No. 25-1084

IN THE
Supreme Court of the United States

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

Petitioners,

v.

FRITZ EMMANUEL LESLY MIOT, ET AL.,

Respondents.

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

BRIEF OF *AMICUS CURIAE* HAITIAN WOMEN FOR HAITIAN REFUGEES IN SUPPORT OF RESPONDENTS

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STATEMENT OF INTEREST[1]

Haitian Women for Haitian Refugees (HWHR) submits this brief as *amicus curiae* in support of Respondents.

HWHR is a nonprofit organization that responds to the needs of Haitian refugees and immigrants in the United States. Since its founding in 1992, HWHR has provided direct support to thousands of families seeking protection in this country after facing persecution in Haiti. It offers case management, legal clinics, and many other services in addition to engaging in grassroots advocacy.

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

HWHR has an interest in this proceeding because many of the refugees it serves have Temporary Protected Status (TPS) and would be subject to irreparable and potentially fatal harm if the district court's order is stayed. HWHR has previously been a plaintiff in litigation challenging the suspension of TPS for Haiti, and has also served as an amicus in such litigation. *See NAACP* v. *DHS*, 364 F. Supp. 3d 568 (D. Md. 2019); *Saget* v. *Biden*, No. 19-1685, 2021 WL 12137584 (2d Cir. Oct. 5, 2021). HWHR is well situated to provide this Court with a background on Haiti's history and relationship with the United States, which is important context in considering the United States' relationship with Haiti and Haitian nationals.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The United States and Haiti have a long, shared history. At roughly the same time that the thirteen colonies that would become the United States were fighting for freedom from English rule, the enslaved people of the colony of Saint-Domingue were fighting for their freedom from French slaveholders.

But when the enslaved people of Saint-Domingue won their independence and abolished slavery, their northern neighbor viewed Haiti as a threat. Haiti's very existence challenged the racial hierarchy on which the United States' economy depended. Politicians in the United States feared that news of the Haitian Revolution could lead to violent uprisings by enslaved people at home. *See* Bonnie Kelly, *The Tale of St. Domingo's Fate: The Impact of the Haitian Revolution on Virginia's Slave Codes, 1800-1810*, 52 S.U. L. Rev. 91, 101-108 (2024). The United States refused to

recognize the new Haitian state and instead helped France impose "reparations" on Haiti—payments to former French slaveholders for their lost slaves—that permanently crippled Haiti's economy. *See* Joseph M. Frengel II, *The Haitian Revolution, Anti-Haitianism, and the Evolution of Exclusionary Immigration Policy in the United States*, 20 Intercultural Hum. Rts. L. Rev. 483, 489-490 (2025).

This shared history has had lasting effects on Haiti and on the United States' immigration policy toward Haitians. At the same time that the United States has played a key role in shaping Haiti's political and economic landscape, the United States has turned away Haitian refugees. For example, the United States supported François Duvalier's rise to the presidency in 1957. *Id.* at 696. The Duvalier regime, which was arguably "the most oppressive regime in the hemisphere," forced hundreds of thousands of Haitians to flee for safety. *Haitian Refugee Ctr.* v. *Civiletti*, 503 F. Supp. 442, 475-477 (S.D. Fla. 1980). But in the 1970s, when Haitian refugees began arriving in southern Florida by boat, the United States turned those migrants away. *See* Alex Stepick, *Haitian Boat People: A Study in the Conflicting Forces Shaping U.S. Immigration Policy*, 45 Law & Contemp. Probs. 163, 163 (1982). The United States established a "Haitian Program," "[t]he goal" of which "was to expel Haitian asylum applicants as rapidly as possible." *Civiletti*, 503 F. Supp. at 512-513, 519. Upon being returned to Haiti, the returners were seen as opponents of the Duvalier regime, and were imprisoned, persecuted, and in many cases, killed. *Id*. at 476-482.

The United States' immigration policies are uniquely hostile to Haitian refugees. For example,

while Haitians were fleeing the United States-backed Duvalier regime, Cubans were fleeing Mariel Harbor for south Florida. *See Louis* v. *Nelson*, 544 F. Supp. 973, 978 (S.D. Fla. 1982). In contrast to the Haitian refugees being systematically sent back through the Haitian Program, Cuban refugees were greeted with preferential treatment. *See* Malissia Lennox, *Refugees, Racism, and Reparations*, 45 Stan. L. Rev. 687, 712-716 (1993). Similarly, the United States broke new ground in the 1980s when it began incarcerating, rather than paroling, Haitians upon their arrival in the United States. *Louis*, 544 F. Supp. at 984. Prior to that program, the United States had rarely jailed people for alleged immigration violations. *Id.* at 981.

In more recent years, Haiti has continued to struggle politically and economically. Rather than accord Haitians refugee status, the United States has provided a limited form of relief through the TPS program. *See* Extension and Redesignation of Haiti for Temporary Protected Status, 89 Fed. Reg. 54484 (July 1, 2024). Haiti's TPS designation acknowledges the dire conditions of present-day Haiti. *Id.* at 54488-92. For years, Haiti has suffered from devastating natural disasters, economic hardship, and severe political instability that have left the government unable to provide basic services or to protect its citizens from violence. *Id.* The TPS program provides needed humanitarian relief to those refugees.

