Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.,* 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

SENTINELSTOCKS v. NATIONAL SECURITY COUNCIL

ON WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 20-02. Argued July 20th, 2025—Decided July 22nd, 2025

Petitioner was designated a "National Security Threat" by the National Security Council (NSC) under Section 103 of the Countering, Restricting, and other Appropriate Controls for Killers Act of 2022 ("CRACK Act"). Petitioner alleges that the designation occurred without notice, opportunity to respond, or access to evidence, and resulted in professional and reputational harm. The district court dismissed the complaint with prejudice based on internal precedent. The Supreme Court granted certiorari.

Held: Section 103 of Pub. L. No. 3-25 (the "CRACK Act") is unconstitutional on its face and as applied. We vacate the judgment of the United States District Court for the District of Columbia, and hold that any designations made pursuant to Section 103 are null and void; and we enjoin any further enforcement or reliance on Section 103 by the government. Given that the Petitioner is not present or able to seek further relief, we decline to remand.

(a) The Court rejects the government's argument that the case presents a nonjusticiable political question. The Petitioner is not challenging the designation itself as a National Security Threat, but rather the process by which he was designated due to the potential due process harms that came with it. We remain deferential to the executive branch on whether or not this designation was justified. The ability for the National Security Council to make threat designations does not run through the power of the President, and it does not act solely as an advisory body. There is a statutory commitment to providing the National Security Council the power to make these designations on their own, which constitutes final agency action, and is not merely advisory to the President.

Furthermore, these designations carry immediate and binding consequences, such as the prohibition on employment detailed in Section 103(a). Courts look for clear and convincing evidence "that Congress has forbidden judicial review of all questions" related to a matter in an Act of Congress. *Bowen v. Michigan Academy of Family Physicians,* 476 U.S. 667, 669 (1986). Courts also look for "specific language or legislative history that is a reliable indicator of congressional intent." *Block v. Community Nutrition Institute*, 467 U.S. 340, 349 (1984). In this particular case, there is fundamentally no textual evidence to conclude that Congress ever intended to preclude judicial review, as there is no alternative, fair, statutory scheme for remedying potential Due Process claims.

(b) The Court holds that Section 103 violates the Fifth Amendment's Due Process Clause. The Petitioner alleges that following his designation as a National Security Threat, he was denied employment in multiple federal and contractor positions, not limited to solely the intelligence community prohibition outlined in Section 103(a). He asserts that the designation caused reputational stigma and exclusion from public service, and that he faced the immediate loss of his employment and security clearance. These claims satisfy the "stigma-plus" test articulated in *Paul v. Davis,* 424 U.S. 693 (1976); they involve reputational harm coupled with a material legal consequence. When the government excludes individuals from public employment based on a label, without an opportunity to contest that label, it impairs a protected liberty interest.

To determine the adequacy of these procedural protections, we apply the familiar balancing test from *Matthews v. Eldridge*, 424 U.S. 319 (1976). Section 103, as written, fails every step of the Matthews analysis.

(c) Executive Orders 18-2 and 29-2 do not cure Section 103's constitutional defects. Although Executive Order 18-2 purported to establish procedural safeguards, its protections were ultimately discretionary, unenforceable, and later rescinded by Executive Order 29-2. The Court reaffirms that executive orders cannot substitute for due process guaranteed by statute and the Constitution, and may resemble an attempt by the Executive Branch to create legislation that is outside the scope of their constitutional powers. The repeal of Executive Order 18-2 underscores the impermanence of such directives and highlights the insufficiency of relying on executive discretion in place of legislative safeguards.

(d) The Court further holds that Section 103 is unconstitutionally vague. The statute authorizes designations based on undefined terms such as threats to "the integrity of the national security apparatus," offering no clear standards to guide enforcement or individual behavior. This language fails to provide fair notice and invites discriminatory enforcement, in violation of the void-for-vagueness doctrine. Such vagueness is especially problematic where designations implicate protected activity and carry significant professional and reputational consequences.

STONE, C.J., delivered the opinion of the Court, in which DOUGLAS, J., and HARLAN, J., joined. DOUGLAS, J., filed a concurring opinion.

SUPREME COURT OF THE UNITED STATES

No. 20-02

SENTINELSTOCKS *v.* NATIONAL SECURITY COUNCIL

ON WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[July 22, 2025]

CHIEF JUSTICE STONE delivered the opinion of the Court.

