No. 25A952

In the Supreme Court of the United States

KRISTI NOEM, SECRETARY, DEPARTMENT OF HOMELAND SECURITY, ET AL.,
Applicants,

v.

DAHLIA DOE, ET AL.,
Respondents.

BRIEF OF HAITIAN TPS HOLDERS AS *AMICI CURIAE* IN OPPOSITION TO APPLICATION TO STAY

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INTEREST OF *AMICI CURIAE*[1]

Amici Fritz Emmanuel, Lesly Miot, Rudolph Civil, Marlene Gail Noble, Marica Merline Laguerre, and Vilbrun Dorsainvil are Haitian nationals whose protection from removal under the Temporary Protected Status (TPS) statute was terminated by Secretary Noem effective February 3, 2026, the effect of which was postponed by a February 2, 2026, order of the U.S. District Court for the District of Columbia. *See Miot v. Trump*, ___ F. Supp. 3d ___, 2026 WL 266413 (D.D.C. 2026). The government has appealed that order to the D.C. Circuit and asked that court to stay the order pending a final resolution on the merits. *Amici* submit this brief in opposition to the government's stay application in this case because the relief requested by the government could impact the *Miot* litigation and the rights that *amici* assert there.

INTRODUCTION AND SUMMARY OF ARGUMENT

The government seeks to fast-track the Court's consideration of its termination of Syria's TPS designation. But this case is not an emergency *for the government* in any meaningful sense, and granting a stay and *certiorari* before judgment here could cause earthshattering harm in other cases—like the one *amici* are currently litigating. Haitian TPS holders challenging the termination of their TPS status have a more developed record, and a reasoned (and written) 83-page district court decision, and legal challenges not raised in this case. Crucially, Haitian TPS holders face the threat of literal death if deported to Haiti while the appeal in their case is pending.

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[1] No counsel for a party authored any portion of this brief, and no person or entity other than *amici* or its counsel made any monetary contribution to its preparation or submission.

This Court should not grant expedited relief here and should instead allow these appeals to play out in the ordinary course so that the Court does not issue rushed decisions without a full appreciation of their broader impact.

Haiti is one of the most—if not the most—unsafe, unstable countries in the world. Haiti has aptly been described as a "a maelstrom of disease, poverty, violence (including sexual violence) and death." George F. Will, *A federal judge schools chaotic Kristi Noem*, WASH. POST (Feb. 6, 2026), http://tiny.cc/8msz001. Just last month, the bodies of four recently deported Haitian women were found in a river—the women's heads had been cut off. Hector Rios Morales, *Four Haitian Women Were Deported From Puerto Rico; They Have Now Been Found Decapitated*, LATIN TIMES (Feb. 4, 2026), http://tiny.cc/bmsz001. This was not an isolated incident; indeed, according to the Department of Homeland Security's own sources, Haiti is "deep in crisis," with state authority "largely absent" and, thus, unable to quell the "catastrophic" violence that has "paralyzed" the country. *Miot*, 2026 WL 266413, at *25 (quoting, inter alia, the Certified Administrative Record ("CAR") produced by the government in *Miot*). Put simply: people deported to Haiti face mortal danger the moment they arrive.

Amici are among the 350,000 people who could face this mortal danger should this Court rule for the government in this case. The district court in *Miot* postponed the effect of Secretary Noem's termination of Haiti's TPS designation, and a decision on the government's fully briefed application to stay that ruling is currently pending in the D.C. Circuit. Even though necessarily provisional, a broad jurisdictional ruling in this case at this stage of the proceedings could effectively, if not formally, foreclose

viable claims and cause *amici*—and hundreds of thousands of other TPS holders—to be deported before their claims are resolved on the merits.

And the evidence in *Miot* shows that Secretary Noem terminated Haiti's TPS designation because the current President simply does not like people from Haiti. During a now-infamous 2024 Presidential debate, the President falsely claimed that Haitian TPS holders in Springfield, Ohio, were "eating the dogs" and "eating the cats" of citizens. Austin Williams, *Trump falsely claims migrants in Ohio are eating pets*, LIVENOW FOX (Sept. 10, 2024, 11:00 PM EDT), https://bit.ly/4spozqC. Shortly thereafter, he promised that if re-elected he "absolutely . . . would revoke" Haiti's TPS designation and send Haitians "back to their country." Maggie Astor, *Trump Says He Would Try Again to Revoke Haitian Immigrants' Protections*, N.Y. TIMES (Oct. 3, 2024), https://nyti.ms/45682P7. Upon taking office, at the earliest possible opportunity, and with the help of Secretary Noem, he kept that promise.[2]

After echoing the President's sentiments at her confirmation hearing and later declaring that "[w]hen the President gives a directive [about TPS], the Department of Homeland Security will follow it," the Secretary did just that. *Homeland Security*

[2] The President's animus is not new. He has derided Haitian immigrants as undesirable people from "shithole countries." Jonathan J. Cooper, *Trump once denied using this slur about Haiti and African nations. Now he boasts about it*, ASSOCIATED PRESS (Dec. 9, 2025, 9:36 PM CST), http://tiny.cc/9ssz001; Daniel Dale, *Almost eight years later, Trump confirms he used the phrase 'shithole countries,'* CNN (Dec. 10, 2025), http://tiny.cc/9tsz001. He said Haitian immigrants "all have AIDS." Michael D. Shear & Julie Hirschfeld Davis, *Stoking Fears, Trump Defied Bureaucracy to Advance Immigration Agenda*, N.Y. TIMES (Dec. 23, 2017), http://tiny.cc/0luz001. And he bemoaned TPS for Haitians by asking: "Why do we need more Haitians" in the United States. Josh Dawsey, *Trump derides protections for immigrants from 'shithole' countries*, WASH. POST (Jan. 12, 2018), http://tiny.cc/dssz001.

