No. _____

In the Supreme Court of the United States

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

v.

FRITZ EMMANUEL LESLY MIOT, ET AL.

APPLICATION TO STAY THE ORDER ISSUED
BY THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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PARTIES TO THE PROCEEDING

Applicants (defendants-appellants below) are Donald J. Trump, in his official capacity as President of the United States of America, the United States of America, United States Department of Homeland Security, and Kristi Noem, in her official capacity as Secretary of Homeland Security.

Respondents (plaintiffs-appellees below) are Fritz Emmanuel Lesly Miot, Rudolph Civil, Marlene Gail Noble, Marica Merline Laguerre, and Vilbrun Dorsainvil.

RELATED PROCEEDINGS

United States District Court (D.D.C.):

Miot v. *Trump*, No. 25-cv-2471 (Feb. 2, 2026) (order granting motion to postpone agency action)

Miot v. *Trump*, No. 25-cv-2471 (Feb. 23, 2026) (order denying motion for stay pending appeal)

United States Court of Appeals (D.C. Cir.):

Miot v. *Trump*, No. 26-5050 (Mar. 6, 2026) (order denying motion for stay pending appeal)

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Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Solicitor General—on behalf of applicants Donald J. Trump, President of the United States, et al.—respectfully files this application to stay the order postponing agency action issued by the United States District Court for the District of Columbia (App., *infra*, 1a-83a), pending the consideration and disposition of the government's appeal to the United States Court of Appeals for the D.C. Circuit and, if the court of appeals affirms the order, pending the timely filing and disposition of a petition for a writ of certiorari and any further proceedings in this Court. In addition to a stay, the Solicitor General respectfully requests that this Court treat this application as a petition for a writ of certiorari before judgment and grant the petition.

This is the government's fourth application for a stay arising from lower courts' refusal to allow the Executive Branch to terminate Temporary Protected Status (TPS) for various countries on the eve of the terminations taking effect. This case involves Haiti's TPS designation. Prior stay applications involved Venezuela (twice, resulting in stays from this Court) and Syria (currently pending). See *Noem* v. *NTPSA*, 145

S. Ct. 2728 (2025); *Noem* v. *NTPSA*, 146 S. Ct. 23 (2025); *Noem* v. *Doe*, No. 25A952 (filed Feb. 26, 2026). Those cases—and the decisions of the Fourth and Ninth Circuits allowing TPS terminations to take effect for Nepal, Honduras, Nicaragua, Afghanistan, and Cameroon—involve overlapping legal issues. They all include Administrative Procedure Act (APA) challenges that second-guess the underpinnings of Secretary Noem's decisions, including whether she consulted enough with other agencies, whether she correctly assessed country conditions, and whether her decision was preordained. They all feature challengers' attempts to end-run a judicial-review bar that forecloses those sorts of claims by providing for "no judicial review of any determination of the [Secretary] with respect to the designation, or termination * * * of a designation" of a foreign state for TPS. 8 U.S.C. 1254a(b)(5)(A). And they all involve similar irreparable-harm and balance-of-equities disputes, pitting the government's determinations that the national interest and foreign-relations considerations dictate termination of TPS against TPS holders' loss of employment authorization and exposure to removal proceedings. The main variation is that courts in some cases (including this one) endorse a far-fetched and far-reaching equal-protection claim based on decisionmakers' purported racial animus—a theory that threatens to invalidate virtually every immigration policy of the current administration.

More broadly, these cases implicate critical issues of vertical stare decisis and the separation of powers. These cases are "the legal equivalent of fraternal, if not identical, twins"—"too similar to distinguish" from this Court's previous stay orders. App., *infra*, 99a (Walker, J., dissenting). Lower courts should be guided by this Court's conclusions that the government was likely to succeed on the merits and edged out challengers on the equities when deciding how to "exercise * * * equitable discretion in like cases," *NTPSA* v. *Noem*, 26-199 C.A. Doc. 11, at 5 (*NTPSA* Order)

(9th Cir. Feb. 9, 2026) (quoting *Trump* v. *Boyle*, 145 S. Ct. 2653, 2654 (2025))—as exemplified by the Fourth and Ninth Circuits' rulings regarding other TPS terminations. 25A952 Gov't Appl. 2-3; see *CASA, Inc.* v. *Noem*, No. 25-1792, 2025 WL 2028397, at *1 (4th Cir. July 21, 2025); *NTPSA* Order; *NTPSA* v. *Noem*, 25-4901 C.A. Doc. 19 (9th Cir. Aug. 20, 2025). But other lower courts have instead fastened upon immaterial distinctions (a lack of elaboration; disclination to "divin[e]" what this Court might have reasoned, App., *infra*, 39a; "different countr[ies]," 25A952 Gov't Appl. App. 39a) to disregard the necessary import of this Court's stay orders.

As a result, the government must seek emergency relief in this Court a fourth time, with more prospects waiting in the wings; a 2-2 circuit split has arisen over how to apply the injunctive calculus; and stop-and-start litigation over TPS terminations has become endemic. See 25A952 Gov't Appl. 3-5. Just yesterday, another district court refused to stay its postponement of another TPS termination, for Burma, relying on the lower-court decisions here and in the Syria TPS case. See *Doe* v. *Noem*, No. 25-cv-15483, 2026 WL 674343 (N.D. Ill. Mar. 10, 2026).

Below, the D.C. Circuit, in a split decision, joined the Second Circuit in refusing to stay a district court's postponement of a TPS termination. Here, the termination of Haiti's TPS designation was to take effect February 3, 2026. See *Termination of the Designation of Haiti for Temporary Protected Status*, 90 Fed. Reg. 54,733, 54,738 (Nov. 28, 2025). As in other cases, the Secretary arrived at that determination by consulting the Department of State; reviewing statutory criteria; assessing country conditions; and explaining her reasoning. Here, she determined that there were no longer "extraordinary and temporary conditions in Haiti that prevent Haitian nationals * * * from returning in safety." *Id.* at 54,735. Even if such conditions persisted, she determined that termination would still be statutorily required because continu-

ing Haiti's TPS designation would be "contrary to the national interest" due to, among other considerations, the United States' "severely limit[ed]" "ability to screen and vet Haitians in the United States with [TPS]." *Id.* at 54,737. Moreover, in the Secretary's judgment, terminating Haiti's TPS designation "reflects a necessary and strategic vote of confidence in the new chapter Haiti is turning," and the "foreign policy vision of a secure, sovereign, and self-reliant Haiti." *Id.* at 54,738.

One day before the termination was to take effect, the district court indefinitely postponed it. App., *infra*, 1a-83a. The court "decline[d] the invitation to try its hand at divin[ing]" the basis for this Court's prior stays. *Id.* at 39a. The court then bypassed the judicial-review bar in 8 U.S.C. 1254a(b)(5)(A), reading "no judicial review of any determination * * * with respect to * * * termination" of TPS to bar judicial review only of "the Secretary's *determination*" itself—not "*how* the Secretary went about making her determination." App., *infra*, 20a. The court then reassessed the Secretary's decisionmaking soup to nuts, finding APA violations ranging from a "Humpty Dumpty-like" disregard for "'meaningful'" consultation with the Department of State, *id.* at 43a (citation omitted), to faulty assessments of country conditions and the national interest, to a nefarious "pattern and practice" of always terminating TPS designations, *id.* at 46a; see *id.* at 63a-64a. On top of that, the court embraced respondents' equal-protection claim that "anti-black and anti-Haitian animus motivated" the termination, *id.* at 67a, citing an "X post" and other statements evincing the Secretary's supposed "animus towards nonwhite foreigners" and statements from President Trump dating back to 2018, *id.* at 72a; see *id.* at 64a-73a. As to the equities, the court dismissed national-security and foreign-relations concerns and emphasized respondents' alleged harms—which are all inherent in TPS's temporary nature.

The D.C. Circuit denied the government's motion to stay. App., *infra*, 88a-100a. Judge Walker would have granted a stay "[a]s the Supreme Court and the Ninth Circuit have done in extraordinarily similar cases." *Id.* at 94a. The majority instead "d[id] not find it necessary to resolve the government's likelihood of success on the merits" and rested only on the equities, *id.* at 92a, casting this Court's previous stay orders as "meaningfully distinct" due to the government's indication that it was engaged in "'complex and ongoing negotiations with Venezuela'" that did not appear comparable for Haiti, *id.* at 90a-91a (citation omitted). The majority viewed respondents' harms, "including risk of detention and deportation, separation from family members, and loss of work authorization," as outweighing any harm to the government in maintaining the status quo, *id.* at 92a—a view that would preclude the government from showing irreparable harm any time it alters existing policy.

For all of the reasons stated in prior applications and then some, this Court should grant a stay yet again. As to the merits, respondents' APA claims are clearly not reviewable and are in all events meritless, and respondents' precedent-defying equal-protection challenge would apparently invalidate every action the Department of Homeland Security (DHS) has taken since January 2025. As to the equities, lower courts are again attempting to block major executive-branch policy initiatives in ways that inflict specific harms to the national interest and foreign relations, while crediting harms to respondents that inhere in the temporary nature of TPS.

Unless the Court resolves the merits of these challenges—issues that have now been ventilated in courts nationwide—this unsustainable cycle will repeat again and again, spawning more competing rulings and competing views of what to make of this Court's interim orders. This Court should break that cycle by granting stays as well as certiorari before judgment in both *Noem* v. *Doe*, No. 25A952, and in this case.

STATEMENT

A. Legal Background

As the government has previously recounted, various statutory provisions govern temporary protected status. See 25A952 Gov't Appl. 6-8; 25A326 Gov't Appl. 5-7; 24A1059 Gov't Appl. 4-6. In 1990, Congress established a discretionary program for providing temporary shelter in the United States for aliens from countries experiencing armed conflict, natural disaster, or "extraordinary and temporary conditions" that prevent the aliens' safe return. 8 U.S.C. 1254a(b)(1); see Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978. The program authorizes the Secretary of Homeland Security, "after consultation with appropriate agencies of the Government," to designate countries for temporary protected status if she finds that certain conditions for designation are met:

> (A) * * * that there is an ongoing armed conflict within the state and, due to such conflict, requiring the return of aliens who are nationals of that state to that state (or to the part of the state) would pose a serious threat to their personal safety;
>
> (B) * * * that— (i) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected, (ii) the foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state, and (iii) the foreign state officially has requested designation under this subparagraph; or
>
> (C) * * * that 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, unless the [Secretary] finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.

8 U.S.C. 1254a(b)(1).[1]

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[1] While the provisions refer to the Attorney General, Congress has transferred the authority to the Secretary of Homeland Security. See 6 U.S.C. 552(d), 557.

When the Secretary designates a country for TPS, eligible individuals from that country who are physically present in the United States on the effective date of the designation (and continuously thereafter) generally may not be removed from the United States and are authorized to work here for the duration of the country's TPS designation. 8 U.S.C. 1254a(a) and (c).

As the program's name suggests, designations shall be "temporary." 8 U.S.C. 1254a(a). Initial designations and extensions thereof may not exceed eighteen months. 8 U.S.C. 1254a(b)(2) and (3)(C). The Secretary, in consultation with appropriate agencies, must review each designation at least 60 days before the designation period ends to determine whether conditions for the country's designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). If the Secretary finds that the foreign state "no longer continues to meet the conditions for designation," she "shall terminate the designation" by publishing notice in the Federal Register of that determination and its basis. 8 U.S.C. 1254a(b)(3)(B). If the Secretary "does not determine" that the foreign state "no longer meets the conditions for designation," then "the period of designation of the foreign state is extended for an additional period of 6 months (or, in the discretion of the [Secretary], a period of 12 or 18 months)." 8 U.S.C. 1254a(b)(3)(C).

The TPS statute also categorically bars judicial review of the Secretary's TPS determinations: "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 under this subsection." 8 U.S.C. 1254a(b)(5)(A).

B. Factual Background

Since the TPS statute was enacted, every administration has designated coun-

tries for TPS or extended those designations in extraordinary circumstances.[2] Secretaries across administrations have also terminated designations when the conditions were no longer met.[3]

In 2010, the Secretary designated Haiti for TPS due to "extraordinary and temporary conditions in Haiti" resulting from an earthquake that "destroyed most of the capital city." *Designation of Haiti for Temporary Protected Status*, 75 Fed. Reg. 3476, 3477 (Jan. 21, 2010). At that time, the Secretary found that it would not be "contrary to the national interest of the United States to permit Haitian nationals * * * who meet the eligibility requirements of TPS to remain in the United States temporarily." *Ibid.* The designation was extended several times. *Termination of the Designation of Haiti for Temporary Protected Status*, 90 Fed. Reg. 54,733, 54,734 (Nov. 28, 2025) (listing extensions).

During the first Trump Administration, the Secretary announced the termination of Haiti's designation, based on a determination that the "'extraordinary and temporary conditions' relating to the 2010 earthquake that prevented Haitian nationals from returning in safety" were "no longer met." *Termination of the Designation of Haiti for Temporary Protected Status*, 83 Fed. Reg. 2648, 2650 (Jan. 18, 2018). A district court enjoined that termination, however. See *Ramos* v. *Nielsen*, 336 F. Supp. 3d 1075, 1108 (N.D. Cal. 2018). The Ninth Circuit reversed the district court, only to

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[2] See United States Government Accountability Office, *GAO, Report to Congressional Requesters, Temporary Protected Status: Steps Taken to Inform and Communicate Secretary of Homeland Security's Decisions* 11 fig. 2 (Apr. 2020), http://gao.gov/assets/gao-20-134.pdf (charting TPS designations).

[3] See, *e.g.*, *Termination of Designation of Lebanon Under Temporary Protected Status Program*, 58 Fed. Reg. 7582 (Feb. 8, 1993); *Termination of the Designation of Montserrat Under the Temporary Protected Status Program*, 69 Fed. Reg. 40,642 (July 6, 2004); *Six-Month Extension of Temporary Protected Status Benefits for Orderly Transition Before Termination of Guinea's Designation for Temporary Protected Status*, 81 Fed. Reg. 66,064 (Sept. 26, 2016).

grant review en banc. See *Ramos* v. *Wolf*, 975 F.3d 872 (9th Cir. 2020), reh'g en banc granted, opinion vacated, 59 F.4th 1010 (9th Cir. 2023). En banc review remained pending until a change in administration mooted the appeal. See *Ramos* v. *Nielsen*, 709 F. Supp. 3d 871, 876 (N.D. Cal. 2023).

Haiti was redesignated for TPS in 2021 based on a finding of "extraordinary and temporary conditions" due to a presidential assassination, "a deteriorating political crisis, violence, and a staggering increase in human rights abuses." *Designation of Haiti for Temporary Protected Status*, 86 Fed. Reg. 41,863, 41,864 (Aug. 3, 2021). Then-Secretary Mayorkas twice extended that designation, with the latest extension set to expire on February 3, 2026. 90 Fed. Reg. at 54,734.

On February 24, 2025, Secretary Noem issued a notice that partially vacated the most recent extension by reducing the period of extension to August 3, 2025. *Partial Vacatur of 2024 Temporary Protected Status Decision for Haiti*, 90 Fed. Reg. 10,511 (Feb. 24, 2025). The Secretary then announced the termination of Haiti's TPS designation, effective September 2, 2025. *Termination of the Designation of Haiti for Temporary Protected Status*, 90 Fed. Reg. 28,760 (July 1, 2025). A district court set aside the partial vacatur, leaving the February 3, 2026 expiration date in place. *Haitian Evangelical Clergy Ass'n* v. *Trump*, 789 F. Supp. 3d 255, 276 (E.D.N.Y. 2025).

In part to resolve litigation over the effect of the partial vacatur, on November 28, 2025, Secretary Noem announced that Haiti's TPS designation would be terminated, effective February 3, 2026. 90 Fed. Reg. at 54,733. "[A]fter consulting with appropriate U.S. Government agencies, the Secretary reviewed country conditions in Haiti and considered whether Haiti continues to meet the conditions for the designation" under the statute. *Id.* at 54,735. Based on her review, she determined that "there are no extraordinary and temporary conditions in Haiti that prevent Haitian

nationals * * * from returning in safety." *Ibid.* The Secretary explained that while "[c]ertain conditions in Haiti remain concerning," including "escalating violence and gang violence" in the capital city, the data she examined indicate that "parts of the country are suitable to return to," that a new Gang Suppression Force would help to provide security, and that Haiti's GDP is projected to grow—all "positive developments" supporting the Secretary's ultimate determination. *Ibid.*

In addition, the Secretary determined that, "even if" extraordinary and temporary conditions persisted in Haiti, "termination of [TPS] for Haiti is still required because it is contrary to the national interest of the United States to permit Haitian nationals * * * to remain temporarily in the United States." 90 Fed. Reg. at 54,735. The Secretary highlighted large numbers of Haitians arriving in the United States illegally in recent years—numbers that "continued to increase with extremely high numbers seen around the time and following the latest new designations of [TPS] for Haiti by then Secretary Mayorkas," suggesting that TPS serves as a "'pull factor[]'" for such immigration. *Id.* at 54,737. And she described the "joint assessment by the Secretary of State, Secretary of Homeland Security, and Director of National Intelligence," that "Haiti lacks a functioning central authority capable of maintaining or sharing" critical law enforcement or security information, which "severely limit[s] the U.S. government's ability to screen and vet Haitians in the United States with [TPS]." *Ibid.* The Secretary found that lack of information particularly concerning because "Haitian gangs—such as those designated by the State Department as Foreign Terrorist Organizations—pose a serious threat to U.S. interests." *Ibid.*

The Secretary also underscored the United States' support for "Haiti's path toward peace, stability, and democratic governance," including through the establishing of the Gang Suppression Force. 90 Fed. Reg. at 54,738. "Ending [TPS] for Haiti,"

the Secretary explained, "reflects a necessary and strategic vote of confidence in the new chapter Haiti is turning," and the "foreign policy vision of a secure, sovereign, and self-reliant Haiti." *Ibid.*

The Secretary thus determined that "Haiti no longer * * * meet[s]" the statutory basis for TPS and that termination was required. See 90 Fed. Reg. at 54,739. She set the termination to take effect on February 3, 2026. The notice stated that there were 352,959 beneficiaries under Haiti's TPS designation. *Id.* at 54,738.

C. Procedural Background

1. On December 5, 2025, respondents—five Haitian TPS holders—filed an amended class action complaint challenging the Secretary's termination of Haiti's TPS designation and moved to postpone the termination under 5 U.S.C. 705. See Am. Compl. 9-13, 81-84; D. Ct. Doc. 81 (Dec. 12, 2025).

2. On February 2, 2026—the day before the termination was to take effect—the district court granted respondents' motion and stayed consideration of respondents' motion to certify a class. App., *infra*, 1a-83a.

The district court first held that respondents' APA and equal-protection claims were all reviewable, despite Section 1254a(b)(5)(A)'s judicial-review bar. App., *infra*, 20a-27a. The court "decline[d] the invitation to try its hand at divin[ing]" the import of this Court's prior TPS stays because they "never discuss jurisdiction." *Id.* at 38a-39a. The court then portrayed Section 1254a(b)(5)(A) as "[n]arrow" and limited to challenges to "the Secretary's *determination*"—not challenges to "*how* the Secretary went about making her determination," including respondents'. *Id.* at 20a, 23a.[4]

[4] The district court also rejected the government's argument that 8 U.S.C. 1252(f)(1) prohibited the requested relief by precluding lower courts from "enjoin[ing] or restrain[ing] the operation of" provisions including Section 1254a, see App., *infra*, 27a-34a, as well as its argument that 8 U.S.C. 1252(a)(2)(B)(ii) bars judicial review because the decision is "in the discretion" of the Secretary, see App., *infra*, 34a-36a.

As to the APA merits, the district court held that the Secretary failed to adequately "consult appropriate agencies" and accused her of taking a "Humpty Dumpty-like" view of consultation. App., *infra*, 41a, 43a; see *id.* at 41a-46a. The court acknowledged that a DHS official requested the Department of State's views on country conditions in Haiti, prompting the response that "State believes that there would be no foreign policy concerns with respect to a change in the TPS statu[s] of Haiti." *Id.* at 42a (citation omitted). But the court deemed that exchange not "meaningful," *id.* at 43a (citation omitted), and held that "the Secretary did not consult" at all, *id.* at 46a.

The district court also treated the Secretary's record of terminating "every TPS designation that crosses her desk" as so "unprecedented" as to "strongly suggest[]" that every single decision "'shrug[ged] off'" statutory requirements without "individualized review of the conditions of each country." App., *infra*, 47a-48a (citation omitted).

Next, the district court held that the termination was likely arbitrary and capricious based on its disagreement with the Secretary's determination that "conditions in Haiti permit safe return." App., *infra*, 49a. Based on its own read of the administrative record, the court deemed Haiti "a nation deep in crisis." *Ibid.*; see *id.* at 49a-58a. As for the Secretary's determination that extending TPS would be "contrary to the national interest," *id.* at 58a (quoting 90 Fed. Reg. at 54,735), the court conceded that it "has no role in second-guessing this analysis," *ibid*, yet faulted the Secretary for failing to focus her assessment on Haitian TPS holders, *id.* at 59a-62a, and failing to "consider the impact Haitian TPS holders have on our economy," *id.* at 62a. The court concluded that "nearly everything" in its analysis also indicated that

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As in its previous stay applications, the government is not pressing its Section 1252(f)(1) argument here, see 25A952 Gov't Appl. 13 n.5; 25A326 Gov't Appl. 14 n.9; 24A1059 Gov't Appl. 14 n.10, nor its argument under Section 1252(a)(2)(B)(ii). The government continues to assert those arguments in the lower courts.

"the Secretary preordained the result." *Id.* at 64a; see *id.* at 63a-64a.

As to the equal-protection claim, the district court held that the Secretary's termination decision was likely motivated by racial animus. App., *infra*, 64a-73a. The court applied heightened scrutiny under *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), dismissing the deferential standard of *Trump* v. *Hawaii*, 585 U.S. 667 (2018), as inapplicable because that case involved entry restrictions. App., *infra*, 65a-66a. The court then found that racial animus infected the termination decision by invoking statements of President Trump dating back to 2018, *id.* at 67a; see Second Am. Compl. 29, and a handful of statements from Secretary Noem that, in the court's view, supposedly evinced "animus towards nonwhite foreigners" that alone "would support a stay," App., *infra*, 72a.

Finally, the district court found that the equitable factors favored respondents, citing the "risk of deportation and detention, separation from family members, and loss of work authorization" from TPS termination. App., *infra*, 73a; see *id.* at 73a-82a. The court rejected the government's description of those harms as speculative by invoking a "daily news barrage of aggressive ICE raids." *Id.* at 75a. The court further found that a "stay is in the public interest" based on Haitian TPS holders' economic contributions and place in local communities. *Id.* at 79a; see *id.* at 79a-81a. The court rejected the government's interest in "advancing national security" and "enforcing" immigration laws. *Id.* at 81a-82a. The court therefore postponed the Secretary's actions pursuant to Section 705 of the APA. *Id.* at 83a.

When the government moved to stay the district court's postponement order, see D. Ct. Doc. 126 (Feb. 5, 2026), the district court responded by ordering the government to "submit a sworn declaration from a senior member of [DHS] which states what steps, if any, DHS has taken in the expectation of the February 3, 2026, Termi-

nation (now stayed) going into effect," C.A. Docket entry (Feb. 6, 2026). "Specifically," the court ordered the declarant to state whether DHS had attempted to "mobilize members of Immigration & Customs Enforcement to areas heavily populated with Haitian TPS holders, such as Springfield, Ohio, and South Florida." *Ibid.* The government submitted the requested declaration. D. Ct. Doc. 129 (Feb. 10, 2026).

In the order denying a stay, the district court clarified that it "found that the Secretary did not consult *any* agency, including * * * the Department of State." App., *infra*, 85a. The court added that the government would "not face irreparable harm" because postponing the termination "maintain[s] the status quo." *Id.* at 87a.

3. On March 6, 2026, the D.C. Circuit rendered a 2-1 decision denying the government's request for a stay pending appeal. App., *infra*, 88a-100a. The majority sidestepped the merits and only "focus[ed] on irreparable harm and the weighing of the equities." *Id.* at 89a. The court held that the government's invocation of foreign affairs and the national interest in terminating TPS was "insufficient to support a stay pending appeal." *Ibid.* The court acknowledged this Court's two stay orders involving the termination of TPS for Venezuela, but found those cases "meaningfully distinct" because the government had invoked "'complex and ongoing negotiations with Venezuela'" as part of its irreparable harms. *Id.* at 90a-91a (citation omitted). Here, the court saw "no such diplomatic concerns." *Id.* at 91a. The court also noted that the government had not requested a stay of an earlier decision that set aside its partial vacatur of Haiti's TPS extension, reasoning that if the government could wait for the termination of TPS to take effect in February 2026, it could also wait now. *Ibid.* The court then held that respondents' harms—"including risk of detention and deportation, separation from family members, and loss of work authorization"—outweighed any harm to the government. *Id.* at 92a. Although the court did "not find it

necessary to resolve the government's likelihood of success on the merits," it noted other courts' rejection of the government's judicial-review arguments. *Ibid.* & n.*.

Judge Walker dissented. App., *infra*, 95a-100a. He would have granted a stay, "[a]s the Supreme Court and the Ninth Circuit have done in extraordinarily similar cases." *Id.* at 94a. He found this case and the Venezuela TPS stay orders indistinguishable in that they all involved the same equities for the opposing parties, *id.* at 98a-99a, and "[t]he weight of those equities does not materially change just because a court thinks the Secretary's reasons for the national-interest decision were stronger there than here," particularly where "Congress has told [courts] *not* to review the Secretary's decision," *id.* at 99a. He explained that the government "is irreparably harmed by 'an improper intrusion by a federal court into the workings of a coordinate branch of the Government.'" *Id.* at 95a (citation omitted). As to the merits, because the TPS statute precludes "'judicial review of any determination of the [Secretary] with respect to the designation, or termination or extension of a designation, of a foreign state,'" he found the government "likely to prevail." *Id.* at 96a-97a (quoting 8 U.S.C. 1254a(b)(5)(A)). As to the balance of equities, "[i]f termination means the unlawful removal to Haiti of [respondents] who would prefer to stay in America, the [respondents] are injured," but whether removal would be wrongful depends on the merits, which "includ[es] the 'temporary' nature of [TPS]." *Id.* at 97a.

ARGUMENT

Under Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, to obtain a stay of preliminary relief pending review in the court of appeals and in this Court, an applicant must show a likelihood of success on the merits, a reasonable probability of obtaining certiorari, and a likelihood of irreparable harm. See *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam). In "close cases," "the Court

will balance the equities and weigh the relative harms." *Ibid.* This is not a close case. The Court has performed a materially similar calculus twice before and granted stays permitting the Secretary's Venezuela TPS determinations to take effect. See *Noem* v. *NTPSA*, 146 S. Ct. 23 (2025) (*NTPSA II*); *Noem* v. *NTPSA*, 145 S. Ct. 2728 (2025) (*NTPSA I*). There, as here, the government is likely to succeed on the merits because Section 1254a(b)(5)(A) bars judicial review of respondents' APA claims. Here, the government is even likelier to succeed because respondents' APA claims are patently meritless and their equal-protection challenge defies this Court's precedent. This Court should grant a stay again and should also grant certiorari before judgment.

A. The Government Is Likely To Succeed On The Merits

Here again, the lower courts committed the same legal errors that pervade stayed lower-court opinions. *First*, Section 1254a(b)(5)(A) precludes review of "any determination" of the Secretary "with respect to * * * termination." This Court necessarily viewed the government as likely to succeed on its jurisdictional-bar argument in prior applications, and that bar covers respondents' materially similar claims here, which are common across TPS termination challenges. See 25A952 Gov't Appl. 15-21; 25A326 Gov't Appl. 16-19; 24A1059 Gov't Appl. 16-20. *Second*, respondents' APA claims are meritless in all events; they mirror the arguments that respondents made to challenge the termination of TPS for Venezuela (stayed twice by this Court), Syria (currently pending), and Nepal, Honduras, and Nicaragua (stayed by the Ninth Circuit). *Third*, even assuming constitutional challenges are reviewable, the district court's equal-protection analysis applied the wrong standard and adopts an absurd theory that would invalidate virtually any immigration action taken by this administration. Indeed, this Court necessarily concluded that the government was likely to succeed against indistinguishable equal-protection arguments in the Venezuela

litigation. See 24A1059 Gov't Appl. 23-31.

1. The statute precludes judicial review of respondents' APA claims

The TPS statute is unambiguous: "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 TPS. 8 U.S.C. 1254a(b)(5)(A). That bar encompasses the types of APA claims at issue here. Indeed, this Court has twice granted the government's requests for stays when the government raised the same judicial-review bar regarding similar APA claims challenging the Secretary's vacatur of her predecessor's extension of Venezuela's 2023 TPS designation and termination of Venezuela's 2023 TPS designation. See *NTPSA II*, 146 S. Ct. 23; *NTPSA I*, 145 S. Ct. 2728. In *NTPSA I*, the claim was that the Secretary's vacatur determination "had not provided a 'reasoned explanation.'" 24A1059 Gov't Appl. 19 (citation omitted). In *NTPSA II*, challengers asserted that insufficient evidence supported the Secretary's determination; that she failed to consider alternatives; and that she failed to meaningfully consult other agencies. See 25A326 Gov't Appl. 17-18. The government's only argument as to its likely success on those claims was that Section 1254a(b)(5)(A) barred review. By granting the government's stay requests twice, the Court necessarily determined that the government had made a "strong showing that [it] is likely to succeed on the merits" of its argument as to the judicial-review bar. *Nken* v. *Holder*, 556 U.S. 418, 434 (2009) (citation omitted). Here, too, the government is entitled to relief, as the Ninth Circuit recognized under similar circumstances. *NTPSA* Order at 3-4.

a. The text of Section 1254a(b)(5)(A) is broad. Congress prefaced "determination" with the term "any." 8 U.S.C. 1254a(b)(5)(A). "As this Court has repeatedly explained, the word 'any' has an expansive meaning," *Patel* v. *Garland*, 596 U.S. 328,

338 (2022) (citation and internal quotation marks omitted), and captures determinations "of whatever kind," *ibid.* (quoting *Webster's Third New International Dictionary* 97 (1993)). Likewise, the use of the phrase "with respect to," has "a broadening effect," as it "ensur[es] that the scope of [the] provision covers not only its subject but also matters relating to that subject." *Id.* at 339 (quoting *Lamar*, *Archer & Cofrin, LLP* v. *Appling*, 584 U.S. 709, 717 (2018)). When Congress has stripped a court of jurisdiction "'in respect to'" particular claims, this Court has accordingly construed it as a "broad prohibition." *United States* v. *Tohono O'odham Nation*, 563 U.S. 307, 312 (2011) (citation omitted); see *Patel*, 596 U.S. at 338-339. As the Ninth Circuit recognized when granting the government's motion to stay, where a case "involves a *termination* of TPS, an action expressly authorized by statute," the "Secretary's action is unreviewable" under the judicial-review bar. *NTPSA* Order at 3-4.

