Nos. 25-1083 and 25-1084

In the Supreme Court of the United States

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

v.

DAHLIA DOE, ET AL.

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

v.

FRITZ EMMANUEL LESLY MIOT, ET AL.

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

REPLY BRIEF FOR PETITIONERS

D. JOHN SAUER
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Cases—Continued: Page

Constitution and statutes:

Miscellaneous: Page

In the Supreme Court of the United States

No. 25-1083

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

v.

DAHLIA DOE, ET AL.

No. 25-1084

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

v.

FRITZ EMMANUEL LESLY MIOT, ET AL.

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

REPLY BRIEF FOR PETITIONERS

Congress meant what it said: "There is no judicial review of *any determination* of the [Secretary] *with respect to* the designation, or termination or extension of a designation, of a foreign state" for Temporary Protected Status (TPS). 8 U.S.C. 1254a(b)(5)(A) (emphases added). That language clearly bars respondents' challenges to the Secretary of Homeland Security's terminations of TPS for Syria and Haiti. Only constitutional claims would conceivably not be barred, under the special reviewability rule for such claims. That commonsense reading is unsurprising: Foreign-policy-laden judgments like these are often unreviewable because courts

are ill-equipped to evaluate them. Respondents cannot evade that bar by targeting subsidiary parts of the Secretary's final TPS decisions. Certainly, respondents cannot rewrite the statute just because they believe a broad judicial-review bar would be "radical," *Doe* Br. 1, or "dangerous," or would "hand the Executive unbridled power to act" without "constraint," *Miot* Br. 1. Policy arguments cannot trump statutory text. Nor does the lack of judicial review greenlight statutory violations. It just means Congress opted to hold the Executive accountable through the political process, just as is the case for countless other foreign-policy and discretionary decisions.

Recent lower-court TPS cases vindicate Congress's judgment that courts are inappropriate overseers of the Secretary's TPS determinations. Lower courts have second-guessed myriad foreign-policy judgments on their way to indefinitely postponing multiple TPS terminations. See Gov't Br. 3-4. Two weeks ago, another district court postponed the Secretary's termination of Ethiopia's TPS designation, finding that the judicial-review bar posed no barrier to the same Administrative Procedure Act (APA) objections raised in other TPS cases, including questioning the termination as pretextual because "armed conflict and natural disasters continue to create dangerous conditions in Ethiopia." *African Communities Together* v. *Noem*, No. 26-cv-10278, 2026 WL 948591, at *12 (D. Mass. Apr. 8, 2026). Congress enacted the judicial-review bar to foreclose exactly this type of interference.

Even if reviewable, respondents' claims fail. Their APA claims rest on erroneous interpretations of TPS statutory requirements and defy deferential arbitrary-and-capricious review. Further, *Miot* respondents' equal-

protection claim is reviewable, but clearly fails under the rational-basis standard of *Trump* v. *Hawaii*, 585 U.S. 667 (2018)—or any other standard. *Miot* respondents would limit *Hawaii* to its facts, but their challenge is on all fours with that case. Even under heightened scrutiny, the out-of-context, race-neutral statements on which respondents rely cannot show that racial animus, rather than the stated national-interest and foreign-relations justifications, motivated the Haiti TPS termination. This Court should reverse and allow the TPS statute to function as Congress wrote it.

ARGUMENT

I. THE JUDICIAL-REVIEW BAR FORECLOSES RESPONDENTS' APA CLAIMS

The TPS statute broadly bars "judicial review of *any determination* of the [Secretary] *with respect to* the designation, or termination or extension of a designation, of a foreign state" for TPS. 8 U.S.C. 1254a(b)(5)(A) (emphases added). That bar precludes challenges to the Secretary's ultimate determination to designate a country or terminate or extend a TPS designation, as well as challenges to subsidiary aspects of those decisions, including the procedures and analysis underlying them. That includes respondents' APA claims.

A. Section 1254a(b)(5)(A) Precludes Challenges To Final TPS Determinations And All Subsidiary Parts

1. The government's reading offers the only commonsense account of the plain text. Congress used the word "determination," which no one disputes ordinarily means "the resolving of a question by argument or reasoning," "[t]he decision arrived at or promulgated," or "a determinate sentence, conclusion, or opinion." Gov't Br. 19 (quoting *EPA* v. *Calumet Shreveport Ref., L.L.C.*,

605 U.S. 627, 643 (2025)). Congress also deliberately referred to "any" determination "with respect to" TPS designations, terminations, and extensions—terms that undisputedly have a broadening effect. See *id.* at 19-21. Congress thus covered determinations "of whatever kind" that "relat[e] to" TPS designations, terminations, or extensions. *Patel* v. *Garland*, 596 U.S. 328, 338-339 (2022).