Secretary Nominee Governor Kristi Noem Testifies at Confirmation Hearing, C-SPAN (Jan. 17, 2025), https://bit.ly/4aeqoB0; Kristi Noem (@Sec_Noem), X (Jan. 29, 2025), https://bit.ly/48AWxBI. Although TPS holders are, as a matter of law, *not* illegal immigrants, 8 U.S.C. § 1254a(f)(4), the Secretary terminated Haiti's TPS designation in "furtherance of" the President's directive "to rescind policies that led to increased or continued presence of illegal aliens in the United States." 90 Fed. Reg. 54733, 54736 (Nov. 28, 2025) (citing 90 Fed. Reg. 8443, 8446 (Jan. 29, 2025)); 90 Fed. Reg. 28760, 28762 (Jul. 1, 2025); 90 Fed. Reg. 10511, 10513 (Feb. 24, 2025).

This Court should not issue a broad stay with implications in other TPS cases but should instead let those cases—including *Miot*—play out in the ordinary course. For one thing, *Miot* presents legal issues not considered by the district court in its oral ruling below, including whether the TPS statute supersedes 5 U.S.C. § 559; a still-live constitutional claim under the equal protection clause; a challenge to the Secretary's unexplained departure from past agency practice; and a claim that the Secretary's "national interest" determination violated the non-delegation doctrine. It also fails to account for the unique record developed in *Miot*, including direct evidence of the Secretary's failure to satisfy her statutory obligations.

That is why this Court should not issue a preliminary decision on the merits in this case: such a decision would benefit from the more fully developed record and arguments present in *Miot* (which the Court can consider in the ordinary course). Issuing a broad order in this case in this posture is particularly problematic because it does not present threshold issues that must be considered in any jurisdictional

ruling. Unlike *Miot*, this case as litigated raises neither the question whether 5 U.S.C. § 559 renders 8 U.S.C. § 1254a(b)(5)(A) inapplicable to APA claims nor the question whether § 1254a(b)(5)(A), if it is applicable, precludes judicial review of constitutional claims. In addition to presenting these antecedent issues, *Miot* raises a bevy of APA claims not asserted in this case—and does so against the backdrop of a more complete record and written trial court decision.

ARGUMENT

I. A broadly worded stay could inflict immediate, severe, and irreversible harm on Haitian TPS holders.

A. More than 350,000 Haitian nationals could be made removable to one of the world's most dangerous countries.

Haiti is among the most violent nations on the planet. "The Certified Administrative Record" in *Miot* "contains over 1,450 pages, and it speaks with remarkable consistency." *Miot*, 2026 WL 266413, at *25. Haiti has the world's highest homicide rate, with gangs killing at least 5,601 people in 2024 and at least 4,384 people in the first nine months of 2025. *Miot* D. Ct. Dkt. 78–5 at 177; *Haiti Events of 2025, World Report 2026*, HUM. RTS. WATCH, http://tiny.cc/cmsz001 [hereinafter *HRW Report*]. Gangs control an estimated 90% of Haiti's capital Port-au-Prince. *Haiti's gangs have 'near-total control' of the capital, U.N. says*, NPR (July 3, 2025), http://tiny.cc/emsz001. And that grip has steadily grown as criminal groups have recently "expanded into previously secure areas and key regions in the Artibonite, Centre, and Northwest departments." *HRW Report*.

The downstream effects of gang rule are equally horrific. Haitian children "are

being forcibly recruited and subjected to sexual violence." *Miot*, 2026 WL 266413, at *25 (quoting CAR.78-7 at 91). "Threats of violence have forced essential services to shut down, including hospitals and roadways." *Id.* (quoting CAR.78-7 at 150). "Hospitals, health centres and schools are routinely attacked and at the brink of collapse." *Id.* (quoting CAR.78-13 at 149). Having "less access to clean water" has led to reports of "cholera on the rise in Haiti." *Id.* (quoting CAR.78-7 at 130); *see also id.* ("resurgence of cholera" has "further complicated the crisis") (quoting CAR.78-12 at 71). And, to make this "perfect storm of suffering" worse, *id.* at *34 (quoting CAR.78-13 at 179–80), some 5.7 million Haitians face "acute food insecurity and 600,000 are experiencing famine, one of the highest rates worldwide." *HRW Report*.

"Escalating terrorist and insurgent gang violence" has also driven Haitians from their homes. *Id.* (quoting CAR.78-7 at 91). Just last year, it "displaced more than 1.4 million people." Marius Loiseau, *How Far Will the Dominican Republic Go in Deporting Haitians?*, INSTICK (Feb. 26, 2026), https://bit.ly/4bmfRUn. And half of those displaced are children. Romain Le Cour Grandmaison, *Ending Haiti's Criminal Governance Crisis*, AMERICAS QUARTERLY (Sept. 25, 2025), http://tiny.cc/7msz001. This "unprecedented level" of displacement "marks the highest figure ever recorded in the country and represents a 36 per cent increase since the end of 2024." *Displacement in Haiti Reaches Record High as 1.4 Million People Flee Violence*, INT'L ORG. FOR MIGRATION (Oct. 15, 2025), http://tiny.cc/fmsz001.