Moreover, immigration policy is "vitally and intricately interwoven 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). The Executive Branch had long exercised inherent authority to afford temporary immigration status based on its assessment of conditions in foreign states, even before any specific statute authorized such relief. *Hotel & Rest. Emps. Union* v. *Smith*, 846 F.2d 1499, 1501, 1510 (D.C. Cir. 1988) (opinion of Mikva, J.). That authority included "unreviewable" discretion "*not* to extend [protected] status" to particular classes of aliens. *Ibid.* (emphasis added). Congress legislated against that backdrop in enacting the TPS program and codified in Section 1254a(b)(5)(A) the understanding that "[t]here is no judicial review" of such determinations. 8 U.S.C. 1254a(b)(5)(A).

At minimum, "[i]f a no-review provision shields particular types of administra-

tive action, a court may not inquire whether a challenged agency decision is arbitrary, capricious, or procedurally defective." *Amgen Inc.* v. *Smith*, 357 F.3d 103, 113 (D.C. Cir. 2004); see *Delgado* v. *Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011) (per curiam) (preclusion provision barred review of a claim "indirectly challenging" underlying order); *Skagit County Pub. Hosp. Dist. No. 2* v. *Shalala*, 80 F.3d 379, 386 (9th Cir. 1996) (preclusion provision applies when "procedure is challenged only in order to reverse the individual [unreviewable] decision"). To hold otherwise "would eviscerate the statutory bar, for almost any challenge to [a determination] 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); see *id.* at 505-507. A Ninth Circuit panel thus recognized that the TPS statute "precludes review of non-constitutional claims that fundamentally attack the Secretary's specific TPS determinations, as well as the substance of her discretionary analysis in reaching those determinations." *Ramos* v. *Wolf*, 975 F.3d 872, 891 (2020), reh'g en banc granted, opinion vacated, 59 F.4th 1010 (9th Cir. 2023).

Respondents' APA claims fall squarely within Section 1254a(b)(5)(A)'s prohibition on judicial review. The district court credited respondents' assertions that:

- the Secretary "fail[ed] to consult appropriate agencies as required by the TPS statute," App., *infra*, 41a, because there was no "'meaningful exchange of information,'" *id.* at 43a (citation omitted);
- the Secretary's termination of other TPS designations was "evidence that the administration is terminating TPS designations, including Haiti's TPS designation, based on a predetermined agenda rather than a good-faith, fact-based, country-specific review," *id.* at 47a (quoting Second Am. Compl. 77);
- the Secretary's evaluation of country conditions was "implausible," *id.* at 49a (quoting D. Ct. Doc. 81, at 26), because the record instead showed "a country in chaos and crisis," *id.* at 54a;
- the Secretary "failed to apply" the "national interest" standard to "Haitian TPS holders," *id.* at 58a, and "[f]ail[ed] to [c]onsider [e]conomics" as part of that analysis, *id.* at 62a (emphasis omitted); and

- the termination "was preordained" because there is "no 'rational connection between the facts found and the choice [the Secretary] made,'" *id.* at 63a (quoting *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

At every turn, the court second-guessed the substance of the Secretary's determinations. No matter how those challenges are packaged, they are "essentially an attack on the substantive considerations underlying the Secretary's specific TPS determinations, over which the statute prohibits judicial review." *Ramos*, 975 F.3d at 893.

b. Below, the court of appeals declined to "resolve the government's likelihood of success on the merits," but (like the district court) it noted other courts' conclusions that "the statute does *not* bar challenges, like [respondents'], to the process by which a TPS determination is reached as opposed to challenges to the determination itself," citing *McNary* v. *Haitian Refugee Center, Inc.*, 498 U.S. 479 (1991), and the "'presumption favoring judicial review of administrative action.'" App., *infra*, 92a (citation omitted); accord *id.* at 19a-23a. That reasoning lacks merit.

To start, the presumption favoring judicial review lacks force where, as here, "the congressional intent to preclude review is 'fairly discernible in the statutory scheme.'" *AFGE* v. *FLRA*, 99 F.4th 585, 595 (D.C. Cir. 2024) (citation omitted); see *Patel*, 596 U.S. at 347. When Congress expressly provides that "*[t]here is no judicial review*" of "any" determination related to a TPS termination, that readily overcomes the presumption. 8 U.S.C. 1254a(b)(5)(A) (emphasis added).

Nor may respondents evade the judicial-review bar by dubbing their arguments "procedural" and "collateral." Such opportunistic reframing in litigation "would create an end-run around the judicial-review bar in virtually every case." 25A326 Gov't Appl. 16; see 25A952 Gov't Appl. 20; 24A1059 Gov't Appl. 18-20. Besides, respondents' claims fail because they "fundamentally attack the Secretary's

specific TPS terminations, as well as the substance of her discretionary analysis in reaching those determinations." *Ramos*, 975 F.3d at 891. They do not challenge any guidance document, regulation, or policy distinct from the Secretary's termination of Haiti's TPS designation. Cf. *National Insts. of Health* v. *American Pub. Health Ass'n*, 145 S. Ct. 2658, 2661 (2025) (Barrett, J., concurring) (distinguishing between challenges to grant terminations and challenges to guidance documents). They ask courts to set aside the termination itself, Second Am. Compl. 90—and claims that "seek direct relief from the challenged decisions" are not collateral, *Ramos*, 975 F.3d at 893.

Thus, the lower courts' reliance on *McNary*, *supra*, see App., *infra*, 20a-21a, 92a, is just as misplaced here as in prior cases, see 25A326 Br. in Opp. 26-28; 24A1059 Br. in Opp. 21-24. *McNary* considered a statute that barred judicial review "of a determination respecting an application for adjustment of status" under 8 U.S.C. 1160(e). 498 U.S. at 491-492. Each plaintiff had unsuccessfully sought amnesty under Section 1160, but none "contest[ed] the denial of their * * * applications" for relief. *Id.* at 488; see *id.* at 487-488. Instead, they brought a "general collateral challenge[] to unconstitutional practices and policies used by the agency in processing applications." *Id.* at 492. This Court deemed that challenge reviewable, notwithstanding the judicial-review bar. Section 1160(e)'s "reference to 'a determination,'" the Court explained, "describes a single act"—there, the denial of a particular "application" for relief—and not broader "practice[s] or procedure[s] employed in making decisions." *Ibid.*

Here, the "single act" contemplated by Section 1254a(b)(5)(A) is the Secretary's determination with respect to whether to designate a country for TPS or to extend or terminate a particular country's TPS designation. Respondents do not bring a "collateral" attack on such a determination—they attack the Secretary's termination decision itself. *McNary*, 498 U.S. at 492; see *Reno* v. *Catholic Soc. Servs.*, 509 U.S. 43,

56 (1993) (interpreting *McNary* as permitting a challenge that could be reviewed "without referring to * * * the denial of any individual application"). The "nature of respondents' requested relief" confirms the point. *McNary*, 498 U.S. at 484. Unlike the plaintiffs in *McNary*, respondents do not seek a declaration or injunction invalidating a collateral agency policy or practice. Rather, respondents seek an order barring implementation of the termination decision. Under Section 1254a(b)(5)(A), that type of direct attack on the Secretary's termination is unreviewable.

Indeed, the district court's contrary view would nullify the judicial-review bar. That court tried to distinguish between challenges to "the Secretary's *determination*" and challenges to "*how* the Secretary went about making her determination." App., *infra*, 20a. But that distinction is illusory, as evidenced by the district court's insistence that "[t]he Secretary's path to the substantive 'determination' is not part of the determination itself." *Id.* at 24a. The judicial-review bar would cover nothing if every element that comprised the determination were subject to challenge. Under the district court's approach, not even the Secretary's findings about country conditions are off limits, as evidenced by the court's eagerness to substitute its own take on country conditions in Haiti based on the administrative record for the Secretary's contrary determinations. *Id.* at 49a-58a. That is the opposite of what Congress prescribed by barring judicial review, and it would impermissibly allow courts to second-guess national-security judgments and decisionmaking processes that the Constitution vests in the President. See *Ramos*, 975 F.3d at 893-894.

2. Regardless, respondents' APA claims lack merit

Even if reviewable, respondents' APA claims are meritless. In holding otherwise, the district court imposed extra-statutory requirements and overrode the Secretary's judgments as to foreign policy and the national interest with its own views.

Consultation. Like the district court addressing the Syria termination, see 25A952 Gov't Appl. 22-23, the district court here found an APA violation based on the Secretary's purported failure to "consult[] with appropriate agencies" before terminating Haiti's TPS designation, 8 U.S.C. 1254a(b)(3)(A); see App., *infra*, 41a. Although the court recognized that DHS contacted State to ask for "State's views on the matter" of Haiti's designation, and State responded with those views, *id*. at 42a, the court concluded that the exchange was insufficiently "'meaningful'" to count, *id*. at 43a (citation omitted), then said no consultation happened at all, *id*. at 85a.

Such judicial micromanagement of how much consultation needs to happen, especially on foreign-policy questions, runs afoul of the bedrock APA principle that courts cannot substitute their own discretionary judgments for that of the agency, see *FCC* v. *Prometheus Radio Project*, 592 U.S. 414, 423 (2021), and that courts are "'generally not free to impose' additional judge-made procedural requirements on agencies that Congress has not prescribed and the Constitution does not compel," *Garland* v. *Ming Dai*, 593 U.S. 357, 365 (2021) (citation omitted). The Ninth Circuit recognized those principles when it determined that the government was likely to succeed in showing that the Secretary "consulted with appropriate agencies" with respect to the Nepal, Honduras, and Nicaragua TPS determinations when the challengers there mounted a similar objection. *NTPSA* Order at 4. Here, DHS sought State's views on Haiti's designation for TPS, and State responded by providing its views. The statute requires nothing more. Indeed, that exchange falls squarely within the definitions of consultation that the court cited: "[t]he act of asking the advice or opinion of someone"; or to "seek information or advice from (someone with expertise in a particular area)." App., *infra*, 43a (citations omitted).

Repeat Terminations. The district court next found an unlawful "pattern

and practice of terminating all TPS designations without the country specific statutorily mandated periodic review" because the Secretary had terminated all twelve TPS designations that had come up for periodic review since January 20, 2025. App., *infra*, 46a; see *id*. at 46a-48a. But consistency across multiple, related actions—for example, in assessing the national interest—suggests reasoned decisionmaking, not illegality. See, *e.g.*, *Skidmore* v. *Swift & Co.*, 323 U.S. 134, 140 (1944). Facing a series of "temporary" designations that have lasted many years or decades, it is unremarkable that the Secretary has found them to have outlasted their statutory purposes.

The record also belies the district court's pejorative assumption that the Secretary could not have followed the procedural prerequisites in reaching those determinations. For example, the Secretary extended the designation of South Sudan for six months because she "only had a non-current record from the Department of State" regarding the country conditions and that "record did not contain a meaningful national interest discussion." *Extension of South Sudan Designation for Temporary Protected Status*, 90 Fed. Reg. 19,217, 19,218 (May 6, 2025). She stated that without a "current country conditions analysis that would allow her to make an informed determination on South Sudan's designation by" the statutory deadline, an extension was appropriate. *Ibid*. Only after receiving and considering the information that she deemed necessary did the Secretary act. See *Termination of the Designation of South Sudan for Temporary Protected Status*, 90 Fed. Reg. 50,484 (Nov. 6, 2025).

Here too, the Secretary "consult[ed] with appropriate U.S. Government agencies"; "reviewed country conditions in Haiti"; and "considered whether Haiti continues to meet the conditions for designation." 90 Fed. Reg. at 54,735. Based on that review, she determined that Haiti's TPS designation should be terminated. *Ibid*. That conclusion accounted for current conditions in Haiti, *ibid*., and the national in-

terest, which includes concern for the government's "ability to screen and vet Haitians with Temporary Protected Status," *id.* at 54,737, and the "strategic vote of confidence" in Haiti's future that the termination represents, *id.* at 54,738. The TPS statute directs the Secretary to make exactly those types of judgments, see 8 U.S.C. 1254a(b)(1) and (3), which are up to the Executive Branch, not courts. See *Holder* v. *Humanitarian Law Project*, 561 U.S. 1, 33-34 (2010).

Arbitrary and Capricious. The district court next second-guessed the Secretary's reasons for terminating Haiti's TPS designation—her view of conditions in Haiti and the national interest—by deeming both judgments arbitrary and capricious and accusing the Secretary of "throw[ing] *verifiably* inapposite or false assertion[s] * * * against the wall and hop[ing] something sticks." App., *infra*, 63a; *see id.* at 48a-63a. Contrary to the district court's rhetoric, the Secretary's determinations were "reasonable and reasonably explained." *Prometheus Radio Project*¸ 592 U.S. at 423.

In considering conditions in Haiti, the Secretary evaluated "data * * * indicat[ing] parts of the country are suitable to return to"; evidence that Haiti's government would more effectively combat gang violence; and projections that Haiti's economy would grow in the near future. 90 Fed. Reg. at 54,735. The district court instead viewed Haiti as "a nation deep in crisis" and disputed the Secretary's assessment of Haiti's efforts to combat gang violence and her prediction of economic growth. App., *infra*, 49a, 57a. But no court may "reject reasonable findings and conclusions" by the Secretary merely because it "would have weighed the evidence differently." *Cumberland Coal Res., LP* v. *Federal Mine Safety & Health Rev. Comm'n*, 717 F.3d 1020, 1028 (D.C. Cir. 2013). That is especially true here, given the "wide berth" agencies are afforded "when making predictive judgments." *Board of County Comm'rs*, v. *United States Dep't of Transp.*, 955 F.3d 96, 99 (D.C. Cir. 2020). All the more so when

those judgments involve "assess[ing] practices in foreign countries" and "determin[ing] national policy in light of those assessments"—matters entrusted to "the political branches, not the Judiciary." *Munaf* v. *Geren*, 553 U.S. 674, 700-701 (2008).[5] The Secretary acknowledged that "[c]ertain conditions in Haiti remain concerning," but found that other considerations weighed in favor of termination. 90 Fed. Reg. at 54,735. That determination was well within her discretion.

The Secretary's determination of the national interest—an independently sufficient justification for termination—was likewise lawful. She considered limitations on the ability to adequately vet Haitian nationals, the "added strain" TPS holders place on public resources and "an already limited job market," and foreign-policy needs in supporting Haiti's future. 90 Fed. Reg. at 54,736-54,738. The district court derided the Secretary's "failure to focus on Haitian TPS holders," App., *infra*, 59a, and "fail[ure] to consider the impact Haitian TPS holders have on [the] economy," *id.* at 62a. But here too, district courts have no warrant to substitute their own judgment of what the "national interest" entails in this foreign-policy-laden context. Precisely because of the sensitive nature of such judgment calls, the question of what serves the national interest offers "no meaningful standard against which to judge the agency's exercise of discretion." *Lincoln* v. *Vigil*, 508 U.S. 182, 191 (1993) (citation omitted); see *Trump* v. *Hawaii*, 585 U.S. 667, 685-686 (2018) (where President has discretion to determine if alien's entry "would be detrimental to the interests of the United States," courts should not inquire "into the persuasiveness of the President's justifications"); *Webster* v. *Doe*, 486 U.S. 592, 600 (1988) ("'[I]n the interests of the

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[5] The district court also suggested that the TPS statute requires the Secretary to "focus[] on present conditions rather than future change." App., *infra*, 58a. There is no basis for that limitation. What Haiti will look like tomorrow is obviously a "condition" that affects whether an alien can "return[]" there "in safety." 8 U.S.C. 1254a(b)(1)(C).

United States' * * * exudes deference" and lacks "meaningful judicial standard of review.").

Even on its own terms, the district court's analysis fails. The Secretary *did* consider Haitian TPS holders. She emphasized the government's inability to "screen and vet Haitians in the United States with [TPS]" because of limited "law enforcement or security information" from the Haitian government. 90 Fed. Reg. at 54,737. She added that aliens who overstay visas can "place an added strain on local communities." *Id.* at 54,736. And the Secretary's recognition that the "national interest" is an "expansive standard" should have prompted the district court to stay within Article III bounds, not to exceed its purview by substituting its own perspective on the pros and cons of continued designation. App., *infra*, 58a (citation omitted).

Preordained. Finally, the district court here (like the one that halted the termination of Syria's designation, see 25A952 Gov't Appl. 26-27), held that the Secretary's decision must have been impermissibly preordained given all the other putative flaws it identified. App., *infra*, 63a. But those flaws are illusory and in all events do not cumulatively render the termination unlawful. *Id.* at 62a. Again, the Secretary followed prescribed procedures and acted consistently with the administration's broader immigration priorities. "[A] court may not set aside an agency's policymaking decision solely because it might have been * * * prompted by an Administration's priorities." *Department of Commerce* v. *New York*, 588 U.S. 752, 781 (2019). That a new administration may pursue its policy priorities is a feature of our constitutional system, not a basis to invalidate agency decisions. See *ibid.*; see also *State Farm*, 463 U.S. at 59 (Rehnquist, J., concurring in part).

3. The district court's equal-protection analysis is untenable

The district court separately held that the termination decision likely rested

on impermissible racial animus. As this Court presumably determined in finding the government likely to succeed on the merits in *NTPSA I*—which involved the same argument, see 24A1059 Gov't Appl. 23-31—that holding applies the wrong legal standard, egregiously misconstrues the factual basis for the Secretary's actions and the Secretary's and President Trump's statements, and would effectively brand any immigration policy of this administration as unconstitutional.

a. The standard of review should be dispositive. The district court applied heightened scrutiny in contravention of *Trump* v. *Hawaii*, 585 U.S. 667 (2018), which prescribes that rational-basis review governs constitutional challenges to Executive Branch immigration policies and that such policies pass muster so long as they are "plausibly related" to the government's policy objective. *Id*. at 704. That deferential review reflects that "decisions in these matters may implicate 'relations with foreign powers,' or involve 'classifications . . . defined in the light of changing political and economic circumstances,'" which are judgments "'frequently of a character more appropriate to either the Legislature or the Executive.'" *Id*. at 702 (citation omitted). That reasoning certainly holds for TPS-related actions, which involve country-specific determinations that both "implicate 'relations with foreign powers'" and "involve 'classifications defined in the light of changing political and economic circumstances.'" *Ibid.* (citation and ellipsis omitted).

Yet the district court refused to follow *Hawaii* on the flimsy basis that TPS concerns aliens who are already in the United States, App., *infra*, 65a-66a—disregarding this Court's admonition that rational-basis review applies "across different contexts and constitutional claims," *Hawaii*, 585 U.S. at 703. Refuting the district court's premise, *Hawaii* approvingly cited *Rajah* v. *Mukasey*, 544 F.3d 427, 438 (2d Cir. 2008), a case which, like this one, involved an equal-protection challenge to an

Executive Branch action brought by aliens within the United States, see *Hawaii*, 585 U.S. at 704. The district court's refusal to apply rational basis review is fatal to its analysis, because the decision here would plainly satisfy that standard. The Secretary's conclusion that the conditions for Haiti's TPS designation were no longer met, based on both country conditions and the national interest, 90 Fed. Reg. at 54,733, are rational and related to the government's legitimate interests in immigration, national security, and foreign policy. *Ibid.*

b. Even under heightened scrutiny, respondents' equal-protection claim fails. The district court applied *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), which requires respondents to establish that "a discriminatory purpose has been a motivating factor in the [government's] decision." *Id.* at 265-266. But the Secretary's termination decision lacks any plausible discriminatory purpose. She provided reasoned explanations. She consulted with the Department of State and determined that Haiti's TPS designation was no longer appropriate because "there are no extraordinary and temporary conditions in Haiti that prevent Haitian nationals * * * from returning in safety" and because prolonging the designation would be "contrary to the national interest." 90 Fed. Reg. at 54,735. She relied, among other factors, on data that "indicate[d] parts of the country are suitable to return to," *ibid.*, alongside concerns with "U.S. national security interests" in light of the government's "inability to access reliable law enforcement or security information" to "screen and vet Haitians in the United States with Temporary Protected Status"—an issue of concern given the presence of Haitian gangs designated as Foreign Terrorist Organizations that "pose a serious threat to U.S. interests," *id.* at 54,737. Nothing about that reasoning suggests discriminatory intent.

Yet the district court treated all of that as pretext, focusing instead on cherry-

picked statements from the Secretary and President Trump advocating for policies that curb immigration and decrease crime. App., *infra*, 67a-72a. Those statements raise no plausible inference of discriminatory intent. Many were "remote in time and made in unrelated contexts," and thus "do not qualify as 'contemporary statements' probative of the decision at issue." *DHS* v. *Regents of the Univ. of Cal.*, 591 U.S. 1, 35 (2020) (opinion of Roberts, C.J.) (quoting *Arlington Heights*, 429 U.S. at 268); see *Ramos*, 975 F.3d at 898 (noting that President Trump's statements "occurred primarily in contexts removed from and unrelated to TPS policy or decisions"). Some statements arose during the campaign trail—just like the statements *Hawaii* rejected. Others date from the first Trump Administration—the same administration that *extended* TPS designations for Somalia, South Sudan, Syria, and Yemen.[6] None reflects any kind of racial or national-origin animus. The only references to race are the district court's own editorializing labels of "nonwhite foreigners" and "predominantly nonwhite" countries. App., *infra*, 69a-70a.

Moreover, the district court's recitation of President Trump's prior statements—which, again, raise no plausible inference of animus—certainly could not show animus by *the Secretary*. See, *e.g.*, *Staub* v. *Proctor Hospital*, 562 U.S. 411, 418 (2011); *Ramos*, 975 F.3d at 897 ("We doubt that the 'cat's paw' doctrine of employer liability in discrimination cases can be transposed to th[e] particular context" of TPS terminations.). Otherwise, courts could invalidate any agency official's actions based on mere allegations that a more senior government official harbored some discrimi-

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[6] *Extension of South Sudan for Temporary Protected Status*, 82 Fed. Reg. 44,205 (Sept. 21, 2017); *Extension of the Designation of Syria for Temporary Protected Status*, 83 Fed. Reg. 9329 (Mar. 5, 2018); *Extension of the Designation of Yemen for Temporary Protected Status*, 83 Fed. Reg. 40,307 (Aug. 14, 2018); *Extension of the Designation of Somalia for Temporary Protected Status*, 83 Fed. Reg. 43,695 (Aug. 27, 2018).

natory motive. That theory would also invite impermissible intrusion on privileged Executive Branch deliberations, see *United States* v. *Nixon*, 418 U.S. 683, 708 (1974), and potential litigant-driven discovery that would disrupt the President's execution of the laws, *Nixon* v. *Fitzgerald*, 457 U.S. 731, 749-750 (1982).

B. As Before, The Other Factors Overwhelmingly Support Relief

Other stay factors include whether the underlying issues warrant review; whether the applicants likely face irreparable harm; and in close cases, the balance of equities. See *Hollingsworth*, 558 U.S. at 190. Those factors heavily favor a stay here. As in prior cases, the district court's order interferes with the federal government's determinations regarding foreign policy and the national interest in enforcing immigration laws—an area of wide Executive Branch latitude. Respondents, by contrast, have asserted harms that inhere in the temporary nature of the program Congress designed. This Court has twice weighed virtually identical equities and twice held that the government is entitled to a stay allowing the Secretary's TPS terminations to take effect. See *NTPSA II*, 146 S. Ct. 23; *NTPSA I*, 145 S. Ct. 2728. "[T]hose cases and today's" are "too similar to distinguish." App., *infra*, 99a (Walker, J., dissenting).

1. As this Court necessarily determined when granting stays in previous TPS cases, the issues in these cases are certworthy. Here as before, "[t]he district court's order impermissibly intrudes on an area of operations that Congress left to the Executive Branch's discretion, in a manner that effectively precludes the Secretary's determinations in a time-sensitive program from ever taking effect." 25A326 Gov't Appl. 22; see 24A1059 Gov't Appl. 35-36. The President has deemed it "critically important to the national security and public safety" that the Secretary ensure that TPS designations "are appropriately limited in scope and made for only so long as may be necessary to fulfill the textual requirements of th[e] statute." Exec. Order

No. 14,159, 90 Fed. Reg. 8443, 8446 (Jan. 29, 2025). While Secretaries across administrations previously terminated TPS designations largely without judicial intervention, see 24A1059 Gov't Appl. 6-7 & nn.4-6, 35, the district court's order below halts the Secretary's implementation of this key policy in perpetuity.

This Court has repeatedly intervened in similar circumstances. See, *e.g.*, *NTPSA II*, 146 S. Ct. 23; *Noem* v. *Vasquez Perdomo*, 146 S. Ct. 1 (2025); *NTPSA I*, 145 S. Ct. 2728; *DHS* v. *D.V.D.*, 145 S. Ct. 2153 (2025); *Noem* v. *Doe*, 145 S. Ct. 1524 (2025); *Heckler* v. *Lopez*, 463 U.S. 1328, 1329 (1983) (Rehnquist, J., in chambers) (granting stay of district court order requiring Secretary of Health and Human Services "immediately to reinstate benefits to the applicants" and mandating that the Secretary then make certain showings "before terminating benefits"); cf. *Trump* v. *Sierra Club*, 140 S. Ct. 1 (2019) (granting stay of district court order enjoining the Department of Defense from undertaking any border-wall construction using funding the Acting Secretary transferred pursuant to statutory authority); *INS* v. *Legalization Assistance Project*, 510 U.S. 1301, 1306 (1993) (O'Connor, J., in chambers) (granting stay of district court order requiring INS to engage in certain immigration procedures, as "an improper intrusion by a federal court into the workings of a coordinate branch of the Government"). The same result is warranted here.

2. The equities also favor a stay. The district court's universal relief "'improper[ly] intru[des]' on 'a coordinate branch of the Government' and prevents the Government from enforcing its policies against nonparties." *Trump* v. *CASA, Inc.*, 606 U.S. 831, 859 (2025) (citation omitted; brackets in original). And the harm here arises in an area that implicates "a fundamental sovereign attribute exercised by the Government's political departments[,] largely immune from judicial control." *Fiallo* v. *Bell*, 430 U.S. 787, 792 (1977) (citation omitted). Where the government is making

"efforts to prioritize stricter enforcement of the immigration laws enacted by Congress," the courts should "decline to step outside [their] constitutionally assigned role to improperly *restrict* reasonable Executive Branch enforcement of the immigration laws." *Vasquez Perdomo*, 146 S. Ct. at 4, 5 (Kavanaugh, J., concurring).

The harm to the government and the public interest is particularly acute here because the Secretary determined Haiti's TPS designation "is contrary to the national interest" for numerous reasons. 90 Fed. Reg. at 54,737. Haitian gangs "pose a serious threat to U.S. interests," and Haiti "lacks a functioning central authority capable of maintaining or sharing" critical "law enforcement or security information," which "severely limit[s] the U.S. government's ability to screen and vet Haitians in the United States with Temporary Protected Status." *Ibid.* That "inability of the previous administration to reliably screen aliens from a country with limited law enforcement infrastructure and widespread gang activity presents a clear and growing threat to U.S. public safety." *Id.* at 54,738. Further, the Secretary found, extending Haiti's TPS designation does not "align with [the government's] foreign policy vision of a secure, sovereign, and self-reliant Haiti," rather than "a country that Haitian citizens continue to leave in large numbers to seek opportunities in the United States." *Ibid.*

The district court disagreed with those national-security and foreign-policy judgments, see App., *infra*, 81a-82a, and the D.C. Circuit dismissed those interests as insufficiently concrete or weighty, *id.* at 89a-92a. But those quintessential, specific foreign-policy judgments are beyond the competence of courts to second-guess. They involve the Secretary's express determinations regarding the national-security concerns represented by permitting ineffectively screened Haitian TPS holders to remain in the United States and the foreign-policy concerns with continuing a designation that is contrary to U.S. goals. 90 Fed. Reg. at 54,737-54,738. Such concerns are just

as concrete as the similar concerns the government raised in the Venezuela cases. See 25A326 Gov't Appl. 24-25; 24A1059 Gov't Appl. 36-37. There, as here, the Secretary voiced "national security" and "public safety" concerns. 24A1059 Gov't Appl. 36-37. There, as here, the government articulated foreign-policy concerns based on the Executive Branch's chosen course of engagement with the foreign country. *Ibid.* The "weight of th[e] equities does not materially change just because a court thinks the Secretary's reasons for the national-interest decision were stronger" in another case. App., *infra*, 99a (Walker, J., dissenting).

The D.C. Circuit viewed the government as claiming that it "is irreparably injured 'any time' it is enjoined by a court"—an assertion that the court has rejected, "particularly when the order at issue 'maintains the status quo.'" App., *infra*, 90a (citation omitted). That is a strawman. The government's argument hinges on the clear separation-of-powers harms from allowing courts to enjoin nationally significant immigration policies, coupled with the particular harms flowing from this particular order—harms that materially resemble those this Court has already recognized. See *id.* at 99a (Walker, J., dissenting). By contrast, the D.C. Circuit would automatically refuse every stay on irreparable-harm grounds just because the government changes an approach from a prior administration, on the theory that the status quo should remain in place just a little longer. That auto-blocking approach is irreconcilable with this Court's stay orders and invites indefinite, potentially years-long postponements of major governmental policies—all the way until an administration ends and the issue becomes moot, as happened the first time the Trump administration attempted to terminate Haiti's TPS designation. See pp. 8-9, *supra*.

The D.C. Circuit also rebuffed the government's claims of irreparable harm because the government had not sought a stay of a prior court order that prevented

the government from partially vacating then-Secretary Mayorkas's extension and terminating Haiti's TPS designation before the February 3, 2026 expiration. App., *infra*, 91a; see p. 9, *supra*. But as explained, 25A952 Gov't Reply Br. 17 n.2; 25A326 Gov't Appl. 7 n.6, the government did not seek emergency relief then because the extension the Secretary vacated would expire—and the case would be moot—before it could be finally resolved on the merits. The Secretary knew that regardless of the lower courts' view of the lawfulness of her partial vacatur of the prior Haiti TPS extension, she would soon have the opportunity to make a new determination with respect to TPS for Haiti, allowing her to implement that decision by February 3, 2026—as she then did. Now, the lower courts have indefinitely stayed that termination, giving rise to much greater irreparable harm. See App., *infra*, 99a n.21 (Walker, J., dissenting) (noting that while the government was willing to "wait until Haiti's designation expired in February 2026," that date has now past, creating "the need for a stay").

On the other side of the ledger, respondents have not shown irreparable harm that warrants relief. Congress designed the TPS statute to provide "temporary" status, see 8 U.S.C. 1254a(b)(1)(B)(i) and (ii), (C), and (g), and the Secretary's termination decision provided the requisite notice that Haiti's TPS designation would terminate, 90 Fed. Reg. at 54,739. Respondents' alleged harms flow from the scheme that *Congress* designed. See 8 U.S.C. 1254a(b)(3)(B). The lower courts focused on the possibility that respondents may be removed if Haiti loses its TPS designation. App., *infra*, 73a-77a, 92a. But the Secretary's decision to terminate the TPS designation is not equivalent to a final removal order. See 8 U.S.C. 1101(a)(47). When a TPS designation terminates, beneficiaries generally maintain any other immigration status they held during the designation. TPS beneficiaries may have other immigrant or nonimmigrant status, 8 U.S.C. 1254a(a)(5), and those who fear persecution in their

home country generally may apply for asylum or similar protection. In any event, under the court of appeals' theory, irreparable harm would result every time the Secretary terminates a country's TPS designation. Allowing that theory of irreparable harm to delay the Secretary's actions would effectively nullify them, tying them up in judicial-second guessing that could extend throughout an entire Presidential term, as occurred during the first Trump Administration. See pp. 8-9, *supra*.

