No. 25-5724

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL TPS ALLIANCE, et al.,
Appellees,

v.

KRISTI NOEM, et al.,
Appellants.

On Appeal from the United States District Court
for the Northern District of California
District Court Case No. 3:25-cv-1766-EMC

PETITION FOR REHEARING EN BANC
(Mandate Issues February 4, 2026)

BRETT A. SHUMATE
Assistant Attorney General

YAAKOV M. ROTH
Principal Deputy Assistant Attorney General

DREW C. ENSIGN
Deputy Assistant Attorney General

SARAH WELCH
Counsel to the Assistant Attorney General

RUTH ANN MUELLER
Senior Litigation Counsel

JEFFREY M. HARTMAN
Trial Attorney
Office of Immigration Litigation
Civil Division, U.S. Dep't of Justice
P.O. Box 878, Ben Franklin Station
Washington, D.C. 20044
Phone: (202) 532-4404
Email: Jeffrey.M.Hartman@usdoj.gov

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INTRODUCTION

Temporary Protected Status (TPS) is a statutory program that provides work authorization and removal protection for up to 18-months for eligible aliens from countries designated by the Secretary of Homeland Security, in her discretion.[1] §1254a(a)(1)(A)-(B). Initial designations are based on specified conditions, here, "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." §1254a(b)(1)(C).

After initial designation, the Secretary determines whether the conditions underlying a TPS designation continue to be met through periodic reviews. §1254a(b)(2), (b)(3)(A). If the Secretary "does not determine" that the foreign state "no longer meets the conditions for designation," then "the period of designation of the foreign state is extended for an additional period of" 6, 12, or 18 months. §1254a(b)(3)(C). But if the Secretary decides that the foreign state "no longer continues to meet the conditions for designation," the Secretary "shall terminate the designation." §1254a(b)(3)(B). "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." §1254a(b)(5)(A).

[1] Unless noted, all statutory citations are to Title 8.

This litigation involves the vacatur of the extension of Venezuela's 2023 TPS designation, which was issued at the twilight of the Biden Administration on January 17, 2025, as well as the subsequent termination of that TPS designation. It also involves the partial vacatur of Haiti's most recent TPS extension. The district court granted preliminary APA relief under 5 U.S.C. §705. The government appealed and sought a stay pending appeal of the Venezuela termination, which this Court denied. The Supreme Court then intervened and stayed the district court's order, permitting the Venezuela TPS termination to take effect with only one Justice noting a dissent. *Noem v. NTPSA*, 145 S. Ct. 2728, 2728-29 (2025). In August, the panel nonetheless concluded that the Secretary lacked statutory authority to vacate a TPS extension and that the statute's review bar was inapplicable, so it affirmed the district court's §705 stay. *NTPSA v. Noem*, 150 F.4th 1000 (9th Cir. 2025) (*NTPSA I*), *motion to vacate filed* (Nov. 25, 2025).

Seven days later, relying heavily on the panel's preliminary-relief opinion, the district court entered partial final judgment for Plaintiffs on their APA claims. *NTPSA v. Noem*, 798 F. Supp. 3d 1108 (N.D. Cal. 2025). After the panel (again) declined to grant a stay, *NTPSA v. Noem*, — F.4th —, 2025 WL 2661556, at *7-14 (9th Cir. Sept. 17, 2025) (*NTPSA II*), the Supreme Court (again) stayed the district court's judgment and permitted the termination of Venezuela's 2023 TPS designation to take effect. *Noem v. Nat'l TPS Alliance*, 146 S. Ct. 23, 24 (2025).

Last week, for the third—but potentially not the last[2]—time, the panel held that §1254a(b)(5)(A)'s bar on "judicial review" does not encompass the vacatur of TPS extensions and that the Secretary lacked inherent authority to reconsider TPS extensions. *NTPSA v. Noem*, — F.4th —, 2026 WL 226573, at *7-9, *11-16 (9th Cir. Jan. 28, 2026) (*NTPSA III*). The panel also concluded that the Secretary's determinations had to be set aside on a universal basis because it could not devise narrower relief. *Id.* at *17-18.

En banc review is warranted. The issues here are exceptionally important. Fed. R. App. P. 40(b)(2)(D). This Court already recognized that the breadth of TPS's statutory review bar warranted en banc review, but that case became moot before the Court could resolve that question. *See Ramos v. Wolf*, 975 F.3d 872, 889 (9th Cir. 2020), *vacated upon rehearing en banc*, 59 F.4th 1010, 1011 (9th Cir. 2023); *Ramos v. Mayorkas*, 2023 WL 4363667, at *1 (9th Cir. June 29, 2023) (granting dismissal). Although *Ramos* was withdrawn and is not precedential, this Court's previous grant of en banc review confirms that en banc review is warranted. Likewise, the Supreme Court has recognized the importance of the issues presented in this case by granting two stays pending certiorari. *See Noem*, 146 S. Ct. at 24; *Noem*, 145 S. Ct. at 2728-29; *see also Hollingsworth v.*

[2] While this appeal was pending, and after the Supreme Court's second stay, Plaintiffs filed an untimely motion to alter the judgment to enter new relief—a declaratory judgment—on the same APA claims at issue here. The government's appeal of that second judgment is pending as No. 26-187. If the Court grants en banc rehearing in this appeal, it should consolidate the new appeal with this one. *Duncan v. Bonta*, 131 F.4th 1019, 1025 (9th Cir. 2025) (en banc).

Perry, 558 U.S. 183, 190 (2010) (requiring "reasonable probability" four justices would vote for certiorari to grant a stay).

The panel's resolution of these important legal questions is plainly wrong, and en banc review is warranted to correct those errors. The scope of the review bar, §1254a(b)(5)(A), is one such question. *NTPSA I* did not meaningfully analyze §1254a(b)(5)(A). Instead, it drew a false distinction between first-order questions (which it concluded are reviewable) and second-order (unreviewable) questions, straining to extend *Block v. Community Nutrition Institute*, 467 U.S. 340 (1984), which interpreted a statute expressly *authorizing* review, to this context. *But see City of Arlington v. FCC*, 569 U.S. 290, 297 (2013) (rejecting the analytic framework the panel employed). *NTPSA III* incorporated that flawed reasoning, despite acknowledging that the government's interpretation literally fit §1254a(b)(5)(A)'s text. And it dismissed the government's reading of the review bar as "absurd" because it would leave courts unable to review agency errors.

But Congress can, and clearly and convincingly did, eliminate judicial review of TPS determinations in §1254a(b)(5)(A). A review bar has material effect precisely and only when it shields an agency error from judicial correction. Congress has full awareness of this axiomatic fact when it enacts a review bar. That some errors would escape judicial review is a *conscious choice* made by Congress, not a symptom of absurdity. Congress may also judge that lower courts are too prone to reach erroneous results in

particular contexts—a concern hardly dispelled by the Supreme Court's need to issue serial stays here.

The panel's conclusion that the Secretary lacks authority to vacate TPS actions to correct errors is also important and wrong. The panel repeatedly concluded that the vacated extension of TPS for Venezuela was immediately effective, which (it thought) barred the Secretary from vacating the extension. Not so. Treating the vacated extension as immediately effective is directly at odds with the statute, §1254a(b)(3)(A), (c)(1)(iv), which does not authorize simultaneous overlapping extensions of the same TPS designation. And the panel's professed concern with TPS extensions exceeding the 18-month statutory maximum (§1254a(b)(3)(C)) illustrates the point: if the panel was right, then Secretary Mayorkas's TPS extension for Venezuela exceeded what Congress had authorized by *two months*. *NTPSA III*, 2026 WL 226573 at *11-14; §1254a(d)(3). How could the Secretary lack inherent authority to correct that (otherwise unreviewable, §1254a(b)(5)(A)) error? Because exceptionally important interpretive work remains, en banc review is warranted. *Id.* at *8.

Finally, en banc review is warranted because the panel exceeded its Article III authority and rendered an advisory opinion with respect to the partial vacatur of TPS for Haiti in conflict with precedent from both this circuit and the Supreme Court. The Haiti partial vacatur was superseded in November, *Termination of Designation of Haiti for* [*TPS*], 90 Fed. Reg. 54,733 (Nov. 28, 2025), and, regardless, expired on its own terms today, February 3, 2026, *Extension and Redesignation of Haiti for* [*TPS*], 89 Fed. Reg. 54484

(July 1, 2024). Fed. R. App. P. 40(b)(2)(A); *see Church of Scientology v. United States*, 506 U.S. 9, 12 (1992); *In re Pattullo*, 271 F.3d 898, 900-01 (9th Cir. 2001) ("[I]f [this Court] has not yet issued its mandate and the case becomes moot, the court will vacate its decision and dismiss the appeal as moot.").

All of these issues are exceptionally important, affect hundreds of thousands of people, and cry out for en banc rehearing to bring critically needed clarity to systematic litigation challenging the Secretary's TPS authority.

BACKGROUND

Venezuela. Venezuela was initially designated for TPS in 2021 based on extraordinary and temporary conditions that prevented its citizens from safely returning. *Designation of Venez. for [TPS]*, 86 Fed. Reg. 13,574 (Mar. 9, 2021).

In 2023, Secretary Mayorkas extended the 2021 Designation through September 2025 and, at the same time, redesignated Venezuela for TPS until April 2025. *Extension and Redesignation of Venez. for [TPS]*, 88 Fed. Reg. 68,130 (Oct. 3, 2023).

On January 17, 2025, days before leaving office, Secretary Mayorkas published an extension of the not-yet-expired 2023 Designation for 18 months and established a consolidated filing process that allowed *all* Venezuela TPS beneficiaries to obtain TPS through the expiration of that extension (*i.e.*, until October 2, 2026), including registrants under the separate 2021 designation, which remained effective until

September 2025. *Extension of the 2023 Designation of Venez. for [TPS]*, 90 Fed. Reg. 5,961 (Jan. 17, 2025).

On January 28, 2025, Secretary Noem vacated that late-breaking extension, months before it was scheduled to take effect, reasoning that both the consolidation of the two tracks and the premature extension failed to "acknowledge the novelty of its approach" or "explain how it is consistent with the TPS statute." *Vacatur of 2025 TPS Decision for Venez.*, 90 Fed. Reg. 8,805 (Feb. 3, 2025).

On February 5, 2026, Secretary Noem then terminated Venezuela's 2023 designation because it was "contrary to the national interest to permit the covered Venezuelan nationals to remain temporarily in the United States." *Termination of the October 3, 2023 Designation of Venez. for [TPS]*, 90 Fed. Reg. 9,040, 9,041 (Feb. 5, 2025).

Haiti. Haiti was most recently designated for TPS in 2021. *Designation of Haiti for [TPS]*, 86 Fed. Reg. 41,863 (Aug. 3, 2021). In January 2023, Secretary Mayorkas extended and redesignated Haiti for TPS. *Extension and Redesignation of Haiti for TPS*, 88 Fed. Reg. 5,022 (Jan. 26, 2023). In 2024, he again redesignated TPS for Haiti and extended the designation for eighteen months until today, February 3, 2026. *Extension and Redesignation of Haiti for* [*TPS*], 89 Fed. Reg. at 54,484.

On February 24, 2025, Secretary Noem partially vacated the 2024 extension, shortening the TPS designation from eighteen months ending on February 3, 2026, to twelve months ending on August 3, 2025. *Partial Vacatur of 2024 [TPS] Decision for Haiti*, 90 Fed. Reg. 10,511 (Feb. 24, 2025). On July 1, she terminated Haiti's TPS designation,

effective September 2. *Termination of the Designation of Haiti for [TPS]*, 90 Fed. Reg. 28,760 (July 1, 2025). Following litigation in *Haitian Evangelical Clergy Association, et al., v. Donald J. Trump*, *et al.*, 789 F. Supp. 3d 255 (E.D.N.Y. 2025) (*HECA*), *appeal pending* No. 25-2372 (2d Cir.), in November, the Secretary published a new termination that becomes effective on February 3, 2026—the day before the panel ordered its expedited mandate to issue. *Termination of Designation of Haiti for* [*TPS*], 90 Fed. Reg. at 54,733. The new termination specified that TPS would remain in effect for Haiti until February 3, 2026, superseding the partial vacatur. *Id.* at 54,738-39.

Procedural Background. The panel opinion conveys the relevant procedural history. *NTPSA III*, 2026 WL 226573, at *5. In addition, the government appealed the district court's second judgment. *Supra* n.1; No. 26-187.

ARGUMENT

I. THE PANEL ERRONEOUSLY DECIDED ISSUES OF EXCEPTIONAL IMPORTANCE

A. The TPS Statute Unambiguously Bars Review

The Court already recognized in *Ramos* that the scope of the judicial review bar in §1254a is exceptionally important. *Ramos v. Wolf*, 59 F.4th 1010 (9th Cir. 2023) (en banc order). That case became moot before this Court could address it. *Ramos*, 2023 WL 4363667, at *1. The question's importance has only grown since. This case is at the forefront of an unprecedented wave of interference with the Executive's immigration and foreign-affairs policy prerogatives epitomized by the deluge of TPS

litigation. Indeed, the Supreme Court has twice granted the government's stay applications in *this* case, reflecting a determination that it is likely to review the important questions it raises.

The panel resolved the reviewability question incorrectly, and the en banc Court should correct its mistake. Congress unambiguously barred judicial second-guessing of the Secretary's TPS determinations, providing that "[t]here 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" for TPS. §1254a(b)(5)(A). The plain meaning of the statute's broad terms confirms its broad sweep. *See Patel v. Garland*, 596 U.S. 328, 338-39 (2022) (examining the ordinary meaning of broadening terms in §1252(a)(2)(B)(i)'s review bar). First, Congress prefaced "determination" with the term "any," which has "an expansive meaning." *Id.* at 338 ("As this Court has repeatedly explained, the word 'any' has an expansive meaning" encompassing "judgments of 'whatever kind'") (cleaned up). The provision thus captures determinations "of whatever kind." *Id.* Second, the phrase "with respect to" "has a broadening effect, ensuring that the scope of a provision covers not only its subject but also matters relating to that subject." *Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 717 (2018). When Congress has stripped a court of jurisdiction "in respect to" certain claims, that is a "broad prohibition." *United States v. Tohono O'odham Nation*, 563 U.S. 307, 312 (2011). The TPS statute thus commits to the Secretary's unreviewable authority "any" and all determinations "with respect to" any TPS determination.

The panel missed that unavoidable conclusion by failing to apply ordinary tools of statutory construction. *See NTPSA III*, 2026 WL 226573, at *7-9; *NTPSA II*, 2025 WL 2661556, at *3; *NTPSA I*, 150 F.4th at 1017-18. Instead, it extracted "determination" from §1254a(b)(5)(A)—without grappling with its broadening purpose in *this* statute—and analogized it to *McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479 (1991), and *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43, 47 (1993). *NTPSA III*, 2026 WL 226573, at *8. But §1254a(b)(5)(A)'s text distances it from those cases.

McNary concluded that litigants could raise "collateral challenges to unconstitutional practices and policies" in the administration of an immigration program, *McNary*, 498 U.S. at 479, because Congress there barred judicial review only of "a determination respecting an" individual worker's "application." *Ramos*, 975 F.3d at 889 (quoting former 8 U.S.C. §1160(e)(1)); *see CSS*, 509 U.S. at 64 (interpreting "the phrase 'a determination respecting an application for adjustment of status'"). *McNary* emphasized that Congress *could* bar judicial review of collateral challenges if it used more expansive language. 498 U.S. at 494 (citing 8 U.S.C. §1329as an example). Congress did so here, barring review of "*any determination* of the [Secretary] *with respect to* the … termination … of a [TPS] designation." §1254a(b)(5)(A) (altered); *see* §1254a(b)(5)(B) (providing individualized administrative review of TPS eligibility); *cf. Bouarfa v. Mayorkas*, 604 U.S. 6, 19 (2024). That review bar covers every facet of the Secretary's TPS determinations.

Confirming the infirmity of its analysis, the panel manufactured a parade-of-horribles—such as the Secretary *selling* TPS extensions, *NTPSA III*, 2026 WL 226573, at *9—but those theoretical concerns "cannot surmount the plain language of the statute." *Truck Insur. Exch. v. Kaiser Gypsum Co., Inc.*, 602 U.S. 268, 284 (2024). And the panel's—contestable, *see Ramos*, 975 F.3d at 894—reliance on legislative history is equally flawed because the statute is unambiguous. *Gonzalez v. Herrera*, 151 F.4th 1076, 1081 (9th Cir. 2025). Courts must "*interpret* the statute, not rewrite it." *Jennings v. Rodrigeuz*, 583 U.S. 281, 286 (2018).

Even the panel tacitly acknowledged its flawed approach, characterizing the government's construction of §1254a(b)(5)(A) as at "a high level of generality[.]" *NTPSA III*, 2026 WL 226573, at *9. Broader than the panel would prefer, no doubt. But exactly what Congress intended in providing "no judicial review *of any determination* of the [Secretary] *with respect to* the designation, or termination or extension of a designation[.]" §1254a(b)(5)(A) (altered).

Ultimately, judicial review of the Venezuela termination is foreclosed because it is a "determination ... with respect to ... the termination" of a prior TPS extension. And the vacatur of the extension of Venezuela's 2023 TPS designation is also literally a "determination ... with respect to the ... extension" of TPS—*i.e.*, a determination that the extension was improper and should have no legal effect. Given the manifest errors in the panel's interpretation of §1254a(b)(5)(A), rehearing en banc is warranted on this ground alone.

B. The Secretary Has Inherent Authority to Reconsider Erroneous TPS Extensions—Especially Before They Take Effect

Even if the question of the Secretary's authority to vacate the termination were judicially reviewable, the panel erred in its resolution that question on the merits. The Secretary has inherent authority to reconsider a TPS extension months *before* it became effective on April 3, 2025. *See Haig v. Agee,* 453 U.S. 280 (1981); *China Unicom (Ams.) Ops. Ltd. v. FCC*, 124 F.4th 1128, 1143 (9th Cir. 2024); *see also Ivy Sports Medicine, LLC v. Burwell*, 767 F.3d 81, 86 (D.C. Cir. 2014) (collecting cases and explaining that "administrative agencies are assumed to possess at least some inherent authority to revisit their prior decisions, at least if done in a timely fashion."). Nowhere did Congress prohibit the Secretary from exercising that authority. §1254a. En banc rehearing is warranted to correct the panel's erroneous understanding of the Secretary's authority to administer TPS, which conflicts with this Court's *China Unicom* decision.

The panel's conclusion that the Secretary lacks inherent authority to reconsider Venezuela's TPS extension is predicated entirely on its erroneous conclusion that Secretary Mayorkas's extension of Venezuela's 2023 TPS designation was immediately effective when announced on January 17, 2025. *NTPSA III*, 2026 WL 226573, at *15 (citing *NTPSA I*, 150 F.4th at 1024 n.12). The statute authorizes TPS protection only in 6-, 12-, or 18-month increments. §§1254a(b)(2)(B), (b)(3)(C). The Secretary's periodic review of a "designation, and any extended period of designation" must occur at least 60 days before the end of that period. §1254a(b)(3)(A). Any TPS extension is only "for

an additional period," and does not create an overlapping extension. §1254a(b)(3)(C) (altered); *see also* §1254a(b)(2)(B) (TPS designation remains "in effect until the effective date of the termination").

The panel's efforts to escape the obvious—that TPS extensions run consecutively—all fail. *First*, the panel erred in relying on the Secretary's statement addressing putative reliance interests in the exceedingly brief period after Secretary Mayorkas's announced extension and the imperative of quick corrective action; the Secretary did not (and cannot) change the statute through a Federal Register notice. *Loper Bright v. Raimondo*, 603 U.S. 369, 386 (2024); *NTPSA III*, 2026 WL 226573, at *15. Moreover, Secretary Mayorkas announced that his "[e]xtension of the 2023 Designation of Venezuela for TPS begins on April 3, 2025[.]" 90 Fed. Reg. at 5,961. The panel never explains how—even under its construction of §1254a(b)(5)(A)—it could possibly alter Secretary Mayorkas's determination of when Venezuela's TPS *extension* became effective.

Second, the panel's superfluity concern—that vacatur would be inconsistent with §1254a(b)(2)(B), which provides that a TPS designation "shall remain in effect until the effective date of the termination"—is nonexistent because the Secretary's TPS reconsideration did not impact Venezuelans who actually received TPS documents in reliance on the announced extension. §1254a(b)(2)(B); *NTPSA III*, 2026 WL 226573, at *15. Instead, as the statute provides, the vacatur "only appl[ied] to documentation

and authorization issued or renewed after the effective date" of vacatur's publication in the Federal Register. §1254a(d)(3); *see NTPSA*, 798 F. Supp. 3d at 1145-46.[3]

Third, the panel conflated the period of TPS registration with a TPS designation or extension under §1254a(b). Although a TPS designation or extension always precedes registration, nothing about the registration process prevents the Secretary from reconsidering a TPS extension. The panel's logic is obviously incorrect because it would mean that the Secretary could *never* terminate an initial TPS designation of six months (the statutory default)—because the associated registration period lasts *at least* 180 days, §1254a(c)(1)(A)(iv)—even though Congress expressly authorized termination after an initial designation. §1254a(b)(3)(A)-(B). The panel's rationale is irreconcilable with the statute Congress wrote.

II. THE PANEL'S ADVISORY OPINION RESPECTING THE PARTIAL VACATUR OF TPS FOR HAITI CONFLICTS WITH DECISIONS OF THIS COURT AND THE SUPREME COURT

En banc review is also warranted because the panel exceeded its Article III authority and rendered an advisory opinion about the moot partial vacatur of TPS for Haiti, improperly "deciding legal disputes or expounding on the law in the absence of… a case or controversy." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 90 (2013); *see Teter v. Lopez*, 125 F.4th 1301, 1306-07 (9th Cir. 2025) (en banc) (dismissing challenge to statute made moot by intervening legislation). The only claim on appeal with regard to Haiti is

[3] The government has not contested that aspect of the district court's ruling.

Plaintiffs' challenge to the partial vacatur. The partial vacatur was already superseded by subsequent action and has now expired too. Plaintiffs' challenge to it is thus doubly moot.

The Haiti vacatur's only effect was to advance the expiration of its TPS designation by six months, from February 3, 2026, to August 3, 2025. *Partial Vacatur*, 90 Fed. Reg. at 10,514 (effect of vacatur). Those six months have now elapsed. Even if the partial vacatur had never issued, Haiti's most recent TPS extension would have expired—and did expire—on February 3, 2026, the day this petition is filed and the day before the panel set the mandate to issue.[4] *Extension and Redesignation of Haiti for* [*TPS*], 89 Fed. Reg. at 54,485.

The Haiti designation further became moot when it was superseded on November 28, 2025. *Termination of Designation of Haiti for* [*TPS*], 90 Fed. Reg. at 54,738-39. Consistent with the periodic review mandated by statute, §1254a(b)(3)(A), the Secretary reviewed that TPS designation at least 60 days before its expiration and issued a Federal Register notice on November 28 terminating TPS for Haiti effective on February 3, 2026. *Id.* That notice superseded the partial vacatur by specifying that

[4] Eligible aliens from Haiti have continuously received TPS protections since July 1, 2025. *See HECA*, 789 F. Supp. 3d at 276. The United States District Court for the District of Columbia stayed the November 28 termination of TPS for Haiti last night, so TPS protections remain in effect. *See Miot v. Trump*, — F. Supp. 3d —, 2026 WL 266413 (D.D.C. Feb. 2, 2026) (granting interim relief under 5 U.S.C. § 705).

Haiti would retain its TPS designation until that expiration date. *Id.* At that juncture, the portion of this appeal involving Haiti became moot.

Indeed, this Court has repeatedly recognized that action superseding or repealing the challenged action moots a challenge to the original action. *Teter*, 125 F.4th at 1306-07; *Donovan v. Vance*, 70 F.4th 1167, 1171 (9th Cir. 2023) (litigation moot where challenged Executive Order was revoked); *Forest Guardians v. U.S. Forest Serv.*, 329 F.3d 1089, 1096 (9th Cir. 2003); *Am. Rivers v. Nat'l Marine Fisheries Serv.*, 126 F.3d 1118, 1123-24 (9th Cir. 1997); *Or. Natural Res. Council, Inc. v. Grossarth*, 979 F.2d 1377, 1379-80 (9th Cir. 1992). Once that superseding action took place, all that the panel could do was provide an advisory opinion about the partial vacatur.

The government advised the panel of mootness. ACMS No. 65. And Plaintiffs recognized as much. Oral Arg. at 24:12-15 (Jan. 14, 2026) (asserting that *Munsingwear* vacatur was unwarranted because "they're the ones who have effectively mooted it out by making a new determination"). Further, the voluntary-cessation exception is wholly inapplicable because: the Secretary was *required* to act when she did to comply with §1254a(b)(3)(A)'s periodic review requirements. Indeed, the challenged conduct—the partial vacatur—demonstrably has not recurred, and the authority to vacate a TPS extension is not an issue that "would *always* evade review," as the remainder of the panel's opinion (and ongoing litigation below) illustrates. *Donovan*, 70 F.4th at 1172 n.5 (cleaned up). At minimum, even if superseding the partial vacatur had somehow not rendered the challenge to it moot, the partial vacatur became indisputably moot when

the Haiti extension expired on its own terms today. *See Brach v. Newsom*, 38 F.4th 6, 11-15 (9th Cir. 2022) (en banc) (challenge to Governor's COVID guidance closing schools was moot where it was "revoked" and schools reopened).

Because it was "impossible for the [panel] to grant any effectual relief whatever" to Plaintiffs in light of the Secretary's intervening TPS termination on the pre-litigation timeline, the panel overstepped its Article III bounds and applicable precedent enforcing them. *Church of Scientology*, 506 U.S. at 12; *see Teter*, 125 F.4th at 1306-07; *In re Pattullo*, 271 F.3d at 900-01 ("if [this Court] has not yet issued its mandate and the case becomes moot, the court will vacate its decision and dismiss the appeal as moot."). Disagreement with the Secretary's policy preferences is not grounds to disregard the Constitution or precedent: en banc review is warranted. Fed. R. App. P. 40(b)(2)(A).

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CONCLUSION

This Court should grant rehearing en banc and stay issuance of the mandate while it considers this en banc petition. *See* Fed. R. App. P. 41(b); Gen. Order 5.1(b)(8) (automatic stay).

Respectfully submitted,

BRETT A. SHUMATE
Assistant Attorney General

YAAKOV M. ROTH
Principal Deputy Assistant Attorney General

DREW C. ENSIGN
Deputy Assistant Attorney General

SARAH WELCH
Counsel to the Assistant Attorney General

RUTH ANN MUELLER
Senior Litigation Counsel

/s/ Jeffrey M. Hartman
Office of Immigration Litigation
U.S. Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, DC 20044
Telephone: (202) 532-4404
Email: Jeffrey.M.Hartman@usdoj.gov
ERIC SNYDERMAN
CATHERINE ROSS
LAUREN BRYANT
LORI MACKENZIE
DANIEL CAPPELLETTI
ILANA KRAMER
SHELBY WADE
RACHEL P. BERMAN-VAPORIS
Trial Attorneys

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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9th Cir. Case Number(s) 25-5724

I am the attorney or self-represented party.

I certify that pursuant to Circuit Rule 40-1, the attached petition for panel rehearing/petition for rehearing en banc/response to petition is *(select one)*:

[X] Prepared in a format, typeface, and type style that complies with Fed. R. App. P. 32(a)(4)-(6) and **contains the following number of words:** 4,178**.**
(Petitions and responses must not exceed 4,200 words)

[X] Contains appended copies of the panel's challenged opinions. 9th Cir. R. 40-1(d).

Signature /s/ Jeffrey M. Hartman **Date:** February 3, 2026

APPENDIX A

NTPSA v. Noem, — F.4th —, 2026 WL 226573 (9th Cir. Jan. 28, 2026) (*NTPSA III*)

2026 WL 226573
Only the Westlaw citation is currently available.
United States Court of Appeals, Ninth Circuit.

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, Plaintiffs - Appellees,

v.

Kristi NOEM; United States Department of Homeland Security; United States of America, Defendants - Appellants.

No. 25-5724
|
Argued and Submitted January 14, 2026 Pasadena, California
|
Filed January 28, 2026

Synopsis

Background: Organization and noncitizens, who were Venezuelan and Haitian holders of Temporary Protected Status (TPS), brought action against United States, Secretary of Homeland Security, and Department of Homeland Security (DHS), contending that Secretary's vacatur and termination of Venezuela's and Haiti's TPS designations and their extensions exceeded her statutory authority and were arbitrary and capricious under Administrative Procedure Act (APA) and violated equal protection. The United States District Court for the Northern District of California, Edward M. Chen, J., 773 F.Supp.3d 807, granted plaintiffs' motion to postpone Venezuela vacatur, and government appealed. After the Supreme Court stayed postponement order, the United States Court of Appeals for the Ninth Circuit, 150 F.4th 1000, affirmed order. Plaintiffs moved for partial summary judgment as to APA claims. The District Court, Chen, J., 798 F.Supp.3d 1108, granted plaintiffs' motion. Government appealed. The Court of Appeals, 2025 WL 2661556, denied government's emergency stay request, but the Supreme Court, 146 S.Ct. 23, granted stay. Government appealed.

Holdings: The Court of Appeals, Wardlaw, Circuit Judge, held that:

Supreme Court's stay orders did not preclude plaintiffs from prevailing on merits of APA claims;

INA provision barring judicial review of TPS designations did not preclude claims that Secretary acted in excess of statutory authority;

INA's general bar on non-individualized injunctive relief did not preclude claims to set aside action under APA;

Secretary lacked inherent authority to vacate prior extension of TPS designation;

Secretary lacked statutory authority to reduce period of prior TPS extension;

proper remedy was to set aside vacaturs and terminations in their entirety; and

in a concurring opinion, for a majority of the court, Mendoza, Circuit Judge, held that vacatur and termination were arbitrary and capricious under APA.

Affirmed.

Mendoza, Circuit Judge, filed concurring opinion, in which Wardlaw, Circuit Judge, joined in part.

Procedural Posture(s): On Appeal; Review of Administrative Decision; Motion for Summary Judgment.

Appeal from the United States District Court for the Northern District of California, Edward M. Chen, District Judge, Presiding, D.C. No. 3:25-cv-01766-EMC

Attorneys and Law Firms

Ahilan T. Arulanantham (argued), Center for Immigration Law and Policy, UCLA School of Law, Los Angeles, California; Diana Sanchez and Eva L. Bitran, American Civil Liberties Union Foundation of Southern California, Los Angeles, California; Michelle Y. Cho, Emilou MacLean, and Amanda Young, American Civil Liberties Union Foundation of Northern California, San Francisco, California; Jessica K. Bansal and Lauren M. Wilfong, National Day Laborer Organizing Network, Pasadena, California; Erik M. Crew, Haitian Bridge Alliance, San Diego, California; for Plaintiffs-Appellees.

Sarah Welch (argued), Counsel to the Assistant Attorney General; Carlton F. Sheffield, Jeffrey M. Hartman, Eric M. Snyderman, Craig A. Newell Jr., and Lauren Bryant, Trial Attorneys; Drew C. Ensign, Deputy Assistant Attorney General; William H. Weiland, Acting Assistant Director; Office of Immigration Litigation; Yaakov M. Roth, Principal Deputy Assistant Attorney General; Brett A. Shumate, Assistant Attorney General; Civil Division, United States Department of Justice, Washington, D.C.; for Defendants-Appellants.

Christopher J. Hajec, Matt A Crapo, and Jonathon P. Hauenschild, Federation for American Immigration Reform, Washington, D.C., for Amicus Curiae Federation for American Immigration Reform.

