

Nos. 25-1083 and 25-1084

IN THE
Supreme Court of the United States

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

Petitioners,

v.

DAHLIA DOE, ET AL.,

Respondents.

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

Petitioners,

v.

FRITZ EMMANUEL LESLY MIOT, ET AL.,

Respondents.

On Writs of Certiorari Before Judgment to the United
States Courts of Appeals for the Second and District
of Columbia Circuits

**BRIEF OF *AMICI CURIAE* THE NATIONAL TPS
ALLIANCE, THE HAITIAN BRIDGE ALLIANCE
& COMMUNITIES UNITED FOR STATUS AND
PROTECTION IN SUPPORT OF
RESPONDENTS**

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INTERESTS OF *AMICI CURIAE*¹

Amicus National TPS Alliance is a membership-led organization of Temporary Protected Status holders across the United States, and it is a plaintiff in lawsuits relating to the Secretary of Homeland Security's (the Secretary's) recent terminations of TPS for five countries, including Haiti, in which courts have found the Secretary's actions unlawful and unreasonable. Its more than 320,000 members include individuals directly affected by unlawful terminations of Temporary Protected Status, many of whom have lived and worked in the United States for years or decades, built families, and contributed to their communities.

Amicus the Haitian Bridge Alliance ("HBA") is a grassroots non-profit organization that provides migrants and immigrants with humanitarian, legal, and social services. HBA represents eight TPS-holding communities, including the community from Haiti, which comprise hundreds of thousands of individuals, in five lawsuits challenging the Secretary's recent TPS terminations. HBA also assists TPS holders and those seeking TPS to navigate the immigration system. The challenged agency actions directly affect the stability, safety, and legal status of the communities it serves.

Amicus Communities United for Status and Protection ("CUSP") is a collaborative of five immigrant community organizations—HBA, Adhikaar, UndocuBlack Network, African Communities Together, and National Network of Arab American Communities. These organizations collaborate to build a more inclusive immigrant rights movement and advocate to ensure the

¹ No counsel for any party authored this brief in whole or in part. No entity or person, other than *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

Secretary follows the law in administering TPS, including by supporting litigation challenging the Secretary's unlawful terminations of TPS for countries wholly unprepared for the return of their nationals.

Collectively, amici have a substantial interest in ensuring that the Secretary acts consistent with the meaningful protections Congress provided in the TPS statute and the Administrative Procedure Act. Their members depend on TPS for lawful presence, employment authorization, and family stability. And amici's work gives them firsthand knowledge of the severe humanitarian, economic, and personal impacts that individuals and families endure when lawful protections are abruptly withdrawn without adherence to statutory and procedural safeguards.

Because amici are litigating numerous ongoing legal challenges to the Secretary's across-the-board terminations of TPS designations, they are uniquely positioned to inform the Court of the ramifications of a decision finding courts have no jurisdiction to review unlawful agency action relating to TPS. The government argues that, rather than examine the facts, the Court should look no further than a "presumption" that agencies "follow Congress's statutory commands." But evidentiary records in lower-court cases across the country demonstrate that the government has engaged in repeated willful evasions of the TPS statute and the APA and that judicial review is necessary to prevent defiance of congressional commands.

SUMMARY OF ARGUMENT

The government asks this Court to adopt an extraordinarily expansive reading of the TPS statute's jurisdictional bar, 8 U.S.C. § 1254a(b)(5)(A), on the thinnest of records. Before insulating current and future Secretaries from judicial review, and rendering

Congress’s words in the TPS statute mere formalities, the Court should consider the ample record evidence from lower courts demonstrating that the government’s position would defeat the plain language of the TPS regime and permit persistent violations of law.

The government presents this jurisdictional issue to the Court via cases that are in a preliminary posture and have underdeveloped factual records. Closing courthouse doors to plaintiffs will not invite “lawless agency behavior,” says the government, because agencies are presumed to “follow Congress’s statutory commands.” U.S. Br. at 23. But the records developed in TPS cases across the country rebut the presumption at the heart of the government’s position. Those records demonstrate that the Secretary has repeatedly and flagrantly violated Congress’s explicit commands—violations that would be hidden from the public absent judicial review.

Indeed, the Secretary has failed to comply with even basic TPS procedural requirements and the APA’s most basic demands. To take several remarkable examples, the Secretary has (i) terminated TPS without consulting with the State Department, despite the requirement that the Secretary “consult[] with appropriate agencies,” 8 U.S.C. § 1254a(b)(1); (ii) failed to review country conditions, despite the statutory mandate to “review the conditions of the foreign state” *id.* § 1254a(b)(3)(A); (iii) ignored record evidence of ongoing crises; (iv) contradicted record evidence without explanation; (iv) relied on boilerplate assertions—including demonstrably false ones—in lieu of reasoned analysis; and (v) abandoned longstanding agency practices without acknowledgment or justification.