The Court should allow the termination to take effect so that its implementation may proceed as planned, allowing for removal proceedings to begin and objections to those proceedings to be resolved. Delaying the termination until all litigation is resolved risks creating future implementation issues, particularly given the unpredictability of the courts' timeline and the foreign-policy implications of coordinating with foreign governments to repatriate their citizens.

This Court has already balanced the equities and determined a stay is warranted in two related cases. See *NTPSA II*, 146 S. Ct. 23; *NTPSA I*, 145 S. Ct. 2728. The court of appeals rejected that course by citing the "lack of express guidance from the Court," App., *infra*, 90a, and putative differences in the weight of the government's interests, *id*. at 90a-91a. But at a minimum, this Court's decisions in the stay posture "inform" like cases. *NIH* v. *American Pub. Health Ass'n*, 145 S. Ct. 2658, 2664 (2025) (Gorsuch, J., concurring) (quoting *Trump* v. *Boyle*, 145 S. Ct. 2653, 2654 (2025)). As the Ninth Circuit recognized in staying the partial final judgment vacating a TPS termination, where "stay applications involve[] similar assertions of harm by both parties," this Court's stay orders "must inform" the lower courts' "exercise [of] 'equitable discretion in like cases.'" *NTPSA* Order at 5 (quoting *Boyle*, 145 S. Ct. at 2654); see *CASA, Inc.* v. *Noem*, No. 25-1792, 2025 WL 2028397, at *1 (4th Cir. July 21, 2025) (finding "insufficient evidence to warrant the extraordinary remedy of a

postponement of agency action pending appeal").[7]

C. This Court Should Grant Certiorari Before Judgment

In addition to granting certiorari before judgment in *Noem* v. *Doe*, see 25A952 Gov't Appl. 32-34, the Court should construe this application as a petition for a writ of certiorari before judgment, grant the petition, and consolidate the two cases. As previously explained, since this Court granted the government's stay applications in *NTPSA I* and *NTPSA II*, a clear division has developed among the lower courts considering stay requests involving materially similar issues in other TPS terminations. Some have hewed to this Court's stay orders; others have deemed those orders distinguishable or too opaque to follow, even though courts have assessed the same, recurrent legal questions regarding the judicial-review bar, materially similar APA claims, and (here and in several other cases) a meritless equal-protection theory. This Court should intervene now and conclusively resolve those straightforward issues.[8]

The D.C. Circuit below joined the Second Circuit in preventing the Secretary's termination decision from going into effect. Like the D.C. Circuit, the Second Circuit treated this Court's orders in the Venezuela TPS cases as good for those cases only. 25A952 Gov't Appl. App. 39a. The court failed to account for the import of this Court's orders in its perfunctory discussion of the likelihood of success on the merits, including a claim involving "inter-agency consultation." *Ibid.* And the court concluded that

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[7] The district court erred in granting universal relief under Section 705 instead of tailoring relief to the named parties. See, *e.g.*, 25A952 Gov't Appl. 34 n.8; 24A1059 Gov't Appl. 31-34; *United States* v. *Texas*, 599 U.S. 670, 695-699 (2023) (Gorsuch, J., concurring in the judgment); Gov't Br. at 49-50, *Trump* v. *Pennsylvania*, 591 U.S. 657 (2020) (No. 19-954). Regardless, in its previous orders, this Court stayed the district court's orders at issue in full, and should do the same here. See *NTPSA II*, 146 S. Ct. 23; *NTPSA I*, 145 S. Ct. 2728.

[8] In a conditional petition for a writ of certiorari before judgment filed yesterday (but not yet docketed), respondents agree that if the Court grants review in *Noem* v. *Doe*, No. 25A952, it should also grant certiorari before judgment in this case.

the government could not show irreparable harm because the TPS designation at issue involved "6,100 Syrian TPS holders," rather than the "over 300,000 TPS holders" under the Venezuela designation. *Id.* at 40a.

Both the Fourth and Ninth Circuits, by contrast, have allowed materially similar TPS terminations to take effect. In *CASA, Inc.* v. *Noem*, the Fourth Circuit denied an emergency motion for postponement of the Secretary's termination of TPS for Afghanistan and Cameroon pending appeal. 2025 WL 2028397, at *1. There, as here, the plaintiffs asserted that the Secretary's termination decision was "preordained." *Ibid.* Despite finding that claim "plausible," the court of appeals found "insufficient evidence to warrant the extraordinary remedy of a postponement of agency action pending appeal," and allowed the termination to proceed. *Ibid.* The Ninth Circuit similarly permitted TPS terminations for Nepal, Honduras, and Nicaragua to take effect. See *NTPSA* Order at 1 (staying partial final judgment); see also *NTPSA* v. *Noem*, 25-4901 C.A. Doc. 19 (9th Cir. Aug. 20, 2025) (staying postponement order). There, as here, the plaintiffs asserted that the Secretary's termination decision was preordained and that the Secretary failed to consult. *NTPSA* Order at 4.

By preventing the Secretary's termination of TPS for Haiti from going into effect, the D.C. Circuit departed from those "extraordinarily similar cases." See App., *infra*, 94a (Walker, J., dissenting). District courts across the country have likewise disregarded the import of this Court's stay decisions and postponed TPS terminations based on similar allegations of preordained and pretextual decisionmaking and a failure to consult with appropriate agencies.[9] And the plaintiffs in those cases have like-

[9] See *African Communities Together* v. *Noem*, No. 25-cv-13939, 2026 WL 395732, at *3, *9-*11 (D. Mass. Feb. 12, 2026) (postponing termination of South Sudan TPS designation because, *inter alia*, the Secretary "failed to consult with appropriate agencies" and "engaged in a preordained practice of terminating all TPS designations") (citation omitted); *Doe* v. *Noem*, No. 25-cv-15483, 2026 WL 184544, at *13-

wise raised equal-protection claims based on the same alleged animus that respondents assert here.[10] The issues that this application presents are thus common among the numerous challenges to the Secretary's TPS terminations, have been ventilated in litigation across the country, and cry out for immediate resolution.

The D.C. Circuit's decision below also exemplifies lower courts' ongoing refusal to heed this Court's instruction that its interim orders should "inform how a court should exercise its equitable discretion in like cases." *Boyle*, 145 S. Ct. at 2654; see, *e.g.*, App., *infra*, 90a-91a; 25A326 Gov't Appl. 23. Given the pattern of lower-court rulings and the division of courts of appeals, this Court should grant review and provide guidance to lower courts. This case provides a suitable vehicle for resolving those cross-cutting questions. Whether the TPS statute's judicial-review bar precludes APA challenges to TPS determinations is a threshold issue that arises in every suit challenging a TPS termination. And the specific APA and constitutional challenges respondents have raised are common across other TPS litigation.

Granting both *Noem* v. *Doe*, *supra*, and this case would allow the Court to resolve the same judicial-review question and the same types of APA challenges, and it would also enable resolution of the baseless but recurrent equal-protection challenge at issue. If the Court grants certiorari before judgment in this case, the Court should review the following questions: (1) whether the judicial-review bar in the TPS statute,

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*24 (N.D. Ill. Jan. 23, 2026) (postponing termination of Burma's TPS designation based on similar failure-to-consult claim and because termination was pretextual and predetermined).

[10] See *National TPS Alliance* v. *Noem*, 773 F. Supp. 3d 807, 855-866 (N.D. Cal. 2025) (plaintiffs are likely to succeed on their equal-protection claim); *African Communities Together*, 2026 WL 395732, at *13 (declining to address equal-protection claim "[b]ecause Plaintiffs have shown a likelihood of success on other claims"); *Doe*, 25-cv-15483 D. Ct. Doc. 51, at 52 ("Based on the Court's conclusion that the plaintiffs are likely to succeed on their APA claims, it need not address the merits of their Fifth Amendment claim at this time.").

8 U.S.C. 1254a(b)(5)(A), precludes respondents' APA claims; (2) if reviewable, whether respondents' APA claims nonetheless fail on the merits; and (3) whether respondents' equal-protection claim fails on the merits.

CONCLUSION

This Court should at a minimum stay the order of the United States District Court for the District of Columbia pending the resolution of the government's appeal to the United States Court of Appeals for the D.C. Circuit and any proceedings in this Court. This Court should also construe this application as a petition for a writ of certiorari before judgment and grant the petition.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

MARCH 2026

APPENDIX

District court opinion granting motion to postpone agency action (D.D.C. Feb. 2, 2026) 1a

District court order denying stay pending appeal (D.D.C. Feb. 23, 2026) 84a

Court of appeals order denying stay pending appeal (D.C. Cir. March 6, 2026) 88a

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FRITZ EMMANUEL LESLY MIOT, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

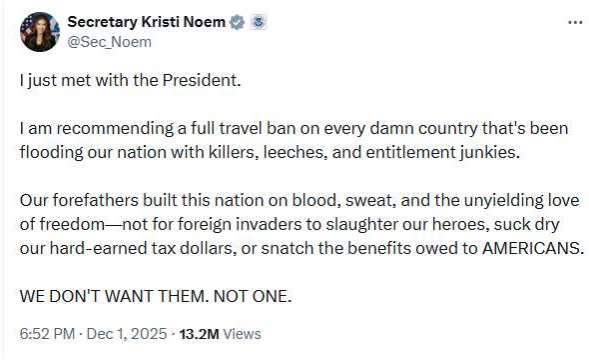
Defendants.

Case No. 25-cv-02471 (ACR)

MEMORANDUM OPINION

On December 2, 1783, then-Commander-in-Chief George Washington penned: "America is open to receive not only the Opulent & respected Stranger, but the oppressed & persecuted of all Nations & Religions."[1] More than two centuries later, Congress reaffirmed President Washington's vision by establishing the Temporary Protected Status (TPS) program. *See* 8 U.S.C. § 1254a (TPS statute). It provides humanitarian relief to foreign nationals in the United States who come from disaster-stricken countries. It also brings in substantial revenue, with TPS holders generating $5.2 billion in taxes annually. *See* Part VI.

Department of Homeland Security (DHS) Secretary Kristi Noem has a different take.[2]



[1] Letter from George Washington to Joshua Holmes (December 2, 1783).

[2] Dkt. 90 (Second Am. Compl.) ¶ 110 n.91. *But see supra* n.1.

So says the official responsible for overseeing the TPS program. And one of those (her word) "damn" countries is Haiti.[3] Relevant here, three days before making the above post, Secretary Noem announced she would terminate Haiti's TPS designation as of February 3, 2026. *See* 90 Fed. Reg. 54733 (Nov. 28, 2025) (Termination).

Plaintiffs are five Haitian TPS holders. They are not, it emerges, "killers, leeches, or entitlement junkies." They are instead: Fritz Emmanuel Lesly Miot, a neuroscientist researching Alzheimer's disease, Dkt. 90 (Second Am. Compl. (SAC)) ¶ 1; Rudolph Civil, a software engineer at a national bank, *id.* ¶ 2; Marlene Gail Noble, a laboratory assistant in a toxicology department, *id.* ¶ 3; Marica Merline Laguerre, a college economics major, *id.* ¶ 4; and Vilbrun Dorsainvil, a full-time registered nurse, *id.* ¶ 5. They claim that Secretary Noem's decision violates the Administrative Procedure Act (APA), 5 U.S.C. § 706(2), and the Fifth Amendment of the U.S. Constitution. The Government counters that the Court does not have jurisdiction, and, in any case, the Secretary did not violate the law.

Plaintiffs seek to stay the Secretary's decision under 5 U.S.C. § 705 pending the outcome of this litigation. *See* Dkt. 81 (§ 705 Mot.). To decide their motion, the Court considers first whether it has jurisdiction. It does. *See* Part II. It then considers: whether Plaintiffs have a substantial likelihood of success on the merits; whether they will be irreparably harmed absent a stay; and whether a merged balance of the equities and public interest analysis favors a stay. *See* Part III. Each element favors Plaintiffs. *See* Parts IV, V, and VI.

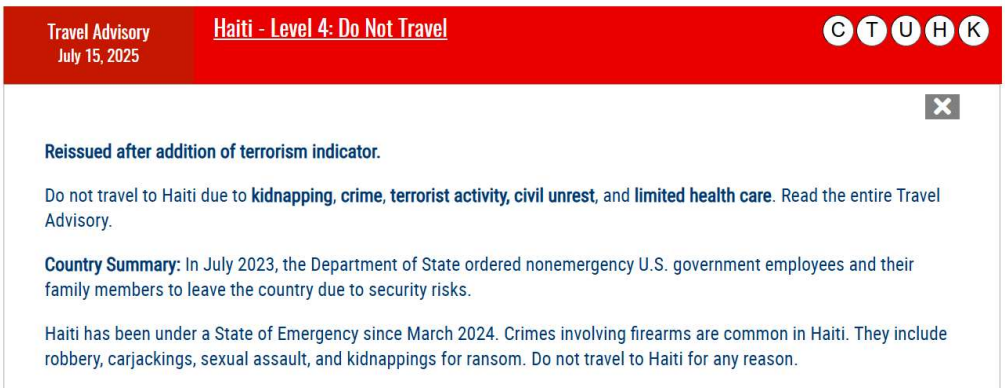
Plaintiffs charge that Secretary Noem preordained her termination decision and did so because of hostility to nonwhite immigrants. This seems substantially likely. Secretary Noem

[3] *See* 90 Fed. Reg. 24497 (June 10, 2025); *see also* USCIS Policy Memorandum, *Hold and Review of all Pending Asylum Applications and all USCIS Benefit Applications Filed by Aliens from High-Risk Countries*, December 2, 2025 (PM-602-0192) (naming Haiti as one of nineteen countries banned from certain immigration relief).

has terminated every TPS country designation to have reached her desk—twelve countries up, twelve countries down. *See* Section IV.A.2. Her conclusion that Haiti (a majority nonwhite country) faces merely "concerning" conditions cannot be squared with the "perfect storm of suffering" and "staggering" "humanitarian toll" described in page-after-page of the Certified Administrative Record (CAR). *See* Section IV.A.3.a. She ignored Congress's requirement that she "review the conditions" in Haiti only "after" consulting "with appropriate agencies." 8 U.S.C. § 1254a(b)(3)(A); *see* Section IV.A.1. Indeed, she did not consult other agencies at all. *See id*. Her "national interest" analysis focuses on Haitians outside the United States or here illegally, ignoring that Haitian TPS holders already live here, and legally so. *See* Section IV.A.3.b. And though she states that the analysis must include "economic considerations," she ignores altogether the billions Haitian TPS holders contribute to the economy. *See id*.

The Government's primary response is that the TPS statute gives the Secretary unbounded discretion to make whatever determination she wants, any way she wants. And, yes, the statute does grant her some discretion. But not unbounded discretion. To the contrary, Congress passed the TPS statute to standardize the then *ad hoc* temporary protection system—to replace executive whim with statutory predictability. *See* Section I.A.

As to irreparable harm, the Government contends that, at most, the harms to Haitian TPS holders are speculative. But the Department of State (State) warns:



Dkt. 100 (§ 705 Reply) at 20–21.[4] "Do not travel to Haiti for any reason" does not exactly scream, as Secretary Noem concluded, suitable for return. And so, the Government studiously does not argue that Plaintiffs will suffer no harm if removed to Haiti. Instead, it argues Plaintiffs will not certainly suffer irreparable harm because DHS might not remove them. But this fails to take Secretary Noem at her word: "WE DON'T WANT THEM. NOT ONE." *See* Section IV.B.2.b.

Finally, the balance of equities and public interest favor a stay. The Government does not cite any reason termination must occur post haste. Secretary Noem complains of strains unlawful immigrants place on our immigration-enforcement system. Her answer? Turn 352,959 lawful immigrants into unlawful immigrants overnight. She complains of strains to our economy. Her answer? Turn employed lawful immigrants who contribute billions in taxes into the legally unemployable. She complains of strains to our healthcare system. Her answer? Turn the insured into the uninsured. This approach is many things—in the public interest is not one of them.

For the reasons below, the Court **GRANTS** Plaintiffs' Renewed Motion for a Stay Under 5 U.S.C. § 705, Dkt. 81.

I. BACKGROUND

A. The TPS Statute

Before Congress passed the TPS Statute, the Executive Branch handled nationality-based temporary protection through an "ad hoc framework for providing relief to nationals of certain designated countries." *Nat'l TPS All. v. Noem* (*NTPSA III*), 150 F.4th 1000, 1010 (9th Cir.

[4] Citations to pages in a filing on the docket refer to the page numbers assigned by the Court's CM/ECF system.

2025).[5] This led to haphazard regulations and procedures, resulting in discretionary temporary stays that left recipients uncertain of their immigration status. In 1990, Congress stepped in to replace chaos with structure by enacting the TPS statute, codified at 8 U.S.C. § 1254a. Congress wanted "a system of temporary status that was predictable, dependable, and insulated from electoral politics." *NTPSA III*, 150 F.4th at 1008. So, it gave first the Attorney General and then the DHS Secretary, *see* 6 U.S.C. § 557, responsibility for the program but prescribed the relevant criteria and applicable process. It specified the kind of country conditions severe enough to warrant a designation under the statute. 8 U.S.C. § 1254a(b)(1). It prescribed the specific time frame for any such designation. *Id.* § 1254a(b)(2). And it prescribed with specificity the process for periodic review of a TPS designation, which would culminate in either termination or extension of such designation. *Id.* § 1254a(b)(3).

Before designating a country for TPS, the DHS Secretary must "consult[] with appropriate agencies." *Id.* § 1254a(b)(1). And she must find one of three circumstances: that (1) "there is an ongoing armed conflict within the [foreign] state" such that "requiring the return" of nationals "would pose a serious threat to their personal safety"; (2) there has been an "environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected" and the foreign state is both "unable, temporarily, to handle adequately the return" of nationals and "has requested [temporary protected status] designation";

[5] For the remainder of this Memorandum Opinion, the Court cites the relevant *NTPSA* opinions as follows: *NTPSA I*, 773 F. Supp. 3d 807 (N.D. Cal. 2025) (postponing vacatur/termination decisions on Venezuela's designation); *NTPSA II*, 145 S. Ct. 2728 (May 19, 2025) (staying postponement pending appeal); *NTPSA III*, 150 F.4th 1000 (9th Cir. 2025) (affirming postponement); *NTPSA IV*, 798 F. Supp. 3d 1108 (N.D. Cal. 2025) (setting aside Haiti's partial vacatur decision on summary judgment, and taking related action with respect to Venezuela's designation); *NTPSA V*, 146 S. Ct. 23 (Oct. 3, 2025) (staying district court's summary-judgment order as to the vacatur/termination decisions on Venezuela pending appeal); *NTPSA VI*, No. 25-5724, 2026 WL 226573 (9th Cir. Jan. 28, 2026) (affirming summary-judgment).

or (3) "there exist extraordinary and temporary conditions in the foreign state that prevent [its nationals] from returning to the state in safety, unless the [Secretary] finds that permitting" that country's nationals "to remain temporarily in the United States is contrary to the national interest of the United States." *Id.* § 1254a(b)(1)(A)–(C).

A country's TPS designation does not automatically mean its citizens receive TPS. A foreign national is eligible for TPS only if she meets several criteria, including being otherwise admissible and registering for TPS within a specific time frame. *Id*. § 1254a(c); 8 C.F.R. § 244.2. In addition, a non-citizen waives eligibility for TPS if, among other things, she has been convicted of a felony or two or more misdemeanors in the United States. 8 U.S.C. § 1254a(c)(2)(B).

All initial TPS designations last six to eighteen months. *Id*. § 1254a(b)(2). Before the expiration of a designation, the statute mandates that the Secretary—again, "after consultation with appropriate agencies of the Government"—"review the conditions in the foreign state" and "determine whether the conditions for such designation . . . continue to be met." *Id*. § 1254(a)(b)(3)(A). Following this review, the Secretary determines whether to redesignate, extend, or terminate TPS for the country.

Extension is the default—the designation "shall be extended" unless the Secretary affirmatively determines that conditions are "no longer me[t]." *Id.* § 1254a(b)(3)(C). And Congress did not cap how many times the Secretary can extend the designation. Nor did it set a maximum number of years an individual can hold TPS. The statutory design is straightforward: TPS exists because threats to life exist; when the threat persists, so should TPS protection, unless the Secretary articulates a well-reasoned and well-supported national interest to the contrary.

B. Factual Background

The Court bases this background on the entire record, including the SAC and the documents the SAC cites, the CAR, exhibits to the parties' pleadings, and party concessions and points of agreement in joint stipulations and at oral argument (altogether, the record).

1. Obama Administration Designates Haiti for TPS

We begin with an earthquake that registered 7.0 on the Richter scale. 75 Fed. Reg. 3476, 3477 (Jan. 21, 2010). It hit Haiti on January 12, 2010, and precipitated an unprecedented humanitarian crisis. Shortly after, then-DHS Secretary Janet Napolitano, in consultation with State, designated Haiti for TPS due to "extraordinary and temporary conditions." *Id.* at 3476 (citing 8 U.S.C. § 1254a(b)(1)(C)). Haitian nationals in the United States continuously as of January 12, 2010, could thus apply for TPS. *Id.* TPS recipients also obtained the right to remain and work in the United States while Haiti maintained its TPS designation. *Id*. at 3476–77.

Secretary Napolitano set the initial designation for eighteen months. *Id*. at 3476. Unfortunately, repeated environmental and political crises continued to batter the island. Secretary Napolitano and her successor, Jeh Johnson, therefore redesignated Haiti and/or extended its designation on May 19, 2011, 76 Fed. Reg. 29000; October 1, 2012, 77 Fed. Reg. 59943; March 3, 2014, 79 Fed. Reg. 11808; and August 25, 2015, 80 Fed. Red. 51582. "With each of these decisions, DHS outlined conditions arising from the 2010 earthquake in Haiti and its attendant damage to infrastructure, public health, agriculture, transportation, and educational facilities." *Saget v. Trump*, 375 F. Supp. 3d 280, 301 (E.D.N.Y. 2019). "In addition, each extension cited the cholera epidemic and the exacerbation of preexisting vulnerabilities caused by the earthquake, including food insecurity and a housing crisis." *Id.*

In the 2015 extension, the Secretary found that conditions prompting the original January 2010 TPS designation, "persist[ed], including a housing shortage, a cholera epidemic, limited access to medical care, damage to the economy, political instability, security risks, limited access to food and water, a heightened vulnerability of women and children, and environmental risks." 80 Fed. Reg. at 51583. The Secretary found that "Haiti lacks sufficient housing units to address its pre-earthquake shortage." *Id.* "Some Haitians have returned to unsafe homes or built houses in informal settlements located in hazardous areas without access to basic services." *Id.* "Even prior to the 2010 earthquake, Haiti had one of the highest rates of hunger and malnutrition in the Western Hemisphere, with 45 percent of the population undernourished and 30 percent of children under 5 suffering from chronic malnutrition." *Id.* Unfortunately, "[d]amage from the 2010 earthquake exacerbated Haiti's historic food security challenges." *Id.*

There was more. Public health, for example, continued to suffer. "The introduction of cholera in Haiti shortly after the earthquake, and its persistence since then, [was] mainly due to the lack of access to clean water and appropriate sanitation facilities." *Id.* And the political situation continued to deteriorate. "The January 2010 earthquake had an immediate impact on governance and the rule of law in Haiti, killing an estimated 18 percent of the country's civil service and destroying key government infrastructure." *Id.* As of 2015, "Haiti was left without a functioning legislative branch or duly elected local authorities. Increasingly, politically and economically motivated protests and demonstrations . . . turned violent." *Id.* at 51584.

2. First Trump Administration Attempts to Terminate TPS for Haiti

On January 20, 2017, President Donald J. Trump became the 45th President of the United States. He expressed little regard for Haiti and Haitians. He referred to Haiti as a "shithole"[6] country. *See* § 705 Motion at 46–47. He also "stated in a June 2017 meeting with then-DHS Secretary Kelly and others that Haitians 'all have AIDS' upon learning 15,000 Haitian people received visas to enter the U.S. that year." *Saget*, 375 F. Supp. 3d at 371; SAC ¶ 93. To little surprise, then, his administration attempted to end TPS for Haiti.

Litigation ensued in the Eastern District of New York before Judge William F. Kuntz, II. *See Saget*, 375 F. Supp. 3d at 280. In his decision, he laid out the series of events leading to the litigation, which the Court recounts here only for historical context. In March 2017, career officials at DHS recommended extending TPS for Haiti for eighteen months, through January 22, 2019. *Id*. at 304–05. They did so based in large part on United States Citizenship and Immigration Services (USCIS) career analysts' reporting on the effects of Hurricane Matthew, which had made landfall in Haiti in October 2016. It was "the strongest storm to hit Haiti in more than half a century and caused extensive damage." *Id.* at 304. Haiti was "in a state of near total destruction" and "[b]y mid-December 2016 as many as 1.4 million people were in need of

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[6] Alexander Moritz Frey was the first to use "shithole" as a descriptor of a "wretched place," doing so in his seminal antiwar novel, *The Cross Bearers* (1930). *See Shithole*, Oxford English Dictionary, https://www.oed.com/search/dictionary/?scope=Entries&q=shithole.

Frey's life story confirms the role democracies can play in welcoming, as George Washington did, "the oppressed and persecuted." Frey, a prolific author and pacifist, served as a medic in the trenches of World War I alongside Adolf Hitler. Hitler later tried to convert him to Nazism, but Frey staunchly refused. He fled Germany in 1933, as Nazis burned his books, raided his apartment, and issued a warrant for his arrest. He lived his remaining years in exile, first in Austria and then in Switzerland. *See* Von David Gordon Smith, *Eye-Witness Account of Hitler's WWI Years Found*, Spiegel International (April 30, 2007), https://www.spiegel.de/international/zeitgeist/ rediscovering-alexander-moritz-frey-eye-witness-account-of-hitler-s-wwi-years-found-a-478359.html [https://perma.cc/RU49-2Y4U].

humanitarian assistance." *Id.* Hurricane Matthew "exacerbated" conditions, and career officials highlighted that it would "likely take Haiti years to recover from the damages." *Id.*

Ignoring this information and the recommendation, "new USCIS appointees began to cultivate a record they believed would weigh in favor of termination." *Id.* at 305. These actions leaked to the press. The leaks included that then-DHS Secretary John F. Kelly sought "criminal activity data" of TPS holders, even though no Secretary had before considered that data to assess TPS and even though that data was, in any event, unavailable to USCIS. *Id*. at 305–11.

After substantial public pushback, Secretary Kelly issued a limited six-month extension of TPS to January 22, 2018. *Id*. at 311–12; 82 Fed. Reg. 23830 (May 24, 2017). The Federal Register Notice "cited the effects of more recent natural disasters, such as Hurricane Matthew and extensive flooding in the spring of 2017." *Saget*, 375 F. Supp. 3d at 313. But Secretary Kelly also signaled that the end was near: "[i]t is in the best interest of TPS beneficiaries to prepare for their return to Haiti in the event that Haiti's TPS designation is not extended again." 82 Fed. Reg. at 23832.

The same day that Secretary Kelly granted the six-month extension, "officials at DHS began exploring rationales for terminating TPS for Haiti, recognizing Secretary Kelly—or whoever would be Secretary at the time—would seek termination." *Saget*, 375 F. Supp. 3d at 313. What happened next is a rather long story. *Id.* at 313–28. Bottom line: on November 20, 2017, then-acting-DHS Secretary Elaine C. Duke announced she would terminate TPS for Haiti. *Id*. at 328. The official notice published in January 2018. *See* 83 Fed. Reg. 2648 (Jan. 18, 2018).

After an extensive review of the record and legal analysis, Judge Kuntz found that substantial evidence, "at the very least [raised] serious questions" that the DHS Secretary based the termination decision on "animus toward nonwhite immigrants, including Haitians

specifically." *Saget*, 375 F. Supp. 3d at 372. Based on this and many other legal infirmities, Judge Kuntz held that Plaintiffs were "likely to succeed on and ha[d] raised serious questions going to the merits of their substantive APA claims and equal protection claim." *Id.* at 379. He enjoined the Government from terminating TPS for Haiti pending a final decision on the merits of the case. *Id*. DHS appealed.

Before that appeal concluded, President Joseph R. Biden became the 46th President of the United States. Subsequently, DHS withdrew the appeal. *See Saget v. Trump*, No. 18-cv-1599 (E.D.N.Y. Oct. 5, 2021) (Dkt. 164).

3. The Biden Administration Redesignates Haiti for TPS

Haiti's deterioration continued. Gang violence and kidnappings spiked. 86 Fed. Reg. 41863, 41866 (Aug. 3, 2021). State officials and police became "complicit[] . . . in gang attacks that left hundreds of people dead" and "the government . . . helped to unleash criminal violence on poor neighborhoods, including by providing gangs with money, weapons, police uniforms, and government vehicles." *Id.* This support encouraged "gangs to grow to the point where they [could] no longer be reined in, allowing criminality to explode." *Id.*

On July 7, 2021, an already fragile security situation spiraled when a group of assailants killed Haiti's then-President Jovenel Moïse. *Id.* This led to "a deteriorating political crisis, violence, and a staggering increase in human rights abuses." *Id.* at 41864. Haiti simultaneously faced "the challenges of 'rising food insecurity and malnutrition, . . . waterborne disease epidemics, and high vulnerability to natural hazards, all of which [were] further exacerbated by the coronavirus disease 2019 (COVID–19) pandemic." *Id.*

And so, on August 3, 2021, then-DHS Secretary Alejandro N. Mayorkas redesignated and extended Haiti's TPS through February 3, 2023. *Id.* at 41863. Just eleven days later, another catastrophic earthquake hit Haiti. This time, a 7.2-magnitude one "kill[ed] more than 2,200

people, injur[ed] 12,700, destroy[ed] 130,000 homes, and le[ft] thousands of people in urgent need of assistance." 88 Fed. Reg. 5022, 5027 (Jan. 26, 2023). Adding to the environmental crisis, Haitian gangs posed "an increasing threat as they expand[ed] their influence and geographic presence" across the country. *Id*. at 5025.

Secretary Mayorkas therefore extended and redesignated Haiti, this time effective February 4, 2023, through August 3, 2024. *Id.* at 5022. During this period, the situation worsened. "Haitian law enforcement [was] unable to cope with the level of gang violence," while gangs "expanded their arsenals and upgraded their firepower." 89 Fed. Reg. 54484, 54489 (July 1, 2024). Extreme weather events continued to pummel the country. In June 2023, a 4.4 magnitude earthquake and 5.5 magnitude earthquake hit Haiti's west coast only two days apart, causing deaths and destroying homes, blocking roads, and overwhelming healthcare facilities. *Id*. at 54490. Simultaneously, Haiti experienced "one of the highest levels of chronic food insecurity in the world with more than half of its total population chronically food insecure and 22 percent of children chronically malnourished." *Id.* "Amidst the political, security, and environmental crises, Haiti's economy ha[d] been decimated." *Id.*

In response to these conditions, on July 1, 2024, Secretary Mayorkas again extended and redesignated Haiti, this time effective from August 4, 2024, through to February 3, 2026. *Id*. at 54484. This period—August 4, 2024, to February 3, 2026—is key because the dates bookend the core disputes in this litigation.