Annabelle C. Wilmott, Brandy Doyle, and Jesse Basbaum, Deputy Attorneys General; Vilma Palma-Solana, Supervising Deputy Attorney General; Michael Newman, Senior Assistant Attorney General; Rob Bonta, California Attorney General; Office of the California Attorney General, Sacramento, California; Cleland B. Welton II, Assistant Solicitor General; Zoe Levine, Special Counsel for Immigrant Justice; Judith N. Vale, Deputy Solicitor General; Barbara D. Underwood, Solicitor General; Letitia James, New York Attorney General; Office of the New York Attorney General, New York, New York; Philip J. Weiser, Colorado Attorney General, Office of the Colorado Attorney General, Denver, Colorado; Kathleen Jennings, Delaware Attorney General, Office of the Delaware Attorney General, Wilmington, Delaware; Brian L. Schwalb, District of Columbia Attorney General, Office of the District of Columbia Attorney General, Washington, D.C.; Anne E. Lopez, Hawai'i Attorney General, Office of the Hawai'i Attorney General, Honolulu, Hawai'i; Kwame Raoul, Illinois Attorney General, Office of the Illinois Attorney General, Chicago, Illinois; Aaron M. Frey, Maine Attorney General, Office of the Maine Attorney General, Augusta, Maine; Andrea J. Campbell, Massachusetts Attorney General, Office of the Massachusetts Attorney General, Boston, Massachusetts; Keith Ellison, Minnesota Attorney General, Office of the Minnesota Attorney General, St. Paul, Minnesota; Aaron D. Ford, Nevada Attorney General, Office of the Nevada Attorney General, Carson City, Nevada; Matthew J. Platkin, New Jersey Attorney General, Office of the New Jersey Attorney General, Trenton, New Jersey; Dan Rayfield, Oregon Attorney General, Office of the Oregon Attorney General, Salem, Oregon; Charity R. Clark, Vermont Attorney General, Office of the Vermont Attorney General, Montpelier, Vermont; Anthony G. Brown, Maryland Attorney General, Office of the Maryland Attorney General, Baltimore, Maryland; Nicholas W. Brown, Washington Attorney General, Office of the Washington Attorney General, Olympia, Washington; for Amici Curiae States of California, New York, Colorado, Delaware, Hawai'i, Illinois, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, Oregon, Vermont, Washington, and the District of Columbia.

Vincent Levy, Colin A. Mark, and Torrell E. Mills, Holwell Shuster & Goldberg LLP, New York, New York, for Amici Curiae Economists.

Daniel R. Suvor, O'Melveny & Myers LLP, Los Angeles, California; Adam Cederbaum, Corporation Counsel, Boston, Massachusetts; Ben Pearlman, County Attorney, Boulder, Colorado; Megan B. Bayer, City Solicitor, City of Cambridge Law Department, Cambridge, Massachusetts; Hydee F. Soto, City Attorney, Los Angeles, California; Heather Ferbert, City Attorney, San Diego, California; Kristyn Anderson, City Attorney, Minneapolis, Minnesota; Muriel Goode-Trufant, Corporation Counsel, New York, New York; Ryan Richardson, City Attorney, Oakland, California; Robert Taylor, City Attorney, Portland, Oregon; Lyndsey M. Olson, City Attorney, St. Paul, Minnesota; David Chiu, City Attorney, San Francisco, California; Tony Lopresti, County Counsel, San Jose, California; Lauren Langer, City Attorney, Best Best & Krieger LLP, Los Angeles, California; for Amici Curiae 14 Local Governments.

Anne Lai, UC Irvine School of Law, Irvine, California; Jaya Ramji-Nogales, Beasley School of Law, Temple University, Philadelphia; Andrew I. Schoenholtz, Georgetown University Law Center, Washington, D.C.; for Amici Curiae Immigration Law Scholars.

Stephen J. Van Stempvoort and Amanda L. Rauh-Bieri, Miller Johnson, Grand Rapids, Michigan; Robert S. Chang and Shaleen Shanbhag, Fred T. Korematsu Center for Law and Equality, UC Irvine School of Law, Irvine, California; Rose Cuion-Villazor, Center for Immigrant Justice, Rutgers Law School, Newark, New Jersey; for Amici Curiae Members of Congress.

Before: Kim McLane Wardlaw, Salvador Mendoza, Jr., and Anthony D. Johnstone, Circuit Judges.

Opinion by Judge Wardlaw;

Concurrence by Judge Mendoza

OPINION

WARDLAW, Circuit Judge:

***1** We again consider the National TPS Alliance's and individual Temporary Protected Status ("TPS") beneficiaries' (collectively, Plaintiffs) challenge to Department of Homeland Security ("DHS") Secretary Kristi Noem's vacatur and termination of Venezuela's TPS designation. We also consider Plaintiffs' challenge to Secretary Noem's partial vacatur of Haiti's TPS designation. The district court held that the Secretary's actions exceeded her statutory authority under the TPS statute, 8 U.S.C. § 1254a, and that the Secretary acted in an arbitrary and capricious manner. The district court therefore set aside the Venezuelan vacatur and termination, and the Haitian partial vacatur. We affirm.

Congress created TPS to provide stability, predictability, and a brief reprieve from deportation to qualifying citizens of designated countries. The catch: that reprieve is guaranteed for no more than 18 months at a time. *See* 8 U.S.C. § 1254a(b)(2)(B), (b)(3)(C). The TPS statute grants the Secretary of Homeland Security significant discretion and authority in designating, extending, and terminating a country's TPS. But by its plain language, the statute does not grant the Secretary the power to vacate an existing TPS designation. Secretary Noem exceeded her statutory authority by vacating and terminating Venezuela's TPS designation, and by partially vacating Haiti's TPS designation.

The Secretary's unlawful actions have had real and significant consequences for the hundreds of thousands of Venezuelans and Haitians in the United States who rely on TPS. The record is replete with examples of hard-working, contributing members of society—who are mothers, fathers, wives, husbands, and partners of U.S. citizens, pay taxes, and have no criminal records—who have been deported or detained after losing their TPS. Other TPS beneficiaries have lost their jobs after the Secretary stripped them of their work authorization forms, leaving them with no ability to provide for their families. Some beneficiaries, unable to work legally, have now lost their homes, rendering them and their families homeless. The Secretary's actions affect physicians, artists, automotive mechanics, food service employees, construction workers, students, and thousands of others who "didn't come [to the United States] for hand-outs," but "to work hard." The Secretary's actions have left hundreds of thousands of people in a constant state of fear that they will be deported, detained, separated from their families, and returned to a country in which they were subjected to violence or any other number of harms.

The Secretary's actions fundamentally contradict Congress's statutory design, and her assertion of a raw, unchecked power to vacate a country's TPS is irreconcilable with the plain language of the statute. The district court correctly set aside the Secretary's unlawful actions.

I. FACTUAL BACKGROUND

A. History of Temporary Protected Status

The TPS statute was Congress's solution to the unprincipled and largely unchecked power that presidents enjoyed through the extended voluntary departure ("EVD") program. EVD was a discretionary power of the president to allow foreign nationals to remain in the United States for humanitarian reasons. As we explained in *National TPS Alliance v. Noem*, 150 F.4th 1000, 1008 (9th Cir. 2025) ("*NTPSA I*"), in creating the TPS statutory program, "Congress designed a system of temporary status that was predictable, dependable, and insulated from electoral politics." In effect, Congress codified the executive branch's existing EVD powers, but added guardrails and provided guidance on the circumstances in which Congress deemed it appropriate to permit foreign nationals to remain in the United States. Once a country is designated for TPS, foreign nationals of that country may apply for immigration status, which, if granted, prevents them from being removed from the U.S. and enables them to obtain authorization to work during the period of designation. *See* 8 U.S.C. § 1254a(a)(1). [1]

***2** The TPS statute did not replace EVD. In fact, after the TPS statute was enacted, President George H.W. Bush created Deferred Enforced Departure ("DED"), another extra-statutory discretionary power of the president to provide work authorization and protection from deportation to certain foreign nationals. *See NTPSA I*, 150 F.4th at 1009 (citing Andrew I. Schoenholtz, *The Promise and Challenge of Humanitarian Protection in the United States: Making Temporary Protected Status Work as a Safe Haven*, 15 NW. J. L. & SOC. POL'Y 1, 5 (2019)). DED protections have been authorized for several countries across multiple presidential administrations. *Id.* Unlike EVD and DED,

however, Temporary Protected Status is, as its name suggests, temporary. *See* § 1254a(b)(2)(B), (c)(3)(C). TPS can be granted or extended only when specified country conditions exist, such as armed conflict, natural disaster, significant instability, or other "extraordinary and temporary conditions in the foreign state." *See* § 1254a(b)(1). And TPS is constrained by procedural requirements that the Secretary must follow before designating, extending, or terminating a country's TPS. *See generally* § 1254a.

Since the TPS statute was enacted in 1990, more than twenty countries have received TPS designations. TPS has been used to address Ebola outbreaks in Guinea and Sierra Leone, genocide in Rwanda, and civil war in Somalia.[2] TPS designations have been extended for countries with persisting qualifying country conditions and terminated for countries in which conditions have improved.[3] In the thirty-five-year history of TPS, however, no presidential administration had ever asserted the power to vacate an existing TPS designation, until the Second Trump Administration did so in 2025.

B. Venezuela's TPS Designation, Extension, Vacatur, and Termination

In March 2021, then-Secretary Mayorkas designated Venezuela for TPS ("2021 Designation"). 86 Fed. Reg. 13574 (Mar. 9, 2021). This designation was extended twice. *See* 87 Fed. Reg. 55024 (Sept. 8, 2022); 88 Fed. Reg. 68130 (Oct. 3, 2023). Secretary Mayorkas's second extension simultaneously re-designated Venezuela for TPS ("2023 Designation"), expanding the pool of Venezuelans eligible for protection. 88 Fed. Reg. 68130 (Oct. 3, 2023). The second extension of the 2021 Designation "allow[ed] existing TPS beneficiaries to retain TPS through" the expiration of the extension but required them to "re-register during the re-registration period." *Id.* at 68130. The eligibility criteria for TPS beneficiaries did not change. In other words, the population of Venezuelan citizens eligible for TPS under the 2021 Designation would also be eligible for TPS under the 2023 Designation. *Id.* However, as of October 2023, existing 2021 Designation beneficiaries re-registered for TPS separately from beneficiaries of the 2023 Designation. *Id.* 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. *Id.* at 68134.

On January 17, 2025, Secretary Mayorkas extended the 2023 Designation by eighteen months, through October 2, 2026 ("2025 Extension").[4] 90 Fed. Reg. 5961 (Jan. 17, 2025). The extension was set to become effective on April 3, 2025. *Id.* at 5962. Because the 2021 and 2023 Designations had resulted in two distinct registration and filing processes, Secretary Mayorkas consolidated them. *Id.* at 5963. Secretary Mayorkas found that "[o]perational challenges in the identification and adjudication of Venezuela TPS filings and confusion among stakeholders exist because of the two separate TPS designations," and consolidated the filing processes to "decrease confusion[,] ... ensure optimal operational processes, and maintain the same eligibility requirements." *Id.*

***3** President Trump's second term began on January 20, 2025. His administration immediately began the process of vacating the 2025 Extension.

On January 24, 2025, DHS began drafting the decision to vacate the TPS extension. Secretary Noem was confirmed the next day. On January 25, 2025, DHS told lawyers who had been involved in the 2025 Extension that DHS was "not at all interested in revisiting the substance of whether [the vacatur] should go forward." The vacatur decision was finalized on January 27, 2025, and signed by Secretary Noem on January 28, 2025. The vacatur decision ("Venezuela Vacatur") was published in the Federal Register on February 3, 2025. 90 Fed. Reg. 8805.

The Venezuela Vacatur described the 2025 Extension as "novel[,] ... thin and inadequately developed," and concluded that "vacatur is warranted to untangle the confusion, and provide an opportunity for informed determinations regarding the TPS designations and clear guidance." 90 Fed. Reg. at 8807. As support for its conclusion, the Venezuelan Vacatur cited President Trump's January 20, 2025, Executive Order entitled "Protecting the American People Against Invasion." *Id.* at 8807 n.3 (citing Exec. Order No. 14159, *reprinted in* 90 Fed. Reg. 8443 (Jan. 29, 2025)). The vacatur did not include any analysis of country conditions evidence. *Id.*

On January 26, 2025, before the vacatur was finalized, DHS began drafting a termination of Venezuela's TPS. Secretary Rubio provided recommendations to Secretary Noem on January 31, 2025, in a one-and-a-half-page letter. The letter addressed only the United States' national interest in terminating TPS for Venezuela and did not discuss country conditions. United States Citizenship and Immigration Services ("USCIS") recommended termination that same day. Secretary Noem signed off on the termination on

February 1, 2025, and the termination decision ("Venezuela Termination") was published in the Federal Register on February 5, 2025. 90 Fed. Reg. 9041–42. The Secretary terminated the 2023 Designation, which was set to expire on October 2, 2026, but not the 2021 Designation, which had only been extended to September 10, 2025. *Id.* at 9042, 9044.

The Venezuela Termination concluded that "it is contrary to the national interest to permit the Venezuelan nationals ... to remain temporarily in the United States." 90 Fed. Reg. at 9042. The Termination 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.* However, it also stated that, "even assuming the relevant [country] conditions in Venezuela remain[ed] both 'extraordinary' and 'temporary,' termination of the 2023 Venezuela TPS designation [was] required" because the Secretary concluded that "it [was] contrary to the national interest to permit the Venezuelan nationals ... to remain temporarily in the United States." *Id.* Secretary Noem ultimately declined to make any factual findings as to the country conditions in Venezuela, explaining that she was "not required to make findings on issues the decision of which is unnecessary to the results [she] reach[ed]." *Id.* at 9042 n.3 (quoting *INS v. Bagamasbad*, 429 U.S. 24, 25, 97 S.Ct. 200, 50 L.Ed.2d 190 (1976) (per curiam)). In other words, the Secretary confirmed that she was relying solely on the national interest ground for terminating Venezuela's TPS. *Id.*

C. Haiti's TPS Designation, Extension, and Partial Vacatur

***4** Haiti has been designated for TPS for sixteen years. Haiti was initially designated for TPS in 2010, after a 7.0 magnitude earthquake "destroyed most of the capital city" and crippled its critical infrastructure. Designation of Haiti for Temporary Protected Status, 75 Fed. Reg. 3476, 3477 (Jan. 21, 2010). DHS concluded that "there clearly exist[ed] extraordinary and temporary conditions preventing Haitian nationals from returning to Haiti in safety" "[g]iven the size of the destruction and humanitarian challenges." *Id.*

Haiti's TPS was repeatedly extended due to ongoing complications caused by the earthquake, as well as a cholera epidemic. *See, e.g.*, 77 Fed. Reg. 59943, 59944 (Oct. 1, 2012) (extending Haiti's TPS due to continued extraordinary conditions caused by the earthquake, as well as a "deadly cholera outbreak"). The First Trump Administration extended Haiti's TPS designation once, for six months. [5] *See* Extension of the Designation of Haiti for Temporary Protected Status, 82 Fed. Reg. 23830 (May 24, 2017). The Administration then attempted to terminate Haiti's TPS designation, effective as of July 22, 2019. *See* Termination of the Designation of Haiti for Temporary Protected Status, 83 Fed. Reg. 2648 (Jan. 18, 2018). A district court enjoined that termination, *Saget*, 375 F. Supp. 3d at 379, and the new Biden Administration withdrew the Government's pending appeal of the order enjoining the termination, *see Saget v. Biden*, 2021 WL 12137584 (Oct. 5, 2021).

Haiti was designated again for TPS in August 2021. *See* Designation of Haiti for Temporary Protected Status, 86 Fed. Reg. 41863 (Aug. 3, 2021). Secretary Mayorkas extended and redesignated Haiti's TPS in 2023, *see* 88 Fed. Reg. 5022 (Jan. 26, 2023), and again in 2024, *see* 89 Fed. Reg. 54484 (July 1, 2024). The July 2024 re-designation and extension was set to expire on February 3, 2026. *Id.*

On February 7, 2025, DHS prepared and circulated a draft decision partially vacating Secretary Mayorkas' July 2024 extension. The draft decision was reviewed and signed off by DHS staff between February 14 and 17 and signed by Secretary Noem on February 18, 2025. DHS announced the vacatur in a press release on February 20, 2025, and it was published in the Federal Register on February 24, 2025 ("Haiti Partial Vacatur"). *See* Partial Vacatur of 2024 Temporary Protected Status Decision for Haiti, 90 Fed. Reg. 10511 (Feb. 24, 2025).

The Haiti Partial Vacatur explained that it was shortening Haiti's TPS designation period "from 18 months to 12 months," such that the designation would expire on August 3, 2025, instead of February 3, 2026. *Id.* DHS offered three reasons for the Partial Vacatur of Secretary Mayorkas's extension: first, Secretary Mayorkas's July 1, 2024, notice failed to explain why an 18-month TPS period was selected instead of a 6- or 12-month period; second, the notice did not explain why permitting Haitians to remain in the United States was not contrary to the national interest of the United States; and third, the country conditions reports on which Secretary Mayorkas relied actually suggested "an improvement in conditions." *Id.* at 10513. Secretary Noem subsequently terminated Haiti's TPS, effective September 2, 2025 ("Haiti Termination"). [6] *See* 90 Fed. Reg. 28760 (July 1, 2025).

II. Procedural History

***5** Plaintiffs filed suit in the United States District Court for the Northern District of California on February 19, 2025. The district court granted Plaintiffs' motion to postpone the Venezuela Vacatur on March 31, 2025. *National TPS Alliance v. Noem*, 773 F. Supp. 3d 807 (N.D. Cal. 2025). The Government sought a stay of the district court's order from our court, which we denied. *National TPS Alliance v. Noem*, 2025 WL 1142444 (9th Cir. Apr. 18, 2025). The Government then turned to the Supreme Court, which granted the Government's emergency request to stay the district court's order on May 19, 2025. *National TPS Alliance v. Noem*, —— U.S. ——, 145 S. Ct. 2728, 221 L.Ed.2d 981 (Mem.) (2025). We affirmed the district court's postponement order on August 29, 2025. *NTPSA I*.

On September 5, 2025, the district court granted partial summary judgment to Plaintiffs on their Administrative Procedure Act ("APA") claims, and set aside both the Secretary's vacatur and termination of Venezuela's TPS designation, and the partial vacatur of Haiti's TPS designation under APA § 706. *National TPS Alliance v. Noem*, 798 F. Supp. 3d 1108 (N.D. Cal. 2025). We denied the Government's emergency stay request on September 17, 2025. *National TPS Alliance v. Noem*, —— F.4th ——, 2025 WL 2661556 (9th Cir. 2025) ("*NTPSA II*"). The Supreme Court granted a stay of the district court's set aside order on October 3, 2025. *Noem v. National TPS Alliance*, 606 U.S. ——, 146 S.Ct. 23, 222 L.Ed.2d 1241 (2025). The Government timely appealed the September 5, 2025, partial summary judgment order.

III. Standard of Review

"We review the district court's grant of summary judgment de novo, viewing the evidence and drawing all reasonable inferences in the light most favorable to the non-moving party." *Anthony v. Trax Int'l Corp.*, 955 F.3d 1123, 1127 (9th Cir. 2020) (quoting *Cohen v. City of Culver City*, 754 F.3d 690, 694 (9th Cir. 2014)).

IV. Effect of the Supreme Court's Emergency Stay Orders

At the outset, we address the Government's argument that we are bound by the Supreme Court's twice determination that the Government is likely to succeed on the merits. However, the Supreme Court's emergency stay orders did not expressly decide the issue of whether the Government was likely to succeed on the merits of this case, so we reject the Government's argument that the stay orders control our determination of this case. *See Noem v. National TPS Alliance*, 606 U.S. ——, 146 S.Ct. 23 (Mem.) (2025) ("Although the posture of the case has changed, the parties' legal arguments and relative harms generally have not. The same result that we reached in May is appropriate here.").

Unlike *NTPSA I* and *NTPSA II*, our opinion today for the first time addresses solely the merits of Plaintiffs' claims. Because "[w]e can only guess as to the Court's rationale when it provides none," we are wary of the possibility that the Court granted the Government's emergency stay application due to its assessment of the balance of the equities or the parties' respective irreparable harms, rather than its assessment of the merits. *NTPSA II*, 2025 WL 2661556, at *2–3.

The Supreme Court's unreasoned stay orders were "not conclusive as to the merits." *Trump v. Boyle*, 606 U.S. ——, 145 S. Ct. 2653, 2654, 222 L.Ed.2d 1181 (2025). While they may have informed "how [we] should exercise [our] equitable discretion in like cases," in this appeal, we are confronted with legal questions, not equitable ones. *Id.*; *cf. Noem v. National TPS Alliance*, —— U.S. ——, 146 S.Ct. 23, 26 (Jackson, J., dissenting) (arguing that the Court "misjudge[d] the irreparable harm and balance-of-the-equities factors," rather than addressing the merits). We therefore conclude that the Supreme Court's October 3, 2025, stay order is not controlling as to the outcome of this case.

V. Structure of the TPS Statute

***6** Under the TPS statute, 8 U.S.C. § 1254a, the Secretary of Homeland Security may designate any foreign state for TPS, permitting qualifying foreign nationals of the designated state to apply for protection from removal and work authorization.[7] The statute sets forth the following procedure for designating a country for TPS:

> (1) The [Secretary], after consultation with appropriate agencies of the Government, may designate any foreign state (or any part of such foreign state) under this subsection only if--

> (A) the [Secretary] finds 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) the [Secretary] finds 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) the [Secretary] finds 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.

§ 1254a(b)(1). Under the statute, the Secretary may designate a foreign state for TPS for a minimum of six months and a maximum of eighteen months. *Id.* Before the period of designation expires, the Secretary is required to follow the following procedures to determine whether the designation should be extended or terminated:

> (A) Periodic review
>
> At least 60 days before end of the initial period of designation, and any extended period of designation, of a foreign state (or part thereof) under this section the [Secretary], after consultation with appropriate agencies of the Government, shall review the conditions in the foreign state (or part of such foreign state) for which a designation is in effect under this subsection and shall determine whether the conditions for such designation under this subsection continue to be met. The [Secretary] shall provide on a timely basis for the publication of notice of each such determination (including the basis for the determination, and, in the case of an affirmative determination, the period of extension of designation under subparagraph (C)) in the Federal Register.
>
> (B) Termination of designation
>
> If the [Secretary] determines under subparagraph (A) that a foreign state (or part of such foreign state) no longer continues to meet the conditions for designation under paragraph (1), the [Secretary] shall terminate the designation by publishing notice in the Federal Register of the determination under this subparagraph (including the basis for the determination). Such termination is effective in accordance with subsection (d)(3), but shall not be effective earlier than 60 days after the date the notice is published or, if later, the expiration of the most recent previous extension under subparagraph (C).
>
> ***7** (C) Extension of designation
>
> If the [Secretary] does not determine under subparagraph (A) that a foreign state (or part of such foreign state) no longer meets the conditions for designation under paragraph (1), 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).

§ 1254a(b)(3). The statute also sets forth the procedure by which foreign nationals of TPS-designated states can qualify and apply for work authorization and protection from removal, as well as the Secretary's authority to withdraw a foreign national's TPS. *See* § 1254a(a)(1), (c)(1)–(3).

VI. Venezuela Vacatur

A. 8 U.S.C. § 1254a(b)(5)(A) – Judicial Review Bar

Section 1254a(b)(5)(A) provides: "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" for TPS. The Government argues that this subsection forecloses judicial review of all of Plaintiffs' APA challenges. We rejected this argument in *NTPSA I* and do so again here. 150 F.4th at 1016–1018.

We begin with the strong presumption "that Congress intends judicial review of administrative actions." *NTPSA I*, 150 F.4th at 1016 (citing *Hyatt v. Off. of Mgmt. & Budget*, 908 F.3d 1165, 1170–71 (9th Cir. 2018)). "This presumption can only be overcome by 'clear and convincing evidence of a contrary legislative intent.' " *Id.* (quoting *Hyatt*, 908 F.3d at 1171). We therefore ask whether "the congressional intent to preclude

judicial review is fairly discernible in the statutory scheme." *Id.* (quoting *Hyatt*, 908 F.3d at 1171). As we explained in *NTPSA I*, the presumption of reviewability is particularly strong where the claim is that agency action was taken in excess of delegated authority. *Id.* "The assertion that a statute bars substantial statutory and constitutional claims is 'an extreme position.' " *Id.* (quoting *Bowen v. Mich. Acad. of Fam. Physicians*, 476 U.S. 667, 680–81, 106 S.Ct. 2133, 90 L.Ed.2d 623 (1986)).

"When interpreting a statute, we are guided by the fundamental canons of statutory construction and begin with the statutory text." *United States v. Neal*, 776 F.3d 645, 652 (9th Cir. 2015). "We interpret statutory terms in accordance with their ordinary meaning, unless the statute clearly expresses an intention to the contrary." *Id.* "We must 'interpret the statute as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous.' " *Id.* (quoting *Boise Cascade Corp. v. United States E.P.A.*, 942 F.2d 1427, 1432 (9th Cir. 1991) (citation modified)). "Our analysis can begin and end with [the statutory] text." *Bottinelli v. Salazar*, 929 F.3d 1196, 1199 (9th Cir. 2019).

***8** The Government argues that the plain text of the statute "forecloses judicial review of 'any' TPS 'determinations,' regardless of the kind of challenge to the determination." In the Government's view, the statute's use of "determination" means that *any* "decision" related to a TPS designation, extension, or termination by the Secretary is entirely unreviewable. As we explained in *NTPSA I*, however, the scope and "extent of statutory authority granted to the Secretary is a first order question that is not a 'determination ... with respect to the designation, or termination or extension' of a country for TPS." 150 F.4th at 1017 (quoting § 1254a(b)(5)(A)). Thus, the plain language of the statute does not bar judicial review of challenges to the Secretary's statutory authority.

If Congress had intended the statute to preclude judicial review of all the Secretary's actions, it could have used broader language. In *McNary v. Haitian Refugee Center, Inc.*, the Supreme Court considered the scope of the judicial review bar in 8 U.S.C. § 1160(e)(1), a provision of the Immigration Reform and Control Act of 1986 ("IRCA") which provided that "[t]here shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection." 498 U.S. 479, 491–92, 111 S.Ct. 888, 112 L.Ed.2d 1005 (1991). The Court rejected the argument that the statute operated as a total bar, holding that "had Congress intended the limited review provisions ... to encompass challenges to [Immigration and Naturalization Service] procedures and practices, it could easily have used broader statutory language," such as language precluding review of "all causes ... arising" under the IRCA, or of "all questions of law and fact." *Id.* at 494, 111 S.Ct. 888.

Similarly, in *Reno v. Catholic Social Services, Inc.*, the Court addressed a challenge to the INS's narrow interpretation of a provision of the IRCA determining eligibility for a temporary resident to apply for permanent status. 509 U.S. 43, 47, 113 S.Ct. 2485, 125 L.Ed.2d 38 (1993) ("*CSS*"). The Court rejected the Government's argument that another judicial review bar in the IRCA, which precluded "judicial review of a determination respecting an application for adjustment of status," 8 U.S.C § 1255a(f)(1), precluded judicial review of plaintiffs' statutory interpretation claim, *id.* at 55, 113 S.Ct. 2485. In both *McNary* and *CSS*, the Court concluded that the judicial review bars did not apply to challenges to a "practice or procedure employed in making decisions." *CSS*, 509 U.S. at 56, 113 S.Ct. 2485 (quoting *McNary*, 498 U.S. at 492, 111 S.Ct. 888). Applying *McNary* and *CSS* to the case at hand, it is clear that § 1254a(b)(5)(A)'s bar on judicial review of "any determination ... with respect to the designation, or termination or extension" cannot apply to a claim that the Secretary exceeded her statutory authority. [8]

Moreover, the Government's interpretation produces absurd results. *See United States v. LKAV*, 712 F.3d 436, 440 (9th Cir. 2013) (the canon against absurdity provides that "[s]tatutory interpretations which would produce absurd results are to be avoided" (citation omitted)). As we explained in *NTPSA I*, "the TPS statute limits each TPS designation period to between six and eighteen months, but holding that we lack jurisdiction to review questions of statutory interpretation would make unreviewable a Secretary's decision to authorize a statutorily prohibited thirty-year TPS period." 150 F.4th at 1018 n.7 (internal citation omitted). When confronted with this reality at oral argument, the Government argued that "the review bar would cover" a challenge to a thirty-year TPS designation and that "Congress would have expected" the bar to apply in this manner. If that's true, then it's difficult to see why Congress bothered to limit the period of a designation at all, or why it included any of the statute's other procedural and substantive limits on the Secretary's authority. *See Freeman v. Quicken Loans, Inc.*, 566 U.S. 624, 635, 132 S.Ct. 2034, 182

L.Ed.2d 955 (2012) (the "canon against surplusage ... favors that interpretation which *avoids* surplusage").

***9** The Government characterizes the nature of Plaintiffs' APA claims at a high level of generality: because Plaintiffs challenge the Secretary's vacatur, they challenge a decision about a TPS designation; and because a decision about a TPS designation is the same as a "determination ... with respect to the designation, or termination or extension of a designation, of a foreign state," the review bar applies. Yet there is no limiting principle to the Government's argument. For example, if a Secretary decided to sell TPS designations, that decision would be unreviewable under the Government's interpretation because that action could be characterized as a decision about a TPS designation. The same is true for a Secretary's decision to limit TPS designations to countries with perceived favored racial or ethnic populations. As we have explained, the TPS statute was designed to constrain executive authority by adding guardrails to the unchecked power of administrations over the EVD program. *See NTPSA I*, 150 F.4th at 1017–18. It was not meant to be a blank check.

Section 1254a(b)(5)(A) simply cannot bear the weight of the Government's expansive interpretation. And the Government's arguments are certainly insufficient to overcome the strong presumption of judicial reviewability that applies in this case. *See Hyatt*, 908 F.3d 1165, 1170–71. We hold that § 1254a(b)(5)(A) does not bar judicial review of a claim that the Secretary exceeded her statutory authority. Because we resolve this case on that basis alone, we need not decide whether other types of APA challenges would be subject to the statute's review bar.

B. 8 U.S.C. § 1252(f)(1) – Impermissible Restraint

8 U.S.C. § 1252(f)(1), as enacted in the Immigration and Naturalization Act,[9] provides that:

> In general. Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of chapter 4 of title II [8 U.S.C. §§ 1221 et seq.], as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, other than with respect to the application of such provisions to an individual alien against whom proceedings under such chapter have been initiated.

The district court set aside the Secretary's vacatur under § 706 of the APA. Under that provision, a reviewing court may "hold unlawful and set aside agency action" where that action is "found to be ... in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2). On appeal, the Government argues that relief under § 706 "impermissibly restrains the Secretary from exercising her authority under the TPS statute, compels the expenditure of finite governmental resources implementing TPS designations that are contrary to the national interest, and precludes Executive officials from enforcing immigration laws in the way the Executive Branch deems appropriate," in violation of 8 U.S.C. § 1252(f)(1). We rejected an identical challenge to the district court's postponement of the Secretary's vacatur under § 705 of the APA in *NTPSA I,* 150 F.4th at 1018–19. For similar reasons, we conclude that set-aside relief under § 706 is not barred by 8 U.S.C. § 1252(f)(1).[10]

i. Prior Authority

We previously explained that two opinions of our court—*Ali v. Ashcroft*, 346 F.3d 873 (9th Cir. 2003) and *Rodriguez v. Hayes*, 591 F.3d 1105 (9th Cir. 2010)—supported our holding that § 1252(f)(1) does not bar courts from issuing relief under the APA. *NTPSA I*, 150 F.4th at 1018–19. *Ali v. Ashcroft* was subsequently vacated on unrelated grounds, *see Ali v. Gonzales*, 421 F.3d 795, 796 (9th Cir. 2005), but we adopt our reasoning that "[w]here ... a petitioner seeks to enjoin conduct that ... is not even authorized by the statute, the court is not enjoining the operation of part IV of subchapter II, and § 1252(f)(1) therefore is not implicated." 346 F.3d at 886; *see also Rodriguez*, 591 F.3d at 1120 (reaffirming *Ali v. Ashcroft*'s holding).

