

IN THE
Supreme Court of the United States

MARKWAYNE MULLIN, SECRETARY,
DEPARTMENT OF HOMELAND SECURITY, *et al.*,
Petitioners,

v.

DAHLIA DOE, *et al.*,
Respondents.

DONALD J. TRUMP, PRESIDENT
OF THE UNITED STATES, *et al.*,
Petitioners,

v.

FRITZ EMMANUEL LESLY MIOT, *et al.*,
Respondents.

**ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF
APPEALS FOR THE SECOND AND DISTRICT OF COLUMBIA CIRCUITS**

**BRIEF OF THE HAITIAN AMERICAN
LAWYERS ASSOCIATION OF ILLINOIS AND
THE HAITIAN AMERICAN LAWYERS
ASSOCIATION OF NEW YORK AS *AMICI
CURIAE* IN SUPPORT OF RESPONDENTS**

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INTEREST OF AMICI CURIAE¹

The Haitian American Lawyers Association of Illinois (HALAIL) is a not-for-profit voluntary bar association focused on its two-fold mission: 1) to articulate and promote the goals and objectives of Haitian American Lawyers, fostering and encouraging professional development and excellence; and 2) to provide information and resources to the larger Haitian American community of Illinois, helping promote a greater awareness of and commitment to the civil and political rights of the Haitian-American community. Since its incorporation in 2008, HALAIL has shown great solicitude for the Haitian migrant community, holding numerous TPS Workshops, Know Your Rights Workshops, and an Asylum Application Clinic/Forum. HALAIL also served as a subgrantee of Metropolitan Family Services, providing legal services to migrants at a Centralized Migrants Clinic between February and September of 2024. HALAIL attorneys triaged asylum claims for migrants from Haiti, Colombia, Venezuela, and other countries, helping the migrants with solid claims file their applications for asylum. HALAIL continues to help the Haitian migrant community through workshops and consultations with the Haitian Congress to Fortify Haiti in its work to help Haitian migrants navigate TPS and asylum. Lastly, HALAIL is a founding member of the Coalition of Haitian American Organizations in the Chicagoland Area, a voluntary partnership of

1. Pursuant to Supreme Court Rule 37.6, amici curiae states that no counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici curiae or its counsel made a monetary contribution to the preparation or submission.

organizations, businesses, and professionals working to build a community voice for advocacy and improve the quality of life in the Haitian-American community. The Coalition has worked to influence public policy as it impacts the Haitian-American community, Haitian TPS holders, as well as Haiti.

The Haitian American Lawyers Association of New York (HALANY) is a not-for-profit professional organization founded to promote the participation of Haitian-Americans and other ethnic minorities in the judicial and legal system. Since its establishment in 2013, HALANY has delivered meaningful legal support and advocacy for the Haitian community. HALANY members are sought-after speakers on United Nations panels and collaborate with distinguished organizations such as the Institute for Justice & Democracy in Haiti (IDJH). Members remain at the forefront of key legal issues affecting the Haitian community, including TPS legislation, the Haitian migrant crisis, civil rights, trusts and estates, and employment. Through its 'At the Bench' internship program, HALANY inspires high school and college students to pursue careers in law, ensuring the next generation is equipped to carry the mission forward. HALANY actively participates in CLEs and bar association panels, working jointly with affinity bars throughout New York. The organization also partners with churches, universities, and community-based organizations to broaden its impact. Notable achievements include assisting TPS recipients with renewal applications, hosting legal clinics in underserved neighborhoods, and filing an amicus brief denouncing the denationalization of Dominicans of Haitian descent.

Composed of first and second-generation Haitian-American attorneys, judges, and scholars, HALAIL and HALANY have recourse to reliable sources of information as to conditions on the ground in Haiti. HALAIL and HALANY are keenly aware of the dangers, including murder, rape, child trafficking, kidnapping, and extortion, to which Haitian nationals would be exposed if returned to Haiti at this time.

Amici files this brief to illuminate the stark and constitutionally untenable disparity between the administration's decision to terminate Temporary Protected Status (TPS) for approximately 350,000 Haitian nationals. A decision with \$3.4 billion in annual economic consequences affecting communities across dozens of states. This is a decision of major national significance. At the same time, the administration created an expedited refugee resettlement program for white Afrikaner South Africans based on claims that multiple independent authorities have found to be factually unsubstantiated.

INTRODUCTION AND SUMMARY OF ARGUMENT

The TPS program was created by Congress in 1990 to provide a safe harbor for foreign nationals already present in the United States who cannot safely return home due to armed conflict, environmental disaster, or other extraordinary and temporary conditions. The statute tasks the Secretary of Homeland Security² with

2. *Trump Picks Senator Mullin to Replace Kristi Noem as Homeland Security Secretary*, N.Y. TIMES (Mar. 5, 2026), <https://www.nytimes.com/2026/03/05/us/politics/kristi-noem-markwayne-mullin-trump.html>.

conducting a genuine assessment of country conditions before designating or terminating TPS for any nation. 8 U.S.C. § 1254a(b)(1). This case presents a convergence of constitutional failures. The administration violated its own statutory mandate and rewrote a statute in a manner Congress never authorized. The Department of Homeland Security disregarded overwhelming and uncontested humanitarian evidence demonstrating that Haiti is unsafe for return, while at the same time affording uniquely favorable immigration pathways, without rational justification, to white Afrikaner South Africans. The Department's racial focus violated both the TPS statute and established equal protection principles. Together, these failures establish a policy that is constitutionally infirm. Congress did not authorize race as a factor in TPS determinations.