As black-letter APA principles underscore, that language precludes review of challenges to the Secretary's ultimate TPS determinations *and* challenges to all subsidiary decisional steps, whether procedural or substantive. See Gov't Br. 21. Separation-of-powers principles reinforce that Section 1254a(b)(5)(A) shields from second-guessing the entire decisionmaking process, which comprises foreign-affairs and national-security judgments typically entrusted to the Executive. *Id.* at 22. Historical context too shows that the TPS statute was enacted against a backdrop of unreviewable, discretionary Executive decisions within TPS's predecessor program; Section 1254a(b)(5)(A) preserved that understanding. *Id.* at 22-23. Respondents thus do not dispute that if the government's reading is correct, their APA claims are barred; they all challenge the Secretary's "determinations" to terminate TPS for Syria and Haiti by attacking their constituent parts. *Id.* at 25-27.

2. Respondents' rejoinders are unpersuasive.

a. Respondents argue that the word "any" "'cannot expand the reach of the noun it modifies,'" *Miot* Br. 25 (quoting *City & County of San Francisco* v. *EPA*, 604 U.S. 334, 348 (2025)); *Doe* Br. 25 (same). But "any" modifies "determination"—*i.e.*, "decision," "conclusion," or "opinion." See p. 3, *supra*. Just as "[a] reference to 'any mammal' would capture all mammals," *San Francisco*,

604 U.S. at 348, Section 1254a(b)(5)(A)'s reference to "any determination" captures *all* the Secretary's determinations, decisions, conclusions, or opinions regarding TPS designations, terminations, or extensions. The government does not argue for "talismanic reliance" on "any" and "with respect to," *Doe* Br. 27, but argues that those words must be given meaning. Congress itself enacted a "sweeping jurisdiction-stripping provision." *NTPSA* v. *Noem*, 169 F.4th 796, 803 (9th Cir. 2026) (Bumatay, J., dissenting from the denial of rehearing en banc).

It is unsurprising, then, that lower courts have recognized that when a final action is unreviewable, subsidiary parts are likewise unreviewable. Gov't Br. 21-22. *Miot* respondents attempt (Br. 28-29) to limit that principle to the Medicare context. But the relevant decisions reflect the principles that the government invokes here, including that "judicial review is not permitted" where a "procedure is challenged only in order to reverse" the unreviewable decision, *Skagit County Pub. Hosp. Dist. No. 2* v. *Shalala*, 80 F.3d 379, 386 (9th Cir. 1996), and that an opposite interpretation "would eviscerate" the judicial-review bar because "almost any challenge to" an unreviewable decision "could be recast as a challenge to its underlying methodology," *DCH Reg'l Med. Ctr.* v. *Azar*, 925 F.3d 503, 506 (D.C. Cir. 2019).

b. Respondents read *Bowen* v. *Michigan Academy of Family Physicians*, 476 U.S. 667 (1986), *McNary* v. *Haitian Refugee Center, Inc.*, 498 U.S. 479 (1991), and *Reno* v. *Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (*CSS*), to "establish[] a clear line between challenges to an agency's 'determination' (which are barred) and 'collateral' challenges (which remain reviewable)." *Doe* Br. 30; see *Miot* Br. 17, 25-26 (similar). But those

cases rested on statute-specific reasoning and involved challenges that were actually collateral, not (as here) challenges to decisional inputs to the unreviewable final decision.

Bowen held that a provision that affirmatively provided for limited review of "'any determination . . . of . . . the amount of benefits under [Medicare] part A,'" and of the "'amount of . . . payment' of benefits under Part B," did not "impliedly den[y] judicial review" of a challenge to the validity of a regulation regarding "the *method* by which such amounts are to be determined." 476 U.S. at 675-676. *Bowen* is inapt because Section 1254a(b)(5)(A)'s review bar is explicit, not "implied[]." *Id.* at 676.

The provision in *McNary* barred review of "'a determination respecting an application for adjustment of status'" under 8 U.S.C. 1160(e), except in deportation proceedings; the Court held that that provision, which "applie[d] only to review of denials of individual [amnesty] applications," did not preclude "general collateral challenges to unconstitutional practices and policies used by the agency in processing applications." 498 U.S. at 491-492, 494. Indeed, while the individual plaintiffs had unsuccessfully sought amnesty under Section 1160, none "*contest[ed] the denial of their * * * applications*." *Id.* at 488 (emphasis added); see *id.* at 494. *McNary* does not support separating the Secretary's ultimate TPS decision from its antecedent parts. Gov't Br. 31-33. It instead reflects the principle that prescribing a specific process for review of individual application denials does not bar cross-cutting challenges to policies that govern how *all* applications are processed. *Id.* at 32.