***10** The Government also argues that we erred in *NTPSA I* by relying on *Rodriguez*, because the Supreme Court remanded *Rodriguez* to "decide whether [we] continue[d] to have jurisdiction despite 8 U.S.C. § 1252(f)(1)." *See*

Jennings v. Rodriguez, 583 U.S. 281, 312, 138 S.Ct. 830, 200 L.Ed.2d 122 (2018). But the Government omits that the Supreme Court acknowledged and declined to overrule our holding that § 1252(f)(1) "did not affect [our] jurisdiction over ... *statutory* claims because those claims did not 'seek to enjoin the operation of the immigration detention statutes, but to enjoin conduct ... not authorized by the statutes.' " *Id.* at 313, 138 S.Ct. 830 (quoting *Rodriguez*, 591 F.3d at 1120). *Jennings* noted that "[t]his reasoning does not seem to apply to an order granting relief on *constitutional* grounds," and therefore remanded the case to consider "whether [we] may issue classwide injunctive relief based on [the] constitutional claims." *Id.* (emphasis added). The Court further acknowledged our power to issue declaratory relief, even as to the constitutional claims. *Id.*

This case is several steps removed from *Jennings*. In this appeal, we consider Plaintiffs' statutory claims, not their constitutional claims. We do not consider an injunction, but rather set-aside relief under the APA. We conclude, therefore, that *Rodriguez* remains good law on this question.

ii. Plain Meaning

Even if we were starting from scratch, we would still hold that set-aside relief under APA § 706 does not "enjoin" or "restrain" the Secretary's actions in violation of § 1252(f)(1). Set-aside relief under § 706 does not violate § 1252(f)(1) because the plain text of § 1252(f)(1)'s judicial review bar is limited to injunctive relief, and § 706 set asides are not injunctions. *See Trump v. CASA*, 606 U.S. 831, 847 n.10, 145 S.Ct. 2540, 222 L.Ed.2d 930 (2025) (distinguishing between universal injunctions and relief under the APA, the latter of which the opinion expressly declined to reach); *id.* at 873, 145 S.Ct. 2540 (Kavanaugh, J., concurring) (noting that "setting aside or declining to set aside an agency rule under the APA" remained an available remedy to district courts in lieu of a universal injunction).

The plain meaning of § 1252(f)(1) confirms our reading. In *Garland v. Aleman Gonzalez*, the Supreme Court explained that the statute's use of "enjoin" refers to "an 'injunction,' which is a judicial order that 'tells someone what to do or not to do.' " 596 U.S. 543, 549, 142 S.Ct. 2057, 213 L.Ed.2d 102 (2022) (quoting *Nken v. Holder*, 556 U.S. 418, 428, 129 S.Ct. 1749, 173 L.Ed.2d 550 (2009)). [11] On the other hand, " 'restrain' sometimes has a 'broad meaning' that refers to judicial orders that 'inhibit' particular actions, and at other times it has a 'narrower meaning' that includes 'orders that stop (or perhaps compel)' such acts." *Id.* (quoting *Direct Marketing Ass'n v. Brohl*, 575 U.S. 1, 12–13, 135 S.Ct. 1124, 191 L.Ed.2d 97 (2015)). Because the "object of the verbs 'enjoin or restrain' is the operation of certain provisions of federal immigration law" which "charge the Federal Government with the implementation and enforcement of the immigration laws governing the inspection, apprehension, examination, and removal of aliens," the Court concluded that § 1252(f)(1) is "best understood to refer to the Government's efforts to *enforce or implement*" these statutes. *Id.* at 549–50, 142 S.Ct. 2057 (citation modified). Accordingly, "§ 1252(f)(1) generally prohibits lower courts from entering injunctions that *order federal officials to take or to refrain from taking actions* to enforce, implement, or otherwise carry out the specified statutory provisions." *Id.* at 550, 142 S.Ct. 2057 (emphasis added); *see also Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 481, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) ("By its plain terms, and even by its title, [§ 1252(f)(1)] is nothing more or less than a limit on injunctive relief.").

***11** "When Congress enacted the APA in 1946, the phrase 'set aside' meant 'cancel, annul, or revoke.' " *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 829, 144 S.Ct. 2440, 219 L.Ed.2d 1139 (Kavanaugh, J., concurring) (quoting Black's Law Dictionary 1612 (3d ed. 1933)). As Justice Kavanaugh explained, the vacatur or set aside of agency action under the APA is a distinct remedy from an injunction. *Id.* at 828, 144 S.Ct. 2440. Textually, it would be difficult to square the plain meaning of a "set aside"—to "cancel, annul, or revoke"—with the plain meaning of an injunction— "a judicial order that 'tells someone what to do or not to do.' " *Compare id.* at 829, 144 S.Ct. 2440 *with Aleman Gonzalez*, 596 U.S. at 549, 142 S.Ct. 2057 (quoting *Nken*, 556 U.S. at 428, 129 S.Ct. 1749).

Moreover, a set aside is functionally identical to a vacatur, which we have already held falls outside the scope of § 1252(f)(1). In *Immigrant Defenders*, 145 F.4th at 990, we agreed with the Fifth Circuit that unlike an injunction, vacatur "does nothing but re-establish the status quo absent the unlawful agency action," *Texas v. United States*, 40 F.4th 205, 220 (5th Cir. 2022). Most significantly, "[a]part from the constitutional or statutory basis on which the court invalidated an agency action, vacatur neither compels nor restrains further agency decision-making." *Texas*, 40 F.4th at 220. Because set asides and vacaturs operate in a functionally identical manner in this respect, set asides are no more like injunctions than are

vacaturs. *See Mont. Wildlife Fed'n v. Haaland*, 127 F.4th 1, 28 n.8 (9th Cir. 2025) (acknowledging the similarity of a set aside and vacatur under the APA).

By its plain terms, a set aside does not affect the Government's future actions. It merely declares that a past agency action was unlawful and returns the world to the status quo, before that unlawful action. Here, Secretary Noem remains free to terminate TPS within the confines of the TPS statute. A set aside under § 706 of the APA does not enjoin or restrain the Secretary from doing anything. *Aleman Gonzalez*, 596 U.S. at 548–49, 142 S.Ct. 2057. Secretary Noem is free to "enforce, implement, or otherwise carry out" the TPS statute. *Id.* at 550, 142 S.Ct. 2057. By setting aside the Secretary's vacatur and termination of Venezuela's TPS, the district court did no more than return the country to the status quo. To hold that the narrow limitation of § 1252(f)(1), *see Biden v. Texas*, 597 U.S. at 798, 142 S.Ct. 2528, bars relief under § 706 would nullify the checks Congress placed on the Secretary's authority in the TPS statute. It would also leave no legal recourse for blatant violations of the TPS statute, such as a Secretary's decision to designate a country for TPS for 10 years. Congress did not intend such an absurd result. *See Aleman Gonzalez*, 596 U.S. at 571, 142 S.Ct. 2057 (Sotomayor, J., concurring in part). And, as we explained in *Immigrant Defenders*, "Congress knows ... how to limit relief under the APA in other statutory schemes," and chose not to do so here. 145 F.4th at 990. Set aside relief under the APA is thus not barred by § 1252(f)(1).

C. Inherent Vacatur Authority

Finding no support in the TPS statute for her claim of authority to vacate a prior designation or extension, Secretary Noem argues that she has the "inherent authority to reconsider and vacate the TPS extension[ ] for Venezuela." We reject the Secretary's arguments for three reasons. First, an agency may correct clerical or ministerial mistakes but cannot use this authority to smuggle in substantive policy changes. *See, e.g., Am. Trucking Ass'ns v. Frisco Transp. Co.*, 358 U.S. 133, 145, 79 S.Ct. 170, 3 L.Ed.2d 172 (1958). Second, we have been more likely to find inherent authority to reconsider or revoke past agency decisions where Congress has been silent as to the exercise of the authority that the agency purports to possess, *see, e.g., China Unicom (Ams.) Ops. Ltd. v. FCC (CUA)*, 124 F.4th 1128 (9th Cir. 2024), but here Congress spoke clearly as to the Secretary's power to designate, or extend or terminate a designation of, a foreign state for TPS. Third, the remaining authorities on which the Government relies are either readily distinguishable or outright favor the Plaintiffs. As we explained in *NTPSA I*, "the power to do does not necessarily encompass a power to undo. The structure and temporal limitations of the TPS statute protect the important reliance interests of individual TPS holders, and the Government must adhere to these statutory restraints." 150 F.4th at 1021.

i. Clerical Errors and Ministerial Mistakes

***12** First, the Supreme Court has endorsed only a limited authority to reconsider or revoke an agency's past actions in the absence of express or implied statutory authority to do so. In *American Trucking*, the Supreme Court held that a "broad enabling statute ... authorize[d] the correction of inadvertent ministerial errors," and that such power "has long been recognized." 358 U.S. at 145, 79 S.Ct. 170. The Court compared this administrative power to courts' inherent authority "to correct judgments which contain clerical errors or judgments which have issued due to inadvertence or mistake." *Id.* (citing *Gagnon v. United States*, 193 U.S. 451, 24 S.Ct. 510, 48 L.Ed. 745 (1904)). The Court was careful to clarify that "the power to correct inadvertent ministerial errors may not be used as a guise for changing previous decisions because the wisdom of those decisions appears doubtful in the light of changing policies." *Id.* at 146, 79 S.Ct. 170.

The *American Trucking* Court relied on *United States v. Seatrain Lines*, 329 U.S. 424, 67 S.Ct. 435, 91 L.Ed. 396 (1947) and *Watson Bros. Transp. Co. v. United States*, 132 F. Supp. 905 (D. Neb. 1955), *aff'd United States v. Watson Bros. Transp. Co.*, 350 U.S. 927, 76 S.Ct. 302, 100 L.Ed. 810 (1957). In *Seatrain Lines*, the Court held that the Interstate Commerce Commission ("ICC") lacked authority to reconsider a previously granted certificate to transport goods along two water routes where it was "apparent that" the reconsideration was initiated "not to correct a mere clerical error, but to execute [a] new policy." 329 U.S. at 429, 67 S.Ct. 435. Similarly, in *Watson Bros. Transp. Co.*, a three-judge panel of the district court enjoined an attempt by the ICC to limit the scope of a certificate which authorized the transportation of general commodities on certain routes. 132 F. Supp. at 909. The *Watson* court explained that even if the Commission had inherent authority "to correct clerical errors," the ICC had far exceeded that authority by attempting "to revoke and change a certificate duly issued." *Id.*

Relying on these authorities and the lack of any contrary language in the Interstate Commerce Act, the *American Trucking* Court held that the statute permitted "the correction of inadvertent errors," but "not the execution of a newly adopted policy." 358 U.S. at 146, 79 S.Ct. 170. *American Trucking* therefore articulates an exceedingly narrow inherent power: agencies may correct clerical mistakes, but not substantive ones, and may do so only if not prohibited by statute. *Id.*

The Venezuela Vacatur was, by its own terms, a substantive decision. Secretary Noem explained that she was vacating the 2025 Extension "to untangle the confusion" caused by consolidating the filing processes for TPS beneficiaries, and to "provide an opportunity for informed determinations regarding the TPS designations and clear guidance." 90 Fed. Reg. 8805, 8807 (Feb. 3, 2025). The Vacatur notice did not claim that the 2025 Extension contained any clerical error. Instead, the Vacatur was carried out to provide the Secretary the opportunity to "execute [a] new policy." *Seatrain Lines*, 329 U.S. at 429, 67 S.Ct. 435. The power the Secretary claims has no basis in Supreme Court precedent.

ii. Congressional Guidance

Second, an agency cannot claim the inherent authority to reconsider or revoke past actions where Congress has addressed the agency's power to do so in the underlying statute. *See NTPSA I*, 150 F.4th at 1019 ("[A]gencies lack the authority to undo their actions where, as here, Congress has spoken and said otherwise."). "Where Congress does not explicitly address the subject, agencies have some authority to reconsider prior decisions." *Id.*

The Government again argues that it has an "implied incidental authority to revoke" past decisions related to a TPS designation, extension, or termination. It analogizes this claimed authority to the implied revocation power we considered in *China Unicom (Americas) Operations Ltd. v. FCC*, 124 F.4th 1128 (9th Cir. 2024). But we have already rejected the Government's analogy to *China Unicom* in *NTPSA I*, and the Government offers no compelling argument for holding otherwise. 150 F.4th at 1019–20.

***13** In *China Unicom*, we held that the Communication Act of 1934's silence on the Federal Communication Commission's ("FCC") ability to revoke telecommunications certificates, combined with the fact that the certificates were issued for an indefinite period, weighed in favor of finding an implied power of revocation. 124 F.4th at 1148. Significantly, we contrasted the unlimited duration of telecommunications certificates with the fixed, eight-year renewable period for broadcast licenses under the Act, finding that while the former situation supported a finding of inherent revocation authority, the latter did not. *Id.* ("The use of a fixed term is thus affirmatively inconsistent with positing an implied power to revoke a license at any time," while "[b]y contrast, ... silence on the temporal duration of common-carrier certificates, which have traditionally been open-ended in length, is a factor that weighs in *favor* of an implied power of revocation."). Because the TPS statute permits designations for only a maximum of an 18-month period and provides an explicit process for terminating a designation, *China Unicom* hurts, rather than helps, the Government. *See* § 1254a(b)(2)(B).

The Government next points us to *Haig v. Agee*, in which the Supreme Court held that the Secretary of State had inherent authority to revoke a passport due to national security concerns where the Passport Act was silent on the Secretary's authority to revoke a passport. 453 U.S. 280, 290, 101 S.Ct. 2766, 69 L.Ed.2d 640 (1981). The Court relied on a presumption that "in the areas of foreign policy and national security ... congressional silence is not to be equated with congressional disapproval." *Id.* at 291, 101 S.Ct. 2766. *Haig* answered only the narrow question of whether the Secretary of State could revoke a single individual's U.S. passport, while still providing "a statement of reasons and an opportunity for a prompt postrevocation hearing." *Id.* at 310, 101 S.Ct. 2766. And, just as in *China Unicom*, the key in *Haig* was Congress' silence on the matter.

Because Congress provided an explicit procedure for terminating a TPS designation, we cannot contravene Congressional intent by permitting the Secretary to exercise an unchecked and standardless vacatur power devoid of any of those statutory procedures. Congress provided the Secretary with two avenues if she disfavors a TPS designation. First, she can withdraw TPS status granted to an individual noncitizen for a variety of reasons, *see* § 1254a(c)(2)(B), including national security concerns, *see* § 1158(b)(2)(A). Second, because TPS designations are temporally limited, the Secretary can terminate a country's TPS, effective upon the expiration of the current TPS designation period. *See* § 1254a(b)(3)(B). Congress clearly knew how to authorize the Secretary to withdraw a prior designation or extension. Indeed, it authorized the Secretary to "withdraw temporary protected status granted to" individual foreign nationals under

certain conditions. *See* § 1254a(c)(3). But it provided a different procedure for terminating a TPS designation.

The TPS statute is simply not silent as to the Secretary's remedies if she disfavors a TPS designation. The Secretary seeks to exercise authority that Congress chose not to grant her. [12] If the Secretary believes that she should be entitled to unchecked power in the administration of the TPS statute, it is Congress, not the courts, to whom that argument should be directed.

iii. Other Authority

***14** Third, the Government argues, citing several out-of-circuit cases, that an "administrative agency has inherent or statutorily implicit authority to reconsider and change a decision if it does so within a reasonable period of time if Congress has not foreclosed this authority by requiring other procedures." But none of these authorities suggest that such a power could be used to enact sweeping policy changes despite clear language in the statute to the contrary.

We previously concluded that *Ivy Sports Medicine, LLC v. Burwell*, 767 F.3d 81, 86 (D.C. Cir. 2014), favored the Plaintiffs' argument rather than the Government's. *See NTPSA I*, 150 F.4th at 1020. As then-Judge Kavanaugh explained, although "administrative agencies are assumed to possess at least some inherent authority to revisit their prior decisions, at least if done in a timely fashion," this "inherent reconsideration authority does not apply in cases where Congress has spoken." 767 F.3d at 86.

In *Mazaleski v. Treusdell*, 562 F.2d 701, 720 (D.C. Cir. 1977), the D.C. Circuit acknowledged an agency's power to reinstate an employee after concluding that the initial termination procedure violated the employee's procedural due process rights. In our view, however, the ability of an agency to reconsider the termination of a single employee due to an unconstitutional initial process is not analogous to the situation at hand. The Government does not argue that Secretary Mayorkas acted unconstitutionally with respect to the 2025 Extension determination.

In *Belville Mining Co. v. United States*, the Sixth Circuit suggested in dicta that the inherent "power to correct inadvertent ministerial errors," might permit the reconsideration of prior action that was affected by "serious procedural and substantive deficiencies." 999 F.2d 989, 998 (6th Cir. 1993). However, the Sixth Circuit specifically distinguished those circumstances from a situation in which the agency "was attempting to change existing policy rather than to correct [an] erroneous ... determination[ ]." *Id.* Here, as we have explained, it is indisputable that the Secretary vacated the 2025 Extension in an attempt to change existing policy because of the Trump Administration's immigration priorities.

The Government's remaining authorities are similarly distinguishable. *Macktal v. Chao* held narrowly that an Administrative Law Judge's ("ALJ") order of attorney's fees could be reconsidered where a party's brief had been misaddressed and thus not considered by the ALJ. 286 F.3d 822, 824–25 (5th Cir. 2002). *Albertson v. F.C.C.* held that where a statutory right to file a motion to reconsider and appeal a decision of the agency existed, the agency had the implied power to reconsider its decision during the statutory appeal period of twenty days. 182 F.2d 397, 399 (D.C. Cir. 1950). Lastly, in *The Last Best Beef, LLC v. Dudas*, the Fourth Circuit held that the U.S. Patent and Trademark Office had the inherent authority to cancel trademarks for a phrase after a subsequent act of Congress prohibited the phrase from being trademarked. 506 F.3d 333, 340–41 (4th Cir. 2007). These cases are several steps removed from the facts at hand, and do not lend support to the Government's argument.

At best, *Mazaleski, Ivy Sports Medicine, Belville, Macktal, Albertson*, and *Last Best Beef* support the proposition that administrative agencies have the inherent authority to revisit determinations as to individuals, but not as to broad policy decisions. For example, had the TPS statute not provided a mechanism for withdrawing TPS protections from individual foreign nationals, this line of authority, were we to adopt it, might support the Government's claim of inherent authority to do so. But there is simply no argument that the same authority can be read to permit broad policy changes to be smuggled in through vacatur when Congress has expressly declined to grant that authority to the Secretary. *Am. Trucking*, 358 U.S. at 146, 79 S.Ct. 170.

***15** The Secretary lacks the inherent authority to revoke or reconsider a prior designation, or extension or termination of a designation, of TPS to a foreign state.

D. Venezuela Vacatur – Lack of Statutory Authority

Because the Secretary has no express, implied, or inherent power to vacate a prior TPS designation, or extension or termination of a designation, the district court correctly "[held] unlawful and set aside" the Vacatur on the grounds that it was "in excess of statutory ... authority." 5 U.S.C. § 706(2).

The Government offers one final argument: because § 1254a(b)(3)(B), which defines the Secretary's authority to terminate a TPS designation, applies only to an active designation, the statute is silent as to the Secretary's authority to vacate an extension that has not yet taken effect. Specifically, the Government argues that because the 2025 Extension would cover a period from April 3, 2025, to October 2, 2026, but the TPS statute only provides a mechanism for canceling a currently effective designation, the Secretary's February 3, 2025, vacatur of the 2025 Extension was not contrary to Congress's intent. That argument fails for several reasons. [13]

First, as we have already explained, the 2025 Extension was effective as of January 17, 2025, because the re-registration period opened as of that date and the filing processes for the 2021 and 2023 Venezuela Designations were immediately consolidated. *See NTPSA I*, 150 F.4th at 1024 n.12. Indeed, the Secretary's vacatur notice acknowledged that the 2025 Extension "ha[d] been in effect" and that vacatur would "restore the status quo preceding [the] notice." 90 Fed. Reg. 8805, 8807 (Feb. 3, 2025).

Second, § 1254a(b)(2)(B) provides that a "designation of a foreign state ... shall remain in effect until the effective date of the termination of the designation under paragraph (3)(B)." This language would not only be superfluous if the Secretary had the power to vacate a prior designation or extension of TPS, but such a power would also directly contradict this subparagraph.

Third, the TPS statute contemplates that an extension or termination of an existing designation will take effect during the period of designation preceding the extension or termination. In other words, because an extension must be published in the Federal Register while the "designation is in effect," and "[a]t least 60 days before end of the [current] period of designation," there will always be a period of time after the Secretary has announced an extension, but before the period of extension commences. § 1254a(b)(3)(A). Similarly, a termination cannot be "effective earlier than 60 days after ... [publication in the Federal Register] or, if later, the expiration of the most recent previous extension." § 1254a(b)(3)(B). The Government's suggestion that it could change its mind during this period would contravene the entire purpose of such a notice period. *Id.*

***16** We conclude that there is no explicit, implied, or inherent authority to vacate a prior TPS determination. The Secretary exceeded her authority under the TPS statute, and the district court properly set aside the Venezuela Vacatur. Because that conclusion resolves this claim, we decline to reach the remainder of Plaintiffs' APA challenge.

VII. Venezuela Termination

A. 8 U.S.C. § 1254a(b)(5)(A) – Judicial Review Bar

For the same reasons already stated, we hold that the judicial review bar in § 1254a(b)(5)(A) does not preclude us from reviewing Plaintiffs' claim that the Secretary acted in excess of her statutory authority by terminating the 2025 Extension.

B. 8 U.S.C. § 1252(f)(1) – Impermissible Restraint

The district court set aside Secretary Noem's termination of the 2025 Extension under APA § 706. As we have already explained, § 1252(f)(1) does not apply to set aside relief.

C. Venezuela Termination – Lack of Statutory Authority

The TPS statute explicitly provides that a "designation of a foreign state ... shall remain in effect until the effective date of the termination of the designation under paragraph (3)(B)." § 1254a(b)(2)(B). The statute sets forth a specific procedure that the Secretary must follow to terminate a TPS designation or extension. § 1254a(b)(3)(B). Importantly, even if all statutory procedures are followed, a termination cannot be effective earlier than "the expiration of the most recent previous extension." *Id.*

As of January 17, 2025, Venezuela's TPS was extended through October 2, 2026. Secretary Noem acted in excess of her statutory authority when she purported to vacate the 2025 Extension, and that Extension therefore remained in effect when she attempted to effectuate the Venezuela Termination. Congress could not have been clearer: the

Secretary could terminate Venezuela's TPS with at least sixty days' notice and with an effective date no earlier than October 2026. *See NTPSA II*, at 1022 n.9 ("By codifying the TPS statute, Congress ... balanced predictability and stability with temporal limits—TPS holders can rely on the security of their status but only for a limited period of time. And, the [Secretary] may terminate that status, but only with sixty days' notice and not prior to the expiration of the current designation."). That is the beginning and end of the inquiry.

We hold that Secretary Noem exceeded her authority under the TPS statute by attempting to terminate Venezuela's TPS, as extended by the 2025 Extension. Because the 2025 Extension remains in effect until October 2, 2026, Secretary Noem's attempt to terminate Venezuela's TPS with an effective date of April 7, 2025, violated the plain text of the TPS statute. *See* § 1254a(b)(3)(B) (a termination cannot be effective earlier than "the expiration of the most recent previous extension"). The Venezuela Termination was predicated on and inextricably intertwined with the Venezuela Vacatur; therefore, the illegality of the Vacatur must be fatal to the Termination. Because, again, that conclusion resolves this claim, we decline to reach the remainder of Plaintiffs' APA challenge.

VIII. Haiti Partial Vacatur

Plaintiffs' challenge to the Haiti Partial Vacatur overlaps substantially with their challenge to the Venezuela Vacatur. For the same reasons already stated, § 1254a(b)(5)(A) does not bar any aspect of our review of the Haiti Partial Vacatur. And, again for the same reasons stated, the district court's grant of set aside relief does not violate § 1252(f)(1).

***17** As to the merits, Secretary Noem lacked the statutory authority to partially vacate Secretary Mayorkas's July 2024 extension of Haiti's TPS for the same reasons that she lacked the authority to entirely vacate Secretary Mayorkas's January 2025 extension of Venezuela's TPS. Although the Secretary has discretion to determine whether a foreign state's TPS should be extended for a period of six, twelve, or eighteen months, nothing in the statute permits the Secretary to reduce the period of extension at a later date. *See* § 1254a(b)(3)(C). As we have already explained, such a power would displace the carefully designed TPS termination procedures that Congress chose to proscribe in the statute. *See* § 1254a(b)(3)(B). It would defy logic to read such a significant loophole into the statute absent corresponding Congressional intent, and we decline to do so here.

Secretary Noem exceeded her statutory authority by partially vacating Haiti's TPS. Accordingly, the district court did not err by setting aside the Haiti Partial Vacatur. Because, again, that conclusion resolves this claim, we need not reach the remainder of Plaintiffs' APA challenge.

IX. Universal Relief

The Government argues that the district court abused its discretion by granting "universal vacatur extending to non-parties." We acknowledge that there are difficult and unanswered questions related to the limits of APA relief under *Trump v. CASA, Inc.*, 606 U.S. 831, 145 S.Ct. 2540, 222 L.Ed.2d 930 (2025). *CASA* declined to reach these questions, though Justice Kavanaugh suggested that district courts retained the ability to "set aside an agency rule under the APA," even if such relief would be the "functional equivalent of a universal injunction." *Id.* at 873, 145 S.Ct. 2540 (Kavanaugh, J., concurring); *see also id.* at 847 n.10, 145 S.Ct. 2540 ("Nothing we say today resolves the distinct question whether the Administrative Procedure Act authorizes federal courts to vacate federal agency action." (citing 5 U.S.C. § 706(2)). We need not resolve this question for our circuit.

As we have already twice explained, Plaintiffs complain of "injuries for which it is all but impossible for courts to craft relief that is complete *and* benefits only the named [P]laintiffs." *Id.* at 852 n.12, 145 S.Ct. 2540; *see also NTPSA II*, 2025 WL 2661556 at *6 ("[I]t is impossible to structure relief on an individual basis or to impose any relief short of nationwide set asides under APA § 706 of Secretary Noem's vacatur and termination of Venezuela's [and Haiti's] TPS."); *NTPSA I*, 150 F.4th at 1028 (explaining that postponement was the "only remedy that provides complete relief to the parties before the court and complies with the TPS statute"). Relief cannot be limited to NTPSA's members because Plaintiffs do not simply challenge the application of the vacaturs or termination to them, they challenge the Secretary's very authority to act. *Id.* Because the Secretary lacked authority to act in the manner that she did, the proper remedy under APA § 706(2) is to set aside her actions and restore the status quo.

The Government proposes that we "limit [relief] to Plaintiffs and their members at the time their complaint was filed." The Government makes no attempt to explain how such an order could be enforced. The National TPS Alliance has more than 84,000 members in all fifty states and the District of Columbia. *NTPSA I*, 150 F.4th at 1028. Would members need to carry a National TPS Alliance membership card? Would they need to provide evidence that they joined the organization at the appropriate time? If so, how? By signing a declaration? Subjecting themselves to interrogation? The Government has no answer to these questions. It would be impossible to grant complete relief to the Plaintiffs short of a full set aside of the Secretary's unlawful Venezuela Vacatur, Venezuela Termination, and Haiti Partial Vacatur. *CASA*, 606 U.S. at 852, 145 S.Ct. 2540.

***18** Lastly, we reject the Government's argument that "[t]he challenged order exemplifies the significant problem created when an organization—like Plaintiff NTPSA—litigates based on speculative harms or generalized grievances rather than *actual injury*." The harms caused by the abrupt and unexpected vacaturs and termination are not speculative. As we have explained, foreign nationals with TPS who, absent the Secretary's unlawful actions, would be protected from deportation and could receive work authorization, have suffered immense harms that are both concrete and particularized. The record is replete with stories of mothers separated from their children (many of whom are U.S. citizens); families struggling to make ends meet after losing the support of the breadwinner; and hard-working people who become homeless or are left to live day-to-day after losing their jobs as preschool teachers, automotive mechanics, warehouse and grocery store employees, and day laborers. [14] Others have been detained for months or weeks in squalid, overcrowded facilities, where they are forced to sleep on the ground, aren't given enough water to drink, and are deprived of the ability to contact their family or attorney for days or weeks at a time. There are stories of detainees being moved repeatedly from facility to facility and eventually being deported, despite the attempts of their attorneys and families to advocate for them and the fact that they have pending asylum applications. Hundreds of thousands of TPS holders are living in a state of constant fear, wondering whether they will be next to be detained and deported to a place where the Government promised—at least temporarily—it would not send them. If these are not actual injuries, what are?

The district court did not abuse its discretion by setting aside each of the Secretary's unlawful Venezuela Vacatur, Venezuela Termination, and Haiti Partial Vacatur in full.

X. Conclusion

Congress designed the TPS statute, carefully and deliberately, to restrain the Secretary's authority to designate, or extend or terminate an existing designation of, a foreign nation for TPS. The statute contains numerous procedural safeguards that ensure individuals with TPS enjoy predictability and stability during periods of extraordinary and temporary conditions in their home country. But the statute contemplates that this stability would last only a short while: the protective guarantees of TPS are subject to termination at most every 18 months. At bottom, this case comes down to the Secretary's failure to conform to the strictures of the TPS statute. The Secretary attempted to exercise powers Congress simply did not provide under the statute. Because that conclusion resolves this case in full, we need not, and do not, reach any other aspects of Plaintiffs' claims.

AFFIRMED. [15]

Mendoza, Circuit Judge, with whom Wardlaw, Circuit Judge, joins as to Parts I and II, concurring:

I wholeheartedly agree with Judge Wardlaw's opinion and its conclusion that Secretary of Homeland Security Kristi Noem exceeded her authority under 8 U.S.C. § 1254a when she vacated and terminated Temporary Protected Status ("TPS") for Venezuela and Haiti. I believe Judge Wardlaw's explanation is sufficient to dispose of this case.

However, I write separately to underscore why we must not permit government agencies to justify their actions with pretext, especially when that pretext is cloaking animus on the basis of race or national origin. When decision-makers repeatedly broadcast their impermissible reasons for making a decision, we should heed the fitting words of Maya Angelou and "believe them the first time." Maya Angelou, Oprah Winfrey Show (Harpo Productions broadcast, June 18, 1997). And as the Supreme Court cautions, we cannot allow agencies to eschew their obligation to engage in reasoned decision-making and instead use administrative procedure to reach preordained outcomes. I therefore author this concurrence to explain why the Secretary's actions would not stand had we

reached the merits of Plaintiffs' Administrative Procedure Act ("APA") claims.

I.

Although I focus on the inexplicable procedures, reasoning, and animus underlying the Secretary's vacatur actions, the question of judicial reviewability is foundational and must be resolved before reaching the merits of Plaintiffs' APA claims.

***19** Contrary to the Government's assertion, neither 8 U.S.C. § 1254a(b)(5)(A) nor 8 U.S.C. § 1252(f)(1) bars judicial review of whether the Secretary's vacatur actions were arbitrary and capricious. Section 1254a(b)(5)(A) narrowly bars review of "determination[s] ... with respect to the designation, or termination or extension of a designation, of a foreign state," *not* of a claimed vacatur power (which exceeds the Secretary's authority). [1] *See Nat'l TPS All. v. Noem*, 150 F.4th 1000, 1018–19 (9th Cir. 2025). To assume that § 1254a(b)(5)(A) would apply to even non-existent powers falling outside the scope of congressionally defined TPS procedures would lead to absurd outcomes whereby the Secretary would be free to disregard the binding text of the TPS statute while simultaneously being insulated from judicial review. *See* 8 U.S.C. § 1254a(b)(3)(B) (dictating that a termination of a TPS designation "*shall* not be effective earlier than 60 days after the date the notice is published or, *if later*, the expiration of the most recent previous extension under subparagraph (C)." (emphases added)). [2]

Section 1252(f)(1) also does not bar courts from reviewing the Secretary's vacatur actions because that provision similarly does not apply to manufactured acts of vacatur that exceed the Secretary's authority. *Ali v. Ashcroft*, 346 F.3d 873, 886–87 (9th Cir. 2003), *opinion withdrawn on denial of reh'g sub nom. Ali v. Gonzales*, 421 F.3d 795 (9th Cir. 2005), *as amended on reh'g* (Oct. 20, 2005); *see also Rodriguez v. Hayes*, 591 F.3d 1105, 1119–21 (9th Cir. 2010) (narrowing the scope of the terms "enjoin or restrain" in light of other, more expansionary, phrases found in other statutes), *abrogated on other grounds by Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022).