The discontinuation of TPS status for Haitian refugees would be devastating. As one impacted community member told HWHR: "The way things are going [in Haiti]—the situation isn't good. Political problems, kidnapping, killings, rape * * * all these problems are why we can't stay there. They're still happening, even

worse." *See* Haitian Women for Haitian Refugees, *A Critical Hour for Haitian Immigrant Justice: Community Testimony and Policy Solutions Amid Relentless Racist Attacks on TPS and Humanitarian Parole* 21 (Dec. 12, 2025) ("A Critical Hour"). As another explained: "[P]eople are being killed, gangs are causing destruction, innocent people are being shot. It's not only physical insecurity but also food insecurity and economic insecurity." *Id.* As another said: "If they end TPS for Haitians, it's as if we are dead." *Id.* at 20.

ARGUMENT

I. HAITI'S SELF-LIBERATION, FOUNDING, AND EARLY RELATIONSHIP WITH THE UNITED STATES

"Of all the Atlantic revolutions, the fifteen-year struggle that transformed French Saint-Domingue into independent Haiti produced the greatest degree of social and economic change, and most fully embodied the contemporary pursuit of freedom, equality, and independence." David Geggus, *The Haitian Revolution in Atlantic Perspective*, in *The Atlantic World* c.1450-c.1820 533 (Nicholas Canny ed., 2011) ("Atlantic Perspective"). Understanding the forces that led to Haitian independence in 1804—and how the United States reacted—is key to understanding modern Haiti.

A. Haiti's Colonial History

In 1492, Christopher Columbus claimed the island he called Hispaniola—which had been inhabited by indigenous people since around 5000 BCE—for the Spanish. Murdo J. MacLeod et al., "History of Haiti," Encyclopedia Britannica (Jan. 12, 2026), https://tinyurl.com/56rt9cz5; Haiti Profile – Timeline, BBC

(Feb. 11, 2019), https://perma.cc/4V7D-R7KV. Two hundred years later, Spain ceded the western part of its territory to France, which established the colony of Saint-Domingue. Thomas O. Ott, *The Haitian Revolution: 1789-1804* 5 (1999).

Over the next century, the French forcibly transported 900,000 captive Africans to be slaves on Saint-Domingue. Marlene L. Daut, *How Haiti Destroyed Slavery and Led the Way to Freedom Throughout the Atlantic World* (Jan. 9, 2024), https://perma.cc/RPW4-CA9T. Though thirty percent of newly arrived slaves died from disease, deplorable living conditions, corporal punishment, and suicide, slaves ultimately made up nearly 90 percent of the population. Lennox, *supra*, at 690; Geggus (Atlantic Perspective), *supra*, at 533. Saint-Domingue became the largest single market for the Atlantic slave trade. Geggus (Atlantic Perspective), *supra*, at 533.

France derived immense wealth from its slaves' labor. Saint-Domingue "stood at the very center of the network of the developing capitalist world economy." Elizabeth Maddock Dillon et al., *Introduction*, in *The Haitian Revolution and the Early United States* 5 (Univ. Penn. Press 2016). By the late 1780s, Saint-Domingue exported more than the United States, Mexico, and Brazil; and France claimed that it was the "richest colony in the world." Franklin W. Knight, *The Haitian Revolution*, 105 Am. Hist. R. 103, 107 (2000); Geggus (Atlantic Perspective), *supra*, at 533; *see also* State Dep't Off. of the Historian, *The United States and the Haitian Revolution, 1791-1804*, https://perma.cc/89C7-6BBH (by the 1760s, Saint-Domingue was "the most profitable colony in the Americas").

Despite the wealth that Saint-Domingue and its other colonies provided, the French monarchy went bankrupt in 1788, precipitating the French Revolution. David Geggus, *Slavery and the Haitian Revolution*, in *The Cambridge World History of Slavery* 324 (David Eltis ed., 2017) ("World History"). Within days after France issued the 1789 Declaration of the Rights of Man, which implicitly promised racial equality, free black men in Paris—including those from the colonies—began to campaign for equal participation in the new government. Geggus (Atlantic Perspective), *supra*, at 537. And free black men in Saint-Domingue petitioned local authorities for inclusion in the colony's politics. *Id.*

Vincent Ogé, a prominent free black activist from Saint-Domingue, had gone to Paris to demand political representation. Geggus (Atlantic Perspective), *supra*, at 537. But the new French government's response was "embarrassed prevarication and dishonest maneuvering." *Id.* Unsuccessful, Ogé returned to Saint-Dominigue in 1790, where the "predominant white response" to the French Revolution was "violent repression" of the black population. *Id.* After white colonists perpetuated a series of murders and property confiscations against Saint-Domingue's black community, Ogé initiated a consequential 300-man uprising. *Id.* at 326. Though the French captured and executed Ogé, his rebellion inspired large-scale uprisings among both enslaved and free black men. *See id.*; Geggus (Atlantic Perspective), *supra*, at 537.

B. The Haitian War For Independence

The Haitian slave rebellion from 1791 to 1793 "was by far the largest in the history of the Americas." *Id.* at 321. The self-liberated black forces burned a

thousand plantations, "physically disabling and removing the material means of their oppression and confinement." Johnhenry Gonzalez, *Maroon Nation: A History of Revolutionary Haiti* 60 (Yale Univ. Press 2019); Geggus (Atlantic Perspective), *supra*, at 538. The uprising "drew strength from * * * the creole language and Vodou religion that knit together the diverse cultures that composed it." Geggus (Atlantic Perspective), *supra*, at 538.