At the same time, lower court decisions have demonstrated the judiciary’s ability to maintain a boundary between overseeing statutory compliance and

respecting the discretion that the TPS statute grants to the Secretary—ensuring that targeted judicial review does not interfere with the Secretary’s legitimate authority.

Under the government’s reading of § 1254a(b)(5)(A), none of the unlawful actions that have been uncovered in TPS litigation would be subject to judicial oversight. Had lower courts accepted the government’s assurances about presumptive compliance, many of the Secretary’s manifest violations might never have come to light. Even more blatant departures from the statute would be equally unreviewable—a Secretary could publicly announce terminating TPS in exchange for a bribe, for example, or could do so based on a personal feud with an individual from that country.

And if no recourse exists for terminations of TPS, the same must be true for grants or extensions of it—the TPS statute treats “determination[s] ... with respect to the designation, or termination or extension” of TPS identically. 8 U.S.C. § 1254a(b)(5)(a). So, under the government’s view, a future Secretary could equally abuse power to grant or extend TPS protections without regard to the TPS regime designed by Congress, just as this Secretary has ignored the law while restricting it.

It is hard to overstate the consequences of the government’s view, which would grant the agency unconstrained power to alter who can live and work in the United States without regard to law enacted by Congress. The TPS regime governs the lives of hundreds of thousands of individuals who have lived and worked in the United States for years, sometimes decades. Congress did not intend for every aspect of such weighty decisions to be unreviewable. Rather, it imposed specific procedural requirements—consultation, evidence-based review, and reasoned explanation—to

ensure that decisions to grant or deny conform to basic procedures. The Court therefore should reaffirm that the Secretary, like all agency heads, must follow the law Congress prescribed.

ARGUMENT

I. DEVELOPED FACTUAL RECORDS IN TPS CASES MAKE THE SIGNIFICANCE OF THE JURISDICTIONAL QUESTION CLEAR.

A. The Government Urges the Court to Hold, on Incomplete Records, That Legal Violations Relating to TPS Are Unreviewable.

Both cases before the Court remain in a preliminary posture—decisions under 5 U.S.C. § 705, not final judgments. See U.S. Br. at 10–11, 15. Neither case has a developed record that could inform the Court of the types of lawless conduct the government’s overbroad interpretation of the jurisdictional limitation would insulate from judicial review.

In *Doe*, the government filed the administrative record for the first time just days ago, after this Court granted certiorari, well after the decision the Court is reviewing, and only after being ordered to do so. See *Dahlia Doe v. Noem*, No. 1:25-cv-08686 (S.D.N.Y. Apr. 3, 2026), Dkt. 72; *id.*, Dkt. 71 (granting motion to compel). Until then, *Dahlia Doe* was the only TPS case in which the government had succeeded in refusing to produce any administrative record.² After this Court

² Courts have otherwise uniformly ordered production of the administrative record in recent challenges to TPS terminations. See, e.g., *Nat’l TPS All. v. Noem*, No. 3:25-cv-01766 (N.D. Cal. Apr. 8, 2025), Dkt. 106 [hereinafter “*NTPSA I*”] (ordering production of the certified administrative record within seven days in challenge to termination of TPS for Venezuela and Haiti); *Nat’l TPS All. v. Noem*, No. 3:25-cv-05687-TLT (N.D. Cal. July 15, 2025), Dkt. 47

granted review, the government still opposed producing the administrative record, arguing “the Supreme Court is already considering this case on an expedited schedule.” *Dahlia Doe*, Dkt. 71. The *Doe* plaintiffs have not been permitted to seek supplementation of the record—which consists solely of what the government chose to disclose, often entirely redacted—or discovery. See *id.*, Dkt. 72-2, 1–14. Notably, the certification that the record in *Dahlia Doe* is purportedly complete remains unsigned. *Id.*, Dkt. 72.

In *Miot*, the record likewise remains undeveloped. The district court in *Miot* required the government to file an administrative record and to remove certain redactions. *Miot v. Trump*, 1:25-cv-02471 (D.D.C.), Dec. 16, 2025 Min Order; *id.*, Dec. 1, 2025 Min. Order. But it also ordered additional discovery, which remains in