Further, the provision in *CSS* provided "an exclusive scheme for administrative and judicial review of 'deter-

mination[s] respecting . . . application[s] for adjustment of status,'" which the Court held did not "preclude[] district court jurisdiction over an action challenging the legality of a regulation *without referring to or relying on the denial of any individual application*." 509 U.S. at 53, 56 (emphasis added).

Here, respondents' claims attack "specific individual determinations by the Secretary"—the Syria and Haiti terminations—as well as the decisionmaking and analysis underlying those terminations. *NTPSA*, 169 F.4th at 806 (Bumatay, J., dissenting from the denial of rehearing en banc). Respondents' challenges cannot be made "without referring to or relying on" the termination decisions themselves. *CSS*, 509 U.S. at 56. The relief respondents seek confirms as much. Respondents disclaim "seek[ing] a substantive declaration that they are entitled to" TPS. *Miot* Br. 18 (quoting *McNary*, 498 U.S. at 495). But respondents still seek "direct relief from the challenged decisions, rather than collateral relief from an allegedly unlawful agency practice." *Ramos* v. *Wolf*, 975 F.3d 872, 893 (9th Cir. 2020), reh'g en banc granted, opinion vacated, 59 F.4th 1010 (9th Cir. 2023).

c. Respondents contend that Section 1254a(b)(5)(A) was drafted to mirror the *Bowen* statute, see *Miot* Br. 26, and that Congress declined to make Section 1254a(b)(5)(A) broader after *McNary*, see *id.* at 26-27; *Doe* Br. 29-30. Again, the Medicare provision in *Bowen* involved "an explicit authorization of judicial review, not a bar," 476 U.S. at 674, making it an exceedingly unlikely model for Congress to use in precluding judicial review of TPS decisions. Cf. *Kemp* v. *United States*, 596 U.S. 528, 539 (2022). And Congress's failure to amend the TPS statute in response to *McNary* signals nothing.

Arguments about congressional inaction are unpersuasive. Cf. *Central Bank of Denver, N.A.* v. *First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 187 (1994). Congress could have reasonably and correctly believed that *McNary* was inapposite. See Gov't Br. 31-33.[1]

Furthermore, the "historical context" of Section 1254a(b)(5)(A), *Miot* Br. 25-26, was the Extended Voluntary Departure (EVD) program—a backdrop that helps the government. Courts viewed the Executive's decision to withhold EVD status as "discretionary" and "unreviewable." Gov't Br. 23; see *Doe* Br. 4; *Miot* Br. 29. Congress in the TPS statute then sought "to formalize" "humanitarian relief" and "impose 'explicit guidelines, specific procedural steps, and time limitations.'" *Miot* Br. 29-30. But Section 1254a(b)(5)(A) simultaneously preserved Executive Branch discretion by shielding all determinations with respect to the designation, termination, or extension of TPS from judicial review. That reflects how "vitally and intricately interwoven" immigration policy is "with contemporaneous policies in regard to the conduct of foreign relations" that are "exclusively entrusted to the political branches of government." *Harisiades* v. *Shaughnessy*, 342 U.S. 580, 588-589 (1952).

---

[1] Respondents' examples of Congress purportedly responding to *McNary* do not support them. *Doe* Br. 29-30; *Miot* Br. 26-27. Several provisions were newly enacted (not amended) after *McNary*. See 8 U.S.C. 1252(a)(2)(A)(i), (iv), and (B)(ii). One "deeming" provision that respondents cite (*Doe* Br. 29-30) predated *McNary* and remained unchanged after *McNary*. See Immigration and Nationality Act, ch. 477, § 206, 66 Stat. 181; Act of Oct. 3, 1965, Pub. L. No. 89-236, § 5, 79 Stat. 916 (reenacting substantially the same language as 8 U.S.C. 1155). And the statute in *Gebhardt* v. *Nielsen*, 879 F.3d 980 (9th Cir.), cert. denied, 586 U.S. 920 (2018), see *Doe* Br. 30, was enacted in 2006—hardly suggesting Congress was responding to a 1991 decision.

d. Respondents invoke the presumption favoring judicial review. *Doe* Br. 36-37; *Miot* Br. 14-15. But that presumption applies where "a statutory provision 'is reasonably susceptible to divergent interpretation.'" *Miot* Br. 14. Here, "the statute is clear," so there is "no reason to resort to the presumption of reviewability." *Patel*, 596 U.S. at 347; see Gov't Br. 34-35.

3. Respondents mainly fight the government's textual reading with a policy parade of horribles. Such arguments prove too much, because any non-reviewability provision leaves open the possibility that some bizarre or inexplicable decision might go unreviewed. Respondents cast the government's interpretation as "extreme," *Miot* Br. 31, "dangerous," *ibid.*, and inviting "extraordinary, unchecked control," *Doe* Br. 34. But courts "swerve out of [their] lane when [they] put policy considerations in the driver's seat." *Patel*, 596 U.S. at 346. Besides, respondents' outlandish hypotheticals lack bite.