This case concerns the constitutionality of Section 7 of Pub. L. No. 3-25, the Countering, Restricting, and other Appropriate Controls for Killers Act of 2022 ("CRACK Act"). The Petitioner, SentinelStocks, challenges the lawfulness of his designation as a "National Security Threat" by the National Security Council pursuant to the aforementioned section of the CRACK Act, alleging that the process by which he was designated violated his constitutional rights.

We conclude that Section 103, both in its text and implementation, fails to provide the minimum procedural safeguards required by the Fifth Amendment's Due Process Clause. Moreover, the designation regime described in Exec. Order No. 18-2 (Feb. 5, 2024) does not remedy the underlying constitutional deficiencies, as it imposed obligations and procedures that were ultimately discretionary, unenforceable, and subject to revocation at any time, as we have thus seen with Exec. Order No. 29-2 (Jul. 12, 2025). Furthermore, recent developments surrounding Executive Order 29-2 prove the insufficiency of these orders in truly resolving the concerns presented by the

CRACK Act, and likely exceed the executive authority to issue Executive Orders pursuant to the law. For these reasons, we hold that Section 103, as presently written and applied, is unconstitutional.

I

Section 103 of the CRACK Act authorizes the National Security Council to designate individuals as National Security Threats if they are found to pose a threat "to the integrity of the national security apparatus" of the United States. See CRACK Act §103(b)(i). Section 103(b)(i) and (iii) reference a requirement for public notice and a right to appeal. Section 103(a) of the CRACK Act also employs a prohibition on employment in the intelligence community to individuals who are designated as National Security Threats.

Petitioner SentinelStocks was designated as a National Security Threat pursuant to Section 103 of the CRACK Act by the National Security Council on May 10th, 2025. He claims he was not notified personally of the designation at the time it occurred, nor was he offered a right to appeal such designation in a meaningful manner. Instead, he claims to have learned of the designation through a general posting in the #white-house channel feed in the main USAR Discord Server. Following his designation, SentinelStocks alleges that he was denied a series of employment opportunities, including in agencies and departments outside the intelligence community, where the statutory reach of Section 103(a) ends. He also asserts that his designation was used to justify his removal from existing positions within the government, and prohibit employment with a government contractor, and that reputational harm followed due to his public association with the National Security Threat label.

Petitioner sued the National Security Council on June 24th, 2025, and the District Court dismissed his claim with prejudice on July 3rd, 2025 based on internal precedent rooted in *Villeneuve_Montbell v. National Security Council,* Case No. CV-022825-52 (D.D.C), without allowing development of a factual record to differentiate from past cases. Petitioner appealed to the Supreme Court, and certiorari was granted on July 10th, 2025.

II

Before discussing the constitutional infirmities of Section 103, we must address the government's threshold argument that this dispute is nonjusticiable. According to the government, the designation of an individual as a National Security Threat is an internal executive function insulated from judicial review. We disagree.

Under the framework established in *Baker v. Carr*, 369 U.S. 186, 217 (1962), the presence of a political question is determined by specific factors, including whether there is "a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it," among others. None of these factors bar review in the present case. The Petitioner is not challenging the designation itself as a National Security Threat, but rather the process by which he was designated due to the potential due process harms that came with it. We remain deferential to the executive branch on whether or not this designation was justified, and as the Petitioner themselves does not challenge the classification's justifications, neither do we.

Likewise, the contention that there exists no law to apply or no manageable standard to review designation decisions ultimately misconstrues the nature of the Petitioner's claim. The Petitioner is not asking us to second guess the merits of the designation itself, but instead challenges the lack of process afforded to him in connection with that designation. Courts routinely assess the adequacy of procedural protections under established standards rooted in the Due Process Clause. See *Webster v. Doe,* 486 U.S. 592 (1988).