Haiti has been designated for TPS continuously since January 2010, following a magnitude 7.0 earthquake that killed more than 200,000 people and set off a cascade of disasters from which the country has never recovered.³ Today, the humanitarian and security situation in Haiti is not merely "concerning," as the administration belatedly acknowledged in its own Federal Register termination notice.⁴

3. American Immigration Council, *Granting Refuge: Temporary Protected Status (TPS) for Haitians in the United States*. <https://www.americanimmigrationcouncil.org/fact-sheet/granting-refuge-temporary-protected-status-tps-haitians-united-states/>

4. Termination of the Designation of Haiti for Temporary Protected Status, 90 Fed. Reg. 54,733 (Nov. 28, 2025) <https://www.federalregister.gov/documents/2025/11/28/2025-21379/termination-of-the-designation-of-haiti-for-temporary-protected-status>

Haiti's situation is catastrophically worse than when TPS was first granted.⁵

The United Nations Human Rights Office has verified that at least 5,519 people were killed and 2,608 injured in Haiti between March 2025 and January 2026 alone.⁶ Gangs continued to expand their territorial control beyond Port-au-Prince into previously peaceful departments.⁷ As of 2025, approximately 90% of Port-au-Prince is under the control of criminal organizations.⁸ Furthermore, 1.3 million Haitians roughly one in ten have been internally displaced.⁹ The State Department currently maintains a Level 4 “Do Not Travel” advisory for Haiti and notes that Haiti has been under a state of emergency since March 2024.¹⁰

5. Bertelsmann Stiftung, *Haiti Country Report 2026* (2026), https://www.ecoi.net/en/file/local/2138403/country_report_2026_HTI.pdf

6. U.N. Off. of the High Comm’r for Hum. Rts. (OHCHR), *Gangs Expand Reach in Haiti Amid Persistent Deadly Violence — UN Human Rights Office Report* (Mar. 24, 2026). <https://www.ohchr.org/en/press-releases/2026/03/gangs-expand-reach-haiti-amid-persistent-deadly-violence-un-human-rights>

7. *Id.*

8. Romain Le Cour Grandmaison, *Ending Haiti's Criminal Governance Crisis*, *Americas Quarterly* (September 25, 2025) <https://americasquarterly.org/article/ending-haitis-criminal-governance-crisis/>

9. Int’l Org. for Migration (IOM), *Haiti Sees Record Displacement as 1.3 Million Flee Violence* (June 11, 2025). <https://www.iom.int/news/haiti-sees-record-displacement-13-million-flee-violence>

10. U.S. Dep’t of State, *Haiti Travel Advisory* (July 15, 2025), <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/haiti-travel-advisory.html>

The Trump administration has moved to terminate TPS for Haitians and threaten mass deportation to Haiti.¹¹ Simultaneously, this administration replaced all existing refugee resettlement programs with an expedited refugee resettlement program, officially titled “Mission South Africa,” limited to white Afrikaner South Africans.¹² The Trump administration claims that the South African government persecutes Afrikaner South Africans.¹³ The South African government, independent experts, multiple fact-checkers, and the administration’s own prior State Department reports have each found this claim to be without credible evidentiary support.¹⁴

This juxtaposition is not merely a troubling policy; it is the kind of racially disparate treatment that the equal protection principles of the Fifth Amendment prohibit. As

11. Tim Padgett, *Trump Administration Ends Temporary Protected Status for Haitians — In Spite of Gang Terror in Haiti*, WLRN (Nov. 26, 2025), <https://www.wlrn.org/immigration/2025-11-26/temporary-protected-status-haiti-tps-trump>

12. U.S. Embassy in S. Afr., *Refugee Admissions Program for South Africans* (Nov. 4, 2025), <https://za.usembassy.gov/refugee-admissions-program-for-south-africans/>

13. Exec. Order No. 14,204, *Addressing Egregious Actions of the Republic of South Africa*, 90 Fed. Reg. 9497 (Feb. 12, 2025), <https://www.federalregister.gov/documents/2025/02/12/2025-02630/addressing-egregious-actions-of-the-republic-of-south-africa>

14. Tim Cocks and Nellie Peyton, *A Check of Trump’s False Claims About White Genocide in South Africa*, Reuters (May 21, 2025), <https://www.reuters.com/world/us/trump-makes-false-claims-white-genocide-south-africa-during-ramaphosa-meeting-2025-05-21/>

the District Court below found, it is “substantially likely” that Secretary Noem terminated Haiti’s TPS designation “because of hostility to nonwhite immigrants.” *Miot et al. v. Trump et al.*, No. 25-cv-02471-ACR (D.D.C. Feb. 2, 2026).¹⁵ This Court should affirm the stay and deny the government’s motion to permit termination to proceed during the pendency of this litigation.

ARGUMENT

A. The Termination Violates the Plain Text of the TPS Statute

The TPS statute, as authorized by Congress, merely empowers the Secretary to do an initial designation; the Secretary can always choose not to designate a country for TPS, no matter how bad the conditions are there. On the other hand, the statute directs the Secretary to maintain a TPS designation so long as the conditions underlying the initial designation persist such as ongoing armed conflict where it would pose a serious threat to the personal safety of the country’s nationals, or when there exist “extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety.” 8 U.S.C. § 1254a(b)(1)(A), (C).¹⁶ Haiti satisfies both standards today more than at any prior point in its TPS designation history. Under the present circumstances, the Secretary’s termination is in direct contravention of the directive.