- TPS terminations based on coin flips or ice-cream preferences, *Miot* Br. 1, 31, would have to be disclosed as bases for decision in the Federal Register and reported to Congress, 8 U.S.C. 1254a(b)(3)(B) and (i)(1)(C), inviting congressional oversight and public scrutiny. The same would go for terminating TPS effective immediately, in violation of the 60-day notice requirement. *Doe* Br. 35.
- Cancellation of already-issued employment authorization documents (*Doe* Br. 34-35) would not fall under Section 1254a(b)(5)(A) on the government's view, insofar as the alien did not challenge the TPS termination precipitating the cancellation. Questions about TPS eligibility and the conditions and procedures for receiving work authorization are separate from TPS designation, exten-

sion, and termination decisions. Cf. *McNary*, 498 U.S. at 491-492.

- Attempting to fix a TPS designation for 50 years, *Doe* Br. 1, 34, would constitute an inexplicably pointless statutory violation. That Secretary could maintain the TPS designation for the duration of an Administration just by failing to determine that termination is warranted, which would result in automatic extensions. See 8 U.S.C. 1254a(b)(3)(C). Any ensuing Administration could end the designation.
- A Secretary's decision to "'sell TPS designations' (or terminations)," *Doe* Br. 35, is likely unreviewable. But "the political branches have several remedies" for that conduct, including that the Secretary "could be charged with bribery," that "Congress could impeach her," and that "Congress could refuse to fund the agency she leads." *NTPSA*, 169 F.4th at 807 (Bumatay, J., dissenting from the denial of rehearing en banc).
- The Secretary's decision to "'vacate' an extension," *Doe* Br. 35, is likely unreviewable as "a 'determination' related to the 'extension' of TPS," *NTPSA*, 169 F.4th at 804 (Bumatay, J., dissenting from the denial of rehearing en banc). Regardless, respondents' challenges involve decisions to "terminat[e] * * * a designation[] of a foreign state," which are plainly unreviewable. 8 U.S.C. 1254a(b)(5)(A).

At bottom, judicial-review bars reflect that "[s]ometimes Congress decides that the political process is the proper forum for remedying improper conduct." *NTPSA*, 169 F.4th at 807 (Bumatay, J., dissenting from the denial of rehearing en banc). When Congress makes that

judgment, courts "resolve cases and controversies consistent with the authority Congress has given them" and "do not exercise general oversight of the Executive Branch." *Trump* v. *CASA, Inc.*, 606 U.S. 831, 861 (2025).

B. Respondents' Competing Interpretations Are Untenable

Respondents agree that Section 1254a(b)(5)(A) bars none of their claims, but cannot agree (with each other, or with lower courts' yet different interpretations) what the provision means. See Gov't Br. 28-29.

1. *Miot* respondents abandon (Br. 15 n.10) their spurious position that "Section 1254a(b)(5)(A) [is] inapplicable to APA claims." They also abandon the *Miot* district court's actual holding—that "'determination' here refers to [the Secretary's] act of designating, terminating, or extending TPS," not "how she reached her determination." J.A. 651; contra Br. 15 (mischaracterizing holding). Now, they propose an atextual distinction between substantive and procedural challenges. They interpret the unreviewable "determination" as "the Secretary's substantive conclusion as to the existence or non-existence of the criteria for designation," Br. 12, by which they mean "determination[s] with respect to country conditions" or "the U.S. national interest," Br. 18, 20; see Br. 15. But all process-related challenges, they say, are fair game. Br. 15-17.

That position has no basis in Section 1254a(b)(5)(A)'s text. *Miot* respondents never explain why Congress would have barred review of "any determination" "with respect to the designation, or termination or extension of a designation," 8 U.S.C. 1254a(b)(5)(A), if Congress simply meant "determinations regarding country conditions and the national interest." Neither the broadening words "any" nor "with respect to" would do any work. While the word "any" of course "'cannot expand

the reach of the noun it modifies,'" *Miot* Br. 25, that does not address why Congress would use "any" if it meant a closed universe of two specific "determinations," or why Congress added "with respect to the designation, or termination or extension" of TPS.

Also unexplained is the textual origin of any substance-versus-process distinction. *Miot* respondents rely (Br. 16-17) on *McNary*. But *McNary* rested on the statutory text at issue limiting review only of "'a determination,'" which "describe[d] a single act rather than a group of decisions or a practice or procedure employed in making decisions." 498 U.S. at 492; see p. 6, *supra*.