[hereinafter “*NTPSA II*”] (ordering production of the certified administrative record within seven days in challenge to termination of TPS for Honduras, Nepal, and Nicaragua); *Afr. Cmty. Together v. Noem*, No. 1:26-cv-11201 (D. Mass. Mar. 13, 2026), Dkt. 33 (administratively staying termination of TPS for Somalia until CAR produced and issue of preliminary relief fully briefed); *Afr. Cmty. Together v. Noem*, No. 1:26-cv-10278 (D. Mass. Jan. 26, 2026), Dkt. 24 [hereinafter “*ACT II*”] (ordering production of CAR regarding termination of TPS for Ethiopia within 8 days); *Afr. Cmty. Together v. Noem*, No. 1:25-cv-13939 (D. Mass. Jan. 15, 2026), Dkt. 53 [hereinafter “*ACT I*”] (ordering production of CAR regarding termination of TPS for South Sudan within 7 days), Dkt. 53; *Miot v. Trump*, No. 1:25-cv-02471 (D.D.C. Dec. 1, 2025), Min. Entry (ordering filing of CAR within 10 days); *CASA, Inc. v. Noem*, 8:25-cv-01484 (D. Md. Jun. 18, 2025), Dkt. 68 (ordering filing of CAR for Cameroon within 7 days); *Aung Doe v. Noem*, 1:25-cv-15483 (N.D. Ill. Jan. 16, 2026), Dkts. 39–43 (CAR produced before court hearing on 705 motion); see also *CASA, Inc. v. Noem*, 8:25-cv-01484, (D. Md. Jun. 13, 2025) Dkt. 59 (CAR for termination of TPS for Afghanistan produced within two months of complaint); *Doe v. Noem*, 1:26-cv-2280-DEH, Dkt. 20 (S.D.N.Y. Apr. 7, 2026) (ordering production of administrative record within 7 days in case challenging termination of TPS for Yemen).

its infancy. See *Miot*, 1:25-cv-02471, Jan. 16, 2026 Min. Order (granting extra-record discovery); *id.*, Dkt. 131 (Feb. 11, 2026) (explaining the government is reviewing approximately 4,000 documents); *id.*, Feb. 12, 2026 Min. Entry (noting court had granted preliminary relief under 5 U.S.C. § 705).

In contrast to *Doe* and *Miot*, other TPS cases are much further along in fact development.³ For instance, by the time the government sought this Court’s intervention in *Doe*, the Ninth Circuit had already affirmed a final judgment entered on a full administrative record in *NTPSA v. Noem*, 166 F.4th 739 (9th Cir. 2026), *reh’g en banc denied*, 169 F.4th 396 (9th Cir. 2026), which had the additional benefit of necessary extra-record evidence. *Id.* (setting aside vacatur and termination of TPS for Venezuela and vacatur for Haiti). This additional fact development has proven a pattern of glaring legal violations, as spelled out further below.

The Court need not decide the breadth of the jurisdictional bar blind to the real-world agency overreach and lawlessness such a decision would invite.

B. The Records in TPS Cases Prove the Secretary Has Repeatedly Violated the Law in Terminating TPS Designations.

If courts lack jurisdiction to review respondents’ claims, serious legal violations will remain forever insulated from judicial review. This is no mere hypothetical. The Secretary has repeatedly acted unlawfully and pretextually, without regard for the statutory

³ For example, other cases have reached the summary judgment stage. See, e.g., *NTPSA I*, 798 F. Supp. 3d 1108, 1118 (N.D. Cal. 2025), *aff’d*, 166 F.4th 739 (9th Cir. 2026); *NTPSA II*, No. 25-cv-05687, 2025 WL 4058572, at *1 (N.D. Cal. Sep. 5, 2025).

processes established by Congress or requirements of the APA.

1. The TPS Statute and the APA Require the Secretary to Comply With Specific Procedural Steps and to Act Reasonably.

In the TPS statute, Congress chose to spell out in detail specific steps that the Secretary “shall” take before designating a foreign state for TPS status or withdrawing such a designation.

Before designating a foreign state, for example, the Secretary must “consul[t] with appropriate agencies of the Government” and may issue a designation “only if” the Secretary makes specific factual findings. 8 U.S.C. § 1254a(b)(1). The designation “shall not become effective unless notice of the designation (including a statement of the [required] findings) is published in the Federal Register.” *Id.* § 1254a(b)(1)(C). An initial period of designation of a foreign state must be “not less than 6 months and not more than 18 months.” *Id.* § 1254a(b)(2)(B).

Similarly, before terminating a TPS designation, “[a]t least 60 days before” a period of designation ends and “after consultation with appropriate agencies of the Government” the Secretary “shall review the conditions of the foreign state ... for which the designation is in effect under this subsection and shall determine whether the conditions for such designation under this subsection continue to be met.” *Id.* § 1254a(b)(3)(A). The Secretary “shall provide on a timely basis for the publication of notice of each such determination (including the basis for the determination ...) in the Federal Register.” *Id.* If the Secretary determines “that a foreign state ... no longer continues to meet the conditions for designation ... the [Secretary] shall terminate the designation by publishing notice in the Federal

Register of the determination ... (including the basis for the determination).” *Id.* § 1254a(b)(3)(B).

And of course, it is bedrock law that the APA requires agencies to engage in reasoned decision making and to act consistent with the law. 5 U.S.C. § 706; *Dep’t of Com. v. New York*, 588 U.S. 752, 785 (2019).

2. Records in Other TPS Cases Show the Secretary Has Routinely Violated Statutory Requirements.

The Secretary has routinely departed from the requirements of the TPS statute and the APA.

First, the records in TPS cases show the Secretary failed to consult with appropriate agencies regarding country conditions. Courts reviewing developed records have found the Secretary engaged in either no communication with relevant agencies at all, or exchanges so superficial as to render the statutory requirement meaningless.

