

In the Supreme Court of the United States

DONALD J. TRUMP, ET AL.,
Applicants,

v.

FRITZ EMMANUEL LESLY MIOT, ET AL.,
Respondents.

**RESPONDENTS' OPPOSITION TO
STAY APPLICATION AND PETITION FOR A WRIT OF CERTIORARI**

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
STATEMENT.....	2
A. Temporary Protected Status.....	3
B. Haiti’s TPS designation.....	6
C. Respondents are Haitian TPS holders	6
D. The contributions of Haitian TPS holders.....	10
E. The termination of Haiti’s TPS designation.....	11
F. The termination of all TPS designations.....	14
G. Proceedings below	15
ARGUMENT	17
I. The equities weigh heavily against a stay.	17
A. A stay would irreparably harm respondents.....	17
B. The government would not be irreparably absent a stay.....	21
C. A stay is against the public interest.....	25
II. Respondents are likely to succeed on the merits.	26
A. The Secretary’s action is subject to judicial review.	26
1. There is a strong presumption of judicial review.....	26
2. § 1254a(b)(5)(A) does not bar respondents’ claims.....	27
B. Respondents are likely to prevail on their APA claims.	32
C. Respondents are likely to prevail on their equal-protection claim.	37
III. Certiorari at this stage of the proceedings is unwarranted.	40
CONCLUSION.....	40

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Afr. Cmty. Together v. Noem</i> , 2026 WL 395732 (D. Mass. Feb. 12, 2026)	29, 34
<i>Am. Ass’n of Univ. Professors v. Rubio</i> , 802 F. Supp. 3d 120 (D. Mass. 2025)	39
<i>Amgen Inc. v. Smith</i> , 357 F.3d 103 (D.C. Cir. 2004).....	34
<i>Bennett v. Stirling</i> , 842 F.3d 319 (4th Cir. 2016)	40
<i>Biden v. Texas</i> , 597 U.S. 785 (2022)	29
<i>CASA de Md., Inc. v. Trump</i> , 355 F. Supp. 3d 307 (D. Md. 2018)	29, 30
<i>Centro Presente v. DHS</i> , 332 F. Supp. 3d 393 (D. Mass. 2018)	29, 37
<i>DHS v. Regents of the Univ. of Cal.</i> , 591 U.S. 1 (2020)	39
<i>Doe v. Noem</i> , 2026 WL 184544 (N.D. Ill. Jan. 23, 2026)	34
<i>Griffith v. Fed. Lab. Rels. Auth.</i> , 842 F.2d 487 (D.C. Cir. 1988).....	27
<i>Haitian Evangelical Clergy Ass’n v. Trump</i> , 789 F. Supp. 3d 255 (E.D.N.Y. 2025).....	12, 22, 28, 29, 32
<i>Immigration Defs. L. Ctr. v. Noem</i> , 145 F.4th 972 (9th Cir. 2025).....	25
<i>John Doe Co. v. CFPB</i> , 849 F.3d 1129 (D.C. Cir. 2017).....	2, 24
<i>Kucana v. Holder</i> , 558 U.S. 233 (2010)	26

<i>League of Women Voters v. Newby</i> , 838 F.3d 1 (D.C. Cir. 2016)	25
<i>Make the Rd. N.Y. v. Noem</i> , 805 F. Supp. 3d 139 (D.D.C. 2025).....	20, 26
<i>Make the Road N.Y. v. Wolf</i> , 962 F.3d 612 (D.C. Cir. 2020).....	26
<i>Marcello v. Bonds</i> , 349 U.S. 302 (1955)	28
<i>Margolin v. National Association of Immigration Judges</i> , --- S. Ct. ---, 2025 WL 3684278 (Dec. 19, 2025)	25
<i>Matter of Yajure Hurtado</i> , 29 I.&N. Dec. 216 (BIA 2025).....	20
<i>McNary v. Haitian Refugee Center, Inc.</i> , 498 U.S. 479 (1991)	29, 30
<i>Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.</i> , 463 U.S. 29 (1983)	34, 35
<i>NAACP v. DHS</i> , 364 F. Supp. 3d 568 (D. Md. 2019)	37
<i>Nat’l TPS All. v. Noem</i> , 166 F.4th 739 (9th Cir. 2026).....	29
<i>Nat’l TPS All. v. Noem</i> , 2026 BL 42675 (9th Cir. Feb. 9, 2026).....	28
<i>National TPS Alliance v. Noem</i> , 798 F. Supp. 3d 1108 (N.D. Cal. 2025)	22, 24, 29, 37
<i>Noem v. National TPS Alliance</i> , No. 25A326 (U.S. Sep. 19, 2025)	23
<i>NTPSA v. Noem</i> , No. 25-4901 C.A. Doc. 19 (9th Cir. Aug. 20, 2025).....	23
<i>Perkins Coie LLP v. U.S. Dep’t of Just.</i> , 783 F. Supp. 3d 105 (D.D.C. 2025).....	25, 39
<i>R.I.L-R v. Johnson</i> , 80 F. Supp. 3d 164 (D.D.C. 2015).....	25

<i>Ramos v. Wolf</i> , 975 F.3d 872 (9th Cir. 2020)	28
<i>Ramos v. Wolf</i> , 59 F.4th 1010 (9th Cir. 2023).....	28
<i>Reno v. Cath. Soc. Servs., Inc.</i> , 509 U.S. 43 (1993)	27
<i>Saget v. Trump</i> , 375 F. Supp. 3d 280 (E.D.N.Y. 2019).....	12, 24, 31, 32, 35, 37
<i>Seila L. LLC v. CFPB</i> , 591 U.S. 197 (2020)	39
<i>Shaughnessy v. Pedreiro</i> , 349 U.S. 48 (1955)	28
<i>Trump v. Hawaii</i> , 585 U.S. 667 (2018)	37
<i>Village of Arlington Heights v. Metropolitan Housing Development Corp.</i> , 429 U.S. 252 (1977)	37, 38
<i>Webster v. Doe</i> , 486 U.S. 592 (1988)	26
<i>Zadvydas v. Davis</i> , 533 U.S. 678 (2001)	37
Statutes	
Administrative Procedure Act, Pub. L. No. 79-404,60 Stat. 237 (June 11, 1946).....	27
Immigration Act of 1990, Pub. L. No. 101-649 Tit. III, § 302, 104 Stat. 4978, 5032 (Nov. 29, 1990)	27
5 U.S.C.	
§ 559.....	27
§ 705.....	15, 27
§ 706.....	27

§ 706(2).....	31
§ 706(2)(B).....	37

8 U.S.C.

§ 1160	29
§ 1160(e).....	29, 30
§ 1182(a)(2)	5
§ 1182(a)(3)	5
§ 1252(a)(2)(B)(ii).....	27
§ 1254a(a)(1)(A)	4, 17
§ 1254a(a)(1)(B)	4
§ 1254a(b)(1)	6
§ 1254a(b)(1)(C)	4
§ 1254a(b)(2)	5
§ 1254a(b)(3)	21
§ 1254a(b)(3)(A)	5, 6, 32, 33
§ 1254a(b)(3)(B)	5, 6, 24
§ 1254a(b)(3)(C)	5, 21
§ 1254a(b)(5)(A)	15, 16, 27, 28, 29, 30, 34
§ 1254a(c)(1)(A).....	5
§ 1254a(c)(2)(A).....	5
§ 1254a(c)(2)(B).....	5, 35
§ 1254a(c)(3).....	5

§ 1254a(c)(3)(A).....	35
§ 1254a(c)(3)(C).....	36
§ 1254a(f)(2).....	10

Regulations and Executive Actions

75 Fed. Reg. 3476 (Jan. 21, 2010)	6, 22
76 Fed. Reg. 29000 (May 19, 2011)	6
77 Fed. Reg. 59943 (Oct. 1, 2012).....	6
79 Fed. Reg. 11808 (Mar. 3, 2014).....	6
80 Fed. Reg. 51582 (Aug. 25, 2015).....	6
86 Fed. Reg. 41863 (Aug. 3, 2021).....	6
88 Fed. Reg. 5022 (Jan. 26, 2023)	6
89 Fed. Reg. 54484 (July 1, 2024)	6
90 Fed. Reg. 8443 (Jan. 29, 2025)	12
90 Fed. Reg. 8805 (Feb. 3, 2025)	14
90 Fed. Reg. 9040 (Feb. 5, 2025)	14
90 Fed. Reg. 10511 (Feb. 24, 2025)	12, 14
90 Fed. Reg. 20309 (May 13, 2025)	14
90 Fed. Reg. 23697 (June 4, 2025)	14
90 Fed. Reg. 24151 (June 6, 2025)	14
90 Fed. Reg. 28760 (July 1, 2025)	12, 14
90 Fed. Reg. 30086 (July 8, 2025)	14
90 Fed. Reg. 30089 (July 8, 2025)	14
90 Fed. Reg. 43225 (Sept. 8, 2025)	14
90 Fed. Reg. 45398 (Sept. 22, 2025)	14