Finally, *Miot* respondents' assertions that their claims are procedural, not substantive, underscore the malleability of their invented distinction and their ultimate nullification of the judicial-review bar. Even as respondents assert (Br. 18) that they "do not challenge the substantive correctness of the Secretary's determination with respect to country conditions in Haiti or her assessment of the U.S. national interest," they defend (Br. 22) the district court's holding questioning "the Secretary's determination that TPS holders can return to Haiti in safety." And they frame the national-interest issue as whether the Secretary can "terminate a TPS designation based on U.S. national interest," Br. 21-22, while the district court actually held that the Secretary "failed to apply the [national-interest] standard" correctly by failing to focus on "Haitian TPS holders" and their economic contributions, J.A. 689; see J.A. 689-694.

2. *Doe* respondents insist (Br. 20) that Section 1254a(b)(5)(A) bars only challenges to determinations regarding country conditions. They would thus allow judicial review even of the national-interest determinations that *Miot* respondents concede are barred. Courts

could review the Secretary's final decisions to designate, terminate, or extend TPS—only excepting challenges that would second-guess country-conditions assessments. *Ibid.*

Doe respondents rest (Br. 18-19) this reading on their contention that Section 1254a(b) elsewhere uses the word "determine" or "determination" to refer exclusively to the Secretary's conclusions about country-conditions requirements. But Congress used the broadening words "any" and "with respect to," and referred to "designation, or termination or extension" instead of simply stating that country-conditions determinations are unreviewable. Cf., *e.g.*, 8 U.S.C. 1158(b)(2)(D) ("There shall be no judicial review of a determination of the Attorney General" that an alien is ineligible for asylum because of involvement in terrorism).

This Court rejected a similar term-of-art argument in *Calumet*, reasoning that "determination" is "hardly a rarely used word" and context did not suggest that Congress intended it to reach only certain agency actions. 605 U.S. at 648. *Doe* respondents counter *Calumet* by arguing that the TPS statute's context supports that it uses "determination" differently. Br. 24-25. That argument fails.

Section 1254a uses "determination" or "determine" to refer to a variety of decisions. As *Doe* respondents admit (Br. 21 & n.3), Section 1254a(a)(4)(B) refers to "a final determination with respect to" an alien's eligibility for TPS benefits. Section 1254a(c)(2)(A) refers to "the determination of an alien's admissibility" for purposes of TPS eligibility. Section 1254a(e) describes a "determin[ation] that extreme hardship exists." *Doe* respondents attempt (Br. 19, 21) to confine their term-of-art definition to "subsection (b)" alone. But it would be ab-

surd to read "determination" in Section 1254a as switching between its ordinary meaning and purported term-of-art meaning. Such "elaborate efforts to avoid the most natural meaning of the text" underscore that ordinary meaning controls throughout. *Patel*, 596 U.S. at 340.

3. Though respondents disagree over what Section 1254a(b)(5)(A) means, their shared bottom line is to effectively negate the judicial-review bar. *Doe* respondents suggest only that the provision would bar a claim "that the Secretary's conclusion that Syria is now safe lacks substantial evidence." Br. 22. *Miot* respondents say only that they cannot "challenge the substantive correctness of the Secretary's determination with respect to country conditions in Haiti or her assessment of the U.S. national interest," Br. 18, but their own claims do just that, despite respondents' efforts at repackaging.

Congress does not enact judicial-review bars that bar nothing. The perverse result respondents endorse "strikes a blow to Congress's authority over federal courts and to 'speaker[s] of ordinary English.'" *NTPSA*, 169 F.4th at 808 (Bumatay, J., dissenting from the denial of rehearing en banc).

II. RESPONDENTS' APA CLAIMS LACK MERIT

Even if reviewable, respondents' APA claims fail on the merits. Respondents invent new statutory requirements, ignore those that exist, and substitute their views for the Secretary's. In doing so, respondents second-guess the Secretary's sensitive, foreign-policy-laden judgments, which Congress forbade.

A. The Secretary Satisfied The Consultation Requirement

DHS solicited and received the State Department's views on Syria's and Haiti's TPS designations. The Secretary considered those views, along with country-conditions reports from U.S. Citizenship and Immigration Services (USCIS), before terminating the designations. Gov't Br. 36-39. The requirement that the Secretary "consult[] with appropriate agencies of the Government" demands nothing more. 8 U.S.C. 1254a(b)(3)(A).

Respondents assert (*Doe* Br. 39-45; *Miot* Br. 32-34) that the consultation was insufficiently meaningful and that State's response was insufficiently tied to country conditions and departed from past practice. Those objections seek to prescribe extra-statutory requirements. Congress could have imposed more detailed consultation requirements, as it has done elsewhere. Gov't Br. 38 (collecting statutes). This Court, however, is "not free to impose" procedural requirements that Congress did not. *Vermont Yankee Nuclear Power Corp.* v. *Natural Res. Def. Council, Inc.*, 435 U.S. 519, 524 (1978). And respondents cannot read their preferred requirements into the bare instruction to engage in "consultation." Contra *Doe* Br. 44-45.