15. *Miot v. Trump*, No. 25-cv-02471-ACR, mem. op. at 2 (D.D.C. Feb. 2, 2026), <https://www.justsecurity.org/wp-content/uploads/2026/02/Lesly-Miot-v.-Trump-Feb.-2-2026-Order.pdf>

16. 8 U.S.C. § 1254a(b)(1)(A), (b)(1)(C)

1. Catastrophic Gang Violence and Armed Conflict

Gang violence in Haiti has reached levels that multiple international bodies have characterized as crimes against humanity. The Organization of American States' Special Adviser on Responsibility to Protect determined in May 2025 that mass killing, rape, torture, and enslavement in Haiti constitute crimes against humanity, based on the coordinated and widespread nature of the violence and gangs' hierarchical command structures.¹⁷

The scale is staggering:

- At least 5,601 people were killed in Haiti due to gang violence in 2024, alone an increase of more than 1,000 over 2023 figures. U.N. Office of the High Comm'r for Hum. Rts., *Haiti: Over 5,600 Killed in Gang Violence in 2024, UN Figures Show (Jan. 7, 2025)*¹⁸
- Between March 1, 2025, and January 15, 2026, at least 5,519 additional people were killed and 2,608 more were injured.¹⁹

17. Global Ctr. for the Resp. to Protect, *Haiti* (Mar. 16, 2026), <https://www.globalr2p.org/countries/haiti>

18. OHCHR, *Haiti: Over 5,600 Killed in Gang Violence in 2024, UN Figures Show* (Jan. 7, 2025), <https://www.ohchr.org/en/press-releases/2025/01/haiti-over-5600-killed-gang-violence-2024-un-figures-show>

19. OHCHR, *Gangs Expand Reach*, *supra* note 6. <https://www.ohchr.org/en/press-releases/2026/03/gangs-expand-reach-haiti-amid-persistent-deadly-violence-un-human-rights>

- Between October 2024 and June 2025, 4,864 people were killed and at least 620 were abducted across the country.²⁰
- In the third quarter of 2025 alone (July–September), at least 1,247 people were killed and 710 injured as a result of gang violence.²¹
- Approximately 300 criminal groups are active in Haiti, with experts estimating between 270,000 and 500,000 firearms are in illegal circulation, the majority controlled by gangs.²²
- By the end of 2024, more than 80 per cent of Port-au-Prince remained under the control or influence of armed groups.²³

20. U.N. Integrated Off. in Haiti (BINUH) & OHCHR, *Spreading Gang Violence Poses Major Risk to Haiti and Caribbean Sub-Region* (July 11, 2025). <https://www.ohchr.org/en/press-releases/2025/07/spreading-gang-violence-poses-major-risk-haiti-and-caribbean-sub-region>

21. BINUH, *Quarterly Report on the Human Rights Situation in Haiti (July–September 2025)*, at 1 (Nov. 2025), https://binuh.unmissions.org/sites/default/files/quarterly_report_on_the_human_rights_situation_in_haiti_july_-_sept_2025.pdf

22. Global Ctr. for the Resp. to Protect, Haiti, *supra* note 15. <https://www.globalr2p.org/countries/haiti/>

23. U.N. Off. for the Coordination of Humanitarian Affs. (OCHA), *Haiti: Humanitarian Needs and Response Plan Executive Summary* (February 2025). <https://www.unocha.org/publications/report/haiti/haiti-humanitarian-needs-and-response-plan-executive-summary-february-2025-enht>

- As reported by Amnesty International on April 1, 2026, a massacre took place in Petite-Rivière de l'Artibonite on March 29, 2026.²⁴ Preliminary reports state that 16 people were killed and 10 injured, 50 homes were burned and looted, and thousands were forced to flee their homes. This was carried out by one of the more notorious Haitian gangs “Gran Grif.”²⁵

UN High Commissioner for Human Rights Volker Türk has stated explicitly: “The acute insecurity and resulting human rights crisis in the country simply do not allow for the safe, dignified and sustainable return of Haitians. And yet, deportations are continuing.”²⁶

2. Massive Displacement and Humanitarian Crisis

Country conditions affirmatively preclude termination under the statute. The evidentiary record establishes country conditions that satisfy and the criterion for continued TPS designation. Haiti was initially only designated on the third ground, the Secretary must

24. Amnesty Int’l, Press Release, *Haiti: New Massacre Highlights Widespread Failure to Protect the Population* (Apr. 1, 2026), <https://www.amnesty.org/en/latest/news/2026/04/haiti-nueva-masacre-demuestra-crisis-de-desproteccion-general-de-la-poblacion/>

25. *Id.*

26. OHCHR, *Over 5,600 Killed*, *supra* note 16. <https://www.ohchr.org/en/press-releases/2025/01/haiti-over-5600-killed-gang-violence-2024-un-figures-show>

continue the designation so long as the third ground is satisfied.

