Nos. 25-1083 and 25-1084

In the Supreme Court of the United States

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

Petitioners,

v.

DAHLIA DOE, ET AL.

Respondents.

DONALD J. TRUMP, ET AL.,

Petitioners,

v.

FRITZ EMMANUEL LESLY MIOT, ET AL.

Respondents.

On Writs of Certiorari Before Judgment to the United States Courts of Appeals for the Second and D.C. Circuits

BRIEF OF AMICI CURIAE FORMER SENIOR GOVERNMENT OFFICIALS IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICI CURIAE[1]

Amici are former senior government officials who have served in past administrations (Republican, Democratic, or both) and are familiar with and/or have participated directly in all stages of the inter-agency consultation process for the designation, extension, and termination of Temporary Protected Status (TPS).

The summary below highlights amici's experience relevant to the TPS consultation process:

The Hon. Janet Napolitano served as Secretary of the Department of Homeland Security (DHS) from 2009 to 2013. As Secretary of Homeland Security, she had direct responsibility for making the final determinations about temporary protected status under 8 U.S.C. § 1254a.

The following amici served in senior and career legal, policy, refugee, asylum, humanitarian, and international-affairs positions at DHS, where they advised the DHS Secretary on immigration policy, including TPS determinations, and supervised and/or participated in the processes through which DHS fulfilled its statutory obligation to consult with other federal agencies to collect, verify, and assess country conditions:

Amanda Baran served as Chief of Policy & Strategy at the U.S. Citizenship and Immigration Services (USCIS) from 2021 to 2023.

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[1] No counsel for any party authored this brief in whole or in part. No person or entity other than amici or their counsel made a monetary contribution to fund the brief's preparation or submission.

Andrew Block served as a Program Analyst in the Office of Policy & Strategy at USCIS from 2022 to 2025.

Phyllis A. Coven served as Citizenship and Immigration Services Ombudsman from 2021 to 2023.

Rena Cutlip-Mason served as Chief of the Humanitarian Affairs Division, Office of Policy & Strategy at USCIS from 2021 to 2025.

Amany Ezeldin served as a Policy Analyst in the Office of Policy & Strategy at USCIS from 2021 to 2025.

Tom Jawetz served as Deputy General Counsel of DHS from 2021 to 2022.

Stephen H. Legomsky served as Chief Counsel of USCIS from 2011 to 2013.

Avideh Moussavian served as the Chief of the Office of Policy & Strategy at USCIS from 2023 to 2025.

The Hon. Royce Bernstein Murray served as Senior Counselor to the DHS Secretary from 2023 to 2024, Assistant Secretary for Border and Immigration Policy from 2024 to 2025, and Associate Counsel at the USCIS Office of the Chief Counsel, Refugee and Asylum Law Division from 2002 to 2007.

Esther Olavarria served as Senior Counselor to the DHS Secretary from 2014 to 2016.

The Hon. León Rodríguez served as Director of USCIS from 2014 to 2017.

Paul Rosenzweig served as Deputy Assistant Secretary for Policy from 2005 to 2009.

The Hon. Kelly Ryan served as Chief of the Refugee and Asylum Division in the Office of the General

Counsel in the Department of Justice Immigration and Naturalization Service (INS) from 1998 to 2002, Deputy Assistant Secretary of State in the Bureau of Population, Refugees, and Migration from 2002 to 2009, and Acting Deputy Assistant Secretary for Immigration in the DHS Office of Policy from 2010 to 2013.

Claudia Schwartz served as Chief of the Refugee and Asylum Law Division in the USCIS Office of Chief Counsel from 2023 to 2025, and Associate Chief Counsel from 2010 to 2023.

Olivia Troye served as Homeland Security and Counterterrorism Special Advisor to the Vice President from 2018 to 2020 and Chief of the Office of Intelligence & Analysis, DHS Office of Strategy, Policy & Plans from 2016 to 2018.

The following amici served in senior and career roles at the Department of State, where they advised the Secretary of State and/or evaluated and provided direct input on the State Department's reports on country conditions and the Secretary of State's recommendations on TPS determinations that were prepared as an integral part of the interagency consultation process required by TPS:

Scott Busby served as Deputy Assistant Secretary of State of Democracy, Human Rights, and Labor from 2013 to 2023, Director of Human Rights and Refugee Protection, National Security Council from 2009 to 2011, and INS Associate General Counsel from 1995 to 1997.

The Hon. Nancy H. Ely-Raphel served as Director of the Office to Monitor and Combat Trafficking in Persons from 2001 to 2003 and Ambassador to Slovenia from 1998 to 2001.

The Hon. Harold Hongju Koh served as Assistant Secretary of State for Democracy, Human Rights and Labor from 1998 to 2001, Legal Adviser at the State Department from 2009 to 2013, and Senior Adviser at the State Department in 2021.

The Hon. Thomas R. Pickering served as United States Ambassador to the United Nations from 1989 to 1992 and Under Secretary of State for Political Affairs from 1997 to 2000.

The Hon. Michael H. Posner served as Assistant Secretary of State for Democracy, Human Rights, and Labor from 2009 to 2013.

The Hon. Anne C. Richard served as Assistant Secretary of State for Population, Refugees, and Migration from 2012 to 2017.

The Hon. Eric Schwartz served as Assistant Secretary of State for Population, Refugees and Migration from 2009 to 2011, and as the principal refugee and international migration official on the National Security Council Staff from 1993 to 2000, including as Special Assistant to the President for National Security Affairs and Senior Director for Multilateral and Humanitarian Affairs.

The Hon. John Shattuck served as Assistant Secretary of State for Democracy, Human Rights, and Labor from 1993 to 1998.