And, as Judge Wardlaw explains, set-aside relief under § 706 does not violate § 1252(f)(1) because that bar is limited to *injunctive* relief. APA § 706 relief is distinct from injunctive relief and neither "enjoins" nor "restrains" the Secretary's actions. It simply restores the status quo ante to the time before the Secretary took her unlawful action. Though the Supreme Court has declined to reach this issue, *Garland v. Aleman Gonzalez*, 596 U.S. 543, 142 S.Ct. 2057, 213 L.Ed.2d 102 (2022), logically supports the conclusion that APA § 706 set-asides are distinct from injunctions, and our sister circuits have essentially held as much. *See, e.g., Texas v. United States*, 40 F.4th 205, 220 (5th Cir. 2022) ("[A] vacatur does nothing but re-establish the status quo absent the unlawful agency action. Apart from the constitutional or statutory basis on which the court invalidated an agency action, vacatur neither compels nor restrains further agency decision-making.").

Accordingly, the presumption of reviewability governs here, and nothing in these statutes insulates the Secretary's vacatur decisions from APA scrutiny. *See Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 586 U.S. 9, 22, 139 S.Ct. 361, 202 L.Ed.2d 269 (2018) ("The Administrative Procedure Act creates a 'basic presumption of judicial review [for] one 'suffering legal wrong because of agency action.' " (alteration in original) (quoting *Abbott Lab'ys v. Gardner*, 387 U.S. 136, 140, 87 S.Ct. 1507, 18 L.Ed.2d 681 (1967))). We are therefore empowered to review agency action for arbitrariness and capriciousness when an agency acts beyond the confines of bars on judicial review or in excess of its authority, as holding otherwise would defy the APA's presumption of reviewability and open the floodgates to unchecked agency action insulated from accountability. *See Salinas v. U.S. R.R. Ret. Bd.*, 592 U.S. 188, 197, 141 S.Ct. 691, 208 L.Ed.2d 608 (2021) ("To the extent there is ambiguity in the meaning of 'any final decision,' it must be resolved ... under the 'strong presumption favoring judicial review of administrative action.' " (internal citation omitted)).

***20** Having concluded that no statutory bar on judicial review would shield the Secretary's vacatur actions from our scrutiny, I turn to why those actions would not survive the APA's requirement of reasoned and non-arbitrary decision-making.

II.

Secretary Noem's vacatur actions would fail on the independent ground that they were arbitrary and capricious in contravention of the APA, as even a cursory review of the record indicates that her decisions were both preordained and rooted in pretext. Courts must be wary of situations in which the record "reveal[s] a significant mismatch between

the decision the Secretary [makes] and the rationale [she] provide[s].” *Dep't of Com. v. New York*, 588 U.S. 752, 783, 139 S.Ct. 2551, 204 L.Ed.2d 978 (2019). In particular, where “the evidence tells a story that does not match the explanation the Secretary [gives] for [her] decision,” such that the “stated reason” for a policy change “seems to have been contrived,” courts may set aside such action under the APA. *Id.* at 784, 139 S.Ct. 2551.

The APA “instructs reviewing courts to set aside agency action that is ‘arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.’ ” *Id.* at 771, 139 S.Ct. 2551 (citation omitted). “In order to permit meaningful judicial review, an agency must disclose the basis of its action.” *Id.* at 780, 139 S.Ct. 2551 (internal quotation marks and citation omitted). In short, “[o]ur task is simply to ensure that the agency considered the relevant factors and articulated a rational connection between the facts found and the choices made.” *Nw. Ecosystem All. v. U.S. Fish & Wildlife Serv.*, 475 F.3d 1136, 1140 (9th Cir. 2007) (internal quotation marks and citation omitted).

The APA's reasoned-explanation requirement exists to “ensure that agencies offer genuine justifications for important decisions, reasons that can be scrutinized by courts and the interested public.” *Dep't of Com.*, 588 U.S. at 785, 139 S.Ct. 2551. “Accepting contrived reasons” or post hoc rationalizations “would defeat the purpose of the enterprise” of administrative review. *Id.* So while our review of agency action is typically deferential, we are “not required to exhibit a naiveté from which ordinary citizens are free.” *Id.* (internal citation omitted). Therefore, when “the evidence tells a story that does not match the explanation the Secretary gave for [her] decision,” we must demand “something better than the explanation offered.” *Id.* at 784–85, 139 S.Ct. 2551.

This foundational principle of administrative law obliges us to look beyond an agency's purported rationale when that rationale is pretext or a cloak for improper motive. And although judicial review ordinarily focuses exclusively on an agency's contemporaneous record and explanation, it is well established that a court may inquire into the “mental processes of administrative decisionmakers” upon a “strong showing of bad faith or improper behavior.” *Id.* at 781, 139 S.Ct. 2551 (citation omitted). In sum, while the APA *does not* license courts to second-guess policy judgments duly entrusted to the executive branch, it *does* require us to police the bounds of reasoned agency decision-making and to set aside actions founded on implausible and illegitimate justifications.

The district court's thorough findings detail multiple, serious defects in the process behind the Secretary's TPS vacatur and termination. First, the Secretary's primary vacatur rationale was unsupported and affirmatively contradicted by Plaintiffs' evidence of past practice. An agency acts arbitrarily and capriciously when it “offer[s] an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 103 S.Ct. 2856, 77 L.Ed.2d 443 (1983).

***21** The Secretary's assertion that the prior administration's 2023 TPS consolidation was “novel,” “confus[ing],” or unlawful was based on a fundamental misreading of prior agency action and does not align with the sweeping action taken. As the district court observed, there was nothing novel about streamlining dual TPS extension tracks for the same country, as similar procedures had been used for other countries. As a legal matter, TPS beneficiaries under the 2021 designation were *necessarily* TPS beneficiaries under the 2023 designation. And streamlining tracks tended to eliminate confusion, since it would otherwise be difficult for employers to distinguish between TPS beneficiaries with varying employment authorization document end dates. The Secretary's mischaracterization of the prior TPS consolidation and extension as irregular and confusing was therefore not only entirely unsupported but was affirmatively contradicted by Plaintiffs' evidence of past practice.

Second, the district court correctly determined that the Secretary failed to consider reasonable alternatives or more moderate approaches before resorting to the unprecedented step of vacatur. Agencies must consider feasible alternatives and articulate a rational connection between the facts found and the choice made. *Dep't of Homeland Security v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30, 140 S.Ct. 1891, 207 L.Ed.2d 353 (2020) (“*Regents*”) (“[W]hen an agency rescinds a prior policy its reasoned analysis must consider the alternative[s] that are within the ambit of the existing [policy].” (alterations in original) (internal quotation marks and citation omitted)).

Here, the Secretary provided no explanation for why simply de-consolidating the prior administration's dual-track filing procedure would not have addressed her concerns of administrative confusion, as opposed to completely nullifying the TPS extensions altogether. Similarly, with respect to her claims that criminals are abusing the TPS system, it is

worth noting that the Secretary could have considered simply revoking TPS status for individuals who have committed crimes rather than wiping away thousands of lawful TPS holders' protections. *See* § 1254a(c)(2)(B) (noting that an individual is ineligible for TPS if they have "been convicted of any felony or 2 or more misdemeanors committed in the United States"); § 1254a(c)(3). The complete absence of any consideration of less disruptive options underscores the preordained and pretextual character of the Secretary's decision and the disingenuity of her official reasoning.

Third, as the district court noted, the Secretary ignored the reliance interests of TPS beneficiaries and their families, who have structured their livelihoods around the continuation of TPS under the prior designations and extensions. When an agency changes course and alters a policy on which regulated parties have depended, it is required to at least assess the existence and strength of any serious reliance interests and weigh those interests in its decision. *See Regents*, 591 U.S. at 30, 140 S.Ct. 1891 ("When an agency changes course, as DHS did here, it must 'be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account.' " (citation omitted)); *Nat'l TPS All.*, 150 F.4th at 1021 ("The structure and temporal limitations of the TPS statute protect the important reliance interests of individual TPS holders.").

Judge Wardlaw's opinion compellingly describes the devastating impact of the Secretary's unprecedented action on TPS holders. And, as the district court explained, by "canceling TPS documentation that had already issued" under the prior extension without first addressing the hardship it would inflict, the Secretary "failed to consider [the] reliance interests" of people who had been assured of protection until the original TPS end date. Far from accounting for such reliance interests, the Secretary perfunctorily dismissed those whose very livelihoods depend on TPS as having "negligible" reliance interests. This conclusory statement does not satisfy the agency's duty of providing a "*reasoned* explanation for the change." *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221, 136 S.Ct. 2117, 195 L.Ed.2d 382 (2016) (emphasis added); *see also FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515, 129 S.Ct. 1800, 173 L.Ed.2d 738 (2009) (noting that an agency must meaningfully engage with the reliance interests engendered by prior policy in providing an explanation for agency action). This is particularly so given the profound disruption that stripping TPS protections would visit upon thousands of immigrants. [3]

***22** The abrupt policy changes at issue in this case "radiate outward to [TPS beneficiaries'] families, including their ... U.S.-citizen children, to the schools where [they] study and teach, and to the employers who have invested time and money in training them." *Regents*, 591 U.S. at 31, 140 S.Ct. 1891. Additionally, "excluding [TPS beneficiaries] from the lawful labor force may ... result in the loss of ... economic activity and ... tax revenue." *Id.* In sum, "DHS may determine ... that other interests and policy concerns outweigh any reliance interests. Making that difficult decision was the agency's job, but the agency failed to do it." *Id.* at 32, 140 S.Ct. 1891. By failing to consider these concerns, the Secretary disregarded her obligation to consider the significant reliance interests of those impacted.

Fourth, the Secretary's decision-making process deviated dramatically from established Department of Homeland Security ("DHS") norms and procedures for TPS determinations, without any coherent explanation. Under the TPS statute and longstanding practice, decisions to extend or terminate a country's TPS designation are informed by inter-agency consultation and review of up-to-date country conditions by expert staff. *See* § 1254a(b)(3)(A)–(C). A 2020 Government Accountability Office report documenting DHS's standard TPS decision-making practices explains that DHS typically collects (1) a country conditions report compiled by U.S. Citizenship and Immigration Services ("USCIS"); (2) a memorandum with a recommendation from the USCIS Director to the Secretary; (3) a country conditions report compiled by the State Department; and (4) a letter with a recommendation from the Secretary of State to the Secretary of Homeland Security.

Here, the Secretary hastily ordered the vacatur and prepared to terminate TPS without first seeking meaningful input from the State Department or other agencies, and without obtaining any new TPS country conditions analysis from her own department. In fact, the administrative record for the Secretary's vacatur contained only a report from August 2024 that was prepared during the prior administration to affirmatively *support* Secretary Mayorkas's TPS extension. It defies logic that Secretary Noem could point to the *very same* country conditions report, without explanation, as somehow justifying her decision to vacate and terminate that TPS designation. *See Fox Television Stations*, 556 U.S. at 515, 129 S.Ct. 1800 ("[W]hen ... [an agency's] new policy rests upon factual findings that contradict those which underlay its prior policy," "the agency [must] provide a more detailed justification.").

Then-acting USCIS Director Jennifer Higgins did *eventually* circulate a memorandum recommending that the TPS designation be terminated, but this was *after* the vacatur decision was prepared and circulated. Notably, USCIS officials have indicated that they ordinarily begin the review process for an existing TPS designation about six months to a year *before* the end date of the country's current designation. Here, USCIS sent its recommendation just eleven days after President Trump took office. DHS also belatedly reached out to the State Department, which provided a one-and-a-half-page letter that contained no information on country conditions in Venezuela.

An agency acts arbitrarily when it "depart[s] from a prior policy *sub silentio* or simply disregard[s] rules that are still on the books" without acknowledgment or explanation. *Id.* The issue before us is not whether we normatively agree with Secretary Noem's departure from TPS decision-making policy—the problem is that Secretary Noem did not provide *any* reasoned explanation for departing from the normal fact-gathering process. The record here indicates that the Secretary's TPS procedures were exactly such an inexplicable departure from DHS's established process.

***23** Finally, the record supports the district court's conclusion that the Secretary's vacatur and termination of TPS were predetermined well in advance and that the official justifications given in the Federal Register were therefore merely a pretext for her true motives. The timeline is strikingly suspicious: DHS began drafting the Venezuela TPS vacatur within days of President Trump's inauguration, and a draft termination notice was prepared even *before* the vacatur decision was made. The same day Secretary Noem approved the vacatur, DHS staff were directed to "focus on any improvements in Venezuela"—effectively manufacturing an after-the-fact termination rationale—and a sense of urgency was conveyed to finalize the termination decision immediately.

Indeed, the termination was formally approved just *three days* after the vacatur, with the entire process from vacatur drafting to termination completion spanning only a few days. Such haste and sequencing are unprecedented for TPS decision-making, and they belie any notion that the Secretary engaged in or relied on a genuine reassessment of country conditions or policy analysis. Instead, as the district court found, the Secretary's vacatur was a means to the preordained end of blanketly terminating TPS designations and extensions for Venezuela as quickly as possible.

In sum, the district court rightly identified a litany of APA defects, each of which render the Secretary's actions arbitrary and capricious. Taken together, these deficiencies paint a picture of agency action that was not the product of reasoned decision-making, but of a rushed and pre-determined agenda masked by pretext.

III.

But even this should not be the end of our analysis. I find it necessary to address the ample evidence of racial and national origin animus in the record, which reinforces the district court's conclusion that the Secretary's actions were preordained and her reasoning pretextual. This case presents one of the rare situations where the strong showing of bad faith needed to look beyond the administrative record is easily met.

We cannot ignore the backdrop of extraordinary statements by direct decision-makers when assessing whether the agency's proffered rationale was genuine or merely a pretext for an ulterior (and impermissible) motive. The record is replete with public statements by Secretary Noem and President Donald Trump that evince a hostility toward, and desire to rid the country of, TPS holders who are Venezuelan and Haitian. And these were not generalized statements about immigration policy toward Venezuela and Haiti or national security concerns to which the Executive is owed deference. Instead, these statements were overtly founded on racist stereotyping based on country of origin.

Stereotyping on the basis of race or country of origin can never form the basis of "reasoned decision making" nor can it provide a "rational connection between the facts found and the choice made" necessary to survive review under the APA. *All. for the Wild Rockies v. Petrick*, 68 F.4th 475, 493 (9th Cir. 2023) (internal quotation marks and citations omitted) ("The touchstone of 'arbitrary and capricious' review under the APA is reasoned decisionmaking." (alterations and internal quotation marks omitted) (quoting *Altera Corp. & Subsidiaries v. Comm'r*, 926 F.3d 1061, 1080 (9th Cir. 2019))).

Animus based on race or national origin can *never* qualify as a "political consideration[ ]" or "Administration priorit[y]" that

falls beyond a court's scrutiny of agency decision-making. *Dep't of Com.*, 588 U.S. at 781, 139 S.Ct. 2551; *see Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–66, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977) ("[I]t is because legislators and administrators are properly concerned with balancing numerous competing considerations that courts refrain from reviewing the merits of their decisions, absent a showing of arbitrariness or irrationality. But racial discrimination is not just another competing consideration. When there is a proof that a discriminatory purpose has been a motivating factor in the decision, this judicial deference is no longer justified.").

***24** Here, the Secretary's statements are neither isolated nor stray. They are numerous, specific, and closely tied to the agency action at issue. *Cf. Trump v. Hawaii*, 585 U.S. 667, 701-02, 138 S.Ct. 2392, 201 L.Ed.2d 775 (2018). Many of the assertions were made within days or hours of the Secretary's decision to vacate TPS for Venezuela and Haiti. Here, the Secretary's and President's statements of ethnic hostility and prejudice toward TPS holders who are Venezuelan and Haitian reveals the ugly truth of bad faith and impermissible animus. [4]

For example, on January 15, 2025, during Secretary Noem's confirmation hearing, she stated that "the program was intended to be temporary. **This extension [of TPS] of over 600,000 Venezuelans ... is alarming when you look at what we've seen in different States, including Colorado with gangs doing damage and harming the individuals and the people that live there.**" *Nomination of Hon. Kristi Noem: Hearing Before the Comm. on Homeland Security and Governmental Affairs*, 119th Cong. 37 (2025) (emphasis added); *see also* Homeland Security Secretary Nominee Governor Kristi Noem Testifies at Confirmation Hearing, at 1:52:01 (Jan. 27, 2025), https://www.c-span.org/program/senate-committee/homeland-security-secretary-nominee-governor-kristi-noem-testifies-at-confirmation-hearing/654484.

On January 29, 2025, Secretary Noem explained in a nationally televised interview that she was vacating Secretary Mayorkas's extension of TPS status because his extension "**meant [Venezuelan TPS holders] were going to be able to stay here and violate our laws for another eighteen months.**" Kristi Noem, *Fox and Friends*, (Fox News television broadcast, Jan. 29, 2025) (emphasis added), https://www.instagram.com/reel/DFaf8JTxU-o. Secretary Noem announced that she had signed an executive order directing DHS not to "follow through" on the prior administration's TPS extension for Venezuelans, vowing instead to "evaluate all of these individuals that are in our country" because "**the people of this country want these dirtbags out**" and "want their communities to be safe." *Id.* (emphasis added). She explicitly described ending TPS for Venezuelans as part of the new administration's plan to "make sure that we're protecting America, keeping it safe again, just like President Trump promised." *Id.*

On February 2, 2025, Secretary Noem stated in a "Meet the Press" interview that "the TPP [sic] program has been abused, and it doesn't have integrity right now." Kristi Noem, *Meet the Press* (NBC television broadcast, Feb. 2, 2025), https://www.nbcnews.com/meet-the-press/meet-press-february-2-2025-n1311457. Secretary Noem went on to state that "**folks from Venezuela that have come into this country are members of [Tren de Aragua]. And remember, Venezuela purposely emptied out their prisons, emptied out their mental health facilities and sent them to the United States of America. So we are ending that extension of that [TPS] program, adding some integrity back into it. And this administration's evaluating all of our programs to make sure that they truly are something that's to the benefit of the United States, so they're not for the benefit of criminals.**" *Id.* (emphasis added). [5]

***25** President Trump's statements echoed and amplified the same animus toward TPS holders who are Venezuelan and Haitian. In a December 16, 2023, campaign speech, President Trump stated that "**[illegal immigrants] are poisoning the blood of our country.**" Donald Trump, Campaign Speech in Durham, New Hampshire, at 0:14 (Dec. 16, 2023) (emphasis added), https://www.c-span.org/clip/campaign-2024/donald-trump-on-illegal-immigrants-poisoning-the-blood-of-our-country/5098439. At an October 11, 2024, rally, he accused his political opponent of having "**decided to empty the slums and prison cells of Caracas**" and other places into the United States, forcing Americans to "**live with these animals**"—a situation he promised would not last long. Donald Trump, Campaign Speech in Aurora, Colorado, at 41:06, 41:55 (Oct. 11, 2024) (emphases added), https://www.youtube.com/watch?v=_xguaneoZ5A. And in a televised interview just one week into his second term, President Trump claimed that "jails and mental institutions from other countries and gang members ... are being brought to the United States ... and emptied out into our country." Donald Trump, *Fox News*, at

18:26 (Fox News television broadcast, Jan. 22, 2025), https://www.youtube.com/watch?v=mQUmy6gkwWg.

Even if we examined only the statements that *specifically* reference TPS designations and extensions for Venezuelans and Haitians, those statements would be sufficient in demonstrating a clear "bad faith" motive to eliminate TPS protections in order to facilitate the removal of people from two countries whom the decision-makers openly generalized as undesirable "criminals" and as coming from "mental health facilities." [6] These pronouncements alone, many of which were delivered contemporaneously with the TPS policy moves, leave no doubt as to the bad faith mindset and objectives motivating the administration's rush to vacate and terminate TPS for Venezuela and Haiti.

But we must not view each statement in a silo. To do so would require an astonishing level of naiveté. Many of the TPS-related statements were made against a broader backdrop of rhetoric expressing animus toward Venezuelan and Haitian immigrants based on their country of origin. And unlike in *Regents*, 591 U.S. at 35, 140 S.Ct. 1891, where the Supreme Court gave little weight to generalized statements that were untethered to specific government action, this case is unique in that the decision-makers were explicit in explaining their actual motives for vacating TPS extensions for Venezuela. *See Smith v. Town of Clarkton*, 682 F.2d 1055, 1064 (4th Cir. 1982) ("[O]fficials acting in their official capacities seldom, if ever, announce on the record that they are pursuing a particular course of action because of their desire to discriminate against a racial minority."); *Cook County v. Wolf*, 461 F. Supp. 3d 779, 794 (N.D. Ill. 2020) ("Most people know by now that the quiet part should not be said out loud.").

***26** The Secretary's decision expressly rested on the administration's perception of TPS holders from Venezuela as being "criminals" or coming from "mental health facilities." To ignore the obvious relationship between the Secretary's and President's collective statements demonstrating animus toward Venezuelans and Haitians and the Secretary's rushed and abnormal process of vacating TPS extensions for those very same individuals would be to bury our heads in the sand. Many commentators and stakeholders have similarly pointed out the clear connection between the statements made and action taken. [7]

When decision-makers so brazenly broadcast their racially charged reasons for reaching a decision, we should take them at their word. To insist otherwise is to render judicial review of agency action a nullity. Under the APA, courts have a duty to scrutinize the agency's stated rationale where there is evidence that the official justification may conceal an unlawful purpose. And this skepticism should be heightened when it appears that the outcomes are driven by invidious motives such as racial or national origin animus. It is clear that the Secretary's vacatur actions were not actually grounded in substantive policy considerations or genuine differences with respect to the prior administration's TPS procedures, but were instead rooted in a stereotype-based diagnosis of immigrants from Venezuela and Haiti as dangerous criminals or mentally unwell. The American public is able to see the true reason behind the Secretary's vacatur of TPS protections for Venezuelans and Haitians. We should too.

In sum, had we reached the merits of whether the Secretary's actions were arbitrary and capricious, I would have found that the Secretary's and President's remarks provide ample compelling evidence of pretextual reasoning and a preordained outcome. Though the district court primarily considered these statements within the context of its equal protection analysis, we may consider the statements as an additional evidentiary basis on which to affirm the district court's grant of summary judgment on Plaintiffs' APA claims, too. *See McSherry v. City of Long Beach*, 584 F.3d 1129, 1131 (9th Cir. 2009) ("We may affirm the district court's grant of summary judgment on any basis supported by the record." (quoting *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1030 (9th Cir. 2004))).

***27** Under settled administrative law principles, a strong showing of bad faith or improper motive can warrant probing behind an agency's stated reasons. *Dep't of Com.*, 588 U.S. at 781–85, 139 S.Ct. 2551; *Overton Park v. Volpe*, 401 U.S. 402, 420, 91 S.Ct. 814, 28 L.Ed.2d 136 (1971). The Supreme Court has been clear that the "bad faith" standard is met when there is evidence that the "official" rationale in the administrative record was not the agency's actual basis for acting. *Dep't of Com.*, 588 U.S. at 781–85, 139 S.Ct. 2551.

Accordingly, the APA's deferential standard does not require courts to cover their eyes to clear indicia of pretext. *Id.* at 785, 139 S.Ct. 2551. In light of the evidence that Secretary Noem's official reasons for vacating TPS extensions for Venezuela and Haiti were not the true motivations behind her actions, there is ample evidence of bad faith and pretext to justify an examination of Secretary Noem's extra-record statements. This case is not a difficult one where the decision-makers were at least aware that the "quiet part should not

be said out loud." *Cook County*, 461 F. Supp. 3d at 783. Instead, the decision-maker herself repeatedly expressed that "[f]olks from Venezuela that have come into this country are members of [Tren de Aragua]" and that "Venezuela purposely emptied out their prisons, emptied out their mental health facilities and sent them to the United States of America ... ***so*** we are ending that extension of that [TPS] program." Kristi Noem, *Meet the Press* (NBC television broadcast, Feb. 2, 2025) (emphasis added), https://www.nbcnews.com/meet-the-press/meet-press-february-2-2025-n1311457.

At oral argument, the Government repeatedly asserted that we should disregard or discount the above statements of animus because some (though not all) were made before the Secretary and President assumed office or are otherwise outside the four corners of the agency's formal decision record. It relies on *Trump v. Hawaii* and *Regents* to contend that courts are barred from considering pre-office or extra-record remarks. But those cases are readily distinguishable, and the Government's argument is unavailing.

Trump v. Hawaii did not establish any brightline rule forbidding courts from considering such statements in an APA context. In that case, Plaintiffs brought an Immigration and Nationality Act and First Amendment Establishment Clause challenge to a presidential proclamation that barred nationals from certain countries from entering the United States. *Trump*, 585 U.S. at 673–76, 138 S.Ct. 2392. The Supreme Court upheld the policy after applying a form of rational-basis review that examined whether the policy could be upheld on its stated national-security justification, despite the President's history of anti-Muslim statements. *Id.* at 706–10, 138 S.Ct. 2392.

Crucially, the Court did *not* hold that a decision-maker's inflammatory statements were entirely irrelevant to its analysis; to the contrary, the Court recounted the President's statements and declined to lay down a rule insulating them from scrutiny. Instead, the Court proceeded to note that "the issue before us is not whether to denounce the statements," but rather "the significance of those statements in reviewing a Presidential directive, neutral on its face, addressing a matter within the core of executive responsibility." *Id.* at 701–02, 138 S.Ct. 2392. The key to *Trump v. Hawaii*'s result was that, even *accounting* for the troubling statements, the policy on its face was supported by a lengthy inter-agency review and satisfied the deferential standard applicable to the exclusion of foreign nationals in the national-security realm and under the Establishment Clause. Not so here. *Trump v. Hawaii* is also distinguishable because it did not involve any agency decision-making and was instead a direct challenge to the Executive itself. *Id.* at 701–05, 138 S.Ct. 2392. And despite the *Trump v. Hawaii* plaintiffs' claims that the ban targeted Muslims specifically, the Supreme Court noted that the policy impacted only a small fraction of the world's Muslim population and that not all of the countries included were majority-Muslim. *Id.* at 706, 138 S.Ct. 2392.

***28** In sum, *Trump v. Hawaii* was decided in an entirely different legal and factual context from this case, and largely stands for the unrelated proposition in the Establishment Clause context that a facially neutral executive policy will not be set aside as unconstitutional *solely* due to a leader's generalized rhetoric, so long as the policy can otherwise pass a legitimate-purpose test. It does not insulate government agencies from all inquiry into impermissible motive when the APA's standard of review demands a genuine, non-pretextual justification for the action.

Likewise, the Supreme Court in *Regents* did not categorically bar consideration of extra-record statements. The majority declined to invalidate the rescission of Deferred Action for Childhood Arrivals ("DACA") based on an equal protection claim, reasoning that the plaintiffs had not plausibly connected President Trump's generalized remarks about Mexicans to the agency's decision, especially given that the rescission was ostensibly based on the Attorney General's legal determination about DACA's unlawfulness. *Regents*, 591 U.S. at 35, 140 S.Ct. 1891. The Court noted that there was "nothing irregular" about the history or process leading to the DACA rescission and that the decision-makers' actions could be explained without attributing them to animus. *Id.* at 34, 140 S.Ct. 1891.

Importantly, the *Regents* Court did *not* hold that such statements are flatly irrelevant to a court's analysis. Even the majority did not avoid consideration of the statements; it expressly reviewed the remarks made by the President but characterized them as being largely irrelevant in *time* and *context* to the specific action taken *in that case*. *Id.* at 34–35, 140 S.Ct. 1891. Here, unlike in *Regents*, the administrative process was highly irregular and devoid of a consistent non-discriminatory rationale, and the nexus between the leadership's animus-laden statements and the challenged action is uniquely direct and specific.

Secretary Noem's own remarks show that, from day one, she set out to end TPS for Venezuela and Haiti specifically

because she stereotyped TPS holders *from those countries* as dangerous, criminals, and otherwise undesirable. This was a view she expressed repeatedly and tied explicitly to her TPS decisions. These statements were made by the official exercising the agency's power, as well as by the President who influenced and directed the policy, and many of the statements concerned the very subject matter of the decision in question.

Taken together, the agency's rushed and abnormal procedure, coupled with the Secretary's and President's bad faith statements of animus toward TPS holders who are Venezuelan and Haitian, make clear that the official concerns cited by the Secretary were not the driving forces behind her actions. Rather, those reasons were pretextual. Simply put, "the evidence tells a story that does not match the explanation the Secretary gave for [her] decision." *Dep't of Com.*, 588 U.S. at 784, 139 S.Ct. 2551.

The true impetus for the Secretary's actions was the illegitimate one of vacating TPS protections for disfavored groups that were stereotyped as criminals, mentally unwell, and gang members based on their country of origin. The APA does not tolerate such an overt deception of the judicial and public audience. As the Supreme Court has observed, the "evidence showed that the Secretary was determined" to reach a particular result from the time she entered office, and only later "adopted [a] rationale" to justify it; allowing an agency to proceed in such a manner would reduce judicial review to an "empty ritual" and undermine the rule of law. *Id.* at 782–83, 785, 139 S.Ct. 2551.

***29** In my view, to ignore this evidence would be to ignore what is obvious. Nothing in *Trump v. Hawaii* or *Regents* mandates judicial blindness in the face of clear pretext. To the contrary, our case law demands that we consider an official's bad faith statements when they strongly suggest that the official reason given is not the true motive behind the action taken. The APA does not permit us to uphold agency action on the basis of post hoc or contrived justifications. [8]

A court cannot shirk its duty to conduct judicial review of agency action under the APA. *Cf. Cohens v. State of Virginia*, 19 U.S. (6 Wheat.) 264, 404, 5 L.Ed. 257 (1821) ("With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given."); *see also Marbury v. Madison*, 5 U.S. 137, 177, 1 Cranch 137, 2 L.Ed. 60 (1803). For judicial review of agency action to be meaningful, we must consider evidence that suggests agency action is contrived. To recall the Supreme Court, "we are not required to exhibit a naiveté from which ordinary citizens are free." *Dep't of Com.*, 588 U.S. at 785, 139 S.Ct. 2551 (internal quotation marks and citation omitted). And here, there is a compelling record showing that the Secretary's justification was pretextual and that the TPS vacaturs were driven by impermissible animus and preconceived outcomes. I therefore believe that, in addition to grossly exceeding her statutory authority, the Secretary's actions were arbitrary and capricious under the APA.

In reaching this conclusion, I do not probe the wisdom of the Secretary's or President's broader immigration policy preferences or the correctness of their beliefs on immigration or the conditions in Venezuela or Haiti. After all, "[i]t is hardly improper for an agency head to come into office with policy preferences and ideas, discuss them with affected parties, sound out other agencies for support, and work with staff attorneys to substantiate the legal basis for a preferred policy." *Id.* at 783, 139 S.Ct. 2551. Rather, in this instance, we are enforcing the basic point that an agency must exercise its decision-making process in a reasoned manner and in accordance with the law, not for preordained reasons infected by pretext, prejudice, or false expediency. The record here reveals that the reasoning listed by the Secretary was not her true motivation and does not align with the sweeping action taken. Instead, the Secretary was motivated by stereotypes of individuals on the basis of their country of origin in order to vacate TPS designations for those countries. [9]

***30** In reviewing agency action, courts ensure that agency decisions are the result of reasoned decision-making and prevent agencies from using administrative procedure as a cloak to pursue impermissible objectives. Judicial review maintains the integrity of administrative governance and the trust of the public. And while a reviewing court should not lightly impute bad faith to agency officials, the evidence in this case is as stark as any in recent memory. Indeed, if the APA's mandate of genuine, non-arbitrary decision-making means anything, it surely means that an agency cannot openly express stereotype-based animus toward a group of immigrants from certain countries and a predetermined intent to sweep away their protections, and then expect a court to blindly accept a post hoc rationalization that its decision was actually the product of a technical administrative concern. We as the judiciary should not pretend to be blind to what the American public can easily observe for themselves.