None of this is news to the government. The State Department has issued a Level 4 travel advisory warning against "travel[ing] to Haiti for any reason" because

of "kidnapping, crime, terrorist activity, civil unrest, and limited health care." *Id.* at *2. The advisory notably applies to "all . . . parts of Haiti," *Miot* D. Ct. Dkt. 81-1 ¶ 20, contradicting the Secretary's assertion that "parts of the country are suitable to return to." 90 Fed. Reg. at 54735. Meanwhile, the Federal Aviation Administration last year extended its ban on commercial flights to Port-au-Prince "because of the risk that powerful gangs might attack flights with drones and small arms." *Miot*, 2026 WL 266413, at *25 (quoting CAR.78-8 at 17). Just *this week*, the FAA extended the ban not only for Port-au-Prince but for "areas beyond Port-au-Prince . . . noting that gangs have increasingly attacked the Artibonite and Centre departments north of the capital." *US extends ban on commercial flights to Haiti's capital due to gang violence*, ASSOCIATED PRESS (Mar. 4, 2025, 4:06 PM CST), https://tinyurl.com/5777nk7k.

These dangers would be even greater for returning TPS holders, many with "no meaningful ties to the country" because they arrived in the United States as children. *Miot*, 2026 WL 266413, at *35. Linguistic unfamiliarity would make some "vulnerable target[s] for gangs." *Id.*; *see also* Bri Buckley, *Haitian woman fears being sent back to gang-ravaged homeland*, CBS NEWS (Dec. 2, 2025), http://tiny.cc/qosz001 (describing TPS holder's fear of "becom[ing] a target to a terrorist group"). The "ongoing medical conditions" of others, meanwhile, would pose an added risk given their need for "consistent treatment and prescription medication," the loss of which could prove fatal. *Miot*, 2026 WL 266413, at *35. And with the Haitian health system "near collapse," their odds of survival if removed are slim. *HRW Report*.

B. Haitian TPS holders removed from the United States would have no recourse if the Secretary's termination of Haiti's TPS designation ultimately is deemed unlawful.

If a stay is granted and the government moves to immediately deport Haitian TPS holders, the perils posed by the potential removal would be a one-way ratchet. A wrongfully removed TPS holder would have no avenue to return because TPS does not grant holders admission but instead protects them from removal. *Sanchez v. Mayorkas*, 593 U.S. 409, 412, 414 (2021). The government conceded in *Miot* that once removed, Haitian TPS holders would have no right to return even if they prevail on the merits. *Miot* D. Ct. Dkt. 101 at 19:11–19. And even if not immediately deported, many could be subject to indefinite detention pending removal. *See, e.g.*, *Matter of Yajure Hurtado*, 29 I.&N. Dec. 216, 220 (BIA 2025). "The harm from detention surely cannot be remediated after the fact" and, therefore, is "a quintessential irreparable harm." *Make the Rd. N.Y. v. Noem*, 805 F. Supp. 3d. 139, 171 (D.D.C. 2025).

C. Removal of Haitian TPS holders would separate parents from their American citizen children.

Haitian TPS holders could also suffer "irreparable harm through forced family separation" because many are parents of United States citizen children. *Miot*, 2026 WL 266413, at *35. "Such separations would inflict great and lasting harm on both [TPS holders] and their United States-based family members—harm that cannot be remedied by a later ruling." *Id.* The stay requested by the government only magnifies this threat.

An estimated 50,000 United States citizen children "have at least one parent who is a Haitian TPS holder." Danae King, *What happens to U.S. citizen children if*

Haitians with TPS are deported?, THE COLUMBUS DISPATCH (Feb. 12, 2026), http://tiny.cc/qqsz001. Faced with the threat of removal, some parents have had to "designate guardians" or "find short-term respite care" for their children. *Id.* County governments also have had to "prepare for a potential increase of children who may need to enter into children services custody." *Id.* In Springfield, Ohio, for example, the parents of "more than 1,000 children" born to Haitian TPS holders, "most of whom are under age 5," would be faced with the impossible choice between leaving their children in the United States, where many would be directed to children services, and subjecting them to the carnage of a nation that has never been their home. Katie Millard, *Springfield deportation concerns leave 1,000 US citizen children with limited options*, WCMH COLUMBUS (Feb. 18, 2026), http://tiny.cc/1rsz001. Unsurprisingly, many Haitian TPS holders faced with this once-unimaginable situation have taken their families into hiding, seeking sanctuary in the basements and spare bedrooms of neighbors. Miriam Jordan, *Inside the Underground Safe Houses Sheltering Immigrants From ICE*, N.Y. TIMES (Mar. 3, 2026), http://tiny.cc/9psz001.

II. The government will not be harmed by the denial of a stay.

A. The government cannot identify any concrete harm attributable to the postponement of the Secretary's termination decisions.