90 Fed. Reg. 50484 (Nov. 6, 2025).....	14, 21
90 Fed. Reg. 53378 (Nov. 25, 2025).....	14
90 Fed. Reg. 54733 (Nov. 28, 2025).....	3, 12, 13, 14, 15, 19, 22, 35, 36, 38
90 Fed. Reg. 58028 (Dec. 15, 2025)	14
91 Fed. Reg. 1547 (Jan. 1, 2026)	14
91 Fed. Reg. 1547 (Jan. 14, 2026)	14
91 Fed. Reg. 10402 (Mar. 3, 2026).....	14
Other Authorities	
American Immigration Counsel, <i>The Contributions of Temporary Protected Status Holders to the U.S. Economy</i> (Sept. 2023), https://tinyurl.com/bddbavfm	11
Maggie Astor, <i>Trump Says He Would Try Again to Revoke Haitian Immigrants’ Protections</i> , N.Y. TIMES (Oct. 3, 2024), https://tinyurl.com/mrxxx7f5	11
Riley Hoffman, <i>READ: Harris-Trump presidential debate transcript</i> , ABC (Sept. 10, 2024), https://tinyurl.com/5az7a383	11
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S.K.S. Shannon <i>et al.</i> , <i>The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948-2010</i> , 54 DEMOGRAPHY 1795, 1808 (2017)	36
Donald J. Trump (@realDonaldTrump), Truth Social (Nov. 21, 2025), https://truthsocial.com/@realDonaldTrump/posts/115590786862216464	14
George F. Will, <i>A federal judge schools chaotic Kristi Noem</i> , WASH. POST (Feb. 6, 2026), https://tinyurl.com/3c6nrrbh	1

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<https://tinyurl.com/y8bwk58m> (last visited Mar. 15, 2026)..... 3

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Inform and Communicate Secretary of Homeland Security's Decisions*
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INTRODUCTION

The government’s application for a stay and a writ of certiorari before judgment should be denied. A stay pending appeal is an extraordinary remedy. To obtain a stay, the government must show that it will suffer irreparable harm and that it is likely to prevail on the merits—but it has shown neither.

The government will suffer no irreparable harm if the district court’s order remains in effect pending the government’s appeal of it. Haiti has been designated for Temporary Protected Status since 2010. Since then, hundreds of thousands of Haitian TPS holders have lived in and contributed to American communities across the country. The government identifies no emergency requiring their immediate expulsion.

Respondents, by contrast, will suffer irreparable—potentially fatal—injury if the district court’s order is stayed. Respondents would be subject to immediate detention and removal to Haiti, “a maelstrom of disease, poverty, violence (including sexual violence) and death.”¹ Indeed, the State Department advises that you should not travel to Haiti for any reason but that if you nevertheless do, then you should “[l]eave DNA samples with your medical provider and dental records with your family in case it is necessary for your family to access them to identify your remains.”²

It is, moreover, respondents rather than the government who are likely to prevail on the merits. The government’s jurisdictional argument is contrary to both

¹ George F. Will, *A federal judge schools chaotic Kristi Noem*, WASH. POST (Feb. 6, 2026), <https://tinyurl.com/3c6nrrbh>.

² High Risk Areas, U.S. DEP’T OF STATE (accessed Mar. 15, 2026), <https://tinyurl.com/3xfak7ud>.

statute and this Court’s precedent. And the government’s merits argument is not only inconsistent with established law but also refuted by the administrative record.

Because the equities strongly favor respondents and, independently, because respondents are likely to succeed on the merits, no stay should issue.

Nor should the Court grant a writ of certiorari. Given their importance and complexity, the issues raised here (and in *Doe*) are best resolved in the ordinary course. If, however, the Court grants review in *Doe*, it should also grant review here.³

STATEMENT

Absent Temporary Protected Status (TPS), respondents face the risk of immediate deportation to Haiti. Without a functioning government, Haiti is a nation in turmoil. Rape, kidnapping, and murder are rampant, while food, housing, and medical care are scarce.

Since the assassination of President Jovenel Moïse in 2021, armed gangs have gained control over much of [Haiti’s capital] Port-au-Prince, creating a power vacuum that has made governing a challenge and fueled further violence, homelessness and starvation. More than 5,600 people were killed and 1,400 were kidnapped amid gang conflicts last year, according to the United Nations. The violence has rendered 1 million people homeless in Haiti, forcing many into makeshift shelters and exacerbating the country’s economic challenges.⁴

That was as of last March. Conditions have only gotten worse. Indeed, the Federal Register notice announcing the termination of Haiti’s TPS designation reports that, as of late August 2025, “1.3 million people—approximately 12% of Haiti’s

³ In their conditional petition for a writ of certiorari, respondents explain why this case is a better vehicle than *Doe* for addressing the questions presented should certiorari be granted. See Conditional Cert. Pet., *Miot v. Trump*, No. 25-1077.

⁴ Fredlyn Pierre Louis, *Haitian immigrants grapple with uncertainty as TPS end date looms*, NBC NEWS (Mar. 8, 2025), <https://tinyurl.com/2s3enwkc>.

population—have been forced to flee their homes and are internally displaced due to escalating violence” that “has engulfed Port-au-Prince and spreads beyond.” 90 Fed. Reg. 54733, 54735 (Nov. 28, 2025) (citation modified).

Recognizing the gravity of the situation, the State Department advises that people “not travel to Haiti due to kidnapping, crime, terrorist activity, civil unrest, and limited health care.”⁵ That warning “is not limited to Port-au-Prince” but applies also to “all other parts of Haiti.” ECF 81-1 ¶ 20.⁶

That respondents risk death upon their removal to Haiti is not speculative. Just last month, the decapitated bodies of four Haitian women deported from the U.S. several months earlier were found dumped in a river.⁷

A. Temporary Protected Status

“Before Congress passed the TPS Statute, the Executive Branch handled nationality-based temporary protection through an ‘ad hoc framework’” that “led to haphazard regulations and procedures, resulting in discretionary temporary stays that left recipients uncertain of their immigration status.” Appl. App. 4a–5a. “In 1990, Congress stepped in to replace chaos with structure by enacting the TPS statute” to create “a system of temporary status that was predictable, dependable, and insulated

⁵ Travel Advisory: Haiti, U.S. DEPT OF STATE (July 15, 2025), <https://tinyurl.com/y8bwk58m> (last visited Mar. 15, 2026).

⁶ All ECF references are to the docket in *Miot v. Trump*, No. 25-cv-2471 (D.D.C.).

⁷ Héctor Ríos Morales, *Four Haitian Women Were Deported from Puerto Rico; They Have Now Been Found Decapitated*, LATIN TIMES (Feb. 4, 2026), <https://tinyurl.com/yc6zts7k>. People who return to Haiti after having lived in the United States, especially those who—like respondent Marlene Noble—came to the U.S. as young children and do not speak Creole, are targeted by the violent gangs that control Haiti. See ECF 81-1 ¶ 146; ECF 81-4 ¶¶ 3–8, 17–18; App. 87a–89a.

from electoral politics.” *Id.* at 5a.

When the Secretary designates a country for TPS, nationals of that country already present in the United States can lawfully live and work in the U.S. for the duration of the designation. A country may be designated for TPS if certain statutory conditions are met. As relevant here, the Secretary of Homeland Security may designate a country for TPS if the Secretary finds that “there exist extraordinary and temporary conditions in the” country “that prevent” its nationals “from returning . . . in safety.” 8 U.S.C. §§ 1254a(b)(1)(C).⁸ When considering whether to designate a country because it is unsafe for its nationals to return home, the Secretary is allowed, but not required, to consider whether “permitting the [country’s nationals] to remain temporarily in the United States is contrary to the national interest of the United States.” § 1254a(b)(1)(C).

Once a country is designated for TPS, that country’s nationals who are physically present in the United States may register as TPS holders unless they are ineligible to do so. TPS holders may not be deported and are authorized to work in the United States so long as their home country’s designation remains in place. § 1254a(a)(1)(A)–(B).

Individuals are ineligible for TPS if (1) they have been convicted of a felony or more than one misdemeanor; (2) they are known to have engaged in drug trafficking; (3) they belong to a terrorist organization; or (4) their presence in the United States would have potentially serious adverse foreign policy consequences for the United

⁸ All subsequent statutory references are to 8 U.S.C. unless otherwise indicated.

States. §§ 1254a(c)(1)(A), (2)(A)–(B); §§ 1182(a)(2)–(3). Recognizing that errors might be made and that circumstances might change, the Secretary of Homeland Security is required to withdraw TPS from any individual who has received TPS but is subsequently determined to be ineligible. § 1254a(c)(3).

A country’s initial designation is for a “period . . . of not less than 6 months and not more than 18 months.” § 1254a(b)(2).

A TPS designation is subject to periodic review. At least 60 days before the TPS designation is set to expire, the DHS Secretary, “after consultation with appropriate agencies of the Government, shall review the conditions in the foreign state . . . and shall determine whether the conditions for such designation . . . continue to be met.” § 1254a(b)(3)(A). If the Secretary determines that the conditions for designation continue to exist, the designation must be extended. *Id.*⁹ Conversely, if the Secretary determines that the conditions for designation are no longer met, the designation must be terminated. § 1254a(b)(3)(B). Regardless which, “notice of . . . such determination (including the basis for the determination . . .)” must be timely published “in the Federal Register.” § 1254a(b)(3)(A). If the Secretary fails to make the mandated determination within the statutorily prescribed period, the designation is automatically extended by at least six months. § 1254a(b)(3)(C). Thus, the only circumstance under which a TPS designation may be lawfully terminated is if, as a result of the statutorily mandated periodic review, the Secretary affirmatively determines that a foreign state “no longer continues to meet the conditions for

⁹ Congress placed no limit on the number of times a designation may be extended.

designation under [§ 1254a(b)(1)]” and then gives timely notice of “the basis for the determination.” § 1254a(b)(3)(A)–(B).

