

No.

In the Supreme Court of the United States

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

v.

NATIONAL TPS ALLIANCE, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the court of appeals erred in affirming the district court's order setting aside the Secretary of Homeland Security's vacatur and termination of Temporary Protected Status (TPS) for Venezuela and partial vacatur of TPS for Haiti.

PARTIES TO THE PROCEEDING

Petitioners (defendants-appellants below) are Markwayne Mullin, in his official capacity as Secretary of Homeland Security,* the United States Department of Homeland Security, and the United States of America.

Respondents (plaintiffs-appellees below) are the National TPS Alliance, Mariela Gonzalez, Freddy Arape Rivas, M.H., Cecilia Gonzalez Herrera, Alba Purica Hernandez, E.R., Hendrina Vivas Castillo, Viles Dorsainvil, A.C.A., Sherika Blanc, and G.S.

* Respondents sued Kristi Noem, in her official capacity as Secretary of Homeland Security. Secretary Mullin has been automatically substituted in her place. See Sup. Ct. R. 35.3.

RELATED PROCEEDINGS

United States District Court (N.D. Cal.):

National TPS Alliance v. Noem, No. 25-cv-1766
(Sept. 5, 2025)

United States Court of Appeals (9th Cir.):

National TPS Alliance v. Mullin, No. 26-187 (filed
Jan. 9, 2026)

National TPS Alliance v. Noem, No. 25-5724 (Jan.
28, 2026)

National TPS Alliance v. Noem, No. 25-2120 (Aug.
29, 2025)

Supreme Court of the United States:

Noem v. National TPS Alliance, No. 25A326 (Oct. 3,
2025)

Noem v. National TPS Alliance, No. 24A1059 (May
19, 2025)

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PETITION FOR A WRIT OF CERTIORARI

The Solicitor General—on behalf of the Secretary of Homeland Security, the United States Department of Homeland Security, and the United States—respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-74a) is reported at 166 F.4th 739. The order of the court of appeals denying rehearing en banc and opinions regarding the denial of rehearing en banc (Pet. App. 343a-388a) are reported at 169 F.4th 796. The prior order of the court of appeals denying a stay pending appeal is reported at 163 F.4th 1152. The opinion of the court of appeals (Pet. App. 179a-226a) concerning the district court's postponement order is reported at 150 F.4th 1000. A further opinion of the court of appeals concern-

ing vacatur of the court’s previous opinion on postponement is reported at 169 F.4th 1170. The opinion of the district court (Pet. App. 75a-178a) is reported at 798 F. Supp. 3d 1108. The order of the district court (Pet. App. 227a-342a) granting postponement is reported at 773 F. Supp. 3d 807. The order of the district court denying a motion to stay is available at 2025 WL 2617231.

JURISDICTION

The judgment of the court of appeals was entered on January 28, 2026. A petition for rehearing was denied on March 11, 2026. On June 2, 2026, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including July 9, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reprinted in the appendix to this petition. Pet. App. 389a-404a.

STATEMENT

1. a. In 1990, Congress established a discretionary program to provide temporary shelter in the United States for eligible nationals of countries experiencing certain temporary conditions. 8 U.S.C. 1254a(b)(1); see Immigration Act of 1990, Pub. L. No. 101-649, § 302(a), 104 Stat. 5030-5036. The Secretary of Homeland Security, “after consultation with appropriate agencies of the Government,” “may” designate countries for “temporary protected status” (TPS), if the Secretary finds that certain conditions for designation are met:

(A) * * * that there is an ongoing armed conflict within the state and, due to such conflict, requiring the return of aliens who are nationals of that state to that state (or to the part of the state) would pose a serious threat to their personal safety;

(B) * * * that—

(i) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected,

(ii) the foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state, and

(iii) the foreign state officially has requested designation under this subparagraph; or

(C) * * * that there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless the [Secretary] finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.

8 U.S.C. 1254a(b)(1).¹

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

Congress required protected status to be “temporary.” 8 U.S.C. 1254a. Initial designations and exten-

¹ The provisions at issue refer to the Attorney General; Congress has transferred the authority to the Secretary of Homeland Security. 6 U.S.C. 552(d), 557.

sions thereof may not exceed 18 months. 8 U.S.C. 1254a(b)(2) and (3)(C). Congress mandated periodic review and required the Secretary to terminate TPS if, in his judgment, the country no longer satisfies conditions for designation. The Secretary, in consultation with appropriate agencies, “shall” review each designation at least 60 days before the designation period ends to determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). And the Secretary “shall terminate the designation” if he “determines” that the country “no longer continues to meet the conditions for designation.” 8 U.S.C. 1254a(b)(3)(B). If, during the periodic review, the Secretary “does not determine” that the country “no longer meets the conditions for designation,” then “the period of designation of the foreign state is extended for an additional period of 6 months (or, in the discretion of the [Secretary], a period of 12 or 18 months).” 8 U.S.C. 1254a(b)(3)(C).