In the face of literal death, the government's claimed harm is woefully small, and certainly remediable on appeal. The constitutional harm the government identifies is not irreparable and undercuts its request for a stay. Indeed, this is dispositive of the request for a stay: even if it was "probably right" on the merits, that the government "would suffer little harm" if the district court order's remains in effect

means it that "would not be entitled to interim relief." *Mirabelli v. Bonta*, 607 U.S. ___, 2026 WL 575049, at *4 (2026) (Barrett, J., concurring).

Rather than explain its harm, the government instead characterizes a pair of this Court's emergency docket decisions granting stays in another case as an endorsement of the view that it is harmed when a district court order "block[s] the Secretary's implementation of a core administration policy." Gov't.Appl.28. The government is mistaken; this Court has made no such endorsement.

Neither of the supposedly "materially identical cases" cited by the government even mentions irreparable harm, much less explains this Court's decision to grant a stay. Gov't.App.32 (citing *Noem v. Nat'l TPS Alliance*, 145 S. Ct. 2728 (2025) (*NTPSA I*); *Noem v. Nat'l TPS Alliance*, 146 S. Ct. 23 (2025) (*NTPSA II*)). This is in clear contrast to other stay orders entered on the emergency docket. *See, e.g.*, *Dep't of Educ. v. California*, 604 U.S. 650, 651–52 (2025) (finding that "the Government is likely to succeed" on immunity waiver and that the "remaining stay factors" favor stay); *Trump v. Sierra Club*, 588 U.S. 930, 930 (2019) (granting stay where Court found that "the Government has made a sufficient showing at this stage that the plaintiffs have no cause of action"). Devoid of explanation, the *NTPSA* stay orders do not bear the weight that the government places on them. *Cf. NIH v. American Public Health Association*, 145 S. Ct. 2658, 2663–64 (2025) (Gorsuch, J., concurring) (explaining that it is a decision's "reasoning—its *ratio decidendi*"—that "carries precedential weight in future cases").

This Court's decision in *Trump v. Boyle*, 145 S. Ct. 2653 (2025), likewise lends

no credence to the government's view that the stay orders in *NTPSA I* and *NTPSA II* control here. To be sure, *Boyle* instructs that this Court's interim stay orders "inform how a court should exercise its equitable discretion in like cases." 145 S. Ct. at 2654. What the government fails to acknowledge, however, is that *Boyle* relied on an order in which this Court expressly said "that the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty." *Id.* (quoting *Trump v. Wilcox*, 145 S. Ct. 1415, 1415 (2025)). The Court also provided a reason: "to avoid the disruptive effect of the repeated removal and reinstatement of officers during the pendency of this litigation." 145 S. Ct. at 1415.

Not so of *NTPSA I* and *NTPSA II*, in which this Court, whatever its reasons, chose to omit any "probabilistic holdings" or "reasoning" that might have afforded them "precedential weight." *NIH*, 145 S. Ct. at 2663–64 (Gorsuch, J., concurring); *see also Labrador v. Poe by & through Poe*, 144 S. Ct. 921, 934 (2024) (Kavanaugh, J., concurring) ("[I]ssuing opinions for the Court with respect to emergency applications may sometimes be appropriate, but we should exercise appropriate caution before doing so."); *Arthur v. Dunn*, 580 U.S. 977, 977 (2016) (Roberts, C.J., concurring) (providing fifth vote to grant interim relief "as a courtesy" even though "I do not believe that this application meets our ordinary criteria for a stay").

B. The President's recent statements at the State of the Union refute the existence of any harm to the government.

The argument that the district court's order "prevents the Government from enforcing its policies" is belied by the words of the same people responsible for crafting

and enforcing those policies. Gov't.Appl.28–29 (quoting *Trump v. CASA, Inc.*, 606 U.S. 831, 859 (2025)). Just days ago, the President told Congress that "we now have the strongest and most secure border in American history by far." THE WHITE HOUSE, *President Donald J. Trump's 2026 State of the Union Address*, at 17:32 (YouTube, Feb. 24, 2026), http://tiny.cc/cvsz001. The President added that "zero illegal aliens have been admitted to the United States" in the prior nine months. *Id.*

A simultaneous press release from Secretary Noem's own agency echoes the President's declaration of his immigration policy's unmitigated success. It declared that "President Trump has delivered the most secure border in U.S. history." Press Release, Dep't of Homeland Sec., *Making America Safe Again: The State of DHS Under President Trump and Secretary Noem* (Feb. 24, 2026), http://tiny.cc/dvsz001. And just a few weeks earlier, DHS announced that it "continue[s] to set new records for border security," including "historic lows" in encounters and apprehensions and "[r]ecord drug seizures." Press Release, Dep't of Homeland Sec., *Historic 9th Straight Month of Zero Releases at the Border* (Feb. 4, 2026), http://tiny.cc/fvsz001.

The current administration's recent and categorical claims of its immigration policy's success rebut the government's claim that the district court's order is "effectively prohibiting enforcement of that policy in perpetuity." Gov't.Appl.28. The President and the Secretary declared these victories even as the district court's order and others like it continue to defer the effect of the Secretary's decisions to terminate the TPS designations of several countries. In other words, the administration achieved its signature immigration policy goals of unprecedented border security and

crime reduction without needing those terminations to take immediate effect.