For example, the record for the Cameroon termination showed the Secretary acted without any consultation with the State Department. See *CASA, Inc. v. Noem*, No. 25-cv-1484, 2025 WL 3514378, at *14 (D. Md. Dec. 8, 2025) (“Secretary Noem acted without a recommendation from the State Department”); *accord id.*, Dkt. 147-2, at 13 (decisional memo acknowledging that USCIS failed to “obtain a more recent recommendation” from the State Department before its termination decision). In other cases, the record showed only perfunctory interagency exchanges that contained no discussion of country conditions. In the case relating to Burma, for example, the Department of Homeland Security merely circulated a list of four countries “coming up for review” and received a generic, two-sentence State Department response that did not address country conditions at all. See *Aung Doe v. Noem*, No. 1:25-

cv-15483, 2026 WL 184544, at *13–14 (N.D. Ill. Jan. 23, 2026) (noting that the only evidence of inter-agency communication was a two-sentence email that “addressed the TPS terminations of four different countries [including Syria], but the State Department’s response did not individually consider the circumstances in those nations”). This “does not qualify as a consultation” because “[t]here was no meaningful exchange of information.” *Id.* (cleaned up).

South Sudan was the same: the only purported consultation there was a skeletal email chain, again devoid of any discussion of conditions or statutory criteria. See *ACT I*, No. 25-cv-13939, 2026 WL 395732, at *10–12 (D. Mass. Feb. 12, 2026) (finding that “[u]nder any reasonable interpretation of the word ‘consultation,’ the single email chain cited by Defendants plainly is inadequate,” supporting plaintiffs’ claim that “Defendants were predetermined to terminate” the designation). For Venezuela, even when consultation nominally occurred, it consisted of a cursory, one-and-a-half-page State Department letter that failed to analyze country conditions. *NTPSA I*, 798 F. Supp. 3d, at 1127 (noting that this letter “did *not* address country conditions, nor did the State Department provide any country conditions report to USCIS”).

Second, more developed records across TPS cases show that the Secretary made termination decisions *before* seeking input from other agencies, despite the statutory command that the Secretary reach a decision only “after” such consultation. See 8 U.S.C. § 1254a(b)(3)(A). In the Venezuela record, for example, internal emails proved that the Secretary decided to terminate before consulting *any* agency, meaning that termination “was a *fait accompli* from the outset.” *NTPSA I*, 798 F. Supp. 3d at 1149. In the Cameroon case, the State Department sent a letter dated the day

after the Secretary's April 7, 2025 termination decision. See *CASA*, No. 8:25-cv-1484, Dkt. 106-7 (Secretary Rubio letter dated April 8, 2025).

Records across numerous cases revealed a pattern of decisions made first and justified later. Officials drafted termination memoranda despite acknowledging internally that updated country conditions information had not been obtained. See, e.g., *NTPSA II*, 2025 WL 4058572, at *23–24 (collecting internal email evidence for Nicaragua, Honduras, and Nepal terminations, including statement that memo was “ready to go” even though “[w]e did not receive a recommendation from [State]”); *CASA, Inc. v. Noem*, 792 F. Supp. 3d 576, 606 (D. Md. 2025) (noting that, for Afghanistan and Cameroon, DHS had imposed arbitrarily tight timelines preventing USCIS from gathering updated information on the statutory factors).

This shift was a marked departure from prior agency practice. To fulfil the statutory requirements that the Secretary consult with appropriate agencies and review country conditions, DHS's longstanding practice has been to collect country conditions reports and recommendation memoranda from both USCIS and State. See, e.g., *NTPSA I*, 798 F. Supp. 3d at 1121–22 (detailing the “standard departmental clearance process,” and noting that the agency failed to follow it); see also *NTPSA v. Noem*, 163 F.4th 1152, 1159–61 (9th Cir. 2025) (facts show that “effectively none of DHS's normal procedures was followed”). DHS departed from this practice by failing to obtain contemporaneous country-conditions reports from USCIS or the State Department, without articulating any reason for the procedural shift. See *NTPSA I*, No. 3:25-cv-05687, Dkt. 176-22 at 3 (N.D. Cal. Nov. 4, 2025) (“[The Department of State] will not provide country conditions [for TPS decisions] anymore”); see also, e.g., *NTPSA I*, 798 F.