B. Haiti’s TPS designation

Haiti was first designated for TPS in January 2010, following a devastating earthquake. 75 Fed. Reg. 3476 (Jan. 21, 2010). Since then, Haiti’s TPS designation has been extended or redesignated multiple times over multiple administrations due to worsening conditions in the country.¹⁰ See 76 Fed. Reg. 29000 (May 19, 2011); 77 Fed. Reg. 59943 (Oct. 1, 2012); 79 Fed. Reg. 11808 (Mar. 3, 2014); 80 Fed. Reg. 51582 (Aug. 25, 2015); 86 Fed. Reg. 41863 (Aug. 3, 2021); 88 Fed. Reg. 5022 (Jan. 26, 2023); 89 Fed. Reg. 54484 (July 1, 2024).

In July 2024, Secretary Alejandro Mayorkas—citing political corruption, human-rights abuses, escalating gang violence, limited health care, food insecurity, and the continuing impact of a destructive 2021 earthquake that was quickly followed by a severe tropical storm—“determined” again “that an 18-month TPS extension is warranted because the extraordinary and temporary conditions supporting Haiti’s TPS designation remain.” 89 Fed. Reg. at 54487. The extension extended Haiti’s TPS designation through February 3, 2026. *Id.*

C. Respondents are Haitian TPS holders

Respondent Marlene Gail Noble was born in Haiti and, as a small child, was adopted by U.S. citizens. ECF 81-4 ¶ 3. She has held TPS since 2024. *Id.* ¶ 13. She

¹⁰ An extension of a TPS designation applies only to those who already hold TPS. The redesignation of country for TPS enables individuals who were not present in the U.S. at the time of the prior designation to register for TPS.

was abandoned as an infant. *Id.* ¶ 2. While still a toddler in Haiti, she contracted spinal tuberculosis, which caused her spinal cord to collapse and left her unable to sit, move, or function without additional medical care. *Id.* ¶ 4. In 1993, when she was two years old, the Gabriel Foundation, a faith-based organization in Florida, brought her to the United States for medical treatment. *Id.* ¶ 5. After undergoing surgery, she was placed in a series of foster homes before being adopted by a Pennsylvania couple. *Id.* ¶¶ 6–7. Having left Haiti as a young child, Ms. Noble neither speaks nor understands either Creole or French. *Id.* ¶ 18. In 2023, at the age of 30, she learned that, despite having been automatically eligible as an adoptive child, she had not received U.S. citizenship because her adoptive parents had neglected to submit the requisite paperwork before Ms. Noble turned 18. *Id.* ¶¶ 8–12. After consulting with an immigration lawyer and determining that other paths to lawful presence were unavailable to her, Ms. Noble applied for TPS. *Id.* ¶ 13. With the work authorization that TPS confers and in the hope of someday working as a post-mortem forensic toxicologist, she has worked as a laboratory assistant in a toxicology department preparing urine samples for pain-management testing as well as blood samples for organ-donor recipients. *Id.* ¶¶ 14, 16. Although Ms. Noble underwent a second spinal fusion surgery in 2017, she is still afflicted with pain. *Id.* ¶ 15.

Respondent Vilbrun Dorsainvil was born in Haiti and is 35 years old. ECF 81-6 ¶ 2. He completed medical school and worked as a doctor in Haiti. *Id.* He and other family members were politically active in Haiti; he left Haiti after he and family members were targeted because of their anti-corruption efforts. *Id.* ¶¶ 10–14, 16. Dr.

Dorsainvil has held TPS since 2021. *Id.* ¶ 2. He lives and owns a home in Springfield, Ohio, where—with TPS-based work authorization—he is employed full time as a Registered Nurse at Springfield Regional Medical Center after receiving an Associate Degree in Nursing (ADN) from Clark State College in Springfield. *Id.* ¶¶ 2–4. He has health insurance through his job. *Id.* ¶ 6. With his earnings, he supports himself and his diabetic cousin, who lives in the United States, and provides financial assistance to relatives in Haiti. *Id.* ¶¶ 7–8. Dr. Dorsainvil would be unable to do so if he loses his work authorization. *Id.* ¶ 8.

Respondent Fritz Emmanuel Lesly Miot was born in Haiti and is 33 years old. ECF 81-2 ¶ 2. He has held TPS since 2011. *Id.* He is a Ph.D. candidate in neuroscience at Loma Linda University in Loma Linda, California. *Id.* ¶ 3. His research in the laboratory, where he spends anywhere from thirty to sixty hours weekly, focuses on understanding how the processes of aging and Alzheimer’s Disease damage blood vessels in the brain, with the goal of generating life-saving therapies. *Id.* ¶ 4. Mr. Miot’s work authorization, and thus his ability to conduct this research, is dependent on his TPS status. *Id.* ¶ 5. Mr. Miot has Type 1 Diabetes, which requires daily insulin injections and regular appointments with medical specialists; without his student health insurance, Mr. Miot could not afford the insulin or the specialists he needs to keep his diabetes in control. *Id.* ¶ 7. In Haiti, neither the insulin nor the specialists would be readily accessible, if at all. *Id.* ¶ 8. Even if he were not immediately deported to Haiti upon termination of Haiti’s TPS designation, Mr. Miot would lose his work

authorization and medical insurance, which would endanger his health and end his research, graduate studies, and promising future in neuroscience.

Respondent Rudolph Civil was born in Haiti, is 23 years old, lives in New Jersey, and has held TPS since 2010. ECF 81-3 ¶ 2. A freelance photographer on the side, Mr. Civil works full-time as a software engineer for a major national bank in the New York City metro area. *Id.* ¶ 2. He graduated from the University of Florida with a degree in computer engineering and plans to obtain either an MBA or a master's degree in computer engineering. *Id.* ¶¶ 3, 6. Culturally American and perceived as such, he speaks Creole infrequently and with an American accent. *Id.* ¶¶ 3, 7. His TPS-derived work authorization enables Mr. Civil to support himself while also sending money to his aunt in Haiti, who relies on his financial support for basic needs and the education of her three children, one of whom has Down syndrome. *Id.* ¶ 5.

Respondent Marica Merline Laguerre is 22 years old. ECF 81-5 ¶ 2. Born in Haiti in 2004, she and her parents moved to the U.S. Virgin Islands in 2005 and to the United States in 2007 or 2008. *Id.* Ms. Laguerre has held TPS since 2010. *Id.* After moving from Florida to New York about fifteen years ago, Ms. Laguerre attended a preparatory high school where, thanks to a partnership with the City University of New York, she obtained both her high school degree and an associate degree in biology. *Id.* ¶ 3. Currently a junior studying economics at Hunter College, she works as a receptionist and administrative assistant at a licensed fiduciary firm which specializes in retirement planning. *Id.* ¶¶ 6–7. She aspires to have a career in finance and recently was one of only eighteen students nationwide to receive a

scholarship to study for the Securities Industry Essentials exam. *Id.* ¶ 13. She has been offered an internship at one of the nation’s largest banks but cannot accept it if she loses her TPS-derived work authorization. *Id.* ¶ 14.

D. The contributions of Haitian TPS holders

Haitian TPS holders contribute “approximately \$3.4 billion to [the U.S. economy] annually.” Appl. App. 79a (citing ECF 54 at 11).

Ineligible for federal assistance (*see* § 1254a(f)(2)), “[w]orkforce participation among TPS holders is exceptionally high.” ECF 54 at 8; *see also* ECF 47 at 12. Haitian TPS holders in particular play “critical roles . . . in workplaces across the country,” where they “fill labor shortages in essential industries.” Appl. App. 79a (citing ECF 47 at 12–14). Like Dr. Dorsainvil, many work in the healthcare industry, a “labor-starved industry” in which “understaffing and overwork” are “the norm.” *Id.* (quoting ECF 54 at 14 and ECF 37 at 14). Moreover, “[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.” *Id.* (quoting ECF 37 at 14).

Healthcare is not the only industry in which their labor is essential. “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.” Appl. App. 80a (citing ECF 37 at 13–20; ECF 47 at 12–13; ECF 54 at 11–13). To cite just one example: Haitian TPS holders

have helped power Springfield, Ohio’s economic recovery, enabling employers to fill jobs and meet demand that they otherwise could not. ECF 54 at 13.¹¹

“TPS holders also make substantial contributions as entrepreneurs and taxpayers.” Appl. App. 80a. “As a group, 14.5% of TPS holders are entrepreneurs—compared with 9.3% of the U.S.-born workforce.” *Id.* (citing ECF 47 at 13).¹² In 2021 alone, entrepreneurs and self-employed workers with TPS “generated \$1.5 billion in business income.” ECF 47 at 13. In 2023, Haitian TPS holders “paid about \$1.3 billion in federal, state, and local taxes.” Appl. App. 80a. 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.” *Id.*

E. The termination of Haiti’s TPS designation

Shortly before taking office—and thus before his administration could conduct the required periodic review—President Trump, who falsely claimed that Haitian TPS holders in Springfield, Ohio were “eating the pets of the people” there,¹³ vowed to “revoke” Haiti’s TPS designation and send Haitian TPS holders “back to their country.”¹⁴ Upon taking office, he promptly made good on that threat.

