No. 25A999

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.*,

Respondents.

BRIEF OF FEDERATION FOR AMERICAN IMMIGRATION REFORM AS *AMICUS CURIAE* IN SUPPORT OF APPLICATION FOR STAY

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IDENTITY AND INTEREST OF *AMICUS CURIAE*

The Federation for American Immigration Reform (FAIR) is a nonprofit, nonpartisan public-policy and membership organization dedicated to advocating for immigration policies that are in America's best interest, and to promoting the faithful execution of the nation's immigration laws. FAIR regularly participates in litigation involving immigration law enforcement, border integrity, and the scope of executive authority over the entry of aliens into the United States. Because, in this case, the court below overrode core executive prerogatives to conduct foreign affairs and control the border, this case presents a question vital to FAIR's mission.[1]

SUMMARY OF ARGUMENT

This case involves Secretary Noem's determination to terminate the temporary protected status (TPS) designation for Haiti. The district court's order postponing the effective date of this TPS termination conflicts with both the text of the TPS statute and the President's constitutional authority. Secretary Noem's termination of TPS for citizens of Haiti was not only permitted under the TPS statute but was an exercise of inherent Executive power under Article II of the Constitution. Indeed, because Secretary Noem's

[1] No counsel for any party authored this brief in whole or in part and no person or entity, other than *amicus curiae*, its members, or its counsel, has contributed money that was intended to fund preparing or submitting the brief.

action was at the behest of the President, it is unreviewable under the Administrative Procedure Act (APA). The conclusion of the court below that it may review "*how* the Secretary went about making her determination," Appendix to Application to Stay at 20a (emphasis in original), intrudes on the President's inherent authority, in overseeing foreign affairs, to exclude aliens from the United States.

Additionally, the plain text of the TPS statute deprives courts of judicial review of such decisions. Accordingly, whether Secretary Noem's termination determination is viewed as an exercise of inherent presidential authority or as an exercise of delegated power under the TPS statute, the court below erred in subjecting that determination to judicial review. Thus, the application to stay the postponement of Secretary Noem's determination should be granted.

ARGUMENT

There is no question that the United States has a right inherent in its sovereignty to defend itself from foreign dangers by controlling the admission of aliens. "It is an accepted maxim of international law that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe." *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892). The President's authority over immigration and naturalization stems from his

constitutional authority to superintend foreign relations and national security. *See, e.g.*, *Hernandez v. Mesa*, 589 U.S 93, 103-04 (2020) (declining to create a new *Bivens* remedy for the behavior of border patrol because it is a matter "relating to the conduct of foreign relations" and the Executive Branch "has the lead role in foreign policy"); *Trump v. Hawaii*, 585 U.S. 667, 702 (2018) (acknowledging that immigration related decisions "implicate relations with foreign powers or involve classifications defined in the light of changing political and economic circumstances"); *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-589 (1952) ("[A]ny policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government"); *Chicago & Southern Air Lines, Inc. v. Waterman S.S. Corp*., 333 U.S. 103, 109 (1948) ("The President . . . possesses in his own right certain powers conferred by the Constitution on him as Commander-in-Chief and as the Nation's organ in foreign affairs"); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542-43 (1950) ("The exclusion of aliens is a fundamental act of sovereignty . . . inherent in [both Congress and] the executive department of the sovereign"); see also *id.* at 542 ("When Congress prescribes a procedure concerning the admissibility of aliens, it is not dealing alone with a legislative power. It is implementing *an inherent executive power*.") (emphasis added); *United States v. Melgar-Diaz*, 2 F.4th 1263,1268

(9th Cir. 2021) (holding that the exclusion of aliens is a "fundamental act of sovereignty" and is "inherent in the executive power.").

Indeed, Congress has acknowledged the President's inherent authority to exclude aliens in the nation's interest. *See* 8 U.S.C. § 1182(f) (implementing the President's authority, in the interests of the United States, to "suspend the entry of all aliens or any class of aliens" or "impose on the entry of aliens any restrictions he may deem to be appropriate"). Granted the President's inherent constitutional power, as Commander-in-Chief, to exclude aliens, it is far from a nullity even if exercised outside of the precise form of its implementation by Congress in 8 U.S.C. § 1182(f).

By reason of this power, as explained below, Respondents are unlikely to succeed on the merits of their action, and this Court accordingly should stay the district court's order postponing agency action.

A. Secretary Noem's TPS termination decision was an exercise of presidential authority and is therefore unreviewable under the APA

On January 20, 2025, in exercise not only of his supervisory powers over the Executive Branch, but of his power to exclude aliens committed to him by the Constitution, President Trump directed Secretary Noem to "rescind the policy decisions of the previous administration that led to the increased or continued presence of illegal aliens in the United States," including "ensuring that designations of Temporary Protected Status are consistent with the

provisions of section 244 of the INA (8 U.S.C. § 1254a), and that such designations are appropriately *limited in scope* and *made for only so long as may be necessary* to fulfill the textual requirements of that statute." Executive Order 14159 at § 16, "Protecting the American People Against Invasion," 90 Fed. Reg. 8443, 8446 (Jan. 29, 2025) (emphasis added).