Because Judge Wardlaw's opinion resolves the appeal solely on the basis that the Secretary exceeded her authority, reaching the merits of the APA issues is not necessary to the judgment. However, we are free to affirm the district court's summary judgment on any ground supported by the record, and I believe it important to make clear that the outcome in this case would be independently justified by the APA's arbitrary-and-capricious standard, too. *See McSherry*, 584 F.3d at 1131. In my view, the administrative record of procedural abnormalities, augmented by permissible extra-record evidence of bad faith and racial and national origin animus, demonstrates that the Secretary's stated reasons were not the true motivating factors behind her vacatur of TPS for Venezuela and Haiti, and that her vacatur was impermissibly preordained. Therefore, the Secretary's actions cannot withstand even the deferential scrutiny applied under the APA's arbitrary-and-capricious framework.

At its core, the APA enshrines a fundamental principle: agencies of the federal government "must pursue their goals reasonably" and in a manner that is transparent to the people they serve. *Dep't of Com.*, 588 U.S. at 785, 139 S.Ct. 2551. When executive officials short-circuit statutory guardrails or base decisions on hidden motives, it is not a mere technical lapse but an affront to the rule of law. Judicial vigilance in these circumstances is essential to ensure that regulatory power remains tethered to law and reason, not the whims of hidden motives or prejudice.

In sum, while the Executive may certainly shape an agency's policy within the scope granted by Congress, it may not do so by subverting the APA's requirements or by smuggling racial or national origin animus into the administrative process. Animus is never a legitimate basis for agency action and will always constitute arbitrary and capricious decision-making.

The law's promise of accountability demands no less than candor and reasoned decision-making from those entrusted with immense regulatory powers. Here, that promise was betrayed, and it is our duty to say what is already plainly known to the public.

All Citations

--- F.4th ----, 2026 WL 226573

Footnotes

1 Unless otherwise specified, statutory citations are to Title 8 of the U.S. Code.

2 *See* Designation of Guinea for Temporary Protected Status, 79 Fed. Reg. 69511 (Nov. 21, 2014); Designation of Sierra Leone for Temporary Protected Status, 79 Fed. Reg. 69506 (Nov. 21, 2014); Designation of Rwanda Under Temporary Protected Status Program, 59 Fed. Reg. 29440 (June 7, 1994); Designation of Nationals of Somalia for Temporary Protected Status, 56 Fed. Reg. 46804 (Sept. 16, 1991).

3 *See, e.g.*, Extension of the Designation of Somalia for Temporary Protected Status, 83 Fed. Reg. 43695 (Aug. 27, 2018); Termination of the Designation of Angola Under the Temporary Protected Status Program, 68 Fed. Reg. 3896 (Jan. 27, 2003).

4 The 2021 Designation was not extended, but beneficiaries of the 2021 Designation could re-register under the 2025 Extension, and receive TPS through October 2, 2026, as a result. 90 Fed. Reg. at 5962.

5 It was already clear as of the May 2017 extension that Haiti's TPS would soon be terminated. *See Saget v. Trump*, 375 F. Supp. 3d 280, 312 (E.D.N.Y. 2019).

6 This appeal does not concern the Haiti Termination.

7 The TPS statute originally granted this authority to the Attorney General. *See generally* 8 U.S.C. § 1254a. The Attorney General subsequently delegated the responsibility for administering the statute to the Secretary of Homeland Security. *See Nat. TPS Alliance*, 798 F. Supp. 3d at 1117 n.1.

8 Indeed, our holding is much more modest than *McNary* and *CSS.* We decide only that a challenge to the Secretary's statutory authority is reviewable. We save for another day whether other aspects of Plaintiffs' APA challenges would be reviewable under the TPS statute.

9 Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, Div. C, § 306(a)(2), 110 Stat. at 3009–611–12 (1996); *See NTPSA I*, 150 F.4th at 1018 n.8 (noting that "[w]e rely on the enacted text, which differs slightly from the U.S. Code version located at 8 U.S.C. § 1252").

10 While the principles of *Immigrant Defenders Law Center v. Noem*, 145 F.4th 972, 990–91 (9th Cir. 2025), counsel in favor of this holding, unlike in *NTPSA I*, we do not view *Immigrant Defenders* as controlling.

11 Although the clear holding of *Aleman Gonzalez* is that § 1252(f)(1) applies only to injunctions, the Court was careful not to reach the issue of whether relief under APA § 705 and § 706 amounted to an injunction. *Id.* Concurring in part, Justice Sotomayor wrote that "the Court does not purport to hold that § 1252(f)(1) affects courts' ability to 'hold unlawful and set aside agency action, findings, and conclusions' under the Administrative Procedure Act." *Id.* at 571, 142 S.Ct. 2057 (quoting 5 U.S.C. § 706) (Sotomayor, J., concurring). Justice Barrett, joined by Justices Thomas, Alito, and Gorsuch, wrote just a few weeks later that the Court was "avoid[ing] a position on whether § 1252(f)(1) prevents a lower court from vacating or setting aside an agency action under the Administrative Procedure Act," which was a "complex" question that should be first addressed by the lower courts. *Biden v. Texas*, 597 U.S. 785, 839–40, 142 S.Ct. 2528, 213 L.Ed.2d 956 (2022) (Barrett, J., dissenting).

12 At oral argument, the Government insisted that it must have the inherent power to vacate a prior determination because otherwise, "a plainly erroneous assessment of country conditions ... can't be fixed by the Secretary." The Government misses the purpose of the statute. TPS determinations were designed to "provide stability for those with temporary status by insulating them from shifting political winds." *NTPSA I*, 150 F.4th at 1023. As written, the TPS statute does not allow for the revocation of designations or extensions based on mere disagreements between administrations over the proper assessment of country conditions evidence. *Id.* Indeed, the statute provides that, upon finding certain conditions in a foreign state, the Secretary "*may* designate [the] foreign state" for TPS. § 1254a(b)(1) (emphasis added). Congress recognized and expressly allowed for the possibility that the Secretary might determine that a set of circumstances present the "extraordinary and temporary conditions" that justify designating a country for TPS, while a subsequent Secretary would draw the opposite conclusion. § 1254a(b)(1)(C). Such is the nature of discretion. The fact that a subsequent administration may have strong disagreements with its predecessor as to the proper assessment of country conditions, and therefore be stuck with a designation with which it disagrees, is a feature, not a bug, of the statute.

13 We express some reservations about the Government's interpretation of the statute. While § 1254a(b)(3)(A) requires the Government to "consult[ ] with appropriate agencies of the Government" and "review the conditions in the foreign state ... for which a designation is in effect" before "determin[ing] whether the conditions for such designation ... continue to be met," it is not clear that this review must occur during the most recent period of extension. Indeed, even if the Secretary determines that a condition for designation continues to be met, an extension of TPS is discretionary. As such, the Secretary might have been able to, after following the appropriate procedures, terminate Venezuela's TPS designation in February 2025, effective as of the expiration of the 2025 Extension (October 2026). Nevertheless, we decline to resolve this issue today.

14 Indeed, "[t]he real people affected by the Secretary's actions are spouses and parents of U.S. citizens, neighbors in our communities, and contributing members of society who have 'lower rates of criminality and higher rates of college education and workforce participation than the general population.' " *NTPSA II*, 2025 WL 2661556, at *1 (quoting *Nat'l TPS Alliance v. Noem*, 798 F.Supp.3d at 1157–58).

15 Because of the exigencies presented by this case, the mandate shall issue seven days after the publication of this decision. *See* Fed. R. App. P. 41; 9th Cir. Gen. Ord. 4.6.

1 To further reiterate, even *if* the Secretary had some implied or inherent power to vacate a prior TPS designation (which she does not), I would find that her power falls outside the narrow bounds of the statutory bars on judicial review. In the context of the TPS statute, vacatur is *not* a "determination ... with respect to the designation, or termination or extension of a designation, of a foreign state." 8 U.S.C. § 1254a(b)(5)(A). We may therefore reach the merits of Plaintiffs' APA claims even *if* we assumed that the Secretary had an implied or inherent vacatur power.

2 Imagine that the Secretary extended a TPS designation for 100 months, in contravention of § 1254a(b)(3)(C)'s mandate that TPS extensions will last "for an additional period of 6 months (or, in the discretion of the Attorney General, a period of 12 or 18 months)." Would prospective plaintiffs be barred from raising an APA claim against the Secretary's extension on the grounds that § 1254a(b)(5)(A) bars review of *all* TPS determinations, no matter how brashly those determinations flout the TPS statute?

3 Though the Government does not appeal the district court's decision "to the extent that it preserved '[Employment Authorization Documents], Forms I-797, Notices of Action, and Forms I-94 issued with October 2, 2026 expiration dates' through February 5, 2025—the effective date of Secretary Noem's Venezuela vacatur," we may still view the Secretary's failure to consider these reliance interests as evidence of pretext. Additionally, the Secretary's bare-bones vacatur order does not meaningfully consider the reliance interests of *all* TPS holders (including those who had not yet received documentation) and certainly does not provide any reasoned explanation for why vacatur was necessary despite those interests. *Fox Television Stations*, 556 U.S. at 515, 129 S.Ct. 1800.

4 The Government has argued that these extra-record statements should not be considered in evaluating whether the Secretary's actions were arbitrary or capricious. However, as explained *infra*, the district court correctly granted Plaintiffs' Motion to Consider Extra-Record Evidence, which included these statements. Although the district court relied on these statements to deny the Government's motion for summary judgment as to Plaintiffs' equal protection claims, these statements are also relevant to the merits of Plaintiffs' APA claims.

5 This statement is perhaps the most damning for the Secretary. It is unclear how one could view this statement as anything other than stating that the Secretary decided to end TPS for Venezuela *because of* her belief that "Venezuela purposely emptied out their prisons, emptied out their mental health facilities and sent them to the United States of America." Generalizing hundreds of thousands of TPS holders as criminals and mentally unwell *on the basis of* their country of origin is a textbook example of animus-ridden stereotyping. A reliance on animus can never be viewed as "reasonable" decision-making. *See Nw. Ecosystem All.*, 475 F.3d at 1140.

6 *See Stereotype*, Britannica Dictionary, https://www.britannica.com/dictionary/stereotype (last visited Jan. 23, 2025), ("[A]n often unfair and untrue belief that many people have about all people or things with a particular characteristic."); *see also Nat'l TPS All. v. Noem*, 798 F. Supp. 3d 1108, 1157 (N.D. Cal. 2025) ("Secretary Noem's generalization of the alleged acts of a few (for which there is little or no evidence) to the entire population of Venezuelan TPS holders who have lower rates of criminality and higher rates of college education and workforce participation than the general population is a classic form of racism."); Ran Abramitzky et al., *Law Abiding Immigrants: The Incarceration Gap Between Immigrants and the US-Born,*

1870-2020 (2023, *revised* 2024), https://www.nber.org/system/files/working_papers/w31440/w31440.pdf, (finding that immigrants have consistently had lower incarceration rates compared to U.S.-born individuals—a trend that has held true for 150 years); Michael Light et al., *Comparing Crime Rates Between Undocumented Immigrants, Legal Immigrants, and Native-Born US Citizens in Texas* (2020), https://pmc.ncbi.nlm.nih.gov/articles/PMC7768760/pdf/pnas.202014704.pdf, (finding that undocumented immigrants are roughly half as likely to be arrested for violent and property crimes than people born in the United States).

7 *See, e.g., Mass Deportation: Analyzing the Trump Administration's Attacks on Immigrants, Democracy, and America*, American Immigration Council (July 23, 2025), https://www.americanimmigrationcouncil.org/report/mass-deportation-trump-democracy/ (noting that the Trump administration has "invent[ed] millions of nonexistent migrants and accus[ed] them of inherent criminality," and that "while the federal government cannot turn immigrants into bad people just by saying they are, it does have the power to strip legal status from individuals" through ending the TPS program); Elliot Young, *Racism and Classism at the Heart of Rescission of Venezuelan TPS*, Border Criminologies, University of Oxford (May 5, 2025), https://blogs.law.ox.ac.uk/border-criminologies-blog/blog-post/2025/05/racism-and-classism-heart-rescission-venezuelan-tps ("The irresponsible and unfounded comments by politicians and other officials about Venezuelan immigrant criminality should not be used as an excuse to rescind TPS protections for Venezuelans. Rather, they should be understood within the context of a long history of racist and classist tropes characterizing immigrants as diseased, mentally ill, and criminals."); Dominique Espinoza, *Trump Administration's Heartless Termination of TPS for Venezuelans Sparks Legal Showdown*, Coalition on Human Needs (Apr. 8, 2025), https://www.chn.org/voices/trump-administrations-heartless-termination-of-tps-for-venezuelans-sparks-legal-showdown; Amnesty International (@amnestyusa), X (Feb. 2, 2025, 11:12 a.m. PST) ("This [TPS] decision reeks of President Trump's racism towards Venezuelans.").

8 It is worth repeating that the statutory bars on judicial review do not apply under these circumstances. Specifically, § 1254a(b)(5)(A) should be viewed as barring only determinations with respect to the Secretary's actual assessment of "whether the conditions for [a country's] designation" are met given "the conditions in the foreign state." § 1254a(b)(3)(A); *see also* § 1254a(b)(3)(B). It does not shield the Secretary from judicial scrutiny where, as here, Plaintiffs allege that she acted unlawfully by vacating a designation midstream, departed from required procedures, and offered a rationale that was patently pretextual. To interpret § 1254a(b)(5)(A) as foreclosing all APA review of TPS-related actions—no matter how procedurally irregular or facially implausible—would yield outcomes Congress could not have intended. *See Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575, 102 S.Ct. 3245, 73 L.Ed.2d 973 (1982) ("[I]nterpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available."). Imagine, for example, a decision-maker publicly announcing that she would rescind a TPS designation for a country solely on account of those TPS holders' race, then listing a transparently inconsistent or baseless rationale as the official justification. On the Secretary's reading of § 1254a(b)(5)(A), courts would be powerless to intervene under the APA. That reading not only defies logic but erases the judiciary's essential role under the APA in ensuring reasoned and lawful agency action.

9 I do not dispute that TPS determinations necessarily involve country-specific evaluations—indeed, that is what the statute requires. A prospective plaintiff could not simply allege animus on the basis that a TPS determination as to a specific country has the impact of affecting persons who are from that country. But there is a fundamental difference between terminating TPS for a country based on objective, evidence-based assessments of conditions on the ground, and doing so *because of* generalized and derogatory stereotypes about *the people* who have emigrated from that country. The former is entirely lawful and expected, while the latter is unlawful and antithetical to the principles of reasoned decision-making required by the TPS statute and APA.

2026 WL 226573

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APPENDIX B

NTPSA v. Noem, — F.4th —, 2025 WL 2661556 (9th Cir. Sept. 17, 2025) (*NTPSA II*)

2025 WL 2661556
United States Court of Appeals, Ninth Circuit.

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, Plaintiffs - Appellees,
v.
Kristi NOEM; United States Department of Homeland Security; United States of America, Defendants - Appellants.

No. 25-5724
|
FILED September 17, 2025

Synopsis

Background: Noncitizens, who were Venezuelan holders of Temporary Protective Status (TPS), and organization brought action against United States, Secretary of Homeland Security, and Department of Homeland Security (DHS), contending that Secretary's vacatur and termination of Venezuela's TPS designation and its extension exceeded her statutory authority and was arbitrary and capricious under Administrative Procedure Act (APA) and violated Equal Protection Clause. The United States District Court for the Northern District of California, Edward M. Chen, J., 773 F.Supp.3d 807, postponed Secretary's vacatur decision pursuant to APA. Government appealed. The Supreme Court, 145 S.Ct. 2728, granted government's application for stay pending appeal. The Court of Appeals, 2025 WL 2487771, affirmed postponement. The District Court, Chen, J., 2025 WL 2578045, granted summary judgment on plaintiffs' claims that Secretary's vacatur and termination decisions violated APA and denied government's motion for summary judgment on equal protection claims. Government appealed and, in Court of Appeals, filed emergency motion for immediate administrative stay and stay pending appeal.

Holdings: The Court of Appeals held that:

Supreme Court's interim stay of postponement order did not entitle government to stay pending appeal of summary judgment order;

INA's jurisdictional limits did not preclude judicial review of claim that Secretary's vacatur and termination of TPS lacked statutory authorization;

government was not likely to succeed on merits of argument that it had inherent authority to reconsider and vacate any TPS designation;

government was not likely to succeed on merits of noncitizens' claim that vacatur and termination decisions were arbitrary and capricious;

government was not likely to succeed on merits of argument that district court lacked jurisdiction to review whether TPS termination was in national interest;

"irreparable harm" factor weighed against granting stay pending appeal; and

order setting aside vacatur and termination decisions nationwide was not overbroad.

Motion denied.

Procedural Posture(s): On Appeal; Motion for Stay.

D.C. No. 3:25-cv-01766-EMC, Northern District of California, San Francisco

Attorneys and Law Firms

Mr. Ahilan Thevanesan Arulanantham, Attorney, UCLA School of Law, Center for Immigration Law and Policy, Los Angeles, CA, Ms. Eva Lucia Bitran, ACLU Foundation of Southern California, Riverside, CA, Lauren Michel Wilfong, Attorney, Ms. Jessica Karp Bansal, National Day Laborer Organizing Network, Pasadena, CA, Michelle Young Cho, Amanda Young, ACLU Foundation of Northern California, San Francisco, CA, Emilou MacLean, ACLU Foundation of Northern California, San Francisco, CA, Erik Matthew Crew, Haitian Bridge Alliance, San Diego, CA, for Plaintiffs-Appellees.

Mr. Craig Alan Newell, Jr., Mr. Eric Michael Snyderman, Trial Attorney, Jeffrey Michael Hartman, Mr. Carlton Frederick Sheffield, DOJ - U.S. Department of Justice, Civil Division/Office of Immigration Litigation, Washington, DC, Mr. William Weiland, Trial Attorney, DOJ - U.S. Department of Justice, Civil Division, Office of Immigration Litigation, General Litigation and Appeals Section, Washington, DC,

Drew C. Ensign, DOJ - U.S. Department of Justice, Civil Division, Appellate Staff, Washington, DC, for Defendants-Appellants.

Before: Kim McLane Wardlaw, Salvador Mendoza, Jr., and Anthony D. Johnstone, Circuit Judges.

ORDER

***1** On September 5, 2025, the district court granted summary judgment to Plaintiffs, National TPS Alliance ("NTPSA") and individual Temporary Protective Status ("TPS") holders, holding that Department of Homeland Security ("DHS") Secretary Kristi Noem's vacatur and termination of Venezuela's TPS status "exceeded the Secretary's statutory authority and was arbitrary and capricious, and thus must be set aside under the Administrative Procedure Act ("APA")." *Nat'l TPS Alliance v. Noem*, —— F. Supp. 3d. ——, ——, 2025 WL 2578045, at *1 (N.D. Cal. Sept. 5, 2025). More than 600,000 Venezuelan citizens living in the United States rely on the protections provided by Venezuela's TPS status. The real people affected by the Secretary's actions are spouses and parents of U.S. citizens, neighbors in our communities, and contributing members of society who have "lower rates of criminality and higher rates of college education and workforce participation than the general population." *Id.* at *——, 2025 WL 2578045, at *35. Vacating and terminating Venezuela's TPS status threw the future of these Venezuelan citizens into disarray, and exposed them to a substantial risk of wrongful removal, separation from their families, and loss of employment. Congress did not contemplate such a result, and we decline to take the extraordinary step of staying the district court's order as the Government Defendants ("Government") request.

On March 31, 2025, the district court entered an order postponing Secretary Noem's decision to vacate prior DHS Secretary Alejandro Mayorkas's designation and extension of Venezuela's TPS status. *See* Dkt. 93 (Order Granting Plaintiffs' Mot. to Postpone), *Nat'l TPS Alliance v. Noem*, No. 25-cv-01766 (N.D. Cal. Mar. 31, 2025). The Government filed a notice of appeal of the March 31 order and also sought an emergency stay before our Court, which we denied. *Nat'l TPS Alliance v. Noem*, 2025 WL 1142444, at *1 (9th Cir. Apr. 18, 2025). The Government then filed an application for a stay in the Supreme Court, which the Court granted. *Noem v. Nat'l TPS Alliance*, —— U.S. ——, 145 S. Ct. 2728, 2728-29, 221 L.Ed.2d 981 (2025). The Court's order provided:

> The application for stay presented to Justice Kagan and by her referred to the Court is granted. The March 31, 2025 order entered by the United States District Court for the Northern District of California, case No. 3:25-cv1766, is stayed pending the disposition of the appeal in the United States Court of Appeals for the Ninth Circuit and disposition of a petition for a writ of certiorari, if such a writ is timely sought. Should certiorari be denied, this stay shall terminate automatically. In the event certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court. This order is without prejudice to any challenge to Secretary Noem's February 3, 2025 vacatur notice insofar as it purports to invalidate EADs, Forms I-797, Notices of Action, and Forms I-94 issued with October 2, 2026 expiration dates. *See* 8 U.S.C. § 1254a(d)(3). Justice Jackson would deny the application.

***2** *Id.*

We held argument on the merits on July 16, 2025, and on August 29, 2025, we issued our opinion holding that Secretary Noem's vacatur of Venezuela's TPS violated the APA given that "the TPS statute does not authorize the vacatur of a prior grant of TPS." *Nat'l TPS Alliance v. Noem*, —— F.4th ——, ——, 2025 WL 2487771, at *15 (9th Cir. Aug. 29, 2025) (*NTPSA I*). We affirmed the district court's postponement, under APA § 705, of that unauthorized action. The Government did not file a petition for writ of certiorari.

Thereafter, on September 5, 2025, the district court granted summary judgment to Plaintiffs on two APA claims: (1) a challenge to Secretary Noem's vacatur of Venezuela's TPS extension, which was granted by Secretary Mayorkas on January 17, 2025, and (2) a challenge to Secretary Noem's decision to terminate Venezuela's TPS status. Plaintiffs did not move for summary judgment on their Equal Protection

claims, and the district court denied the Government's motion for summary judgment on those claims. [1] The Government filed a new notice of appeal of this judgment and moved before the district court for a stay of enforcement of the district court's judgment pending appeal, which the district court denied on September 10, 2025. The Government then filed an emergency motion in our court on September 12, 2025, seeking an immediate administrative stay and a stay pending appeal of the district court's order. We have jurisdiction under 28 U.S.C. § 1291, and for the reasons discussed herein, we deny the Government's motion. [2]

I. THE SUPREME COURT'S MAY 19, 2025 STAY

As a threshold matter, we reject the Government's argument that the Supreme Court's May 19, 2025 order staying the district court's March 31, 2025 postponement order "squarely control[s]" the outcome of its stay motion. That argument ignores the text of the Supreme Court's order and the reality that the Supreme Court did not have the benefit of reviewing the now more fully developed record on which the district court's summary judgment order relied.

First, the Supreme Court's stay order was textually limited to "[t]he March 31, 2025 order entered by the" district court, *Noem v. Nat'l TPS Alliance, et al.*, —— U.S. ——, 145 S. Ct. 2728, 2728-29, 221 L.Ed.2d 981 (2025), and the appeal of that order to our court. As the district court recognized, that order "did not bar [the district court] from adjudicating the case on the merits and entering a final judgment issuing relief under... the APA." *Nat'l TPS Alliance v. Noem*, —— F. Supp. 3d. ——, ——, n.23, 2025 WL 2578045, at *41, n.23 (N.D. Cal. Sept. 5, 2025).

***3** *Second*, the Supreme Court granted the stay of the March 31, 2025 postponement order without explanation. The Government argues that the stay "predict[s] that the government would prevail on the merits." We do not read the stay order that way. As the Court recently reiterated, its "interim orders are not conclusive as to the merits." *Trump v. Boyle*, 606 U.S. ——, 145 S. Ct. 2653, 2653-54, —— L.Ed.2d —— (2025). And while the Court's interim orders do "inform how a court should exercise its equitable discretion in like cases," *Boyle*, 145 S. Ct. at 2654, they do so through analysis that is lacking in the stay order here. *Boyle* concerned the President's power to remove commissioners of the Consumer Products Safety Commission ("CPSC") subject to for-cause removal protections. A mere two months before *Boyle* was decided, in *Trump v. Wilcox*, the Supreme Court stayed an injunction preventing the President from removing officers of the National Labor Relations Board ("NLRB") and Merit Systems Protection Board ("MSPB"). —— U.S. ——, 145 S. Ct. 1415, 221 L.Ed.2d 985 (2025). *Boyle* held that the stay was "squarely controlled" by the short opinion in *Wilcox* given that both cases had substantially similar facts and turned on the same equities: "that the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty." *Boyle*, 145 S. Ct. at 2654 (quoting *Wilcox*, 145 S. Ct. at 1415).

Unlike the way in which the reasoning in *Wilcox* informed the decision in *Boyle*, the unreasoned stay order in this case provides no analysis to inform our view of the equities in this posture and on this record. We can only guess as to the Court's rationale when it provides none. Perhaps the Court found that the record was not developed sufficiently as to the issue of irreparable harm to the Plaintiffs. Perhaps it was concerned about our jurisdiction. Therefore, without more, we cannot say that the Court's May 19, 2025 order "squarely control[s]" our decision on a later, distinct emergency stay motion, presented in a different procedural posture and on a different record.

Third, this is an appeal from a final order of judgment of a materially different case, based on a fully developed record. This judgment is a set-aside of agency action under APA § 706, not a mere postponement. Moreover, neither we, nor the Supreme Court, had the benefit of discovery when we reviewed the district court's order postponing the Secretary's vacatur. The record before us today is different in several material respects from the one before the district court in March. *See* Dkt. 296 (Order Denying Defendants' Mot. to Stay) at 3, *Nat. TPS Alliance v. Noem*, No. 25-cv-01766 (N.D. Cal. Sept. 10, 2025) (summarizing evidence elicited in discovery and distinguishing the record the Supreme Court considered in May from the record upon which the district court based its summary judgment order). In short, discovery has revealed that DHS ran a barebones process, "acting with unprecedented haste and in an unprecedented manner... for the preordained purpose of expediting termination of Venezuela's TPS" status. —— F.Supp.3d at ——, 2025 WL 2578045, at *29. Neither we nor the Supreme Court had the benefit of reviewing this evidence when the Government first sought an emergency stay of the district court's March 31 postponement order.

II. JURISDICTION AND STANDARD OF REVIEW

The Government raises largely the same challenges to our jurisdiction that we rejected in *NTPSA I*. First, the Government argues that 8 U.S.C. § 1254a(b)(5)(A) bars judicial review of "*any* determinations—that is, determinations of whatever kind—*with respect to* TPS terminations." As we have explained, "[t]he extent of statutory authority granted to the Secretary is a first order question that is not a 'determination ... with respect to the designation, or termination or extension' of a country for TPS." *NTPSA I*, at ——, 2025 WL 2487771, at *10. We reject the Government's argument that *NTPSA I* "is likely to be vacated as moot... so it should not control the Court's assessment of the government's likelihood of success in this appeal."

The Government also reasserts its argument that 8 U.S.C. § 1252(f)(1) bars our review of the Secretary's actions. Our circuit has already squarely resolved this issue, *see Imm. Def's v. Noem*, 145 F.4th 972, 989 (9th Cir. 2025), and we decline to revisit it today. Although some Justices have expressed doubts as to whether the remedy issued in this case under the APA is barred by Section 1252(f)(1), *see United States v. Texas*, 599 U.S. 670, 690-92, 695-701, 143 S.Ct. 1964, 216 L.Ed.2d 624 (2023) (Gorsuch, J. concurring), the Court has yet to resolve this question. There are very good reasons to read Section 1252(f)(1) to permit "challenges to actions that fall outside of a statutory grant of authority." *NTPSA I*, at ——, 2025 WL 2487771, at *11.

***4** We have jurisdiction to review the Secretary's actions and consider the following factors in deciding the Government's motion: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 426, 129 S.Ct. 1749, 173 L.Ed.2d 550 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776, 107 S.Ct. 2113, 95 L.Ed.2d 724 (1987)). "The burden of demonstrating that these factors weigh[ ] in favor of a stay [lies] with the proponent" of the stay. *Mi Familia Vota v. Fontes*, 111 F.4th 976, 981 (9th Cir. 2024) (per curiam).

III. LIKELIHOOD OF SUCCESS

A. First APA Claim

As we previously held, the Government's argument that it has "inherent authority" to reconsider Venezuela's TPS extension is predicated on a clear misapprehension of our circuit's case law and is irreconcilable with the text and purpose of the TPS statute. *See NTPSA I*, at ——, 2025 WL 2487771, at *12 (distinguishing the FCC's inherent authority to revoke telecommunications certificates from the Secretary's inability to revoke a TPS designation or extension because "the statutory framework for the issuance of telecommunications certificates... provides [for] no time limitation at all, [which] 'is a factor that weighs in favor of an implied power of revocation.' ") (quoting *China Unicom (Ams.) Ops. Ltd. v. FCC*, 124 F.4th 1128, 1148 (9th Cir. 2024)) (emphasis removed). To hold that the Government could simply vacate any designation or extension of a prior TPS designation on the whims of shifting political winds would undermine Congress's careful choice to balance the "predictability and stability" of TPS status "with temporal limits." *Id.* at ——, n.9, 2025 WL 2487771, at *14, n.9.

Separately, the district court found that Secretary Noem's vacatur, if she had such authority, was arbitrary and capricious. The Government does not meaningfully engage with the district court's conclusion that a primary rationale for Secretary Noem's vacatur—that "vacatur [was] warranted to untangle the confusion" of consolidating the 2021 and 2023 TPS designations—was squarely contradicted by evidence that the consolidations were "not novel, did not engender confusion, and [were] not 'thin' in explanation." *Nat'l TPS Alliance v. Noem*, —— F. Supp. 3d ——, ——, 2025 WL 2578045, at *27 (quoting 90 Fed. Reg. 8805, at 8807).

Discovery revealed that effectively none of DHS's normal procedures was followed with respect to the vacatur and termination of Venezuela's TPS status. For example, a 2020 Governmental Accountability Office ("GAO") Report details "the general process that DHS has long followed when a TPS designation is subject to periodic review." *Id.* at *——, 2025 WL 2578045, at *4. Specifically, "DHS's practice is to collect four documents to inform each TPS decision," including "a country conditions report compiled by USCIS," "a memo with a recommendation from the USCIS Director to the DHS Secretary," "a country conditions report compiled by the State Department," and "a letter with a recommendation from the

Secretary of State to the Secretary of DHS." *Id.* at *——– – ——–, 2025 WL 2578045, at *4-5. DHS typically receives input from "other agencies or other entities" and "may hold briefings or meetings on TPS reviews, both internally and externally." *Id.* at *——– – ——–, 2025 WL 2578045, at *5-6. Yet the government's "draft of the vacatur decision was begun before Secretary Noem was confirmed as DHS secretary," "[j]ust four days" into the second Trump administration. *Id.* at *——–, 2025 WL 2578045, at *7. Secretary Noem finalized the vacatur decision and began pressuring staff to terminate Venezuela's TPS status *before* receiving any input from the Department of State, the Secretary of State, or USCIS. *Id.* at *——– – ——–, 2025 WL 2578045, at *7-8.

***5** When DHS finally did "belatedly" seek input from the State Department, Secretary Rubio sent a "one-and-a-half page letter" recommending termination of TPS for Venezuela which "failed to include *any* information on country conditions in Venezuela." *Id.* at *——–, *——– – ——–, 2025 WL 2578045, at *30, 7-8. USCIS's recommendation memo did cite country conditions evidence, but inexplicably relied on the exact report that Secretary Mayorkas had cited as necessitating the extension of TPS status for Venezuela just two weeks earlier. *Id.* at *——–, 2025 WL 2578045, at *8. That memo "did *not* explain how USCIS could rely on the Biden Administration country conditions report – which led Secretary Mayorkas to *extend* TPS for Venezuela – to conclude that conditions had improved to such an extent that TPS should be terminated." *Id.* Significantly, this sudden reversal of "DHS's established practices for TPS decision-making" was made "without providing any explanation for that reversal." *Id.* at *——–, 2025 WL 2578045, at *31.