4. The 2024 Presidential Campaign

President Trump hit the campaign trail again during the 2024 election cycle. Time had not tempered his views on Haiti. During a presidential debate, he accused Haitians of "eating the dogs," "eating the cats," and "eating the pets of the people [who] live" in Springfield, Ohio. *See* § 705 Mot. at 36–37; SAC ¶¶ 87–92. He stated elsewhere that he would "[a]bsolutely . . . revoke" Haiti's TPS designation and send "them back to their country." SAC ¶ 60.

5. Second Trump Administration Attempts to End All TPS Designations

On January 20, 2025, President Trump became the 47th President of the United States. On January 25, 2025, the Senate confirmed Kristi Noem as the Secretary of DHS. She immediately took steps to end Venezuela's TPS designation and, since then, has attempted to terminate the TPS designation for each country whose periodic review process has come due. *See infra* Section IV.A.2; Dkt. 113.

On February 24, 2025, Secretary Noem issued a "partial vacatur" of Secretary Mayorkas's July 2024 extension and redesignation of Haiti for TPS. She purported to shorten Haiti's designation period from the existing end date of February 3, 2026, to August 3, 2025. 90 Fed. Reg. 10511, 10511 (Feb. 24, 2025) (Partial Vacatur). Litigation quickly ensued in the Eastern District of New York. In *Haitian Evangelical Clergy Ass'n v. Trump*, Judge Brian M. Cogan concluded that Secretary Noem lacked statutory authority to issue the Partial Vacatur. 789 F. Supp. 3d 255, 273 (E.D.N.Y. 2025) (*HECA*). And so, he set aside the Partial Vacatur under the APA. *See id.*

Meanwhile, Secretary Noem continued her efforts to terminate TPS for Haiti. On July 1, 2025, she issued a formal notice purporting to terminate Haiti's TPS designation as of September 2, 2025. *See* 90 Fed. Reg. 28760 (July 1, 2025) (July Termination). Other plaintiffs in a

different TPS lawsuit in front of Judge Edward M. Chen in the Northern District of California amended their complaint to include a challenge to Secretary Noem's Partial Vacatur and July Termination. *Nat'l TPS All. v. Noem* (*NTPSA*), No. 25-cv-1766 (N.D. Cal. Mar. 20, 2025) (Dkt. 74); *id*. (July 8, 2025) (Dkt. 250). Their initial complaint challenged Secretary Noem's TPS decisions regarding Venezuela.

Enter our Plaintiffs. Independent of the *HECA* and *NTPSA* litigations, on July 30, 2025, Plaintiffs filed this suit to set aside the July Termination. *See* Dkt. 1.

C. Procedural Background

1. The Parties

Plaintiffs are five Haitian nationals who hold TPS. *See* SAC ¶¶ 1–6. Fritz Emmanuel Lesly Miot is 32 years old and has held TPS since 2011. *Id*. ¶ 1. He is completing his Ph.D. in neuroscience at Loma Linda University in California, where he works on therapies targeting Alzheimer's disease. *Id*. Mr. Miot has Type 1 diabetes and alleges that "[i]n Haiti, neither the insulin nor the specialists" he requires to treat the disease "would be readily accessible, if at all." *Id*.

Rudolph Civil is 23 years old and has held TPS since 2010. *Id.* ¶ 2. He currently works as a software engineer for a major national bank in New York City. *Id.* He financially supports his aunt, her three children, one of whom has Down syndrome, and his grandmother in Haiti. *Id*.

Marlene Gail Noble is 34 years old and has held TPS since 2024. *Id.* ¶ 3. She contracted spinal tuberculosis as a toddler in Haiti, which caused her spinal cord to collapse. *Id*. In 1993, a faith-based organization in Florida brought her to the United States, where she received spinal fusion surgery and obtained temporary humanitarian parole status. *Id*. She currently works as a prep laboratory assistant in a toxicology department. *Id*. She received a second spinal fusion

surgery in 2017 and continues to live with kyphosis in spinal tuberculosis. *Id.* Ms. Noble plans to work as a post-mortem forensic toxicologist after pursuing further education. *Id*.

Marica Merline Laguerre is 21 years old and has held TPS since 2010. *Id.* ¶ 4. She simultaneously obtained a high school and associate degree in biology, along with an Advanced Regents Diploma, from a New York preparatory high school and the City University of New York. *Id*. She studies economics at Hunter College and aspires to a career in finance. *Id*.

Finally, Vilbrun Dorsainvil is 34 years old and has held TPS since 2021. *Id*. ¶ 5. He completed medical school and worked as a doctor in Haiti. *Id*. He currently works as a registered nurse at Springfield Regional Medical Center in Ohio. *Id.* He financially supports family members and plans to obtain a Bachelor of Science in Nursing. *Id*.

Plaintiffs name as Defendants Donald J. Trump in his official capacity as the President of the United States, Kristi Noem in her capacity as DHS Secretary, DHS, and the United States (collectively, the Government). *Id*. ¶¶ 7–10.

2. The Haiti Litigation Continued

On August 20, Plaintiffs filed their First § 705 Motion. Dkt. 26 (First § 705 Mot.). The Government confirmed, however, that because of *HECA*, Haiti's TPS designation would expire no earlier than February 3, 2026, notwithstanding the July Termination. Dkt. 31; Dkt. 65.

Before briefing concluded on Plaintiffs' First § 705 Motion, Judge Chen in California entered a final judgment in the *NTPSA* litigation. *See NTPSA IV*, 798 F. Supp. 3d at 1108. He found the Partial Vacatur arbitrary and capricious because it "was preordained without any meaning[ful] analysis and review." *Id.* at 1155. And that the Secretary made it without consulting government agencies or engaging in a review of country conditions. *Id*. at 1155–56. In fact, the only country conditions report in that record "*supported* the Mayorkas extension/redesignation." *Id.* at 1156. Judge Chen found it "ironic, if not disingenuous, for

Secretary Noem to rely on a report which supported the Mayorkas extension/redesignation to *vacate* that extension/redesignation." *Id.* He concluded that her decision "was simply driven by her predetermined desire to terminate Haiti's TPS on a hastened timeline." *Id.* He granted the *NTPSA* plaintiffs summary judgment and set aside the Secretary's Partial Vacatur under the APA. *Id*. at 1164.

As for the July Termination, Judge Chen denied the Government's motion to dismiss. He concluded that "Plaintiffs' APA and Equal Protection claims related to the Haiti termination are . . . plausible as there are allegations in the operative complaint suggesting pretext." *Id.* at 1159. These included the following:

> [O]n June 7, 2025, DHS announced in a press release that Haiti's TPS would be terminated, *both* because country conditions had improved and because allowing Haitians to remain temporarily in the United States was against national interest. However, on July 1, 2025, when the decision to terminate was published in the Federal Register, no mention was made of improved conditions; the decision rested on a national interest assessment alone. Country conditions were referenced only indirectly in the context of the Secretary's national interest findings—and here there was no mention of any improved conditions; rather, the clear suggestion [was] that there was significant instability in the country.

Id.

Anticipating the Government's appeal of his setting aside the Partial Vacatur, however, Judge Chen stayed the July Termination litigation. *Id*. at 1164–65.

The *HECA* and *NTPSA* decisions impacted this action. On September 17, 2025, the Government informed the Court that the "[t]he Secretary intends to conduct a review, make a decision regarding Haiti's Temporary Protected Status (TPS) designation, and publish in the Federal Register no later than December 5, 2025." Dkt. 59 at 1. Plaintiffs insisted that the Court grant a stay despite the Government's representation. Dkt. 60 at 2–4. The Court instead took the

Government at its word and denied Plaintiffs' First § 705 Motion as moot and without prejudice. Sept. 22, 2025, Min. Order.

Secretary Noem then issued a decision, published on November 28, 2025, to terminate Haiti's TPS designation as of February 3, 2026. *See* 90 Fed. Reg. at 54733. On December 5, 2025, Plaintiffs filed an amended complaint. Dkt. 74. They renewed their motion to stay on December 12, 2025. *See* § 705 Mot. Also on December 12, the Government filed a Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(1) and (b)(6). Dkt. 80 (MTD).

On December 15, 2025, the Court entered an order directing the Government to identify "all portions of the CAR that constitute 'consultation with appropriate agencies of the Government'" under the TPS statute, 8 U.S.C. § 1254a(b)(3)(A). Dec. 15, 2025. Min. Order. The Court also directed the Government to provide "a complete list of agencies" the Secretary "consulted in [her] decision-making process." *Id.*

The Government answered on January 2, 2026. Dkt. 98. It stated that the Secretary had not consulted with the U.S. Ambassador to Haiti, the U.S. Embassy in Haiti, State's regional office or Haiti desk, or Congress in reaching her decision. *Id.* ¶¶ 2–4. She also did not consult with Secretary of State Marco Rubio, though the Government added that "DHS has no reason to believe that information provided by the Department of State to DHS during the consultation process lacks the support of the Secretary of State." *Id.* ¶ 5. The Government also confirmed that of the eleven TPS-designated countries that had by that time come up for periodic review, "[t]he Secretary terminated TPS designations for all eleven countries as required by statute." *Id.* ¶ 12. Another country came up for periodic review afterward, and the Secretary terminated the designation for that country as well. *See* Dkt. 113.

The Court held a two-day hearing on the renewed § 705 Motion on January 6 and 7, 2026. During that hearing, the Court granted in part Plaintiffs' motion for discovery. It ordered, however, that such discovery must be limited and narrowly tailored, in line with the Supreme Court's decision in *Department of Commerce v. New York*, 588 U.S. 752, 781–82 (2019).[7] *See* Dkt. 107 (Jan. 7 Hr'g Tr.) at 18–31; Jan. 23, 2026, Min. Order. It also accepted Plaintiffs' SAC, Dkt. 90, which is the operative complaint here. *See* Dkt. 106 (Jan. 6 A.M. Hr'g Tr.) at 8.

II. JURISDICTION

Courts have federal-question jurisdiction over APA and constitutional claims, unless a specific statute says otherwise. *See Elgin v. Dep't of Treasury*, 567 U.S. 1, 9 (2012); *Chrysler Corp. v. Brown*, 441 U.S. 281, 317 n.47 (1979). The Government cites four: the TPS statute, 8 U.S.C. § 1254a(b)(5)(A); two subsections of a provision of the Immigration and Nationality Act of 1942 (INA) governing judicial review of removal orders, 8 U.S.C. §§ 1252(f)(1) and (a)(2)(B)(ii); and a provision of the APA, 5 U.S.C. § 701(a)(2).

The Government has made the same jurisdiction challenge in every other current TPS case—and there have been many. To varying degrees, each court has rejected the Government's

[7] "[I]n reviewing agency action, a court is ordinarily limited to evaluating the agency's contemporaneous explanation in light of the existing administrative record." *Dep't of Com.*, 588 U.S. at 780. The Court authorized discovery here based on "a strong showing of bad faith or improper behavior." *Id.* (cleaned up).

rather expansive view that the Secretary's TPS decision making is immune from judicial review.[8] This Court joins the chorus.

A. The Presumption in Favor of Judicial Review

The Court begins with a "familiar principle of statutory construction: the presumption favoring judicial review of administrative action." *Kucana v. Holder*, 558 U.S. 233, 251 (2010). This presumption is "well-settled" and "strong." *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 229 (2020) (cleaned up); *accord Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 16 (2020). And relevant here, courts "consistently" apply it "to legislation regarding immigration, and particularly to questions concerning the preservation of federal-court jurisdiction." *Kucana*, 558 U.S. at 251; *see also McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 496 (1991).

The presumption applies with force to claims that an agency exceeded statutory authority, *see Amgen, Inc. v. Smith*, 357 F.3d 103, 111 (D.C. Cir. 2004), or violated the Constitution, *see Webster v. Doe*, 486 U.S. 592, 603 (1988). Not surprising. For it would be "an extreme position" indeed to offer no recourse for action taken outside the bounds of an agency's statutory grant or our constitutional order. *Bowen v. Mich. Acad. of Fam. Physicians*, 476 U.S. 667, 680

[8] The cases on point from President Trump's second administration include *NTPSA VI*, 2026 WL 226573, at *7–16; *NTPSA III*, 150 F.4th at 1016–18; *CASA, Inc. v. Noem*, 792 F. Supp. 3d 576, 588–94 (D. Md. 2025) (finding jurisdiction as to the termination of Afghanistan's and Cameroon's designations but denying cross-motions for summary judgment and plaintiffs' motion for a stay); *Doe v. Noem*, No. 25 C 15483, 2026 WL 184544 (N.D. Ill. Jan. 23, 2026) (staying termination of Burma's designation); *HECA*, 789 F. Supp. 3d at 269; *Nat'l TPS All. v. Noem*, No. 25-cv-5687, 2025 WL 4058572, at *7–12 (N.D. Cal. Dec. 31, 2025) (granting summary judgment setting aside Honduras', Nepal's, and Nicaragua's designations); *Doe v. Noem*, No. 25 Civ. 8686 (S.D.N.Y. Nov. 18, 2025) (Dkt. 59 at 9–11 (Oral Ruling Tr.) (postponing the termination of Syria's TPS designation)).

The relevant cases from the first Trump administration include *Saget*, 375 F. Supp. 3d at 330–33 and *Centro Presente v. Department of Homeland Security*, 332 F. Supp. 3d 393, 404–05 (D. Mass. 2018).

(1986). That noted, when Congress addresses jurisdiction in a statute, courts must determine "whether the challenged action falls within the preclusive scope of the statute." *DCH Reg'l Med. Center v. Avar*, 925 F.3d 503, 506 (D.C. Cir. 2017) (cleaned up).

These principles guide the Court's interpretation of the four provisions the Government raises. For each provision, the presumption against jurisdiction stripping is consistent with the Court's interpretation of the statute's plain text.

B. The TPS Statute Does Not Strip the Court's Jurisdiction

Perhaps the Government's strongest jurisdictional argument lies within the TPS statute itself. Section 1254a(b)(5)(A) divests courts of jurisdiction to "review . . . any determination of the [Secretary] with respect to the designation, or termination or extension of a designation, of a foreign state" for TPS. Indeed, if Plaintiffs had challenged the Secretary's *determination*, the Court would lack jurisdiction. But they have not. They challenge instead *how* the Secretary went about making her determination.

This distinction between decision and process is the ballgame.

1. Plaintiffs Do Not Challenge the Secretary's Substantive Determination

Twice in the immigration context, the Supreme Court has interpreted statutory language constraining review of an agency's "determination." Each case supports that Secretary Noem's "determination" here refers to her act of designating, terminating, or extending TPS. And each contradicts the Government's view that it applies more broadly to how she reached her determination.

In *McNary v. Haitian Refugee Center, Inc.*, the Supreme Court considered the statutory language in 8 U.S.C. § 1160(e)(1): "[t]here shall be no administrative or judicial review of a determination respecting an application for adjustment of status" for certain special agricultural workers. 498 U.S. at 483. The *McNary* Court concluded "the reference to 'a determination'

describes a single act *rather than* a group of decisions or a practice or procedure employed in making decisions." *Id*. at 492 (emphasis added). In that case, the "single act" in question was the Secretary's denial of Special Agricultural Worker (SAW) status to plaintiffs. *Id*. Had the Secretary instead, say, flipped a coin to make her decision, that would be a "practice or procedure" subject to review.

The Supreme Court doubled down two years later. In *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993), it considered a provision of the INA that prohibits "judicial review of a determination respecting an application for adjustment of status" for certain non-citizens, 8 U.S.C. § 1255a(f)(1). The *Reno* Court likewise held that a "determination" does not cover an entire agency regulation but refers only to the "'single act'" of adjudicating individual adjustment-of-status applications. 509 U.S. at 56 (quoting *McNary*, 498 U.S. at 492).

So too here. The Secretary has exclusive authority to engage in the "single act" of designating a country or terminating or extending its designation thereafter. *McNary*, 498 U.S. at 492. As all agree, the Court cannot override one of these "substantive" determinations. *See* Dkt. 93 (MTD Opp'n) at 22; Dkt. 99 (MTD Reply) at 4–6. But Plaintiffs do not ask for that. They instead assert that the Secretary failed to consult; engaged in a pattern or practice of terminating TPS writ large; preordained the outcome of her review; engaged in both unreasoned and unsupported decision making; and, among other failures, acted with discriminatory animus. These claims challenge purported deficiencies in Secretary Noem's "group of decisions," "practice," and "procedure" in reviewing Haiti's TPS designation. *McNary*, 498 U.S. at 492.

The Government counters that a stay or "set aside" of the Secretary's Termination under the APA would inhibit the *substance* of that termination decision. To be sure, *McNary* does warn that a process decision can have "the practical effect of also deciding . . . claims for benefits on

the merits." 498 U.S. at 495 (distinguishing *Heckler v. Ringer*, 466 U.S. 602 (1984)).[9] But here, at most, the Court can order the Secretary to restart the periodic review process under lawful criteria, not to arrive at a particular substantive outcome. *See* 5 U.S.C. § 706(2); *see also infra* Section II.C.1 (explaining that a "set aside" does not impact the TPS statute's "operation" or "enjoin" or "restrain" the Government).[10]

Indeed, most of Plaintiffs' claims also do not assail the Secretary's "single act" of terminating Haiti's TPS designation at all. The APA claim that the Secretary exceeded her "statutory authority" presents a "first order question" unrelated to her final determination. *NTPSA III*, 150 F.4th at 1017. Likewise, the APA claim that the Secretary engaged in a "general pattern and practice" of unlawful terminations is "not unique to the Secretary's decision on [Haiti's] status." *Doe v. Noem*, 25 C 15483, 2026 WL 184544, at *8–9 (N.D. Ill. Jan. 23, 2026); *cf.* Dkt. 103 (Gov't's Suppl. Br.) at 9. Finally, the Equal Protection claim presents a "general collateral challenge[] to unconstitutional practices and policies." *McNary*, 498 U.S. at 492. Even the Government's best case (a vacated Ninth Circuit decision) acknowledges that plaintiffs can bring constitutional challenges to TPS determinations. *See Ramos v. Wolf*, 975 F.3d 872, 892 (9th Cir. 2020), *vacated*, 59 F.4th 1010 (9th Cir. 2023); MTD at 20–21 & n.4. At the very least, claims of these types all escape the TPS statute's jurisdictional bar under the plain meaning of "determination."

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[9] The *McNary* Court distinguished *Heckler*. Unlike in *Heckler*, the *McNary* plaintiffs "d[id] not seek a substantive declaration that they are entitled to SAW status" and if they prevailed on their procedural claims, they would not have "establish[ed] their entitlement to SAW status." *McNary*, 498 U.S. at 495.

[10] The Government's reliance on *Federal Law Enforcement Officers Ass'n v. Ahuja*, 62 F.4th 551 (D.C. Cir. 2023), fails for the same reason. *See* Dkt. 103 (Gov't's Suppl. Br.) at 9; Jan. 7 Hr'g Tr. at 82–84. There, the plaintiff sought a "permanent injunction barring" the agency from pursuing a particular course. *Ahuja*, 62 F.4th at 561.

Confronted with *McNary*'s "single act" language, the Government falls back to the position that "at a minimum, § 1254a(b)(5)(A) bars claims that an agency's decision was arbitrary and capricious," unlike, for example, claims that the Secretary exceeded her authority. MTD at 21. That is not an unfair point. The garden-variety arbitrary-and-capricious claim presents the closest call. Still, even they fall on the procedural side of *McNary*'s line since they each implicate failures in how she came to her decision. *See infra* Section IV.A.3.

2. The TPS Statute's Jurisdiction-Stripping Provision Is Narrow

The Government claims that the words "any" and "with respect to" in the TPS statute's jurisdiction-stripping provision—"*any* determination of the [Secretary] *with respect to*" (emphasis added)—suggest that courts should read "determination" broadly enough to encompass the Secretary's decision-making process. *See* MTD at 19–20. That argument misreads the statute. Grammatically, both phrases modify the noun "determination." They do not invite in other nouns, nouns such as group of decisions, practice, or procedure.

To be sure, the word "any," as the Government contends, "indicates a broad sweep." *Id.* at 19. But, however broad, "[t]he adjective 'any' . . . cannot expand the reach of the noun it modifies." *City & Cnty. of San Francisco v. EPA*, 604 U.S. 334, 348 (2025). So the word "any determination" captures all determinations the Secretary may make—whether to expand, designate, or terminate—but it does not capture the process by which she reaches that determination.

Similarly, the interpretive canon "that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme . . . carries particular force when construing phrases that govern conceptual relationships—like 'with respect to'—whose meanings inherently depend on their surrounding context." *United States v. Miller*, 604 U.S.

518, 533 (2025) (cleaned up). Here, "determination" is the jurisdiction-stripping provision's key word. And "determination" means a "single act." *See supra* Section II.B.1.[11]

The Government cites *Patel v. Garland* for the proposition that a "statute barring review of 'any judgment regarding the granting of relief' covers 'any authoritative decision' on the matter." MTD at 19 (quoting 596 U.S. 328, 337–40 (2022)). *Patel* involved a statute that barred review of "any judgment regarding the granting of relief" concerning a non-citizen's eligibility for adjustment of status. 596 U.S. at 335 (quoting 8 U.S.C. § 1255). There, "any judgment" encompasses an immigration judge's (IJ's) "factual findings." *Id*. at 339. Even if the Court accepts that an IJ's "judgment" (in a quasi-judicial proceeding) and the DHS Secretary's TPS "determination" are similar enough statutory terms to compare directly, *Patel* does not help the Government. A factual finding is a constituent "authoritative *decision*" in an IJ's "judgment." *Id.* at 337–39 (emphasis added). But procedural and constitutional defects in the Secretary's periodic review and consultation process are not decision-like at all. The Secretary's path to the substantive "determination" is not part of the determination itself—for the reasons *McNary* sets out. *See supra* Section II.B.1.

The Government cites only one case interpreting the same TPS provision that arguably supports its view, *Ramos v. Wolf*, 975 F.3d 872 (9th Cir. 2020). *See* MTD at 20. But, again, the Government honestly concedes that the Ninth Circuit vacated this panel opinion on rehearing

[11] The TPS statute's phrasing does not appear as expansive as other jurisdiction-stripping provisions within the same Title of the U.S. Code. *See, e.g.*, *Gebhardt v. Nielsen*, 879 F.3d 980, 987–89 (9th Cir. 2018) (discussing 8 U.S.C. § 1154(a)(1)(A)(viii)(I) endowing the Secretary with "sole and unreviewable discretion" to determine whether a citizen convicted of certain offenses poses a risk to a non-citizen for whom the citizen seeks to file an I-130 petition); *Saget*, 375 F. Supp. 3d at 331 (discussing statutory language, as in 8 U.S.C. § 1252(b)(9), that references review of "all questions of law and fact, including interpretation and application of constitutional and statutory provisions"). The Government itself recognizes this contrasting language (albeit for a different purpose). *See* Gov't's Supp. Br. at 10.

and the case later became moot. *Id*. at n.4. The Government claims that, even a vacated decision "still carries persuasive value." *Id*. Maybe. But not *Ramos*—not least because the Ninth Circuit has twice since *Ramos* taken a more expansive view of jurisdiction under the TPS statute. *See supra* n.5. Indeed, the citation backfires—it speaks volumes that a vacated decision from a sister circuit is the best authority the Government can muster.

3. Jurisdiction Here Does Not Eviscerate the Statutory Bar

Quoting the D.C. Circuit's decision in *DCH Regional Medical Center v. Azar*, the Government separately suggests that permitting review of Plaintiffs' claims "would eviscerate the statutory bar, for almost any challenge to [a determination] could be recast as a challenge to its underlying methodology." MTD at 21 (alteration in original) (quoting 925 F.3d 503, 506 (D.C. Cir. 2019)). But the Government replaced the original case language "estimates" with "determination." This was no small change. *DCH* involved a bar on judicial review of Medicare "estimate" payments to hospitals. The D.C. Circuit held that "a challenge to the methodology for estimating uncompensated care is unavoidably a challenge to the estimates themselves." *Id*. at 506. Change the methodology, necessarily change the estimates. Not so here. After changing her process to comport with the APA, the Secretary can determine to keep or end Haiti's TPS designation.

The Government's evisceration concern contains another flaw. In several jurisdictional statutes, Congress expressly permits a court to "modify" the substantive decision an agency makes. *See, e.g.*, *Solondz v. FAA*, 141 F.4th 268, 276 (D.C. Cir. 2025) (appellate jurisdiction to "modify" a final order of the FAA regarding a pilot's medical clearance); *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 181 (2023) (appellate jurisdiction to "modify" an SEC order "in whole or in part"). The TPS statute's language here bars the Court from modifying the Secretary's determination—and so at a minimum, is not superfluous on this score.

4. Plaintiffs Have No Other Avenue to Challenge the Termination

The Government claims that the TPS statute directs any judicial challenge exclusively to removal proceedings in immigration court, from which Plaintiffs can appeal to the applicable Federal Circuit. *See* Gov't's Suppl. Br. at 9–11; Jan. 7 Hr'g Tr. at 82–84, 95–102. Federal district courts, it argues, have no role.

But the Government does not explain, as it must, *see Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 208–16 (1994), what in the TPS statute makes it "fairly discernible" that Congress intended to channel the "type" of claims here *exclusively* to an IJ through the "comprehensive review process" for orders of removal for which the INA provides. Indeed, it ignores altogether the proper analysis, which asks the following three questions:

> First, could precluding district court jurisdiction "foreclose all meaningful judicial review" of the claim? Next, is the claim "wholly collateral to [the] statute's review provisions"? And last, is the claim "outside the agency's expertise"? When the answer to all three questions is yes, "we presume that Congress does not intend to limit jurisdiction."

Axon Enter., 598 U.S. at 186 (citations omitted).

Here, the answer to all three questions is yes. *McNary*, and common sense, readily provide an affirmative answer to the first factor. Consider that non-citizens who lose TPS must depart voluntarily, and those who do can have no judicial review. *See* Jan. 7 Hr'g Tr. at 92–102. To see the inside of an immigration court, a former TPS holder must first break the law—*i.e.*, not depart. Then, she must either go about her day in fear of being detained by Immigration and Customs Enforcement (ICE) or affirmatively self-surrender. But asking non-citizens to "voluntarily surrender themselves for deportation" to obtain review "is tantamount to a complete denial of judicial review." *McNary*, 498 U.S. at 496–97; *accord Reich*, 510 U.S. at 212–13.

As to the second question, the APA and constitutional claims Plaintiffs raise are "wholly collateral" to 8 U.S.C. § 1252(b)(9). Section 1252(b)(9) provides for "[j]udicial review of all

questions of law and fact . . . arising from any action take or proceeding brought to remove" a non-citizen. 8 U.S.C. § 1252(b)(9); *see id*. § 1252(a)(5) (channeling review of an order of removal to a circuit court). But the claims raised here "do not relate to the subject of the enforcement actions" that that provision covers—*i.e.*, orders of removal. *Axon Enter.*, 598 U.S. at 193. Finally, the "standard questions of administrative and constitutional law" at play here are outside the bread-and-butter determinations an IJ makes in everyday removal proceedings. *Id*. at 194 (cleaned up).

* * *

In sum, the Government cannot bear its "heavy burden" of showing that the TPS statute displaces the strong presumption in favor of judicial review of the Secretary's Termination. *Mach Mining, LLC v. EEOC*, 575 U.S. 480, 486 (2015).

C. The INA's Bars on Judicial Review of Removal Decisions Do Not Apply

The Court next examines the two subsections of the INA that the Government also argues precludes judicial review of Plaintiffs' claims—Subsection (f)(1) and Subsection (a)(2)(B)(ii). Straight away, the Government encounters a roadblock. Section 1252 is titled "[j]udicial review of *orders of removal*." 8 U.S.C. § 1252 (emphasis added). In fact, the text of § 1252 mentions some permutation of "order" forty-eight times and "remove" or "removal" thirty-one times. *See id*. The Secretary's Termination is decidedly not an order of removal.

But of course, a statute's title is not dispositive. *See Yates v. United States*, 574 U.S. 528, 540 (2015). The Government's greater problem is that the text of Subsection (f)(1) and Subsection (a)(2)(B)(ii) "points in the same direction as [the] title." *Dubin v. United States*, 599 U.S. 110, 124 (2023). Both Subsections apply only to individualized immigration adjudications. They do not prevent judicial review of a generally-applicable agency action.

1. Subsection (f)(1)

Defendants first point to Subsection (f)(1). It provides:

> Regardless of the nature of the action or the claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of part IV of [subchapter II of Title 8], as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.

Id. § 1252(f)(1).

But for good reason, "[n]o court" to consider the question has adopted the view that Subsection (f)(1) prevents a court from reviewing the Secretary's action on a country's TPS designation. *NTPSA I*, 773 F. Supp. 3d at 826; *accord HECA*, 789 F. Supp. 3d at 270.

a. Subsection (f)(1) does not cover the TPS statute

Subsection (f)(1) on its face applies only to "provisions of part IV" of subchapter II of Title 8 of the U.S. Code. The TPS statute appears in part V of that subchapter, not part IV. [12] The Government has conceded as much elsewhere. *See NTPSA I*, 773 F. Supp. 3d at 824. The Government counters that the relevant public law, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), contradicts this categorization. *See* Dkt. 72 at 5. True, where a public law conflicts with the codified language, the enacted version controls. *See U.S. Nat'l Bank of Or. v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 448 (1993). But on closer study, IIRIRA's language is not the slam dunk the Government contends.

IIRIRA describes Subsection (f)(1)'s coverage as encompassing "chapter 4 of title II" of the INA. *See* IIRIRA, Pub. L. No. 104-208 § 306(a)(2), 110 Stat 3009-611–12 (Sept. 30, 1996).

[12] This organization is logical, as the TPS statute more readily concerns "Adjustment and Change of Status" (part V) than "Inspection, Apprehension, Examination, Exclusion, and Removal" (part IV). *See* 8 U.S.C. ch. 12, subch. II.

That is, the enacted text, unlike the codified version, refers to its own numbering system (one different from the U.S. Code's numbering system). IIRIRA does place the TPS statute within chapter 4 of Title II of the enacted INA. *See id*. § 308, 110 Stat. at 3009-614–15. So far, so good for the Government—but there is more. The enacted text of Subsection (f)(1) itself falls under the heading labeled "Appeals from Orders of Removal" and the Subsection concerns orders of removal—which just about mirrors the title of § 1252 in the U.S. Code. *See* 8 U.S.C. § 1252 ("Judicial review of orders of removal"). So, the public-law version of Subsection (f)(1) counsels that this provision applies to every statute that both (1) appears under "chapter 4 of title II" of the INA as amended in the enacted law; *and* (2) concerns an order of removal. The TPS statute meets only the first criteria.

In English: the Government relies on a statute, Subsection (f)(1), that it claims tells lower courts not to stick their judicial noses into agency actions falling within a range of statutes. But the range differs based on whether one consults the enacted version of Subsection (f)(1) or the U.S. Code version. Because the TPS statute falls inside the range described in the enacted text, but outside the range identified in the U.S. Code, the Government claims the Court must mind its own business.[13] The Government's problem is that it does not matter either way. Even if the TPS statute falls initially inside the statutory range that Subsection (f)(1) identifies, both the enacted and codified versions of Subsection (f)(1)'s text concern orders of removal and TPS decision-making is not an order of removal. So, Subsection (f)(1) does not cover TPS-related claims.