The violence has generated what the International Organization for Migration has described as the largest displacement due to political upheaval in Haitian history:

- Over 1.3 million Haitians, approximately 12% of the country’s population, have been internally displaced as a direct result of gang violence, as reported by the UN Secretary-General to the Security Council in August 2025.²⁷
- In some areas, the entirety of a city’s population has fled. The town of Mirebalais in the Centre Department, home to approximately 100,000 residents, saw all of its residents evacuate in early 2025.²⁸
- 6.4 million people need humanitarian assistance, more than half the population, of whom 3.6 million will be prioritized to receive humanitarian assistance²⁹

27. U.N. Sec’y-Gen., *Report on the United Nations Integrated Office in Haiti*, U.N. Doc. S/2026/31 (Jan. 15, 2026).<https://documents.un.org/doc/undoc/gen/n25/370/35/pdf/n2537035.pdf>

28. BINUH & OHCHR, *Spreading Gang Violence*, *supra* note 18.<https://www.ohchr.org/en/press-releases/2025/07/spreading-gang-violence-poses-major-risk-haiti-and-caribbean-sub-region>

29. U.N. Office for the Coordination of Humanitarian Affairs (OCHA), *Global Humanitarian Overview 2026: Haiti* (Dec. 8, 2025), <https://humanitarianaction.info/document/global-humanitarian-overview-2026/article/haiti-4>

- At least 2,680 people were killed between 1 January and 30 May 2025, including 54 children, according to information verified by the UN Human Rights Office. At least 957 others were injured and 316 kidnapped for ransom. Sexual violence by gangs and recruitment of children in gangs also continues to rise.³⁰
- The number of children in Haiti recruited and used by armed groups has skyrocketed by an estimated 200 per cent in 2025 reflecting a growing reliance on the exploitation of children, amid ongoing violence by armed groups.³¹

3. The State Department Itself Prohibits Travel to Haiti

The State Department has maintained a Level 4: Do Not Travel advisory for Haiti, its highest possible designation.³² The advisory states that “there is widespread

30. OHCHR, *Haiti: UN Human Rights Chief Alarmed by Widening Violence as Gangs Expand Reach* (June 13, 2025), <https://www.ohchr.org/en/press-releases/2025/06/haiti-un-human-rights-chief-alarmed-widening-violence-gangs-expand-reach>

31. U.N. Children’s Fund (UNICEF), *Child Recruitment in Haiti Surges Threefold in Just One Year* (Feb. 12, 2026), <https://www.unicef.org/haiti/en/press-releases/child-recruitment-haiti-surges-threefold-just-one-year>

32. U.S. Dep’t of State, *Haiti Travel Advisory* (July 15, 2025), <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/haiti-travel-advisory.html>

violent crime and organized crime in the country, and local law enforcement has limited ability to respond to serious crimes.”³³ Haiti has been under a State of Emergency since March 2024.³⁴ It is hard to imagine that Congress intended the statute to allow the Secretary to terminate a TPS designation under those conditions. Insisting on the termination of TPS results in forcing lawful Haitian TPS holders back to a country the State Department warns Americans to avoid, exposing them to the very dangers the U.S. government has officially acknowledged. These are not disputed findings. They appear in the records of the UN Secretary-General, OHCHR, UNICEF, the Organization of American States, and the U.S. State Department itself. These facts are not even contested by the administration.³⁵ They demonstrate that the original ground of Haiti’s designation, extraordinary conditions preventing nationals from returning in safety under §1254a(b)(1)(C)³⁶ continues in force. Indeed, the statutory prong of ongoing armed conflict posing a serious threat to personal safety under §1254a(b)(1)(A) is satisfied as well.³⁷

As Haitian American attorneys, we have worked directly with Haitian immigrants seeking TPS through community-based workshops. We have listened firsthand to their fears of being forced to return to Haiti under these

33. *Id.*

34. *Id.*

35. Termination of the Designation of Haiti for Temporary Protected Status, 90 Fed. Reg. 54,733, 54,735-38 (Nov. 28, 2025).

36. *See* 8 U.S.C. § 1254a(b)(1)(A); *see also* 90 Fed. Reg. at 54,735.

37. *See* 8 U.S.C. § 1254a(b)(1)(C); *see also* 90 Fed. Reg. at 54,735.

conditions. Many individuals have nowhere to return to, as their families have been displaced. Their neighborhoods have been overtaken by armed gangs. We have repeatedly heard harrowing accounts of violence inflicted on family members and friends, underscoring the grave and ongoing danger facing those who would be returned.

B. The Administration's Own Record Defeats Its Termination Decision

The administration's Federal Register notice terminating Haiti's TPS designation is remarkable for what it concedes. While a DHS Spokesperson claimed that "the environmental situation in Haiti has improved enough that it is safe for Haitian citizens to return home," the official Federal Register termination notice, the government's own legally operative document, tells an entirely different story.³⁸ The statutory standard for termination, improvement sufficient for safe return, is flatly contradicted by the government's own record.

The notice explicitly acknowledges that "certain conditions in Haiti remain concerning," and cites the UN Secretary-General's August 2025 report noting that 1.3 million people, approximately 12% of Haiti's population, have been forced to flee their homes.³⁹ The administration's justification for termination was not, as Secretary Noem publicly claimed, that conditions had improved. The Federal Register notice makes clear that the termination rested instead on the administration's

38. Termination of the Designation of Haiti for Temporary Protected Status, 90 Fed. Reg. 54,733, 54,735-38 (Nov. 28, 2025).

39. *Id.* at 54,735

determination that it was contrary to the national interest to maintain the designation. The decision to end TPS is a circular, post-hoc rationalization untethered from the statutory standard.