In 1793, led by former slave Pierre-Dominique Toussaint Louverture, "the tide of war turned inexorably" in favor of the black rebels. Knight, *supra*, at 112. Toussaint and his army successfully forced the formal liberation of all of Saint-Domingue's enslaved people. Daut, *supra*. Louverture—a legendary and "brilliant military leader[]"—became governor general of Saint-Domingue in 1797. Knight, *supra*, at 112. His army ultimately expelled all invading forces, including the Spanish, British, and French. *See id.*; Geggus (World History), *supra*, at 334.

Louverture then helped establish a "remarkably modern and democratic constitution" that declared emancipation inviolable. Geggus (World History), *supra*, at 335; Knight, *supra*, at 112. Saint-Domingue was *de facto* no longer a French colony. Geggus (Atlantic Perspective), *supra*, at 543.

Driven to restore slavery and reestablish the French empire, Napoleon Bonaparte sent 44,000 troops to Saint-Domingue beginning in 1802. Knight, *supra*, at 113. France's war campaign was "savage and bitter." *Id.* One historian characterized it as "veer[ing] toward a strategy of genocide." Geggus (Atlantic Perspective), *supra*, at 544. Louverture was captured and died in exile in a French prison. Geggus (World History),

supra, at 336. But the French army sustained significant losses, and after losing almost 40,000 soldiers in less than two years, France evacuated Saint-Domingue in late 1803. Geggus (Atlantic Perspective), *supra*, at 544.

In January 1804, Jean-Jacques Dessalines, a senior black general, declared the independence of the "State of Haiti." Geggus (World History), *supra*, at 337. Dessalines adopted the name "Haiti," from the Amerindian word Ayiti, as "a symbolic erasure of the colonial past." Geggus (Atlantic Perspective), *supra*, at 544. Haiti's Declaration of Independence was only the third in history. Geggus (World History), *supra*, at 337.

C. Aftermath And Early United States-Haitian Relations

Haiti was the first nation in the world to permanently abolish slavery—more than six decades before the United States took that step. Daut, *supra*. Haiti was also "the first independent non-European state to be carved out of the European universal empires anywhere." Knight, *supra*, at 105. The Haitian Revolution achieved independence, racial equality, and emancipation. Geggus (Atlantic Perspective), *supra*, at 545. Haiti became a beacon of abolition and self-determination. Diana Roy & Rocio Cara Labrador, *Haiti's Troubled Path to Development*, Council on Foreign Rels. (Nov. 5, 2025), https://perma.cc/Y9XJ-BE35.

But Haiti's triumph was followed by civil war and decades of isolation and financial crises, enforced through economic imperialism. Because Haiti was founded by and for black people who had liberated themselves from enslavement, "the Haitian Revolution posed a direct threat to deeply entrenched

interests throughout the world," especially in the United States. *See* Laurent Dubois, *Two Revolutions in the Atlantic World: Connections Between the American Revolution and the Haitian Revolution*, *in* 34 Hist. Now (2012), https://perma.cc/N5AG-QBVG.

The United States—whose economy then depended on the enslavement of black people—refused to recognize a former slave state as a sovereign nation. *See* Gordon S. Brown, *Toussaint's Clause: The Founding Fathers and the Haitian Revolution* 237, 294 (Univ. Press of Miss. 2005). Haiti received no foreign assistance or trade preferences for most of its first century. Gonzalez, *supra*, at 3. Haiti was "simply not allowed to be an equal participant in Atlantic commerce, diplomacy, or an alleged 'international community.' " *Id.* at 10.

Haiti's exclusion was the United States' design. From the beginning, United States policy was to continually undermine Haiti as a state. The United States prohibited trade with Haiti in February 1806 and again in later years; those embargoes had direct consequences on Haiti's economy, and particularly its agricultural sector. *See* Donald R. Hickey, *America's Response to the Slave Revolt in Haiti, 1791-1806*, 2 J. Early Republic 361, 361-362 (1982). The United States isolated Haiti in part because "American lawmakers * * * did not want enslaved people in their own country to be inspired by Haiti's self-liberation." Catherine Porter et al., *The Root of Haiti's Misery: Reparations to Enslavers*, N.Y. Times (Nov. 16, 2022), https://tinyurl.com/2rj33sna. And the United States did not formally recognize Haiti until 1862, after the southern states had seceded. State Dep't, *supra*.

Prohibitions also affected participation at the individual level. For example, take the so-called "Negro Seaman Acts." First appearing in South Carolina after the Haitian Revolution, southern states passed laws that mandated the arrest and incarceration of free black sailors while their ships were in port. *See* Jacki H. Tyler, *The Unwanted Sailor*, 117 Or. Hist. Soc'y 506, 510 (2016). Enacted on the premise that free black sailors would act as a "moral contagion" and spread ideas that might encourage rebellion, those laws served to further obstruct the ability of Haitians to participate in the international community. *See* Michael Schoeppner, *Peculiar Quarantines: The Seamen Acts and Regulatory Authority in the Antebellum South*, 31 L. & Hist. Rev. 559, 563-565 (2013) (noting that proponents of the laws "pinpointed the origins of the contagion in the French and Haitian Revolutions").