¹¹ See also Miriam Jordan, *Why Thousands of Haitians Have Settled in Springfield, Ohio*, N.Y. TIMES (Sept. 14, 2024), <https://tinyurl.com/nx4bu9at>.

¹² See also American Immigration Counsel, *The Contributions of Temporary Protected Status Holders to the U.S. Economy* (Sept. 2023), <https://tinyurl.com/bddbavfm>.

¹³ Riley Hoffman, *READ: Harris-Trump presidential debate transcript*, ABC (Sept. 10, 2024), <https://tinyurl.com/5az7a383>.

¹⁴ Maggie Astor, *Trump Says He Would Try Again to Revoke Haitian Immigrants’ Protections*, N.Y. TIMES (Oct. 3, 2024), <https://tinyurl.com/mrxxx7f5>.

The termination of Haiti’s TPS designation has been a three-step process. On February 24, his Secretary of Homeland Security, Kristi Noem, issued a “partial vacatur” prematurely terminating Haiti’s TPS designation effective August 3, 2025. 90 Fed. Reg. 10511 (Feb. 24, 2025). On July 1, the partial vacatur was held unlawful. *Haitian Evangelical Clergy Ass’n v. Trump*, 789 F. Supp. 3d 255 (E.D.N.Y. 2025) (*HECA*). The same day, Secretary Noem issued a termination notice that purported to terminate Haiti’s designation effective September 2, 2025. 90 Fed. Reg. 28760 (July 1, 2025). Then, on November 28, three months after respondents challenged the July 1 termination notice on constitutional and statutory grounds, Secretary Noem issued a superseding termination notice purporting to terminate Haiti’s TPS designation effective February 3, 2026. 90 Fed. Reg. 54733 (Nov. 28, 2025).¹⁵ The operative complaint challenges the November 28 notice. ECF 90.

Secretary Noem issued the termination notice in “furtherance of” Executive Order 14159 (Jan. 20, 2025). 90 Fed. Reg. at 54736. Issued by President Trump within hours of regaining office, the order decries what it characterizes as an “unprecedented flood of illegal immigration into the United States.” 90 Fed. Reg. 8443, 8443 (Jan. 29, 2025). Directing each to “align any and all departmental activities with the policies set out by this order,” the order instructs the Secretary of State, Attorney General, and DHS Secretary to “promptly” take action “to rescind the policy decisions of the

¹⁵ The November 28 termination of Haiti’s TPS designation, the action at issue here, is the fourth unlawful attempt by a Trump administration to end Haiti’s designation. Federal courts blocked the first Trump administration’s attempt to terminate Haiti’s TPS designation as “preordained and pretextual” in violation of both the APA and the Constitution. E.g., *Saget v. Trump*, 375 F. Supp. 3d 280, 346 (E.D.N.Y. 2019).

previous administration” that “led to the increased or continued presence of illegal aliens in the United States.” *Id.* at 8446. Although TPS holders are not “illegal aliens”—because the TPS designation itself makes their presence lawful—the order states that “[s]uch action should include . . . ensuring that” TPS designations are “limited in scope and made for only so long as may be necessary to fulfill the textual requirements of that statute.” *Id.*

The Secretary gave two reasons for terminating Haiti’s TPS designation. First, despite acknowledging that “1.3 million people—approximately 12% of Haiti’s population—have been forced to flee their homes and are internally displaced due to escalating violence” that “has engulfed Port-au-Prince and spreads beyond,” she “determined that there are no extraordinary and temporary conditions in Haiti that prevent Haitian nationals . . . from returning in safety.” 90 Fed. Reg. at 54735 (citation modified). Second, relying largely on purported criminality of Haitian TPS holders, she determined that

even if . . . there existed conditions that were extraordinary and temporary that prevented Haitian nationals . . . from returning in safety, termination of Temporary Protected Status of 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.

Id.

President Trump has claimed personal responsibility for the termination of Haiti’s TPS designation. Two days before Secretary Noem published notice of the “partial vacatur” in the Federal Register, President Trump declared that “I . . . cancelled Temporary Protected Status for migrants from Haiti.” Appl. App. 71a

(quoting *President Trump Speaks at CPAC*, C-SPAN (Feb. 22, 2025 at 22:11), <https://tinyurl.com/mrx2s49v>).¹⁶

F. The termination of all TPS designations

Since President Trump returned to office, TPS designations for thirteen countries have been up for periodic review. The administration has terminated, sometimes in multiple steps, the designations for all thirteen. See 91 Fed. Reg. 10402 (Mar. 3, 2026) (Yemen); 91 Fed. Reg. 1547 (Jan. 14, 2026) (Somalia); 90 Fed. Reg. 58028 (Dec. 15, 2025) (Ethiopia); 90 Fed. Reg. 54733 (Nov. 28, 2025) (Haiti); 90 Fed. Reg. 53378 (Nov. 25, 2025) (Burma); 90 Fed. Reg. 50484 (Nov. 6, 2025) (South Sudan); 90 Fed. Reg. 45398 (Sept. 22, 2025) (Syria); 90 Fed. Reg. 43225 (Sept. 8, 2025) (Venezuela); 90 Fed. Reg. 30089 (July 8, 2025) (Honduras); 90 Fed. Reg. 30086 (July 8, 2025) (Nicaragua); 90 Fed. Reg. 28760 (July 1, 2025) (Haiti); 90 Fed. Reg. 24151 (June 6, 2025) (Nepal); 90 Fed. Reg. 23697 (June 4, 2025) (Cameroon); 90 Fed. Reg. 20309 (May 13, 2025) (Afghanistan); 90 Fed. Reg. 10511 (Feb. 24, 2025) (Haiti); 90 Fed. Reg. 9040 (Feb. 5, 2025) (Venezuela); 90 Fed. Reg. 8805 (Feb. 3, 2025) (Venezuela).

The terminations share at least two commonalities. First, each country whose designation was terminated is a majority non-white country. Second, in each

¹⁶ President Trump has also claimed personal responsibility for terminating Somalia's TPS designation. Six weeks before the Secretary published a corresponding notice in the Federal Register (*cf.* 91 Fed. Reg. 1547 (Jan. 1, 2026)), he announced on social media that "I am, as President of the United States, hereby terminating, effective immediately, the Temporary Protected Status . . . for Somalis." Donald J. Trump (@realDonaldTrump), Truth Social (Nov. 21, 2025), <https://truthsocial.com/@realDonaldTrump/posts/115590786862216464>.

instance, the Secretary concluded that “it is contrary to the national interest of the United States to permit” TPS holders “to remain . . . in the United States.” E.g., 90 Fed. Reg. at 54735.

G. Proceedings below

Respondents filed their original complaint, targeting the July 1 termination notice, on July 30. ECF 1. Respondents filed an amended complaint, challenging the superseding November 28 termination notice on December 5. ECF 74. Two weeks later, on December 19, respondents filed a slightly revised second amended complaint, which is the operative complaint. ECF 90. Alleging that the termination was a procedurally defective predetermined outcome motivated at least in part by racial animus, respondents asserted claims under the Administrative Procedure Act and the Fifth Amendment.

The government produced the administrative record on December 10. ECF 78.

Recognizing that the litigation would not be complete before the scheduled February 3 termination date, respondents filed a motion for interim relief under 5 U.S.C. § 705, asking that termination be postponed until a final resolution on the merits. ECF 81.

The government moved to dismiss, contending, *inter alia*, that § 1254a(b)(5)(A) deprived the district court of jurisdiction and that respondents’ claims failed on the merits. ECF 80.

On February 2, the day before Haiti’s TPS designation was to have been terminated, the court denied the government’s motion to dismiss and granted respondents’ motion to postpone the termination pending a final resolution on the

merits. Appl. App. 1a–83a.

The court rejected the government’s contention that § 1254a(b)(5)(A) bars review of respondents’ claims, recognizing that respondents do not challenge the Secretary’s substantive determinations but instead the process by which she arrived at those determinations. Appl. App. 20–23a.

The court held that respondents are likely to succeed on the merits of their APA claims, finding sufficient evidence in the administrative record and the administration’s across-the-board termination of all TPS designations to conclude that the termination of Haiti’s designation was not only arbitrary and capricious but the preordained result of a pattern and practice of terminating TPS designations without adherence to the statutorily mandated periodic review process. Appl. App. 41a–64a.

Finally, the court concluded that respondents are likely to succeed on the merits of their equal-protection claim, finding sufficient evidence that the termination was motivated, at least in part, by racial animus. Appl. App. 64a–73a.

On February 23, the district court denied respondents’ application to stay its order postponing termination of Haiti’s TPS designation pending appeal. Appl. App. 84a–87a. The court found, among other things, that respondents “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.” Appl. App. 87a (citation modified).