Miot respondents are wrong (Br. 32-33) that the exchange between DHS and State was too brief to qualify as consultation. If an emergency-room doctor asked a neurologist for a consult, *Miot* Br. 33 n.18, and the neurologist confirmed that he saw no issues, no one would question that consultation occurred—no matter the length of the response or whether the doctor told the neurologist what to consider. So too here: DHS need not request State's views in any particular way, and State need not provide them in any particular form.

Doe respondents fault (Br. 41-42) the consultation because State provided views on foreign policy, not country conditions. But the statute does not specify the content of the consultation; it states only that the Secretary "shall review the conditions in the foreign state" after consultation occurs. 8 U.S.C. 1254a(b)(3)(A). Regardless, the foreign-policy consequences of returning nationals to a particular country necessarily depend on the country's conditions. See, *e.g.*, *Munaf* v. *Geren*, 553 U.S. 674, 700-701 (2008) (political branches "determine national policy in light of" conditions in foreign countries). State's response reflected its judgment that conditions in Syria and Haiti do not present foreign-policy concerns sufficient to warrant maintaining the TPS designations.

Respondents suggest (*Doe* Br. 44; *Miot* Br. 33) that the extension of South Sudan's designation based on the lack of a current country-conditions report from State proves that the Secretary had to obtain such a report here. But when South Sudan's designation was extended, the Secretary "only had a non-current record from" State, with no updated consultation. 90 Fed. Reg. 19,217, 19,218 (May 6, 2025). The Secretary thus complied with the statute by allowing extension. Gov't Br. 45. For Haiti and Syria, by contrast, the Secretary had State's current views.

Respondents are wrong (*Miot* Br. 34) that State's response is invalid as an unexplained departure from past practice. This Court has never held that changes in internal, informal agency procedures—rather than policies "expressed in a more formal setting"—require explanation. *FDA* v. *Wages & White Lion Invs. L.L.C.*, 604 U.S. 542, 569 n.5 (2025).

B. The Secretary Lawfully Considered The National Interest

Both sets of respondents now contend (*Doe* Br. 45-48; *Miot* Br. 34-36) that the TPS statute precludes the Secretary from considering the national interest in determining whether to terminate a TPS designation. That is incorrect.

During periodic review, the Secretary must consider "whether the conditions for such designation under this subsection continue to be met." 8 U.S.C. 1254a(b)(3)(A). When the Secretary designates a country under Section 1254a(b)(1)(C) based on extraordinary and temporary conditions, the Secretary must *also* find that the designation is not "contrary to the national interest of the United States." 8 U.S.C. 1254a(b)(1)(C); see Gov't Br. 39-40.

Respondents contend (*Doe* Br. 46-47; *Miot* Br. 34-35) that the "conditions" assessed must be limited to foreign-state conditions. But the statute requires review of "conditions in the foreign state" *and* whether "the conditions for such designation" "continue to be met." 8 U.S.C. 1254a(b)(3)(A). To escape that language, *Doe* respondents contend (Br. 46) that the national-interest inquiry is a "separate factor triggering an exception," not a condition for designation. But because the Secretary must consider consistency with the national interest when designating a country under Section 1254a(b)(1)(C), that is a condition for designation that must "continue to be met" upon periodic review.

Miot respondents again assert (Br. 36) that the Secretary departed from past practice without explanation by terminating TPS based on the national interest. But TPS extension decisions have long included national-interest findings. See, *e.g.*, 57 Fed. Reg. 32,232, 32,233 (July 21, 1992). Even if the Secretary had not previ-

ously determined that the national interest warranted a termination, that hardly suggests a formal policy that termination may not be based on the national interest.

C. The Terminations Satisfy Arbitrary-And-Capricious Review

Respondents also fail to show that the terminations were arbitrary and capricious.

Haiti. *Miot* respondents echo the district court's claim that Haiti is a "'nation deep in crisis.'" Br. 37. But the Secretary acknowledged Haiti's challenges and considered them alongside improvements—including that millions of Haitians displaced by violence remained in some areas of Haiti, indicating that parts of the country are suitable for return; a new gang suppression force that would combat violence; and projections that Haiti's economy would grow. 90 Fed. Reg. 54,733, 54,735 (Nov. 28, 2025); see J.A. 753-755. The Secretary thus "examine[d] the relevant data" and explained the basis for her action, which was "rational[ly] connect[ed]" to the facts found. *Wages & White Lion*, 604 U.S. at 567.