Two decades after Haiti won its independence from France, France forced Haiti to pay 150 million francs in reparations—$560 million in today's dollars—a "staggering amount" far beyond the nation's means.[2] Lazaro Gamio et al., *Haiti's Lost Billions*, N.Y. Times (May 20, 2022), https://perma.cc/S954-DEC3; Roy, *supra*. The ransom imposed severe limitations on infrastructural development in Haiti. The first installment France demanded was more than six times the Haitian government's annual income, so Haiti was forced to take out loans from French banks. Porter, *supra*.

[2] The value of the French ransom is even higher when taking lost investment opportunities into account. A *New York Times* study estimated that if the money Haiti had paid to France had instead stayed within the Haitian economy, it would have added a staggering $21 billion to Haiti over time. Porter, *supra*.

The debts "drain[ed] away much of [Haiti's] revenue and chopp[ed] away at its ability to build the essential institutions and infrastructure of an independent nation." *Id*. The legacy of that ransom can be seen in modern Haiti's limited hospitals, crumbling roads, and slums—all in a countryside once considered the most lucrative and productive in the world. *Id.*

Despite these and other efforts to undermine Haiti's capacity to function as a state, early Haitians created a new economic order centered around small farms and "enjoyed relative autonomy and prosperity during most of the nineteenth century." Gonzalez, *supra*, at 15-16. Rural self-sufficiency guided their economic achievements and led to unprecedented demographic growth. *Id.* at 3-4. The men and women who became Haiti's first farmers—former slaves and their immediate descendants—succeeded at "throw[ing] off the hunger and indignities of slavery by claiming their own land and by cultivating food for themselves." *Id.* at 5. And they developed pronounced cultural, economic, and political autonomy. *Id.* at 7.

II. UNITED STATES–HAITI RELATIONS IN THE TWENTIETH CENTURY

Still, Haiti entered the twentieth century carrying the immense structural burdens created in part by the United States in the wake of its independence. The lack of international recognition and the crippling national debt to France had destabilizing effects on the Haitian government and economy. *See* Patrick Bellegarde-Smith et al., *Haiti and Its Occupation by the United States in 1915: Antecedents and Outcomes*, 21 J. Haitian Studies 14 (2015). The United States and American businesses spent the next 100 years exploiting Haiti's vulnerabilities.

A. The American Occupation Of Haiti

At the turn of the twentieth century, the United States had a policy of hemispheric hegemony and seemed to "reserve[] the right to intervene anywhere and whenever it chose." Bellegarde-Smith, *supra*, at 15. As such, the United States and American entities became interested in financially investing in (and controlling) Haitian affairs.

For example, between 1849 and 1913, the United States military intervened 24 times to "secure the economic interest and socio-political development of the United States" in Haiti. Jeffrey W. Sommers, *Race, Reality, and Realpolitik: U.S.-Haiti Relations in the Lead Up to the 1915 Invasion* viii (Bloomsbury 2015). In 1909, the National City Bank of New York (now, Citibank) secured a controlling interest in the Haitian National Bank; and to protect that interest, President Woodrow Wilson authorized United States military to take a sizable portion of the Haitian National Bank's coffers to New York for "safeguard[ing]," giving the United States control of Haiti's largest financial institution. *See* Leslie Mullin, *The First US Occupation of Haiti: 1915-1934*, Haiti Solidarity (Aug. 2015), https://perma.cc/LR9X-DBYB. American investors also acquired Haiti's National Railroad and the corresponding right to establish banana plantations along certain points on the track, which violated the Haitian Constitution's (slavery-preventing) prohibition against foreigners owning land and caused mass evictions of small Haitian farms. *Id.*

During the same period, Haiti's political order deteriorated—in a four-year span, seven presidents were assassinated or overthrown, culminating in the lynching of President Vilbrun Guillaume Sam. Celucian J.

Joseph, *A Brief History of Presidential Deaths in Haiti*, The Haitian Times (July 11, 2021), https://perma.cc/V98Z-29EP. And most of Haiti's presidents came to power through coups d'etat. Bellegarde-Smith, *supra*, at 14. While the country continued to struggle, Haiti's internal volatility intersected with intensifying foreign competition.

Facing pressure from banks with investments in Haiti and possibly unnerved by Germany's influence there, President Woodrow Wilson authorized a military invasion in 1915, effectively stripping Haiti of its sovereignty. Jeffrey W. Sommers, *The US Power Elite and the Political Economy of Haiti's Occupation: Investment, Race, and World Order*, 21 J. Haitian Studies 53, 55, 63 (2015). Haiti's American occupiers consistently suppressed local democratic institutions and denied elementary political liberties. Hans Schmidt, *The United States Occupation of Haiti, 1915-1934* 17 (Rutgers Univ. Press 1995). And when guerilla fighters took up arms against American occupiers, they were killed. *See* Mullin, *supra*.