Furthermore, it is well-established in modern precedent that national security concerns do not place the government's actions outside of judicial scrutiny. For example, in *Hamdi v. Rumsfeld,* 542 U.S. 507 (2004), we held that even the detention of enemy combatants requires notice and a fair opportunity to rebut the government's factual assertions before a neutral decisionmaker. Similarly, in *Boumediene v. Bush,* 553 U.S. 723 (2008), we reaffirmed that the suspension of habeas corpus for Guantanamo detainees raised justiciable constitutional claims. Additionally, *Zadvydas v. Davis*, 533 U.S. 678 (2001) found justiciability in detention of immigrants even when based on potentially security risks. While all of these cases are not perfectly analogous to the situation at hand, they demonstrate a commitment to judicial review even when national security matters intertwine with due process concerns. While courts try to defer to the executive branch on matters of national security as much as possible (see *Ziglar v. Abbasi,* 582 U.S. 120 (2017), *Winter v. Natural Resources Defense Council, Inc.*, 555 U. S. 7, 24, 26 (2008) and *Christopher v. Harbury*, 536 U. S. 403, 417 (2002).), the Constitution is ultimately the supreme law of the land, and this case plainly implicates Fifth Amendment Due Process claims. Judicial review is particularly appropriate where, as here, an individual claims to have suffered reputational and professional harm as a result of government action taken without any enforceable process. The judiciary retains a vital role in safeguarding individual rights even in the face of executive claims of necessity.

Nor does the government's interpretation of the Administrative Procedure Act (APA) provide a shield. Although the National Security Council does not squarely fall within the APA's definition of an agency, and is ordinarily merely an advisory body which are not subject to the provisions of the APA, See *Franklin v. Massachusetts,* 505 U.S. 788 (1992), we have held that the label is not dispositive where final agency action is taken that has direct legal consequences. See *Bennett v. Spear*, 520 U.S. 154 (1997). In *Sackett v. EPA,* 566 U.S. 120 (2012), we iterated that where government determinations impose immediate and binding consequences on private parties, they are presumptively subject to judicial review. Section 103 of the CRACK Act satisfies this requirement, and authorizes the National Security Council to make precisely such determinations. The ability for the National Security Council to make threat designations does not run through the power of the President, and it does not act solely as an advisory body. There is a statutory commitment to providing the National Security Council the power to make these designations on their own, which constitutes final agency action, and is not merely advisory to the President. Furthermore, these designations carry immediate and binding consequences, such as the prohibition on employment detailed in Section 103(a).

The government also argues that the CRACK Act's language precludes judicial review. Courts look for clear and convincing evidence "that Congress has forbidden judicial review of all questions" related to a matter in an Act of Congress. *Bowen v. Michigan Academy of Family Physicians,* 476 U.S. 667, 669 (1986). Furthermore, they also look for "specific language or legislative history that is a reliable indicator of congressional intent." See *Block v. Community Nutrition Institute,* 467 U.S. 340, 349 (1984). In this particular case, there is fundamentally no textual evidence to conclude that Congress ever intended to preclude judicial review, as there is no alternative, fair, statutory scheme for remedying potential Due Process claims.

Altogether, the claims presented by the Petitioner present a justiciable and particularly important matter involving Due Process rights.

III

Due Process requires, at minimum, that the government provide "notice and an opportunity to be heard" before depriving an individual of a protected liberty or property interest. See *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306 (1950); *Matthews v. Eldridge*, 424 U.S. 319 (1976). Where reputation harm combines with the loss of tangible opportunities, such as employment, a liberty interest is implicated. See *Paul v. Davis*, 424 U.S. 693 (1976); *Valmonte v. Bane* 18 F.3d 992 (2d Cir. 1994).

The Petitioner alleges that following his designation as a National Security Threat, he was denied employment in multiple federal and contractor positions, not limited to solely the intelligence community prohibition outlined in Section 103(a). He asserts that the designation caused reputational stigma and exclusion from public service, and that he faced the immediate loss of his employment and security clearance. These claims satisfy the "stigma-plus" test articulated in *Paul* 424 U.S. 693: they involve reputational harm coupled with a material legal consequence. When the government excludes individuals from public employment based on a label, without an opportunity to contest that label, it impairs a protected liberty interest. See *Valmonte v. Bane*, 18 F.3d 992 (2d Cir. 1994) (holding that inclusion on a registry that prevented employment in a statutorily regulated field, without sufficient process, implicated a liberty interest under the 'stigma-plus' framework).

Furthermore, while the government claims there was no liberty or property interest at stake for the Petitioner, precedent rejects this idea. The Court has held that the ability to pursue employment opportunities can implicate a liberty interest. See *Perry v. Sindermann,* 408 U.S. 593 (1972). Even if the CRACK Act and the designation itself does not explicitly prohibit the Petitioner from pursuing employment opportunities outside of the prohibition found within Section 103(a), if the stigma or damage to their reputation is significant enough to foreclose future employment opportunities, it implicates their liberty for the purpose of the Due Process Clause. "To be deprived not only of present government employment but of future opportunity for it certainly is no small injury…" *Joint Anti-Fascist Refugee Committee v. McGrath,* 341 U.S. 185 (Jackson, J., concurring).