C. A broadly worded stay could harm the United States economy, its workforce, and the public fisc.

In actuality, issuing a broad jurisdictional ruling in an emergency posture could harm the government and the public. TPS holders are not marginal participants in American economic life. They are estimated to contribute "over $36 billion in annual GDP," and their labor force participation rate is estimated to exceed American-born individuals by 15%. Jesús Villero et al., *550,000 Workers Lose Status by End of 2025: Potential Impact by State and Industry*, PENN WHARTON BUDGET MODEL (Nov. 19, 2025), http://tiny.cc/gvsz001. In fact, "mass deportations amidst an already tight labor market will shutter business, disrupt supply chains, drive up costs for consumers, and put jobs at risk." Letter from Jody Calemine, Dir., Gov't Affs (Jul. 17, 2025) http://tiny.cc/hvsz001.

The regional impact is stark. In Miami, Florida, "TPS holders contribute hundreds of millions of dollars annually in state and federal taxes, and they pump more than a billion dollars a year into the national and local economies[.]" Max Klaver, *Haitian TPS ends on Tuesday. No economy will be hit harder than Greater Miami's*, MIAMI HERALD (Feb. 3, 2026, 3:37 PM), http://tiny.cc/ivsz001. And in New York, TPS holders contributed over $654 million in federal, state, and local taxes in 2023 alone. Press Release, *Attorney General James Defends Haitian and Venezuelan Immigrants' Temporary Protected Status* (Nov. 12, 2025), http://tiny.cc/mvsz001.

The specter of removal raised by a broadly worded stay means "the United States would lose not only a vital segment of its workforce but also a significant source

of tax revenue." *Miot*, 2026 WL 266413, at *37. TPS holders pay federal and state income taxes, payroll taxes, and contributions to Social Security and Medicare—programs for which TPS holders by law do not qualify to use—generating billions in tax revenue annually that supports the very public programs and infrastructure the government purports to protect. *Id.* Allowing the removal of these workers from the labor force would not reduce the burden on public resources; it would eliminate a substantial source of the revenue that funds them.

The possible downstream effects of a sweeping stay are not strictly economic. Catholic Health Services warns that "[i]f TPS ends, our patients—the aging, the vulnerable—will feel the loss the most" following the sudden lapse of work authorization for many "experienced caregivers." Cristina Cabrera Jarro, *Extending TPS for Haitians: The right things to do*, ARCHDIOCESE OF MIAMI (Feb. 10, 2026), https://bit.ly/408buGn. The nation's reliance on TPS holders during the COVID-19 pandemic, when more than 131,000 TPS holders served as "essential critical infrastructure workers," provides a powerful illustration of what the public stands to lose. Nicole Svajlenka & Tom Jawetz, *A Demographic Profile of TPS Holders Providing Essential Services During the Coronavirus Crisis*, CENT. FOR AM. PROGRESS (Apr. 14, 2020), http://tiny.cc/ovsz001.

The government asks this Court to ignore both its own and the broader public's reliance on TPS holders in favor of political expedience. But the social and economic consequences threatened by a broadly worded stay are not speculative: they manifest in billions of dollars in lost GDP and tax revenue, the loss of caregivers for vulnerable

patients, the loss of a dependable workforce for American businesses, and the erosion of local communities. The government's failure to identify any harm, much less irreparable harm that would justify disregarding these immense social and economic losses, necessarily forecloses any stay, regardless whether it is "probably right." *Mirabelli*, 2026 WL 575049, at *4 (Barrett, J., concurring).

III. The judicial review bar does not support a broadly worded stay.

The government is also wrong on the law. As the government states, the TPS statute is unambiguous. Gov't.Appl.15. By its plain terms, the provision bars judicial review only of a "*determination* . . . with respect to the designation, or termination or extension of a designation, of a foreign state under this subsection." 8 U.S.C. § 1254a(b)(5)(A) (emphasis added). It does not strip the Court of jurisdiction over Respondents' APA claims, which challenge the Secretary's compliance with the required statutory *procedures*, not her *determination* as to any TPS designation. Nor does the government explain how it should bar a *constitutional challenge*.

Nearly every court to reach the issue has held that "§ 1254a(b)(5)(A) was designed to bar judicial review of substantive" findings with respect to "country-specific conditions" that are made "in service of TPS designations, terminations, or extensions . . . [,] not judicial review of general procedures or collateral practices related to such." *Nat'l TPS Alliance v. Noem*, 773 F. Supp. 3d 807, 831 (N.D. Cal. 2025); *accord Haitian Evangelical Clergy Ass'n v. Trump*, 789 F. Supp. 3d 255, 269 (E.D.N.Y. 2025); *Saget v. Trump*, 375 F. Supp. 3d 280, 330–32 (E.D.N.Y. 2019); *CASA de Md., Inc. v. Trump*, 355 F. Supp. 3d 307, 317–21 (D. Md. 2018); *Ramos v. Nielsen*,

336 F. Supp. 3d 1075, 1102 (N.D. Cal. 2018), *vacated and remanded sub nom. Ramos v. Wolf*, 975 F.3d 872 (9th Cir. 2020*), reh'g en banc granted, opinion vacated*, 59 F.4th 1010 (9th Cir. 2023); *Centro Presente v. DHS*, 332 F. Supp. 3d 393, 408–09 (D. Mass. 2018). Section 1254a(b)(5)(A) "does not prevent courts from reviewing and setting aside agency action that is procedurally deficient." *HECA*, 789 F. Supp. 3d at 269.