Miot respondents also dispute (Br. 38) that TPS can serve as a pull factor for illegal immigration. But the Secretary noted that "extremely high numbers" of illegal immigrants from Haiti crossed the border "around the time of and following the latest new designations of [TPS] for Haiti by then Secretary Mayorkas." 90 Fed. Reg. at 54,737. Respondents contend (Br. 38-39) that one USCIS researcher disagreed. But the cited exchange indicates that the researcher took a limited view of what constitutes a pull factor, while others (including the Secretary) reasonably concluded that favorable immigration policies can encourage illegal immigration even if those immigrants would not benefit from the policies. See J.A. 742-743; J.A. 757 n.39 (citing "misinfor-

mation about TPS eligibility" as a factor leading to increased Haitian immigration). "[T]he mere fact that the Secretary's decision overruled the views of some of [her] subordinates is by itself of no moment in any judicial review of [her] decision." *Wisconsin* v. *City of New York*, 517 U.S. 1, 23 (1996).

Miot respondents fare no better in contending (Br. 38) that the Secretary's public-safety concerns were pretextual because aliens who commit certain crimes are ineligible for TPS. The government's inability to adequately vet TPS holders to uncover the type of criminal history that would render them ineligible is the problem. See 90 Fed. Reg. at 54,737. That information gap likewise renders the statistics respondents cite (Br. 38) underinclusive of public-safety concerns.

Syria. *Doe* respondents dispute (Br. 53-54) the Secretary's determination that Syria no longer satisfied the "ongoing armed conflict" criterion for designation. But the Secretary considered whether the nature of the conflict had changed such that "aliens who are nationals of that state" may return. 8 U.S.C. 1254a(b)(1)(A). The Secretary saw evidence of that change based on the "shift[] to localized clashes" and "sporadic, isolated episodes of violence" that had already allowed "over 1.2 million Syrians" to "return[] to Syria." 90 Fed. Reg. 45,398, 45,400 (Sept. 22, 2025). Respondents contend (Br. 53) that the Secretary's cited source post-dated the decision. But the return of displaced Syrians was documented months earlier. See 25A952 Gov't Appl. 24 n.6. The Secretary simply cited the latest reports, which, like earlier reports, indicated that there is no longer a "serious threat to the personal safety of returning Syrians." 90 Fed. Reg. at 45,400. That the State Department determined that the violence had not lessened

enough to alter its travel advisories to *U.S. citizens* is not inconsistent with the Secretary's determination.

Doe respondents also repeat (Br. 54) the district court's error in asserting that the Secretary should have considered intervening events. But the statute undisputedly does not compel the Secretary to consider such events. See Gov't Br. 42-43. Respondents instead reiterate that the Secretary's purported failure to do so departed from past practice but again fail to cite any agency policy establishing such a practice.

D. The Terminations Were Not Predetermined

Finally, respondents effectively ask the Court to disregard the "administrative findings that were made at the same time as the decision" and instead inquire into the "mental processes of administrative decisionmakers." *Citizens to Preserve Overton Park, Inc.* v. *Volpe*, 401 U.S. 402, 420 (1971). This Court requires a "strong showing of bad faith or improper behavior" to undertake such analysis, *ibid.*, but respondents make no such showing, see Gov't Br. 43-45. That the Secretary's determinations aligned with Administration policy and were consistent across agency actions is neither surprising nor improper. See *Department of Commerce* v. *New York*, 588 U.S. 752, 783 (2019); *Bouarfa* v. *Mayorkas*, 604 U.S. 6, 17 (2024).

Respondents claim (*Doe* Br. 50-51; *Miot* Br. 40-41) that the Secretary terminated TPS "regardless of country conditions" based on presidential directive. But the Secretary considered country conditions and based her decisions on her assessment of those conditions and the national interest, where appropriate. See Gov't Br. 8-9, 12-13. Further, the President's Executive Order requires compliance with the "textual requirements of th[e] statute." Exec. Order No. 14,159, 90 Fed. Reg.

8443, 8446 (Jan. 29, 2025). As the Secretary explained, that directive required her to ensure the TPS statute is "used properly." J.A. 519.

Respondents cite (*Doe* Br. 51-53; *Miot* Br. 39-40) other terminations and district-court decisions enjoining them. But respondents cannot bolster their arguments by relying on disputed decisions that are infected with the same errors the district courts made here.

III. THE EQUAL-PROTECTION CLAIM FAILS

Miot respondents' equal-protection claim lacks merit. *Trump* v. *Hawaii*, 585 U.S. 667 (2018), supplies the proper standard of review and is fatal. Moreover, regardless of the level of scrutiny, there is no plausible inference that racial animus motivated the Haiti termination. See *DHS* v. *Regents of the Univ. of Cal.*, 591 U.S. 1, 34-36 (2020) (opinion of Roberts, C.J.).

A. Rational-Basis Review Applies

Hawaii applied rational-basis review to a constitutional challenge in remarkably similar circumstances: Plaintiffs challenged a facially neutral immigration action involving national security and foreign relations, and asserted animus based on extrinsic statements. 585 U.S. at 702-704; see Gov't Br. 46-47. *Miot* respondents cannot distinguish *Hawaii*.