While the government claims that the Petitioner was able to successfully seek employment in some certain and individual cases, such as being elected to the United States Senate, this does not provide a comprehensive argument against the potential for foreclosure of employment opportunities. Election to the Senate is not analogous to ordinary employment, and any effort to bar a duly elected individual from serving would violate constitutional qualifications. See *Powell v. McCormack*, 395 U.S. 486 (1969).

Furthermore, we have gone so far as to recognize a liberty interest in termination of employment itself, where an employee alleging that the employer potentially "creates and disseminates a false and defamatory impression about the employee" is entitled to a hearing. See *Codd v. Velger*, 429 U.S. 624 (1977). Even public notices accusing individuals of criminal conduct can be "such a stigma or badge of disgrace that procedural due process requires notice and an opportunity to be heard". See *Wisconsin v. Constantineau,* 400 U.S. 433 (1971). As we can see through a March 6th, 2025 posting by the Office of the National Security Advisor in the #white-house channel, it is quite standard for most National Security Threat designees to have public notices accusing them of Title 18 crimes for which they never were tried or found guilty in a court of law for.

To be clear, the CRACK Act does permit *some* procedural protections on paper, in Sections 103(b)(i) and (iii). To determine the adequacy of these procedural protections, we apply the familiar balancing test from *Matthews v. Eldridge,* 424 U.S. 319 (1976). First, the private interest affected by the designation is substantial. A designation as a National Security Threat carries significant stigma and forecloses meaningful employment opportunities. Second, the risk of erroneous deprivation is high under the current framework. Section 103 lacks standards, evidentiary safeguards, or meaningful opportunities to contest the designation. There is no notice requirement beyond a general announcement, no timeline for appeal, and no requirement that any adjudicator be neutral or independent. Third, while the government has an interest in national security, that interest does not outweigh the need for basic procedural protections, particularly where reputational consequences and employment disqualifications follow.

The Petitioner alleges that the government did not provide him with any individualized notice, explanation of the evidence against him, or opportunity to challenge the designation before or after it was imposed, despite such requirements being laid out in Section 103 and Executive Order 18-2. Regardless of whether or not an effort to notify the individual personally was made, the government conceded during arguments that "the government would need to provide sufficient notice that's reasonably calculated to reach them". A public notice is not a sufficient notice that is reasonably calculated to reach a potential designee. This Court has held in *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306 (1950) that public newspaper postings do not satisfy due process requirements of notice. A public posting in a general #white-house announcement feed notifying an individual of their potential to be designated as a National Security Threat, as we saw in the Petitioner's case on April 28th, 2025, and more recently on July 17th, 2025 is not possibly sufficient notice to potential designees on their own, and is akin to publishing the notice in a newspaper and expecting it to reach the designee. This is constitutionally insufficient.

Furthermore, the CRACK Act's provisions do not provide appeal or hearing before a neutral decisionmaker, but rather before the designating authority. The absence of such a safeguard, as required in *Hamdi v. Rumsfeld,* 542 U.S. 507 (2004) in national security matters, particularly where designations can carry career-ending implications, undermine the fairness and reliability of the entire designation process. It is also equally as important for pre-deprivation hearings in general to have a neutral decisionmaker, as emphasized in *Goldberg v. Kelly*, 397 U.S. 254 (1970).

The statute and implementing executive orders also fail to identify a standard of proof. Whether a designation must be supported by probable cause, preponderance of the evidence, or some lesser showing remains unspecified—leaving the process untethered from any recognizable evidentiary threshold.

Section 103, as written, fails every step of the *Matthews* analysis. It imposes a severe burden on individual liberty without any of the procedural guarantees our Constitution requires. Due process is not satisfied by vague statutory language or by the promise of appeal in name only. It requires real notice, a real opportunity to respond, and real accountability. The Constitution does not allow the government to impose civil penalties of such magnitude—especially under the national security label—without affording basic procedural fairness. If liberty means anything, it means that an individual must not be branded and blacklisted by secret processes beyond challenge or review.

IV

The government also suggests that any procedural deficiencies in Section 103 are remedied by Executive Order 18-2 in the case of the Petitioner, which purports to establish internal procedures for designating National Security Threats and provide minimal safeguards such as a right to appeal. We disagree.