This consensus is rooted in this Court's settled precedent, namely, *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479 (1991), which construed a provision analogous to § 1254a(b)(5)(A). *See HECA*, 789 F. Supp. 3d at 269; *Nat'l TPS Alliance*, 773 F. Supp. 3d at 831; *Saget*, 345 F. Supp. 3d at 295; *CASA*, 355 F. Supp. 3d at 317–18; *Centro Presente*, 332 F. Supp. 3d at 407.

McNary involved 8 U.S.C. § 1160's establishment of a procedure by which undocumented foreign agricultural workers could apply for an adjustment of their immigration status. Section 1160(a)(1) instructs that the Attorney General "shall adjust" an applicant's status if she "determines" that the applicant is eligible under the specified criteria. Individuals whose applications were denied sued, claiming that the process for making those determinations "was conducted in an arbitrary fashion that deprived applicants of the due process guaranteed by the Fifth Amendment to the Constitution." 498 U.S. at 487. The question in *McNary* was whether the plaintiffs' claims were barred by § 1160(e)'s instruction that "[t]here shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section." The government argued that courts lacked jurisdiction to hear the plaintiffs' suit because it was "an action seeking 'judicial

review of a determination respecting an application for adjustment of status'" and "therefore barred by the plain language" of § 1160(e). 498 U.S. at 491.

This Court disagreed. The statute's "reference to 'a determination' describes a single act rather than a group of decisions or a practice or procedure employed in making decisions." *McNary*, 498 U.S. at 492. But its preclusion of claims challenging "a determination" did not bar "general collateral challenges to unconstitutional practices and policies used by the agency in processing applications." *Id.*

McNary is dispositive here. Using materially indistinguishable language from that of § 1160(e), § 1254a(b)(5)(A) bars judicial review only as to a "determination of the [Secretary] with respect to the designation, or termination or extension of a [TPS] designation." Section 1254a(b)(5)(A) thus "is best read as barring judicial review of the merits of the determination itself, but not whether the determination" was the result of unlawful "practices and policies." *CASA*, 355 F. Supp. 3d at 320.

Respondents' and *amici*'s claims are procedural, not substantive. They do not contest the correctness of the Secretary's *determinations* with respect to country conditions or national interest—only the *process* by which she made them.

That Respondents' and *amici*'s claims are procedural rather than substantive is evident from the relief they seek. They "do not seek a substantive declaration from the Court they are entitled to a TPS determination in their favor," and their "success in this case would not compel Defendants to extend [their] TPS designation[s]." *Saget*, 375 F. Supp. 3d at 332. Setting aside the Secretary's decision "does not dictate how the Secretary should ultimately rule on a TPS designation, termination, or

extension." *Nat'l TPS Alliance*, 773 F. Supp. 3d at 832. The Secretary need only "make a new, good faith, fact-and evidence-based determination" applying "lawful criteria" before terminating a TPS designation. *Saget*, 375 F. Supp. 3d at 332.

There is nothing to the government's argument that § 1254a(b)(5)(A)'s use of the word "any" to modify "determination" means Congress intended a uniquely broad bar on judicial review. Gov't.Appl.16. The analysis always begins with a "strong presumption that Congress did not mean to prohibit all judicial review of executive action." *Bowen v. Michigan Acad. of Fam. Physicians*, 476 U.S. 667, 681 (1986) (internal citations omitted). And only "a showing of clear and convincing evidence" can overcome this presumption. *Id.* The government's reliance on the word "any" falls far short of that standard. Nothing in § 1254a(b)(5)(A)'s text provides the clear and convincing evidence necessary to displace judicial review. The phrase "any determination" means what it says: any determination. The breadth of the modifier does not alter the meaning of the underlying subject.

This Court "ordinarily presume[s] that Congress intends the executive to obey its statutory commands and, accordingly, that it expects the courts to grant relief when an executive agency violates such a command." *Bowen*, 476 U.S. at 681. "That presumption has not been surmounted here," so the default expectation applies. *Id.*

IV. A broadly worded stay could absolve the Secretary of any obligation to meet the standard Congress prescribed as a precondition to any decision to terminate a TPS designation.

A. The Secretary did not conduct the required interagency consultation before making her determinations.

The Secretary did not satisfy her obligation to "consult[] with appropriate

agencies of the Government" before terminating Haiti's or Syria's TPS designation. 8 U.S.C. § 1254a(b)(3)(A). At least in Haiti's case, she deliberately flouted it.

On September 5, 2025, a DHS staffer requested that someone "reach out to Department of State to satisfy the consultation requirement for" the Secretary's "consideration (again) of TPS Haiti." *Miot* D. Ct. Dkt. 78–7 at 10. A recipient then emailed a State Department staffer: "Due to the litigation, we are re-reviewing country conditions in Haiti based on the original TPS deadline. Can you advise on State's views on the matter?" *Id.* at 9. The State Department staffer responded less than an hour later: "State believes there would be no foreign policy concerns with respect to a change in the TPS status of Haiti." *Id.* This was the entirety of the government's "consultation" with other agencies regarding Haiti's TPS designation. 8 U.S.C. § 1254(a)(b)(3)(A); *Miot* D. Ct. Dkt. 101 at 19:14–21:6.