Miot respondents dismiss (Br. 42-43) *Hawaii*'s standard as inapplicable because they are within the United States and protected by the Due Process Clause. But that just raises the question of what standard of review governs their equal-protection claim under the Due Process Clause. When *Hawaii* assessed "various aspects of [the] plaintiffs' challenge" that "inform[ed]

[the] standard of review," the aliens' location was not considered. 585 U.S. at 702.[2]

Nor can *Miot* respondents evade *Hawaii* because it addressed 8 U.S.C. 1182(f), not the TPS statute. According to *Miot* respondents, Section 1182(f) allows for "different classes of aliens to be treated differently" and "exudes deference to the President." Br. 43. But the President used that statute to distinguish among aliens based on their nationality, see *Hawaii*, 585 U.S. at 677—a classification that Section 1254a also contemplates for TPS designations. Section 1254a likewise defers to Executive judgments by charging the Secretary with making unreviewable determinations. See Gov't Br. 22.

Miot respondents' attempts to distinguish *Hawaii*—as well as the cases from which the Court drew its standard, see Br. 43-45—ignore what *Hawaii* made clear: Rational-basis review applies "across different contexts and constitutional claims," 585 U.S. at 703—including respondents'.

B. The Termination Is Constitutional Regardless Of The Standard Of Review

Under either rational-basis review or heightened scrutiny, *Miot* respondents' equal-protection claim fails.

1. Although *Miot* respondents contend (Br. 46) they could prevail under rational-basis review, they never engage with that standard, which requires upholding an action if it is "expressly premised on legitimate pur-

---

[2] The application of heightened scrutiny in *Regents*, *supra*, is not to the contrary. The government there asserted that the equal-protection claim was not cognizable. See 591 U.S. at 34 (opinion of Roberts, C.J.). The Court declined to resolve that question because the allegations were insufficient, even under heightened scrutiny. *Ibid.*; see *id.* at 41 n.1 (Thomas, J., concurring in the judgment in part and dissenting in part).

poses" and is "plausibly related to the Government's stated objective[s]." *Hawaii*, 585 U.S. at 704-706. The Haiti termination easily passes muster. It was based on the Secretary's view of country conditions and the national interest, including national-security and foreign-policy concerns. Gov't Br. 48. Respondents assert that the Court should not "uncritically defer" to the government's assertions of national-security and foreign-policy interests. Br. 46 n.20. But they provide no basis for questioning the legitimacy of the concerns, which parallel those in *Hawaii*. Gov't Br. 47.

2. Even under heightened scrutiny, *Miot* respondents cannot prevail. They focus (Br. 46-47) on the same statements from President Trump and Secretary Noem that the district court highlighted. None involves race; many were made before the election; and most have nothing to do with TPS. Gov't Br. 49-50. Such "statements—remote in time and made in unrelated contexts— * * * fail to raise a plausible inference that" any determination "was motivated by animus." *Regents*, 591 U.S. at 35 (opinion of Roberts, C.J.). The only comments respondents cite that are "explicitly tied to the termination of Haiti's TPS designation," Br. 48, are benign statements that Haiti's TPS designation would be terminated and that TPS extensions would not "be allowed * * * going forward the way that they [we]re" under the prior Administration. J.A. 809; see *Miot* Br. 47, 49. Respondents invite the Court to infer racial animus from every statement made about a "predominantly nonwhite countr[y]," J.A. 699, or a program affecting such countries. That is untenable. See *Regents*, 591 U.S. at 34 (opinion of Roberts, C.J.).

Miot respondents further err by relying (Br. 46-48) almost exclusively on statements by the President.

Those statements do not suggest racial animus on their own terms. Moreover, respondents identify no workable theory under which they could impute the President's supposed animus to the Secretary. They cite (Br. 49) the Secretary's statement that the termination was in "furtherance" of the President's Executive Orders, but the relevant Order instructs compliance with statutory requirements. See p. 20, *supra*. Respondents' reference (Br. 49) to an "in-person conversation" between the Secretary and the President concerning Haiti's TPS designation only illustrates that accepting their argument invites discovery of deliberations between the highest-ranking government officials. This Court should categorically reject any theory that would open the door to such intrusions.

* * * * *

Because respondents are unlikely to succeed on the merits of their challenges, the Court need not weigh the equities. See *Winter* v. *Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). And because this Court granted certiorari before judgment, the government has not repeated its arguments for a stay of the lower-court rulings. But, as the government has repeatedly explained, the equitable factors weigh decisively against continued postponement of the terminations. 25A952 Gov't Appl. 27-32; 25A999 Gov't Appl. 31-37.

The orders of the district courts should be reversed.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

APRIL 2026