Indeed, the district court found that the reasons given for the Secretary's decision were entirely pretextual. The district court found that DHS made its vacatur and termination decisions first and searched for a valid basis for those decisions second. *See id.* at *——–, 2025 WL 2578045, at *7 (explaining that DHS attempted to create post-hoc rationalizations for the vacatur *after* a decision had already been made by instructing staff to " 'focus on any improvements in Venezuela,' implicitly to advance and support termination of Venezuela's TPS."). In fact, before a vacatur decision was even finalized, DHS was already "preparing to terminate Venezuela's TPS" even though no "country conditions analysis was conducted." *Id.* The Government ultimately failed to provide "any evidence substantiating" its position that "there are notable improvements in several areas such as the economy, public health, and crime that allow for these nationals to be safely returned to their home country." *Id.* at *——–, 2025 WL 2578045, at *10. And the evidence it did submit undermined its argument that the vacatur was necessary to avoid confusion caused by merging the 2021 and 2023 TPS designations. *Id.* at *——–, 2025 WL 2578045, at *27 ("[E]vidence that the *government* submitted in conjunction with the summary judgment proceedings demonstrates that the Biden Administration consolidated the process for the 2021 and 2023 TPS holders precisely to *avoid* confusion."). [3]

Nor does the Government point to any evidence that "Venezuelan TPS holders constitute a threat to national security." *Id.* at *——–, 2025 WL 2578045, at *10. And, the mere conclusory statement that "the Secretary's TPS terminations rested on reasoned decision making based on her review of relevant country conditions evidence" falls far short of the "strong showing" of a likelihood of success on the merits that we require. *Nken*, 556 U.S. at 426, 129 S.Ct. 1749. The record strongly supports the district court's conclusion that the Secretary's actions were "preordained." —– F.Supp.3d at ——–, 2025 WL 2578045, at *29. The Government has not made a sufficient showing to obtain a stay of the district court's order.

B. Second APA Claim

Plaintiffs also argue that the Secretary's termination decision violated the APA. The Government's motion does not meaningfully distinguish between Plaintiffs' APA claims. The Government argues that "the district court... erroneously concluded that it had jurisdiction to review and second-guess whether a TPS termination is in the 'national interest' of the United States" and the district may not "substitute its own policy judgment for that of the agency."

The Government's argument is contradicted by the record. The district court found that the Secretary failed to "consult[ ] with appropriate agencies of the Government" or to "review the conditions in the foreign state" as required by 8 U.S.C. § 1254a(b)(3)(A). Uncontradicted evidence established that the Secretary effectively decided to terminate Venezuela's TPS status before consulting with any government agency and before reviewing any country conditions evidence. —– F.Supp.3d at ——– – ——–, 2025 WL 2578045, at *7-8.

***6** The Government also points to no evidence that Secretary Noem's termination was based on any national security

interest, and the Federal Register publication does not reflect such a rationale for the termination. *Id.* at *——, 2025 WL 2578045, at *22 (finding that "the Secretary has not asserted national interest whatsoever in justifying her vacatur decisions").

The Government is not likely to succeed on the merits of its second APA claim.

IV. REMAINING *NKEN* FACTORS

Mere weeks ago, we found that Plaintiffs would suffer irreparable harm absent postponement of the Secretary's actions, and that the balance of the equities favored Plaintiffs. *NTPSA I*, at ——– ——, 2025 WL 2487771, at *16-18. With the benefit of a more developed record, these conclusions are only strengthened.

As the district court found, the Government "provide[d] *zero evidence* – or argument – [of] irreparable injury." Dkt. 296 (Order Denying Defendants' Mot. to Stay) at 3, *Nat. TPS Alliance v. Noem*, No. 25-cv-01766 (N.D. Cal. Sept. 10, 2025). That failure is "difficult to disregard" and "should matter." *Id.* In its emergency motion, the Government points to no evidence of irreparable harm and merely recycles its argument that the Supreme Court's May 19 order already resolved this issue. The Government contends that "removal alone cannot constitute the requisite irreparable injury to justify a stay and the possibility of family separation is an unfortunate possible consequence of *any* removal proceeding." But as we explained, the irreparable harm in this case is not removal in a vacuum, it is "[w]rongful removal," which brings with it "fears of family separation, detention, and deportation" to a country that "is rated by the U.S. State Department as a 'Level 4 Do Not Travel' country." *NTPSA I*, at ——, ——, 2025 WL 2487771, at *17, 20.

We similarly see no reason to disturb our holding that the balance of the equities heavily favors Plaintiffs.

V. SCOPE OF RELIEF

Lastly, we reject the Government's argument that the relief ordered by the district court is overbroad. As we have already explained, it is impossible to structure relief on an individual basis or to impose any relief short of nationwide set asides under APA § 706 of Secretary Noem's vacatur and termination of Venezuela's TPS status. *Id.* at ——, 2025 WL 2487771, at *20.

VI. CONCLUSION

The Government's Motions for a Stay Pending Appeal and an Immediate Administrative Stay are **DENIED**. The Court shall set an expedited briefing schedule by separate order on the merits of this appeal.

All Citations

--- F.4th ----, 2025 WL 2661556, 2025 Daily Journal D.A.R. 9057

Footnotes

1 The district court also granted summary judgment on Plaintiffs' claims related to Secretary Noem's vacatur and termination of Haiti's TPS status. The Government does not seek a stay of that portion of the judgment.

2 The Government moved for an administrative stay and a stay pending appeal, but did not distinguish between the two requests in briefing. Because we deny the stay pending appeal, the request for an administrative stay is denied as well.

3 The Secretary apparently failed to recognize that 2021 TPS holders were necessarily 2023 TPS holders, such that consolidating the two designations would avoid confusing, overlapping processes.

2025 WL 2661556, 2025 Daily Journal D.A.R. 9057

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APPENDIX C

NTPSA v. Noem, 150 F.4th 1000 (9th Cir. 2025) (*NTPSA I*)

150 F.4th 1000
United States Court of Appeals, Ninth Circuit.

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, Plaintiffs - Appellees,
v.
Kristi NOEM, in her official capacity as Secretary of Homeland Security; United States Department of Homeland Security; United States of America, Defendants - Appellants.

No. 25-2120
|
Argued and Submitted July 16, 2025 Pasadena, California
|
August 29, 2025

Synopsis

Background: Venezuelan nationals with Temporary Protected Status (TPS) and nonprofit organization representing Venezuelan TPS holders nationwide brought action against Secretary of Department of Homeland Security (DHS) to challenge Secretary's decisions vacating prior extension of redesignation of Venezuela for TPS and terminating the redesignation. TPS holders and organization moved under the Administrative Procedure Act (APA) to postpone effective dates of the Secretary's decisions pending judicial review. The United States District Court for the Northern District of California, Edward M. Chen, J., 773 F.Supp.3d 807, granted motion to postpone effective dates pending judicial review. Secretary appealed.

Holdings: The Court of Appeals, Wardlaw, Circuit Judge, held that:

it had jurisdiction to consider interlocutory appeal;

courts were not deprived of jurisdiction to consider challenge to Secretary's decision;

plaintiffs were likely to succeed on merits of claim;

they established likelihood of irreparable harm absent postponement of decision;

balance of equities and public interest supported postponement; and

nationwide postponement was necessary.

Affirmed.

Procedural Posture(s): Interlocutory Appeal; Review of Administrative Decision.

Appeal from the United States District Court for the Northern District of California, Edward M. Chen, District Judge, Presiding, D.C. No. 3:25-cv-01766-EMC

Attorneys and Law Firms

Ahilan T. Arulanantham (argued), Center for Immigration Law and Policy, UCLA School of Law, Los Angeles, California; Eva L. Bitran, ACLU Foundation of Southern California, Riverside, California; Michelle Y. Cho, Emilou MacLean, and Amanda Young, ACLU Foundation of Northern California, San Francisco, California; Jessica K. Bansal and Lauren M. Wilfong, National Day Laborer Organizing Network, Pasadena, California; Erik Crew, Haitian Bridge Alliance, San Diego, California; for Plaintiffs-Appellees.

Drew C. Ensign (argued), Deputy Assistant Attorney General; Amanda Saylor, Carlton F. Sheffield, Jeffrey M. Hartman, Lauren Bryant, Anna Dichter, Eric M. Snyderman, Catherine Ross and Luz M. Restrepo, Trial Attorneys; Craig A. Newell Jr. and William H. Weiland, Senior Litigation Counsel; Sarah L. Vuong, Assistant Director; Office of Immigration Litigation; Yaakov M. Roth, Principal Deputy Assistant Attorney General; Brett A. Shumate, Assistant Attorney General; Civil Division, United States Department of Justice, Washington, D.C.; for Defendants-Appellants.

Matt A. Crapo and Christopher J. Hajec, Immigration Reform Law Institute, Washington, D.C., for Amicus Curiae Immigration Reform Law Institute.

Jeremiah L. Morgan and William J. Olson, William J. Olson PC, Vienna, Virginia; Rick Boyer, Integrity Law Firm, Lynchburg, Virginia; Patrick M. McSweeney, Powhatan, Virginia; Michael Boos, Citizens United, Washington, D.C.;

for Amicus Curiae America's Future, Citizens United, and Conservative Legal Defense and Education Fund.

Steven K. Ury, Elena Medina, Deborah L. Smith, and Nathanial Putnam, Service Employees International Union, Washington, D.C.; Daniel B. Rojas, Rothner, Segall & Greenstone, Pasadena, California; Matthew Holder, Communications Workers of America, Washington, D.C.; Mario Martinez, United Farm Workers of America, Keene, California; for Amici Curiae Service Employees International Union, Communications Workers of America, and United Farm Workers of America.

Anne Lai, UC Irvine School of Law, Irvine, California; Andrew I. Schoenholtz, Georgetown University Law Center, Washington, D.C.; Jaya Ramji-Nogales, Beasley School of Law, Temple University, Philadelphia, Pennsylvania; for Amici Curiae Immigration Law Scholars.

Jesse P. Basbaum, Alex Flores, and Annabelle Wilmott, Deputy Attorneys General; Vilma Palma-Solana, Supervising Deputy Attorney General; Michael Newman, Senior Assistant Attorney General; Rob Bonta, California Attorney General; Office of the California Attorney General, Oakland, California; Cleland B. Welton II, Assistant Solicitor General; Zoe Levine, Special Counsel for Immigrant Justice; Judith N. Vale, Deputy Solicitor General; Barbara D. Underwood, Solicitor General; Letitia James, New York Attorney General; Office of the New York Attorney General, New York, New York; William Tong, Connecticut Attorney General, Office of the Connecticut Attorney General, Hartford, Connecticut; Kathleen Jennings, Delaware Attorney General, Office of the Delaware Attorney General, Wilmington, Delaware; Brian L. Schwalb, District of Columbia Attorney General, Office of the District of Columbia Attorney General, Washington, D.C.; Anne E. Lopez, Hawai'i Attorney General, Office of the Hawai'i Attorney General, Honolulu, Hawai'i; Kwame Raoul, Illinois Attorney General, Office of the Illinois Attorney General, Chicago, Illinois; Aaron M. Frey, Maine Attorney General, Office of the Maine Attorney General, Augusta, Maine; Dana Nessel, Michigan Attorney General, Office of the Michigan Attorney General, Lansing, Michigan; Keith Ellison, Minnesota Attorney General, Office of the Minnesota Attorney General, St. Paul, Minnesota; Aaron D. Ford, Nevada Attorney General, Office of the Nevada Attorney General, Carson City, Nevada; Matthew J. Platkin, New Jersey Attorney General, Office of the New Jersey Attorney General, Trenton, New Jersey; Dan Rayfield, Oregon Attorney General, Office of the Oregon Attorney General, Salem, Oregon; Peter F. Neronha, Rhode Island Attorney General, Office of the Rhode Island Attorney General, Providence, Rhode Island; Anthony G. Brown, Maryland Attorney General, Office of the Maryland Attorney General, Baltimore, Maryland; Andrea J. Campbell, Commonwealth of Massachusetts Attorney General, Office of the Commonwealth of Massachusetts Attorney General, Boston, Massachusetts; Charity R. Clark, Vermont Attorney General, Office of the Vermont Attorney General, Montpelier, Vermont; Nicholas W. Brown, Washington Attorney General, Office of the Washington Attorney General, Olympia, Washington; for Amici Curiae States of California, New York, Connecticut, Delaware, Hawai'i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, Oregon, Rhode Island, Vermont, Washington, and the District of Columbia.

Robert S. Chang and Shaleen Shanbhag, Fred T. Korematsu Center for Law and Equality, UC Irvine School of Law, Irvine, California; Rose Cuison-Villazor, Center for Immigrant Justice, Rutgers Law School, Newark, New Jersey; for Amici Curiae Members of Congress.

Before: Kim McLane Wardlaw, Salvador Mendoza, Jr., and Anthony D. Johnstone, Circuit Judges.

OPINION

WARDLAW, Circuit Judge:

***1007** Since 2021, over 600,000 Venezuelan citizens living in the United States have received immigration status under the Temporary Protected Status ("TPS") program. This status provides eligible Venezuelans with work authorization and temporary protection from deportation. 8 U.S.C. § 1254a(a)(1). While their home country experienced "the worst humanitarian crisis in the Western Hemisphere in recent memory," Deferred Enforced Departure for Certain Venezuelans, 86 Fed. Reg. 6845, 6845 (Jan. 19, 2021), Venezuelan TPS holders were given protection to build their lives in the United States for renewable periods of six to eighteen months, 8 U.S.C. § 1254a(b)(2)–(3). Some hoped to return to Venezuela after the crisis subsided. Others awaited the adjudication of their applications for asylum or for other long-term immigration status in the United States. Each discrete extension of TPS allowed them to take jobs, sign leases, enroll in schools, and raise their families with the knowledge that although their ***1008** status was temporary, they were authorized to remain in the United States until the expiration of their lawful status.

On January 17, 2025, then-Secretary of the Department of Homeland Security ("DHS") Alejandro Mayorkas announced an extension, effective immediately, of Venezuelan TPS through October 2, 2026. Extension of the 2023 Designation of Venezuela for Temporary Protected Status, 90 Fed. Reg. 5961, 5961 (Jan. 17, 2025). Secretary Mayorkas cited Venezuela's ongoing "complex, serious and multidimensional humanitarian crisis" marked by the collapse of its healthcare system and the disruption of its basic services, and he concluded that the "extraordinary and temporary conditions supporting Venezuela's TPS designation remain." *Id.* at 5963 (citation omitted). Seventeen days later, newly confirmed DHS Secretary Kristi Noem took the unprecedented action [1] of purporting to vacate this prior extension of TPS. Vacatur of 2025 Temporary Protected Status Decision for Venezuela, 90 Fed. Reg. 8805, 8806 (Feb. 3, 2025) ("Vacatur Notice"). Two days after that, she moved to terminate TPS for one group of Venezuelan TPS holders. Termination of the October 3, 2023 Designation of Venezuela for Temporary Protected Status, 90 Fed. Reg. 9040, 9040 (Feb. 5, 2025) ("Termination Notice"). The Secretary explained this reversal by invoking concerns about "confusion" caused by the prior extension, asserting that there were "notable improvements" in the conditions in Venezuela, and concluding that "[c]ontinuing to permit Venezuelans [with TPS] to remain in the United States does not champion core American interests." Vacatur Notice, 90 Fed. Reg. 8805, 8807; Termination Notice, 90 Fed. Reg. 9040, 9042–43.

TPS beneficiaries were suddenly faced with the fear of prematurely losing their status within a matter of weeks or months. For many, this meant the loss of their jobs, and the possibility of deportation to a country that had been declared unsafe just one month earlier, and, for others, the real possibility of family separation from their relatives with more permanent status. Hundreds of thousands of TPS holders, who had been living in the United States and relying on their legal immigration status for years, could become targets for detention and deportation.

Plaintiffs, the National TPS Alliance ("NTPSA"), an organization with members in all 50 states, and seven individual TPS holders, sued to restore the January 2025 extension of Venezuelan TPS. They claimed that the DHS Secretary lacks vacatur authority under 8 U.S.C. § 1254a ("TPS statute") and that Secretary Noem's actions otherwise violated the Administrative Procedure Act ("APA") and the Equal Protection Clause of the U.S. Constitution. On March 31, 2025, the U.S. District Court for the Northern District of California granted preliminary relief, postponing the effective dates of Secretary Noem's vacatur and termination notices under APA section 705. The Government now appeals.

We hold that Plaintiffs are likely to succeed on their claim that the vacatur of a prior extension of TPS is not permitted by the governing statutory framework. In enacting the TPS statute, Congress designed a system of temporary status that was predictable, dependable, and insulated from electoral politics. Congress rejected the prior system of deferred action based on "the vagaries of our domestic politics," 135 Cong. Rec. H7501 (daily ed. Oct. 25, 1989) (statement of Rep. Meldon Edises ***1009** Levine), and instead enacted fixed terms of protected status of between six and eighteen months, 8 U.S.C. § 1254a(b)(2), (3)(C). A reading of the statute that allows for vacatur would render these terms—and Congress's design—meaningless. Plaintiffs are therefore likely to succeed on the merits of their first APA claim. Moreover, Plaintiffs have demonstrated that they face irreparable harm to their lives, families, and livelihood, that the balance of equities favors a grant of preliminary relief, and that nationwide relief is appropriate. Accordingly, we affirm the district court's order postponing the vacatur and termination of Venezuelan TPS.

I. FACTUAL AND LEGAL BACKGROUND

A. History of Temporary Protection

For about three decades before the enactment of the statute authorizing TPS, presidential administrations exercised prosecutorial discretion to grant protection from deportation to certain groups of noncitizens on an ad hoc basis. H.R. Rep. No. 100-627, at 6 (1988) ("[E]very Administration since and including that of President Eisenhower has permitted one or more groups of otherwise deportable aliens to remain temporarily in the United States out of concern that ... forced repatriation ... could endanger their lives or safety."). This type of humanitarian protection—which the Executive premised on its authority to enforce the immigration laws—was termed Extended Voluntary Departure ("EVD"). Andorra Bruno et al., Cong. Rsch. Serv., RS75700, Analysis of June 15, 2012 DHS Memorandum, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children, at 9 (2012). *see* 8 U.S.C. § 1229a, *id.* § 1229c. Noncitizens protected under EVD received a work authorization and a stay of deportation. Andrew I. Schoenholtz, *The Promise and Challenge of Humanitarian*

Protection in the United States: Making Temporary Protected Status Work as a Safe Haven, 15 Nw. J. L. & Soc. Pol'y. 1, 5 (2019). From 1960 to 1989, the Attorney General granted EVD to nationals from at least fourteen different countries. *Id.* Beginning in 1990, President George H.W. Bush began granting Deferred Enforced Departure ("DED"), which effectively provides the same relief as EVD: protection from deportation and the ability to apply for an accompanying work permit. *Id.* at 6. This action, too, is not specifically authorized by statute, rather the Executive has cited its general enforcement authority under the Immigration and Nationality Act ("INA"), *see* 8 U.S.C. §§ 1229a, 1229c, to exercise this discretion. Bruno, *supra*, at 9.

In the late 1980s, Congress considered multiple proposals for alternative mechanisms for granting humanitarian relief to groups of non-U.S. citizens. For instance, the Temporary Safe Haven Act of 1988, a proposed amendment to the INA, was intended to create a "more formal and orderly mechanism for the selection, processing and registration" of foreign citizens in the United States whose countries of nationality were experiencing ongoing armed conflict, natural disaster, or other extraordinary and temporary conditions. H.R. Rep. No. 100-627, at 4 (1988). Several legislators spoke about the need for a statutory EVD- or DED-like procedure, but they voiced concerns about granting unbridled deference to the Executive branch in determining the country designations and time periods for relief. *See, e.g.*, 133 Cong. Rec. 19560 (1987) (statement of Rep. Romano Mazzoli) ("[T]he process by which EVD grants are made, extended, or terminated is utterly mysterious, since there exist no statutory criteria to guide the administration."); 133 Cong. Rec. 19559 ***1010** (1987) (Statement of Rep. Hamilton Fish, Jr.) (decrying the lack of criteria for granting EVD and explaining the need to fill the statutory gap for those who seek temporary refuge in the United States). In discussions about another TPS precursor bill, legislators expressed the same concerns. *See, e.g.*, 135 Cong. Rec. H7501 (daily ed. Oct. 25, 1989) (statement of Rep. William Blaine Richardson) (speaking in favor of the establishment of a systematic procedure for temporary protected status "because we need to replace the current ad hoc, haphazard regulations and procedures that exist today"). Representative Levine stressed the importance of constraining Executive authority and insulating vulnerable noncitizens from politics: "Refugees, spawned by the sad and tragic forces of warfare, should not be subject to the vagaries of our domestic politics as well." 135 Cong. Rec. H7501 (daily ed. Oct. 25, 1989) (statement of Rep. Meldon Edises Levine).

One year later, in 1990, Congress passed, and President George H.W. Bush signed, the Immigration Act of 1990, Pub. L. No. 101-649. This law amended the INA to create the TPS program, which has largely replaced the Executive's prior ad hoc framework for providing relief to nationals of certain designated countries. The law provided a new statutory basis for the temporary protection of certain nationals of foreign countries, now with explicit guidelines, specific procedural steps, and time limitations.

B. TPS Statutory Framework

Pursuant to the TPS statute, 8 U.S.C. § 1254a, the DHS Secretary may designate a foreign state for TPS when nationals of that state cannot return there safely due to armed conflict, natural disaster, or other "extraordinary and temporary conditions," unless the Secretary "finds that permitting the [noncitizens] to remain temporarily in the United States is contrary to the national interest of the United States." 8 U.S.C. § 1254a(b)(1)(C); *see also* 8 U.S.C. § 1103(a); 6 U.S.C. § 557 (transferring responsibility for TPS administration from the Attorney General to the Secretary of Homeland Security). A foreign state's initial TPS designation is for a set period of between six and eighteen months, as selected by the Secretary. 8 U.S.C. § 1254a(b)(2). Such a designation permits certain nationals of the foreign state, who have continuously resided in the United States since the effective date of the designation, to register for employment authorization and protection from deportation for the duration of the TPS period. *Id.* § 1254a(a)(1), (b)(2). Other restrictions apply: applicants must be "admissible" under the immigration laws, *id.* § 1254a(c)(1)(A)(iii); they must not have been "convicted of any felony or 2 or more misdemeanors committed in the United States," *id.* § 1254a(c)(2)(B)(i); and they risk revocation of status if the Secretary "finds that the [noncitizen] was not in fact eligible for such status," *id.* § 1254a(c)(3)(A). TPS does not provide beneficiaries with a pathway to permanent resident status, nor does it include any right to petition for visas on behalf of family members in the United States or abroad.

At least sixty days before the end of the designated TPS period, the Secretary, "after consultation with appropriate agencies of the Government," reviews the designation and determines "whether the conditions for such designation under this subsection continue to be met." *Id.* § 1254a(b)(3)(A). If the foreign state no longer meets the conditions for TPS

designation, the Secretary "shall terminate the designation." *Id.* § 1254a(b)(3)(B). Otherwise, the Secretary may extend the designation for an additional period of six, twelve, or eighteen months. ***1011** *Id.* § 1254a(b)(3)(C). The statute provides that "[t]here 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." *Id.* § 1254a(b)(5)(A).

C. Venezuelan TPS

On January 19, 2021, the last day of his first term, President Donald Trump designated Venezuela for DED, explaining that Venezuela was experiencing the "worst humanitarian crisis in the Western Hemisphere in recent memory." Deferred Enforced Departure for Certain Venezuelans, 86 Fed. Reg. 6845, 6845 (Jan. 19, 2021). President Trump directed the Secretary of Homeland Security to "take appropriate measures to authorize employment" for certain Venezuelans citizens who were present in the United States as of January 20, 2021. *Id.* On March 9, 2021, DHS Secretary Alejandro Mayorkas designated Venezuela for an 18-month period of TPS, effective March 9, 2021 through September 9, 2022. Designation of Venezuela for Temporary Protected Status and Implementation of Employment Authorization for Venezuelans Covered by Deferred Enforced Departure, 86 Fed. Reg. 13574, 13574 (Mar. 9, 2021) ("2021 Designation"). In the Federal Register notice, Secretary Mayorkas cited Venezuela's "severe political and economic crisis" marked by "[e]conomic contraction," "deepening poverty," "a collapse in basic services," and "human rights abuses and repression." *Id.* at 13576. Approximately 323,000 Venezuelan nationals who had continuously resided in the United States since March 8, 2021 or earlier became eligible to apply for TPS. *Id.* at 13575.

On September 8, 2022, one day before the expiration of Venezuela's 2021 TPS designation, Secretary Mayorkas announced the extension of Venezuelan TPS for an additional eighteen months, from September 10, 2022 through March 10, 2024. Extension of the Designation of Venezuela for Temporary Protected Status, 87 Fed. Reg. 55024, 55024 (Sept. 8, 2022). This extension permitted existing beneficiaries of the 2021 TPS designation to extend their work authorization and protection from removal.[2] *Id.* In the Federal Register notice, Secretary Mayorkas explained that the 18-month extension was warranted because "Venezuela remain[ed] in a humanitarian emergency due to economic and political crises," with "limited access to food, basic services, and adequate healthcare, and the deterioration of the rule of law and protection of human rights." *Id.* at 55026. He concluded that "it is not contrary to the national interest of the United States to permit Venezuelan TPS beneficiaries to remain in the United States temporarily." *Id.* at 55027.

On October 3, 2023, Secretary Mayorkas issued a Federal Register notice in which he took two actions: first, he announced a second 18-month extension of the 2021 Venezuela TPS designation; and second, he redesignated Venezuela for TPS. Extension and Redesignation of Venezuela for Temporary Protected Status, 88 Fed. Reg. 68130, 68130 (Oct. 3, 2023). The redesignation of Venezuela for TPS allowed eligible Venezuelans who had continuously resided in the United States since July 31, ***1012** 2023 to apply for TPS for the first time. *Id.* Secretary Mayorkas reasoned that both extending and redesignating Venezuelan TPS was warranted "because extraordinary and temporary conditions continue to prevent Venezuelan nationals from returning in safety." *Id.* at 68132. Based on this notice, beneficiaries of the 2021 Venezuelan TPS designation could extend their status through September 10, 2025. *Id.* at 68130. Registration for the 2023 Venezuela TPS redesignation began on October 3, 2023, and the status continued through April 2, 2025. *Id.* Approximately 472,000 additional people became potentially eligible for this second Venezuela designation. *Id.* at 68134. This created a two-track system, with different TPS periods for the 2021 and 2023 registrants ending on two different dates.

Secretary Mayorkas addressed this two-track system on January 17, 2025 by extending the 2023 Venezuelan TPS designation. Extension of the 2023 Designation of Venezuela for Temporary Protected Status, 90 Fed. Reg. 5961 (Jan. 17, 2025). Through this notice, Secretary Mayorkas allowed existing beneficiaries of either the 2021 or 2023 TPS designation to seek an 18-month extension of status through October 2, 2026. *Id.* at 5962. Secretary Mayorkas explained that there would no longer be two separate filing processes for the 2021 and 2023 TPS designations for Venezuela. *Id.* at 5963. Instead, based on a U.S. Citizenship and Immigration Services ("USCIS") evaluation of "the operational feasibility and resulting impact on stakeholders of having two separate filing processes," including confusion among applicants and adjudicators, the Secretary determined that it was appropriate to consolidate the two filing processes. *Id.* Secretary Mayorkas justified the extension of Venezuelan TPS by citing the Department of Homeland Security's review

of Venezuelan country conditions, "including input received from [the] Department of State" and other agencies. *Id.* He further determined that "it is not contrary to the national interest of the United States to permit Venezuelan TPS beneficiaries to remain in the United States temporarily." *Id.*

Upon taking office on January 20, 2025, President Trump issued Executive Order ("EO") No. 14159, entitled "Protecting the American People Against Invasion," in which he tasked the Secretary of State, the Attorney General, and the Secretary of Homeland Security with "promptly tak[ing] all appropriate action, consistent with law, to rescind the policy decisions of the previous administration that led to the increased or continued presence of illegal aliens in the United States ...." Exec. Order No. 14159, § 16 (Jan. 20, 2025), 90 Fed. Reg. 8443, 8446 (Jan. 29, 2025). Specifically, he charged these officials with "ensuring that designations of Temporary Protected Status are consistent with ... 8 U.S.C. § 1254a[ ], and that such designations are appropriately limited in scope and made for only so long as may be necessary to fulfill the textual requirements of that statute." *Id.* § 16(b).

On February 3, 2025, newly confirmed DHS Secretary Kristi Noem issued a notice purporting to vacate former Secretary Mayorkas's extension of the 2023 designation and the accompanying consolidation of the two Venezuelan TPS filing systems. Vacatur Notice, 90 Fed. Reg. 8805, 8806. Secretary Noem opined that "[t]he Mayorkas Notice adopted a novel approach of implicitly negating the 2021 Venezuela TPS designation by effectively subsuming it within the 2023 Venezuela TPS designation," without "acknowledg[ing] the novelty of its approach or explain[ing] how it is consistent with the TPS statute." *Id.* at 8807. The Secretary explained that Secretary Mayorkas's approach ***1013** "included multiple notices, overlapping populations, overlapping dates, and sometimes multiple actions happening in a single document." *Id.* The Vacatur Notice described Secretary Mayorkas's explanations for his "attempts to address" confusion as "thin and inadequately developed." *Id.* Thus, Secretary Noem decided that "[g]iven these deficiencies and lack of clarity, vacatur is warranted to untangle the confusion, and provide an opportunity for informed determinations regarding the TPS designations and clear guidance." *Id.* Without the extensions provided for by Secretary Mayorkas's extension notice, TPS for 2023 registrants was set to expire on April 2, 2025, and TPS for 2021 registrants was set to expire on September 10, 2025. *Id.* at 8806.

Two days later, on February 5, 2025, Secretary Noem issued another notice, this time announcing the termination of the 2023 TPS designation of Venezuela, which, by statute, would be effective 60 days later. Termination Notice, 90 Fed. Reg. at 9040. The Termination Notice stated that "[a]fter reviewing country conditions ... in consultation with the appropriate U.S. Government agencies," and "determin[ing] it is contrary to the national interest" to extend Venezuelan TPS, the Secretary concluded that Venezuela no longer met the conditions for TPS designation. *Id.* at 9040–41. The Secretary defined the term "national interest" as an "expansive standard," and she provided several reasons for her determination that an extension of TPS would be contrary to the national interest: the "sheer numbers" of TPS holders strained resources in local communities and "cost taxpayers billions of dollars"; the Venezuelan gang "Tren de Aragua" posed a threat to the United States; there was a potential "magnet effect" caused by TPS determinations; and "[c]ontinuing to permit Venezuelans under the 2023 TPS designation to remain in the United States does not champion core American interests or put American interests first." *Id.* at 9042–43 (footnotes and citations omitted). Secretary Noem cited EO 14159 as a justification for "reapprais[ing] the national interest factors and giv[ing] strong consideration to the serious national security, border enforcement, public safety, immigration policy, and economic and public welfare concerns engendered by illegal immigration of Venezuelans." *Id.* at 9043. Because the termination of TPS may not take effect earlier than 60 days after the Federal Register notice is published, 8 U.S.C. § 1254a(b)(3)(B), the effective date of the termination of the 2023 designation of Venezuela for TPS was set for April 7, 2025.

D. Procedural History

On February 19, 2025, the National TPS Alliance, a member-led organization, and seven individual TPS holders (collectively, "Plaintiffs"), sued Secretary Noem and the United States Government ("the Government") in the U.S. District Court for the Northern District of California on behalf of themselves and all NTPSA members. Plaintiffs asked the court to postpone and invalidate the Vacatur and Termination Notices issued by Secretary Noem, and to restore the prior extension of the 2021 and 2023 TPS designations through October 2, 2026.