Supp at 1152–53 (Venezuela); *Aung Doe*, 2026 WL 184544, at *14–15 (Burma); *CASA*, 792 F. Supp. 3d at 584–88 (Afghanistan and Cameroon); *ACT I*, 2026 WL 395732, at *10 (South Sudan). This marked a systematic break from established processes meant to ensure informed, evidence-based decision-making. See *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

Third, the records across the TPS cases demonstrate the Secretary failed to consider the evidence before the agency, or manipulated the evidence to fit a preordained narrative. In the Nicaragua, Honduras, and Nepal case, for example, the record revealed that the Secretary had directed analysts to produce truncated country conditions reports that were limited to a single page and focused only on “improvements,” thereby ensuring the analysis would be both incomplete and skewed toward the Secretary’s predetermined outcome. See *NTPSA II*, 2025 WL 4058572, at *24–25, *27 (the Secretary “improperly narrowed the scope of her review of the conditions of the countries at issue”). Agency staffers openly acknowledged the tension between the evidence and the Secretary’s predetermined course, noting, for example, “if we sing the praises of Honduras (which we can certainly do), then it calls into question why we’re also terminating the program in Nicaragua, with its murderous, dictatorial regime.” *Id.*, No. 25-cv-05687, Dkt. 176-11 at 14.

Indeed, internal emails showed that the Department had decided to forego receiving country conditions reports from the State Department entirely. *Id.*, Dkt. 176-28 at 3 (March 19: “[G]oing forward, State will no longer submit detailed [country of origin] reports for TPS decision-making, but will continue to submit the cover memo from SecState with their recommendation.”); *Id.*, Dkt. 176-22 at 5 (explaining the “general understanding is [State] is no longer providing country

conditions and that the 1 pg. letter may not arrive until the end of the process right before [the Secretary] needs to sign.”).

In the South Sudan and Ethiopia cases, the Secretary relied on claims of fraud that were directly contradicted by USCIS’s own data. See *ACT I*, 2026 WL 395732, at *10, *13–14 (despite including fraud concerns as a basis for the decision, “when USCIS searched for records of fraud or public safety concerns among 228 South Sudanese TPS holders, it found none”); *ACT II*, No. 26-cv-10278, slip op. at 24 (Apr. 8, 2026), Dkt. 56 (claims of fraud in the termination notice were “demonstrably untrue as revealed by the administrative record itself, which shows that of 5,524 Ethiopian TPS holders, there are zero records of fraud.”)

The Secretary also cherry-picked isolated positive developments, while ignoring record evidence describing escalating violence, displacement, and disease. See, e.g., *ACT II*, slip op. at *23 (“The administrative record is replete with evidence, including reports by DHS itself from as recent as August and September of 2025, that armed conflict and natural disasters continue to create dangerous conditions in Ethiopia.”); *Aung Doe*, 2026 WL 184544, at *13–14, *17 (for Burma’s termination, noting that the Secretary asserted unexplained “improvements,” without any attempt at reconciling DHS’s own country report documenting widespread violence and deteriorating humanitarian conditions across the country); *NTPSA I*, 798 F. Supp. 3d at 1128 (noting that the government “has not submitted any evidence” substantiating claimed improvements).

Fourth, across TPS cases, the Secretary’s TPS termination decisions conspicuously failed to discuss the country conditions that had formed the basis for prior

TPS extensions for the country at issue. Compare, *e.g.*, 88 Fed. Reg. 40,304, 40,310 (June 21, 2023) (considering widespread “political violence” and “staggering levels of crime” in Honduras) with 90 Fed. Reg. 30,089 (July 8, 2025) (making no mention of political violence or crime in Honduras); 88 Fed. Reg. 40,294, 40,300 (June 21, 2023) (considering “political instability and a humanitarian crisis” in Nicaragua) with 90 Fed. Reg. 30,086 (July 8, 2025) (failing even to mention political stability or humanitarian situation in Nicaragua); 88 Fed. Reg. 40,317 (June 21, 2023) (considering food insecurity and lack of access to sanitation in Nepal) with 90 Fed. Reg. 24,153 (June 6, 2025) (not considering food security or access to sanitation in Nepal); 88 Fed. Reg. 69,945 (Oct. 10, 2023) (considering human rights abuses, food insecurity, a cholera epidemic, and ongoing mass displacement in Cameroon) with 90 Fed. Reg. 23,697 (June 4, 2025) (entirely ignoring human rights, food security, infectious diseases, or displacement in Cameroon); 88 Fed. Reg. 65,728, 65,731 (Sep. 25, 2023) (considering “worsening” human rights “crisis,” “unprecedented deterioration of women’s rights,” and “sexual violence against women and girls [that] occurs regularly” in Afghanistan) with 90 Fed. Reg. 20,309 (May 13, 2025) (making no mention of human rights or rights of women and girls in Afghanistan). In each instance, the notice was silent where the law demands reasoned explanation.

Even where the prior extension decision was made only a few weeks before the Secretary’s termination—as was true in the case of Venezuela—the Secretary ignored conditions that agency decisionmakers had previously deemed relevant, even where they had served as the basis for the prior extension. Compare also *NTPSA I*, No. 3:25-cv-05687, Dkt. 145-16 (Jan. 9, 2025 Decision Memo for Venezuela) (concluding

Venezuela continues to meet conditions for TPS designation, and considering, *inter alia*, political repression, human rights, and food security) with *id.*, Dkt. 145-17 (Jan. 31, 2025 Decision Memo for Venezuela) (concluding Venezuela no longer meets conditions for TPS designation, without discussing political repression, human rights, or food security).