Because Presidents must always act through subordinates, whether an action is that of the President or the head of an agency, for purposes of APA reviewability, hinges not on whether agency personnel help perform a given action, but on whether the authority to take that action is entrusted to the President, whether by statute or in the Constitution, or delegated by Congress to an agency. *See, a fortiori, Dalton v. Specter,* 511 U.S. 462, 477 (1994) ("Where a statute … commits decisionmaking to the discretion of the President, judicial review of the President's decision is not available."). Here, Secretary Noem terminated Haiti's TPS designation pursuant, at least in part, to the President's executive order allowing TPS designations only as necessary to fulfill the textual requirements of the TPS statute. *See Termination of the Designation of Haiti for Temporary Protected Status*, 90 Fed. Reg. 54733, 54736 (Nov. 28, 2025) (citing Executive Order 14159 and the importance of national security and public safety in support of the termination decision). As the U.S. District Court for the District of Columbia has explained:

> [A]n unreviewable presidential action must involve the exercise of discretionary authority vested in the President; an agency acting on behalf of the President is not sufficient by itself. Since the Constitution vests the powers of the Executive Branch in one unitary chief executive officer, *i.e.*, the President, an agency always acts on behalf of the President. Nonetheless, there is a difference between actions involving discretionary authority delegated by Congress to the President and actions involving authority delegated by Congress to an agency. Courts lack jurisdiction to review an APA challenge in the former circumstances, regardless of whether the President or the agency takes the final action. However, "[w]hen the challenge is to an action delegated to an agency head but directed by the President, a different situation obtains: then, the President effectively has stepped into the shoes of an agency head, and the review provisions usually applicable to that agency's action should govern." Elena Kagan, *Presidential Administration*, 114 Harv. L. Rev. 2245, 2351 (2001).

Detroit Int'l Bridge Co. v. Gov't of Can., 189 F. Supp. 3d 85, 101-04 (D.D.C. 2016). *See also, Franklin v. Massachusetts*, 505 U.S. 788, 800-801 (1992) ("The President is not explicitly excluded from the APA's purview, but he is not explicitly included, either. Out of respect for the separation of powers and the unique constitutional position of the President, we find that textual silence is not enough to subject the President to the provisions of the APA."); *Detroit Int'l Bridge Co. v. Gov't of Canada*, 883 F.3d 895, 903 (D.C. Cir. 2018) (holding that the court lacks a standard of review "[i]n the foreign affairs arena"); *Tulare Cty. v. Bush,* 185 F. Supp. 2d 18, 28 (D.D.C. 2001) ("A court has subject-matter jurisdiction to review an agency action under the APA only when a final agency action exists. Because the President is not a federal agency within the meaning

of the APA, presidential actions are not subject to review pursuant to the APA.") (citing *Dalton,* 511 U.S. at 470) (other internal citations omitted).

It is, of course, not to the prejudice of the unreviewability of the Secretary's action that it was pursuant to an order that the President had inherent constitutional authority to issue. Obviously, if actions committed to the President's discretion by a statute are unreviewable under the APA, actions he takes pursuant to his authority under the Constitution are at least equally so.

Here, Secretary Noem acted at the direction of the President and implemented his executive order when she terminated the protective status designation for Haiti. Accordingly, her action was a presidential action, and the district court lacked jurisdiction to review it under the APA.

B. This Court should harmonize the TPS statute with the President's inherent constitutional authority

A reviewing court should seek to harmonize Congress's enactments with the President's inherent constitutional authority to exclude aliens. *See United States v. Hansen*, 599 U.S. 762, 781 (2023) ("When legislation and the Constitution brush up against each other, our task is to seek harmony, not to manufacture conflict."). "When 'a serious doubt' is raised about the constitutionality of an Act of Congress, 'it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by

which the question may be avoided.'" *Jennings v. Rodriguez*, 583 U.S. 281, 296 (2018) (quoting *Crowell v. Benson*, 285 U. S. 22, 62 (1932)).

Of course, the "canon of constitutional avoidance comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one construction." *Id.* (internal quotation omitted). Here, there in fact is no tension between the TPS statute and the unreviewability of presidential actions. As the government has persuasively established, the TPS statute itself precludes judicial review of Secretary Noem's decision to terminate TPS for Haiti. *See* Application to Stay at 17-22. Thus, whether the Secretary's action is viewed as an exercise of the President's inherent constitutional authority to protect the nation from foreign threats or an exercise of power delegated in the TPS statute, the court below clearly erred in concluding that the APA permitted review of her action.

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CONCLUSION

For the foregoing reasons, the Application for Stay should be granted.

Dated: March 12, 2026

Respectfully submitted,

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