On March 31, 2025, the district court granted Plaintiffs' motion for preliminary relief by postponing the Vacatur and

Termination Notices. Applying the *Winter* test for the grant of preliminary relief, the district court held that (1) Plaintiffs established a likelihood of success on the merits; (2) TPS beneficiaries will "suffer irreparable injury" if relief is not granted; and (3) the public interest and balance of equities "tip[ ] sharply" in favor of postponement. ***1014** *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008). The district court postponed the agency's Vacatur and Termination Notices nationwide. On April 2, 2025, the Government appealed. [3]

II. JURISDICTION – CARSON

28 U.S.C. § 1292(a)(1) grants appellate jurisdiction over "[i]nterlocutory orders of the district courts ... granting, continuing, modifying, refusing or dissolving injunctions." Here, the district court ordered preliminary relief in the form of a postponement of agency action under APA section 705. We may review such a postponement only if the appellant satisfies the three-part test established in *Carson v. American Brands, Inc.*, 450 U.S. 79, 101 S.Ct. 993, 67 L.Ed.2d 59 (1981). *Imm. Defs. Law Ctr. v. Noem*, 145 F.4th 972, 983-84 (9th Cir. 2025). "[T]he appealing party must show that the order (1) has the practical effect of the grant or denial of an injunction; (2) has serious, perhaps irreparable consequences; and (3) can be effectively challenged only by immediate appeal." *United States v. El Dorado County*, 704 F.3d 1261, 1263 (9th Cir. 2013) (quotation marks omitted) (quoting *Thompson v. Enomoto*, 815 F.2d 1323, 1326–27 (9th Cir.1987)).

First, we have recently held that a section 705 postponement has the practical effect of a preliminary injunction because it "pauses the [ ]implementation of" agency action. *Imm. Defs.*, 145 F.4th at 983. We have similarly treated a temporary restraining order as an injunction "where an adversarial hearing has been held and the district court's basis for issuing the order is strongly challenged." *Id.* As in *Immigrant Defenders*, the district court here held a contested hearing on Plaintiffs' motion to postpone, and the Government strongly challenged the postponement order, including by securing a stay on the Supreme Court's emergency docket. *Id.* The first prong of the *Carson* test is satisfied. [4]

The second *Carson* factor is the risk of "serious, perhaps irreparable, consequence[s]" to the appellant. 450 U.S. at 84, 101 S.Ct. 993 (citation omitted). "It is well established that the mere existence of the Executive Branch's desire to enact a policy is not sufficient to satisfy the irreparable harm prong." *Imm. Defs.*, 145 F.4th at 985. However, here, the Government has satisfied this requirement. Because the Supreme Court granted a stay in favor of the Government, the Court necessarily held that the Government would face irreparable harm if the district court's postponement order were to remain in effect. *See Hollingsworth v. Perry*, 558 U.S. 183, 190, 130 S.Ct. 705, 175 L.Ed.2d 657 (2010) (per curiam) (enumerating the threshold requirement that a party seeking a stay must demonstrate "a likelihood that irreparable harm will result from the denial of a stay"); ***1015** *Noem v. Nat'l TPS All.*, —— U.S. ——, 145 S.Ct. 2728, 221 L.Ed.2d 981 (2025) (granting the Government's stay request). Thus, the second *Carson* factor is also satisfied.

Finally, the third *Carson* factor requires that the order under appeal can "be effectually challenged only by immediate appeal." 450 U.S. at 84, 101 S.Ct. 993 (citations and quotation marks omitted). Impeding "the government's [ ]ability to fully enact an immigration policy of its choice," can in some situations "compound the harm to the government over time" and thereby satisfy the third *Carson* factor. *Imm. Defs.*, 145 F.4th at 985. Plaintiffs correctly note that the Government can challenge the postponement order before the district court at the summary judgment stage of litigation. However, TPS presents a unique context because of its temporary nature; it is conceivable that the postponement order, if left in place, would remain in effect throughout much of the challenged extension period. [5] Even a slight delay to allow the district court to rule on summary judgment could prevent the litigants from receiving meaningful appellate review. Accordingly, the Government has made a sufficient showing that the district court's postponement order under section 705 can be effectively challenged only by immediate appeal.

Because the Government has satisfied the three-part *Carson* test, we have jurisdiction to consider this appeal. We therefore proceed to examine the likelihood of success as to the merits of Plaintiffs' challenge to DHS's action.

III. STANDARD OF REVIEW

The Government appeals the grant of temporary relief under 5 U.S.C. § 705 of the APA. Section 705 provides:

> When an agency finds that justice so requires, it may postpone the effective

> date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

The postponement of agency action under the APA is governed by the preliminary injunction factors. *Imm. Defs.*, 145 F.4th at 985-86. Under that framework, "[a] plaintiff seeking a preliminary injunction must establish that (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest." ***1016** *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 668 (9th Cir. 2021) (citation omitted). Where, as here, the Government is a party, the last two factors merge. *Id.* The factors are evaluated on a sliding scale, so "a stronger showing of one element may offset a weaker showing of another." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

We review the district court's factual findings for clear error, legal determinations de novo, and ultimate resolution of the preliminary injunction factors for abuse of discretion. *Washington v. Trump*, 145 F.4th 1013, 1022-23 (9th Cir. 2025). We review the "district court's choice of equitable remedy" for abuse of discretion. *Mont. Wildlife Fed'n v. Haaland*, 127 F.4th 1, 50 (9th Cir. 2025).

IV. FIRST APA CLAIM – JURISDICTION

The Government argues that we lack judicial power to review Plaintiffs' first APA claim, which challenges the DHS Secretary's statutory authority to vacate a prior extension of TPS. The Government relies on two statutes: the TPS statute itself, 8 U.S.C. § 1254a; and a provision of the INA restricting courts from "enjoin[ing] or restrain[ing]" the operation of certain immigration statutes, 8 U.S.C. § 1252(f)(1). However, neither statute prevents us from reaching the merits of this claim.

A. The TPS Statutory Bar, 8 U.S.C. § 1254a

The TPS statute, 8 U.S.C. § 1254a, provides that:

> There is no judicial review of any determination of the [Secretary of Homeland Security] with respect to the designation, or termination or extension of a designation, of a foreign state under this subsection.

Id. § 1254a(b)(5) "Review" (A) "Designations."

Courts strongly presume that Congress intends judicial review of administrative actions. *Hyatt v. Off. of Mgmt. & Budget*, 908 F.3d 1165, 1170-71 (9th Cir. 2018). This presumption can only be overcome by "clear and convincing evidence of a contrary legislative intent." *Id.* at 1171 (quoting *Pinnacle Armor, Inc. v. United States*, 648 F.3d 708, 718 (9th Cir. 2011)). In determining whether the presumption has been overcome, the Supreme Court has noted that " 'the clear and convincing evidence standard is not a rigid evidentiary test,' and 'the presumption favoring judicial review [is] overcome, whenever the congressional intent to preclude judicial review is fairly discernible in the statutory scheme.' " *Id.* (quoting *Block v. Cmty. Nutrition Inst.*, 467 U.S. 340, 350–51, 104 S.Ct. 2450, 81 L.Ed.2d 270 (1984)) (alterations in original).

Where, as here, the claim is that "agency action [was] taken in excess of delegated authority," this presumption of reviewability is "particularly strong." *Amgen, Inc. v. Smith*, 357 F.3d 103, 111 (D.C. Cir. 2004) (citing *Leedom v. Kyne*, 358 U.S. 184, 190, 79 S.Ct. 180, 3 L.Ed.2d 210 (1958)); *Leedom*, 358 U.S. at 190, 79 S.Ct. 180 (Courts "cannot lightly infer that Congress does not intend judicial protection of rights it confers against agency action taken in excess of delegated powers"). The assertion that a statute bars substantial statutory and constitutional claims is "an extreme position." *Bowen v. Mich. Acad. of Fam. Physicians*, 476 U.S. 667, 680–81, 106 S.Ct. 2133, 90 L.Ed.2d 623 (1986).

Courts look to a statute's "express language[,] ... the structure of the statutory scheme, its objectives, its legislative history,

and the nature of the administrative action involved." ***1017** *Hyatt*, 908 F.3d at 1171 (quoting *Block*, 467 U.S. at 345, 104 S.Ct. 2450). We begin, and can end, with the "natural meaning of the text." *Patel v. Garland*, 596 U.S. 328, 340, 142 S.Ct. 1614, 212 L.Ed.2d 685 (2022). If this inquiry reveals clear and convincing evidence that the claim is covered by the jurisdiction-stripping statute, then the jurisdiction-stripping provision applies. *See Amgen*, 357 F.3d at 111. If the jurisdiction-stripping provision does not clearly apply or is ambiguous, we apply the APA's presumption of reviewability. *See Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 229, 140 S.Ct. 1062, 206 L.Ed.2d 271 (2020) ("We have consistently applied the presumption of reviewability to immigration statutes." (citation and quotation marks omitted)).

Textually, Plaintiffs' first APA claim—challenging the Secretary's statutory authority to vacate a prior TPS extension—falls outside the scope of this jurisdiction-stripping provision.[6] The extent of statutory authority granted to the Secretary is a first order question that is not a "determination ... with respect to the designation, or termination or extension" of a country for TPS. Nothing here indicates that Congress's language restricting review of the Secretary's "determination[s]" of whether to grant TPS in a particular situation also extends to her conclusion as to the extent of her power under the TPS statute. *See* 8 U.S.C. § 1254a(b)(5)(A).

Block v. Community Nutrition Institute is instructive. There, the Supreme Court considered whether the Agricultural Marketing Agreement Act of 1937, which granted the Secretary of Agriculture authority to promulgate "milk market orders," stripped courts of jurisdiction to review challenges to milk market orders brought by persons *other than* "dairy handlers." 467 U.S. at 346, 104 S.Ct. 2450. The Court, reasoning that "[i]t is clear that Congress did not intend to strip the judiciary of *all* authority to review the ... orders" because "Congress added a mechanism by which dairy handlers could obtain review of the Secretary's market orders," concluded that "[t]he remainder of the statutory scheme ... makes equally clear Congress' intention to limit the classes entitled to participate in" challenges to market orders. *Id.* (emphasis added). The Court therefore held that "[t]he restriction of the administrative remedy to handlers strongly suggests that Congress intended a similar restriction of judicial review of market orders." *Id.* at 347, 104 S.Ct. 2450. Here, the text of the TPS statute counsels in favor of drawing the same type of inference—Congress's decision to explicitly carve out from judicial review the Secretary's decisions related to "determination[s] ... with respect to the designation, or termination or extension" of a country for TPS "strongly suggests" that we may review the Secretary's interpretations of her *authority* under the TPS statute. *Id.*

The legislative history of the TPS statute confirms our understanding that ***1018** Congress intended to constrain the authority of the Executive, not to render all aspects of the TPS program unreviewable. *Hyatt*, 908 F.3d at 1171. Moreover, we typically do not understand jurisdiction-stripping statutes to bar review of the question of the scope of statutory authority.[7] *See, e.g., Amgen*, 357 F.3d at 113–14 (collecting cases) ("Where, as here, we find that the Commission has acted outside the scope of its statutory mandate, we also find that we have jurisdiction to review the Commission's action." (citation omitted)). Thus, the plain text of the statute, its legislative history, and the strong presumption that the scope of agency authority is reviewable all confirm that we are empowered to answer the question of whether the Secretary has the statutory authority to vacate a prior extension of TPS.

B. Judicial Review Under the Immigration and Nationality Act, 8 U.S.C. § 1252(f)(1)

The Government contends that we lack jurisdiction to provide injunctive relief under the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, otherwise known as the Immigration & Naturalization Act ("INA"), 8 U.S.C. § 1252(f)(1) (U.S. Code version).[8] The parties' dispute centers on whether the district court's postponement order in fact "enjoin[ed] or restrain[ed] the operation" of the TPS statute, and therefore whether the district court lacked jurisdiction to grant injunctive relief in the form of a postponement of agency action.

The INA states, in a section entitled "Judicial Review of Orders of Removal," under the heading "Limit on injunctive relief":

> IN GENERAL.—Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of chapter

> 4 of title II, as amended ... other than with respect to the application of such provisions to an individual alien against whom proceedings under such chapter have been initiated.

Pub. L. No. 104-208, Div. C, § 306(a)(2), 110 Stat. at 3009-611 (1996).

The district court concluded, and we agree for slightly different reasons, that section 1252(f)(1) does not bar Plaintiffs' first APA claim. First, after the district court's March 31, 2025 postponement, our court held that section 1252(f)(1) does not prohibit relief in the form of a stay or postponement of agency action under the APA. *Imm. Defs.*, 145 F.4th at 990-91. Second, even if the district court's order does "enjoin or restrain," it is not barred by section 1252(f)(1) if it affects only agency actions that exceed the agency's statutory authority. In *Ali v. Ashcroft*, we held that:

> [Section] 1252(f)(1) limits the district court's authority to enjoin the INS from carrying out legitimate removal orders. ***1019** Where, however, a petitioner seeks to enjoin conduct that allegedly is not even authorized by the statute, the court is not enjoining the operation of part IV of subchapter II, and § 1252(f)(1) therefore is not implicated.

346 F.3d 873, 886 (9th Cir. 2003), *vacated on unrelated grounds sub nom. Ali v. Gonzales*, 421 F.3d 795 (9th Cir. 2005). We reaffirmed *Ali v. Ashcroft* in *Rodriguez v. Hayes*, in which we held that the petitioner could "enjoin conduct ... not authorized by the statutes" despite the restrictions of section 1252(f)(1). 591 F.3d 1105, 1120–21 (9th Cir. 2010), *rev'd on other grounds, Jennings v. Rodriguez*, 583 U.S. 281, 313, 138 S.Ct. 830, 200 L.Ed.2d 122 (2018) (acknowledging our holding that this provision did not affect our jurisdiction over statutory claims (citing *Rodriguez*, 591 F.3d at 1120)).

As such, section 1252(f)(1)'s bar on injunctive relief for claims does not affect challenges to actions that fall outside of a statutory grant of authority. We therefore have jurisdiction to consider Plaintiffs' APA claim that the Secretary exceeded her statutory authority in vacating the 2023 extension.

V. FIRST APA CLAIM – EXCEEDED AUTHORITY

Plaintiffs argue that Secretary Noem's vacatur was not authorized by the TPS statute because the TPS statute authorizes only the designation, extension, or termination of TPS, and not the vacatur of an extension. *See* 5 U.S.C. § 706(2)(C) (permitting courts to "hold unlawful and set aside agency action" found "in excess of statutory jurisdiction, authority, or limitations"). The Government counters that because the statute grants the DHS Secretary the authority to designate TPS, she must also have the inherent authority to vacate it. However, agencies lack the authority to undo their actions where, as here, Congress has spoken and said otherwise. Plaintiffs are therefore likely to succeed on the merits of this claim.

Where Congress does not explicitly address the subject, agencies have some authority to reconsider prior decisions. In *China Unicom (Ams.) Ops. Ltd. v. FCC (CUA)*, 124 F.4th 1128 (9th Cir. 2024), we considered whether the Federal Communications Commission ("FCC") could revoke a certificate issued to China Unicom (Americas) Operations Limited ("CUA") allowing it to provide telecommunications services in the United States. *Id.* at 1132. The relevant statute required those "acquir[ing] or operat[ing] any line" to first obtain a certificate from the FCC, which the FCC could condition on "such terms and conditions as in its judgment the public convenience and necessity may require." *Id.* at 1133–34 (citations omitted). The statute was silent, however, as to whether or how the FCC could revoke previously issued certificates. *Id.* The FCC had issued CUA's certificate in 2002, but by 2020 the national security environment had changed. *Id.* at 1136–39. After giving CUA an opportunity to respond to its concerns, the FCC revoked the certificate in 2022. *Id.* at 1140–41. We held that the FCC had this revocation power based on the statute's grant of authority to issue certificates, its silence as to revocations, and its language giving the FCC the power to "perform any and all acts" and "issue such orders, ... as may be necessary in the execution of its functions." *Id.* at 1143–44 (citation omitted). We characterized the latter provision as "in effect, a 'necessary and proper' clause that enables the FCC to carry out its statutory authorities," which allowed it to revoke a certificate for rule violations or when the public interest so required. *Id.* at 1134.

***1020** We compared the provisions authorizing these telecommunications certificates to the statutory language

regarding broadcast licenses. *Id.* at 1148. We noted that "broadcast licenses are generally issued for *fixed*, renewable terms of up to eight years," and "[t]he use of a fixed term is thus affirmatively inconsistent with positing an implied power to revoke a license at any time." *Id.* (emphasis in original). "By contrast," the statutory framework for the issuance of telecommunications certificates, which provides no time limitation at all, "is a factor that weighs in *favor* of an implied power of revocation." *Id.* (emphasis in original).

However, where Congress has spoken as to the proper procedure for reversing a decision, agencies lack the inherent authority to circumvent the statute. For instance, in *Ivy Sports Medicine, LLC v. Burwell*, 767 F.3d 81 (D.C. Cir. 2014), the D.C. Circuit considered whether the FDA had the inherent authority to reconsider its regulation of a medical device. *Id.* at 82. The court noted that "administrative agencies are assumed to possess at least some inherent authority to revisit their prior decisions, at least if done in a timely fashion." *Id.* at 86. But the court clarified that "any inherent reconsideration authority does not apply in cases where Congress has spoken." *Id.* "Put more simply, our cases assume that Congress intends to displace an administrative agency's inherent reconsideration authority when it provides statutory authority to rectify the agency's mistakes." *Id.* In *Ivy*, the D.C. Circuit rejected the FDA's claim of inherent authority because Congress specified the statutory mechanism by which the FDA could reclassify the medical device and thereby correct its prior error. *Id.* at 87. The FDA "could not rely on a claimed inherent reconsideration authority to short-circuit that statutory process and revoke its prior ... determination to achieve th[e] same result." *Id.* The FDA's complaints that the statutory reclassification process took longer, required greater process, and did not achieve an identical result did not change the court's determination that Congress had displaced the FDA's inherent reconsideration authority by providing a separate mechanism for doing so. *Id.* at 87–88.

Similarly, in *Gorbach v. Reno*, 219 F.3d 1087 (9th Cir. 2000) (en banc), we considered whether the Attorney General's statutory authority to naturalize new U.S. citizens under 8 U.S.C. § 1421(a) necessarily conferred on her the power to reopen or vacate prior naturalizations. *Id.* at 1089–90. Congress had explicitly allocated the denaturalization power to the federal judiciary, stating that denaturalization proceedings may be brought "in any district court." *Id.* at 1093–94 (quoting 8 U.S.C. § 1451(a)). Because Congress had spoken on the issue, we rejected the Attorney General's assertion of revocation power, explaining:

> There is no general principle that what one can do, one can undo .... But there is no statutory confirmation of any inherent power the [Attorney General] may have to vacate [her] judgments, except for [her] narrow authority to cancel certificates without affecting citizenship ... Whether the Attorney General can undo what she has the power to do, naturalize citizens, depends on whether Congress said she could.

Id. at 1095. Although we recognized that "[p]ossibly the agency has authority to correct clerical errors shortly after they are made," we held that it lacked statutory authorization to rewrite the Congressional allocation of the denaturalization power to the judiciary. *Id.* at 1098.

In the TPS context, Plaintiffs are likely to succeed in their claim that Congress ***1021** has displaced any inherent revocation authority by explicitly providing the procedure by which a TPS designation is terminated. The Secretary's assertion of such a power is, as the district court noted, "at odds with the structure of the TPS statute." The TPS statute specifically addresses the time frame within which a TPS designation may be terminated. Section 1254a(b)(3)(B) provides that a termination "shall not be effective earlier than 60 days after the date the notice is published or, if later, the expiration of the most recent previous extension." It expressly provides that the termination of a TPS designation can be no earlier than the expiration of the most recent extension. The statute does not permit the Secretary to terminate a designation "midstream," but that is exactly what the Secretary purports to do here. And while the statute expressly sets forth in detail procedures for "designation," "extension," and "termination," it nowhere mentions a process for "vacatur," which, in this case, has the practical effect of a "termination" of a TPS designation. Thus, if the Secretary wished to end TPS status for Venezuelans, she is statutorily required to follow the procedures for termination that Congress enacted.

Like in *Ivy* and *Gorbach*, Congress has provided mechanisms for designating, extending, and terminating TPS, and the agency is not free to disregard them by relying on a vague

invocation of "inherent authority." Congress has provided a means for the Secretary to account for changes in country conditions or political priorities: she can terminate TPS within the confines of the statute. Holding otherwise, and allowing rescission or vacatur of the TPS designation here, would empower the agency to indirectly take three separate actions that are prohibited by statute: designating countries for TPS for a time period under six months, 8 U.S.C. § 1254a(b)(2)(B), (b)(3)(C), terminating TPS before the expiration of the last extension, § 1254a(b)(3)(B), and terminating TPS with less than sixty days' notice, *id.* Such a dodge of statutory language is impermissible. *See Civ. Aeronautics Bd. v. Delta Air Lines, Inc.*, 367 U.S. 316, 328, 81 S.Ct. 1611, 6 L.Ed.2d 869 (1961) (rejecting agency's assertion of "the power to do indirectly what it cannot do directly"). We may not render the statute a "dead letter" by allowing the agency to act "without complying with the procedural requirements" set forth by Congress. *Ivy*, 767 F.3d at 87.

Thus, our precedent recognizes that the power to do does not necessarily encompass a power to undo. The structure and temporal limitations of the TPS statute protect the important reliance interests of individual TPS holders, and the Government must adhere to these statutory constraints. The Government's arguments to the contrary lack merit.

First, the Government points to Secretary Mayorkas's 2023 reconsideration and rescission of the termination of Salvadoran TPS and argues that this rescission substantiates the existence of vacatur authority. *See* Reconsideration and Rescission of Termination of the Designation of El Salvador for Temporary Protected Status; Extension of the Temporary Protected Status Designation for El Salvador, 88 Fed. Reg. 40282 (June 21, 2023). The prior administration's 2018 termination of Salvadoran TPS had been enjoined for five years and thus had never gone into effect. *Id.* at 40284. Secretary Mayorkas rescinded the termination and extended Salvadoran TPS. *Id.* at 40283. But this rescission does not affect Secretary Noem's statutory vacatur authority. For one, a prior violation of statutory authority does not excuse subsequent violations, nor does it affect the Congressionally-enacted ***1022** scope of agency authority. *See New Jersey v. EPA*, 517 F.3d 574, 583 (D.C. Cir. 2008) ("[P]revious statutory violations cannot excuse the one now before the court."). Additionally, as Plaintiffs argue, the agency may have the authority to reverse a non-final action where that action is prevented from taking effect by a reviewing court. *United Gas Imp. Co. v. Callery Props., Inc.*, 382 U.S. 223, 229, 86 S.Ct. 360, 15 L.Ed.2d 284 (1965). This consideration is not present here.

Second, the Government expresses a concern that restricting the Secretary's TPS authority "leads to absurd and extreme results—no Secretary would be empowered to vacate a designation or extension of a designation no matter how grave the threat to national security, U.S. foreign policy, or border security interests." However, this argument ignores that TPS is, by its nature, temporary. And Congress expressly contemplated such situations: the statute renders individuals convicted of certain crimes ineligible for TPS and provides for the withdrawal of status of others. 8 U.S.C. § 1254a(c)(2)(B), (c)(3). Moreover, concerns about a designated country that no longer meets the conditions for TPS can be addressed within, at most, eighteen months by terminating the designation upon its expiration. *Id.* § 1254a(b)(2), (3)(C). These restrictions on the Secretary's authority are supported by the legislative history of the TPS statute, which demonstrates that Congress sought to limit the previously unfettered executive discretion inherent in the EVD and DED procedures. If, instead, Congress had intended to retain broad executive discretion to designate and terminate countries at will, it is difficult to imagine why it would have enacted the TPS statute in the form that it did, which provides specific timelines and mechanisms for these actions. [9] *See also CUA*, 124 F.4th at 1148 (noting that the "[t]he use of a fixed term" in the statute is "affirmatively inconsistent with positing an implied power to revoke a license at any time").

These Congressional limitations on the Secretary's authority are further supported by the reliance issues at play here. *See Gorbach*, 219 F.3d at 1097 (considering the "importance of citizenship and the safeguards against taking it away" in support of the conclusion that the agency lacked denaturalization power); *Ivy*, 767 F.3d at 87 (rejecting agency's attempt to avoid the "procedural hoops" because of, in part, the importance of "ensur[ing] that regulated parties receive fair treatment"). Congress's time limitations are meaningful to the regulated parties here—people who use this guaranteed time with "enough stability to work" and "a decent standard of living" to obtain employment, seek educational opportunities, and find long-term housing. [10] This was Congress's design ***1023** when it enacted TPS: to constrain Executive authority and to provide stability for those with temporary status by insulating them from shifting political winds. *See* 135 Cong. Rec. H7501 (daily ed. Oct. 25, 1989) (statement of Rep. Meldon Edises Levine).

Third, the Government's argument that an agency can correct its own errors falls flat. Although agencies may typically correct clerical or typographical errors in a timely manner, even if they otherwise do not have rescission or vacatur authority, they are not empowered to substantively re-decide issues under this authority. We acknowledged as much in *Gorbach*, where we squarely rejected the Attorney General's claimed denaturalization power, although we noted that the agency could likely correct typographical errors on naturalization certificates. 219 F.3d at 1098. The Government is correct that this power to correct small errors can exist "even though the applicable statute and regulations do not expressly provide for such reconsideration." *Gun S., Inc. v. Brady*, 877 F.2d 858, 862 (11th Cir. 1989). But agencies may not change course on a substantive policy decision under this error-correcting authority. *See Am. Trucking Ass'ns v. Frisco Transp. Co.*, 358 U.S. 133, 146, 79 S.Ct. 170, 3 L.Ed.2d 172 (1958) ("Of course, the power to correct inadvertent ministerial errors may not be used as a guise for changing previous decisions because the wisdom of those decisions appears doubtful in the light of changing policies."). [11]

Finally, the Government argues that the TPS statute's limitations did not prevent vacatur here because Secretary Mayorkas's extension of TPS had not yet taken effect. This is factually incorrect: the extension did take effect, and the reregistration period began on January 17, 2025. 90 Fed. Reg. 5961, 5962. TPS holders began applying to extend their status, as the Supreme Court recognized in its stay order in this case, which exempted from that order challenges to the Secretary's attempt to invalidate already-issued documents under the extension. *Noem v. Nat. TPS All.*, —— U.S. at ——, 145 S.Ct. 2728. TPS holders began to rely upon the extension of their protected status at the opening of this registration period, giving rise to the strong reliance interests here at stake. *See Dept. of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30–31, 140 S.Ct. 1891, 207 L.Ed.2d 353 (2020) (cataloguing the reliance interests of Deferred Action for Childhood Arrivals (DACA) recipients). The Government provides no support for its contention that this period is somehow exempt from the statutory restriction on terminating TPS ***1024** before "the expiration of the most recent previous extension." 8 U.S.C. § 1254a(b)(3)(B).

In sum, Plaintiffs make out a strong case on the merits on their APA claim challenging the Secretary's putative vacatur authority. "Where Congress itself has significantly limited executive discretion by establishing a detailed scheme that the Executive must follow in dealing with [noncitizens], the [Executive] may not abandon that scheme because he thinks it is not working well." *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 774 (9th Cir. 2018) (quoting *Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 368, 125 S.Ct. 694, 160 L.Ed.2d 708 (2005)) (quotation marks and alterations omitted). Congress created such a detailed scheme when it enacted the TPS statute, and the Government must follow it. Because the TPS statute does not authorize the vacatur of a prior grant of TPS, Plaintiffs are likely to succeed on the merits of this claim.

* * *

We need not proceed to Plaintiffs' additional claims. Our holding that the Secretary lacks vacatur authority under the statute moots Plaintiffs' claims challenging the particular means by which the Secretary reached the vacatur decision. [12] We likewise decline to reach Plaintiffs' Equal Protection Clause challenge to the Termination Notice. If the vacatur is postponed, and the prior extension is restored, the termination cannot go into effect. *See* 8 U.S.C. § 1254a(b)(3)(B) (prohibiting the termination of TPS before "the expiration of the most recent previous extension"). And "[a] court presented with both statutory and constitutional grounds to support the relief requested usually should pass on the statutory claim before considering the constitutional question." *Califano v. Yamasaki*, 442 U.S. 682, 692, 99 S.Ct. 2545, 61 L.Ed.2d 176 (1979) (citation omitted).

VI. REMAINING WINTER FACTORS

We now turn to our review of the remaining factors underlying the district court's grant of preliminary relief under APA section 705: irreparable harm to the ***1025** party seeking relief, the balance of equities (including the public interest), and the proper scope of relief. 5 U.S.C. § 705 (permitting postponement of agency action "to the extent necessary to prevent irreparable injury"); *see Imm. Defs.*, 145 F.4th at 985-86 (applying *Winter* factors to APA section 705 postponement action) (citing *Winter*, 555 U.S. at 20, 129 S.Ct. 365).

A. Irreparable Harm

We begin by considering whether Plaintiffs will be irreparably harmed absent a postponement of agency action. "Irreparable harm is harm for which there is no adequate legal remedy,

such as an award for damages." *See E. Bay v. Biden*, 993 F.3d at 677 (quotation marks and citation omitted). The district court found, based on Plaintiffs' unrebutted evidence, that Secretary Noem's actions vacating the prior TPS extension and terminating Venezuelan TPS was likely to "inflict irreparable harm on hundreds of thousands of persons whose lives, families, and livelihoods will be severely disrupted." Having reviewed the evidentiary record, we conclude that the district court did not abuse its discretion in determining that Plaintiffs established a likelihood of irreparable harm absent a postponement of agency action.

For many Venezuelan TPS holders, the termination of their status exposes them to the risk of deportation. Wrongful removal is a relevant factor in the irreparable harm analysis. *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (concluding that travel prohibitions which prevented certain noncitizens from traveling to the United States harmed employees and students of state universities, separated families, and stranded states' residents abroad, which constituted "substantial injuries and even irreparable harms" to the states); *see also Nken v. Holder*, 556 U.S. 418, 435–36, 129 S.Ct. 1749, 173 L.Ed.2d 550 (2009) (holding that, although the harm of removal is not sufficient by itself to demonstrate irreparable harm, "there is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm"). Here, the harm of removal is present, because many TPS holders lack any other form of immigration status. And these harms go beyond the removal of individuals from the United States. TPS holders also face a substantial likelihood of family separation: the district court found that, as of 2022, even before the second TPS designation for Venezuela, approximately 54,000 U.S. citizen children and 80,000 U.S. citizen adults lived with a Venezuelan TPS holder. The record is replete with examples of such mixed-status families whose life together depends on TPS, and who must now plan for whether they will remain together or be forced to separate.

Moreover, TPS holders' potential deportation to Venezuela poses independent risks of harm. Venezuela is rated by the U.S. State Department as a "Level 4: Do Not Travel" country because of the "high risk of wrongful detentions, terrorism, kidnapping, the arbitrary enforcement of local laws, crime, civil unrest, [and] poor health infrastructure." Many of Plaintiffs' declarations recite the harms they experienced in Venezuela, and that they fear experiencing again if deported: kidnappings, beatings, threats, robbery, harassment, and the inability to make enough money to support themselves or their families.

For those who will remain in the United States without documentation, the loss of legal status presents additional harms. Many newly undocumented former TPS holders will lose their jobs, educational opportunities, and driver's licenses. Others, who have additional forms of temporary immigration status, like a pending ***1026** asylum application, will lose the stability and reliability of TPS. A pending asylum application only provides a noncitizen with work authorization until that application is adjudicated, whereas TPS provides a discrete and durable form of status for the full designation period.

The Government counters that the temporary nature of TPS is what causes these injuries, not the Vacatur and Termination Notices. By its reasoning, the potential for deportation and the loss of legal status is always present at the end of a given TPS period, so shortening that period of protection does not change the ultimate result. But the district court was correct to reject this argument, reasoning: "[T]ime matters, even if that time is limited. Certainly, anyone who, for instance, has experienced the loss of a loved one to a terminal illness understands the preciousness of time, even if short." This time—in the United States, with their families, and with immigration status—is valuable to TPS holders, and the loss of it can be irreparable. Plaintiffs have made a sufficient showing of irreparable harm.

B. The Balance of Equities and the Public Interest

The final two factors of the preliminary relief standard—the balance of equities and the public interest—merge when the Government is a party. *E. Bay v. Biden*, 993 F.3d at 668. In this analysis, we consider the harm to the Government and the public, the promotion of the efficient administration of our immigration laws, the value of compliance with the APA, the public interest in preventing harm to and the wrongful removal of noncitizens, and the importance of preserving congressional intent. *Id.* at 678. The district court found that "the balance of hardships (including consideration of the public interest) tips sharply in Plaintiffs' favor." Reviewing the district court's factual findings for clear error, we agree. *See Washington v. Trump*, 145 F.4th at 1021-22.