The Hon. Uzra Zeya served as Under Secretary of State for Civilian Security, Democracy, and Human Rights from 2021 to 2025.

The following amici served in the Department of Justice which, until 2003, administered the TPS program, and in other federal agencies consulted as part of the TPS process:

Dea Carpenter served as INS Deputy General Counsel from 2001 to 2003 and USCIS Deputy Chief Counsel from 2003 to 2016.

Dorothea Lay served as INS Assistant General Counsel from 1993 to 2003 and USCIS Associate Chief Counsel from 2003 to 2025.

The Hon. Doris Meissner served as INS Commissioner from 1993 to 2000.

The Hon. Grover Joseph Rees served as INS General Counsel from 1991 to 1993.

Ron Rosenberg served as USCIS Associate Chief Counsel and INS Assistant General Counsel from 2000 to 2006.

The Hon. James W. Ziglar served as INS Commissioner from 2001 to 2002.

In amici's experience, compliance with the statutory mandate for interagency consultation about country conditions, especially consultation with the State Department, provided critical input to the DHS Secretary to ensure that the life-or-death decisions to terminate or extend TPS were, consistent with Congress's intent, based on a comprehensive, vetted examination of evidence establishing prevailing country conditions. Congress intended TPS decisions to be informed by interagency expertise about country conditions, not made through a perfunctory or *post hoc* process. Amici write to explain what the statutorily mandated interagency consultation process has entailed, how that process broke down here, and why this Court therefore should not accord the outcomes of that process any presumption of regularity.

SUMMARY OF ARGUMENT

Under the Temporary Protected Status program created by Congress in 1990, the Secretary of the Department of Homeland Security may—"after consultation with appropriate agencies of the Government"—designate a country for TPS, whether because of war, natural disaster, or other "extraordinary and temporary conditions." 8 U.S.C. § 1254a(b)(1). When the DHS Secretary designates a nation for TPS, individuals who are nationals of that country may register for temporary protection and, if they meet certain eligibility standards, are permitted to live and work in the United States during the duration of the designation.

An initial TPS designation lasts up to 18 months, at which point the DHS Secretary must determine whether to terminate the designation. A designation may not be terminated unless the Secretary determines that the country no longer meets the conditions for a designation; absent such a determination, the designation must be extended for a period of up to 18 months. Before making such a determination, Congress requires that the DHS Secretary "shall review the conditions in the foreign state" after "consultation with appropriate agencies." 8 U.S.C. § 1254a(b)(3)(A).

Amici have decades of experience working at the Executive departments charged with administering this mandatory consultation and review process. Based on this experience, amici fully understand and appreciate the need for Executive discretion on many immigration matters. But they have always understood that under the TPS statute, that discretion must be guided by two statutory mandates: *genuine interagency consultation*, especially with respect to *current*

country conditions. Amici know of no cases during their time in government service where, as here, the DHS Secretary simply dispensed with these two statutory requirements.

In amici's experience, for decades, DHS, the State Department, and other appropriate agencies engaged in robust interagency consultation about ongoing country conditions and other relevant factors before the DHS Secretary extended or terminated a TPS designation. These consultation practices promote Congress's legislative determination that TPS decisions must be grounded on evidence-based assessments of a country's current conditions.

By contrast, the "consultation" process that DHS followed to terminate the designations for Haiti and Syria appears to have consisted exclusively of vague and conclusory emails without any analysis of country conditions. This process plainly lacks the statutorily mandated consultations on current country conditions, is directly contrary to Congress's expressed intent, and constitutes a radical departure from longstanding agency practices.

Congress required interagency consultation so that other expert agencies could guide the Secretary's decisions and provide the information necessary to make accurate assessments of current country conditions. It did not, as the government claims, include the consultation requirement as part of a check-the-box recordkeeping exercise, where the DHS Secretary retains unfettered, unreviewable discretion to extend or terminate a TPS designation so long as there is some perfunctory solicitation of comments from other agencies. *See* Pet'rs' Br. 36-38.

Acceptance of such a plainly defective process would gut the statute. It would undermine the carefully constructed decision-making scheme that Congress enacted to ensure that TPS terminations must be based on expert evaluations by "appropriate agencies" of real-time, on-the-ground "conditions in the foreign state." 8 U.S.C. § 1254a(b)(3)(A). Against statutory mandates, the process used to terminate the TPS of Haiti and Syria was not based on evidence and departed sharply from past interagency practices. Accordingly, that conclusory administrative process should not be entitled to any presumption of regularity warranting judicial deference by this Court.

ARGUMENT

I. Congress authorized the Executive to terminate a TPS designation only after meaningful interagency consultation and examination of current country conditions.

Congress enacted the TPS program in Title III of the Immigration Act of 1990, empowering the DHS Secretary to designate a country for TPS because of armed conflict, natural disaster, or other "extraordinary and temporary conditions." 8 U.S.C. § 1254a(b)(1). The DHS Secretary may set the initial period of TPS designation between six and eighteen months. *Id.* § 1254a(b)(2). Before the expiration of the designation period, the Secretary must engage in a periodic review to determine whether TPS should be terminated. *Id.* § 1254a(b)(3).