Executive Order 18-2, issued following widespread criticism of Section 103, attempted to implement procedural safeguards by establishing an administrative review framework. It required advance notice of designation, a hearing before a neutral third-party overseer, the right to counsel, and temporary clearance for both the neutral decisionmaker and defense counsel. It even allowed for review by a federal court before the designation took effect. These provisions, while commendable, were implemented solely through executive directive. This order conferred no enforceable rights, lacked the force of law, and was revocable at will. Even if we assume that the provisions of this order were followed in spirit despite the Petitioner's claims, it did not establish a reliable or durable foundation for due process.

Furthermore, executive orders can *never* provide such a foundation for due process concerns when such remedies are absent from law due to their inherent nature. Executive orders can be revoked, amended, and rescinded with the flick of a pen by a single individual. Such an example can be found in Executive Order 29-2, which has since repealed and replaced Executive Order 18-2, removing any potential procedural safeguards that it put in place to remedy the CRACK Act. They do not have the force of law, and are not meant to replace the constitutional power of Congress to write laws. As this Court has previously recognized, executive orders "derive their force not from legislation but from the Executive's own authority," and are therefore subject to change at any moment. See *Medellín v. Texas*, 552 U.S. 491, 526 (2008) (noting that presidential memoranda and directives are not self-executing law and cannot supersede legislative requirements); see also *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585–86 (1952) (rejecting the President's effort to legislate through executive order in the absence of congressional authorization).

The inherent fragility of Executive Order 18-2 is demonstrated by its repeal and replacement by Executive Order 29-2, which effectively retracted all of the imposed safeguards. This new order also goes so far as to declare that the provisions of Section 103 are "inoperative within the Executive Branch and are superseded in effect." See Section 7, Executive Order 29-2. This unilateral action by the Executive Branch not only demonstrates the discretionary and impermanent nature of such orders, but also reflects a troubling political posture in which the Executive claims the power both to interpret and to nullify legislative mandates without judicial or congressional oversight. This notion is further reinforced by the provisions of Executive Order 29-2, which attempt to legislate an entirely new process for handling National Security Threats to fundamentally replace the CRACK Act's provisions, which is not an authority the Executive Branch has to create, but is rather a power conferred on Congress.[1]

In declaring a statute inoperative by fiat, and otherwise creating processes that reflect statutory law, the Executive grants to itself the power to suspend laws and even to create them, a power not found in the Constitution and incompatible with the separation of powers. As we held in *Clinton v. City of New York*, 524 U.S. 417, 438 (1998), "There is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes." Nor may the President suspend their operation entirely by executive fiat. See *Kendall v. United States ex rel. Stokes*, 37 U.S. (12 Pet.) 524, 613 (1838). "To contend that the obligation imposed on the President to see the laws faithfully executed, implies a power to forbid their execution, is a novel construction of the Constitution." This principle reaffirms the lesson of *Youngstown*, 343 U.S. 587, that the President's power must "stem either from an act of Congress or from the Constitution itself." While prosecutorial discretion permits prioritization and enforcement flexibility, it does not allow the Executive to render duly enacted statutes null and void. To allow otherwise would erode the foundational principle that the legislative power belongs to Congress, not the Executive.

The Court has long held that executive action must fall within one of three categories articulated in *Youngstown*,

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[1] It is worth noting that this Court makes no judgement on the general provisions of Executive Order 29-2 outside of how it relates to the CRACK Act, as that order was issued after certiorari was granted in this case. While the Order purports to suspend the operation of Section 103 and establish a replacement framework, that Order is not necessary to our resolution of the constitutional issues presented.

either being maximum authority, when the President acts with express or implied authorization from Congress; middle ground, when Congress is silent on a matter and the lines of authority may be unclear; or the lowest ebb, in which the President acts against the expressed or implied will of Congress. The second and third categories—where the President acts without or against congressional authorization—are particularly relevant here. To the extent Executive Orders 18-2 and 29-2 attempt to rewrite the statutory scheme or alter the legal consequences established by Congress, they exceed the bounds of executive authority.

Moreover, these orders concede what the statute itself omits: that due process concerns exist and must be addressed. Their discretionary structure, lack of permanence, and revocability by future administrations confirm that they cannot form the backbone of a constitutionally adequate process. They do not provide a suitable remedy for the statutory defects of the CRACK Act, but they instead underscore them. These orders declare the CRACK Act unconstitutional as applied, and this Court sees no reason to reach a different conclusion. Executive Orders 18-2 and 29-2, while perhaps well-intentioned, cannot substitute for meaningful procedural protections enshrined in statute and required by the Constitution, and furthermore cannot replace Acts of Congress. While the government argued that these Executive Orders suggest "ongoing improvement" or self-correction, they are provenly impermanent and legally meaningless to resolve these potential issues.