The United States finally withdrew from Haiti in 1934, making the Haitian occupation one of the longest in United States history. *See* Porter, *supra*. But before that point, the occupation shaped Haitian institutions so that they "always gave first priority to United States political, military, and economic interests." *Id.* Indeed, the United States installed a new president, seized control of Haiti's administrative institutions, and forced labor projects to fulfill Haiti's debts to the United States and other foreign interests. *Id.* The United States also installed a new Haitian constitution that legalized foreign land ownership for the first time since Haiti's founding, indefinitely

suspended the elected Haitian legislature, and legalized the military occupation. *Id.* at 11. The United States' occupation only exacerbated Haiti's poverty and instability.

B. The Duvalier Era And The Push To Leave Haiti

The conclusion of the United States' formal occupation ushered in another period of political volatility in Haiti. The decades-long occupation left Haiti with institutions that were highly susceptible to executive control. It was against that backdrop that François "Papa Doc" Duvalier rose to power.

In "one of the most brutal authoritarian systems of the twentieth century," Papa Doc consolidated authority by restructuring the security services, creating a parallel paramilitary force that reported directly to the executive, and using those forces to violently silence dissenters. *See* Anthony R. Brunello, *Duvalier Takes Power in Haiti*, EBSCO Research Starters (2023), https://perma.cc/EK3U-8AP3. Over time, the Duvalier government centralized political power, curtailed avenues for dissent, and reorganized state institutions to ensure executive dominance.

That regime continued beyond his death. When Papa Doc died in 1971, his son, Jean-Claude "Baby Doc" Duvalier, succeeded him, continuing a system in which political authority was tightly held and avenues for democratic participation were limited. *See* Jana Evans Braziel, *Duvalier's Ghosts: Race, Diaspora, and U.S. Imperialism in Haitian Literatures* 159-161 (Univ. Press of Fla. 2010).

The United States supported both administrations. Despite the Duvaliers' anti-democratic ideals, the United States maintained diplomatic relations and

provided economic and security assistance at key moments when the Duvalier governments faced internal or external pressure. *See* Jean-Claude Gerlus, *Effects of the Cold War on U.S.-Haiti Relations*, 1 J. Haitian Studies 34, 37 (1995). This assistance—financial, military, and political—helped sustain the regimes by reinforcing their international legitimacy and providing resources that the Haitian state could not generate domestically. *See* Braziel, *supra*, at 135.

By the late 1970s and early 1980s, the combined effects of prolonged authoritarian governance, limited economic opportunity, and deteriorating rural conditions forced many Haitians to emigrate. In 1981, responding to an outbreak of swine fever, the United States and Duvalier forced Haitian farmers to kill every native Creole pig in the country. Marlene L. Daut, *What's the Path Forward for Haiti?*, The New Yorker (Mar. 18, 2023), https://perma.cc/ZFA2-6AHV. The country's pork industry was virtually destroyed; the Creole pig went extinct; and many rural families, facing starvation, flocked to the capital to seek scarce factory jobs. *Id.* The population of Port-au-Prince swelled, causing mass unemployment and a housing crisis. *Id.* Those and other political and economic forces left many Haitians without viable means of subsistence or political recourse. These structural pressures—shaped in part by the American-aided Duvalier regimes—led to the large-scale emigration of Haitian nationals to the United States. *See* Carl Lindskoog, *Detain and Punish: Haitian Refugees and the Rise of the World's Largest Immigration Detention System* 14 (Univ. Press of Fla. 2018).

C. Anti-Haitian Immigration Policy

Despite its involvement in the conditions that caused many Haitians to flee their country, however, the United States took a hostile view of Haitian migrants seeking asylum.

In 1972, Haitian migrants began arriving in southern Florida in improvised boats. Instead of aiding these refugees, the United States adopted a policy of rejecting their asylum applications. The treatment of Haitian migrants differed greatly from that of migrants from other countries like Cuba, who "remained privileged and often exercised greater rights than Haitian entrants." Jana K. Lipman, *The Caribbean Origins of the Krome Detention Center*, Radical Hist. Rev. 115, 122 (2013). For example, Cubans were "given an application for political asylum (and sometimes cash)," while Haitians were seen simply as undocumented migrants awaiting removal. *See* Lindskoog, *supra*, at 36.

Things got worse in the 1980s, when Haitian immigration garnered national attention, and "the reduction of Haitian migration became a focus of U.S. immigration policy." Haitian Women for Haitian Refugees, *Humanitarian Parole Crisis: How Racist Policies and Practices Deny Haitian Refugees Work Authorization* 10 (2023), https://perma.cc/VD2R-NQCL ("Humanitarian Parole"). In 1981, the United States adopted a policy whereby Haitians—and Haitians only—were detained without the possibility of parole for the duration of their immigration cases. *See* Lindskoog, *supra*, at 62-63.

Detention centers rapidly became horrifically overcrowded. *Id.* at 74. In response, the government began to transfer Haitian refugees to federal prisons across

the country. *Id.* By summer 1982, thousands of Haitians were detained across the United States. *Id.* And by decade's end, the United States began to hold Haitian migrants in deplorable conditions at the Guantánamo Bay naval base. *See* Azadeh Dastyari, *United States Migrant Interdiction and the Detention of Refugees in Guantánamo Bay* 25-26 (Cambridge Univ. Press 2015). The policy, which was eventually wound down due to a combination of court orders, political change, and mass repatriation, was unquestionably implemented to discourage migration from Haiti. *See id.*; *see also, e.g.*, *Haitian Ctrs. Council, Inc.* v. *McNary*, 789 F. Supp. 541 (E.D.N.Y. 1992); *Haitian Ctrs. Council, Inc.* v. *Sale*, 823 F. Supp. 1028 (E.D.N.Y. 1993).