The Secretary's decision to make an initial TPS designation is discretionary, guided only by the statutory factors after consultation with appropriate agencies. *See id.* § 1254a(b)(1) (stating that the

Secretary "may designate" a country for TPS). The authority to terminate a TPS designation is more limited. First, under the TPS statute, at least 60 days before the end of a period of designation, the Secretary "*shall* review the conditions in the foreign state" to determine if those conditions continue to qualify the country for TPS. *Id.* § 1254a(b)(3)(A) (emphasis added). Second, the Secretary's review of country conditions must occur "*after* consultation with appropriate agencies." *Id.* (emphasis added). The unambiguous text of the statute thus authorizes the Secretary to terminate a TPS designation only after he adheres to these two procedural requirements. Indeed, if the Secretary does not make a determination that a country no longer meets the conditions for designation, the Secretary cannot terminate the TPS designation. *See id.* § 1254a(b)(3)(C) ("If the [Secretary, previously the Attorney General] does not determine . . . that a foreign state (or part of such foreign state) no longer meets the conditions for designation . . . the period of designation of the foreign state is extended for an additional period. . . .").[2]

A. In enacting TPS, Congress intended to channel, not expand, Executive discretion.

Congress imposed the two mandatory procedural safeguards in Section 1254a(b)(3)—consultation and a focus on current country conditions—to channel, not to loosen, Executive discretion. Under predecessor programs operating before the enactment of Section

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[2] Section 1254a was originally administered by the Department of Justice. These responsibilities were transferred to the Secretary of Homeland Security in 2003. Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002).

1254a, the Executive retained sole discretion to decide whether to grant, extend, or terminate temporary protection. Termination decisions were thus not tied to any statutory requirements or subject to any procedural guardrails, resulting in an "utterly mysterious" process that led to discretionary, ad hoc decisions. 133 Cong. Rec. 19560 (1987) (statement of Rep. Romano Mazzoli). Congress repeatedly expressed concern that such decisions were neither explained nor grounded in clear standards, *id.*, and emphasized that the safety of those receiving temporary protection should not "be subject to the vagaries of our domestic politics." 135 Cong. Rec. 25838 (1989) (statement of Rep. Meldon Levine).[3]

Congress enacted the TPS regime to cabin that unbounded Executive discretion. As the background of the TPS and predecessor statutes establish, Congress recognized a need for a "more formal and orderly mechanism for the selection, processing and registration of" individuals fleeing turmoil in their home countries so that they may remain temporarily in the United States. H.R. Rep. No. 100-627, at 4 (1988). Accordingly, Congress established a more predictable, transparent, fact-based process to guide Executive discretion in setting final decisions on immigration policy. Congress enumerated three statutory criteria—armed conflict, natural disaster, and other extraordinary and temporary conditions—that would support designation for TPS. 8 U.S.C. § 1254a(b)(1). And Congress expressly required meaningful interagency "consultation" about those country conditions

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[3] *See generally* Br. of Amici Curiae Immigr. Law Scholars in Supp. of Pls.-Resp'ts 3-17.

as a precondition for TPS designation, extension, and termination on these grounds. *Id.* § 1254a(b)(1), (b)(3)(A).[4]

In particular, as noted above, Congress mandated that a country's TPS would be subject to a "periodic review" in which the Secretary, "after consultation with appropriate agencies," "*shall review* the conditions in the foreign state" to "determine whether the conditions for such designation" continue to be met. *Id.* § 1254a(b)(3)(A) (emphasis added). Congress authorized the Secretary to terminate a country's TPS designation only if that review establishes that the current country conditions no longer meet the statutory predicates. Significantly, Congress did not limit the number of times a TPS designation could be extended. Where, as in the cases of Haiti and Syria, the designations are based on the existence of an armed conflict and/or extraordinary and temporary conditions, Congress directed that the Secretary must assess whether the current evidence shows that TPS holders would be placed in serious danger if returned to their home country based on the current prevailing conditions.[5]

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[4] Underscoring the importance of the consultation function, Congress also required interagency consultation in connection with the annual report that DHS must submit to both branches of Congress each year. 8 U.S.C. § 1254a(*i*)(1).

[5] Under the existing process, TPS designations have been terminated in both Republican and Democratic administrations. Of the twenty-nine countries designated for TPS since 1990, eighteen have had their status terminated. *Temporary Protected Status (TPS): An Overview*, Am. Immigr. Council (Mar. 13, 2026), https://www.americanimmigrationcouncil.org/fact-sheet/temporary-protected-status-tps-overview/.

B. Consistent with Congress's design, the Executive branch has historically followed a robust process of meaningful agency consultation for TPS.

For most of the thirty-five-year history of the TPS program, both Republican and Democratic administrations complied with the statutory requirements for interagency consultation through a robust, bottom-up, evidence-driven process. DHS, the State Department, and other relevant agencies regularly engaged in a thorough interagency process analysis—relying on the specialized expertise and resources of each agency—to evaluate whether country conditions had sufficiently changed to warrant termination. *See, e.g.*, U.S. Gov't Accountability Off., GAO-20-134, *Temporary Protected Status: Steps Taken to Inform and Communicate Secretary of Homeland Security's Decisions* (2020) ("GAO Report"). In amici's collective decades of experience, this interagency consultation—especially with the State Department and its vast network of embassies, consulates, and foreign service officers—has been critical to ensuring that TPS determinations are based on a full and accurate report of prevailing local country conditions.

In amici's experience, the interagency TPS process included the following steps: [6]

1) Initiation of review process. As a TPS designation period neared its end, DHS would initiate a review of a country for TPS termination or extension. To ensure that DHS and other agencies had sufficient time to collect and analyze data and make appropriate recommendations—and to ensure compliance with the

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[6] This summary describes the process as implemented by the components currently responsible for each step.

statutory requirement that the review be conducted "[a]t least 60 days before [the] end" of the current designation period, 8 U.S.C. § 1254a(b)(3)(A)—DHS usually initiated this review process months in advance of the end of the designation period.