[13] For a surprisingly engaging explanation of the history and structure of the United States Code, the Court commends the aptly titled, *Detailed Guide to the U.S. Code Content and Features*, created by the U.S. House of Representatives Office of the Legal Revision Counsel. It is available at https://uscode.house.gov/detailed_guide.xhtml [https://perma.cc/MC98-58CQ].

Hence, when the Supreme Court has described Subsection (f)(1)'s scope, it has repeatedly excluded the TPS statute (which is codified at § 1254a). It instead refers to Subsection (f)(1)'s coverage as extending to either "§§ 1221–1232" or "part IV of subchapter II" of Title 8 of the U.S. Code. *See Biden v. Texas*, 597 U.S. 785, 798 (2022); *Garland v. Aleman Gonzalez*, 596 U.S. 543, 549 (2022); *Jennings v. Rodriguez*, 583 U.S. 281, 312–13 (2018); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 481 (1999); *see also Gonzalez v. Immigr. & Customs Enf't*, 975 F.3d 788, 812 (9th Cir. 2020). The agency actions in this covered group all relate to "immigration laws governing the inspection, apprehension, examination, and removal of aliens." *Aleman Gonzalez*, 596 U.S. at 544.[14] The TPS statute, which governs wholesale designation of foreign states for TPS, rather than enforcement of immigration laws on individual non-citizens, is of a different ilk.

b. The relief sought does not affect the "operation of" the TPS statute

Helpfully, other statutory terms in Subsection (f)(1) independently confirm that it does not cover judicial review of the Secretary's Termination. That is because even if the Court affords Plaintiffs the full relief they request, the Court will not (1) "enjoin" or "restrain" (2) the "operation of" the TPS statute. 8 U.S.C. § 1252(f)(1).

Start with "the operation of" language. The Government relies on an applicable Supreme Court case, but, unfortunately for it, the case contradicts its position. In *Garland v. Aleman Gonzalez*, the Supreme Court interpreted "to enjoin," "to restrain," and "operation of" in Subsection (f)(1). 596 U.S. at 550. It held that "[p]utting these terms together, § 1252(f)(1) generally prohibits lower courts from entering injunctions that order federal officials to *take or to*

[14] The listed exception in Subsection (f)(1), too, concerns an individualized immigration determination. *See* § 1252(f)(1) (excepting from the jurisdiction-stripping language "the application of such provisions [of part IV] to an individual alien against whom proceedings under such part have been initiated").

refrain from taking actions to enforce, implement, or otherwise carry out the specified statutory provisions." *Id*. (emphasis added).

Applying this standard, the Supreme Court held that Subsection (f)(1) prohibited the district court's order enjoining the Government from detaining, beyond a certain number of days without a bond hearing, a class of non-citizens "ordered removed," when a statute explicitly permits such detention. *See id.* at 546 (cleaned up). The district court impermissibly "require[d] officials to take actions" that the statute does not require and "to refrain from actions" the statute allows. *Id*. at 551. In so doing, it impeded the "operation" of that detention statute. *Id*. Consistent with this approach, in *N.S. v. Dixon*, the D.C. Circuit recently held that an injunction that "prevents the Marshals from arresting and detaining any criminal defendant in the D.C. Superior Court for a suspected civil immigration violation" falls within Subsection (f)(1)'s ambit because a statute, 8 U.S.C. § 1226(a), permits such arrest and detention. 141 F.4th 279, 289 (D.C. Cir. 2025).

In contrast, a "set aside" of the Termination (and an accompanying declaration), 5 U.S.C. § 706(2), does not impact the TPS statute's "operation." Unlike in *Aleman Gonzalez*, Plaintiffs do not ask this Court to impose limitations that the TPS statute itself does not contain. *See* 596 U.S. at 551. They ask the Court only to hold that the Secretary did not follow the process the APA and the Constitution require and to set aside her decision while she begins anew. Even with the set aside, she remains free to "carry out" the TPS statute's full range of provisions—*i.e.*, to make discretionary decisions to designate countries or extend and terminate such designations following periodic review. *Id*. at 543; *cf.* Dkt. 68 at 21–22.

And the subset of Plaintiffs' allegations that the Secretary exceeded her statutory authority fall outside of Subsection (f)(1)'s ambit for another reason. Any relief the Court could

order against "conduct that allegedly is not even authorized by the statute" could not, by definition, enjoin "the operation" of that statute. *NTPSA III*, 150 F.4th at 1018–19.

c. The relief sought would not "enjoin" or "restrain" operation of the TPS statute

Subsection (f)(1)'s verbs pose yet another problem for the Government. Plaintiffs request two forms of relief: APA vacatur of the Termination and an accompanying declaration that the Secretary's action violated the APA and the Equal Protection Clause. *See* SAC ¶ 90. If granted, neither would "enjoin" or "restrain" operation of the TPS statute.

First, APA vacatur. The *Aleman Gonzalez* Court applied Subsection (f)(1) proscription's against "enjoin[ing]" or "restrain[ing]" operation of certain statutes to a district court's *injunction*, as described *supra* Section II.C.1.b. It "d[id] not purport to hold that § 1252(f)(1) affects courts' ability to 'hold unlawful and set aside agency action, findings, and conclusions'" under the APA. *Aleman Gonzalez*, 596 U.S. at 571 (Sotomayor, J., concurring and dissenting in part) (citing 5 U.S.C. § 706(2)).

This Court concurs with the Fifth Circuit that Subsection (f)(1) does not extend to APA vacaturs, because they are unlike injunctions. *See Texas v. United States*, 40 F.4th 205 (5th Cir. 2022).[15] Via injunction, a court can "compel[] or restrain[] further agency decision-making." *Id.* at 220; *see Citizens for Resp. & Ethics in Wash. v. U.S. Dep't of Just.*, 846 F.3d 1235, 1242 (D.C. Cir. 2017) (explaining that "breadth and flexibility are inherent in equitable remedies"). An APA vacatur, meanwhile, is neither forward-looking nor coercive. It accomplishes "nothing but re-establish[ment] [of] the status quo absent the unlawful agency action." *Texas v. United States*, 40

[15] While the D.C. Circuit has yet to decide the question, it has held that § 1252(f)(1) does not cover declaratory relief. *See N.S.*, 141 F.4th at 290 n.7. And it has recognized the Fifth Circuit holding "that § 1252(f)(1) does not bar vacatur under the APA." *Id.*

F.4th at 220. So, while an injunction "enjoins" or "restrains" an actor under Subsection (f)(1), vacatur of past agency action does not.

Statements across three Supreme Court cases, two of which post-date *Aleman Gonzalez*, confirm this interpretation. In *Reno v. Am.-Arab Anti-Discrimination Comm.*, the Supreme Court explained that § 1252(f) is "nothing more or less than a limit on injunctive relief." 525 U.S. at 481. Then, in *Biden v. Texas*, it stated that § 1252's "title—'Limit on injunctive relief'—makes clear the narrowness of its scope." 597 U.S. at 798. Finally, in its landmark decision prohibiting district courts from issuing nationwide injunctions, the Supreme Court distinguished APA vacaturs as a form of relief. It explained that "[n]othing" in its opinion "resolves the distinct question [of] whether the Administrative Procedure Act authorizes federal courts to vacate federal agency action." *Trump v. CASA, Inc.*, 606 U.S. 831, 847 n.10 (2025); *accord id.* at 869 (Kavanaugh, J., concurring). The limited purview of Subsection (f)(1) does not include a "set aside" under the APA.

Second, declaratory relief. On this point, the Court applies D.C. Circuit precedent. Subsection (f)(1) "does not proscribe issuance of a declaratory judgment." *N.S.*, 141 F.4th at 290 n.7; *accord Brito v. Garland*, 22 F.4th 240, 252 (1st Cir. 2021); *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

Neither the setting aside of the Termination nor a declaration that it issued unlawfully falls within Subsection (f)(1)'s proscription.

d. The posture of this case does not alter the Court's analysis of Subsection (f)(1)'s scope

The Government tries yet another tack. An APA stay, it claims, requires an evaluation of the same factors that a court would consider when issuing a preliminary injunction. *See* § 705

Opp'n at 18–20. So, it infers, a stay is the type of injunctive relief covered by Subsection (f)(1). And, yes, the factors are the same. But the similarities end there.

To begin, Subsection (f)(1)'s text "expressly identifies injunctive relief but makes no mention of stays nor other forms of relief under the APA." *Immigrant Defs. L. Ctr. v. Noem*, 145 F.4th 972, 990 (9th Cir. 2025); *accord NTPSA VI*, 2026 WL 226573, at *9–11. Congress, however, knows "how to limit relief under the APA in other statutory schemes such as the Magnuson-Stevens Act and the Clean Air Act." *Id*. So, the omission here must be intentional.[16]

Moreover, an APA stay and a preliminary injunction are fundamentally different remedies. While there is some "functional overlap," a stay is not "a coercive order." *Nken v. Holder*, 556 U.S. 418, 428 (2009). Its effect (like that of a vacatur) is merely to return circumstances to the status quo. *Id*. And a stay does not operate *in personam*. So, here, an APA stay would not "direct[] the conduct of" the Secretary. *Id*. It would merely "temporarily divest[]" her Termination "of enforceability." *Id*. Finally, it would be odd indeed, given the Court's determination that Subsection (f)(1) permits APA vacatur, if it did not also allow the far less drastic APA stay.

Subsection (f)(1) does not strip the Court of jurisdiction in this case.

2. Subsection (a)(2)(B)(ii)

Undeterred, the Government tries a different provision of § 1252 next. Subsection (a)(2)(B)(ii) bars judicial review of "any other decision or action [not enumerated in § 1252(a)(2)(B)(i)] of . . . the Secretary of Homeland Security the authority for which is specified under [subchapter 12 of Title 8] to be in the discretion" of the Secretary. Subchapter 12

[16] Section 1252(f)(1) was enacted in 1996, a half-century after the APA. *See Gonzalez*, 596 U.S. at 562. It "may not be held to supersede or modify [the APA] . . . except to the extent that it does so expressly." 5 U.S.C. § 559; *cf. Marcello v. Bonds*, 349 U.S. 302, 309 (1955).

of Title 8 includes the TPS statute. But as with Subsection (f)(1), Subsection (a)(2)(B)(ii)'s text supports its application only to individual immigration adjudications.

Section 1252(a)(2)(B) contains a clause (i) and clause (ii). Clause (i) bars review of "judgment[s] regarding the granting of relief" under certain statutes—*e.g.*, cancellation of removal, adjustment of status, etc. 8 U.S.C. § 1252(a)(2)(B)(i). Clause (ii), meanwhile, is "a catchall provision" that applies to "decisions of the same genre" as in clause (i). *Kucana*, 558 U.S. at 246; *see RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (explaining the canon of "avoid[ing] . . . the superfluity of a specific provision that is swallowed by the general one"). That genre encompasses "orders denying discretionary relief in *individual cases*." *Make the Rd. New York v. Wolf*, 962 F.3d 612, 630–31 (D.C. Cir. 2020) (emphasis added); *see Nasrallah v. Barr*, 590 U.S. 573, 586 (2020) (explaining the two clauses cover "cancellation of removal, voluntary departure, adjustment of status, certain inadmissibility waivers," and the like).

The Government asserts that various cases broaden the scope of Subsection (a)(2)(B)(ii) to all manner of immigration-related decisions entailing some discretion. *See* MTD at 21–25; Gov't's Suppl. Br. at 6. Those cases, however, all apply Subsection (a)(2)(B)(ii) in a manner that fits comfortably with this Court's interpretation. In *Bouarfa v. Mayorkas*, 604 U.S. 6, 14 (2024), the Supreme Court precluded review of the Secretary's revoked approval of an individual visa petition. In *iTech U.S., Inc. v. Renaud*, 5 F.4th 59, 68 (D.C. Cir. 2021), the D.C. Circuit prohibited review of USCIS's revoked approval of a non-citizen's I-140 immigration visa petition. And in *Zhu v. Gonzales*, 411 F.3d 292, 293 (D.C. Cir. 2005), it precluded review of the Attorney General's refusal to waive the requirement that four non-citizens obtain a labor certification to petition for a work visa.

Subsection (a)(2)(B)(ii) poses no barrier to the Court's review here.

D. The Administrative Procedure Act Does Not Bar Review

The Government makes one last statutory stand. The APA excludes from its own purview cases where the "agency action is committed to agency discretion by law." 5 U.S.C. § 701(a)(2).[17] This exception, however, applies only where a statute offers "absolutely no guidance as to how [an agency's] discretion is to be exercised." *Make the Rd. N.Y.*, 962 F.3d at 632. For the reasons described below, the TPS statute is not (by a long shot) drawn so broadly. *Accord HECA*, 789 F. Supp. 3d at 275; *Nat'l TPS Alliance v. Noem*, No. 25-cv-05687, 2025 WL 4058572 (N.D. Cal. Dec. 31, 2025) (Dkt. 197).

To begin, the Government aims its § 701(a)(2) argument at only Plaintiffs' APA claim (Count One), and not their Equal Protection claim (Count Two). *See* MTD at 28. The latter does not implicate APA review, which is all § 701(a)(2) covers. *See* 5 U.S.C. § 701(a)(2); *Make the Rd. N.Y.*, 962 F.3d at 632.

As to the APA claim, time and again, the Supreme Court has counseled that § 701(a)(2)'s scope is "narrow." *E.g.*, *Heckler v. Chaney*, 470 U.S. 821, 838 (1985). It precludes review only of action "traditionally left to agency discretion," *Lincoln v. Vigil*, 508 U.S. 182, 191 (1993), and "where the relevant statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion," *Dep't of Com.*, 588 U.S. at 772 (cleaned up).

The quintessential example is an agency's exercise of enforcement discretion. *See, e.g.*, *Heckler*, 470 U.S. at 837–38; *Schieber v. United States*, 77 F.4th 806, 813 (D.C. Cir. 2023); *Baltimore Gas & Elec. Co. v. FERC*, 252 F.3d 456, 459–60 (D.C. Cir. 2001). So, in the immigration context, there is no APA review of the Government's policy of prioritizing for

[17] The APA also provides a court may not review agency action where a "statute[] preclude[s] judicial review." 5 U.S.C. § 701(a)(1). The Court has already explained why that provision is inapplicable here. *Cf.* MTD at 27–28.

removal certain categories of non-citizens over others. *See United States v. Texas*, 599 U.S. 670, 682–83 (2023). In such cases, the agency's discretion is so expansive that there is no "law to apply." *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410 (1971).

This action is not that. It instead resembles *Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 586 U.S. 9 (2018), where the Supreme Court found § 701(a)(2) inapplicable. In *Weyerhaeuser*, a group of landowners challenged the designation of their property as a critical habitat. *Id.* at 13. The Endangered Species Act mandates such designation after the Secretary of the Interior "tak[es] into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat." 16 U.S.C. § 1533(b)(2). The Secretary of the Interior "may" still thereafter choose not to designate an area if he determines that the costs of doing so outweigh the benefits—"unless he determines, based on the best scientific and commercial data available, that failure to designate such area as critical habitat will result in the extinction of the species concerned." *Id*. (emphasis added). Plaintiffs challenge that the agency did not follow "a standard set forth in the statute" (*i.e.*, the mandatory part), which the Supreme Court held is a garden-variety APA claims subject to review. *Weyerhaeuser*, 586 U.S. at 23–24.

Our statutory scheme is symmetrical. Under both the Endangered Species Act and the TPS statute, the decisionmaker is required to conduct a study weighing certain enumerated factors—in the TPS context, "country conditions" against "national interest," in "consultation with appropriate agencies," 8 U.S.C. § 1254a(b)(1), (3). In both statutory schemes, the discretionary part of the statute kicks in only *after* the Secretary has properly weighed these factors. The statute hardly offers "absolutely no guidance" to either the agency or this Court.

Make The Rd. New York, 962 F.3d at 632 (cleaned up).[18] And so it is subject to APA review. *See Weyerhaeuser*, 586 U.S. at 23–24.

Section 701(a)(2) does not preclude APA review here.

E. The *NTPSA* Litigation Does Not Compel a Different Result

The Court ends its exhaustive (arguably exhausting) survey of subject-matter jurisdiction by addressing the Government's non-statutory argument. It contends that two recent Supreme Court orders from its emergency docket concerning the TPS statute confirm this Court lacks jurisdiction. *See* MTD at 21. They do not.

Yes, the Supreme Court's interim orders, while not "conclusive as to the merits," "inform how a court should exercise its equitable discretion in like cases." *Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025). But the cited interim orders never discuss jurisdiction. And given the presumption of judicial review discussed earlier, the Court cannot conclude that the Supreme Court implicitly intended for every court handling every TPS case to find it likely has no jurisdiction.

Recall that in 2025, different plaintiffs challenged Secretary Noem's vacatur of the previous administration's extension of a 2023 designation of Venezuela for TPS and then her later decision to terminate that designation. *See NTPSA I*, 773 F. Supp. 3d 807. Judge Chen granted plaintiffs' motion to postpone the Venezuela TPS actions pending litigation. *See id*. at 868. Without statement or opinion, the Supreme Court stayed that order pending appeal in May 2025. *See NTPSA II*, 145 S. Ct. 2728. After the district court entered final judgment for

[18] The Government also analogizes this case to *Webster v. Doe*, 486 U.S. 592 (1988). There the Supreme Court considered a statute permitting the Central Intelligence Agency's (CIA's) Director to terminate an employee when he "shall deem such termination necessary or advisable in the interests of the United States." *Webster*, 486 U.S. at 600 (quoting 50 U.S.C. § 403(c)). "Necessary or advisable," without additional clarifying language, allocates great discretion to the CIA. Such unrestricted terminology is absent from the TPS statute.

plaintiffs, the Supreme Court again stayed the decision pending appeal. *See NTPSA V*, 146 S. Ct. 23 (2025).[19] This time, it said more, but not much more: "[a]lthough the posture of the case has changed, the parties' legal arguments and relative harms generally have not. The same result that we reached in May is appropriate here." *Id*.

From this, the Governmnent claims the Supreme Court agrees with its jurisdiction argument. Since its "only argument" on appeal, it says, was that the TPS statute's jurisdiction-stripping provision bars arbitrary-and-capricious claims, that must be the "legal argument" the Supreme Court telegraphed has merit. *See* MTD at 21 (cleaned up). But the Government undersells its argumentative thoroughness. Its stay application *also* contended, jurisdiction aside, that the Secretary had authority to "vacate the outgoing administration's extension" of Venezuela's TPS designation. *Noem v. Nat'l TPS All.*, No. 25A326, Appl. for Stay at 19–22 (U.S. Sept. 19, 2025).

If this is what intrigued the Supreme Court, its order would not inform, much less resolve, this case. The Court is adjudicating the legality of a TPS termination, not a vacatur of a previous Secretary's TPS designation. In fact, if the Supreme Court agreed with the Government on the merits—that the Secretary has authority to vacate a previous designation before its expiration, *id.*, or, as the Government's first stay application asserted, that the Government did not violate the Equal Protection Clause, *Noem v. Nat'l TPS All.*, No. 24A1059, Appl. for Stay at 59–75 (U.S. May 1, 2025)—that would have presumably entailed an antecedent finding of district-court jurisdiction for at least some TPS-related claims.

In any event, this Court declines the invitation to try its hand at divination.

[19] The district court also set aside the Partial Vacatur of Haiti's designation made in 2024. The Government did not petition for a stay of that portion of district court's opinion. *See NTPSA V*, 146 S. Ct. at 24.

* * *

The TPS statute preserves the Secretary's discretion to make designation, extension, and termination decisions according to her "value judgments." MTD at 23–25. But the Court retains jurisdiction—and indeed has a positive duty—to ensure that the Secretary adheres to the APA and the U.S. Constitution when the Secretary takes TPS-related action. It turns to that responsibility next.

III. LEGAL STANDARD

Section 705 is the APA's "general stay provision." *Mexichem Specialty Resins, Inc. v. E.P.A.*, 787 F.3d 544, 558 (D.C. Cir. 2015). It authorizes courts to "issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings." 5 U.S.C. § 705. A court may do so "[o]n such conditions as may be required and to the extent necessary to prevent irreparable injury." *Id.*

The factors governing issuance of a section 705 stay are the same as those that govern the grant of a preliminary injunction. *See Dist. of Columbia v. U.S. Dep't of Agric.*, 444 F. Supp. 3d 1, 15 (D.D.C. 2020). To prevail on such a motion, the movant "must show (1) a substantial likelihood of success on the merits, (2) that it would suffer irreparable injury if the [stay] were not granted, (3) that a[] [stay] would not substantially injure other interested parties, and (4) that the public interest would be furthered by the [stay]." *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006). In a case like this one, where the Government is the non-movant, the third and fourth factors merge. *Nken*, 556 U.S. at 435.

IV. LIKELIHOOD OF SUCCESS

A. APA Claim

1. The Secretary Likely Acted Contrary to Law in Failing to "Consult[]" Properly with "Appropriate Agencies"

We begin with the APA's familiar requirement that courts "hold unlawful and set aside agency action, findings, and conclusions" that are "in excess of statutory jurisdiction, authority, or limitations" or are "without observance of procedure required by law." 5 U.S.C. § 706(2)(C)–(D). Plaintiffs are likely to succeed on their claim that Secretary Noem acted contrary to law and in excess of her statutory authority by failing to consult appropriate agencies as required by the TPS statute.

The statutory text is unambiguous. Congress vested the DHS Secretary with the decision of whether to extend a country's TPS designation upon "review [of] the conditions in the foreign state." 8 U.S.C. § 1254a(b)(3)(A). But, among other limitations, she can terminate a TPS designation only "after consultation with appropriate agencies of the Government." *Id.* That did not occur.

Recall that on February 24, 2025, Secretary Noem issued the Partial Vacatur of Haiti's TPS designation. On September 5, 2025, the court in the *NTPSA* litigation found that the Partial Vacatur violated the APA, in part because the Secretary made the decision "without consultation with government agencies or country conditions review." *NTPSA IV*, 798 F. Supp. 3d at 1155. Although the court did not formally invalidate DHS's July Termination of Haiti's TPS designation, it noted that the July Termination would be unlawful if the Vacatur is unlawful. *Id.* at 1164 & n.24. Presumably accepting that "the better part of valour is discretion,"[20] DHS

[20] William Shakespeare, *Henry IV, Part I*, in *The Complete Works of William Shakespeare—Comprising His Plays and Poems* 385, 411 (1979).

decided to re-issue its periodic review decision on November 28, 2025, when it again terminated Haiti's TPS designation (the operative Termination here). *See* 90 Fed. Reg. at 54733.

On Friday, September 5, 2025—that is, the same day that the *NTPSA* court set aside the Partial Vacatur of Haiti's TPS designation—a DHS staffer emailed a State staffer at 4:55 p.m.: "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?" CAR 78-7 at 9–10 (HaitiTPSAR 409–10). The State staffer responded within 53 minutes: "State believes that there would be no foreign policy concerns with respect to a change in the TPS statue of Haiti." *Id.*

This was it. The full extent of the supposed "consultation with appropriate agencies." Believing it must be missing something, the Court questioned Government counsel about this:

> **Court:** So in the Federal Register notice, the Secretary wrote, "After reviewing country conditions and consulting with appropriate U.S. Government agencies, the Secretary determined that Haiti no longer meets the conditions for the designating as TPS"; right?
>
> **Government Counsel:** Yes.
>
> **Court:** What were the appropriate agencies that the Secretary consulted? . . .
>
> **Government Counsel:** So, Your Honor, it's the Department of State email found at 409 and 410. That is what we have.
>
> . . .
>
> **Court:** No other agency was consulted?
>
> **Government Counsel:** No other agency was consulted.
>
> . . .
>
> **Court:** And the extent of the Department of State consultation was the email exchange at 409 and 410.
>
> **Government Counsel:** That is my understanding.

Jan. 6 A.M. Hr'g Tr. at 19:14–21:6.

Was this "consultation"? The Court "look[s] first to [the statute's] language, giving the words used their ordinary meaning." *Lawson v. FMR LLC*, 571 U.S. 429, 440 (2014). The ordinary meaning of "consultation" is "[t]he act of asking the advice or opinion of someone (such as a lawyer)" or "[a] meeting in which parties consult or confer." *Consultation*, *Black's Law Dictionary* (12th ed. 2024). To consult is to "seek information or advice from (someone with expertise in a particular area)" or to "have discussions or confer with (someone), typically before undertaking a course of action." *Consult*, *The New Oxford Dictionary* (3d ed. 2015).

The Government contends that the email exchange suffices as consultation because "the statute leaves each Secretary with substantial discretion to determine when, where, how, and with whom to consult as appropriate in each instance." Gov't's Suppl. Br. at 6. But Congress did not vest the Secretary with Humpty Dumpty-like power to make the word "consultation" mean "just what [she] chooses it to mean—neither more nor less."[21] And the above exchange cannot suffice if the word "consultation" is to play any role in the TPS designation process. Instead, some "meaningful exchange of information" must occur. *Cal. Wilderness Coalition v. U.S. DOE*, 631 F.3d 1072, 1086 (9th Cir. 2011); *Nat'l TPS All.*, 2025 WL 4058572 at *14; *Doe*, 2026 WL 184544 at *13–14.

The statutory text supports this view. To start, the Government is wrong about the level of the Secretary's discretion. Congress *did* tell the Secretary "when" and "with whom" to consult. When: the Secretary "*shall* review the conditions in the foreign state" only "*after* consultation." 8 U.S.C. § 1254a(b)(3)(A) (emphasis added). And only after consulting and

[21] Lewis Carroll, *Alice's Adventures in Wonderland and Through the Looking-Glass* 198 (Messner 1982); *cf. Lopez v. Gonzales*, 549 U.S. 47, 54 (2006).

reviewing country conditions can she make her "determin[ation]." *Id.* With whom: "appropriate agencies of the Government." *Id.* And recall that Congress passed the TPS program to *curb* the Executive's discretion, not expand it. *See supra* Section I.A.

Consider further that Congress requires "consultation with appropriate agencies" three times: before making the initial designation, 8 U.S.C. § 1254a(b)(1); before undertaking a periodic review, *id.* § 1254a(b)(3); and before issuing an annual report to Congress about the operation of the TPS program, *id.* § 1254a(i). And each time, the DHS Secretary can act, again, only "*after* consultation." *Id.* (emphasis added). And only after consultation with agenc*ies*—plural, not singular. *Id.* Plainly, Congress's consultation requirement was not an afterthought, but instead an integral mechanism to ensure the DHS Secretary understands country conditions before acting.

The Government more specifically contends that "[w]hat constitutes sufficient consultation is *nothing more* than the Secretary's 'determination' 'with respect to the termination' of a country's designation." Gov't's Suppl. Br. at 5–6 (citing 8 U.S.C. § 1254a(b)(5) (citation modified)) (emphasis added). That cannot be. Given that, as just noted, the Secretary can make a "determination" only "after consultation," consultation must mean something different than determination.

The Government cites Government Accountability Office Report 20-134, titled, *Temporary Protected Status: Steps Taken to Inform and Communicate Secretary of Homeland Security's Decision* (GAO TPS Report). *See* Gov't's Suppl. Br. at 5. Relying on it, the Government contends that "the INA does not prescribe the other agencies that must be consulted"; that "State . . . generally has a role in providing input for the Secretary['s] . . . TPS

reviews"; and that "DHS generally consults with State on TPS decisions, although it is not specifically required to do so under the statute." *Id.* (citing GAO TPS Report at 2, 18–19). Fair.

But the consultation detailed in the GAO TPS Report puts the inadequacy of the email exchange here into stark relief. Typically, State's Bureau of Population, Refugees, and Migration (PRM) compiles a "joint action memo" by reaching out to the regional bureau, which in turn reaches out to the overseas post (*e.g.*, the embassy), which in turns fills out and returns a detailed questionnaire about country conditions. *See* GAO Report at 23. Other agencies (*e.g.*, the U.S. Agency for International Development) may also provide information. *See id.* The Secretary of State then reviews PRM's memorandum and sends a recommendation letter and final country conditions report to the DHS Secretary. *See id.* at 22–23.[22] Compare this with the late Friday afternoon, three-sentence email exchange between staffers that occurred here.

The most the Government can muster as to the Secretary of State's position is that there is "no reason to believe" that the "information provided by the Department of State to DHS"—in its one-sentence email—lacks the Secretary of State's support. Dkt. 98 ¶ 5. Maybe as to foreign policy.[23] But as to Haiti's *country conditions*, Secretary Rubio—as recently as October 1, 2025—raised the concern that Haiti continues to face, "immediate security challenges." CAR 78-7 at 32. And earlier in 2025, he warned that criminal elements in Haiti seek to create "a gang-controlled state where illicit trafficking and other criminal activities operate freely and terrorize Haitian citizens." *Id*. at 46.

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[22] For a detailed review of this process, see *NTPSA IV*, 798 F. Supp. 3d at 1120–22, and *Saget*, 375 F. Supp. 3d at 298–300.

[23] The Government contends that "foreign policy" covers "country conditions." Jan. 6 A.M. Hr'g Tr. at 34:21–36:6. Not according to Secretary Noem. In the Termination, she listed "foreign policy" as part of the national interest analysis, not the country conditions analysis. *See* 90 Fed. Reg. at 54735 ("'National interest' is an expansive standard that may encompass an array of broad considerations, including foreign policy . . . .").

The Court makes the following observation: The State Travel Advisory for Haiti in the CAR is dated September 18, 2024. *See* CAR 78-7 at 17. Secretary Noem published her initial termination notice for Haiti on July 1, 2025. Two weeks later, on July 15, 2025, State "[r]eissued" its travel advisory because conditions had *worsened* since the previous September. It added a "terrorism indicator," and the language "[d]o not travel to Haiti for any reason." § 705 Reply at 20–21. This July reissue was State's operative travel advisory on November 28, 2025, when Secretary Noem issued the Termination, and it remains in effect today. But it does not appear in the CAR. So? The Secretary did not even consider updated information from State freely available to the public.

Perhaps every government agency would have agreed with Secretary Noem's Termination decision. Perhaps none of them would. We do not know. Because the Secretary did not consult. In terminating Haiti's TPS designation without consulting, she acted contrary to law and in excess of statutory authority.

2. The Secretary Engaged in a Pattern and Practice of Terminating All TPS Designations Without the Requisite Periodic Review

As of the publication of this Memorandum Opinion, the Secretary has terminated the TPS designations of all twelve countries, including Haiti, that "have come up for . . . period[ic] review" since President Trump took office in January 2025. Dkt. 98 at 4; Dkt. 113. This alone strongly suggests that the Secretary engaged in a pattern and practice of terminating all TPS designations without the country specific statutorily-mandated periodic review.

The Supreme Court has recognized that when agency action "appl[ies] some particular measure across the board," a person adversely affected may challenge "the entire . . . program, insofar as the content of that particular [contested] action is concerned." *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 890 n.2 (1990) (cleaned up). The D.C. Circuit describes such a claim as

assailing an agency's alleged wholesale "practice of shrugging off . . . statutory . . . limitations." *Hisp. Affs. Project v. Acosta*, 901 F.3d 378, 387 (D.C. Cir. 2018).

Plaintiffs' pattern-and-practice allegations, *see* SAC ¶¶ 240–43; Dkt. 108 at 10–13, claim just that. They assert that "[t]he fact that the administration has terminated every TPS designation that it has reviewed despite the disparate conditions in those countries is evidence that the administration is terminating TPS designations, including Haiti's TPS designation, based on a predetermined agenda rather than a good-faith, fact-based, country-specific review as required by 8 U.S.C. § 1254a(b)(3)(A)." SAC ¶ 241. In fewer words, they allege that the Secretary impermissibly engaged in a "habitual[]" "practice" or "*de facto* policy" of terminations across the board. *Hisp. Affairs Project*, 901 F.3d at 386–88.