The TPS statute bars judicial review of the Secretary’s TPS determinations: “There is no judicial review of any determination of the [Secretary] with respect to the designation, or termination or extension of a designation, of a foreign state under this subsection.” 8 U.S.C. 1254a(b)(5)(A).

b. This case concerns the designations of Venezuela and Haiti for TPS. As to Venezuela, then-Secretary Mayorkas designated Venezuela for TPS in March 2021 (2021 designation). Pet. App. 6a. That designation was extended twice. *Ibid.* The second extension, which was published on October 3, 2023, also redesignated Venezuela for TPS (2023 designation). *Ibid.* The 2021 designation (as extended) was set to expire on September 10, 2025, and the 2023 designation was set to expire on April 2, 2025. *Ibid.*

On January 17, 2025, Secretary Mayorkas extended the 2023 designation through October 2, 2026 (2025 extension). Pet. App. 6a; see 90 Fed. Reg. 5961 (Jan. 17, 2025). Secretary Mayorkas also established a consolidated filing process, such that all current Venezuela TPS beneficiaries (whether under the 2021 or 2023 designations) could obtain TPS through October 2, 2026. 90 Fed. Reg. at 5962. Secretary Mayorkas’s extension was set to become effective on April 3, 2025. *Id.* at 5966.

On February 3, 2025, then-Secretary Noem announced the vacatur of the 2025 extension before it was scheduled to take effect. Pet. App. 7a; see 90 Fed. Reg. 8805 (Feb. 3, 2025). Secretary Noem explained that the 2025 extension “did not acknowledge the novelty of its approach or explain how it is consistent with the TPS statute.” 90 Fed. Reg. at 8807. The Secretary determined that vacatur was warranted to “untangle the confusion” caused by the separate designation tracks and “provide an opportunity for informed determinations regarding the TPS designations and clear guidance.” *Ibid.*

On February 5, 2025, Secretary Noem announced the termination of the 2023 designation, but not the 2021 designation. Pet. App. 8a; 90 Fed. Reg. 9040 (Feb. 5, 2025). The Secretary determined that it was “contrary to the national interest to permit the covered Venezuelan nationals to remain temporarily in the United States.” 90 Fed. Reg. at 9041. Regarding conditions in Venezuela, Secretary Noem stated that “there are notable improvements in several areas such as the economy, public health, and crime that allow for [Venezuelan] nationals to be safely returned to their home country.” *Id.* at 9042. However, Secretary Noem concluded that “even assuming the relevant conditions in Vene-

zuela remain both ‘extraordinary’ and ‘temporary,’ termination of the 2023 Venezuela TPS designation is required.” *Ibid.* The termination was to become effective on April 7, 2025. *Id.* at 9041.

c. As to Haiti, the country was designated for TPS in 2010 due to an earthquake. Pet. App. 9a. That designation was extended multiple times. *Ibid.* President Trump’s first administration attempted to terminate Haiti’s designation in 2018, but a district court enjoined the termination, and after a change in administration, the government withdrew its pending appeal. *Id.* at 9a-10a. Secretary Mayorkas designated Haiti again for TPS in 2021, extended and redesignated the country in 2023, and did so again in 2024. *Id.* at 10a. The latest extension and redesignation in 2024, which was for an 18-month period, was set to expire on February 3, 2026. *Ibid.*; 90 Fed. Reg. 10,511, 10,512 (Feb. 24, 2025).

On February 24, 2025, Secretary Noem published her decision to partially vacate the 2024 extension, which would have meant that the designation would expire on August 3, 2025, rather than February 3, 2026. Pet. App. 10a-11a; see 90 Fed. Reg. at 10,511. The Secretary cited several reasons for her determination, including that there was “no discussion” in the 2024 Federal Register notice “of why the 18-month period was selected in lieu of a 6- or 12-month period” or “why permitting the ever-increasing population of Haitian TPS recipients, particularly those who entered the country unlawfully, to remain temporarily in the United States [wa]s not contrary to the U.S. national interest.” 90 Fed. Reg. at 10,513.

On July 1, 2025, Secretary Noem published in the Federal Register a termination of Haiti’s TPS designation, effective on September 2, 2025, explaining that “it

is contrary to the national interest to permit Haitian nationals * * * to remain temporarily in the United States.” 90 Fed. Reg. 28,760, 28,760, 28,762 (July 1, 2025); see Pet. App. 11a.