Taken together, these records establish that the Secretary has routinely foregone meaningful analysis of country conditions, failed to comply with statutorily mandated consultation processes, and abandoned all pretense of reasoned decision-making. Instead, the Secretary engaged in an unlawful effort to ensure that TPS “will no longer be allowed” across the board. See *Aung Doe*, 2026 WL 184544, at *3 (quoting pre-Inauguration Jan. 15, 2025 confirmation hearing statement of Secretary Noem). Indeed, every single TPS program that has come up for renewal—now fourteen in total—has resulted in a termination, which alone suggests unlawful agency decision-making. See, e.g., *ACT I*, 2026 WL 395732, at *11–12; *Aung Doe*, 2026 WL 184544, at *12–24; *NTPSA I*, 798 F. Supp. 3d at 1156; *Miot v. Trump*, No. 25-cv-02471, 2026 WL 266413, at *29 (D.D.C. Feb. 2, 2026).

Tellingly, these terminations are uniformly directed at low-income, nonwhite countries—as one district court observed, the Secretary’s across-the-board terminations are paired with racially-charged rhetoric casting TPS holders as criminals and security threats, even invoking terminology associated with white nationalist calls for the mass removal of nonwhite immigrants. See *Aung Doe*, 2026 WL 184544, at *4 (noting DHS’s public use of the term “Remigrate,” which plaintiffs’ un rebutted evidence showed is tied to white nationalist advocacy of “mass deportation of non-white

immigrants,” and the President’s statements that immigrants from “Third World Countries” are “non-compatible with Western Civilization”).

Notably, plaintiffs in these cases have had to seek court orders to compel the government to turn over these administrative records, remove baseless redactions, and produce additional documents. See, *e.g.*, *NTPSA I*, No. 3:25-cv-1766 (N.D. Cal. May 2, 2025), Dkt. 129 (ordering extra-record discovery on both APA and equal protection claims as to Venezuela TPS termination); *NTPSA II*, No. 25-cv-5687 (N.D. Cal. Aug. 21, 2025), Dkt. 97 (ordering extra-record discovery on both APA and equal protection claims as to Honduras, Nicaragua, and Nepal terminations); *CASA, Inc. v. Noem*, No. 25-cv-01484 (D. Md. Dec. 8, 2025), Dkt. 123 (ordering extra-record discovery).

These efforts have resulted in the government being forced to produce documents that revealed that the Secretary’s claims were false. For example, in the Cameroon case, the government was forced to turn over documents that showed that, although the Secretary claimed in the Federal Register that she consulted with appropriate agencies prior to her decision, the perfunctory communication she got from the State Department came the day *after* she signed the decision—something that internal communications acknowledge DHS had hoped to avoid. See *CASA, Inc. v. Noem*, 2025 WL 3514378, at *14 (finding that “the [State Department] letter’s absence from the administrative record itself illuminated the fact that Secretary Noem acted without a recommendation from the State Department.”); see also *NTPSA v. Noem*, 163 F.4th at 1159–61 (quoting 798 F. Supp. 3d at 1149–50) (“The record strongly supports the district court’s conclusion that the Secretary’s actions were ‘preordained’” because it supported the finding that “DHS made its

vacatur and termination decisions first and searched for a valid basis for those decisions later”).

3. Even the Limited Records in the Cases on Review Demonstrate the Secretary Engaged in the Same Lawless Actions.

While the lower-court records in the cases under review are underdeveloped, they nevertheless show likely legal violations by the Secretary, as well as a high likelihood that continued factual development will substantiate the respondents’ claims.

In *Doe*, for example, the government claimed in its brief to this Court that, even without any administrative record, the Court must credit “the Secretary’s un rebutted affirmations” that she “reviewed [the] country conditions in Syria,” and that “adequate consultations happened,” in the Federal Register notice itself. U.S. Br. at 8, 25. Until recently, there was no record against which the Court could test those categorical assertions. Now that the district court has required the government to file an administrative record (however inadequate), the record reveals that the Secretary’s actions are rife with the same violations documented above. For example, the record in *Doe* appears to contain no consultation with the State Department at all, let alone consultation regarding country conditions, as the statute requires. See *Dahlia Doe*, Dkt. 72-2 (containing no attachment from State to decision memorandum).

The USCIS country conditions reports that are attached to the decision memorandum detail extensive armed violence throughout Syria, food shortages, and other violent humanitarian and economic disasters. See *id.* The government has entirely redacted the substance of its decision memorandum—despite the fact that other courts have ordered similar redactions to be

lifted. See, *e.g.* *Miot*, 1:25-cv-02471 (Dec. 16, 2025), Min. Order (“The Court sees no basis for the redaction” of these documents). For now, the record does not allow the Court to assess how, if at all, the Government addressed this country conditions information. But it is clear that the weight of the evidence before the Secretary undermined, rather than supported, the Secretary’s decision—something the Secretary’s public decision in the Federal Register ignored.