2) Robust consultation with the State Department. The U.S. Citizenship and Immigration Services (USCIS), through its Office of Policy & Strategy (OP&S), was responsible for ensuring that DHS consults with "appropriate agencies" as required by Section 1254a. OP&S would first identify and contact "appropriate agencies" and request information relevant to the country conditions under consideration. Although Section 1254a does not prescribe which other agencies must be consulted as part of the TPS interagency review process, Congress expected the State Department—as the United States' lead agency on foreign policy and actual country conditions—to be among them:

> H.R. 45, as considered, vests the authority to grant TPS in the Attorney General, after consultation with appropriate agencies of the Federal Government. *The Department of State would be one such agency*, though other agencies may also be appropriate, depending on the circumstances.

135 Cong. Rec. 25846 (1989) (emphasis added). Consistent with Congress's intent and past practice, the State Department has played a key role in the TPS review process for every prior designation, termination, and extension decision of which amici are aware. *See also, e.g.*, GAO Report, Highlights (noting that

between 1990 and 2018, the State Department participated in every consultation under review).[7]

The State Department followed its own extensive process to produce an authoritative report that would, at a minimum, evaluate current country conditions related specifically to the three statutory bases for designation. For example, if a TPS designation was based on the existence of an armed conflict, the country conditions analyses by the State Department would include, among other things, a fact-based evaluation of the current state of the conflict, an assessment of whether the return of foreign nationals would pose a risk to their safety, and whether the country was unable to handle the return of the nationals. *See* GAO Report at 23. Amici are not aware of a single instance, before January 2025, where the State Department did not conduct a robust and thorough analysis of country conditions specific to the statutory requirements.

The State Department's Bureau of Population, Refugees, and Migration (PRM) would trigger the Department's TPS process by requesting information from the relevant regional bureau, which manages foreign policy and diplomatic relations for specific

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[7] Even before the enactment of Section 1254a, agencies implementing TPS predecessor programs routinely consulted with the State Department to benefit from its unique expertise regarding country conditions. *See* Temporary Safe Haven Act of 1987: Hearing Before the Subcomm. on Immigr., Refugees, & Int'l Law of the H. Comm. on the Judiciary, 100th Cong. 39 (1987) (statement of Doris Meissner, Senior Associate, Carnegie Endowment) (testifying that the INS, in implementing a TPS predecessor program, would consult with the State Department because of "the *need for the Department of State's expertise regarding country conditions*" (emphasis added)).

geographic areas. The regional bureau would seek input from the overseas State post (i.e., embassies, consulates, or specialized missions), including the completion of a detailed questionnaire with its analysis of real-time, "on the ground" country conditions. Based on its regional expertise and the information from the post, the regional bureau would draft a report on the current country conditions, which would be compared with the country conditions set out in the Bureau of Democracy, Human Rights and Labor's exhaustive Annual Country Reports on Human Rights. The regional bureau and PRM, with input from the local post and applicable bureaus, would then review and finalize the country conditions report and forward it, along with a joint cover memorandum recommending TPS termination or extension to the Secretary of State.

The Secretary of State would then review the report and recommendation—in consultation with the State Department Legal Adviser and the Under Secretary for Civilian Security, Human Rights and Democracy—and make an interagency recommendation whether the TPS status could and should be terminated or extended, as a matter of law and policy; that recommendation would then be formally transmitted, along with the State Department's country conditions report, to the DHS Secretary and USCIS.

3) Other interagency consultation. Depending on the specific country conditions at issue, OP&S at USCIS would also seek information from other agencies and nongovernmental organizations. *See* GAO Report at 25. For example, where the TPS had been granted because of a public health issue, DHS might consult with the Centers for Disease Control and Prevention and other public health agencies.

4) DHS evaluation of statutory criteria. As part of the Secretary's review, DHS conducted its own analysis of country conditions. USCIS's Refugee, Asylum, and International Operations (RAIO) Directorate would compile, primarily from publicly available data, a factual report on country conditions related to the basis of the designation that would be provided to and, if necessary, jointly revised by OP&S.

Based on the RAIO report and information from other agencies, OP&S would draft a "Director Memo," recommending whether to terminate or extend TPS. This package would be processed through the DHS Executive Secretariat, which ensured that all relevant offices within DHS had the opportunity to review the analysis. After that review, the Office of General Counsel would transmit the Director Memo and the RAIO report to the Secretary for final consideration.

5) Final decision. After receiving all the above inputs, the Secretary of Homeland Security would review the country conditions analyses and recommendation memoranda from USCIS, State, and any other relevant agencies, and then decide whether country conditions warranted termination of TPS. Where conditions did not warrant termination, the designation would be extended.

In sum, the *interagency* consultation process mandated by the TPS statute was, until now, uniformly implemented by careful *inter-bureau intra-agency* processes that engaged multiple offices within both the State Department and DHS. This executive process was designed to ensure that TPS extension or termination decisions were made from the bottom-up, not the top down, guided by evidence and not

expedience, and driven by facts, not conclusions resulting from either politics or prejudice.

II. Since January 2025, the Executive branch has without justification abandoned the practice of meaningful interagency consultation about country conditions.

Recent TPS terminations appear to have departed radically from this long-established executive process governing consultations between DHS and other agencies, particularly the State Department. Based on the record developed in these and other recent TPS cases, DHS has paid mere lip service to—if not outright ignored—the indispensable criteria congressionally mandated by 8 U.S.C. § 1254a.

Thirteen countries have had their TPS status reviewed since January 2025. The Secretary has terminated the TPS designations for every single one of those countries. *See Afr. Cmtys. Together v. Noem*, No. 25-cv-13939-PBS, 2026 WL 395732, at *1, *4 (D. Mass. Feb. 12, 2026) (*ACT I*); *Termination of the Designation of Yemen for Temporary Protected Status*, 91 Fed. Reg. 10,402 (Mar. 3, 2026).