V

Another primary issue with Section 103 is the sheer vagueness thereof. Statutes that impose burdens on reputation or livelihood must provide clear standards to guide both enforcement and compliance. Section 103 of the CRACK Act fails the requirement at face value. It authorized the designation of individuals as National Security Threats based on vague and undefined criteria, namely, whether they are found to pose a threat "to the integrity of the national security apparatus." See CRACK Act §103(a). Despite the government arguing otherwise, there are no other meaningful criteria within the CRACK Act that determine what an individual may be designated as a threat for. Such an indeterminate standard is ultimately susceptible to arbitrary enforcement and offers no clear guidance to individuals on what conduct may trigger designation.

This ultimate lack of clarity implicates the void-for-vagueness doctrine. A law is unconstitutionally vague if it fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or may encourage seriously discriminatory enforcement. The provisions of a law which seeks to inflict punishment on individuals "must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties… and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law." *Connally v. General Construction Co.,* 269 U.S. 385, 391 (1926). Section 103 provides no definitions, no limiting principles, and no elaboration on what constitutes a threat to the "integrity" of national security, leaving those subject to the statute guessing at the boundaries of lawful behavior. "Uncertain meanings inevitably lead citizens to "steer far wider of the unlawful zone' . . . than if the boundaries of the forbidden areas were clearly marked." *Grayned v. City of Rockford*, 408 U.S. 104 (1972). This is especially evident in the Petitioner's case, in which he claims that he was never confronted with a proper hearing or the facts behind what caused his designation as a threat.

It's potentially arguable that a law with such broad and undefined criteria could lead to such discriminatory enforcement. Without statutory criteria, what is to prevent one President and their administration from utilizing the CRACK Act to declare political opponents as threats to the integrity of the national security apparatus? Under the CRACK Act, there is none, and if we were to take the Petitioner's claims as fact, the government would therefore have a proven history of not providing notice, hearing, or appeal before placing a burdensome stigma upon them.

In evaluating vagueness, this Court noted in *Skilling v. United States,* 561 U.S. 358 that a law must define an offense "(1) with sufficient definiteness that ordinary people can understand what conduct is prohibited and (2) in a manner that does not encourage arbitrary and discriminatory enforcement." Section 103 of the CRACK Act does neither, and relies upon reversible executive orders, such as 18-2, to define the criteria. Such a vague statute with such harsh implications can cause individuals to refrain from engaging in political activities, criticism of the government or administration, or association with certain communities or individuals out of fear that such behavior may lead to a secret and unchallengeable designation with career-ending impacts and reputational stigma. This vagueness and chilling effect is incompatible with the constitutional guarantee of the freedom of expression. See e.g., *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972); or *Kolender v. Lawson*, 461 U.S. 352 (1983).

This potential danger is not merely theoretical, too. The Petitioner's briefs in this case suggest that the designation of himself as a National Security Threat under Section 103 of the CRACK Act may have been based at least partially on conduct that is plausibly protected, such as political commentary or whistleblowing. Yet, they claimed to have no access to the evidentiary basis of these decisions, with various requests for the information that led to their designation being ignored or rejected. The statute's silence on these issues invites abuse.

In sum, Section 103, in addition to what we have already outlined, lacks the clarity, precision, and limiting principles required by the Constitution. Its provisions can potentially be abused, and facilitate arbitrary enforcement and chill lawful expression. On its face, and potentially as applied, it violates the Fifth Amendment's requirement that laws be sufficiently clear to inform individuals of the conduct that may subject them to penalties or restrictions.

VI

Given the multiple constitutional infirmities we have identified, including a lack of due process, vagueness, and the improper substitution of executive orders for legislative safeguards, we conclude that Section 103 of the CRACK Act must be struck down in its entirety. The statute, as drafted, provides no clear standard, no meaningful procedural protections, and authorizes a form of unreviewable designation that is ultimately incompatible with the constitutional structure of our government.

Because the procedural and substantive defects are woven throughout the section, they cannot be severed from any hypothetical core. The section's reliance on discretionary executive action in place of any kind of enforceable due process rights compounds the constitutional harm and undermines any possible narrowing construction.