On March 6, the D.C. Circuit denied petitioners’ application to stay the

postponement order. Appl. App. 88a–100a. Like the district court, it found that “the termination of TPS would have devastating consequences for [respondents], including risk of detention and deportation, separation from family members, and loss of work authorization,” and that TPS holders “removed to Haiti would be vulnerable to violence amid a collapsing rule of law and lack access to life-sustaining medical care.” Appl. App. 92a (citation modified).

ARGUMENT

I. The equities weigh heavily against a stay.

A. A stay would irreparably harm respondents.

A principal benefit of TPS is the right to remain in the United States. § 1254a(a)(1)(A). If the district court’s order is stayed, Haitian TPS holders would be subject to immediate deportation. The government concedes that if a stay is granted “nothing would prohibit DHS and ICE to show up,” detain, and deport Haitian TPS holders. ECF 132 at 7:5–6. Indeed, ICE told the district court that “if the termination had not been stayed, DHS would have acted” to do just that. ECF 129 ¶ 4.

Deportation to Haiti would place TPS holders in mortal danger. The very sources on which Secretary Noem relied confirm exactly that.

Indeed, “[e]very document” in the administrative record “describing conditions in Haiti in 2025 describes the country as a nation deep in crisis.” Appl. App. 49a. According to one, “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.” Appl. App. 50a (citing ECF 78-11 at 34–

35). Another states that “[t]he people of Haiti are in a perfect storm of suffering,” “[s]tate authority is crumbling”; “[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.” Appl. App. 56a (citing ECF 78-13 at 179). Yet another reports that “[e]scalating 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.” Appl. App. 53a (citing ECF 78-7 at 91). Still another observes that “Haiti is one of only five countries worldwide with people in famine-like conditions.” Appl. App. 52a (citing ECF 78-13 at 149). Noting that “[t]hreats of violence have forced essential services to shut down, including hospitals and roadways,” a different document reports that “[t]he humanitarian situation in Haiti is considered among the most dire in the world.” Appl. App. 53a (citing ECF 78-7 at 150).

The September 2025 decision memo prepared by the U.S. Citizenship and Immigration Service for the Secretary states that “[r]ampant corruption and violence by armed criminal groups undermine basic services and contribute to pervasive physical insecurity.” ECF 78-5 at 177. It reports that the gangs controlling nearly all of Haiti’s capital Port-au-Prince “killed at least 5,601 people and kidnapped nearly 1,500 in 2024” and explains that this violence has “rapidly expanded into” other “key regions such as the Ouest and Artibonite departments, Haiti’s agricultural hub.” *Id.*

Unsurprisingly, the State Department warns against “travel[ing] to Haiti for any reason” because of “kidnapping, crime, terrorist activity, civil unrest, and limited

health care.” Appl. App. 3a–4a. Contrary to Secretary Noem’s assertion that “parts of the country are suitable to return to” (90 Fed. Reg. at 54735), the State Department has stated that the advisory applies to “all . . . parts of Haiti.” ECF 81-1 ¶ 20.¹⁷

The danger afflicting all Haitians would be even greater for returning TPS holders, many of whom have “no meaningful ties to the country” because they—like respondent Marlene Noble—were brought to the U.S. as young children. Appl. App. 74a. Many “cannot speak French or Haitian Creole, the official languages of Haiti.” *Id.* And because they will have lived in the U.S., returning TPS holders will be “vulnerable target[s] for gangs.” *Id.* The lives of some TPS holders would be at particular risk because they have “ongoing medical conditions that require consistent treatment and prescription medication, which may be unavailable or difficult to access in Haiti.” *Id.*

The government argued below that the risk of deportation is speculative because respondents “could seek relief from removal through the immigration process.” Appl. App. 76a. But the prospect of such relief “is illusory.” *Id.* As the district court explained:

The theoretical availability of such relief provides no assurance that Plaintiffs’ applications for relief would be processed, let alone granted, before removal.

¹⁷ The risks that Haitian TPS holders would face upon removal to Haiti are different and significantly greater than those that other TPS holders would face if removed to their respective countries. Therefore, contrary to what the government asserts, neither the stays issued by this Court in the Venezuela TPS litigation nor the stays issued by the Fourth and Ninth Circuits in the Nepal, Honduras, Nicaragua, Afghanistan, and Cameroon TPS litigations speak to the balance of equities in this case. *Cf.* Appl. 2–3 (citing *Noem v. Nat’l TPS All.*, 145 S. Ct. 2728 (2025); *Noem v. Nat’l TPS All.*, 145 S. Ct. 2728 (2025); *NTPSA v. Noem*, No. 25-4901 C.A. Doc. 19 (9th Cir. Aug. 20, 2025); *CASA, Inc. v. Noem*, 2025 WL 2028397, at *1 (4th Cir. July 21, 2025)).

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.

Id. Moreover, a TPS holder wrongfully removed from the U.S. generally has no avenue to return once deported “because TPS is a vehicle to *remain* in the country, not to enter it.” *Id.* (citing *Sanchez v. Mayorkas*, 593 U.S. 409, 414 (2021)). Indeed, the government has conceded that once removed from the U.S., Haitian TPS holders would have no right to return even if they prevail in this litigation. See ECF 132 at 18:15–10, 19:11–17.

Even if not immediately deported, many TPS holders would be subject to indefinite detention pending removal. See, e.g., *Matter of Yajure Hurtado*, 29 I.&N. Dec. 216, 220 (BIA 2025) (“aliens who are present in the United States without admission ... must be detained for the duration of their removal proceeding”). “The harm from detention surely cannot be remediated after the fact” and is therefore “a quintessential irreparable harm.” *Make the Rd. N.Y. v. Noem*, 805 F. Supp. 3d 139, 171 (D.D.C. 2025) (citation modified).

Whether immediately deported or detained pending deportation, Haitian TPS holders would suffer “irreparable harm through forced family separation” because many are spouses, parents, or siblings of U.S. citizens. Appl. App. 75a. “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.” *Id.*

Even if not detained or deported, Haitian TPS holders would immediately lose

their work authorization, which would “result[] in immediate job loss, and attendant health insurance loss, that cannot be remedied retroactively.” Appl. App. 77a.

According to the government, the harms that respondents would suffer if Haiti’s TPS designation is terminated are “inherent in TPS’s temporary nature.” Appl. 4. But under § 1254a(b)(3), a country’s TPS designation may not be terminated unless the Secretary conducts a good-faith, evidence-based, country-specific review of conditions in the designated country and then, based on that review, affirmatively determines that the conditions for designation no longer exist. If the Secretary fails to make such a determination, then the country’s TPS designation is automatically extended. § 1254a(b)(3)(C). Thus, the statutory default is extension, not termination. Appl. App. 6a; cf. 90 Fed. Reg. at 50485 (“Temporary Protected Status for South Sudan was automatically extended for six months” when the Secretary failed to make a determination). The loss of TPS and the protections it provides therefore is not inherent in the statutory scheme.

B. The government would not be irreparably absent a stay.

In the court of appeals, the government claimed that it would suffer irreparable harm absent a stay because the district court order “requires the United States to continue to permit hundreds of thousands of foreign nationals to remain within its borders.” Appellants’ Emergency Mot. for a Stay Pending Appeal at 27, *Miot v. Trump*, No. 26-5050 (D.C. Cir. Feb. 6, 2026); cf. Appl. 10. But allowing Haitian TPS holders to remain in the country pending the government’s appeal of the district court’s order is not an irreparable harm.

Haiti has been designated for TPS since 2010. When Haiti was first designated,

there were as many as 200,000 TPS-eligible Haitians living in the U.S. 75 Fed. Reg. at 3477. The number grew over the ensuing years as conditions in Haiti deteriorated. In November 2025, there were “approximately 352,959” Haitian TPS holders in the U.S. 90 Fed. Reg. at 54738. In short, Haitian TPS holders have lived in our midst for nearly two decades without problem. There is no sudden emergency requiring their immediate expulsion.

The government’s own conduct—namely, its failure to seek emergency relief in prior cases imposing the same purported harm as here—confirms as much.

On February 24, 2025, Secretary Noem issued a “partial vacatur” that attempted to terminate Haiti’s TPS designation effective August 3, 2025. The partial vacatur was set aside as “unlawful under the APA.” *HECA*, 789 F. Supp. 3d at 273. The decision meant that Secretary Noem could not terminate Haiti’s TPS designation “before February 3, 2026,” *i.e.*, six months later than she had intended. *Id.* Nevertheless, the government did not seek a stay pending appeal. Indeed, the government waited until nearly the last day possible to file a notice of appeal and then selected the latest possible due date for its opening brief—February 12, 2026, nine days after Haiti’s TPS designation was originally set to expire. See ECF 72, *HECA v. Trump*, No. 1:25-cv-1464 (E.D.N.Y. Sept. 25, 2025); ECF 10, *HECA v. Trump*, No. 25-2372 (2d Cir. Nov. 13, 2025).

And when the “partial vacatur” of Haiti’s TPS designation was set aside once more by *National TPS Alliance v. Noem*, 798 F. Supp. 3d 1108 (N.D. Cal. 2025) (“*NTPSA*”), the government again chose not to seek a stay pending appeal. Its failure

to do so is particularly noteworthy. The government *did* seek to stay the *NTPSA* decision insofar as it also set aside Secretary Noem’s termination of Venezuela’s TPS designation but told this Court that it did “not seek to stay the portion of the district court’s judgment related to Haiti.” Stay App. 7 n.6, *Noem v. National TPS Alliance*, No. 25A326 (U.S. Sep. 19, 2025).