The Secretary's legal obligation under 8 U.S.C. §1254a(b)(3)(A) is to examine whether the country conditions that justified TPS have improved sufficiently to permit nationals to return safely.⁴⁰ The Secretary acknowledges that conditions in Haiti remain concerning and are characterized by mass displacement, widespread gang violence, and an ongoing State of Emergency.⁴¹ The statutory standard for termination has plainly not been met. A determination that termination is in the 'national interest' is not a substitute for the congressionally-required factual finding that conditions have improved enough to permit safe return. The District Court below was correct to find it 'substantially likely' that the termination decision will not survive judicial scrutiny on this basis alone.⁴²

The administration's own record establishes the continuing and worsening conditions that make TPS legally required.⁴³

40. *Id.*

41. *Id.*

42. *Miot v. Trump*, No. 25-cv-02471-ACR, mem. op. at 2 (D.D.C. Feb. 2, 2026), <https://www.justsecurity.org/wp-content/uploads/2026/02/Lesly-Miot-v.-Trump-Feb.-2-2026-Order.pdf>

43. The situation in Haiti is dire, even when international forces were sent to protect people in Haiti, some of those troops abused the very people they were supposed to help. A UN report from

1. The Afrikaner Program: Structure, Scope, and Evidentiary Significance

While the administration has moved aggressively to strip humanitarian protections from Haitian TPS holders and threatens to deport them to a country experiencing documented crimes against humanity, it has simultaneously created an entirely separate and racially explicit pathway to protection for white Afrikaner South Africans. This juxtaposition exposes an impermissible departure from the statutory record. The Afrikaner refugee program demonstrates that the Secretary applied a race-based decisional standard, in violation of both the statute and the Constitution

When the President creates a program expressly based on racial classification while simultaneously invoking a statute that contains no racial classification, he has exceeded statutory authority. On January 20, 2025, President Trump's first day back in office, he signed Executive Order 14163,⁴⁴ suspending all refugee admissions to the United States, with the single, explicit exception for white South Africans. On February 7, 2025, Trump signed Executive Order 14204⁴⁵ directing the United States to 'promote the resettlement of Afrikaner

February 2026 found that four cases of sexual abuse by members of the Multinational Security Support (MSS) mission in Haiti were confirmed after investigation.# The abuse happened in 2025 and targeted four victims which included three children (ages 12, 16, and 16) and one 18-year-old adult. Most of the troops involved were from Kenya.

44. Exec.Order No. 14,163, 90 Fed. Reg. 8459 (Jan. 30, 2025).

45. Exec. Order No. 14,204, 90 Fed. Reg. 9,497 (Feb. 12, 2025).

refugees escaping government-sponsored race-based discrimination, including racially discriminatory property confiscation,’ and to provide Afrikaners with rapid pathways to citizenship. At the same time, the administration cut off all foreign aid to South Africa and expelled South Africa’s envoy⁴⁶

On May 12, 2025, a chartered flight landing at Dulles International Airport brought the first group of 59 white South Africans, making them the first people to receive refugee status under the Trump administration.⁴⁷ They were greeted by the Deputy Secretary of State and the DHS Deputy Secretary, who told them: ‘I want you all to know that you are really welcome here and that we respect what you have had to deal with these last few years.’⁴⁸ The government acknowledged that the expedited process for white South Africans was expressly based on what it characterized as racial persecution.⁴⁹

46. Sara Carter, Trump admin. expels South Africa envoy Ebrahim Rasool, calls him a “race-baiting politician who hates America (March 17, 2025) <https://www.cbsnews.com/news/trump-south-africa-ambassador-ebrahim-rasool-expelled/>

47. Kate Bartlett, White South African Afrikaner refugees arrive in U.S. on a government-chartered plane. <https://www.npr.org/2025/05/12/nx-s1-5395067/first-group-afrikaner-refugees-arrive#:~:text=A%20group%20of%2059%20white%20Afrikaners%20who,Dulles%20airport%20outside%20Washington%2C%20DC%2C%20on%20Monday.> (May 12, 2025)

48. Brian Bennett and Nik Popli, Trump Welcomes Planeload of White South Africans, While Shutting Out Other Refugees (May 13, 2025) <https://time.com/7284895/south-african-refugees-landed-trump/>

49. Jennifer Hansen, White South Africans granted refugee status by Trump administration arrive in US (May 12, 2025)

The problem happens when the government grants refugee status in that manner only to white people, and to white people who are not even victims. The administration publicly described it as a response to ‘racial persecution’ of Afrikaners in South Africa.⁵⁰

In October 2025, the administration further cemented the racial nature of this program by setting a record-low annual refugee ceiling of 7,500, down from the prior ceiling of 125,000 under President Biden, and directing that the overwhelming majority of those slots be reserved for white South Africans.⁵¹ This is not incidental to the program’s design; it is its explicit purpose.

2. The Claims of Persecution Are Factually Unsubstantiated

The administration’s predicate for the Afrikaner program is that white farmers face a ‘genocide’ in South Africa. This is a narrative that has been thoroughly

<https://www.cnn.com/2025/05/12/politics/white-south-africans-refugee-status-arrive-us#:~:text=Under%20apartheid%2C%20non%2DWhite%20South,Princewell%20contributed%20to%20this%20report.>

50. Nomia Iqbal, Cecilia Macaulay and Brandon Drenon, Dozens of white South Africans arrive in US under Trump refugee plan <https://www.bbc.com/news/articles/crljn5046epo> (May 12, 2025)