Public court filings reveal that the DHS Secretary made many of these decisions based on cursory or no "consultation" with any other agencies. Even where DHS made a *pro forma* request for the State Department's input before publishing the notice of termination, for example, the State Department offered only generic statements asserting the absence of "foreign policy concerns" and failed to provide any information about on-the-ground country conditions that would be relevant to evaluating whether the statutory bases (armed conflict, natural disaster, or other extraordinary and temporary conditions) for TPS still

exist. Significantly, upon receiving such manifestly irrelevant and inadequate responses, DHS never went back to State Department to request information relevant to the statutory requirements.

The sequence of events leading up to the termination of Haiti's TPS designation is illustrative. On February 24, 2025, just one month after being sworn in as DHS Secretary, Secretary Kristi Noem sought to partially "vacate" a prior extension of Haiti's TPS designation, purporting to shorten the existing designation period from February 3, 2026 to August 3, 2025.[8] While the partial vacatur litigation was ongoing, the Secretary began a process to terminate Haiti's TPS altogether. On July 1, 2025, the Secretary announced her decision to terminate Haiti's TPS designation.[9] Petitioners have not cited any record

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[8] *Partial Vacatur of 2024 Temporary Protected Status Decision for Haiti*, 90 Fed. Reg. 10,511 (Feb. 24, 2025). Amici are unaware of any prior instance where the Executive sought to "vacate" an existing designation. Section 1254a grants the Secretary only three authorities: designation, extension, or termination. The partial vacatur decision was quickly challenged, and several courts held that the Secretary exceeded her authority in attempting to impose it and stayed the vacatur. *See, e.g.*, *Haitian Evangelical Clergy Ass'n v. Trump*, 789 F. Supp. 3d 255, 273 (E.D.N.Y. 2025).

[9] *Termination of the Designation of Haiti for Temporary Protected Status*, 90 Fed. Reg. 28,760 (July 1, 2025). During this same period, Haiti's "multidimensional political, economic, humanitarian, and human rights crisis deteriorated further in 2025." World Report 2026: Haiti, Hum. Rts. Watch (Feb. 4, 2026), https://www.hrw.org/world-report/2026/country-chapters/haiti ("HRW Report"). Widespread and indiscriminate violence has taken over nearly the entire capital of Port-au-Prince, and a resurgent cholera epidemic, recent natural disasters, and widespread internal displacement exacerbated a public health

evidence suggesting that DHS consulted with any other agency about country conditions before this decision. On July 30, 2025, litigation was filed to challenge that determination.[10]

On September 5, 2025, in what appears to be a transparent effort to "paper the file," a senior counselor to the DHS Secretary emailed a senior bureau official in PRM: "Due to the litigation, we are re-reviewing country conditions in Haiti based on the original TPS deadline. Can you advise on State's views on the matter?" *Miot*, 2026 WL 266413, at *21. Just fifty-three minutes later, the State official responded, without any accompanying fact-based evidence: "State believes that there would be no foreign policy concerns with respect to a change in the TPS status of Haiti." *Id.* Petitioners concede that the State staffer's one-line email response on September 5, 2025, constituted DHS's entire consultation with the State Department, or any other agency, for the DHS Secretary's decision to terminate Haiti's TPS. *See id.* And significantly, that one-line response did not address the subject about which DHS was ostensibly inquiring: "State's views" on "country conditions." Indeed, if anything, State's repeated assertion that "there would be no foreign *policy* concerns" conspicuously avoids addressing the foreign *conditions* that the statute made relevant in this context.

The termination process for Syria was likewise plainly defective. Although the administrative record

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crisis. *See generally* Br. of Médecins Sans Frontières USA, Inc. as Am. Curiae in Supp. of Resp'ts, Pt. 1.

[10] *Miot v. Trump*, No. 25-CV-02471, 2026 WL 266413, at *7 (D.D.C. Feb. 2, 2026), *cert. granted before judgment*, No. 25-1084, 2026 WL 731087 (U.S. Mar. 16, 2026).

in the case of the Syria termination has not been fully developed, the government has indicated that "documents produced in other TPS cases show that the Secretary requested and received State's advice as to Syria's designation." Pet'rs' Br. 38-39 (citing *Aung Doe v. Noem*, No. 25 C 15483, 2026 WL 184544, at *13 (N.D. Ill. Jan. 23, 2026)). Based on the *Aung Doe* case, however, amici understand that the entirety of DHS's "consultation" before the Secretary terminated Syria's TPS consisted of a single, conclusory email exchange that starkly departed from established executive practice, and that did not address country conditions. In July 2025, DHS contacted State's PRM regarding upcoming periodic reviews for four countries, including Syria. *See Aung Doe*, 2026 WL 184544, at *13 (addressing termination decisions of Syria, South Sudan, Myanmar, and Ethiopia). A State Department employee responded that State "has no foreign policy concerns" with ending all four countries' TPS designations and stated, without explanation, that "sanctions on Syria have recently been lifted, and we have partnered with South Sudan on immigration-related issues." *Id.* The DHS official replied, adding the USCIS Chief of Staff, "so the State consultation makes it into the memo." *Id.*[11]

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[11] Since the last TPS redesignation and extension for Syria in 2024, a transition government has been announced, but conditions for civilians in Syria have remained dire. *See generally* Br. of Amici Curiae of Syrian Justice and Accountability Centre and Tahrir Institute for Middle East Policy 16-30. Harrowing civilian protection issues persisted in 2025, with widespread violence against civilians, vast swaths of land contaminated by explosive ordnance, and around 100,000 individuals who remain missing or forcibly disappeared. *See* U.N. High Comm'r for Refugees, Syrian Arab Republic: UNHCR Operational Update – Dec.