2. Respondents (the National TPS Alliance and several individual TPS beneficiaries) sued to challenge, as relevant here, the vacatur and termination of Venezuela’s TPS designation, as well as the partial vacatur and termination of Haiti’s designation. Pet. App. 2a, 79a-80a. Respondents asserted that the Secretary’s actions violated the Administrative Procedure Act (APA) and the equal-protection component of the Fifth Amendment’s Due Process Clause. *Id.* at 80a.

On March 31, 2025, the United States District Court for the Northern District of California granted respondents’ motion to postpone the Venezuela vacatur. Pet. App. 11a. The Ninth Circuit denied the government’s motion to stay the district court’s order pending appeal, but this Court granted the government’s emergency stay request on May 19, 2025. *Ibid.*; see 145 S. Ct. 2728. The Ninth Circuit affirmed the district court’s order granting postponement on August 29, 2025. Pet. App. 12a.

On September 5, 2025, the district court granted partial summary judgment to respondents on their APA claims, setting aside the Venezuela vacatur and termination, as well as the Haiti partial vacatur. Pet. App. 12a.² The court rejected the government’s threshold arguments, including that the TPS statute’s judicial-review bar, 8 U.S.C. 1254a(b)(5)(A), precluded review of the decisions. Pet. App. 111a-119a. The court also

² The district court did not opine on respondents’ claims challenging the Haiti termination, or the equal-protection challenges to the TPS decisions for Venezuela or Haiti. See Pet. App. 176a-178a.

found that “the Secretary’s actions in vacating the orders of the prior administration and terminating TPS exceeded the Secretary’s statutory authority and w[ere] arbitrary and capricious.” *Id.* at 76a.

The Ninth Circuit denied the government’s emergency request to stay the district court’s order as to Venezuela on September 17, 2025, but this Court granted a stay as to Venezuela on October 3, 2025, pending the disposition of the government’s appeal to the Ninth Circuit and petition for a writ of certiorari. Pet. App. 12a; see 146 S. Ct. 23.³

3. a. The court of appeals affirmed. The court first determined that it was not bound by this Court’s stay orders as to the merits because they “did not expressly decide the issue of whether the Government was likely to succeed on the merits.” Pet. App. 12a-13a.

As to the Venezuela vacatur, the court of appeals concluded that the TPS statute’s judicial-review bar, 8 U.S.C. 1254a(b)(5)(A), did not preclude judicial review of a challenge to the Secretary’s statutory authority. Pet. App. 16a-21a; see *id.* at 19a n.8. In particular, the court rested on the presumption in favor of judicial review of agency actions, *id.* at 17a, 21a, and explained that the “plain language” of the judicial-review bar “does not bar judicial review of challenges to the Secretary’s statutory authority,” *id.* at 18a; see *id.* at 18a-19a (discussing *McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479 (1991), and *Reno v. Catholic Social Ser-*

³ On December 10, 2025, the district court granted plaintiffs’ request for declaratory relief. 2025 WL 3539156. That decision is the subject of a separate Ninth Circuit appeal, which was stayed pending this Court’s decision in *Mullin v. Doe*, No. 25-1083, and *Trump v. Miot*, No. 25-1084. See 26-187 C.A. Doc. 13 (9th Cir. Apr. 14, 2026).

vices, Inc., 509 U.S. 43 (1993)). The court reserved, however, “whether other aspects of [respondents’] APA challenges would be reviewable under the TPS statute.” *Id.* at 19a n.8. The court also held that 8 U.S.C. 1252(f)(1) did not bar set-aside relief under 5 U.S.C. 706. Pet. App. 21a-27a. On the merits, the court determined that the Secretary lacked inherent authority to vacate the Venezuela extension and concluded that the district court had properly set aside the vacatur as in excess of the Secretary’s statutory authority. *Id.* at 38a. The court of appeals then applied the same analysis to the Haiti vacatur and reached the same conclusion. *Id.* at 40a-41a.

As to the Venezuela termination, the court of appeals similarly held that the TPS statute’s judicial-review bar did not preclude the court from considering whether the termination was in excess of the Secretary’s statutory authority and that 8 U.S.C. 1252(f)(1) posed no barrier to set-aside relief. Pet. App. 38a. The court concluded that because the Secretary had exceeded her statutory authority when she vacated the 2025 extension, that extension remained in effect until October 2, 2026, and the Secretary’s termination with an effective date of April 7, 2025, therefore violated the TPS statute. *Id.* at 39a-40a.

The court of appeals affirmed the district court’s grant of universal relief, rejecting the government’s arguments to the contrary. Pet. App. 41a-44a.