The government prefers to read "consultation" to mean only the most cursory exchange. But Congress required more. This Court need not "defer to some conflicting reading the government might advance." *Niz-Chavez v. Garland*, 593 U.S. 155, 160 (2021). Indeed, to "defer" to the Secretary's preferred interpretation "simply because" the term might arguably be "ambiguous" would be improper. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024). Instead, this Court gives the term its "ordinary meaning at the time Congress adopted" the TPS statute. *Niz-Chavez*, 593 U.S. at 160. Consultation at the time was defined as the "[a]ct of consulting or conferring; *e.g.*, patient with doctor; client with lawyer" and as "[d]eliberation of persons on some subject." *Consultation*, Black's Law Dictionary 316 (6th ed. 1990). Courts likewise

have construed "consultation" to require a "meaningful exchange of information," *California Wilderness Coal. v. U.S. Dep't of Energy*, 631 F.3d 1072, 1086 (9th Cir. 2011), or "reciprocal communication of some substance." *Doe v. Noem*, No. 25-C-15483, 2026 WL 184544, at *13 (N.D. Ill. Jan. 23, 2026). Indeed, where a statute requires "meaningful consultation," a valid agency determination can be made only "after" such consultation has occurred. *Nat'l Wildlife Federation v. Coleman*, 529 F.2d 359, 371 (5th Cir. 1976); *see also Silver v. Babbitt*, 924 F. Supp. 976, 986 (D. Ariz. 1995) (finding agency violates statutory consultation requirement where agency makes decision "prior to completion of . . . consultation").

This Court's discussion of agency consultation requirements in other contexts reinforces this rule that a valid consultation must be reciprocal, substantive, and antecedent to the decision it informs. Examples include "meetings," "conference calls," and "exchanged emails and draft documents on the proposed [agency action] and its potential effect[s]." *U.S. Fish & Wildlife Serv. v. Sierra Club, Inc.*, 592 U.S. 261, 265 (2021); *see also Aberdeen & Rockfish R. Co. v. Students Challenging Regulatory Agency Procs.*, 422 U.S. 289, 321 (1975) (finding statute's "consultation" requirement met through "hearings held—both oral and written" and "draft impact statements" being "circulated"). This Court has also described "consultation with other agencies" as a way to "comprehensively evaluate" the issue to be decided. *Seven Cnty. Infrastructure Coalition v. Eagle Cnty., Colo.*, 605 U.S. 168, 189 (2025); *see also Roe v. Flores Ortega*, 528 U.S. 470, 478 (2000) ("By 'consult,' the Court means advising

the defendant about the advantages and disadvantages of taking an appeal and making a reasonable effort to discover the defendant's wishes.").

No such consultation occurred before the Secretary terminated Haiti's TPS designation. DHS did not deliberate or meaningfully exchange information with the State Department regarding conditions in Haiti, much less "with agenc*ies*—plural, not singular" as the statute requires. *Miot*, 2026 WL 266413, at *20–23; *see also Doe*, 2026 WL 184544, at *15 (concluding similarly brief email exchange on Burma did not meet consultation requirement); *African Cmtys. Together v. Noem*, No. 25-cv-13939, 2026 WL 395732, at *12 (D. Mass. Feb. 12, 2026) (calling similar email exchange on South Sudan "plainly . . . inadequate"). The emails exchanged between DHS and State Department staffers instead reflect a request for "a rubber stamp or a sign-off on a decision that ha[d] already been made." *Doe*, 2026 WL 184544, at *13.

Past TPS consultations provide a guide to what an actual consultation entails. Previously, the State Department's Bureau of Population, Refugees, and Migration would collaborate with the relevant regional bureau and overseas embassy to prepare a memorandum and country conditions report. U.S. Gov't Accountability Off. Report 20-134, *Temporary Protected Status: Steps Taken to Inform and Communicate Secretary of Homeland Security's Decisions* 18, 23 (2020). The Secretary of State would review the memorandum and send a recommendation letter and final country conditions report to DHS to inform the Secretary's TPS determination. *Id.* at 22–23. The two-sentence email exchange between DHS and State Department staffers included no report or recommendation—just a conclusion that "there would be no

foreign policy concerns." *Miot* D. Ct. Dkt. 78–7 at 9; *see also Miot* D. Ct. Dkt. 101 at 47:20–50:25.

B. The TPS statute does not allow for the Secretary's across-the-board invocation of the "national interest."

The Secretary impermissibly based her decision predominantly on her view of whether retaining TPS for Haiti was in the national interest of the United States. But before anything else, the Secretary was required to "review the conditions in the foreign state" and "determine whether the conditions for such designation . . . continue to be met." 8 U.S.C. § 1254a(b)(3)(A). The national interest plays no role in that necessary first step of the periodic review process.