The Government concedes that twelve designated countries have come up for periodic review since January 20, 2025, and Secretary Noem has terminated all twelve.

Table of TPS Actions

Date of Publication	TPS Action Taken	Country	Federal Register Citation
2/3/2025	Vacatur	Venezuela	90 Fed. Reg. 8805
2/5/2025	Termination	Venezuela	90 Fed. Reg. 9040
2/24/2025	Partial Vacatur	Haiti	90 Fed. Reg. 10511
5/13/2025	Termination	Afghanistan	90 Fed. Reg. 20309
6/4/2025	Termination	Cameroon	90 Fed. Reg. 23697
6/6/2025	Termination	Nepal	90 Fed. Reg. 24151
7/1/2025	Termination	Haiti	90 Fed. Reg. 28760
7/8/2025	Termination	Nicaragua	90 Fed. Reg. 30086
7/8/2025	Termination	Honduras	90 Fed. Reg. 30089
9/8/2025	Termination	Venezuela	90 Fed. Reg. 43225
9/22/2025	Termination	Syria	90 Fed. Reg. 45398
11/6/2025	Termination	South Sudan	90 Fed. Reg. 50484
11/25/2025	Termination	Burma	90 Fed. Reg. 53378
11/28/2025	Termination	Haiti	90 Fed. Reg. 54733
12/15/2025	Termination	Ethiopia	90 Fed. Reg. 58028
1/14/2026	Termination	Somalia	91 Fed. Reg. 1547

Dkt. 113.[24] It is, to the Court's knowledge, unprecedented in the thirty-five years since the establishment of the TPS program for a DHS Secretary to terminate every TPS designation that

[24] This chart omits one extension. South Sudan's TPS automatically extended six months in May 2025 because Secretary Noem failed to conduct the required periodic review. *See* Dkt. 113. At the next opportunity, she terminated its designation. *See* 90 Fed. Reg. 5084 (Nov. 6, 2025).

crosses her desk for review. *See* Jan. 7 Hr'g Tr. at 11–15, 60–68. This unprecedented, across-the-board nature of the Secretary's terminations strongly suggests that each decision sprang from a "*de facto* policy" and "shrug[ed] off" the "statutory command" that she engage in an individualized review of the conditions of each country. *Hisp. Affairs Project*, 901 F.3d at 386–88.

This is not only educated speculation. Secretary Noem has failed to consult, as required, appropriate agencies in making other termination decisions. As this Court does with Haiti, courts have concluded that she failed to consult before terminating the TPS designations for Burma, Honduras, Nepal, Nicaragua, and Venezuela, despite her statutory obligation to do so. *See Doe*, 2026 WL 184544 at *14 (Burma); *Nat'l TPS Alliance*, 2025 WL 4058572 at *22–23 (Honduras, Nepal, and Nicaragua); *NTPSA IV*, 798 F.Supp.3d at 1118 (Venezuela). These consistent judicial findings support a broader pattern of terminating TPS designations writ large.

Whatever the "Administration's priorities," *Dep't of Com.*, 588 U.S. at 781, the Secretary has no authority to contravene an act of Congress. A pattern and practice of doing so is "arbitrary, capricious, and contrary to law, in violation of the APA." *Hisp. Affairs Project*, 901 F.3d at 386. Plaintiffs are likely to succeed on the merits of their pattern-and-practice APA claim.

3. The Secretary's Actions Were Arbitrary and Capricious

Agency action is arbitrary and capricious if the agency "has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983). "The scope of review under the 'arbitrary and capricious' standard is narrow and a court is not to substitute its judgment for that of the agency." *Id.* But a court must ensure

that the agency "remained within the bounds of reasoned decisionmaking." *Dep't of Com.*, 588 U.S. at 773 (cleaned up). It does so by considering whether the record confirms that the agency "examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *State Farm*, 463 U.S. at 43 (cleaned up).

Plaintiffs contend that Secretary Noem's explanation for terminating Haiti's TPS designation is "implausible and contrary to the evidence." § 705 Mot. at 37. The Government does not meaningfully dispute this. Instead, it urges the Court not to "second-guess" the Secretary's decision-making or "reweigh the conflicting evidence." § 705 Opp'n at 33–34 (cleaned up). The Court accedes—as it must—to that request. The Court instead "determine[s] whether the [Secretary's] decision-making was reasoned, principled, and based upon the record." *Louisville Gas & El. Co. v. FERC*, 149 F.4th 693, 701 (D.C. Cir. 2025). It was not.

The Secretary offered two reasons for terminating Haiti's TPS designation. First, because "there are no extraordinary and temporary conditions in Haiti that prevent Haitian" TPS holders "from returning [to] safety." 90 Fed. Reg. at 54735. And second, because permitting Haitian TPS holders to remain in the United States "is contrary to the national interest." *Id.* Neither justification withstands APA scrutiny.

a. Conditions in Haiti

Secretary Noem's determination that conditions in Haiti permit safe return "runs counter to the evidence before [her]." *State Farm*, 463 U.S. at 43.

The Certified Administrative Record contains over 1,450 pages, and it speaks with remarkable consistency. Every document describing conditions in Haiti in 2025 describes the country as a nation deep in crisis.

Date	Statement	Source	CAR Cite
Jan. 16	"Haiti's crisis has reached catastrophic levels, with allied criminal groups intensifying large-scale, coordinated attacks on the population and key state infrastructure, nearly paralyzing much of the country and worsening the already dire human rights and humanitarian situation."	News Release Summarizing Human Rights Watch Report	78-11 at 34–35
Jan. 23	"The violence [in Haiti] has increased dramatically in 2024, as armed groups attacked new parts of the city including police stations, hospitals, and residential neighborhoods. This surge in conflict, occurring frequently in residential zones, has deeply affected communities and seriously disrupted the health care system, which is struggling to remain functional amid supply shortages and attacks on patients and medical staff. The instability has severely disrupted the operations of Doctors Without Borders . . . teams, at times forcing the temporary closure of facilities and suspensions of activities."	Doctors Without Borders Report	78-11 at 279
Feb. 19	"Haiti is paralyzed. Early hope that an inclusive transitional government would quickly tackle the country's rampant insecurity with help from an international force has faded. . . . [G]angs have seized the opportunity to occupy more territory, where they are lording it over the population with increasing ruthlessness. With almost one in ten people living in Haiti displaced, and almost half the population facing acute food insecurity, humanitarian conditions are desperate. In such circumstances, the transitional administration's determination to hold a vote on a new constitution and a new government by the end of 2025 seems unrealistic."[25]	Crisis Group Report	78-11 at 126

[25] It was; the elections did not take place. *See* § 705 Mot. at 26.

Feb. 26	"Gang violence in Haiti continued to surge in 2024, following a trend that began with the assassination of President Jovenel Moïse in 2021. The country reported a record number of homicides in 2024. . . . In a scenario where the state is largely absent and criminal actors enjoy undisputed social control, gangs carry out massacres and force residents to leave their homes to exploit the political turmoil and expand their control over the country."	InSight Crime's 2024 Homicide Round-Up	78-11 at 70–71
Mar. 11	Doctors Without Borders reported "cholera on the rise in Haiti." It "expressed concerns about the trend as Haitians have less access to clean water."	Voice of America Article	78-7 at 130
Mar. 12	The Federal Aviation Administration (FAA) "has extended its ban on U.S. flights to Port-au-Prince until Sept. 8, 2025. . . . The FAA first imposed the ban in November 2024 after gunfire hit three U.S. planes attempting to land."	The Haitian Times Article	78-10 at 127
Mar. 18	"Overall, more than 1 million people are displaced across the country, a number that has tripled in the past year. Yet, as suffering reaches new extremes, Haiti's crisis continues to struggle for the world's attention. Resources are stretched thin, and humanitarian needs far exceed the current response capacity. Additionally, insecurity keeps growing."	International Organization for Migration Article	78-11 at 240
Apr. 7	"'Human rights violations and abuses have reached a scale and intensity that I have never seen before in Haiti,' said William O'Neill, the [UN] High Commissioner's Designated Expert on Haiti."	United Nations (UN) Human Rights Office of the High Commissioner Article	78-12 at 49

Apr. 21	"The situation in Haiti has reached a pivotal moment and is further deteriorating and approaching what is likely to become 'a point of no return,' requiring urgent international attention and political will to address the rapid erosion of that country's statehood, briefers told the [UN] Security Council today."	Meetings Coverage, UN Security Council (UNSC)	78-13 at 129
June 24	"A wave of drones strikes has reportedly killed hundreds of alleged gang members in Port-au-Prince and temporarily shaken Haiti's criminal landscape, but legal concerns and mounting civilian casualties have raised questions about the strategy's long-term effectiveness." The drone strikes while temporarily putting gangs on the defensive, "are unlikely to offer a long-term solution to Hait's security crisis, as these groups continue to adapt to shifts in the government's anti-gang strategy. Haiti's gangs are extremely well-armed and resilient. Each time authorities have altered their approach, the gangs quickly found ways to respond."	InSight Crime Article	78-11 at 54, 58
June 27	"Haiti is one of only five countries worldwide with people in famine-like conditions. Internal displacement is at its highest since the earthquake of 2010. Hospitals, health centres and schools are routinely attacked and at the brink of collapse. Years of underfunding of humanitarian response, amid growing needs and rising violence, have eroded fundamental coping mechanisms and left millions of Haitians without essential support."	UN Integrated Office in Haiti, Report of the Secretary-General	78-13 at 149
July 2	"Top United Nations Officials Urge Swift Global Action as Haiti Nears Collapse."	Meetings Coverage, UNSC	78-13 at 95

Aug. 7	"Threats of violence have forced essential services to shut down, including hospitals and roadways, and nearly 1.3 million people have been displaced from their homes. . . . The humanitarian situation in Haiti is considered among the most dire in the world."	Aljazeera Article	78-7 at 150
Aug. 9	"Haiti's government announced . . . that it is implementing a three-month state of emergency in the country's central region as gang violence surges."	AP News Article	78-8 at 31
Sept. 8	"Federal Aviation Administration ban on U.S. commercial flights to Haiti's capital that expired Monday has been extended to March 7, 2026 because of the risk that powerful gangs might attack flights with drones and small arms. The FAA noted that Haitian gangs now control 90% of Port-au-Prince as well as nearby strategic routes and border areas."	AP News Article	78-8 at 17
Sept. 11	"Escalating terrorist and insurgent gang violence is devastating Haiti: more than 1.3 million people—half of them children—are displaced, communities are under siege, and children are being forcibly recruited and subjected to sexual violence. The territorial expansion of these criminals and murderers threatens to erase the hard-fought battles for national sovereignty by the under-resourced Haitian security forces."	U.S. Mission to the Organization of American States, U.S. Remarks	78-7 at 91

Sept. 13	"In 2025, Haiti continues to face a deepening humanitarian emergency marked by widespread insecurity, displacement, and limited access to essential services. Armed violence and gang control have severely disrupted daily life, forcing hundreds of thousands to flee their homes and straining the delivery of food, water, sanitation, and health care. The resurgence of cholera in late 2022, after a three-year absence, has further complicated the crisis, with conditions in displacement cites heightening the risk of disease transmission."	Pan American Health Organization (PAHO) Health Cluster Situation Report No. 26, Humanitarian Situation in Haiti	78-12 at 71

Against this record of a country in chaos and crisis, Secretary Noem concluded that "there are no extraordinary and temporary conditions in Haiti that prevent Haitian" TPS holders "from returning [to] safety." 90 Fed. Reg. at 54735. In doing so, she did not identify a single *present* condition in Haiti that indicates the many crises Secretary Mayorkas identified in July 2024, *see supra* Section I.B.3, have subsided, much less been resolved.

According to Secretary Noem, "data surrounding internal relocation does indicate parts of the country are suitable to return to." 90 Fed. Reg. at 54735. But the Secretary cited no data to support this proposition and failed to identify a single safe location. In response to an inquiry from the Court, the Government cited an October 29, 2025, USCIS memo in the administrative record as the supporting analysis. *See* Dkt. 119 at 2–3; Dkt. 89-2 at 4.[26] "The memo," it noted,

[26] This memorandum appears to have served as a template for the Termination and contains the same flaws. *See* Dkt. 89-2. For example, highlighting overstay of immigrant visas as a concern, it also ignores that current Haitian TPS holders are not in this category. *See id*. at 8–9. It is also equally atonal. It claims that because Immigration & Customs Enforcement (ICE) has removed 4,140 individuals to Haiti since 2020, conditions there "have been sufficiently stable for the safe removal of Haitian nationals." *Id*. at 9. With respect, this borders on the absurd. The latter has zero relation to the former or reality. And, if anything, that ICE is actively removing Haitians not here lawfully helps Plaintiffs. It proves that terminating TPS for the hundreds of thousands of Haitians here lawfully is not necessary to address the unlawful immigration concerns Secretary Noem cites in her national interest analysis.

"reflects that individuals have been internally displaced, thereby indicating that Haitian residents found certain areas in Haiti that could be suitable for return." Dkt. 119 at 3. But the memo also fails to identify a single safe location by name or even geographic area. And the fact that, as the memo notes, 1.3 million Haitians—around twelve percent of the population—have been "internally displaced due to escalating violence" says nothing about whether they escaped to suitable areas. Dkt. 89-2 at 4. If anything, those areas are presumptively now *less suitable* for return, having been inundated with internal refugees.

Another USCIS memo from October 1, 2025, stated that "[w]hile country conditions in Haiti *may* still[27] be challenging . . . there have been improvements." Dkt. 89-1 at 2 (emphasis added). "The Haitian government," it notes, "has committed substantial investments to strengthen security, governance, and the judicial system." *Id.* at 5. That sounds promising; it would be, if one ignored that the cited source is a UNSC warning that Haiti "is a country in full-blown conflict," and that "any effort by the Haitian Government will not be enough to significantly reduce the intensity and violence of criminal groups."[28] This USCIS memorandum is riddled with other such verifiably misleading statements.

Unable to identify present conditions supporting her conclusion, Secretary Noem turns instead to speculation about future improvement. Each source she cited speaks to how Haiti *might* improve *in the future*. She quoted a UN article referencing Secretary-General António Guterres's statement that despite ongoing violence in Haiti, "'there are emerging signals of

[27] *May* still be? The country is in the midst of "famine," CAR 78-13 at 149, and a "humanitarian emergency," CAR 78-12 at 71, and is quickly approaching "a point of no return," CAR 78-13 at 129.

[28] Security Council Meetings Coverage, *Haiti 'Running Out of Time', Delegate Warns Security Council, Noting Possible Fall of Capital to Gangs Cannot Be Allowed*, United Nations (Apr. 21, 2025), https://press.un.org/en/2025/sc16047.doc.htm [https://perma.cc/2QYZ-49Q8] (cleaned up).

hope.'" 90 Fed. Reg. at 54735 & n.19. He cautioned that "these fragile gains" depend on "more decisive international support."[29] Emerging signals of hope, of course, are not actual change.[30] Secretary-General Guterres's full remarks to the UNSC underscore this point. *See* CAR 78-13 at 174, 179–83. They do not describe a nation on the brink of recovery. Rather, they describe a nation in crisis, whose future hinges on internal "unity" and "resolve from [the UNSC]." *Id.* at 183.

Secretary-General Guterres began his August 2025 remarks by stating that "[t]he people of Haiti are in a perfect storm of suffering." *Id.* at 179. He reported that the "State authority is crumbling," the "humanitarian toll is staggering," "[c]ivilians are under siege with appalling reports of rape and sexual violence," "[h]ospitals and schools are under repeated attack," and "[t]he rule of law has collapsed." *Id.* Among other things, Guterres also described that "[c]hildren are being abducted and killed," Haitians are facing "[m]ass displacement," and "[s]ix million people need humanitarian assistance." *Id.* at 179–81. It is hardly surprising that State advises, notwithstanding "emerging signals of hope," against travel to Haiti *for any reason*. *See* § 705 Reply at 20–21. Canada's travel advisory echoes that warning, explaining that "[a] countrywide state of emergency [is] in effect in response to ongoing gang violence." CAR 78-10 at 100–01.

Secretary Noem also highlighted the new UNSC Gang Suppression Force (GSF) which plans to "work in close coordination with the Haitian National Police (HNP) and the Haitian armed forces to conduct intelligence-led operations to neutrali[z]e gangs, provide security for

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[29] *'The People of Haiti are in a Perfect Storm of Suffering,' Warns UN Chief*, United Nations News (Aug. 28, 2025), https://news.un.org/en/story/2025/08/1165738 [https://perma.cc/BB3T-BDGK].

[30] Secretary-General Guterres's statement is, the Government agrees, a prospective-looking statement. *See* Jan. 6 A.M Hr'g Tr. at 78:1–:5.

critical infrastructure and support humanitarian access." 90 Fed. Reg. at 54735. The UNSC approved the GSF in September 2025, about two months before Secretary Noem announced her termination decision. *Id*. at 54735 n.20. It did so because Haiti "*faces an unprecedented crisis*," CAR 78-7 at 94 (emphasis added), and to replace its earlier, failed effort, the Multinational Security Support (MSS) Mission, *id.* at 58–59. Secretary Noem did not explain—and the record does not reflect—whether the GSF had deployed to Haiti by the time Secretary Noem terminated the country's TPS designation (only two months after the GSF was authorized). Jan. 6 A.M Hr'g Tr. at 84:10–85:10.

And there is no evidence or reason to believe that the GSF will succeed anytime soon given the failed prior interventions. A December 2024 Congressional Research Service (CRS) report (which appears in the CAR) found that notwithstanding the MSS's deployment, "Haiti's political and security situation continued to deteriorate in 2024." CAR 78-7 at 55. The updated June 2025 report found the same conclusion for 2025. It explained that "Haiti's political and security situation has continued to deteriorate in 2025 despite the 2024 deployment of a Kenya-led, UN-authorized [MSS mission] that the U.S. government has helped train and equip." *Id.* at 58. Indeed, when the U.S. Mission to the Organization of American States announced the UNSC's approval of the GSF, it explained that "the continued existence of the Haitian state remains *more imperiled today* than when the Security Council first envisioned a way to support [with the MSS mission]." *Id.* at 91 (emphasis added).

Finally, Secretary Noem asserts that "according to the World Bank, 'modest GDP growth is projected by 2026 as investment increases from a low baseline, assuming improvements on the political and security fronts.'" 90 Fed. Reg. at 54735. That same World Bank article explains that Haiti's economy "contracted by 4.2 percent . . . [for] a sixth consecutive year" in 2024 and

would likely continue contracting absent improvements in security and governance. CAR 78-14 at 19. The article goes on to explain that "[d]espite some signs of progress, Haiti continues to face critical security challenges." *Id.*

An agency may rely on reasoned projections of future conditions to justify its actions. *See N.Y. State Pub. Serv. Comm'n v. FERC*, 104 F.4th 886, 893 (D.C. Cir. 2024). But not here. The TPS statute requires periodic review, which focuses the inquiry on present conditions rather than future change, and Secretary Noem failed to explain why speculative future improvement outweighed overwhelming evidence of present danger. Because her explanation runs counter to the record before her, the Court finds Plaintiffs will likely show that Secretary Noem's decision to terminate Haiti's TPS designation is arbitrary and capricious.

b. National Interest

Secretary Noem also claimed to terminate Haiti's TPS designation because permitting Haitian TPS holders to remain in the United States "is contrary to the national interest." 90 Fed. Reg. at 54735. The Court has no role in second-guessing this analysis. The Court must, however, assess whether the Secretary's analysis considered "important aspects of the issue" and included "a rational connection between the facts found and the choice made." *State Farm*, 463 U.S. at 43 (cleaned up). She appears to have done neither.

Secretary Noem defined "national interest" as "an expansive standard that may encompass an array of broad considerations, including foreign policy, public safety (*e.g.,* potential nexus to criminal gang membership), national security, migration factors (*e.g.,* pull factors), immigration policy (*e.g.,* enforcement prerogatives), and economic considerations (*e.g.,* adverse effects on U.S. workers, impact on U.S. communities)." 90 Fed. Reg. at 54735. Yet, having articulated this framework, she failed to apply the standard to the relevant population: Haitian TPS holders.

i. Failure to Focus on Haitian TPS Holders

Secretary Noem premised her national interest analysis on Haiti's lack of reliable law-enforcement infrastructure. Because of that, she said, "federal officials" have problems "reliably assess[ing] the criminal histories or national security threats posed by aliens attempting to enter the U.S. illegally." 90 Fed. Reg. at 54736. But TPS holders are already in the country. So problems attendant with individuals attempting to enter the U.S. unlawfully are as applicable here as are problems attendant with power outages—which is to say, not at all.

Secretary Noem's analysis also focused on those who "overstay their visas" and so remain in the country unlawfully. *Id*. She claimed that these overstayers "may be harder to locate and monitor," increasing vulnerabilities in immigration enforcement systems. *See id*. She also said they "place an added strain on local communities by increasing demand for public resources, contributing to housing and healthcare pressures, and competing in an already limited job market." *Id*. But Haitian TPS holders are not in this cohort either. They are in the U.S. lawfully. *See* Jan. 6 P.M. Hr'g Tr. at 85:15–87:12. Indeed, TPS holders are easy to locate because they regularly update their address information with DHS to maintain that status and their work authorization. *See id*. at 94:25–95:6. And Secretary Noem provides no data to support the overgeneralization that those who overstay their visas are a strain on their local communities. *See* Dkt. 122. They may well cause a strain, but terminating Haiti's TPS termination not alleviate it because, again, Haitian TPS holders do not fall into this cohort.

The Government responds by speculating that maybe some Haitians overstayed their visas before obtaining TPS status. *See* Dkt. 119. Maybe. Who knows? Not Secretary Noem. The Court asked the Government: "[w]here in the [CAR] can the Court find the percentage of TPS holders represented in the overstay rates?" Dkt. 119 at 4. The response: "The [CAR] does not contain data that is this finely dissected." *Id.* Which is to say, not enough people to even

bother counting. And so, the problems attendant with individuals who overstay their visas are also as apt as are the problems attendant with power outages. "Regardless, Defendants maintain that the high visa overstay rate for Haitians is contrary to the national interest and thus requires termination of Haiti's TPS designation." *Id.* But the latter does not logically, much less necessarily, follow from the former. Nothing about the overstay rates requires TPS termination, and TPS termination would not address overstay rates.

Secretary Noem also cited "pull" migration factors to justify terminating Haiti's TPS designation. *See* 90 Fed. Reg. at 54737. Yet TPS eligibility is limited to individuals who are already physically present in the United States at the time of designation. *See* 8 U.S.C. § 1254a(c)(1)(A). No one who arrives later—lawfully or unlawfully—can obtain TPS. Little wonder, then, that the Secretary never explained what role, if any, TPS holders play in creating a migration pull. How could they, given the statutory constraint? In any case, both President Trump and Secretary Noem have rather thoroughly addressed any pull migration possibility by banning individuals from Haiti entering the country. *See supra* n.3.

The CAR, moreover, disproves any migration pull. "Between 2018 and 2025, [nonimmigrant visa] issuances for Haitian nationals decreased significantly, from 26,389 in 2018 to 5,515 in 2025." CAR 78-5 at 116. "I-94 admissions have overall decreased between 2018 and 2023, from 95,160 in 2018 to 47,660 in 2023. Like nonimmigrant visa (NIV) issuances, this pattern is likely reflective of measures aimed to restrict visa eligibility criteria resulting in limited access to NIVs for Haitian nationals." *Id.* at 117. Ignoring this current data, Secretary Noem relied instead on a 2013 report. 90 Fed. Reg. at 54737 n.35. But that decade-old report sheds no light on current migration dynamics or processing backlogs. *See* Jan. 6 P.M. Hr'g Tr. at 131:9–:12.

Secretary Noem highlighted that some Haitian TPS holders "have been the subject of administrative investigations." 90 Fed. Reg. at 54736. But the underlying database that DHS searched identified that such people comprised only 0.4% of the total dataset, and it does not even detail how many of these people in fact made false statements. *See* CAR 78-5 at 195. And yet again, DHS cannot say whether any of those individuals are current TPS holders. This is a relevant question given that the database contained information on 568,545 individuals, but there are only about 353,000 current Haitian TPS holders. *See* 90 Fed. Reg. at 54738; *see also* Jan. 7 Hr'g Tr. at 37:8, 39:5–40:5. More importantly, Secretary Noem offered no comparative baseline to show whether the 0.4% statistic—whoever it covers—is high, low, or unremarkable.

Secretary Noem noted that "Haitian gang members have already been identified among those who have entered the United States and, in some cases, have been apprehended by law enforcement for committing serious and violent crimes." 90 Fed. Reg. at 54737. She referenced ICE's January 2025 apprehension of Wisteguens Jean Quely Charles. *Id.* But neither the Termination nor the CAR states whether Charles is or was a TPS holder. The Termination does mention one TPS holder, Dimitri Vobre. *Id*. at 54738; SAC ¶ 226. Mr. Vobre has denied any involvement with Haitian gangs, and "U.S. authorities have not offered any proof to back up their claim that he has fomented violence in Haiti." SAC ¶ 226 (cleaned up). Even assuming he was involved with Haitian gangs, it says something that DHS was able to cite all of *one* TPS holder as allegedly being a public menace. It says more that the Termination says nothing about the criminality rate of Haitian TPS holders. Secretary Noem's silence here speaks volumes, especially considering that TPS eligibility excludes individuals with disqualifying criminal histories. *See* 8 U.S.C. §§ 1254a(c)(2)(B), (3)(A); 1182(a)(2)–(3).

To recap, Secretary Noem's national interest analysis involved cohorts that she cannot say include any current Haitian TPS holders: individuals who are not in the country, individuals in the country unlawfully, individuals in an over-inclusive database, and individuals already subject to exclusion from the TPS statute. This is not a minor detail. Because her national interest analysis focuses only on cohorts that do not involve Haitian TPS holders, there is no reasoned basis to believe that terminating Haiti's TPS designation will address any of the concerns she raised. Quite the opposite, since turning around 353,000 lawful immigrants into unlawful ones overnight will further burden the very immigration-enforcement system she claims is already over-burdened. This is the type of irrational decision-making the APA prohibits. *See State Farm*, 463 U.S. at 43.

The careful, perhaps even the casual, reader by now also realizes something important is missing from Secretary Noem's analysis: the cohort of current Haitian TPS holders. Let us turn to that cohort next.

ii. Failure to Consider Economics

Did Secretary Noem's failure to consider this cohort potentially affect her analysis? Consider one example. She failed to consider the impact Haitian TPS holders have on our economy. Hence, she did not account for the $1.3 billion they pay annually in taxes, among their many other contributions. *See infra* Part VI. This failure "is problematic, given that the [Secretary] specifically determined that," *Am. Clinical Lab'y Ass'n v. Becerra*, 40 F.4th 616, 625 (D.C. Cir. 2022), national interest includes "economic considerations (*e.g.*, adverse effects on U.S. workers, impact on U.S. communities)," 90 Fed. Reg. at 54735.

Another example. Secretary Noem also failed to analyze the "impact on U.S. communities" of the loss of work authorization for all Haitian TPS holders and the resulting effects on employers, industries, and local economies. Amici representing states, labor

organizations, and members of Congress explain that TPS holders are highly employed, pay taxes, and work in industries with labor shortages. *See infra* Part VI. The so-called adverse effects on U.S. workers? As a group, 14.5% of TPS holders are entrepreneurs—compared with 9.3% of the U.S.-born workforce. *See id*. One need not even credit those figures to recognize the defect here—the Secretary never considered whether such benefits exist at all. The Secretary "fail[ed] to show that [she] considered the issue, much less that [she] reached a reasoned conclusion." *Nat. Res. Def. Council, Inc. v. Rauch*, 244 F. Supp. 3d 66, 97 (D.D.C. 2017).

* * *

The Court is sensitive that its role is not to weigh the record itself. If it was, this Memorandum Opinion would be considerably shorter. Secretary Noem is the decision-maker. But the Secretary cannot just throw *verifiably* inapposite or false assertion after inapposite or false assertion—no matter how inflammatory—against the wall and hope that something sticks. Nor can she lawfully fail to consider the very factors, such as economic considerations, that she herself has determined are relevant simply because they do not support her preferred outcome.

Which brings us to yet another APA violation, predetermining the outcome.

c. Preordained Result

Plaintiffs contend that the Trump administration preordained the decision to terminate Haiti's TPS designation. *See* SAC ¶ 64. Defendants argue that Plaintiffs mischaracterize the record. *See* § 705 Opp'n at 26. Not so. Plaintiffs have shown that there is no "rational connection between the facts found and the choice [the Secretary] made." *State Farm*, 463 U.S. at 43. Accordingly, they are likely to succeed in their claim that the Secretary's decision to terminate Haiti's TPS designation was preordained.

The Court will not regurgitate all it has detailed above. Suffice it to say, nearly everything the Court has already discussed supports that the Secretary preordained the result. This includes Secretary Noem: (1) following the President's direction to terminate before conducting any analysis; (2) terminating every TPS designation to come before her; (3) failing to consult appropriate agencies; (4) making gross generalizations without any supporting data; and, among other things, (5) ignoring key aspects of the analysis. *See passim*.

As does Secretary Noem joining President Trump in insisting that nonwhite immigrants be forced to leave the United States, the subject to which the Court next turns.

B. Equal Protection Claim

The Due Process Clause of the Fifth Amendment provides that "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. Although it is "not as explicit a guarantee of equal treatment as the Fourteenth Amendment," *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 213 (1995), the Clause "contains an equal protection component prohibiting" the federal government from engaging in invidious discrimination against persons in the United States, *Washington v. Davis*, 426 U.S. 229, 239 (1976). These protections "are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality." *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886). They apply to citizens and foreign nationals alike, even when a person's "presence in this country is unlawful, involuntary, or transitory." *Mathews v. Diaz*, 426 U.S. 67, 77 (1976).

Though subject to judicial review, the Government may treat people differently if it has sufficient justification. *See id.* at 78. Here, the Parties dispute the appropriate standard of review for Plaintiffs' Equal Protection claim. Plaintiffs contend that the standard in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), applies because the

Secretary's decision to terminate Haiti's TPS was "motivated, at least in part, by racial animus." § 705 Mot. at 13, 45–47. In the Government's view, the more deferential standard in *Trump v. Hawaii*, 585 U.S. 667 (2018), governs because the Secretary's decision arises in the context of immigration and involves issues related to national security. *See* § 705 Opp'n at 35–37.

For the reasons discussed below, the Court finds that *Arlington Heights* applies to this case. That noted, the Court would find Plaintiffs likely to succeed even if it applied the *Trump v. Hawaii* standard.

1. **Arlington Heights *Governs Plaintiffs' Equal Protection Claim***

The Government argues that "[t]he Supreme Court has specifically foreclosed [the *Arlington Heights*] standard in the context of immigration." § 705 Opp'n at 35. It has not.