In their decades of experience, amici know of no other instance where DHS and State summarily "consulted" regarding four separate TPS designations in a single email, much less an email entirely lacking any substantive interagency exchange concerning real-time country conditions. Nor are amici aware of instances prior to those here where State, upon being consulted, responded by speaking only of "foreign policy" concerns, rather than discussing country conditions.

Additionally, for at least seven of the countries whose designations were terminated in addition to Haiti and Syria (Venezuela, Nicaragua, Honduras, Nepal, Myanmar, South Sudan, Ethiopia), it appears that the DHS Secretary likewise decided to terminate TPS designations before receiving *any* information about current country conditions from the State Department or any other agency.[12]

As noted above, Myanmar and Ethiopia were two of the other countries identified in the email thread about Syria. Yet again, the State Department's communications with DHS are devoid of any country-

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2025 8-9 (Dec. 2025), https://www.unhcr.org/media/syrian-arab-republic-unhcr-operational-update-dec-2025. The United Nations estimated that 16.5 million Syrians needed humanitarian aid, and, in 2025, only 37 percent of primary health-care centers were fully functional, the Syrian population experienced acute water scarcity, only half of the sewage system was operational, and 31 percent of the national housing stock was damaged or destroyed. *Id.* at 2, 8.

[12] *See Aung Doe*, 2026 WL 184544, at *13; *Miot*, 2026 WL 266413, at *21; *ACT I*, 2026 WL 395732, at *12; *Nat'l TPS All. v. Noem*, 798 F. Supp. 3d 1108, 1123-25, 1151 (N.D. Cal. 2025) (*NTPSA IV*); *Nat'l TPS All. v. Noem*, No. 25-CV-05687, 2025 WL 4058572, at *23 (N.D. Cal. Dec. 31, 2025).

specific information about Myanmar and Ethiopia. The State Department's emails instead refer only to unspecified "foreign policy concerns," failing to identify any country-specific facts relevant to assessing, *inter alia*, whether it would be safe for nationals to be returned to those countries. *See Aung Doe*, 2026 WL 184544, at *13; *African Cmtys. Together v. Noem*, No. 1:26-cv-10278, 2026 WL 948591, at *8-9 (D. Mass. Apr. 8, 2026) (*ACT II*).[13]

The Secretary's TPS terminations for Nicaragua, Cameroon, and Nepal were similarly flawed. Public filings show that DHS failed to receive *any* country conditions information from the State Department before the Secretary decided to terminate, leading one court to find two of these terminations to have been "preordained." *See NTPSA*, 2025 WL 4058572, at *23.

Even in the few instances where the Secretary of State sent a short recommendation letter to DHS, those letters focused on broad pronouncements about immigration policies and "did not address country conditions." *NTPSA IV*, 798 F. Supp. 3d at 1124 (Venezuela); *see also NTPSA v. Noem*, 3:25-cv-05687, ECF 145-36 (Oct. 14, 2025) (Honduras).

In sum, for most—if not all—of the recent spate of TPS terminations, DHS either did not consult at all with State, or State's input appears to have amounted to rote references to "foreign policy" and contained no evidence or discussion of country conditions, no analysis of whether the conditions supporting the

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[13] On October 8, 2025, the State Department sent a second email to DHS, stating "I verify that State has no foreign policy concerns with a termination of Temporary Protected Status for Ethiopia." *ACT II*, 2026 WL 948591, at *9. Again, this email is devoid of any discussion of country conditions.

designation had materially changed, and no indication of the substantive input that historically informed TPS review. This sham process drastically departs from the established practice detailed above. Amici know of no prior decisions in which the State Department's consultative role was reduced to a box-checking exercise, and in which not even the correct box was checked, since there was not even cursory discussion of current country conditions—the crux of the TPS determination.

III. Because Congress afforded the Executive no discretion to sidestep a meaningful consultation process, the termination processes followed here are not entitled to any presumption of regularity.

The government asserts that constraining DHS's discretion to entirely ignore the statutory consultation requirements would constitute "[j]udicial micromanagement." Pet'rs' Br. 38. Amici do not contend that every TPS review must unfold identically, or that any departure from prior practice is per se unlawful. But Congress granted the Executive no discretion to rewrite Section 1254a in a way that eviscerates it. What Petitioners call "judicial micromanagement" is Congress's legislative decision to require interagency consultation to ensure that the Secretary's termination decisions would be based on actual facts and evidence. Whatever discretion Congress may have given the Secretary did not include discretion entirely to skip interagency consultation on country conditions or to engage in a process so perfunctory as to render the consultation requirement a nullity.

While Petitioners claim that Congress required only that DHS "solicit and receive other agencies'

views," Pet'rs' Br. 36, on this interpretation, the Secretary could equally satisfy the statute's consultation requirements merely by asking a component of the Department of the Interior regarding its "views" on a TPS termination. Plainly, the matters about which DHS must consult are those *material to the TPS termination or extension*. The mandated "consultation" must be defined by reference to its object: namely, "the conditions in the foreign state (or part of such foreign state) for which a designation is in effect."[14] The ordinary meaning of "consult" is "to get information or advice from a person, book, etc. with special knowledge on a particular subject" or "to discuss something with someone before you make a decision."[15] Had Congress intended that DHS solicit only *pro forma* agency responses, rather than fact-based consultation with subject-matter experts on the criteria relevant to the statute, it would have used different language.[16]

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[14] 8 U.S.C. § 1254a(b)(3)(A); *see also EPA v. Calumet Shreveport Refining, LLC*, 145 S. Ct. 1735, 1750 (2025) (undefined words should be understood in light of their "plain meaning" and "in their context and with a view to their place in the overall statutory scheme" (quoting *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989)).