During the same period, the United States also instituted another policy aimed at preventing Haitian arrival in the country: interdiction—intercepting Haitian refugees at sea and returning them to Haiti. *See* Jeffrey S. Kahn, *Islands of Sovereignty: Haitian Migration and the Borders of Empire* 80 (Univ. of Chicago Press 2019). Throughout the 1970s, the United States' detention and deportation machinery had been hampered by political mobilizations and lawsuits, but the executive branch believed interdicting refugees outside United States waters could enable it to send Haitians back to Haiti without meddling from advocates and courts within the United States. *See id.*, at 81; *see also* Claire P. Gutekunst, *Interdiction of Haitian Migrants on the High Seas: A Legal and Policy Analysis*, 10 Yale J. Int'l L. 151, 165-166 (1984).

Charged with implementing this policy, the United States Coast Guard focused its efforts at the "choke point" on the route from Haiti to southern Florida.

Kahn, *supra*, at 85. If a boat with Haitians aboard was found to be traveling to the United States, its passengers and crew were transferred to a Coast Guard ship. *See* Lawyers' Committee for Human Rights, *Refugee Refoulement: The Forced Return of Haitians Under the U.S.-Haitian Interdiction Agreement* 5 (1990). The Haitian boats left behind were typically "destroyed or sunk as 'hazards to health and navigation.' " *Id.*

Once the Haitians were aboard the Coast Guard ship, an immigration officer and interpreter would conduct brief interviews to determine whether the interdicted Haitians credibly feared return to Haiti. *Id.* at 5-6. If the immigration officer was not convinced that the migrants had a sufficient reason to be fearful, they were sent back. *Id.* As one senior government official later reflected, the officers tasked with conducting the interviews often "had no instruction, they had no training, they just had whatever they felt at the moment." Kahn, *supra*, at 173. With that, it should be no surprise that—literally—99.9% of interdicted Haitians were returned to Haiti. *See* Dastyari, *supra*, at 20 (noting that, from September 1981 to September 1991, just 28 interdicted Haitian refugees were permitted to enter the United States and that the remaining 23,551 Haitians were sent back to Haiti).[3]

All told, characterized by a desire to exclude at a near-categorical level, the late twentieth century set the stage for the current treatment of Haitian migrants arriving in the United States. Indeed, these policies sit at "the root of many of the most inhumane

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[3] As it turns out, the interdiction policy was implemented with the approval of Jean-Claude Duvalier—the very dictator the migrants were seeking to escape. *See Agreement Effected by Exchange of Notes*, 33 U.S.T. 3559 (Sept. 23, 1981).

immigration policies in place today." *See* Haitian Women for Haitian Refugees (Humanitarian Parole Crisis), *supra*, at 10-11 (noting that "xenophobia against Haitian and other Black refugees, asylum seekers and migrants" impact modern immigration policy in numerous ways).

III. UNITED STATES–HAITI RELATIONS IN THE TWENTY-FIRST CENTURY

In this century, as economic and political conditions in Haiti have deteriorated, immigration laws and enforcement policies in the United States have generally worked to deter Haitian refugees from seeking asylum here.

A. Present Day Economic, Environmental, And Political Challenges Facing Haiti

The past 25 years in Haiti have been marked by serious economic challenges. "Nearly two-thirds of the population lives below the poverty line and some 5.7 million people—almost half the population—are facing acute hunger." *Id.* There are not enough economic opportunities for those who want to work; only around 60% to 80% of Haitians have steady incomes, with most barely surviving by working sporadically and receiving money from friends and family outside of the country. *See* Jonathan M. Katz, *Can Low-Paying Garment Industry Save Haiti?,* Associated Press, (Feb. 21, 2010), https://perma.cc/DH5B-7KRG. These remittances make up more than 15% of Haiti's Gross Domestic Product. *See* Roy, *supra.*

The United States has contributed to those challenges. Through a series of policies implemented starting in the 1980s, the United States pushed Haiti towards a manufacturing economy by flooding Haiti

with subsidized American food and simultaneously forcing Haiti to drop import tariffs. *See, e.g.*, Sandra C. Wisner, *Starved for Justice: International Complicity in Systematic Violations of the Right to Food in Haiti*, 6 Colum. Hum. Rts. L. Rev. Online 409, 415-418 (2022), https://perma.cc/SV53-5ME6 ("Starved for Justice"); Sandra C. Wisner & Brian Concannon, *Debt and Dependence: Foreign Interference in Haiti and the Importance of Non-State Actor Accountability*, 21 Nw. J. Hum. Rts. 185, 205-206 (2023).

In 2009, to further protect American interests in Haiti's manufacturing sector, the United States "pressured Haitian President René Préval to limit the minimum wage to $3 per day" instead of the "$5 per day" that he preferred. Frengel, *supra*, at 491. Low wages and dependence on imported food have led to persistent food insecurity in Haiti. *See* Wisner (Starved for Justice), *supra*, at 420-424. Indeed, "Haiti has one of the highest levels of chronic food insecurity in the world with more than half of its total population chronically food insecure and 22 percent of children chronically malnourished." 89 Fed. Reg. at 54490.