The Supreme Court has not announced a categorical rule for the standard of review in immigration cases. Nor has it declined to apply *Arlington Heights* in immigration cases. Consider *Department of Homeland Security v. Regents of the University of California*, 591 U.S. 1 (2020). A case the Supreme Court decided two years after *Hawaii*, and on which Defendants rely, *Regents* involved the DHS's efforts to rescind the Deferred Action for Childhood Arrivals (DACA) program. As here, the plaintiffs in *Regents* were foreign nationals present in the United States who alleged that animus motivated DHS's actions. *See Regents of the Univ. of Cal.*, 591 U.S. at 9, 33–35. The Court applied the *Arlington Heights* standard. *Id.* at 34–35; *see also Ramos v. Nielsen*, 321 F. Supp. 3d 1083, 1129–31 (N.D. Cal. 2018); *Saget*, 375 F. Supp. 3d at 368 (collecting cases).

Hawaii is different. It concerned President Trump's executive order barring foreign nationals from seven majority-Muslim countries from entering the United States. *Hawaii*, 585 U.S. at 676. Unlike in *Regents*, and this case, the *Hawaii* plaintiffs "challenged the application of those *entry* restrictions to certain [foreign nationals] *abroad*." *Id.* at 675 (emphasis added).

This distinction is key because courts are most deferential in cases involving "foreign nationals seeking admission" into the United States. *Id.* at 703. But when the Government seeks to withdraw lawful status from individuals it has vetted, its authority is subject to greater constitutional constraints. TPS recipients fall squarely within the latter category.

The Government also contends that *Hawaii* applies because it is an immigration case that involves national security concerns. Mere invocation of "national security," however, does not serve as a talismanic shield against an Equal Protection violation. If that were the case, then the Government could label anything it does as a national security measure to insulate discriminatory decision-making from judicial scrutiny. National security may justify differential treatment, but only where there is "'a rational connection between the facts found and the choice made.'" *Dep't of Com.*, 588 U.S. at 773 (quoting *State Farm*, 463 U.S. at 43). No such connection appears here.

Even when judicial "review is deferential," the Court is "not required to exhibit a naiveté from which ordinary citizens are free." *Id.* at 785 (cleaned up). Secretary Noem's decision to terminate Haiti's TPS designation "was not supported by the evidence before [her], and [her] stated rationale was pretextual." *Id.* at 773–74; *see supra passim*. When the record fails to support the Government's stated rationale—and where Plaintiffs claim that discriminatory animus played a motivating role in the Government's decision—*Arlington Heights* requires courts to look behind the proffered explanation and assess whether it is pretextual. *See Arlington Heights*, 429 U.S. at 266. The Court now turns to that analysis.

***2. Plaintiffs Are Likely to Succeed Under* Arlington Heights**

"[O]fficial action will not be held unconstitutional solely because it results in a racially disproportionate impact." *Arlington Heights*, 429 U.S. at 264–65. Courts must engage in a "sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Id.*

at 266. In doing so, courts may consider "the historical background of the decision"; "the specific sequence of events leading up to the challenged decision"; departures from normal procedural or substantive standards; and the legislative or administrative history, including "contemporary statements by members of the decisionmaking body." *Id.* at 267–68. Applying these factors, the Court finds that Plaintiffs are likely to succeed on their claim that anti-black and anti-Haitian animus motivated Secretary Noem's decision to terminate Haiti's TPS designation.

a. President Trump has expressed racially motivated animus

President Trump has made—freely, at times even boastfully—several derogatory statements about Haitians and other nonwhite foreigners. To start, he has repeatedly invoked racist tropes of national purity, declaring that "illegal immigrants"—a category he wrongly assigns to Haitian TPS holders—are "poisoning the blood" of America. § 705 Mot. at 47. He has, Plaintiffs allege, complained that recently admitted nonwhite Africans would "never 'go back to their huts' in Africa." SAC 90 ¶ 66. He has complained further that nonwhite immigration is an "invasion," creating a "dumping ground" that is "destroying our country." *Id.* ¶¶ 94, 101. He has described immigrants as "not people," *id.* ¶ 86, "snakes," *id.* ¶ 84, and "garbage," *id.* ¶ 107, who have "bad genes," *id.* ¶ 98. He has also stated that he prefers immigrants from "nice"—predominantly white—countries like Norway, Sweden, and Denmark over immigrants from "shithole countries," *id*. ¶¶ 102, 108.

President Trump has referred to Haiti as a "shithole country," suggested Haitians "probably have AIDS," and complained that Haitian immigration is "like a death wish for our country." § 705 Mot. at 47. He has also promoted the false conspiracy theory that Haitian immigrants were "eating the pets of the people" in Springfield, Ohio. Even after that (ridiculous) claim was debunked, he claimed they were eating "other things too that they're not supposed to

be." *Id.* at 47–48. About two weeks after the Termination, he again described Haiti as a "filthy, dirty, [and] disgusting" "shithole country." *Id.* at 48. He stated: "I have also announced a permanent pause on Third World migration, including from hellholes like Afghanistan, Haiti, Somalia and many other countries." *Id.* at 48 n.53. Then continued, "Why is it we only take people from shithole countries, right? Why cannot we have some people from Norway, Sweden, just a few, let us have a few, from Denmark." *Id.* It is not a coincidence that Haiti's population is ninety-five percent black while Norway's is over ninety percent white. SAC 90 ¶ 70.

Plaintiffs allege that after taking office, putting words to practice, "President Trump made his preference for white immigrants the official policy of the United States." *Id.* ¶ 103. On the one hand, his administration eliminated "the lawful immigration status not only of Haitians but of immigrants from other predominantly nonwhite countries." *Id.* On the other, it "gave special priority" to white South African immigrants, admitting them into the United States as refugees. *Id.* And, of course, Plaintiffs further allege that President Trump targeted the TPS designations of nonwhite countries. He described utilizing the TPS program as "a certain little trick," and groused that TPS recipients "are illegal immigrants as far as [he is] concerned." *Id.* ¶ 91.[31]

To its credit, the Government does not defend President Trump's derogatory statements. No one rationally could.[32] Instead, it argues that the Supreme Court's decision in *Regents* prohibits the Court from considering them. *See* MTD at 42 (citing *Regents of the Univ. of Cal.*, 591 U.S. at 34–35). To be sure, the *Regents* Court found that President Trump's statements at issue there—derogatory statements about Hispanics—were too remote on the facts presented to

[31] They are not. *See* 8 U.S.C. § 1254a.

[32] Which is not to say that Americans cannot rationally debate immigration policy. They can, of course. They can even do so without calling fellow human beings "garbage" and "leeches."

influence the decision-making of the relevant government actors. *See Regents of the Univ. of Cal.*, 591 U.S. at 35.

But the Supreme Court did not place any categorical bar on considering a President's statement in the Equal Protection context. And so, courts since have relied on President Trump's campaign and post-election statements as probative of intent where, as here, they are closely connected in time and substance to the challenged action. *See, e.g.*, *Perkins Coie LLP v. Dep't of Just.*, 783 F. Supp. 3d 105, 162–64 (D.D.C. 2025); *Am. Ass'n of Univ. Professors v. Rubio*, 802 F. Supp. 3d 120, 187 (D. Mass. 2025).

Plaintiffs claim President Trump made numerous derogatory statements about nonwhite immigrants, and Haitians particularly, close in time to Secretary Noem's three TPS decisions about Haiti. In February 2025, the same month that Secretary Noem first acted, President Trump falsely alleged that "some of these countries allowed [in] every single prisoner," specifically calling out "countries . . . from Africa, from Asia, not just South America, a lot, a lot from South America, but not even the most." SAC ¶ 95. Notably missing from the list of continents are Europe and Australia. In June 2025, the same month as Secretary Noem's second action, President Trump instituted a travel ban that imposed visa restrictions on 19 countries—including Haiti—each of which is predominantly nonwhite. *Id.* ¶ 109. On December 16, 2025, shortly after Secretary Noem's third action, President Trump issued a new and expanded travel Proclamation that built on the travel Proclamation he issued on June 4th. *Id.* at n.88. That same month, he allegedly "called nonwhite Somali immigrants—and Somalian U.S. Rep. Ilhan Omar, an American citizen—'garbage.'" *Id.* at ¶ 107. Echoing his previous comments that Haitians are undesirable because they come from a "shithole country," President Trump said that Somali

immigrants "come from hell and they complain and do nothing but bitch, we don't want them in our country." *Id.* These are just a few of many examples.

The Government contends that Plaintiffs take the derogatory statements out of context. To be sure, "outright admissions of impermissible racial motivation are infrequent." *Hunt v. Cromartie*, 526 U.S. 541, 553 (1999). This is why *Arlington Heights* directs courts to conduct a "sensitive inquiry" into the evidence to determine whether discriminatory animus played a motivating factor in the Government's actions. *Arlington Heights*, 429 U.S. at 266–68. But, whatever the context and at whatever level of sensitivity one considers them, the statements are what they are: unmitigated expressions of animus towards nonwhite foreigners.

Finally, it bears highlighting that during his first administration, President Trump also attempted to terminate Haiti's TPS designation. Several courts enjoined his actions, finding the Government's decisions to be "preordained" and motivated by the "discriminatory purpose of removing nonwhite immigrants from the United States." *Saget*, 375 F. Supp. 3d at 346–47, 374; *Ramos*, 336 F. Supp. 3d at 1100–05; *Centro Presente v. Dep't of Homeland Sec.*, 332 F. Supp. 3d 393, 415 (D. Mass. 2018). The Court has no trouble concluding that Plaintiffs are likely to succeed on their claim that that discriminatory intent continues through today.

b. President Trump influenced Secretary Noem's decision

Further relying on *Regents*, the Government also argues that President Trump's statements are irrelevant because the DHS Secretary makes TPS termination determinations.[33] *See* § 705 Opp'n at 35. But when a superior's animus "influenced or manipulated the decision-making process," government action "may violate the equal protection" guarantee "[e]ven if it

[33] The Court requested that the Government submit certain documents referenced in *NTPSA IV*, 798 F. Supp. 3d 1108. *See* Dkt. 109. Finding that they do not add to the analysis, however, the Court does not rely on them.

cannot be proven that" the subordinate "personally harbor[s] animus." *NAACP v. Dep't of Homeland Sec.*, 364 F. Supp. 3d 568, 577 (D. Md. 2019); *Saget*, 375 F. Supp. 3d at 369–72. "Even if the Secretary had taken every formal step required by every applicable statutory provision, reversal would be required . . . [where] extraneous pressure intruded into the calculus of considerations on which the Secretary's decision was based." *D.C. Fed'n of Civic Assocs. v. Volpe*, 459 F.2d 1231, 1245–46 (D.C. Cir. 1971).

Yes, Secretary Noem is supposed to make the decision. But here is what occurred instead:

January 29:	Secretary Noem explained that "[w]hen the President gives a directive, the Department of Homeland Security will follow it." § 705 Mot. at 34.
February 22:	President Trump stated that "[t]his week *I* also cancelled temporary protective status for migrants from Haiti, they are pouring into our country, pouring in."[34] (emphasis added).
February 24:	Secretary Noem published the decision of the partial vacatur of then-Secretary Mayorkas's July 2024 extension of Haiti's TPS designation. *See* 90 Fed. Reg. at 10511.

The Court need do nothing more than take the President and Secretary at their word in concluding that Secretary Noem only followed orders. At a minimum, President Trump influenced Secretary Noem's decision through his many public statements, which Secretary

[34] *President Trump Speaks at CPAC*, C-SPAN (Feb. 22, 2025 at 22:11), https://www.c-span.org/program/public-affairs-event/president-trump-speaks-at-cpac/656191. While the Government objects to the Court taking judicial notice of this speech, *see* Dkt. 118, Plaintiffs correctly note that courts routinely take judicial notice of televised speeches under Federal Rule of Evidence 201(b)(2), *see* Dkt. 121.

Noem has acknowledged. *See supra* Section IV.B.2.a. Indeed, the Government concedes that DHS communicated and met with White House officials to discuss Haiti's TPS designation.[35]

In any event, Plaintiffs also identify statements and actions by Secretary Noem that reinforce the inference of racial animus. Secretary Noem has described Haitians—and people from eighteen other nonwhite countries—as "leeches," "entitlement junkies," and "foreign invaders" who "suck dry our hard-earned tax dollars," and has expressly claimed that "WE DON'T WANT THEM. NOT ONE." *See* SAC ¶¶ 109–10. And recall that that X post and her recommendation that President Trump ban anyone from Haiti coming into the U.S. occurred a mere three days after she made the Termination decision. *See supra* n.2.[36] Plaintiffs allege that she separately accused TPS holders of being "poorly vetted migrants" who include "MS-13 gang members to known terrorists and murderers." SAC ¶ 111.

Though a closer call, even if the Court ignored President Trump's statements altogether, Secretary Noem's expressed animus towards nonwhite foreigners would support a stay.

* * *

Taken together, the record strongly suggests that Secretary Noem's decision to terminate Haiti's TPS designation was motivated, at least in part, by racial animus. The mismatch between what the Secretary said in the Termination and what the evidence shows confirms that the termination of Haiti's TPS designation was not the product of reasoned decision-making, but of a

[35] "[The Government] represent[s] that the communications were not in writing and the substance of the communications is privileged." Dkt. 98 at 3. The Government also "represent[s] that the substance of those meetings is privileged." *Id.* The Court has not yet had opportunity to consider those privilege assertions.

[36] Courts properly consider statements of animus even when officials make them after they issue their formal decisions. *See N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204, 229 n.7 (4th Cir. 2016).

preordained outcome justified by pretextual reasons. Plaintiffs are likely to prevail on their Equal Protection claim.

V. IRREPARABLE HARM

To establish irreparable harm, the party seeking a stay must make two showings. *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 8 (D.C. Cir. 2016). "First, the harm must be certain and great, actual and not theoretical, and so imminent that there is a clear and present need for equitable relief to prevent irreparable harm." *Id.* at 7–8 (cleaned up). "Second the harm must be beyond remediation." *Id.* at 8. Plaintiffs satisfy both requirements.[37]

In support of their irreparable harm showing, each Plaintiff submitted a declaration. *See* Dkt. 81-2 (Miot Decl.); 81-3 (Civil Decl.); 81-4 (Noble Decl.); 81-5 (Laguerre Decl.); 81-6 (Dorsainvil Decl.). These declarations describe the actual and imminent harms Plaintiffs will face if their TPS is terminated, including risk of deportation and detention, separation from family members, and loss of work authorization. The Court addresses each of these harms in turn.

Removal from the United States to Haiti constitutes irreparable harm.[38] TPS is the only avenue for legal status in the United States for many TPS holders, and so "[r]emoval is a concrete reality" if Haiti's TPS designation is terminated. *NTPSA I*, 773 F. Supp. 3d at 836. It would cause Plaintiffs great harm given the "perfect storm of suffering" and the collapsing rule

[37] The named Plaintiffs alone establish irreparable harm sufficient to warrant a stay. The Court references the similar harm that would affect similarly situated Haitian TPS-holders to illustrate the injury's scope, uniformity, and immediacy, even though it does not address Plaintiffs' Motion for Class Certification (Dkt. 67) in this Memorandum Opinion.

[38] Considering removal and removal-related detention as potential harms does not invite the Court to decide questions of law or fact arising from actions to remove non-citizens—matters over which Congress has divested this Court of jurisdiction. *See* 8 U.S.C. § 1252(a)(5), (b)(9), (g). The Court's inquiry is limited to whether removal or detention would cause irreparable harm; it is not weighing in on the lawfulness of removal or detention itself.

of law in Haiti. CAR 78-13 at 179–80. And while the Termination indicates "parts of" Haiti are suitable to return to, 90 Fed. Reg. at 54735, it does not identify a single safe location. *See supra* Section IV.A.3.a. Even after the Court gave it additional time to do so. *See id*.

For many Plaintiffs, removal to Haiti would be devastating because they have no meaningful ties to the country. Ms. Noble came to the United States when she was 2 years old and has lived here continuously for the past thirty-four years. Noble Decl. ¶¶ 5, 17. Aside from being born in Haiti, she has no connection to the country whatsoever—she does not know the identity of her biological family and she cannot speak French or Haitian Creole, the official languages of Haiti. *Id.* ¶ 18. In fact, she cannot even name one person she knows in Haiti. *Id.* Mr. Civil's circumstances are similar. He has not been to Haiti since 2010, when he was seven years old. Civil Decl. ¶ 7. He speaks Creole only infrequently and with an American accent, making him a vulnerable target for gangs. *Id.* Removal would return these individuals to what is essentially a foreign country, without language skills, a support network, or any realistic means of safe reintegration.

In addition, removal to Haiti would pose serious medical risks for many Plaintiffs. Several have ongoing medical conditions that require consistent treatment and prescription medication, which may be unavailable or difficult to access in Haiti. *See, e.g.*, Miot Decl. ¶ 8; Noble Decl. ¶ 20. For example, Mr. Miot has Type 1 Diabetes and must inject himself with insulin multiple times per day. Miot Decl. ¶ 7. He also requires regular care from specialists, including an endocrinologist and an ophthalmologist, to prevent complications from his diabetes. *Id.* In Haiti, Mr. Miot may be unable to obtain the insulin he needs to survive. *Id.* ¶ 8. And even if it were available, the cost of managing his diabetes in Haiti would likely be prohibitively high. *Id.*

Another Plaintiff, Ms. Noble, contracted spinal tuberculosis as a toddler in Haiti. Noble Decl. ¶ 4. Although she initially received treatment in Haiti, her spinal cord collapsed during that treatment. *Id.* So, when she was two years old, a faith-based organization in the United States brought her to this country for further medical care. *Id.* ¶ 5. She has since undergone two spinal fusion surgeries in the United States following her diagnosis. *Id.* ¶¶ 5, 15. Returning Ms. Noble to Haiti would effectively put her life in jeopardy, as she likely would not have access to the medical care she needs. *See supra* Section I.C.1. The combination of Haiti's inadequate medical infrastructure and the country's ongoing instability and violence places Plaintiffs at serious risk of life-threatening interruptions in medical care.

Finally, removal would result in irreparable harm through forced family separation. If removed, Mr. Dorsainvil would be separated from his cousin, who has diabetes and relies on Mr. Dorsainvil for financial support to obtain necessary medical care. Dorsainvil Decl. ¶ 7. Mr. Miot would have to leave his sister, a physician with whom he lives and to whom he contributes financially by helping to pay her mortgage. Miot Decl. ¶ 6. And Ms. Laguerre would be forced to physically leave her husband, a commercial banker employed by one of the United States' largest banks. Laguerre Decl. ¶ 17. Such separations would inflict great and lasting harm on both Plaintiffs and their U.S.-based family members—harm that cannot be remedied by a later favorable ruling.

Notwithstanding the daily news barrage of aggressive ICE raids throughout the country, the Government argues that Plaintiffs' fears of removal amount to nothing more than "remote conjecture." § 705 Opp'n at 42. But the Government's reliance on *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d at 298, is misplaced. In *Chaplaincy*, the alleged harm depended on a chain of speculative contingencies. Here, termination of Plaintiffs' TPS would

instantaneously strip them of lawful immigration status. Plaintiffs would be forced to either self-deport immediately[39] or remain in the United States unlawfully and face the ever-present risk of detention and removal.[40] Hence, the harm Plaintiffs would suffer due to loss of their TPS is not "theoretical," but constitutes an actual and imminent injury. The likelihood that Plaintiffs who remain in the United States will be subject to removal or detention after the loss of their TPS rises beyond a mere possibility.

The Government contends that Plaintiffs could seek relief from removal through the immigration process. § 705 Opp'n at 42–43. But this alternative is illusory. The theoretical availability of such relief provides no assurance that Plaintiffs' applications for relief would be processed, let alone granted, before removal. Indeed, the current administration is making it *more* difficult for those few Haitians who may have other immigration options. For example, USCIS has placed a hold on asylum applications and other immigration benefit requests filed by individuals from Haiti.[41]

The Court does not suggest that removal categorically constitutes irreparable harm. It does not. *See Nken*, 556 U.S. at 435. Here, however, it may not be possible to restore Plaintiffs to the status quo once they are removed—even if they later prevail on the merits—because TPS is a vehicle to *remain* in the country, not to enter it. *Cf. Sanchez v. Mayorkas*, 593 U.S. 409, 414 (2021) (finding that TPS does not constitute an "admission" into the United States for the

[39] Failing to self-deport should, according to the Government, result in a hefty penalty. It seeks over $900,000 in civil penalties for one woman's failure to depart pursuant to a final order of removal. *See United States v. Veliz*, 3:26-cv-61 (E.D. Va. Jan. 23, 2026) (Dkt. 1).

[40] Courts have recognized that detention is "the sort of actual and imminent injur[y] that constitute[s] irreparable harm." *Arecely R. v. Nielsen*, 319 F. Supp. 3d 110, 155 (D.D.C. 2018) (collecting cases).

[41] USCIS Policy Memorandum, *Hold and Review of All Pending Asylum Applications and All USCIS Benefit Applications Filed by Aliens from High-Risk Countries*.

purpose of an adjustment to permanent status). Thus, this case is different from those in which removal can later be undone through immigration proceedings that permit reinstatement of status or return to the United States. In effect, then, denying a stay may prevent Plaintiffs from obtaining any relief at all, even if the Court later sets aside the Secretary's decision.

The loss of work authorization is also irreparable in this context. TPS holders participate in the U.S. workforce at exceptionally high rates. *See* Dkt. 54 (Rep. Amici) at 17. In 2021, 94.6% of TPS holders nationwide were employed. *See id*. at 17–18. If TPS is terminated, Plaintiffs will automatically lose their work authorization, resulting in immediate job loss, and attendant health insurance loss, that cannot be remedied retroactively. *See* Miot Decl. ¶ 6; Dorsainvil Decl. ¶ 4; Laguerre Decl. ¶ 16. Although economic harm is generally insufficient to establish irreparable injury, *Davis v. Pension Ben. Guar. Corp.*, 571 F.3d 1288, 1295 (D.C. Cir. 2009), the harm here extends beyond ordinary economic injury. Plaintiffs would not only suffer lost wages. They would lose the legal ability to work at all. It would implicate Plaintiffs' fundamental ability to earn a livelihood, support their families, and remain self-sufficient. Plaintiffs could not simply find another job, as they would be categorically barred from lawful employment. The loss of work authorization therefore constitutes irreparable harm.

The Government's contention that "Plaintiffs' claimed irreparable harms . . . are inherent in the statutory scheme" because of the "temporary" nature of TPS is unavailing. § 705 Opp'n at 41. That it is temporary does not mean the Government can terminate the program summarily once a designation occurs. For instance, "temporary" may well refer to the duration of *each* designation/extension period (which can be no more than 18 months at a time under 8 U.S.C. § 1254a(b)(2)(B), (b)(3)(C)).

Assuming that "temporary" instead refers to the entire program's duration for a designated country does not help the Government. "Temporary" is any amount of time short of "permanent."[42] That does not tell us that a designation should last any length—short, medium, or long—even if we had a yardstick to measure time against (which we do not). Congress permitted repeated extensions of a country's TPS designation. *See* 8 U.S.C. § 1254a(b)(3)(A), (C). More than that, Congress chose to have the program automatically default to a six-month extension absent the Secretary's review. *See id*. § 1254a(b)(3)(C). If Congress meant the period to be "short," instead of "temporary," it would have said so. At a minimum, it would have signaled its intent, for example, by cabining the number of extensions or defaulting to termination instead of extension. True, "nothing requires that there be countries designated for TPS at any given moment." Gov't's Suppl. Br. at 12. But neither does the statute authorize, let alone mandate, the end of a country's designation merely because the Secretary believes it has gone on for some time.

Indeed, Congress perceived that some crises could last years, maybe even decades. And it ensured that TPS holders' stay would still be temporary. How? The answer lies in Title 8, Section 1254a(f)(4) of the United States Code: "[A]n alien provided temporary protected status under this section . . . shall not be considered to be . . . permanently residing in the United States under color of law." While the recipient is entitled to work authorization, 8 U.S.C. § 1254a(a)(2), TPS holders do not accrue time toward a green card or gain permanent residence credit, *id.* § 1254a(f)(1).

[42] The version of Black's Law Dictionary in circulation at the time Congress established the TPS program defines "temporary" as "[t]hat which is to last for a limited time only, as distinguished from that which is perpetual, or indefinite, in its duration" or the "[o]pposite of permanent." *Temporary, Black's Law Dictionary* (6th ed. 1990).

For these reasons, Plaintiffs have established that the harm they face is certain, imminent, and beyond remediation absent a stay. The irreparable-harm factor therefore weighs in Plaintiffs' favor.

VI. BALANCE OF EQUITIES AND PUBLIC INTEREST

The balance of the equities and the public interest factors merge where, as here, the Government is the opposing party. *Nken*, 556 U.S. at 435. In considering these factors, courts "explore the relative harms" to plaintiffs and defendants, "as well as the interests of the public at large." *Barnes v. E-Sys., Inc. Grp. Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1305 (1991). For the reasons discussed below, these factors favor Plaintiffs.

A stay is in the public interest. Consider the economy first. Haitian TPS holders substantially benefit the U.S. economy, contributing approximately $3.4 billion to it annually. *See* Rep. Amici at 20. These economic contributions reflect the critical roles that Haitian TPS holders play in workplaces across the country. Employers actively rely on Haitian TPS holders, who are far from expendable. *See id*. at 21. This is, in part, because they fill labor shortages in essential industries. *See* Dkt. 47 (State Amici) at 22–24. According to State Amici, a "recent estimate found that 75,000 TPS-eligible Haitians work in labor-short industries, defined as those with openings for at least four percent of their workforce." *Id*. at 23.

Take healthcare, for example—a "labor-starved sector." Rep. Amici at 20. Haitian workers constitute a considerable segment of this workforce. Recall that Mr. Dorsainvil is a registered nurse. *See* Dorsainvil Decl. ¶ 2. He is not alone among Haitians in the United States. "As of 2021, the 103,000 Haitian healthcare workers comprised the sixth-largest immigrant group in this field, where the demand for labor is high and understaffing and overwork is already the norm." Dkt. 37 (Labor Amici) at 18. Direct care services provide another example: seven percent of all direct care professionals in the United States are Haitian. *See* Rep. Amici at 21. In

Massachusetts alone, approximately 2,000 long-term caregivers will lose work authorization if Haiti's TPS designation is terminated. *See* Rep. Amici at 21. "[B]ecause Haitian immigrants are highly concentrated, with almost 66% residing in just three metropolitan areas—Miami, New York City, and Boston—suddenly removing Haitian TPS holders would have a drastic impact on co-workers' workload and patient care quality." Labor Amici at 37. These are not isolated examples. Haitian TPS holders also play indispensable roles in hospitality, food service, education, and manufacturing—industries that already face labor shortages and would be further destabilized by the loss of this workforce. *See* Rep. Amici at 20, 22–23; State Amici at 22–23; Labor Amici at 17–24.

TPS holders also make substantial contributions as entrepreneurs and taxpayers. As a group, 14.5% of TPS holders are entrepreneurs—compared with 9.3% of the U.S.-born workforce. *See* State Amici at 23. In 2021, more than 38,100 self-employed TPS holders generated $1.5 billion in business income. *See id*. This translates into significant tax revenue: in 2023, TPS holders from all countries paid $3.1 billion in federal taxes and $2.1 billion in state and local taxes, supporting programs such as Social Security and Medicare. *See* State Amici at 23–24. And these contributions come despite TPS holders remaining largely ineligible for nearly all federal public benefits. *See* Rep. Amici at 19. Because Haitian TPS holders make up "nearly one quarter of all TPS holders nationwide," State Amici at 12, they paid about $1.3 billion in federal, state, and local taxes.[43] Thus, without Haitian TPS holders, the United States would lose not only a vital segment of its workforce but also a significant source of tax revenue.

[43] To reach this number, the Court took $5.2 billion—the total federal ($3.1 billion) and state and local ($2.1 billion) taxes TPS holders paid—and multiplied it by twenty-five percent, the approximate percent of TPS holders who are Haitian. *See* State Amici at 12.

The public interest in maintaining Haiti's TPS designation extends beyond economics. Many Haitian TPS holders are homeowners and long-term residents who have lived in the United States for more than a decade and are deeply embedded into their local communities. *See* State Amici at 24–25; Rep. Amici at 25; *see also* Miot Decl.; Civil Decl.; Noble Decl.; Laguerre Decl.; Dorsainvil Decl. Without jobs, Haitian TPS holders and their families would lose employer-sponsored health insurance—coverage held by fifty five percent of TPS holders. *See* State Amici at 25.

Moreover, hundreds of thousands of U.S. citizens, many of them children, live in mixed-status households with Haitian TPS holders. *See id*. at 17. As State Amici explain, termination of Haiti's TPS designation would force TPS-holder parents into an "agonizing" choice among untenable options: "(1) returning to Haiti alone, leaving their children behind; (2) taking their U.S. citizen children with them to a dangerous country that the children do not know; or (3) staying in the United States without authorization." *Id*. at 18–19. None of these options is acceptable. Unsurprisingly, the fear that a family member will be deported is profoundly anxiety inducing for children, and studies have shown the obvious—that parental deportation is deeply traumatic and disruptive for children. *See id*. at 19–21. The emotional and developmental harms associated with forced family separation cannot be undone by a later favorable ruling.

Continued TPS also supports public safety and public health. Individuals with lawful immigration status are more likely to report crimes, helping to keep communities safer. *See id*. at 28. Conversely, stripping TPS holders of their lawful status may discourage them from reporting crimes or seeking medical care due to fear of detention or deportation. *See id*. at 27–29.

The Government asserts that termination serves the public interest by advancing national security. § 705 Opp'n at 46. But they offer no evidence that Haitian TPS holders pose any threat

to the United States. In fact, Haitian immigrants are overwhelmingly law-abiding, with incarceration rates lower than those of native-born Americans. *See* Rep. Amici at 24. The Government neither rebuts Plaintiffs' evidence nor identifies any national security interest in terminating Haiti's TPS designation pending the resolution of this litigation.

The Government also invokes the public interest in enforcing immigration laws. But there is no public interest in allowing an unlawful immigration policy to take effect. To the contrary, the public interest is served when agencies comply with statutory and constitutional constraints. *Karem v. Trump*, 960 F.3d 656, 668 (D.C. Cir. 2020); *Newby*, 838 F.3d at 12. In any event, the immigration laws are being properly enforced; Haitian TPS holders are treated as they are—lawful immigrants. Turning them into unlawful immigrants overnight will make enforcing immigration laws more, not less, difficult.

The Government next contends that there is a public interest in the efficient administration of immigration laws at the border. But its analysis is misplaced. This case does not concern new arrivals of Haitians at the border. Rather, it concerns Haitians who have been granted lawful TPS and authorization to live and work in the United States. Maintaining that status pending the outcome of this litigation does nothing to undermine border administration of immigration laws.

Lastly, the balance of the equities favors a stay. Maintaining Haiti's TPS designation pending resolution of this case will prevent harm to Plaintiffs and their families, employers, and communities. By contrast, the Government identifies no harm that would result from continued TPS during the pendency of this litigation.

The balance of the equities and public interest factors together favor a stay, which maintains the status quo while this litigation proceeds.

VII. CONCLUSION

There is an old adage among lawyers. If you have the facts on your side, pound the facts. If you have the law on your side, pound the law. If you have neither, pound the table. Secretary Noem, the record to-date shows, does not have the facts on her side—or at least has ignored them. Does not have the law on her side—or at least has ignored it. Having neither and bringing the adage into the 21st century, she pounds X (f/k/a Twitter).