The government’s conduct in *HECA* and *NTPSA* undermines any claim that it will suffer irreparable harm absent an emergency stay in this case.

Recognizing this, the government attempts to distinguish those cases from this on two grounds. First, it argues that it chose not to seek a stay of the orders setting aside the partial vacatur because the partially vacated July 2024 extension of Haiti’s TPS designation “would expire—and the case[s] would be moot—before [they] could be finally resolved on the merits.” Appl. 35. Second, it argues that, in purported contrast to “indefinitely stayed” November 28 termination, “[t]he 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.” *Id.*

The purported distinctions are specious.

According to the government, the district court’s order inflicts irreparable harm on the government because it “interferes with the federal government’s determinations regarding foreign policy and the national interest in enforcing immigration laws.” Appl. 31. But to whatever extent that is true, it is also true of the

orders setting aside the partial vacatur, which likewise stopped the government from implementing its TPS policy.

Nor is this case materially different because the order at issue postpones the termination of Haiti's TPS designation "indefinitely." Appl. 35. As was true when the partial vacatur was set aside, nothing prevents the Secretary from terminating Haiti's TPS designation so long as she does so lawfully. As the district court explained, "[e]ven 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." Appl. App. 31a. The postponement does "not compel [her] to extend Haiti's TPS designation." *Saget*, 375 F. Supp. 3d at 332. Indeed, if the Secretary, applying "lawful criteria" after consultation with the appropriate agencies, were to make a "good faith, fact-and-evidence-based determination" (*id.*) that Haiti "no longer continues to meet the conditions for designation" (§ 1254a(b)(3)(B)), she could still terminate Haiti's TPS designation. *Saget*, 375 F. Supp. 3d at 332. And she could do so immediately, without awaiting appellate review of the district court's order. Simply put, the postponement "does not dictate how the Secretary should ultimately rule on a TPS designation, termination, or extension." *NTPSA*, 773 F. Supp. 3d at 832.

According to the government, its claim of irreparable harm "hinges on the clear separation-of-powers harms" that flow from the district court's order. Appl. 34. But an alleged "violation of separation of powers' by itself is not invariably an irreparable injury." *John Doe Co. v. CFPB*, 849 F.3d 1129, 1135 (D.C. Cir. 2017) (quoting *In re al-*

Nashiri, 791 F.3d 71, 79–80 (D.C. Cir. 2015)). This is illustrated by *Margolin v. National Association of Immigration Judges*, in which the Court found that “the Government has not demonstrated that it will suffer irreparable harm without a stay” (--- S. Ct. ---, 2025 WL 3684278 (Dec. 19, 2025)), despite the government’s assertion that the decision below “would raise serious separation-of-powers concerns.” Stay App. 25, *Margolin*, No. 25A662. It is, moreover, “well established that the mere existence of the Executive Branch’s desire to enact a policy is not sufficient to satisfy the irreparable harm prong.” *Immigration Defs. L. Ctr. v. Noem*, 145 F.4th 972, 985 (9th Cir. 2025).

C. A stay is against the public interest.

The public interest favors the preservation of respondents’ constitutional rights, the violation of which “is always contrary to the public interest.” *Perkins Coie LLP v. U.S. Dep’t of Just.*, 783 F. Supp. 3d 105, 180 (D.D.C. 2025). The same is true of enforcing administrative agencies’ procedural obligations. “There is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.” *League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (citation modified). Indeed, “the government cannot suffer harm” from a stay that, as here, “merely ends an unlawful practice or reads a statute as required.” *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 191 (D.D.C. 2015).

All this aside, there also are tangible reasons why denying a stay and maintaining the status quo pending appeal “is in the public interest.” Appl. App. 79a. Beyond TPS holders’ contributions to the economy (*see supra* at 10–11), denying a stay and maintaining the status quo pending appeal will enhance both public safety

and public health. “Individuals with lawful immigration status are more likely to report crimes, helping to keep communities safer.” Appl. App. 81a. “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.” *Id.*

And “the public has an interest ‘in preventing [noncitizens] from being wrongfully removed, particularly to countries,’ such as Haiti, “where they are likely to face substantial harm.” *Make the Road*, 805 F. Supp. 3d at 172.

II. Respondents are likely to succeed on the merits.

A. The Secretary’s action is subject to judicial review.

1. There is a strong presumption of judicial review.

The “‘well-settled’ and ‘strong presumption’ in favor of judicial review is so embedded in the law that it applies even when determining the scope of statutory provisions specifically designed to limit judicial review.” *Make the Road N.Y. v. Wolf*, 962 F.3d 612, 624 (D.C. Cir. 2020) (citation omitted). The presumption is especially strong with respect to constitutional claims given “the serious constitutional question that would arise if a federal statute were construed to deny any judicial forum for a colorable constitutional claim.” *Webster v. Doe*, 486 U.S. 592, 603 (1988) (citation modified). Courts “consistently” apply the presumption of reviewability “to legislation regarding immigration.” *Kucana v. Holder*, 558 U.S. 233, 251 (2010).

“Because the presumption favoring interpretations of statutes to allow judicial review of administrative action is well-settled,” courts “assume that Congress legislates with knowledge of the presumption” and thus require “clear and convincing evidence to dislodge the presumption.” *Kucana*, 558 U.S. at 251–52 (citation

modified). “The maxim that congressional preclusion of judicial review must be clear and convincing applies in a particularly rigorous fashion . . . when,” as here, “constitutional claims are at stake.” *Griffith v. Fed. Lab. Rels. Auth.*, 842 F.2d 487, 494 (D.C. Cir. 1988) (citation modified). Here, there is no “clear and convincing evidence” (*Reno v. Cath. Soc. Servs., Inc.*, 509 U.S. 43, 64 (1993)) that Congress intended to foreclose judicial review of respondents’ APA claims (or their free-standing constitutional claim).

2. Section 1254a(b)(5)(A) does not bar respondents’ claims.

The government argues § 1254a(b)(5)(A) “encompasses the types of APA claims at issue here.” Appl. 17. Not so.

1. The government’s argument fails at the outset. A “[s]ubsequent statute may not be held to supersede or modify . . . chapter 7” of the APA “except to the extent that it does so expressly.” 5 U.S.C. § 559. That clear-statement requirement ends the analysis because § 1254a(b)(5)(A), which was enacted in 1990, does not even mention let alone explicitly supersede or modify the APA, which was enacted in 1946. *See* Administrative Procedure Act, Pub. L. No. 79-404, 60 Stat. 237 (June 11, 1946); Immigration Act of 1990, Pub. L. No. 101-649 Tit. III, § 302, 104 Stat. 4978, 5032 (Nov. 29, 1990). Thus, § 559 forbids the Court from construing § 1254a(b)(5)(A) as limiting judicial review of unlawful agency action under 5 U.S.C. § 705 or § 706.¹⁸

Fighting this conclusion, the government argued below that this Court “has

¹⁸ Congress knows how to call out specific statutory provisions in subsequent legislation. *See, e.g.*, § 1252(a)(2)(B)(ii) (limiting judicial review “[n]otwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title”).

explicitly rejected [respondents’] theory” in *Marcello v. Bonds*, 349 U.S. 302 (1955). ECF 92 at 10. But the government’s reliance on *Marcello* is misplaced. *Marcello* not only rests on a unique constellation of historical facts absent here (*see* 349 U.S. at 306–10), but addresses the displacement of hearing procedures, not the preclusion of judicial review. Whether a subsequently enacted statute bars judicial review under the APA is governed by *Shaughnessy v. Pedreiro*, 349 U.S. 48 (1955), not *Marcello*.

2. Even if § 1254a(b)(5)(A) were applicable, it does not preclude judicial review of respondents’ APA claims.

Although it 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, § 1254a(b)(5)(A) does not bar review of claims such as those asserted here. As the district court explained, respondents do not challenge the Secretary’s “*determination*” as to conditions in Haiti or the U.S. national interest. Appl. App. 20a. “They challenge instead *how* the Secretary went about making her determination.” *Id.* The distinction is dispositive because—as every court to have considered the issue on the merits has concluded¹⁹—§ 1254a(b)(5)(A) “does not prevent courts from reviewing and setting aside agency action that is procedurally deficient.” *HECA*, 789 F. Supp. 3d at 269.²⁰

¹⁹ The Ninth Circuit has suggested the contrary in a nonbinding, unpublished order, *Nat’l TPS All. v. Noem*, No. 26-199, 2026 BL 42675 (9th Cir. Feb. 9, 2026), and in a now-vacated panel decision, *Ramos v. Wolf*, 975 F.3d 872 (9th Cir. 2020), *reh’g en banc granted, opinion vacated*, 59 F.4th 1010 (9th Cir. 2023).