At the same time, Haiti has grappled with a series of environmental disasters and resulting public health challenges. In January 2010, Haiti was hit by a devastating earthquake that killed over 350,000 people, displaced another two to three million people, and destroyed much of the infrastructure of its capital, Port-au-Prince. *See* Irwin P. Stotzky, *Haiti: Confronting an Immense Challenge*, 55 U. Miami Inter-Am. L. Rev. 1, 5 (2023). Shortly afterwards, in fall 2010, there was a large-scale outbreak of cholera that killed thousands—caused by United Nations peacekeepers emptying human waste into the largest river

in Haiti. *See* Camila Domonoske, *U.N. Admits Role in Haiti Cholera Outbreak That Has Killed Thousands*, NPR (Aug. 18, 2016), https://perma.cc/8ACH-7M3K; Renaud Piarroux et al*., Understanding the Cholera Epidemic, Haiti*, 17 J. Emerging Infectious Diseases 1161 (2011), https://perma.cc/7F99-ZFKD. In October 2016, a hurricane ravaged parts of the country and killed more than 500 people. A smaller—but still devastating—hurricane in 2021 and a pair of earthquakes in 2021 and 2023 also struck Haiti, resulting in further deaths, displacements, and damage. Stotzky, *supra*, at 5. "Worldwide, Haiti remains one of the most vulnerable countries to natural disasters, predominately including hurricanes, floods, and earthquakes." 89 Fed. Reg. at 54490 (internal quotation marks omitted).

These economic and environmental struggles have contributed to political instability. "Haiti's political situation has been unstable and volatile for decades, with frequent changes of government, coups, protests, and violence," but "[t]he assassination of President Jovenel Moise on July 7, 2021," "created a power vacuum that allowed gangs to seize control of the capital and block the country's main port and fuel terminal." Stotzky, *supra*, at 1, 2. Since then, so-called gang violence has exploded.[4] Even in rural areas, gangs "terroriz[e] local populations with abduction, murder,

[4] The term "gang" fails to fully capture the level of organization, structure, and political involvement that these armed groups have. *See, e.g.*, 86 Fed. Reg. at 41865 (noting that "over a third of Haiti's voters now live in areas controlled by criminal gangs" and that between "2019-2021," "a new federation emerged, uniting urban criminal gangs that control entire neighborhoods in the capital city of Port-au-Prince").

sexual and gender-based violence, extortion, and forced displacement." *Id.*

B. Modern United States Immigration Policies Affecting Haitian Refugees

Some Haitians have sought asylum in the United States to escape the devastating effects of these recent challenges. However—just like in the twentieth century—the United States has largely resisted those efforts, imposing uniquely harsh policies on Haitian refugees. "From October 2018 to June 2021, Haiti had the highest rate of asylum denial in the U.S. among 83 countries surveyed—less than 5% of asylum requests were granted." *See* Haitian Women for Haitian Refugees (Humanitarian Parole), *supra*, at 11. And "[i]n May 2022, Haitians made up 6% of immigrants crossing the Mexico/U.S. border, but they occupied 60% of the flights expelling migrants." *Id.*

1. Two recent policies illustrate the trend: metering and Title 42.

Metering. Under a policy known as "metering," first implemented in 2016, the United States limited the number of Haitian migrants permitted to request asylum at ports of entry and instructed most asylum-seekers to wait in border cities for an opportunity to request protection. *See Metering and Asylum Turnbacks*, Am. Immigr. Council (March 8, 2021), https://perma.cc/Q443-3DT5 (noting that "early usage of metering primarily targeted Haitian asylum seekers").

Life at the border for Haitians turned away because of metering is dangerous and desperate. *See* Julia Neusner, *A Year After Del Rio, Haitian Asylum Seekers Expelled Under Title 42 Are Still Suffering*, Human Rights First (Sept. 22, 2022),

https://perma.cc/4AQC-EKTZ. For example, black migrants in Tijuana are perceived "as easy targets who will not be protected by the police." Refugees International, *"It's Very Hard to Have Rights": The Impact of COVID-19 on Refugee and Migrant Communities in Tijuana* 18 (Dec. 2021), https://perma.cc/H5RG-BP5K. Haitians in Tijuana have therefore reported that "they do not go out at night for fear of attack or theft." *Id.* Children are deprived of their right to education. *Id.* at 27. And families struggle to access healthcare. *Id.* at 26.

Title 42. The United States has also turned away Haitian refugees through health policies related to the COVID-19 pandemic. *See A Guide to Title 42 Expulsions at the Border*, Am. Immigr. Council (Oct. 15, 2021), https://perma.cc/8WB8-TNGB. Soon after the pandemic began, citing a public health statute that permits the United States to "prohibit * * * the introduction" into the United States of individuals when the United States believes that "there is serious danger of the introduction of [a communicable] disease into the United States," 42 U.S.C. § 265, the United States began expelling migrants without providing them with an opportunity to contest their expulsion on the grounds that they would face persecution in the country to which they would be expelled. *Id.* DHS later announced that it would apply these policies to thousands of Haitian asylum-seekers who had gathered in Texas border cities. *See* Press Release, U.S. Dep't of Homeland Security, *DHS Outlines Strategy to Address Increase in Migrants in Del Rio* (Sept. 18, 2021), https://perma.cc/YHW5-TY8U.