In *Miot*, the record also confirms the Secretary’s demonstrated practice of violating the TPS statute’s consultation requirement. The entirety of DHS’s purported “consultation” consists of two emails, one perfunctorily requesting State’s “views on the matter” of Haiti’s TPS termination, and the other, State’s reply, less than one hour later, disavowing any foreign policy concerns in Haiti in a single sentence. See *Miot*, 2026 WL 266413, at *21. And, again, the Secretary ignored extensive record evidence that Haiti remains in acute crisis, and instead relied on speculation about future improvements; it also ignored contemporaneous State Department travel warnings of worsening conditions. See, *e.g.*, *Miot*, 2026 WL 266413, at *23, *25 (providing a chart listing record documents “speak[ing] with remarkable consistency” that Haiti in 2025 was a “nation deep in crisis”).

II. THE SECRETARY’S LAWLESS ACTIONS ARE APPROPRIATELY SUBJECT TO JUDICIAL REVIEW.

A. The Government’s Reading Would Render Congress’s Commands Meaningless and Insulate Egregious Violations From Review.

The government’s interpretation of 8 U.S.C. § 1254a would render the TPS statute’s requirements optional and permit widespread, egregious lawlessness.

According to the government, each of the TPS statute’s legal requirements is effectively just a formality, leaving the agency with unbounded discretion to do as it pleases, since any violation of the TPS statute’s many detailed requirements is unreviewable. See U.S. Br. at 19; *id.* at 24 (arguing the “judicial-review bar expansively covers every subsidiary decision culminating in designation, termination, or extension of TPS ...”). If the Secretary fails to communicate with any agency before designating a foreign state or terminating such a designation, says the government, the only check on that *legal* violation is “the political process”—a position that could undermine judicial review of a broad swath of agency action. U.S. Br. at 23–24. The same is true if the Secretary fails to make any finding about the basis for a TPS designation or withdrawal or to publish a notice containing reasons, or if the Secretary explicitly relies only on considerations not listed in the statute; and the same is true if the Secretary grants or terminates a TPS designation without “review[ing] the conditions in the foreign state” at all. 8 U.S.C. § 1254a(b)(3)(A).

The government’s position would give the Secretary license to engage in even more blatantly unlawful conduct without any judicial scrutiny. “For example, if a Secretary decided to sell TPS designations, that decision would be unreviewable ... because that action could be characterized as a decision about a TPS designation.” *NTPSA v. Noem*, 166 F.4th at 757. The same is true if the Secretary decided to base TPS designations entirely on the Secretary’s—or the President’s—personal feelings about a particular country or even a particular person. In fact, because the government could move to dismiss any challenge to these actions on the pleadings, plaintiffs would not be entitled to even obtain the administrative record or seek

discovery, ensuring that violations would remain hidden from public view. Thus, under the government's view, the agency's decision-making process would remain opaque, making it highly unlikely for even the "political process" to hold officials to account. U.S. Br. at 24. The Secretary could operate in secret, without accountability to Congress or the American people.

While this case arises in the context of denials, the government's position would equally insulate TPS *expansions* from judicial review: a future Secretary could unlawfully decide to broaden the universe of TPS recipients by millions, on a whim. That Secretary could redesignate every foreign state for which TPS was withdrawn under the current administration without reviewing country conditions at all, explicitly on the ground that the Secretary wished to undo decisions by the prior administration. The Secretary could ignore the statute's time-limitations and redesignate TPS status for a period of "thirty-year[s]"—as the government concedes, that conduct too would evade judicial review. *NTPSA v. Noem*, 166 F.4th at 757. Indeed, a future secretary could grant TPS to every country in the world, for decades, in a Federal Register notice that simply reads "because I feel like it." Nothing in the statute requires insulating such absurdly unlawful actions from review. *Dodd v. United States*, 545 U.S. 353, 359 (2005).

The government says that a complete absence of judicial review will not invite "lawless agency behavior." U.S. Br. at 23. This is so, reasons the Government, because "regardless of the availability of judicial review, courts owe to Executive agencies a 'presumption of regularity' and assume that they will follow Congress's statutory commands." *Id.*

The government’s sweeping position cannot be squared with reality. The Secretary has issued multiple decisions in defiance of the TPS statute, not to mention prior court decisions enforcing the TPS statute as written and as understood for decades. The presumption of regularity is no comfort where the government seeks, in these very cases, to prevent the Court from reviewing records that plainly illustrate agency overreach. See *Mitchell v. Forsyth*, 472 U.S. 511, 550 (1985) (“Simply put, an appellate court is best able to decide whether given conduct was prohibited by established law if the record in the case contains a full description of that conduct.”); *Dep’t of Com.*, 588 U.S. at 755–56 (noting the importance of a developed record when the agency rationales are potentially contrived).