²⁰ That the Secretary’s procedurally defective termination notice invoked national interest as a basis for terminating Haiti’s TPS designation is immaterial because “the Constitution gives Congress broad authority to set immigration policy” and the

This consensus is rooted in *McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479 (1991), a case in which the Court interpreted a provision analogous to § 1254a(b)(5)(A). See, e.g., *Nat’l TPS All. v. Noem*, 166 F.4th 739, 757 (9th Cir. 2026) (citing *McNary*), *aff’g* 798 F. Supp. 3d 1108, 1133 (N.D. Cal. 2025) (same); *Afr. Cmty. Together v. Noem*, 2026 WL 395732, at *5–8 (D. Mass. Feb. 12, 2026) (*ACT*); *HECA*, 789 F. Supp. 3d at 269 (same); *CASA de Md., Inc. v. Trump*, 355 F. Supp. 3d 307, 317–21 (D. Md. 2018) (same); *Centro Presente v. DHS*, 332 F. Supp. 3d 393, 408–09 (D. Mass. 2018) (same).

McNary interpreted a provision analogous to § 1254a(b)(5)(A). That provision, § 1160, established a procedure for foreign agricultural workers to apply for adjustment of immigration status. The statute directed the Attorney General to adjust an applicant’s status if she determined that the applicant was eligible under specified criteria. Individuals whose applications were denied sued, claiming that the process she used “was conducted in an arbitrary fashion that deprived applicants of the due process guaranteed by the Fifth Amendment to the Constitution.” 498 U.S. at 487. The question was whether the plaintiffs’ claims were barred by § 1160(e), which declared that “[t]here shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section.” The government argued that courts lacked jurisdiction to hear the suit because it was “an action seeking ‘judicial review of a determination respecting an application for adjustment of status’” and was “therefore barred by the plain language” of § 1160(e).

Executive “does not have the authority to override immigration laws enacted by Congress.” *Biden v. Texas*, 597 U.S. 785, 830 (2022) (Alito, J., dissenting).

498 U.S. at 491.

The Court held that § 1160(e) did not preclude the plaintiffs' claims because the provision's "reference to 'a determination' describes a single act rather than a group of decisions or a practice or procedure employed in making decisions." *McNary*, 498 U.S. at 492. Thus, said the Court, § 1160(e)'s preclusion of claims arising from "a determination" did not bar "general collateral challenges to unconstitutional practices and policies used by the agency in processing applications." *Id.*

The Court's analysis of § 1160(e) in *McNary* applies equally here—and is fatal to the government's contention that § 1254a(b)(5)(A) precludes judicial review of respondents' APA claims. Using language that is materially indistinguishable from that found in § 1160(e), § 1254a(b)(5)(A) only bars judicial review of a "*determination* of the [Secretary] with respect to the designation, or termination or extension of a [TPS] designation." (Emphasis added.) Thus, § 1254a(b)(5)(A) "is best read as barring judicial review of the merits of the determination itself, but not whether the determination" was the result of unlawful "practices and policies." *CASA*, 355 F. Supp. 3d at 320.

Notwithstanding the governments' protests to the contrary, respondents' claims are procedural, not substantive. Appl. 20a. Respondents do not contest the correctness of the Secretary's determinations with respect to country conditions or national interest—they challenge the process by which the Secretary made those determinations, alleging that it was "arbitrary [and] capricious"; "without observance of procedure required by law"; "contrary to constitutional right [and] power"; and

animated by racial animus. ECF 90 ¶¶ 271–81. Although respondents identify flaws in the Secretary’s determinations, they do so only as evidence of the procedural irregularities that they challenge.

That respondents seek “to set aside the termination itself” (Appl. 21) does not convert their procedural challenges into a substantive challenge of the Secretary’s determinations. A set-aside is nothing more than the statutory relief provided when an administrative action is “arbitrary [and] capricious,” “without observance of procedure required by law,” or “contrary to constitutional right [and] power.” 5 U.S.C. § 706(2). Moreover, respondents clearly allege—and are likely to succeed on their claim—that the termination of Haiti’s TPS designation is the predetermined result of an across-the-board policy of terminating all TPS designations. ECF 90 ¶¶ 240–41; Appl. App. 46a–48a. There is no principled reason why a pattern-and-practice claim must challenge more than one termination.²¹ Unlawful policies and practices can infect a single termination, as they did here. That the Secretary’s unlawful policies and practices have also infected other terminations is immaterial. While the other terminations corroborate respondents’ allegations, respondents need not challenge each termination to state a procedural claim.

That respondents’ claims are procedural rather than substantive is confirmed by the relief respondents seek. As noted, a set-aside “would not compel Defendants to extend Haiti’s TPS designation.” *Saget*, 375 F. Supp. 3d at 332; accord Appl. App. 31a.

Citing a case predating the TPS statute, the government contends that judicial

²¹ Indeed, if respondents had challenged other TPS terminations, the government would almost certainly have argued that they lacked standing to do so.

review of a TPS termination is improper because “[t]he 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 statutory authorized such relief.” Appl. 18 (citing *Hotel & Rest. Emps. Union v. Smith*, 846 F.2d 1499, 1501, 1510 (D.C. Cir. 1988)). That is immaterial. Congress enacted the TPS statute specifically to eliminate that “ad hoc framework” and replace it with “a system . . . that was predictable, dependable, and insulated from electoral politics.” Appl. App. 4a–5a (citation modified). Thus, Secretary Noem “does not have . . . inherent authority” to depart from the statutorily prescribed periodic review process. *HECA*, 789 F. Supp. 3d at 273.

B. Respondents are likely to prevail on their APA claims.

1. The congressionally mandated periodic review process requires the Secretary to “consult[] with appropriate agencies of government” before terminating a TPS designation. § 1254a(b)(3)(A). Here, the government has admitted that the only purported consultation was a three-sentence email exchange between a DHS staffer and a State Department staffer that did not address conditions in Haiti at all and touched on national interest obliquely at best. Appl. App. 42a (citing ECF 78-7 at 9–10 (AR 409–10)).

That perfunctory exchange stands in sharp contrast to the practice of every prior administration, including the first Trump administration, all of which based periodic reviews on a series of vetted State Department memos that compiled and analyzed information gathered from country and regional experts at the Department and culminated in a formal recommendation to the Secretary of State. See *Saget*, 375

F. Supp. 3d at 298–300. The government’s own source (Appl. 28 n.2) confirms that this token exchange was a departure from past practice. U.S. Gov’t Accountability Off., *Temporary Protected Status: Steps Taken to Inform and Communicate Secretary of Homeland Security’s Decisions* 15–29 (Apr. 2020), <https://www.gao.gov/assets/gao-20-134.pdf> (detailing extensive consultation process of prior administrations). The divergence from past practice “puts the inadequacy of the email exchange here into stark relief.” Appl. App. 45a.²²

Regardless of past practice, the email exchange did not constitute the meaningful consultation required by § 1254a(b)(3)(A). The district court therefore was right to conclude that petitioners “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.” Appl. App. 41a. That the Secretary could terminate a TPS designation is not in dispute. The question is whether she may do so in the way that she has here—by disregarding Congress’s carefully calibrated termination procedure.

2. By statute, any decision to terminate a TPS designation must be based on the Secretary’s review of “conditions in the [designated] state.” § 1254a(b)(3)(A). In other words, a termination must be based on a country-specific review. But, as noted above (*supra* at 14–15), the current administration has terminated every TPS

²² The government implicitly concedes that a determination with respect to the conditions in a country designated for TPS requires consultation with the State Department, admitting that South Sudan’s designation was automatically extended in part because the Secretary “only had a non-current record from the Department of State’ regarding the country conditions.” Appl. 24 (quoting 90 Fed. Reg. at 19218).

designation that has come up for review despite the disparate conditions in the various designated countries. As the district court found, this “strongly suggests that the Secretary engaged in a pattern and practice of terminating all TPS designations without the country specific statutorily-mandated periodic review.” Appl. App. 46a; accord, e.g., *ACT*, 2026 WL 395732, at *12; *Doe v. Noem*, 2026 WL 184544, at *14 (N.D. Ill. Jan. 23, 2026).

3. 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 the U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983). The termination of Haiti’s TPS designation is arbitrary and capricious under each of these standards.²³

To start, “Secretary Noem’s determination that conditions in Haiti permit safe return” is not merely implausible but “runs counter to the evidence before [her].” App. 49a (quoting *State Farm*, 463 U.S. at 43). As the court found:

²³ Relying on *Amgen Inc. v. Smith*, 357 F.3d 103, 113 (D.C. Cir. 2004), and other cases, the government argues that § 1254a(b)(5)(A) bars respondents’ arbitrary-and-capricious claim in particular because, “[i]f a no-review provision shields particular types of administrative action, a court may not inquire whether a challenged agency decision is arbitrary, capricious, or procedurally defective.” Appl. 18–19. But each case cited by the government stands simply for the “unsurprising” rule that the Medicare statute bars “piecemeal review” of “individual” payment calculations made by the Secretary of Health and Human Services when administering the various Medicare payment systems. *Amgen*, 357 F.3d at 112.

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.

Id. Thus, it is unsurprising that there is nothing in the administrative record to support the Secretary’s conclusory assertion that that unidentified “parts of the country are suitable to return to.” 90 Fed. Reg. at 54735; *see* Appl. App. 54a. Indeed, the Secretary’s determination is based not on current conditions but on “speculation about . . . how Haiti *might* improve *in the future*.” Appl. App. 55a.