Kristi Noem has a First Amendment right to call immigrants killers, leeches, entitlement junkies, and any other inapt name she wants. *Secretary* Noem, however, is constrained by both our Constitution and the APA to apply faithfully the facts to the law in implementing the TPS program. The record to-date shows she has yet to do that.

By accompanying Order, the Court **GRANTS** Plaintiffs' Renewed Motion for a Stay Under 5 U.S.C. § 705.

Date: February 2, 2026

ANA C. REYES
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FRITZ EMMANUEL LESLY MIOT, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

Case No. 25-cv-02471 (ACR)

MEMORANDUM OPINION AND ORDER

The Government moves to stay, pending judicial review, the Court's Order staying the effective date of the Termination of the Designation of Haiti for Temporary Protected Status, 90 Fed. Reg. 54733 (Nov. 28, 2025) (Termination). *See* Dkt. 123 (Order); Dkt. 126 (Mot.). The Government offers no new merits argument, however. And it now bears the burden of establishing irreparable harm, a burden it cannot meet. *See Nken v. Holder*, 556 U.S. 418, 434 (2009). The Court therefore **DENIES** the Government's Motion to Stay the Court's Order Granting Relief Under 5 U.S.C. § 705.

Taking heed (finally) that "brevity is the soul of wit,"[1] the Court does not regurgitate its Memorandum Opinion, Dkt. 124 (Mem. Op.). The Court does, however, address two new assertions the Government makes and its claim of irreparable harm.

* * *

Consultation. The Government contends that the Court "demanded that the Secretary consult some other (unnamed) 'appropriate' agency in addition to the State Department." *Miot v.*

[1] William Shakespeare, *Hamlet* act 2, sc. 2.

Trump, No. 26-5050, at 8 (D.C. Cir. Feb. 6, 2026). Not so. To start, the Court did not demand anything, Congress did. And the Court found that the Secretary did not consult *any* agency, including that it did not consult with the Department of State. *See* Mem. Op. at 41–43. To be sure, that Congress requires the Secretary to consult "agencies"—plural—confirms its intent that the consultation be meaningful. *See id.* at 41–46.[2] But the Court did not reach whether consulting only one other agency would meet the requirement that the Secretary "shall" consult "appropriate agencies." 8 U.S.C. § 1254a(b)(3)(A). It did not reach it because, again, the Secretary did not consult outside DHS at all.

Pattern or Practice. The Government lobs that "[t]he mere existence of multiple decisions in the same direction does not suggest dysfunction; otherwise, the fact that the Biden Administration renewed every TPS designation it reviewed,[3] for four years, would be equally suggestive of failure to objectively follow the legal process." Mot. at 14. This "he started it" grievance is a non-starter. The Biden administration's TPS decisions were not the subject of this or, to the Court's knowledge, any other litigation. If they had been, courts may well have considered those uniform designations to be a pattern or practice subject to APA scrutiny. This Court, all else equal, assuredly would have.

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[2] On a related note, the Court in its Memorandum Opinion cited definitions of "consultation" and to "consult" from 2024 and 2015, respectively. *See* Mem. Op. at 43. It would have done better also to consult (no pun intended) dictionaries from the time Congress enacted the TPS statute, 1990. It has now done so. "Consultation" was then defined as the "[a]ct of consulting or conferring; *e.g.* patient with doctor; client with lawyer" and "[d]eliberation of persons on some subject." *Consultation*, *Black's Law Dictionary* (6th ed. 1990). To "consult" was then defined as "to have regard to" or "to ask the advice of opinion of (~a doctor)." *Consult, Merriam-Webster's Collegiate Dictionary* (9th ed. 1990). These definitions mirror the later ones, *see* Mem. Op. at 43, and so do not change the Court's analysis.

[3] The Court assumes, for now, that the Government's uncited assertion is true.

Irreparable Harm to the Government and the Public Interest/Balance of Equities. At argument, the Government attempted to sidestep the irreparable harm analysis. It stated: "I can make this very simple. If Your Honor's not going to rule for us on the likelihood of success on the merits, then that's the end of the inquiry." Feb. 12 Hr'g Tr. at 14. Fair enough, since the Government has no legitimate interest in enforcing a likely unlawful Termination. But the irreparable harm standard exists and so the Court considers it.

The Order preserves the status quo, which at least suggests that the Government will not face irreparable harm. *See Make the Rd. New York v. Noem*, No. 25-5320, 2025 WL 3563313, at *32 (D.C. Cir. Nov. 22, 2025) (statement of Judges Millett & Childs). Haitian TPS holders will maintain their TPS status pending litigation. They will continue to work and maintain health insurance. They will continue to pay federal, state, and local taxes. They will continue to contribute to their communities. And no additional Haitians will gain TPS. Given this, the Court asked the Government to identify concrete examples of harm if the Termination remains stayed pending litigation. It could not name one. *See* Dkt. 129 (ICE Decl.); Dkt. 132 (Feb. 12 Hr'g Tr.) at 22–23.

The Government cannot name a single concrete harm from maintaining the status quo. And so instead it argues that the Court's decision is "'an improper intrusion by a federal court into the workings of a coordinate branch of the Government'" Mot. at 14 (quoting *INS v. Legalization Assistance Project*, 510 U.S. 1301, 1305–06 (1993)). The argument, taken to its logical conclusion, is that anytime a court stays government action, the Government is irreparably harmed. That is not the standard.

Consider the Supreme Court's recent decision granting the Government's motion for an emergency stay in *Trump v. Wilcox*, 145 S. Ct. 1415, 1415 (2025). The Supreme

Court held that the Government was likely to succeed on the merits, but it did not then just call it a day. It next explored the comparative irreparable harm as between the two parties: "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.*

Here, Plaintiffs and other Haitian TPS holders face a greater risk of harm from an order allowing the Government to remove them to a "perfect storm of suffering" than the Government faces from maintaining the *status quo*. *See* Mem. Op. at 72–82 (discussing further the comparative harms). The Supreme Court went on: "A stay is appropriate to avoid the disruptive effect of the repeated removal and reinstatement of officers during the pendency of this litigation." *Wilcox*, 145 S. Ct. at 1415. Here, granting a stay would cause disruption. Indeed, with almost 353,000 TPS holders having, then losing overnight, and then potentially regaining legal immigration status, it would cause chaos.

* * *

For the reasons stated in its Memorandum Opinion of February 2, 2026, and the reasons above, the Court **DENIES** the Government's Motion to Stay the Court's Order Granting Relief Under 5 U.S.C. § 705, Dkt. 126.

SO ORDERED.

Date: February 23, 2026

Ana C. Reyes

ANA C. REYES
United States District Judge

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 26-5050 **September Term, 2025**

1:25-cv-02471-ACR

Filed On: March 6, 2026

Fritz Emmanuel Lesly Miot, et al.,

Appellees

v.

Donald J. Trump, President of the United States of America, et al.,

Appellants

BEFORE: Walker*, Pan, and Garcia, Circuit Judges

O R D E R

Upon consideration of the emergency motion for a stay pending appeal, the opposition thereto, the reply, the amicus briefs, and the Rule 28(j) letters, it is

ORDERED that the motion for a stay be denied.

Plaintiffs-appellees are Haitian nationals who hold Temporary Protected Status (TPS) under 8 U.S.C. § 1254a. TPS is a form of humanitarian immigration protection that shields eligible nationals of designated countries from removal and authorizes them to work in the United States. *See id.* § 1254a(a)(1). The Secretary of Homeland Security may "designate" a country for TPS if she finds that "extraordinary and temporary conditions" in that country "prevent" its nationals from returning "in safety," unless she determines that allowing them to remain temporarily in the United States is "contrary to the national interest." *Id.* § 1254a(b)(1); *see* 6 U.S.C. § 557.

Haiti has been designated for TPS since 2010. *See Miot v. Trump*, 2026 WL 266413, at *3–6 (D.D.C. Feb. 2, 2026). The Department of Homeland Security recently estimated that there are "approximately 352,959" Haitian TPS holders in the United

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* Judge Walker would grant the motion for a stay pending appeal for the reasons stated in the attached dissenting statement.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 26-5050 **September Term, 2025**

States. 90 Fed. Reg. 54733, 54738 (Nov. 28, 2025). On November 28, 2025, the Department published a notice in the Federal Register announcing that then-Secretary Noem was "terminating the Temporary Protected Status designation of Haiti." *Id.* at 54733. The plaintiffs sued and the district court postponed the termination under 5 U.S.C. § 705, finding it to be arbitrary and capricious, contrary to the TPS statute, and in violation of the Fifth Amendment's equal protection guarantee.

The government now seeks the "extraordinary" relief of a stay pending appeal. *Citizens for Resp. & Ethics in Washington v. FEC*, 904 F.3d 1014, 1017 (D.C. Cir. 2018) (per curiam). To secure such relief, the government must (1) make a "strong showing that [it] is likely to succeed on the merits"; (2) demonstrate that it will be "irreparably injured" if the district court's order remains in effect during the appeal; (3) show that issuing a stay will not "substantially injure the other parties interested in the proceeding"; and (4) establish that "the public interest" favors a stay. *Nken v. Holder*, 556 U.S. 418, 434 (2009). We focus on irreparable harm and the weighing of the equities because it is most clear that the government has not satisfied its burden on either score. *See KalshiEX LLC v. Commodity Futures Trading Comm'n*, 119 F.4th 58, 64 (D.C. Cir. 2024) (noting that "a showing of irreparable harm is a necessary prerequisite for a stay").

In its stay motion, the government takes a minimalist approach to addressing the injuries it faces, arguing only that the district court's order imposes irreparable harm because it is "an improper intrusion into the workings" of the executive. *See* Mot. 27 (quoting *INS v. Legalization Assistance Project*, 510 U.S. 1301, 1305–06 (1993) (O'Connor, J., in chambers)). The sole elaboration it offers is that the district court's postponement of the termination of Haiti's TPS designation "overrides the Secretary's considered judgment on a matter of foreign affairs," which inflicts "harm [that] is particularly pronounced" in light of the Secretary's finding "that maintaining Haiti's TPS designation is contrary to the national interest." *Id.* at 28; *see* 90 Fed. Reg. at 54735–38.

These "generalized assertions of injury" are insufficient to support a stay pending appeal. *Fed. Educ. Ass'n v. Trump*, 2025 WL 2738626, at *3 (D.C. Cir. Sept. 25, 2025) (per curiam). The government must demonstrate an injury that is "both certain and great," and "of such *imminence* that there is a clear and present need for equitable relief to prevent irreparable harm." *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006) (cleaned up). Of course, courts must be sensitive to

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intrusions on executive branch prerogatives. But when faced with requests for emergency stays of considered lower-court orders, we have been appropriately skeptical of the idea that the government is irreparably injured "any time" it is enjoined by a court, particularly when the order at issue "maintains the status quo." *Make the Rd. N.Y. v. Noem*, 2025 WL 3563313, at *31–32 (D.C. Cir. Nov. 22, 2025) (cleaned up). As the district court observed in declining to stay its order, the government has failed to "name a single concrete harm from maintaining the status quo" in this case. *Miot v. Trump*, 2026 WL 544434, at *2 (D.D.C. Feb. 23, 2026).

The government instead relies on the Supreme Court's two stay orders in another TPS-related case, *National TPS Alliance v. Noem*. There, the Northern District of California postponed the Secretary's decisions to vacate a prior extension of Venezuela's TPS designation and then to terminate that designation entirely. *See Nat'l TPS All. v. Noem*, 773 F. Supp. 3d 807 (N.D. Cal. 2025), *aff'd*, 150 F.4th 1000 (9th Cir. 2025). The Supreme Court stayed that postponement order without explanation. *See Noem v. Nat'l TPS All.*, 145 S. Ct. 2728 (2025) (*NTPSA I*). The Northern District of California subsequently entered final judgment against the government, setting aside the Secretary's vacatur and termination decisions as to Venezuela's TPS designation, and the Secretary's vacatur of a prior extension of Haiti's TPS designation. *See Nat'l TPS All. v. Noem*, 798 F. Supp. 3d 1108 (N.D. Cal. 2025), *aff'd*, 166 F.4th 739 (9th Cir. 2026). The government applied for a stay of that decision, but only with respect to "the portions of the District Court's judgment pertaining to Venezuela." *Noem v. Nat'l TPS All.*, 146 S. Ct. 23, 24 (2025) (*NTPSA II*). The Supreme Court granted the government's request; that second stay order, like the first, contained no substantive reasoning. *See id.*

In the government's view, the *NTPSA* stay orders "necessarily" support its stay motion here because they involved "the same harms." Reply 11; *see* Mot. 27. That assertion merits careful consideration. The *NTPSA* orders "inform" how we should approach "like cases," *Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025), and the Supreme Court must have found some irreparable harm to the government when issuing them. But given the lack of express guidance from the Court, we must assess whether there are any material "differences between the cases." Reply 12.

A closer examination shows that *NTPSA* is meaningfully distinct from this case. First, the government asserted a concrete and imminent harm there that is absent here. In that litigation, the government explained that halting the termination of Venezuela's

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TPS designation would "undermine the United States' foreign policy just as the government is engaged in complex and ongoing negotiations with Venezuela." *See* Stay Application 37, *NTPSA I*; *see also* Stay Application 24, *NTPSA II* (similar). It is not only plausible but likely that disruption to those specific ongoing negotiations was a factor motivating the stays. *See Adams v. Vance*, 570 F.2d 950, 954 (D.C. Cir. 1978) (per curiam) ("Courts must beware ignoring the delicacies of diplomatic negotiation . . . ." (internal quotation marks omitted)). By contrast, the stay motion here references no such diplomatic concerns. To the contrary, the government has underscored that "Haiti lacks a central authority" with which it can engage. 90 Fed. Reg. at 54736.

Second, as noted above, in the *NTPSA* litigation the district court set aside the Secretary's vacatur of an extension of Haiti's TPS designation. In practical terms, that decision prevented the government from ending Haiti's TPS designation in August 2025 and instead kept the designation in place until February 2026. *Nat'l TPS All. v. Noem*, 798 F. Supp. 3d at 1128. On September 19, 2025, the government sought a stay of other parts of the district court's order, but it specifically declined to seek relief as to the portion of the decision concerning Haiti's TPS designation. *See* 146 S. Ct. at 24. The government explained that it had no urgent need for a stay because Haiti's TPS designation would expire "in the next few months"—that is, four and a half months later in February 2026. Stay Application 7–8 n.6, *NTPSA II*. But here too, it should be no more than a "few months" before this court can adjudicate the government's appeal on the merits. Yet the government does not explain what has changed to make the continued presence of Haitian TPS holders during that interim period a matter of "imminen[t]" irreparable harm. *See Chaplaincy of Full Gospel Churches*, 454 F.3d at 297.

The government's failure to meet its burden of demonstrating irreparable harm alone justifies denying emergency relief that would upend the status quo and increase uncertainty while this appeal proceeds. *See KalshiEX LLC*, 119 F.4th at 63 (noting that failure to demonstrate irreparable harm is "fatal" to an applicant's stay request). But even assuming the government faces some irreparable harm, we must also "balance the equities and weigh the relative harms to the" parties. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010). The two distinctive factors discussed—the lack of any imminent negotiations with the Haitian government or other concrete injury, and the government's failure to treat an earlier order prolonging Haiti's TPS designation as an emergency—at least lessen the degree of harm to the government. The equities in favor of the

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government are thus not as weighty here as they were in *NTPSA*.

On the other side of the ledger, the plaintiffs face substantial and well-documented harms. As the district court detailed at length, the termination of TPS would have "devastating" consequences for the plaintiffs, including risk of detention and deportation, separation from family members, and loss of work authorization. *Miot*, 2026 WL 266413, at *34–36. Moreover, plaintiffs removed to Haiti would be vulnerable to violence amid a "collapsing rule of law" and lack access to life-sustaining medical care. *Id*. To be sure, the Supreme Court has explained that "the burden of removal alone cannot constitute the requisite irreparable injury" to a noncitizen. *Nken*, 556 U.S. at 435. But it did so on direct review of a removal order, observing that "those who prevail" in that context "can be afforded effective relief by facilitation of their return." *Id.*; *see* Brief for Respondent at 44, *Nken*, 556 U.S. 418 (No. 08-681), 2009 WL 45980 (discussing the government's "policy and practice" of "facilitating" the return of "aliens who were removed pending judicial review but then prevailed before the courts"). Here, by contrast, the government has declined to represent that it would provide similar relief if the plaintiffs ultimately prevail in this litigation. *See* Tr. of Hr'g 16–20 (Feb. 17, 2026). On this record, the balance of equities tilts decisively toward the plaintiffs, providing a second reason that a stay pending appeal is not justified.

We respectfully disagree with our dissenting colleague's contrary conclusion. Two points merit emphasis. First, Judge Walker's view on each of the stay factors is colored largely by his view of the merits. But the government bears the burden of separately demonstrating each of *Nken*'s requirements. And though we do not find it necessary to resolve the government's likelihood of success on the merits given our conclusions above, the dissent oversimplifies matters by asserting that the TPS statute's plain text deprives the district court of jurisdiction over plaintiffs' suit. True, the statute provides that "[t]here is no judicial review of any determination of the [Secretary]" regarding a "termination or extension of a designation." 8 U.S.C. § 1254a(b)(5)(A). But the vast majority of courts to address the question have concluded—drawing in part on *McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479 (1991), and the "presumption favoring judicial review of administrative action," *Kucana v. Holder*, 558 U.S. 233, 251 (2010)—that the statute does *not* bar challenges, like plaintiffs', to the process by which a TPS determination is reached as opposed to challenges to the determination itself.[*]

[*] *See, e.g.*, *Doe v. Noem*, 2026 WL 544631, at *1 (2d Cir. Feb. 17, 2026); *Nat'l TPS All. v. Noem*, 166 F.4th 739, 757 (9th Cir. 2026); *Miot*, 2026 WL 266413, at

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Second, as to irreparable harm, the dissent defends the government's choice not to seek relief in the *NTPSA II* litigation but to do so here on the ground that the government has always been consistent that Haiti's TPS designation needed to end in February 2026. Dissent 6 n.21. That view ignores that the government had attempted to end Haiti's TPS designation by August 2025. So the problem remains: The government has not explained why its inability to terminate Haiti's TPS at its preferred date was for many months tolerable but now constitutes a "certain," "great," and "imminen[t]" harm. *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297.

The dissent's approach reduces to the proposition, sourced to *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), that any and every injunction entered against the government categorically imposes irreparable harm—even when the government previously treated that same harm as bearable. That position "overstates the holding" of *CASA*. *Castañon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1063 (7th Cir. 2025). *CASA* was tethered to the distinct context of a "universal injunction against the government." 606 U.S. at 859. Absent clearer guidance from the Court, we decline to read it as having endorsed such a broad and seemingly novel proposition.

Per Curiam

FOR THE COURT:
Clifton B. Cislak, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

*10–13; *Afr. Communities Together v. Noem*, 2026 WL 395732, at *7 (D. Mass. Feb. 12, 2026); *Doe v. Noem*, 2026 WL 184544, at *8 (N.D. Ill. Jan. 23, 2026); *Haitian Evangelical Clergy Ass'n v. Trump*, 789 F. Supp. 3d 255, 269 (E.D.N.Y. 2025); *Centro Presente v. U.S. Dep't of Homeland Sec.,* 332 F. Supp. 3d 393, 406–09 (D. Mass. 2018); *Saget v. Trump*, 375 F. Supp. 3d 280, 330–33 (E.D.N.Y. 2019); *CASA de Maryland, Inc. v. Trump*, 355 F. Supp. 3d 307, 320–22 (D. Md. 2018).

WALKER, *Circuit Judge*, dissenting:

In 2010, the Secretary of Homeland Security designated Haiti for Temporary Protected Status.[1] That allowed Haitians in the United States to stay here and work here.[2] Now, sixteen years later, the Secretary has decided to terminate Haiti's temporary designation.[3]

The Plaintiffs sued. The district court stayed the termination. The Government moved in this court for a stay of the district court's stay while the Government appeals.

As the Supreme Court and the Ninth Circuit have done in extraordinarily similar cases, I would grant the Government's request for emergency relief.[4] The Government is likely to prevail on the merits, it is irreparably harmed, and the equities favor the Government.[5]

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[1] Designation of Haiti for Temporary Protected Status, 75 Fed. Reg. 3476 (January 21, 2010). The designation has been extended numerous times, most recently on July 1, 2024. Extension of Redesignation of Haiti for Temporary Protected Status, 89 Fed. Reg. 54484.

[2] Designation of Haiti for Temporary Protected Status, 75 Fed. Reg. 3476 (January 21, 2010).

[3] Termination of the Designation of Haiti for Temporary Protected Status, 90 Fed. Reg. 54733 (November 28, 2025).

[4] *Noem v. NTPSA*, 145 S. Ct. 2728 (2025) (*NTPSA I*) (Venezuela); *Noem v. NTPSA*, 146 S. Ct. 23 (2025) (*NTPSA II*) (Venezuela); *NTPSA v. Noem*, No. 26-199 (9th Cir. February 9, 2026) (Nepal, Honduras, Nicaragua); *see also id.* slip op. at 6 (Hawkins, J., concurring) ("I concur in the result and specifically in Section 3 of the Order, heeding guidance from the Supreme Court's stay orders in the Venezuela TPS status case in this circuit.").

[5] *See Nken v. Holder*, 556 U.S. 418, 434 (2009).

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The Government is irreparably harmed by "an improper intrusion by a federal court into the workings of a coordinate branch of the Government."[6] To the extent our court has

[6] *INS v. Legalization Assistance Project*, 510 U.S. 1301, 1305-06 (1993) (O'Connor, J., in chambers); *see also Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2562 (2025) ("the Government is likely to suffer irreparable harm from the District Courts' entry of injunctions that likely exceed the authority conferred by the Judiciary Act"); *Trump v. Wilcox*, 145 S. Ct. 1415, 1416-17 (2025) ("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"); *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) ("Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." (cleaned up)); *American Foreign Service Association v. Trump*, No. 25-5184, 2025 WL 1742853, at *3 (D.C. Cir. June 20, 2025) ("The district court's preliminary injunction inflicts irreparable harm on the President by interfering with the national-security determinations entrusted to him by Congress."); *Media Matters for America v. FTC*, No. 25-5302, 2025 WL 2988966, at *19 (D.C. Cir. October 23, 2025) (Walker, J., dissenting) ("The FTC has an interest in lawfully enforcing consumer protection laws, and it was irreparably harmed when the district court enjoined its lawful activity." (cleaned up)); William Baude et al., *Hart & Wechsler's The Federal Courts and the Federal System* 388 (8th ed. 2025) ("The rule in *Maryland v. King* — that the government as applicant for emergency relief suffers irreparable injury whenever its statutes (or regulations) are enjoined — appears now to be followed by most of the Justices. The satisfaction of the irreparable harm prong in any case where the government seeks emergency relief from an injunction of one of its programs is an important reason why, in such instances, the Court's analysis of the merits predominates.") (citing *Abbott v. Perez*, 585 U.S. 579, 602 n.17 (2018); *Republican Party of Pennsylvania v. Degraffenreid*, 141 S. Ct. 732, 733 (2021) (Thomas, J., dissenting from denial of certiorari); *Little v. Reclaim Idaho*, 140 S. Ct. 2616, 2617 (2020)

occasionally required more than that by echoing the dissenters in *Trump v. CASA*, those requirements conflict with *CASA*'s holding.[7]

The Government's harm would be lightened, perhaps significantly, if the Government were unlikely to prevail on the merits.[8] But for Temporary Protected Status, "[t]here is no judicial review of any determination of the [Secretary] with respect to the designation, or termination or extension of a

(Roberts, C.J., joined by Alito, Gorsuch, and Kavanaugh, JJ., concurring in grant of stay)).

[7] *Cf. CASA*, 145 S. Ct. at 2581 (Sotomayor, J., dissenting) ("[The majority] turns one of the most critical factors we must consider in deciding whether to grant a stay" — the irreparable-harm factor — "into a box-checking exercise whenever the relevant enjoined action is an executive one." (cleaned up)); *id.* at 2580 ("What grave harm does the Executive face that prompts a majority of this Court to grant it relief? The answer, the Government says, is the inability to enforce the Citizenship Order against nonparties. For the majority, that answer suffices."); *Make the Road New York v. Noem*, 2025 WL 3563313, at *31 (D.C. Cir. Nov. 22, 2025); *Federal Education Association v. Trump*, 2025 WL 2738626, at *3 (D.C. Cir. Sept. 25, 2025).

[8] *See Labrador v. Poe*, 144 S. Ct. 921, 929 (2024) (Kavanaugh, J., concurring) ("Courts historically have relied on likelihood of success as a factor because, if the harms and equities are sufficiently weighty on both sides, the best and fairest way to decide whether to temporarily enjoin a law pending the final decision is to evaluate which party is most likely to prevail in the end."); *Huisha-Huisha v. Mayorkas*, 27 F.4th 718, 734 (D.C. Cir. 2022) ("the Plaintiffs' likelihood of success on the merits lightens the Executive's stated interests").

designation, of a foreign state."[9] So at this preliminary stage, the Government appears likely to prevail.[10]

That leaves the other equities — injury to the Plaintiffs, and the public interest.[11] And here the Plaintiffs have a point.[12] If termination means the unlawful removal to Haiti of Plaintiffs who would prefer to stay in America, the Plaintiffs are injured: America is a safe and developed nation with individual liberties and economic opportunity — Haiti is not.[13] And the public has an interest in "preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm."[14]

But whether the Plaintiffs might one day be "*wrongfully* removed" just leads us back to the merits, including the "temporary" nature of Temporary Protected Status. Most temporary things last, at most, days, weeks, or maybe months — not sixteen years. And because "removal alone cannot constitute the requisite irreparable injury" (even for

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[9] 8 U.S.C. § 1254a(b)(5)(A).

[10] *See CASA*, 145 S. Ct. at 2571 (Kavanaugh, J., concurring) ("[D]istrict courts and courts of appeals are . . . not perfectly equipped to make expedited preliminary judgments on important matters of this kind. Yet they have to do so, and so do we. By law, federal courts are open and can receive and review applications for relief 24/7/365.") (citing 28 U.S.C. § 452).

[11] *See Nken*, 556 U.S. at 434.

[12] *Cf. Labrador*, 144 S. Ct. at 929 (Kavanaugh, J., concurring) ("not infrequently — especially with important new laws — the harms and equities are very weighty on both sides").

[13] *See Miot v. Trump*, __ F. Supp. 3d __, 2026 WL 266413, at *4-6 (D.D.C. February 2, 2026) (describing Haiti); *cf. Byrne v. Boadle*, 159 Eng. Rep. 200 (Exch. 1863).

[14] *Nken*, 556 U.S. at 436.

someone seeking *permanent* withholding of removal), neither does the lawful termination of *Temporary* Protected Status.[15] Likewise, because "[t]here is always a public interest in prompt execution of removal orders" (even for orders that *can* be reviewed in court), there is an equal or greater public interest in the prompt execution of the Secretary's *unreviewable* termination order.[16]

Perhaps that is why the Supreme Court twice stayed lower court decisions preventing TPS terminations.[17] Or perhaps not — the Supreme Court's emergency orders did not explain its conclusion that the equities favored the Government. So the Plaintiffs are correct that we cannot know with certainty every reason why the Supreme Court reached that conclusion.

But we *can* know that it *did* reach that conclusion. Otherwise, it could not have issued the stays. And we forget our place in the judicial hierarchy when the Supreme Court's stays do not inform "how [we] should exercise [our] equitable discretion in like cases."[18]

The majority distinguishes today's case from *NTPSA I* and *NTPSA II* because the Government's injury was arguably greater there than here. But here again, the merits affect the equities. In *NTPSA I*, in *NTPSA II*, and in this case, it is undoubtedly in the interests of the Plaintiffs to stay in the United States, and in those cases and this one, the Secretary has made a formal determination in the exercise of unreviewable discretion that it is in the "national interest" for the Plaintiffs to

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[15] *Id.* at 435.

[16] *Id.*

[17] *See NTPSA II*, 146 S. Ct. 23; *NTPSA I*, 145 S. Ct. 2728.

[18] *Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025).

leave.[19] The weight of those equities does not materially change just because a court thinks the Secretary's reasons for the national-interest decision were stronger there than here — after all, Congress has told us *not* to review the Secretary's decision.[20] That makes those cases and today's case too similar to distinguish — the legal equivalent of fraternal, if not identical, twins.[21]

With respect, I dissent.[22]

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[19] *Compare* Termination of the October 3, 2023 Designation of Venezuela for Temporary Protected Status, 90 Fed. Reg. 9040 (February 5, 2025), *with* Termination of the Designation of Haiti for Temporary Protected Status, 90 Fed. Reg. 54733 (November 28, 2025).

[20] *See* 8 U.S.C. § 1254a(b)(5)(A) ("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.").

[21] The majority also notes that in the *NTPSA* litigation, the Government did not seek a stay in September 2025 after a district court set aside the Secretary's vacatur of an extension of Haiti's designation for Temporary Protected Status. But that's because the Government said it could wait until Haiti's designation expired in February 2026. But we are, of course, now *past* February 2026. And the Government said then, and says now, that the nation needs the designation's termination to go into effect no later than February 2026. In other words, the Government's position didn't change. The only thing that changed is the calendar — and with it, the need for a stay.

[22] In the past year, plaintiffs challenging federal policies have often (but not always) prevailed on motions for emergency relief in the lower courts. Meanwhile, the Government has often (but not always) prevailed on the Supreme Court's emergency docket. It has already

happened with other cases about Temporary Protected Status. And it might happen again here.

That *Groundhog Day* dynamic is not unprecedented, *cf.* William Baude, *Foreword: The Supreme Court's Shadow Docket*, 9 N.Y.U. J.L. & Liberty 1, 44 (2015) (from roughly 2005 to 2015, on the non-emergency orders docket, "there were sixteen state-on-top summary reversals in AEDPA cases"), even if "the volume of cases challenging new laws and coming to [the Supreme] Court on the emergency docket is a relatively recent development." *Labrador*, 144 S. Ct. at 934 (Kavanaugh, J., concurring); *see also id.* ("The emergency docket has always existed, and both the Court and even individual Justices acting in chambers have made a plethora of important decisions for the Nation in an emergency posture.") (citing examples that include *West Virginia v. EPA*, 577 U.S. 1126 (2016); *Purcell v. Gonzalez*, 549 U.S. 1 (2006); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952)). It is the product of, among other things, a judicial hierarchy with one Supreme Court atop nearly 1,500 federal judges. When judges and justices disagree, it does not mean they are harboring nefarious motives, making outcome-based decisions, or intentionally twisting the non-partisan, neutral legal principles that divide formalists and functionalists, minimalists and maximalists, hawks and doves on standing, stare decisis traditionalists and skeptics, unitary executive theorists and doubters, and on and on and on. And even when some of our nation's almost 1,500 federal judges issue decisions that could be uncharitably explained, *cf. DHS v. DVD*, 145 S. Ct. 2627, 2630 (2025) ("a claim that a lower court has failed to give effect to an order of this Court is properly addressed here"); *id.* at 2630 (Kagan, J., concurring) (". . . I do not see how a district court can compel compliance with an order that this Court has stayed."), I try to give their motives the benefit of the doubt that I aspire to earn from them.