51. Ted Hesson, Trump sets refugee ceiling at record-low 7,500 with focus on white South Africans. <https://www.reuters.com/world/us/trump-sets-refugee-admissions-ceiling-7500-fiscal-2026-lowest-cap-record-2025-10-30/#:~:text=Subscribe-,Trump%20sets%20refugee%20ceiling%20at%20record%2Dlow%207%2C500%20with%20focus,Sign%20up%20here.> (October 30, 2025)

and consistently debunked by multiple independent authorities, including authorities within the U.S. government itself. Official South African police data for the nine-month period from April 2024 through December 2024 showed 19,696 total murders in the country, of which only 36 approximately 0.2% were linked to farms or agricultural holdings of any kind.⁵² This is consistent with historical data: since 2018, farm killings have consistently represented approximately 0.2% of all murders in South Africa, a figure cited in the Trump administration’s own first-term State Department human rights report.⁵³ Even using data collected by AfriForum, a nongovernmental organization specifically focused on Afrikaner interests and sympathetic to claims of farm persecution, farm murders totaled approximately 49 per year in the 2023–2024 reporting period, representing about 0.2% of the more than 27,000 murders recorded nationally.⁵⁴ In the period from January to March 2025, South African police taking the unprecedented step of providing a racial breakdown specifically to address the administration’s genocide claims reported that five of the six people killed on farms were Black and only one was white.⁵⁵

The South African Police Minister explicitly addressed the administration’s claims in May 2025, stating: ‘The

52. Daniel Dale, Fact Check: Trump’s False Suggestion of a ‘Genocide’ Against White Farmers in South Africa, CNN (May 21, 2025).<https://www.cnn.com/2025/05/21/politics/fact-check-white-farmers-south-africa-trump>

53. *Id.*

54. *Id.*

55. *Id.*

two farm owners that were murdered during the fourth quarter were African and not White. The history of farm murders in the country has always been distorted and reported in an unbalanced way; the truth is that farm murders have always included African people in more numbers.⁵⁶

Independent researchers, South African government officials, and fact-checkers across the political spectrum have reached consistent conclusions:

- The primary motive for farm attacks in South Africa is robbery, not racial animus. Multiple government investigations — including one ordered by the police minister in 2003 — have found this to be true.⁵⁷
- The South African Human Rights Commission’s 2015 investigation similarly found no evidence of a politically or racially motivated campaign against white farmers.⁵⁸
- American embassy political officers, in a cable to the State Department, concluded there was ‘no evidence that murders on

56. Dale, *supra* note 37 <https://www.cnn.com/2025/05/21/politics/fact-check-white-farmers-south-africa-trump>

57. Eugene Scott et al., Fact-Checking Trump’s Claims of White Farmer ‘Genocide’ in South Africa, PBS NewsHour (May 21, 2025). <https://www.pbs.org/newshour/politics/fact-checking-trumps-claims-of-white-farmer-genocide-in-south-africa>

58. Scott et al., *supra* note 41. <https://www.pbs.org/newshour/politics/fact-checking-trumps-claims-of-white-farmer-genocide-in-south-africa>

farms specifically target white people or are politically motivated.’⁵⁹

- The Institute for Security Studies, South Africa’s leading independent crime research organization, stated: “The idea of a white genocide taking place in South Africa is false. If there was any evidence of either a genocide or targeted violence taking place against any group based on their ethnicity, we would be amongst the first to raise alarm.”⁶⁰
- South African President Cyril Ramaphosa stated directly to President Trump in the Oval Office that the claims of persecution “are completely false” and that Afrikaners “are not being persecuted, they are not being hounded, they are not being treated badly.”⁶¹
- When asked by media to produce evidence of a genocide determination, the State Department under the Trump administration stated it ‘had nothing to announce regarding a genocide determination.’⁶²

59. Dale, *supra* note 37.<https://www.cnn.com/2025/05/21/politics/fact-check-white-farmers-south-africa-trump>

60. Scott et al., *supra* note 41.<https://www.pbs.org/newshour/politics/fact-checking-trumps-claims-of-white-farmer-genocide-in-south-africa>

61. Dale, *supra* note 37.<https://www.cnn.com/2025/05/21/politics/fact-check-white-farmers-south-africa-trump>

62. Dale, *supra* note 37.<https://www.cnn.com/2025/05/21/politics/fact-check-white-farmers-south-africa-trump>

The evidence presented by President Trump on May 21, 2025, during an Oval Office meeting with President Ramaphosa has itself been debunked. The aerial footage Trump displayed as purported ‘burial sites’ of thousands of murdered Afrikaners was identified by South Africans as a 2020 roadside protest memorial.⁶³ One such photo contained crosses representing all murder victims on farms over two decades, including Black victims, and was erected to memorialize two specific farmers killed in one incident. It was not a mass grave. Characterizing it as such was factually incorrect.

Refugee advocates have also noted that the Afrikaner applicants did not come from refugee camps; many had not fled their country at all.⁶⁴ Human Rights Watch refugee policy director Bill Frelick stated: “These are people who were not living in refugee camps, who hadn’t fled their country. They were the group that was most associated with the oppression of the Black majority through apartheid. It’s not like these are among the most vulnerable refugees of the world.”

3. The Comparative Record Reveals Racially Based Action

The significance of this comparison is not merely constitutional. It is statutory. The TPS statute authorizes

63. Lou Jacobson, Fact-Checking Trump’s Video, Images About South Africa During Oval Office Meeting with Ramaphosa, PolitiFact (May 22, 2025).<https://www.politifact.com/article/2025/may/22/Trump-video-South-Africa-burial-farmers-genocide/>

64. Montoya-Galvez, *supra* note 35.<https://www.npr.org/2025/05/12/g-s1-65984/south-african-afrikaner-refugee-us>

termination based on one criterion: improvement in country conditions sufficient for safe return. It does not authorize termination based on the race or national origin of TPS holders. The simultaneous conduct here is expedited refugee resettlement for a group whose claimed persecution has been universally debunked, alongside termination of TPS for a group facing conditions the government's own record describes as catastrophic — is powerful evidence that the Secretary applied a standard other than the one Congress enacted. Under *Arlington Heights*, 429 U.S. 252, this Court examines the sequence of events, departures from normal procedure, and the administrative history surrounding an agency decision to determine whether an impermissible factor infected it.⁶⁵ The record here satisfies each *Arlington Heights* factor.