[15] *Consult*, The Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/consult; *see also Consultation*, *Black's Law Dictionary* (12th ed. 2024) (defining consultation as "[t]he act of asking the advice or opinion of someone (such as a lawyer)" or "[a] meeting in which parties consult or confer").

[16] *See, e.g.*, *Cal. Wilderness Coal. v. U.S. Dep't of Energy*, 631 F.3d 1072, 1087-88 (9th Cir. 2011) (noting that statutory requirement for consultation requires more than providing notice and an opportunity to comment); *Campanale & Sons, Inc. v.*

Citing *Philip Morris Prods. S.A. v. Int'l Trade Comm'n*, 63 F.4th 1328 (Fed. Cir. 2023), Petitioners claim that mere solicitation of information is sufficient to satisfy an agency's consultation requirement. *See* Pet'rs' Br. 37-38. But *Philip Morris* held that the International Trade Commission satisfied its obligation to "consult with, and seek advice and information from," among others, the Food and Drug Administration (FDA), because, before rendering his decision, the administrative law judge in that case reviewed and considered "scientific" evidence from over thirty FDA documents, thereby obtaining the FDA's relevant views and analysis through published FDA sources. *Philip Morris Prods. S.A.*, 63 F.4th at 1338-40. Here, by contrast, the government concedes that the Secretary neglected to obtain any evidence at all about current country conditions from the State Department. She engaged in no genuine consultation, because the legislatively mandated TPS termination decision necessarily requires DHS and consulting agencies to generate new analyses of country conditions for each periodic review.

True "consultation" cannot be trivialized into such empty formalism. Just as juries must deliberate before issuing weighty verdicts, or courts must deliberate before issuing important opinions, different agencies must consult to ensure that grave decisions affecting large numbers of individuals are fully vetted,

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Evans, 311 F.3d 109, 117-18 & n.8 (1st Cir. 2002) (same, and holding that consultation requires communication about topics relevant to agency decision); *U.S. Steel Corp. v. United States*, 362 F. Supp. 2d 1336, 1343-44 (U.S. Ct. Int'l Trade 2005) (distinguishing among the statutory terms "notice, comment, and consultation" and holding that consultation requires a meaningful exchange of information).

not based on preordained conclusions.[17] While the statute entrusts the DHS Secretary to find facts and weigh competing considerations, consultation serves as an indispensable input to ensure that life-or-death decisions to terminate or extend TPS are, consistent with Congress's intent, based on the statutory criteria, not forbidden prejudices. Congress never blessed a sham process empowering the Secretary to declare pretextual, *post hoc*, or obviously deficient "consultation" sufficient under the statute. When reviewing agency decisions, this Court has stated, "[o]ur review is deferential, but we are not required to exhibit a naiveté from which ordinary citizens are free." *Dep't of Commerce v. New York*, 588 U.S. 752, 785 (2019) (internal quotation marks and citation omitted).

The express goal of the consultation requirement is to ensure that the DHS Secretary makes the ultimate decision based on the best, most accurate, and most current information.[18] In amici's experience,

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[17] *See Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 22 (2020) (noting that procedural requirements may serve "important values of administrative law" even where the DHS Secretary retains discretion to make final determinations about immigration policy).

[18] *Cf. Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (noting that procedural requirements can ensure that an agency "in reaching its decision, will have available, and will carefully consider, detailed information" and that "relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision"); *City of Tacoma v. FERC*, 460 F.3d 53, 75 (D.C. Cir. 2006) (an "interagency consultation process reflects Congress's awareness that expert agencies . . . are far more knowledgeable than other federal agencies about the precise conditions that pose a threat to listed species, and that those

State Department reports provide critical information on country conditions not readily available to DHS. Alone in the United States government, the State Department has access to relevant, non-public information through its foreign diplomatic contacts and resources, including embassy staff and NGOs within the country. USCIS-RAIO reports, on the other hand, rely primarily on publicly available data and information.

While Petitioners protest that "courts owe to Executive agencies a 'presumption of regularity' and assume that they will follow Congress' statutory commands," Pet'rs' Br. 23–24, a presumption of regularity cannot "shield [an agency's] action from a thorough, probing, in-depth review"[19] that includes (1) whether the Secretary acted within the scope of his authority, which requires an examination of "a delineation of the scope of the Secretary's authority and discretion" and whether "on the facts the Secretary's decision can reasonably be said to be within that range"; (2) "whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment"; and (3) "whether the Secretary's action followed the necessary procedural requirements." *Overton Park*, 401 U.S. at 416-17. A presumption of regularity is not an "excuse to rubberstamp any and

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expert agencies are in the best position to make discretionary factual determinations").

[19] *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 415 (1971); *see also Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 n.9 (1983) ("We do not view as equivalent the presumption of constitutionality afforded legislation drafted by Congress and the presumption of regularity afforded an agency in fulfilling its statutory mandate.").

all executive action as lawful," *Conley v. United States*, 5 F.4th 781, 791 (7th Cir. 2021), especially where the agency has not engaged in the deliberative, consultative process that Congress prescribed.[20] The presumption only operates where there is "general evidence of facts having been legally and regularly done," such that a party did not need to prove "circumstances, strictly speaking, essential to the validity of those acts, and by which they were probably accompanied in most instances." *United States v. Ross*, 92 U.S. 281, 285 (1875).

That reasoning cuts decisively against the government here. The statutory requirements at issue—interagency consultation about current country conditions—are not minor procedural formalities, but rather indispensable statutory predicates Congress enacted to replace the ad hoc process of executive discretion that preceded the TPS regime. Far from being "probably accompanied" by compliance, the record affirmatively demonstrates that these requirements were not met. There is no evidentiary gap for the presumption to bridge; here instead the facts show a chasm between what the statute demands and the process that occurred.

