILA/Academics Amicus Br. Pt. I.C. This is yet another *post hoc* rationale.

3. *Incongruities in the Syria termination decision.* The district court's finding also rests on inconsistencies between the notice and the record evidence, and inconsistencies within the termination notice itself. The State Department's conclusion in the travel advisory that "[n]o part of Syria is safe from violence" due to "active armed conflict," Syria Travel Advisory at 3, *Doe v. Noem,* No. 25-cv-8686 (S.D.N.Y. Oct. 21, 2025), Dkt.20-19, was confirmed by DHS's own research documenting a contemporary death toll from armed conflict *higher* than during the civil war, Admin. R. Ex. at 17, 23, *Doe v. Noem,* No. 25-cv-8686 (S.D.N.Y. Apr. 3, 2026), Dkt.72-2. Yet the Secretary concluded "ongoing armed conflict" no longer "poses a serious threat" to safety. J.A.57-58. This blatant, unexplained contradiction provides further evidence of pretextual decision-making.

The district court also considered the notice's reliance on sources that post-dated the decision (and therefore could not possibly have been a basis for it). J.A.18. For example, the *only* source cited in support of improved extraordinary conditions (a press release

regarding return of some refugees) is dated one month *after* the decision deadline. 90 Fed. Reg. 45398, 45400 n.22. The Secretary also cherry-picked from sources, citing a report to establish the end of Syria's civil war while ignoring that report's references to other ongoing armed conflicts in Syria. J.A.466-67.

Petitioners' *post-hoc* justifications for these anomalies are again unpersuasive. They argue the State Department's advisory is relevant only to "U.S. citizens, nationals, and legal residents," Pet.Br.42, but the district court found the asserted risks—*e.g.*, from "unexploded ordnance, and aerial bombardment," J.A.447—"are not citizenship-specific," J.A.18. Petitioners assert the Secretary considered "the same violence" the State Department did, Pet.Br.42, but the agencies shared no country-conditions research. *See supra* Section II.A.

The cursory email exchange regarding foreign policy that the agencies did share, *id.*, further illustrates predetermination. The email states only that the designations are "up for review," but the State Department's response disclaims foreign policy concerns about only one outcome: *termination*. The obvious inference is that State Department officials understood what the Secretary had already decided.

Petitioners also argue the district court erred in identifying the Secretary's failure to consider "intervening events" as an irregularity supporting its pretext finding. Pet.Br.42-43. But this omission *was* irregular: DHS's "longstanding practice" for decades had been to "consider[] all country conditions…regardless of their relation to the originating condition." *Saget v. Trump*,

375 F. Supp. 3d 280, 350 (E.D.N.Y. 2019); *see also NTPSA*, 2025 WL 4058572, at *25.

The district court did not clearly err in finding the Secretary carried out what she understood as the President's directive to end TPS, in violation of the statute's decision-making criteria.

II. PETITIONERS CONCEDE THE EQUITIES FAVOR RESPONDENTS.

Petitioners never dispute the equities favor Respondents. Nearly 7,000 Syrian TPS holders and applicants face immediate loss of work authorization, and potential detention, family separation, and removal to Syria—a country which remains extremely unsafe according to the State Department and DHS's own experts.

Respondent Laila Doe "faces return to her sister's home in Damascus, in a neighborhood that was hit by airstrikes" shortly before the termination. Her teenage daughter, also a TPS holder, has lived here since age three and is now about to graduate from high school. She neither speaks nor understands Arabic. J.A.548-49, 618. Respondent Dr. Sara Doe lost her brothers in the war and was threatened for providing medical services. She has been terrified for her future since the termination was announced. J.A.537-38. So has Dahlia Doe, a member of the Christian minority who has never even lived in Syria. J.A.530-32. If Waleed Doe and his wife (also a TPS holder) are forced to return to Syria they will have to make the impossible decision to either take their three U.S. citizen children—all under age ten—to Syria with them, or leave them with extended family. J.A.554.

See also 564-66, 558-61, 542-44 (documenting harm faced by other Respondents).

Respondents' loss of work authorization would also trigger irreparable harm and harm the public's interest, including the patients who would benefit from Dr. Doe's highly sought-after pediatric medical expertise. J.A.537. That terminating TPS causes substantial economic harm is undisputed. *See* Economists' Amicus Br. Pts.IV-VII.

Most important, the catastrophic harm Respondents would suffer cannot be undone if they ultimately succeed at final judgment. The district court justifiably acted to avoid these irreparable harms and preserve the status quo while the case proceeds.

CONCLUSION

This Court should affirm.

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