The District Court's finding that it is 'substantially likely' the termination was motivated by 'hostility to nonwhite immigrants' is consistent with this record. The Court found that Secretary Noem's characterization of conditions as merely 'concerning' 'cannot be squared with the perfect storm of suffering and staggering humanitarian toll described in page-after-page' of the government's own record. *Miot et al. v. Trump et al.*, No. 25-cv-02471-ACR, slip op. at 12 (D.D.C. Feb. 2, 2026). If a non-statutory, extra-legal standard drove the termination decision, that decision cannot survive review under either the Administrative Procedure Act (APA) or the Fifth Amendment.

65. *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977).

D. Comparative Data Demonstrates Unconstitutional Racial Disparate Impact and Discriminatory Animus

The Fifth Amendment's Due Process Clause incorporates equal protection principles that prohibit the federal government from making distinctions on the basis of race or national origin without satisfying strict scrutiny. *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252 (1977). Where a facially neutral policy is shown to have been adopted at least in part because of racial animus, it must be subjected to strict judicial scrutiny and will fail absent a compelling governmental interest pursued through narrowly tailored means. *Personnel Administrator v. Feeney*, 442 U.S. 256 (1979).

The following comparative data table illustrates the starkly disparate treatment between the two groups:

Factor	Haitian TPS Holders	White Afrikaner Applicants
Race / National Origin	Black; Haitian national origin	White; South African (Afrikaner)
Number Affected	~350,000 individuals	~7,500 (FY2026 ceiling, mostly Afrikaners)
U.S. State Dept. Travel Advisory	Level 4: Do Not Travel (highest level; in effect since March 2020)	Level 2: Exercise Increased Caution (standard advisory)

Annual Deaths (Country of Origin)	5,519 killed Mar. 2025–Jan. 2026 (OHCHR)	~49 farm murders/year total (all races), 0.2% of national murders
Internally Displaced Persons	1.3 million displaced (approx. 12% of population)	No significant displacement reported
Government Control of Capital	~10% of Port-au-Prince under govt. control	Full democratic government in control
UN Classification	Crimes against humanity determination by OAS (May 2025)	No international body has recognized refugee situation
Administration Action	TPS terminated; deportation threatened	Expedited refugee status; paid travel to U.S.; rapid citizenship pathway
Refugee Program Suspended?	No exceptions made despite documented crisis	Single exception to blanket refugee suspension
Persecution Evidence	Verified by UN, OAS, State Dept., OHCHR	Debunked by South African govt., U.S. Embassy, ISS, fact-checkers
Economic Contribution to U.S.	\$3.4 billion/year contributed to U.S. economy	N/A — newly arrived

This comparison reveals a pattern that is not random, not incidental, and not explainable by neutral factors. It presents the precise circumstance that the Arlington Heights factors are designed to detect:

- Statistical evidence of disparate impact: The administration has terminated or attempted to terminate TPS for every country whose designation came up for renewal under Secretary Noem's tenure. The countries terminated have been overwhelmingly non-white and majority-Black or majority-Brown. No predominantly white country has faced comparable treatment.
- Historical background: President Trump has a documented record of applying a racial lens to immigration policy. In 2018, he used a vulgar epithet to express a preference for immigrants from wealthy, predominantly white countries such as Norway rather than from Haiti, El Salvador, or African nations.⁶⁶ During the 2024 presidential campaign, he amplified false claims that Haitian immigrants in Springfield, Ohio were eating pets. These statements reflect a pattern of racial animus toward Haitian and other nonwhite immigrants that provides direct evidence of discriminatory intent.
- Sequence of events and departures from normal procedure: The administration

66. Josh Dawsey, Trump Derides Protections for Immigrants from 'Shithole' Countries, Wash. Post, Jan. 12, 2018.

departed from all established refugee processing norms to expedite and prioritize Afrikaner admissions — creating a dedicated program funded by the U.S. government, while simultaneously suspending the program for every other refugee group worldwide. This departure from standard procedure, combined with its racial exclusivity, is powerful evidence of discriminatory purpose.

- Legislative and administrative history: The Federal Register notice terminating Haiti’s TPS explicitly acknowledged that country conditions remained dangerous, while simultaneously asserting that termination was in the ‘national interest.’ The statute does not contain a ‘national interest’ override of the safety-of-return requirement. The invocation of an extra-statutory basis for termination, combined with the concurrent creation of a race-specific refugee program for white applicants, supports the inference drawn by the District Court that racial hostility — not a genuine assessment of country conditions — drove the Haiti termination.

The District Court’s finding that it is ‘substantially likely’ that Secretary Noem terminated Haiti’s TPS ‘because of hostility to nonwhite immigrants’ is well-supported by this record.⁶⁷ The Court noted that Noem’s

67. *Miot v. Trump*, No. 25-cv-02471-ACR, mem. op. at 2 (D.D.C. Feb. 2, 2026).<https://www.justsecurity.org/wp-content/uploads/2026/02/Lesly-Miot-v.-Trump-Feb.-2-2026-Order.pdf>

conclusion that Haiti faces merely ‘concerning’ conditions ‘cannot be squared with the perfect storm of suffering and staggering humanitarian toll described in page-after-page’ of the government’s own record. *Miot et al. v. Trump et al.*, slip op. at 12.