Given this, we hold that Section 103 of Pub. L. No. 3-25 (the "CRACK Act") is unconstitutional on its face and as applied.

Although Executive Order 29-2 aims to suspend the enforcement of Section 103, the Executive Branch has continued to rely on the statute in practice as recently as July 17th, 2025. This continued enforcement confirms the need for judicial relief. Therefore, we vacate the judgment of the United States District Court for the District of Columbia, and hold that any designations made pursuant to Section 103 are null and void; and we enjoin any further enforcement or reliance on Section 103 by the government.

Given that the Petitioner is not present or able to seek further relief, we decline to remand.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 20-02

SENTINELSTOCKS *v.* NATIONAL SECURITY COUNCIL

ON WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[July 22, 2025]

JUSTICE DOUGLAS concurring.

While I join the Court's opinion in full, I write to elaborate on the broader constitutional implications of the Countering, Restricting, and other Appropriate Controls for Killers (CRACK) Act of 2022, as well as to highlight the danger posed by several of its other provisions not directly addressed by the majority in its holding.

Section 103, as the Court very rightly concluded, is an affront to the Constitution in its denial of due process, its vagueness, and its usurpation of legislative and judicial authority by the executive. Section 103 is not an anomaly; however, it is merely part of a larger structural defect that is found throughout the statute, one that implicates violations in the First, Fourth, Fifth, and Fourteenth amendments, as well as the concept of separation of powers that is deeply enshrined in our Republic.

I

The Due Process Clause of the Fifth Amendment stands as a barricade against arbitrary and capricious exercises of executive power. Its protections are not limited to the outcome of a deprivation, but to the procedures by which the government makes decisions affecting liberty or property. As the Court explains, the procedural framework of Section 103 fails the balancing test established by *Mathews v. Eldridge*, 424 U.S. 319 (1976). It affects a profound individual interest in reputation and livelihood, it is executed without a meaningful process or neutral arbiter, and the government's interest in national security, while it can be a compelling interest in some cases, does not override the fundamental guarantees of procedural fairness.

The Court's reasoning must not be confined simply to Section 103. The CRACK Act contains other provisions that similarly authorize, or even require, executive action that is lacking any connection to the fundamental concepts of due process and judicial review. Section 407, for example, permits the revocation of business licenses and work authorizations without any opportunity to be heard. This is a clear deprivation of economic liberty and procedural due process that directly contradicts the ruling articulated in *Goldberg v. Kelly*, 397 U.S. 254 (1970). We have previously recognized that professional and business interests are protected under the Due Process Clause. In Barry v. Barchi, 443 U.S. 55 (1979), this Court held that a state's suspension of a license without a prompt post-deprivation hearing violated due process. It is no different in this case. The idea that citizens receive only limited judicial review raises serious constitutional concerns. This Court has also recognized, in *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972), that the right to pursue a lawful occupation is a protected liberty interest. Section 407's revocation of economic rights and interference with the right to pursue a lawful occupation, based on a designation not overseen by any judicial body, violates that protected liberty interest.

II

The void for vagueness doctrine, which is very evidently rooted in the Fifth Amendment and has long been enforced by this Court, clearly demands that laws give ordinary people fair notice of what specifically is prohibited and provide adequate standards to prevent arbitrary and baseless enforcement. Section 103's reference to threats to 'the integrity of the national security apparatus' is a perfect example of the kind of standardless language that this doctrine does not allow. This phrase, given its lack of definition, invites precisely the sort of discriminatory or politically motivated enforcement that our Constitution was set up to avoid.

III

The abuse of the political question doctrine by the government in this case also merits this Court's attention. The doctrine, as laid out in *Baker v. Carr*, 369 U.S. 186 (1962), is a narrow exception to the rule of judicial review, not an unchecked license for the executive to do as it pleases. This Court has repeatedly held, in *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), *Boumediene v. Bush*, 553 U.S. 723 (2008), and *Webster v. Doe*, 486 U.S. 592 (1988), that even in matters related to national security, the Constitution does not permit the government to act totally in the dark. Judicial review is essential, especially when liberty is threatened under the guise of national defense.