These policies culminated in the shocking treatment of Haitian migrants at the Del Rio Bridge in 2021.

Border Patrol detained thousands of Haitian refugees in "a temporary staging area under the Del Rio International Bridge" for processing, which the mayor of Del Rio described as "squalid conditions" that "resembled a shantytown, with little access to clean water and food and just a few portable toilets." James Dobbins, Eileen Sullivan & Edgar Sandoval, *Thousands of Migrants Huddle in Squalid Conditions Under Texas Bridge*, N.Y. Times (Sept. 16, 2021), https://tinyurl.com/mry7cfsm. Customs and Border Patrol agents were video recorded on horseback swinging reins and charging to confront migrants crossing the river. *See* Daniella Diaz et al., *Democrats Blast Biden Administration on Handling of Haitian Immigrants at the Border*, CNN (Sept. 23, 2021), https://perma.cc/4EA7-TFNE.

Instead of hearing the asylum claims of these individuals, the United States returned thousands of them to Haiti, even though the officials with the greatest insight into the matter acknowledged that "[t]he collapsed state is unable to provide security or basic services, and more refugees will fuel further desperation and crime." Letter from Daniel Foote, U.S. Special Envoy for Haiti, to Antony Blinken, U.S. Sec'y of State (Sept. 22, 2021), https://tinyurl.com/2e4yt7wj; *see also* Mem. from Harold Hongju Koh, *Ending Title 42 Return Flights to Countries of Origin, Particularly Haiti* (Oct. 2, 2021); https://tinyurl.com/yezenw75.

2. TPS provides a limited avenue for relief for Haitian refugees. It allows recipients to live and work in the United States on a temporary basis. *See generally* 8 U.S.C. § 1254a(b)(1). It allows Haitian refugees to contribute to the United States economy. *Id.* And it acknowledges the reality that Haitians cannot yet

safely return to Haiti. *See* 8 U.S.C. § 1254a(b)(1)(A)-(C).

The Department of Homeland Security first designated Haiti for TPS status in 2010, after Haiti was struck by a massive earthquake. *See* 75 Fed. Reg. 3476, 3476 (Jan. 21, 2010). DHS later extended this designation and redesignated Haiti for TPS status multiple times based on continuing harms from the earthquake, political instability, and economic insecurity. *See, e.g.*, 76 Fed. Reg. 29000 (May 19, 2011); 77 Fed. Reg. 59943 (Sept. 28, 2012); 79 Fed. Reg. 11808 (March 3, 2014); 80 Fed. Reg. 51582 (Aug. 25, 2015). "With each of these decisions, DHS outlined conditions arising from the 2010 earthquake in Haiti and its attendant damage to infrastructure, public health, agriculture, transportation, and educational facilities." *Saget* v. *Trump* ("*Saget II*"), 375 F. Supp. 3d 280, 301 (E.D.N.Y. 2019). "In addition, each extension cited the cholera epidemic and the exacerbation of preexisting vulnerabilities caused by the earthquake, including food insecurity and a housing crisis." *Id.*

However, in January 2018, DHS announced the termination of TPS for Haitians, despite the continuously dire conditions in Haiti. The TPS termination was enjoined after a federal court found that the policy failed to comply with the applicable statutory and regulatory standards. *Saget* v. *Trump* ("*Saget I*"), 345 F. Supp. 3d 287, 303 (E.D.N.Y. 2018); *see also Saget II,* 375 F. Supp. 3d at 374. In particular, DHS failed to acknowledge the substantial evidence that the agency had regarding dangerous conditions in Haiti, including "unsafe homes, food security concerns, and longstanding public health challenges." *Saget II,* 375 F. Supp. 3d at 356. The government initially

appealed that decision, but after a change in administration, withdrew the appeal and once again extended Haiti's TPS designation. *See* 86 Fed. Reg. 41863 (Aug. 3, 2021).

3. Haitian TPS recipients now find themselves facing the suspension of their status once again. "The prospect of losing TPS is devastating" for Haitian TPS recipients. *See* Haitian Women for Haitian Refugees (A Critical Hour), *supra*, at 20.

Haitian TPS recipients rely on their status to live and work in the United States. As one community member explained: "If TPS ends, I wouldn't be able to work, pay rent, buy what my child needs. * * * Even though the child was born here, it's by working that I take care of him." *Id.* at 18. Indeed, "Haitians living in the United States contribute substantially to the U.S. economy, through participation in the work force across a variety of sectors, their spending, and their tax payments." *Id.* at 14. "Haitian TPS holders" alone "contribute approximately $5.8 billion to the U.S. economy annually and pay $1.5 billion in taxes." *Id.* at 14.

And they reasonably fear returning to Haiti, where they could not effectively contribute to society and would face extreme violence, food insecurity, and economic instability. *Id.* at 21. As one impacted community TPS recipient told HWHR: "If they end TPS for Haitians, it's as if we are dead." *Id.* at 20.

CONCLUSION

For the foregoing reasons, as well as those in Respondents' brief, the Court should affirm.

Respectfully submitted,

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