E. Termination Causes Severe, Irreparable Harm to Individuals and the National Economy

This termination inflicts devastating and unrequested harm on Haitian and Haitian American communities, disrupting health care systems, labor markets, and tax bases across sovereign states, all based on a statutory interpretation Congress never authorized. A stay of the termination is further justified by the severity and irreversibility of the harms that would result from allowing termination to proceed during litigation. The traditional stay factors likelihood of success on the merits, irreparable harm, balance of equities, and public interest each weigh powerfully in favor of maintaining the injunction.

1. Irreparable Harm to Individuals

Deportation to Haiti would expose TPS holders to immediate, life-threatening danger. Deportees would be returned to a country where 90% of the capital is controlled by criminal gangs engaged in mass killings, systematic sexual violence, kidnapping, and extortion.⁶⁸ The UN High Commissioner for Human Rights has explicitly called on all states not to forcibly return anyone to Haiti. Deportation to these conditions constitutes irreparable

68. Beaubien, *supra* note 7. <https://www.npr.org/2025/07/03/nx-s1-5455540/haiti-gangs-capital-port-au-prince-violence>

harm that no subsequent court order could remedy if a TPS holder is killed, tortured, raped, or abducted after return.⁶⁹

The harm is not merely physical. TPS holders facing termination have lived, worked, and built lives in the United States for years and in many cases decades. Families would be separated, including American citizen children who may face the choice between remaining in the United States without their parents or following them to a country they have never known and which their own government warns is too dangerous to visit.

2. Irreparable Economic Harm

A coalition of 18 state attorneys general, in their amici brief before this Court, documented the economic consequences of termination.⁷⁰ Their research found that:

- TPS-eligible Haitians contribute \$3.4 billion annually to the U.S. economy.⁷¹
- Approximately 69% of Haitian immigrants aged 16 and older participate in the civilian

69. OHCHR, *Over 5,600 Killed*, *supra* note 16. <https://www.ohchr.org/en/press-releases/2025/01/haiti-over-5600-killed-gang-violence-2024-un-figures-show>

70. Br. of the Commonwealth of Mass., the States of Cal., Ill., N.Y., and Fifteen Others as Amici Curiae in Supp. of Resp'ts at 6-10, *Trump v. Miot*, No. 25A999 (U.S. Mar. 16, 2026).

71. FWD.us, *Temporary Protected Status Protects Families While Also Boosting the U.S. Economy 2* (Mar. 2025) <https://www.fwd.us/news/temporary-protected-status-report-2025/>

labor force, with high rates of participation in healthcare support, service industries, construction, transportation, and public service.⁷²

- An estimated 75,000 TPS-eligible Haitians work in labor-short industries where their departure would create immediate workforce shortages.⁷³
- Communities in Florida, Ohio, New Jersey, and Maryland would face immediate disruption to healthcare, construction, and service workforces.⁷⁴

The administration's decision to end TPS stands to inflict severe economic and social harm on states across the country.

3. The Balance of Equities and Public Interest

The government cannot demonstrate harm sufficient to outweigh these interests. There is no emergency condition requiring the immediate deportation of Haitian TPS holders that would not be fully addressed by maintaining the stay while this Court reviews the case on the merits.

72. Beatrice Dain & Jeanne Batalova, *Haitian Immigrants in the United States*, Migration Pol'y Inst. (Nov. 8, 2023) <https://www.migrationpolicy.org/article/haitian-immigrants-united-states>

73. Haitian Bridge Alliance, *Haitian TPS Holders Make the U.S. Stronger* (Jan. 2026), https://haitiantimes.com/wp-content/uploads/2026/02/Haiti-TPS-Fact-Sheet_January-2026.pdf.

74. States' AG Br., *supra* note 53.

The public interest is served by ensuring that executive branch immigration actions comply with both statutory requirements and constitutional equal protection guarantees. An immigration system in which the race of applicants determines whether they receive emergency humanitarian protection rather than the objective severity of conditions in their home country undermines the rule of law and the credibility of the United States as a champion of human rights internationally.

CONCLUSION

The termination of TPS for Haiti cannot be reconciled with the statutory record, with the constitutional guarantee of equal protection, or with basic humanitarian principle. The country conditions that Congress intended TPS to address armed conflict posing a serious threat to personal safety, and extraordinary conditions preventing nationals from returning in safety are present in Haiti to a degree that exceeds any prior point in the program's history. The UN has documented crimes against humanity. The State Department prohibits American citizens from traveling there. The administration's own Federal Register notice acknowledges that conditions remain concerning.

At the same time, the administration has created an expressly race-based refugee program for white Afrikaner South Africans founded on claims that have been universally rejected by independent analysts, South African officials, the administration's own embassy, and basic statistics. The comparison between these two programs, one stripping protection from Black Haitian nationals facing documented mortal danger, the other providing expedited protection to white South Africans

based on claims lacking credible evidentiary support compels the inference of unconstitutional discriminatory animus that the District Court correctly identified.

For the foregoing reasons, Amici Curiae respectfully urges this Court to deny the government's motion for a stay of the District Court's order and to uphold the injunction preserving TPS protections for Haitian nationals while this litigation proceeds on the merits.

Respectfully submitted,

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