Judge Mendoza filed a concurring opinion, joined in part by Judge Wardlaw, explaining that the TPS statute’s judicial-review bar did not preclude review of respondents’ APA claims and that the Secretary’s actions would fail on the independent ground that they were arbitrary and capricious. Pet. App. 45a-74a.

b. The court of appeals denied the government’s petition for rehearing en banc. Pet. App. 343a-388a.

Judge Wardlaw, joined by Judges Mendoza and Johnstone, concurred in the denial of rehearing en banc, reiterating that 8 U.S.C. 1254a(b)(5)(A) did not preclude judicial review and that the panel’s decision was correct as to the merits. Pet. App. 344a-350a.

Judge Mendoza, joined by Judge Wardlaw, filed a concurring opinion defending the panel concurrence. Pet. App. 368a-375a.

Judge Bumatay, joined by eight other judges, filed a dissenting opinion, arguing that 8 U.S.C. 1254a(b)(5)(A) precluded review of respondents’ claims. Pet. App. 351a-367a.

Judge Nelson filed a separate dissent, arguing that the panel erred as to the merits and that the en banc court of appeals should have clarified whether the panel concurrence was binding. Pet. App. 376a-388a.

REASONS FOR GRANTING THE PETITION

The Court should grant, vacate, and remand (GVR) for the court of appeals to reconsider its ruling in light of *Mullin v. Doe*, 2026 WL 1825840 (June 25, 2026). The Court has “broad power” to vacate “‘any judgment, decree, or order’” and remand for such proceedings “‘as may be just under the circumstances.’” *Lawrence ex rel. Lawrence v. Chater*, 516 U.S. 163, 166 (1996) (per curiam) (quoting 28 U.S.C. 2106). This Court often issues a GVR when “intervening developments * * * reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration.” *Id.* at 167; see *Stutson v. United States*, 516 U.S. 193, 196 (1996) (per curiam). Most relevant here, a GVR is appropriate when this Court issues a decision “after the

decision under review” that “change[s] or clarifie[s] the governing legal principles in a way that could possibly alter the [lower court’s] decision.” *Flowers v. Mississippi*, 579 U.S. 913, 913 (2016) (Alito, J., dissenting).

Here, a GVR is warranted in light of *Doe*. As relevant, the Ninth Circuit held that the “plain language” of 8 U.S.C. 1254a(b)(5)(A) “does not bar judicial review of challenges to the Secretary’s statutory authority.” Pet. App. 18a. To reach that conclusion, the court of appeals relied on, *inter alia*, this Court’s decision in *McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479 (1991), the “absurd results” that would follow from a contrary interpretation, and “the strong presumption of judicial reviewability.” Pet. App. 18a-21a. Moreover, the two-judge panel concurrence suggested that the judicial-review bar did not preclude review of the merits of respondents’ APA claims. *Id.* at 45a-48a.

But in *Doe*, this Court held that 8 U.S.C. 1254a(b)(5)(A) “barred” review of the nonconstitutional claims raised by respondents there. *Doe*, 2026 WL 1825840, at *7. The Court explained that the “text” of the judicial-review bar “is clear, and its plain meaning is very broad.” *Ibid.* The bar precluded review of not only the Secretary’s “final decision” regarding TPS, but also “all the preceding decisions” made in the process leading up to the final decision. *Ibid.* *Doe* expressly distinguished *McNary* as “turn[ing] on the specific wording of the provision at issue” in that case. *Id.* at *8. The Court rejected arguments that its “interpretation of the judicial-review bar could protect many shocking abuses of TPS,” explaining that “whether or not” respondents’ hypotheticals “could in fact be redressed by the courts,” “Congress would have ample means to stop that abuse.” *Id.* at *10. And the Court explained that

“the text of the TPS judicial-review bar very clearly overcomes the general presumption in favor of judicial review.” *Id.* at *8.

A GVR would thus allow the Ninth Circuit to reconsider its holding with the benefit of this Court’s guidance.⁴

⁴ As the government argued below, the court of appeals’ decision as to the Haiti partial vacatur should separately be vacated as moot because the partial vacatur was superseded by the Secretary’s later termination of Haiti’s TPS designation (addressed by this Court in *Doe*) that was to go into effect after the Haiti extension would have expired on its own terms on February 3, 2026. See C.A. Doc. 76, at 14-17 (Feb. 3, 2026); see Pet. App. 359a-360a (Bumatay, J., dissenting from denial of rehearing en banc). But because a GVR of the court of appeals’ entire decision is warranted in light of *Doe*, this Court need not address whether the portion of the decision concerning the Haiti partial vacatur should also be vacated as moot.

CONCLUSION

The petition for a writ of certiorari should be granted, the judgment of the court of appeals should be vacated, and the case should be remanded in light of *Mullin v. Doe*, 2026 WL 1825840 (June 25, 2026).

Respectfully submitted.

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