Where clear evidence demonstrates an administrative decisionmaker acts with "bad faith or improper behavior," or the agency provides pretextual justifications for its actions, the government no longer can claim the presumption of regularity as a shield from closer judicial scrutiny. *See Dep't of Commerce*, 588

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[20] "An agency may not . . . depart from a prior policy *sub silentio* or simply disregard rules that are still on the books." *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (citing *United States v. Nixon,* 418 U.S. 683, 696 (1974)).

U.S. at 782-85.[21] The government's claim that the DHS Secretary decided to terminate the Haiti and Syria TPS designations only after she engaged in genuine interagency consultation is belied by the record. Within just a month of being sworn in as Secretary, she took an unprecedented, unauthorized step to partially vacate and then terminate Haiti's TPS—and was prompted to reach out to the State Department about the second termination *after* her previous actions had been challenged in court. *See id.* at 783-85 (holding that rationale for agency decision seemed to have been "contrived" where, as here, agency head immediately took steps to reinstate a policy, and only later created a *post hoc* rationale for that decision).

These cursory TPS terminations were part of a broader pattern of the Secretary terminating, wholesale, the designation of every country that came up for review during her tenure, while repeatedly discarding the decades-long process of interagency consultation that DHS and the State Department had used when reaching those determinations. The presumption of regularity cannot be asserted as a shield for the government's failure to provide any explanation or rationale for this sudden and substantial departure

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[21] Courts have increasingly questioned, or outright rejected, the continuing viability of the presumption of regularity in light of an extraordinary number of incidents of executive misconduct or malfeasance during this administration. *See* Ryan Goodman et al., *The "Presumption of Regularity" in Trump Administration Litigation*, Just Security (Mar. 19, 2026), https://www.justsecurity.org/120547/presumption-regularity-trump-administration-litigation/.

from prior agency practice.[22] Upholding TPS terminations based on top-down directives and such a sparse procedural record without evidence-based assessments would permit proliferation of immigration policies based on racial stereotypes and falsehoods.[23] As Justice Thomas explained in *United States v. Fordice*: "[I]f a policy remains in force, without adequate justification and despite tainted roots . . . it appears clear—clear enough to presume conclusively—that the State has failed to disprove discriminatory intent." 505 U.S. 717, 747 (1992) (Thomas, J., concurring).

Amici do not ask this Court to substitute its judgment for the Secretary's on the substance of her country-conditions assessment. Those are the "determinations" that the TPS statute commits to the Secretary's discretion.[24] But the meaning of

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[22] *Overton Park*, 401 U.S. at 415; *see also Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977) (holding that "[d]epartures from the normal procedural sequence also might afford evidence that improper purposes are playing a role").

[23] The Court should not blink at the reality that President Trump has repeatedly accused Haitians of having HIV/AIDS, called Haiti a "sh*thole country," and claimed during the presidential election that they were "eating the pets" of Springfield, Ohio residents, and stated during his last campaign that he "[a]bsolutely" would revoke TPS for Haitian residents in Springfield. *See* Michael Shear, *Trump's Derision of Haitians Goes Back Years*. N.Y. Times (Sep. 18, 2024), https://www.nytimes.com/2024/09/18/us/politics/trump-haitians.html; *Trump Threatens to Deport Legal Haitian Migrants in Ohio*, CNN (Oct. 3, 2024), https://www.cnn.com/2024/10/03/politics/trump-revoke-status-ohio-haitian-migrants.

[24] Section 1254a(b)(5)(A) provides that "[t]here is no judicial review of any determination of the Attorney General [now

"consultation"—and whether the Secretary's process satisfies the statutory command that she act "after consultation with appropriate agencies" before she "review[s] the conditions in the foreign state," 8 U.S.C. § 1254a(b)(3)(A)—is a question of law that this Court is both empowered and obligated to answer. The record here suggests that Petitioners chose to terminate first and justify later—employing a *post hoc* rationale designed to "document" a decision that had already been made, rather than engaging in the meaningful consultation and review that Congress required.

For this Court to accept the government's position would gut the TPS statute. Any future Secretary could terminate every TPS designation simply by asserting in the Federal Register that she "consulted" and "reviewed" country conditions, without actually having done so. The consultation requirement would become a mere formality, the country conditions review optional, and the TPS program would revert to the unchecked executive discretion that Congress sought to rein in when it enacted Section 1254a.

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the Secretary of Homeland Security] with respect to the designation, or termination or extension of a designation, of a foreign state under this subsection." But whatever limitations Section 1254a(b)(5)(A) may place on judicial review of a final determination are inapplicable here. This amicus brief is not concerned with the Secretary's ultimate "determination" to terminate TPS; rather, it challenges only the legality of the procedures that the Secretary used in making that determination in the first place. If, as amici urge, the Court agrees that the Secretary failed to follow the statutorily required interagency process, the Secretary would be free on remand to revisit the ultimate determination whether to terminate TPS, by diligently following the procedures that the statute requires. As amici note, those procedures were conspicuously ignored here.

CONCLUSION

The text, statutory background, and longstanding agency implementation of the TPS statute establish that Congress required that the DHS Secretary meaningfully consult with other agencies, especially the State Department, about real-time country conditions as a means of ensuring that TPS decisions would be based on evidence and statutory requirements, not politics or unfettered discretion. The government thus is not free to decide how perfunctory a process to use to terminate the TPS designations of Haiti and Syria—nor is it free to choose a process that ignores real-life conditions and that departs radically from the consultation process envisioned in the statute and followed by the relevant agencies for decades. For the foregoing reasons, amici submit that the government should be entitled to no presumption of regularity and the Court should affirm the orders below.

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