The Secretary’s conclusion that allowing Haitian TPS holders to remain in the United States is contrary to the national interest rests in significant part on the suggestion that Haitians are criminals prone to overstaying their visas. 90 Fed. Reg. at 54736. But there is no “rational connection between the facts found and the choice” to terminate Haiti’s TPS designation. *State Farm*, 463 U.S. at 43.

Those who commit the types of crimes described in the termination notice are not eligible for TPS. § 1254a(c)(2)(B); *Saget*, 375 F. Supp. 3d at 300. And if someone commits such a crime after receiving TPS, their TPS is withdrawn. § 1254a(c)(3)(A). That presumably is why the termination notice “says nothing about the criminality rate of Haitian TPS holders” in particular, relying instead on statements about Haitians generally. Appl. App. 61a. Indeed, the underlying data reported in the administrative record—data that are not limited to current TPS holders and includes individuals who were merely administratively investigated rather than arrested and convicted—show a vanishingly small criminality rate of 0.4% among Haitians who

ever held TPS. ECF 78-5 at 195 (AR 195); see Appl. App. 61a.²⁴

Nor does the Secretary's decision to terminate Haiti's TPS designation have any rational connection to visa overstay rates. The termination notice says that visa overstays hinder immigration enforcement because individuals who overstay their visas "may be harder to locate and monitor." 90 Fed. Reg. at 54736. But, as the district court correctly noted, "TPS holders" who are lawfully present in the United States "are easy to locate because they regularly update their address information with DHS to maintain that status and their work authorization." Appl. App. 59a; cf. § 1254a(c)(3)(C). And even if that were not the case, the government has conceded that the administrative record contains no data on Haitian TPS holders' overstay rate. Appl. App. 59a–60a (citing ECF 119 at 4).²⁵

Consistent with President Trump's vow to "revoke" Haiti's TPS designation (*supra* at 11), there is abundant evidence that the termination of Haiti's TPS designation was a preordained outcome rather than a product of the congressionally mandated periodic review process. That evidence "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

²⁴ By comparison, 8.11% of the U.S. adult male population is estimated to have a felony conviction. S.K.S. Shannon *et al.*, *The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948–2010*, 54 DEMOGRAPHY 1795, 1808 (2017).

²⁵ The Secretary also justified the termination of Haiti's TPS designation on the ground that it is a "pull" factor inducing additional migration of Haitians to the U.S. 90 Fed. Reg. at 54737. But that assertion is supported by neither logic nor data. Because TPS is available only to those already present in the U.S., future immigrants would not be eligible for TPS. And because they date to 2013, the data the Secretary relied on "shed[] no light on current migration dynamics." Appl. App. 60a.

appropriate agencies; (4) making gross generalizations without any supporting data; and, among other things, (5) ignoring key aspects of the analysis.” App. 64a.

C. Respondents are likely to prevail on their equal-protection claim.

1. According to the government, respondents’ equal-protection claim under 5 U.S.C. § 706(2)(B) must be reviewed under *Trump v. Hawaii*, 585 U.S. 667 (2018), rather than *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). Appl. 28–29.²⁶ Not so. This case involves individuals with lawful status who are already present in the United States; *Hawaii* involved individuals outside the U.S. seeking entry. Cf. *Hawaii*, 585 U.S. at 675. The distinction is critical. Although “a circumscribed inquiry applies to any constitutional claim concerning the entry of foreign nationals” (*id.* at 705 n.5), it does not apply to claims brought by foreign nationals already here, because “the Due Process Clause applies to all ‘persons’ within the United States, including aliens.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). That is why every court to consider a constitutional challenge to the termination of a TPS designation has applied *Arlington Heights*, not *Hawaii*. See, e.g., *NTPSA*, 798 F. Supp. 3d at 1132; *NTPSA*, 773 F. Supp. 3d at 855–58; *Saget*, 375 F. Supp. 3d at 367–68; *Centro Presente*, 332 F. Supp 3d at 410–12; *NAACP v. DHS*, 364 F. Supp. 3d 568, 576 (D. Md. 2019).²⁷

²⁶ Respondents assert two equal-protection claims, one under the APA that seeks a set-aside pursuant to 5s U.S.C. § 706(2)(B), and a free-standing equal-protection claim that seeks declaratory relief. ECF 90 ¶¶ 281–84. At this stage of the proceedings, only their APA claim is at issue.

²⁷ Moreover, unlike the INS provision at issue in *Hawaii*, which “exudes deference to the President in every clause” (585 U.S. at 684), the TPS statute prescribes the

2. The district court not only applied the correct standard but also correctly concluded that respondents are likely to succeed on the merits of their claim. Appl. App. 66a–73a. Under *Arlington Heights*, respondents need only show that discriminatory intent or racial animus was “a motivating factor in the decision” to terminate Haiti’s TPS designation. 429 U.S. at 265–66. Here, there are numerous indicia—in both word and deed—that the termination of Haiti’s TPS designation was motivated, at least in part, by discriminatory intent and racial animus.

The termination notice acknowledges that the decision to terminate Haiti’s designation was made in “furtherance” of President Trump’s directives. 90 Fed. Reg. at 54736. President Trump “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.” Appl. App. 67a. He has also “complained . . . that nonwhite immigration is an ‘invasion,’ creating a ‘dumping ground’ that is ‘destroying our country.’” *Id.* And he has “stated that he prefers immigrants from ‘nice’—predominantly white—countries like Norway, Sweden, and Denmark over immigrants from ‘shithole countries’” like Haiti. *Id.*

Without ever engaging with the substance of these statements, the government brushes them aside as “remote in time and made in unrelated contexts.” Appl. 30 (quoting *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 35 (2020) (opinion of Roberts, C.J.)). That is just not true. President Trump’s statements were not remote in time: though his documented hostility toward Haitians does indeed go back years, it was

relevant considerations, and those considerations are facially neutral. Nowhere does the TPS statute allow for discriminatory intent or racial animus in its application

within only two weeks of the November 28 termination notice that President Trump derided Haitians as undesirable because they come from a “filthy, dirty, [and] disgusting’ ‘shithole country’” and reiterated his desire for immigrants “from Norway, Sweden, . . . [and] Denmark.” Appl. App. 68a. Nor were his statements made in unrelated contexts: it was only a few months before the partial vacatur of Haiti’s TPS designation—the precursor to the November 28 termination notice—that he accused specifically Haitian TPS holders of “eating the pets” of native-born Americans and that he declared that he would “revoke” Haiti’s TPS designation and send Haitian TPS holders “back to their country.” Appl. App. 13a.²⁸

The government dismisses the President’s statements as irrelevant because they cannot “show animus by *the Secretary*.” Appl. 30. But the President has claimed personal responsibility for the termination of Haiti’s TPS designation. *See supra* at 13–14. Regardless, “[u]nder our Constitution, the ‘executive power’—all of it—is ‘vested in a President.’” *Seila L. LLC v. CFPB*, 591 U.S. 197, 203 (2020) (quoting U.S. Const. art. II §§ 1, 3). Thus, the President’s statements are relevant.

Regardless, Secretary Noem too has expressed racially charged antipathy toward nonwhite immigrants, describing them as “leeches,” “entitlement junkies,”

²⁸ It does not matter that these statements were made during the presidential campaign. *Regents* did not announce a bright-line rule that campaign statements are irrelevant, holding only that the statements at issue *in that case* were too “remote in time” to control the equal protection analysis. 591 U.S. at 35. Since *Regents*, courts have relied on the President’s campaign statements as evidence of his intent upon taking office—just as respondents allege here. *See, e.g., Perkins Coie*, 783 F. Supp. 3d at 162–64; *Am. Ass’n of Univ. Professors v. Rubio*, 802 F. Supp. 3d 120, 187–89 (D. Mass. 2025). Furthermore, it is immaterial that the district court also cited earlier statements by the President. Cf. Appl. 4. That his earlier statements also evince discriminatory animus simply shows that his animus is deep-seated.

and “foreign invaders” who “suck dry our hard-earned tax dollars.” Appl. App. 72a. And the conclusion that she draws from those characterizations is unambiguous: “WE DON’T WANT THEM. NOT ONE.” *Id.*²⁹

The administration has translated this racial animus into policy. Every country whose TPS designation has been cancelled is majority nonwhite. And, while it is expelling nonwhite TPS holders, it is giving preferential treatment to white—and only white—South Africans. ECF 90 ¶¶ 103–05.

Thus, as the district court found, respondents “are likely to prevail on their Equal Protection claim.” Appl. App. 73a.

III. Certiorari at this stage of the proceedings is unwarranted.

Because they are important and complex, the questions presented are best decided in the normal course after the court of appeals has addressed them. The Court should therefore deny the government’s application for certiorari before judgment. Cf. Appl. 37–40. But if the Court nonetheless grants the government’s petition in *Doe v. Noem*, 25A952, it should also grant certiorari in this case. See Conditional Cert. Pet., *Miot v. Trump*, No. 25-1077.

CONCLUSION

This Court should deny the government’s application in full.

March 16, 2026

Respectfully submitted,

²⁹ These “coded” statements—like those of the President—are “appeals to racial prejudice.” *Bennett v. Stirling*, 842 F.3d 319, 320, 324 (4th Cir. 2016) (Wilkinson, J.).

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