Indeed, “the presumption of regularity that normally attends agency action” evaporates when there is “a strong showing of bad faith or improper behavior on the part of the agency.” *Biden v. Texas*, 597 U.S. 785, 811 (2022) (citation omitted). Here, the Secretary has repeatedly and flagrantly violated the law. Blatantly illegal conduct and “improper behavior in [the] development of the record” quashes the presumption of regularity here. *Citizens for Alts. to Radioactive Dumping v. United States*, 485 F.3d 1091, 1097 (10th Cir. 2007).

B. Cases Like These Illustrate Precisely Why This Court Presumes Judicial Review of Agency Action.

The agency lawlessness at issue in the TPS cases is paradigmatic agency misconduct this Court has long recognized is important for courts to review.

There is a “strong presumption that Congress intends judicial review of administrative action.” *Traynor v. Turnage*, 485 U.S. 535, 542 (1988) (quoting

Bowen v. Mich. Acad. of Family Physicians, 476 U.S. 667, 670 (1986)). “This default rule is ‘well-settled,’ and Congress is presumed to legislate with it in mind.” *Salinas v. U.S. R.R. Ret. Bd.*, 592 U.S. 188, 197 (2021) (quoting *Kucana v. Holder*, 558 U.S. 233, 252 (2010)). As this Court has recognized, permitting agencies to “violate” Congress’s “statutory commands” without judicial accountability is “an extreme position.” *Bowen*, 476 U.S. at 681–82. Thus, “[t]o rebut the presumption, the [Secretary] bears a ‘heavy burden’ of showing that the statute’s ‘language or structure’ forecloses judicial review.” *Salinas*, 592 U.S. at 197 (quoting *Mach Mining, LLC v. EEOC*, 575 U.S. 480, 486 (2015)).

The fact is, “Congress rarely intends to prevent courts from enforcing its directives to federal agencies.” *Mach Mining*, 575 U.S. at 486. That is because “legal lapses and violations occur, and especially so when they have no consequence.” *Id.* at 489. The presumption of judicial review is therefore critical, even when the Court has no reason to “doubt the [agency]’s trustworthiness, or its fidelity to law.” *Id.*

Here, unfortunately, the Court has every reason to doubt the Secretary’s fidelity to the law. Preventing “such an unrestrained destruction of the rule of law” is precisely why this Court has long adhered to the presumption of judicial review. *Saget v. Trump*, 375 F. Supp. 3d 280, 333 (E.D.N.Y. 2019).

C. Courts In TPS Cases Have Demonstrated It Is Possible to Exercise Limited Review That Respects the Secretary’s Authority.

Faced with record evidence of disregard for Congressional safeguards, courts across the country have repeatedly determined that they are authorized to review challenged aspects of the Secretary’s process, and

that the Secretary violated the law. Like this Court, the lower courts have recognized that there is a difference between substantive determinations left to an agency's sound discretion and general "practices and policies used by the agency" employed to reach decisions. *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 492 (1991).

For example, in the Burma TPS decision, the court explained that it "does not have jurisdiction ... over claims challenging a discrete TPS determination." *Aung Doe*, 2026 WL 184544, at *8. Accordingly, the court made clear that it was not reviewing the Secretary's "assessment of the conditions in Burma" or "balancing [of] the evidence." *Id.* Applying that framework, the court determined that the record revealed "an unlawful pattern and practice." *Id.* at *9.

Other courts have reached similar conclusions under the same careful approach. In *African Communities Together v. Noem*, the court recognized that "the substantive decision to designate a country for TPS, or to terminate such designation, is the Secretary's alone, and the Court cannot, for example, second-guess the weight she ascribes to conditions in the foreign state at issue." No. 25-cv-13939, 2026 WL 395732, at *5 (D. Mass. Feb. 12, 2026). Confining its review to the relevant "procedural requirements," the court determined that the Secretary likely violated the APA by, among other things, failing to engage in adequate interagency consultation. *Id.* at *5, *9–12.

Similarly, in *CASA, Inc. v. Noem*, the court carefully parsed the plaintiffs' APA challenges to the Secretary's terminations of Afghanistan's and Cameroon's TPS designations, construing them to only "challeng[e] a general policy or practice to terminate TPS

designations on a preordained basis in order to reduce the number of non-white immigrants in the United States.” 792 F. Supp. 3d at 591. The court held this plausibly alleged a legal violation, while avoiding interfering with “the Secretary’s specific determinations on [TPS] designations, extensions, or terminations relating to Afghanistan and Cameroon.” *Id.*

Courts routinely walk this line. They are frequently called upon to review the legality of agency actions, including in the homeland security and immigration context. See, e.g., *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 16, 19 (2020); *Biden*, 597 U.S. at 814. They know how to do so while respecting the “important policy choices reserved for DHS.” *Regents*, 591 U.S. at 24. The TPS cases are no different.

CONCLUSION

For the foregoing reasons, the Court should reject the government’s jurisdictional arguments and deny the requested relief.

Respectfully submitted,

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