IV

The CRACK Act also violates the separation of powers in more subtle, but no less dangerous, ways. Section

232, for example, amends the Classified Information Procedures Act (CIPA) to strip courts of their traditional discretion by mandating ex parte rulings. This transforms CIPA from a tool of judicial case management into a legislative mandate that controls the outcome of judicial proceedings, a maneuver that is reminiscent of the unconstitutional encroachment that was condemned in *United States v. Klein*, 80 U.S. 128 (1871). Congress may regulate jurisdiction and procedure, to be sure, but it may not dictate the outcomes in pending cases.

Section 302 imposes extreme limitations on the injunctive relief that a court may provide in surveillance cases, denying courts the ability to restrain unlawful conduct unless conditions so stringent as to render injunctive relief practically unavailable are satisfied. This restriction not only raises concerns under *Boumediene*, 553 U.S. at 723, as well as *INS v. St. Cyr*, 533 U.S. 289 (2001), but it fundamentally undermines the judiciary's Article III function to interpret the law.

V

We must not ignore the chilling effect this statute has on constitutionally protected activity. A designation under Section 103, made in secret, based on classified information, and unaccompanied by notice or opportunity to respond, threatens to silence whistleblowers, chill political dissent, and isolate individuals for their associations or beliefs. Lacking clear standards, the law leaves individuals unable to conform their conduct. The resulting reputational and professional harm creates a powerful deterrent, even where no formal penalty is imposed. This Court has long warned against laws that create uncertain meanings that lead citizens to commit actions that "steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked," *Speiser v. Randall*, 357 U.S. 513 (1958).

Similar problems arise in other sections. Section 230 prohibits the disclosure of detainee information unless permitted by the Attorney General and Director of the Central Intelligence Agency, devoid of any articulated standard or time limit. The result is a vague and overbroad restriction that has a clear chilling effect on journalistic inquiry and public oversight, violating not only the First Amendment but also the concept of open justice that was recognized in *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980).

Section 609, which authorizes the Attorney General to issue civil investigative demands without judicial approval, compounds this chilling effect and raises grave Fourth Amendment concerns. The absence of a neutral magistrate's oversight, as required by both *Camara v. Municipal Court*, 387 U.S. 523 (1967) and *See v. City of Seattle*, 387 U.S. 541 (1967), deprives individuals of the constitutional protection against unreasonable searches. It is no answer to say these are mere requests for information. When backed by statute and absent judicial review, such demands become indistinguishable from the exact kind of unreasonable search and seizure the Fourth Amendment prohibits. Even accepting that civil investigative demands are nominally noncustodial, the lack of judicial oversight renders them indistinguishable from administrative subpoenas, tools that have long been subject to Fourth Amendment scrutiny.

VI

The delegation of unchecked discretion to the Executive Branch, embodied in both Section 103 and elsewhere, raises substantial nondelegation concerns. Although the intelligible principle standard set out in *J. W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394 (1928) has historically permitted broad grants of authority, even that doctrine requires some limiting standard. The CRACK Act's broad delegation to the NSC, particularly when coupled with classified and unreviewable criteria, fails to provide any meaningful guidance. If Congress can grant such boundless discretion to the executive under the guise of coordination, it would effectively transfer legislative power in contravention of Article I and intrude upon the judicial function defined in Article III.

VII

To claim, as the respondent does, that all of this is remedied by internal executive orders is to misunderstand the function of constitutional rights. Executive Orders 18-2 and 29-2 are not law. They are, at best, aspirational administrative policies. Their revocation at the whim of future administrations and the unchecked nature of their content highlight their insufficiency as a substitute for statutory or constitutional guarantees. As this Court reaffirmed in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), executive orders cannot substitute for law, and when they seek to alter or suspend legislation, they violate the Constitution.

VIII

The foundational principle of judicial review demands that no person be left without a remedy when government action deprives them of liberty or property. The idea that national security considerations categorically remove certain decisions from judicial scrutiny simply cannot hold up against the constitutional structure. The Constitution does not permit us to look away when individual rights are endangered by secret designations, classifications beyond judicial scrutiny, or amorphous executive determinations.

To allow section 103 to stand, or to permit other similarly flawed sections of the CRACK Act to persist unchallenged, would be to undermine the core principles of the Constitution. The framers knew well the danger of power concentrated in one branch. They designed a government of checks and balances, not a government where one branch reigns supreme. Today, we have not only the opportunity, but the duty, to reinforce that architecture and to ensure that constitutional principles are never abandoned in the name of national security.

For these reasons, I concur fully in the Court's opinion but write separately to express my view that other provisions of the CRACK Act are equally suspect and should, in due course, be reviewed.