Moreover, the Secretary's "expansive" national interest standard sweeps too broadly. 90 Fed. Reg. at 54735; *see also Wilmer Cutler Pickering Hale & Dorr LLP v. Exec. Office of President*, 784 F. Supp. 3d 127, 149 (D.D.C. 2025) (refusing to give "unlimited deference to the broad concept of national interest"); *cf. Cole v. Young*, 351 U.S. 536, 547 (1956) (rejecting "indefinite and virtually unlimited meaning" of national security). Permitting the Secretary to terminate all TPS designations—as she has done, *Miot* D. Ct. Dkt. 98 at 4; *Miot* D. Ct. Dkt. 113—simply because she believes TPS designations are contrary to the national interest would "distort [the statute's] text by converting the exception into the rule," an act that lies beyond her authority. *TRW Inc. v. Andrews*, 534 U.S. 19, 29 (2001).

In any event, the Secretary failed to apply her own standard "to the relevant population: Haitian *TPS holders*." *Miot*, 2026 WL 266413, at *27. Specifically, she must "find[] that permitting [Haitian TPS holders] to remain temporarily in the

United States is contrary to the national interest." 8 U.S.C. § 1254a(b)(1)(C). No such finding occurred. Instead, the Secretary expressed concern regarding *Haitians* in general. Consequently, she examined data arising from cohorts to which TPS holders do not belong, justifying her termination as necessary to prevent *Haitians* from entering the United States unlawfully or overstaying their visas. 90 Fed. Reg. at 54736. But TPS holders can neither enter unlawfully nor overstay their visas because they already are in the United States and not pursuant to a visa. The threat of a migration "pull" factor is belied by both the statute's limited applicability—to Haitians present in the United States at the time of designation, 8 U.S.C. § 1254a(c)(1)(A)—and the President's proclamation banning Haitians from entering the country. Proc. No. 10998, 90 Fed. Reg. 59717, 59722 (Dec. 19, 2025). Thus, there is "no reasoned basis to believe that terminating Haiti's TPS designation will address any of the concerns she raised." *Miot*, 2026 WL 266413, at *29.

Nor can the Secretary avoid Congress's directives or insulate her decision from judicial review merely by recasting it as a foreign policy matter. "The Executive is not free from the ordinary controls and checks of Congress merely because foreign affairs are at issue." *Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 19–20 (2015). Indeed, "it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance." *Baker v. Carr*, 369 U.S. 186, 211 (1962).

Regardless, administering TPS is not a foreign policy matter. It is a *domestic* program that "provides humanitarian relief to foreign nationals" who are already "in the United States" and whose countries are "beset by especially bad or dangerous

conditions, such as arise from natural disasters or armed conflicts." *Sanchez v. Mayorkas*, 593 U.S. 409, 412 (2021); *accord De Leon-Ochoa v. Att'y General of U.S.*, 622 F.3d 341, 353 (3d Cir. 2010) ("By the terms of the statute, the TPS program was designed to shield aliens already in the country from removal when a natural disaster or similar occurrence has rendered removal unsafe."). While it confers nonimmigrant status on foreign nationals, TPS "'does *not* create an admissions program'" and, thus, "'gives no alien any right to come to the United States.'" *Celaya-Martinez v. Holder*, 493 F. App'x 934, 940 (10th Cir. 2012) (quoting H.R. Rep. No. 101–245, Vol. 2, Doc. 17, at 13 (1989)); *accord Sanchez*, 593 U.S. at 414.

This distinction "runs throughout immigration law." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). And it is decisive here. Because the Secretary's national interest finding did not involve "the admission and exclusion of foreign nationals," *cf. Trump v. Hawaii*, 585 U.S. 667, 702 (2018), the government's argument that courts are "uniquely unqualified to second-guess the national interest in this foreign-policy-laden context of immigration policy" rings hollow. Gov't.Appl.25.

The Secretary's conclusory invocation of national *security*, which appears nowhere in the TPS statute, does not shield her termination decision from scrutiny. As this Court has cautioned, "national-security concerns must not become a talisman used to ward off inconvenient claims—a 'label' used to 'cover a multitude of sins.'" *Ziglar v. Abbasi*, 582 U.S. 120, 143 (2017); *accord Hamdi v. Rumsfeld*, 542 U.S. 507, 535–36 (2004) (rejecting executive attempts to "*condense* power into a single branch of government" by shielding actions taken to protect national security from review);

Lee v. Garland, 120 F.4th 880, 891 (D.C. Cir. 2024) ("[N]ot every case touching on national security lies beyond judicial cognizance.").

This is especially true here, where Haitian TPS holders' residence in the United States means they enjoy "constitutional protections." *Zadvydas*, 533 U.S. at 693. The Secretary does not enjoy "absolute discretion" to make decisions for TPS designations "based on policies normally repugnant to the Constitution." *Webster v. Doe*, 486 U.S. 592, 603 (1988). Yet that is precisely the level of discretion the government seeks. Indeed, by trying to render more than 350,000 lawfully present migrants removable with a unilateral declaration that terminating Haiti's TPS designation is in the "national interest," the government comes dangerously close to invoking a power that "has been overruled in the court of history, and—to be clear—has no place in law under the Constitution." *Hawaii*, 585 U.S. at 710.

* * *

Even if other cases brought on the interim docket are *bona fide* emergencies warranting this Court's immediate intervention, this one is not. This Court should deny the government's requested stay—or, at a minimum, not issue a broad stay—given the possible implications for hundreds of thousands of law-abiding immigrants. This Court should give Haitian TPS holders—and Syrian TPS holders, too—the benefit of time to litigate their appeals in the ordinary course.

CONCLUSION

This Court should deny the application.

March 6, 2026

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