First, both sides contend that the public is injured by the improper application of the laws. The public's interest in the proper enforcement of the laws effectively tracks the

merits analysis here. *See E. Bay v. Biden*, 993 F.3d at 678–79 ("[T]he public has an interest in ensuring that the statutes enacted by [their] representatives are not imperiled by executive fiat." (quotation marks and citation omitted)). Because Plaintiffs have shown a likelihood of success on the merits, this portion of the analysis favors Plaintiffs.

The district court also determined that stripping work authorization from Venezuelans in the United States negatively affects the economy and public safety for several reasons. The district court specifically found that Venezuelan TPS holders "work in frontline jobs" and, and it relied on expert witness declarations to conclude that Venezuelans "make significant economic contributions to their communities" and to the overall U.S. economy. The district court also found that the loss of legal status for Venezuelans will also increase the number of people relying on public benefits and publicly funded health care. Finally, the district court held that the vacatur and termination of Venezuelan TPS will impede law enforcement because noncitizens without legal status are less likely to report crimes or to testify in court.

The Government contends that public hospitals and police stations are overrun, so eliminating Venezuelan TPS is in the public interest. [13] In Secretary ***1027** Noem's Termination Notice, she cited a report by the Center for Strategic and International Studies which states that "city shelters, police stations, and aid services are at a maximum capacity." 90 Fed. Reg. 9040, 9043 & n.13 (citation omitted). However, the district court, relying on multiple expert witness declarations and amici, found that terminating Venezuelan TPS would only exacerbate these problems. Public assistance programs and public healthcare would face increased demand from former TPS holders who had lost their employment authorization and employer-sponsored health insurance. Indeed, the report cited by Secretary Noem rejects the idea that terminating Venezuelan TPS would solve these problems. Instead, the report suggests that "longer-term solutions" include "expediting mechanisms to grant work authorizations so that migrants can escape informal labor[ ] and advocating for a more permanent extension of temporary protective status for all Venezuelans." Betilde Muñoz-Pogossian & Alexandra Winkler, *The Persistence of the Venezuelan Migrant and Refugee Crisis*, Center for Strategic & International Studies (Nov. 27, 2023).

Finally, we note that the Government has never, in the thirty-five-year history of TPS, sought to vacate a prior extension of TPS. The Government's assertion that such a vacatur is necessary now is undermined by the fact that it has never attempted to take such an action before.

Accordingly, we find no clear error in the district court's factual findings, nor do we find an abuse of discretion in its weighing of the balance of equities. Thus, because Plaintiffs demonstrated that all four *Winter* factors are aligned in favor of the postponement of Secretary Noem's Vacatur Notice, we hold that district court did not abuse its discretion by granting preliminary relief.

C. Scope of Relief

Our final consideration is the proper scope of relief. Preliminary relief "must be narrowly tailored to remedy the specific harm shown." *E. Bay Sanctuary Covenant v. Barr*, 934 F.3d 1026, 1029 (9th Cir. 2019) (quotation marks and citation omitted). Broad nationwide injunctions must have "an articulated connection to a plaintiff's particular harm." *Id.* Here, the district court postponed the Vacatur and Termination Notices nationwide based on section 705 of the APA, which allows courts to "issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings." 5 U.S.C. § 705. The Government asks us to limit the scope of relief to the individual plaintiffs.

Although the Supreme Court explicitly declined to address the proper scope of ***1028** APA relief in its recent *Trump v. CASA, Inc.* decision, 606 U.S. 831, 145 S. Ct. 2540, 2554 n.10, 222 L.Ed.2d 930 (2025), we have understood the Court's "complete-relief principle for crafting injunctive relief" to "provide[ ] some useful guidance for crafting interim equitable relief" in the APA context. *Imm. Defs.*, 145 F.4th at 995-96. "Under this [complete-relief] principle, the question is not whether an injunction offers complete relief to *everyone* potentially affected by an allegedly unlawful act; it is whether an injunction will offer complete relief *to the plaintiffs before the court.*" *Id.* (citing *CASA*, 145 S. Ct. at 2557). There is no rule, however, that nonparties must remain unaffected by the court's order. *See City & County of San Francisco v. Trump*, 897 F.3d 1225, 1244 (9th Cir. 2018) ("[A]n injunction is not necessarily made overbroad by extending benefit or protection to persons other than the prevailing parties in the lawsuit ... if such breadth is necessary to give prevailing parties the relief to which they are entitled." (citation omitted)).

Here, Plaintiffs have demonstrated that a postponement of the Vacatur Notice, effective nationwide, is the only remedy that provides complete relief to the parties before the court and complies with the TPS statute. First, Plaintiff NTPSA, a membership organization, brings this challenge on behalf of its more than 84,000 members who are Venezuelan TPS holders in all fifty states and the District of Columbia. *See Warth v. Seldin*, 422 U.S. 490, 511, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975) ("[A]n association may have standing solely as the representative of its members."). As the district court reasoned, "[f]ull relief for the NTPSA and its members cannot be obtained absent application to all fifty states and the District of Columbia."

Second, limiting the relief to individual plaintiffs and NTPSA members is not a workable solution under the TPS statute. Plaintiffs challenge a single act: Secretary Noem's vacatur of the prior extension of Venezuelan TPS. They do not challenge the eligibility determination for any particular TPS holder. Limiting Secretary Noem's decision to affect only certain individuals would effectively mean rewriting it in a way that does not comply with the TPS statute. Although the TPS statute contemplates only a single binary determination for each country's TPS designation, we would be replacing Secretary Mayorkas's positive determination, and Secretary Noem's negative determination, with a judicially created patchwork. *See E. Bay v. Biden*, 993 F.3d at 681 ("Our typical response is to vacate the rule and remand to the agency; we ordinarily do not attempt, even with the assistance of agency counsel, to fashion a valid regulation from the remnants of the old rule." (quotation marks and citation omitted)); *see also Washington v. Trump*, 847 F.3d at 1167 ("[E]ven if the TRO might be overbroad in some respects, it is not our role to try, in effect, to rewrite the Executive Order.").

These statutory constraints distinguish this appeal from those arising in otherwise similar contexts. In *Immigrant Defenders*, the plaintiff organization challenged the enrollment of asylum seekers in the "Remain in Mexico" program. 145 F.4th at 980-81. There, we limited the scope of the order postponing the implementation of the "Remain in Mexico" program to the organization's individual clients, as doing so awarded the plaintiffs complete relief. *Id.* at 995-96. The statute at issue in *Immigrant Defenders* stated that the Secretary of Homeland Security "may return the [noncitizen]" to Mexico pending removal proceedings. 145 F.4th at 980 (citing 8 U.S.C. § 1225(b)(2)(C)). Thus, the statute did not prohibit the Secretary from adopting a piecemeal approach by returning some, but not all, noncitizens to Mexico. ***1029** Indeed, the statute specifically contemplated separate actions for each individual asylum seeker, so the piecemeal approach was consistent with the statute's design and purpose. Similarly, the challenge in *East Bay v. Barr* was to a rule limiting the eligibility of certain noncitizens for asylum. 934 F.3d at 1028. We held that the "nationwide scope" of the injunction was "not supported by the record" at that stage in the litigation because the district court failed to discuss why nationwide relief was necessary to remedy Plaintiffs' harm. *Id.* at 1028–29. Again, since the rule at issue dealt with asylum eligibility, it was possible to apply the rule to asylum applicants in some areas but not others, because each person's asylum eligibility is an individual determination. *See* Asylum Eligibility and Procedural Modifications, 84 Fed. Reg. 33829 (July 16, 2019).

"Where relief can be structured on an individual basis, it must be narrowly tailored to remedy the specific harm shown." *Bresgal v. Brock*, 843 F.2d 1163, 1170 (9th Cir. 1987). Here, relief cannot be structured on an individual basis. Postponing the rule for just some individuals would require rewriting the statute itself, and a narrower construction is not possible. TPS does not allow for partial determinations; no Secretary has the authority to designate a country for TPS when it comes to California residents, but not for Pennsylvania residents. And we do not claim the authority to do so judicially.

Thus, the district court did not abuse its discretion in determining that a postponement of agency action under the APA, effective nationwide, was both permissible and necessary to provide complete relief to Plaintiffs. *See E. Bay v. Biden*, 993 F.3d at 680 ("The equitable relief granted by the district court is acceptable where it is 'necessary to give prevailing parties the relief to which they are entitled.' " (citation omitted)).

VII. CONCLUSION

We have jurisdiction to consider this appeal from the district court's postponement order under APA section 705. Neither the TPS statute nor 8 U.S.C. § 1252(f)(1) precludes our power to review the merits of Plaintiffs' claim that the Secretary exceeded her statutory authority when she purported to vacate TPS status for Venezuelans. And we hold that Plaintiffs are likely to succeed on the merits of that claim. Moreover, the district court did not abuse its discretion by determining that Plaintiffs face irreparable harm based on the vacatur of the

extension of Venezuelan TPS, and that the balance of equities and the public interest favor Plaintiffs. Finally, anything short of a nationwide postponement is incongruent with the TPS statute, and it would not provide Plaintiffs with the complete relief they seek. The district court did not abuse its discretion by postponing the Vacatur and Termination Notices.

* * *

The TPS statute is designed to constrain the Executive, creating predictable periods of safety and legal status for TPS beneficiaries. Sudden reversals of prior decisions contravene the statute's plain language and purpose. Here, hundreds of thousands of people have been stripped of status and plunged into uncertainty. The stability of TPS has been replaced by fears of family separation, detention, and deportation. Congress did not contemplate this, and the ongoing irreparable harm to Plaintiffs warrants a remedy pending a final adjudication on the merits.

***1030 AFFIRMED.** [14]

All Citations

150 F.4th 1000, 2025 Daily Journal D.A.R. 8425

Footnotes

1 No administration has attempted to vacate an existing temporary protection status designation in the thirty-five years in which the program has existed.

2 Because it was an extension of the existing Venezuela TPS designation, no new TPS applicants could receive status through this notice. Only current TPS beneficiaries who had been continuously present in the United States since March 9, 2021, the date of the initial TPS designation, could seek an extension of status. Thus, any Venezuelans who arrived in the United States on or after March 10, 2021 were unaffected by this extension and remained ineligible for TPS.

3 The Government sought a stay of the district court's order pending appeal, which the district court denied. On April 4, 2025, the Government sought a stay in the Ninth Circuit of the district court judge's order pending appeal, which a motions panel of our court denied. On May 1, 2025, Appellants sought a stay from the United States Supreme Court. Dkt. 1, *Noem v. Nat. TPS All.*, No. 24A1059 (May 1, 2025). On May 19, 2025, the Supreme Court granted a stay pending both the disposition of the instant appeal and the disposition of a petition for a writ of certiorari, if any. *Noem v. Nat. TPS All.*, —— U.S. ——, 145 S.Ct. 2728, 221 L.Ed.2d 981 (2025).

4 In *Immigrant Defenders*, we noted that both the Supreme Court and our circuits "have not hesitated to hear interlocutory appeals of orders labeled as 5 U.S.C. § 705 stays." *Imm. Defs.*, 145 F.4th at 984 n.6.

5 Indeed, we have already encountered such a situation. In *Ramos v. Wolf*, we considered the Government's appeal of a district court's 2018 preliminary injunction barring the implementation of the terminations of four TPS country designations. 975 F.3d 872, 878 (9th Cir. 2020). After a panel of our court vacated the preliminary injunction, *id.* at 900, we granted en banc rehearing and vacated the panel opinion, *Ramos v. Wolf*, 59 F.4th 1010 (9th Cir. 2023). Then, nearly five years after the district court issued its preliminary injunction, a new presidential administration took office and changed course. The new administration redesignated two of the relevant countries for TPS and rescinded the terminations of TPS for the two others, and we granted the Government's motion for voluntary dismissal. *Ramos v. Mayorkas*, No. 18-16981, 2023 WL 4363667, at *1 (9th Cir. June 29, 2023). Due to the temporary nature of TPS and the change in administrations, we never conclusively resolved the merits of the preliminary injunction, much less the final merits determination.

6 The district court noted that the Government conceded in the evidentiary hearing before it that § 1254a(b)(5)(A) does not bar the court from determining whether the Secretary acted beyond the scope of her authority when she vacated the extension of the 2023 Designation. But, "[p]arties 'cannot waive ... a court's lack of subject matter jurisdiction,' " and " '[r]egardless of the parties' concessions, therefore, we must satisfy ourselves' of our subject matter jurisdiction." *Proctor v. Vishay Intertechnology Inc.*, 584 F.3d 1208, 1219 (9th Cir. 2009) (quoting *Stock W., Inc. v. Confederated Tribes of the Colville Rsrv.*, 873 F.2d 1221, 1228 (9th Cir. 1989)); *see also* *Richardson v. United States*, 943 F.2d 1107, 1113 (9th Cir. 1991) ("Subject matter jurisdiction cannot be conferred upon the courts by the actions of the parties and [the] principle[ ] of ... waiver do[es] not apply.").

7 As Plaintiffs point out, holding otherwise would produce absurd results. For instance, the TPS statute limits each TPS designation period to between six and eighteen months, 8 U.S.C. § 1254a(b)(2), but holding that we lack jurisdiction to review questions of statutory interpretation would make unreviewable a Secretary's decision to authorize a statutorily prohibited thirty-year TPS period.

8 We rely on the enacted text, which differs slightly from the U.S. Code version located at 8 U.S.C. § 1252. *See* *Galvez v. Jaddou*, 52 F.4th 821, 829–30 (9th Cir. 2022). References in this opinion to 8 U.S.C. § 1252 refer to the enacted text of the statute, as rendered above.

9 The existence of DED at all strongly indicates that Congress intended to provide predictability and certainty to noncitizens relying on TPS status. DED designations are granted pursuant to the executive's constitutional authority to conduct the foreign relations of the United States, *see, e.g.*, 89 Fed. Reg. 26167 (granting DED status to certain Palestinians until August 13, 2025), and are not subject to the same statutory guardrails as are TPS designations. By codifying the TPS statute, Congress provided a different system which balanced predictability and stability with temporal limits—TPS holders can rely on the security of their status but only for a limited period of time. And, the Attorney General may terminate that status, but only with sixty days' notice and not prior to the expiration of the current designation.

10 Indeed, one TPS holder received notice of the 2023 Designation extension, and one day afterwards, submitted his renewal application, received a receipt confirming a 540-day extension of his work authorization, provided that information to his employer, and renewed the lease on his home. Another TPS holder, who leased an apartment, got a job as a child-care provider at a daycare, and is studying to get her GED, submitted her application for renewal a day after the Secretary purported to revoke TPS and is awaiting the adjudication of her application.

11 The Government citation of *SKF USA Inc. v. United States*, 254 F.3d 1022 (Fed. Cir. 2001), for the proposition that an agency can request remand in a court proceeding to reconsider its prior erroneous decision is inapt. *Id.* at 1029–30. In *SKF*, the Federal Circuit explained in some instances, an "agency may request a remand (without confessing error) in order to reconsider its previous position." *Id.* at 1029. In those circumstances, "the reviewing court has discretion over whether to remand," though doing so is usually appropriate when "the agency's concern is substantial and legitimate." *Id.* However, if the remand is requested for the agency to substantively change a policy decision involving "an issue as to whether the agency is either compelled or forbidden by the governing statute to reach a different result," courts have discretion over whether to decide the statutory question or order a remand. *Id.* This case involves such a question of statutory authority. Moreover, here, DHS is not seeking remand, and its own vacatur of a prior TPS extension is the error subject to review.

12 We note that the district court correctly held that the basis for the vacatur was predicated on the Secretary's factual and legal misapprehension as to the operation of the TPS statute. Secretary Noem "failed to recognize that a TPS beneficiary under the 2021 Designation was necessarily a TPS beneficiary under the 2023 Designation." Secretary Mayorkas's extension thereof consolidated the two designations, combining the two

tracks, thus lessening confusion rather than "creating" confusion as Secretary Noem apparently believed. Indeed, as the district court noted, DHS addressed this exact concern. *See* 90 Fed. Reg. 5961, 5963, (Jan. 17, 2025) (Question: "Will there continue to be two separate filing processes for TPS designations for Venezuela?"; Answer: "No. USCIS has evaluated the operational feasibility and resulting impact on stakeholders of having two separate filing processes. Operational challenges in the identification and adjudication of Venezuela TPS filings and confusion among stakeholders exist because of the two separate TPS designations. To date, USCIS has created operational measures to process Venezuela TPS cases for both designations; however, it can most efficiently process these cases by consolidating the filing processes for the two Venezuela TPS populations. To decrease confusion among stakeholders, ensure optimal operational processes, and maintain the same eligibility requirements, upon publication of this Notice, individuals registered under either the March 9, 2021 TPS designation or the October 3, 2023 TPS designation will be allowed to re-register under this extension. This would not, however, require that a beneficiary registered under the March 9, 2021 designation to re-register at this time. Rather, it would provide such individuals with the option of doing so. Venezuela TPS beneficiaries who appropriately apply for TPS or re-register under this Notice and are approved by USCIS will obtain TPS through the same extension date of October 2, 2026.").

13 Although the Government also cites national security concerns, the Government submitted no evidence that any TPS holder is a member of the Venezuelan gang Tren de Aragua, nor did it rebut the district court's finding that immigrants, and particularly TPS holders, are much less likely to commit crimes than U.S.-born Americans are. And as discussed above, Congress authorized the Government to address public safety concerns by withdrawing TPS from recipients who are ineligible due to convictions for crime or are regarded as a danger to national security. 8 U.S.C. § 1254a(c)(2)(B), (c)(3). But the Government did not identify anyone subject to such a withdrawal for these reasons at argument. Absent any evidence that current or former TPS holders implicate national security concerns, the Government's asserted national security concerns do not tip the public interest in the Government's favor *See* *Washington v. Trump*, 847 F.3d at 1168–69, 1168 n.7 (explaining that while the "public has a powerful interest in national security," that interest can be outweighed, especially when "the Government has not offered any evidence or even an explanation" of its "national security concerns").

14 Plaintiff-Appellees' unopposed motion for judicial notice is granted. *See* Dkt. 49.

APPENDIX D

ACMS No. 65, Government Mootness Letter (Jan. 7, 2026)

U.S. Department of Justice
Civil Division
Office of Immigration Litigation

SW:JMH:jmh
39-11-26633.13

Tel: 202.532.4404

Washington, D.C. 20530

January 7, 2026

VIA ACMS
Honorable Molly C. Dwyer, Clerk
United States Court of Appeals
for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

Re: *National TPS Alliance, et al., v. Noem, et al.*, (9th Cir. No. 25-5724) (scheduled for oral argument on January 14, 2026, before Judges Wardlaw, Mendoza, Jr., and Johnstone)
Notice of Supplemental Authority under Fed. R. App. P. 28(j)

Dear Ms. Dwyer:

The government appeals a partial final judgment setting aside the Secretary of Homeland Security's actions regarding TPS for Venezuela and Haiti. 1-ER-54-59, 1-ER-69-70. The portion of the appeal challenging the setting aside of the partial vacatur of TPS for Haiti is now moot.

Absent the challenged partial vacatur, Haiti's latest TPS extension was slated to expire on February 3, 2026. *See* 90 Fed. Reg. 10,511 (Feb. 24, 2025); 89 Fed. Reg. 54,484 (July 1, 2024); 8 U.S.C. § 1254a(b)(3)(A)-(B). On November 28, 2025, within the statutory timeline, the Secretary published a determination that

Haiti's TPS designation would terminate on February 3, 2026, but TPS for Haiti would remain effective until that superseding termination date. 90 Fed. Reg. 54,733, 54,738-39 (Nov. 28, 2025) ("Haiti Temporary Protected Status beneficiaries under the designation continue to be employment authorized until the designation ends on February 3, 2026."). The challenged partial vacatur has been superseded, and Haitian TPS holders will now retain TPS through the full duration of the previous extension, so "there exists no present controversy as to which effective relief can be granted," and Plaintiffs' challenge to the partial vacatur is moot. *W. Coast Seafood Processors Ass'n. v. NRDC*, 643 F.3d 701, 704 (9th Cir. 2011); *see Church of Scientology v. United States*, 506 U.S. 9, 12 (1992) ("[I]f … it [is] impossible for the court to grant any effectual relief whatever to a prevailing party, the appeal must be dismissed.").

The Court should dismiss the portion of the appeal challenging the partial vacatur and vacate the corresponding portion of the district court's decision, since mootness arose because of the statutory periodic-review deadline. *See United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950); *Donovan v. Vance*, 70 F.4th 1167, 1173 (9th Cir. 2023) ("vacatur is generally automatic" in these circumstances). That deadline is a "circumstance[] unattributable to the parties," not a "voluntary action." *U.S. Bancorp. Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 23-24

(1994); *see, e.g.*, *Alvarez v. Smith*, 558 U.S. 87, 96-97 (2009); *All. For the Wild Rockies v. U.S. Forest Serv.*, 907 F.3d 1105, 1121 (9th Cir. 2018).

Respectfully submitted,

/s/ Jeffrey M. Hartman
JEFFREY M. HARTMAN
Trial Attorney
Office of Immigration Litigation

Attachment: *Termination of the Designation of Haiti for Temporary Protected Status*, 90 Fed. Reg. 54,733 (Nov. 28, 2025)

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 28(j), I certify that the body of the foregoing letter contains 350 words.

/s/ Jeffrey M. Hartman
JEFFREY M. HARTMAN
Trial Attorney
Office of Immigration Litigation

distributed by mail) are used as appropriate to meet the needs and preferences of various segments of the target population. The SNS solicits responses regarding issues affecting the emergency communications to determine a jurisdiction's level of communications operability, interoperability, continuity, and security. CISA ECD analyzes the data collected from this general survey to identify major gaps and themes affecting emergency communications across levels of government. This analysis informs the development of supplemental surveys and information collections tailored to specific needs across the emergency response community, as well as future iterations of the Nationwide Baseline Communications Assessment (NCBA), Biennial Progress Report (BPR), National Emergency Communications Plan (NECP), and other products and initiatives that enable ECD to carry out its statutory responsibilities at 6 U.S.C. 571(c).

Findings from the SNS provide invaluable insights that CISA ECD shares with emergency communications partners at all levels of government which assists with: (1) Statewide Communications Interoperability Plan (SCIP) development, (2) Threat and Hazard Identification Risk Analysis (THIRA) development, (3) state-level grant programs and guidance, and (4) funding and resource sharing strategy development.

CISA ECD also conducts supplemental surveys to complete statutorily mandated activities (6 U.S.C. 571(c), 572(a), and 573) and will share the data with relevant emergency communications partners. The SAFECOM supplemental surveys deploy topic-specific or targeted surveys to various emergency response disciplines at the federal, state, territorial, tribal, and local levels of government, as appropriate, as well as the private sector. The instruments solicit responses regarding targeted issues affecting specific segments of the emergency response community. CISA ECD analyzes the data collected from these supplemental surveys to identify changing requirements, mitigate risks, and help further inform the data collected from the SNS.

Analysis

Agency: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

Title: Generic Clearance: SAFECOM Nationwide Surveys Generic Clearance.

OMB Number: 1670–0048.

Frequency: Annually.

Affected Public: State, Local, Tribal, and Territorial Governments.

Number of Respondents: 7,215.

Estimated Time Per Respondent: 0.5 hours.

Total Burden Hours: 3,643 hours.

Total Annual Burden Cost: $179,570.66.

Total Annual Cost to Government Cost: $168,515.35.

Robert J. Costello,

Chief Information Officer, Department of Homeland Security, Cybersecurity and Infrastructure Security Agency.

[FR Doc. 2025–21438 Filed 11–26–25; 8:45 am]

BILLING CODE 9111–LF–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2843–26; DHS Docket No. USCIS–2014–0001]

RIN 1615–ZB70

Termination of the Designation of Haiti for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

ACTION: Notice.

SUMMARY: Through this notice, the Department of Homeland Security (DHS) newly announces that the Secretary of Homeland Security (Secretary) is terminating the designation of Haiti for Temporary Protected Status. Because of interference by a federal district court judge, the designation of Haiti is set to expire on February 3, 2026. After reviewing country conditions and consulting with appropriate U.S. Government agencies, the Secretary determined that Haiti no longer meets the conditions for the designation for Temporary Protected Status. The Secretary, therefore, is newly terminating the Temporary Protected Status designation of Haiti as required by statute. This termination is effective February 3, 2026. After February 3, 2026, nationals of Haiti (and aliens having no nationality who last habitually resided in Haiti) who have been granted Temporary Protected Status under Haiti's designation will no longer have Temporary Protected Status. This determination to terminate the TPS designation for Haiti supersedes the determination announced in the July 1, 2025 notice, ''Termination of the Designation of Haiti for Temporary Protected Status.''

DATES: The designation of Haiti for Temporary Protected Status is terminated, effective at 11:59 p.m., local time, on February 3, 2026.

FOR FURTHER INFORMATION CONTACT: Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, (240) 721–3000.

SUPPLEMENTARY INFORMATION:

List of Abbreviations

CFR—Code of Federal Regulations
DHS—U.S. Department of Homeland Security
EAD—Employment Authorization Document
FR—Federal Register
FRN—Federal Register Notice
Government—U.S. Government
INA—Immigration and Nationality Act
Secretary—Secretary of Homeland Security
TPS—Temporary Protected Status
UN—United Nations
USCIS—U.S. Citizenship and Immigration Services
U.S.C.—United States Code

What is Temporary Protected Status?

The Immigration and Nationality Act (INA) authorizes the Secretary of Homeland Security, after consultation with appropriate agencies of the U.S. Government, to designate a foreign state (or part thereof) for Temporary Protected Status (TPS) if the Secretary determines that certain country conditions exist. *See* INA sec. 244(b)(1), 8 U.S.C. 1254a(b)(1). The Secretary, in her discretion, may grant Temporary Protected Status to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in the designated foreign state). *See* INA sec. 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a foreign state's Temporary Protected Status designation or extension, the Secretary—after consultation with appropriate U.S. Government agencies—must review the conditions in the foreign state designated for Temporary Protected Status to determine whether the conditions for the Temporary Protected Status designation continue to be met. *See* INA sec. 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that the conditions in the foreign state continue to meet the specific statutory criteria for the designation, Temporary Protected Status will be extended for an additional period of 6 months or, in the Secretary's discretion, 12 or 18 months. *See* INA sec. 244(b)(3)(A), (C), 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for Temporary Protected Status designation, the Secretary must terminate the

designation. *See* INA sec. 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B). 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'' for Temporary Protected Status. *See* INA sec. 244(b)(5)(A), 8 U.S.C. 1254a(b)(5)(A).

Temporary Protected Status is a temporary immigration benefit granted to eligible nationals of a country designated by the Secretary for Temporary Protected Status under the INA, or to eligible aliens without nationality who last habitually resided in the designated country. During the designation period, Temporary Protected Status beneficiaries are eligible to remain in the United States and may not be removed, so long as they continue to meet the requirements of Temporary Protected Status. In addition, Temporary Protected Status beneficiaries are authorized to work and obtain an Employment Authorization Document (EAD), if requested. Temporary Protected Status beneficiaries may also apply for and be granted travel authorization as a matter of discretion. The granting of Temporary Protected Status does not result in or lead to lawful permanent resident status or any other immigration status.

To qualify for Temporary Protected Status, beneficiaries must meet the eligibility standards at INA section 244(c)(2), 8 U.S.C. 1254a(c)(2) in accordance with the implementing regulations at 8 CFR parts 244 and 1244. When the Secretary terminates a country's designation, beneficiaries return to the same immigration status or category that they maintained before Temporary Protected Status, if any (unless that status or category has since expired or been terminated), or any other lawfully obtained immigration status or category they received while registered for Temporary Protected Status, as long as it is still valid on the date Temporary Protected Status terminates.

Designation of Haiti for Temporary Protected Status

Haiti was initially designated for Temporary Protected Status on January 21, 2010, based on a determination that there were extraordinary and temporary conditions in Haiti that prevented nationals of Haiti from returning in safety and that permitting such aliens to remain temporarily in the United States would not be contrary to the national interest of the United States.[1] Following the initial designation, former Secretary Napolitano extended and newly designated Haiti for Temporary Protected Status once, from July 23, 2011 through January 22, 2013, based on extraordinary and temporary conditions.[2] Thereafter, Temporary Protected Status was extended three more times based on extraordinary and temporary conditions: (1) from January 23, 2013 through July 22, 2014;[3] (2) from July 23, 2014 through January 22, 2016;[4] and (3) from January 23, 2016 through July 22, 2017.[5] Former Secretary Kelly then granted a six-month extension of Temporary Protected Status from July 23, 2017 through January 22, 2018, but made clear that a further extension appeared unwarranted based on then-current country conditions.[6] Subsequently, then-Acting Secretary Duke announced the termination of the Temporary Protected Status designation of Haiti effective July 22, 2019.[7]

Despite the law barring judicial review, the termination of Haiti's 2011 Temporary Protected Status designation was challenged in several lawsuits, and court injunctions required DHS to temporarily continue Temporary Protected Status for Haiti pending a final court order.[8] Former Secretary Mayorkas then newly designated Haiti on the basis of extraordinary and temporary conditions effective August 3, 2021 through February 3, 2023.[9] Thereafter, Temporary Protected Status for Haiti was extended and newly designated from February 4, 2023 through August 3, 2024.[10]

In July 2024, DHS issued a notice stating that Secretary Mayorkas had once again determined to extend and newly designate Haiti for Temporary Protected Status for an 18-month period, set to expire on February 3, 2026.[11] On February 24, 2025, DHS published a **Federal Register** notice announcing the Secretary's decision to partially vacate the July 1, 2024 Temporary Protected Status decision by reducing the period of extension and new designation of Temporary Protected Status for Haiti from 18 months to 12 months with an amended end date of August 3, 2025.[12] On July 1, 2025, DHS published a **Federal Register** notice announcing the Secretary's decision to terminate the Temporary Protected Status designation for Haiti, effective September 2, 2025.[13]

Again, in spite of the statute prohibiting judicial review, on July 15, 2025, a judge in the U.S. District Court for the Eastern District of New York issued a final judgment in *Haitian Evangelical Clergy Ass'n* v. *Trump,* No. 25–cv–1464, that makes the effective date of any termination no earlier than February 3, 2026. In compliance with the U.S. District Court for the Eastern District of New York's final judgment, the current Temporary Protected Status designation period for Haiti ends February 3, 2026. In view of the district court's ruling with respect to the partial vacatur, the Secretary made a new, superseding determination under 8 U.S.C. 1254a(b)(3)(A), which is being announced in this notice.

Secretary's Authority To Terminate the Designation of Haiti for Temporary Protected Status

At least 60 days before the expiration of a foreign state's Temporary Protected Status designation or extension, the Secretary—after consultation with appropriate U.S. Government agencies—must review the conditions in the foreign state designated for Temporary Protected Status to determine whether the country continues to meet the conditions for the designation. *See* INA sec. 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that the foreign state no longer meets the conditions for the Temporary Protected Status designation, the Secretary must terminate the designation. *See* INA sec. 244(b)(3)(B), 8

[1] Designation of Haiti for Temporary Protected Status, 75 FR 3476 (Jan. 21, 2010).

[2] Extension and Redesignation of Haiti for Temporary Protected Status, 76 FR 29000 (May 19, 2011).

[3] Extension of the Designation of Haiti for Temporary Protected Status, 77 FR 59943 (Oct. 1, 2012).

[4] Extension of the Designation of Haiti for Temporary Protected Status, 79 FR 11808 (Mar. 3, 2014).

[5] Extension of the Designation of Haiti for Temporary Protected Status, 80 FR 51582 (Aug. 25, 2015).

[6] Extension of the Designation of Haiti for Temporary Protected Status, 82 FR 23830 (May 24, 2017).

[7] Termination of the Designation of Haiti for Temporary Protected Status, 83 FR 2648 (Jan. 18, 2018).

[8] On Dec. 28, 2023, the U.S. District Court for the Northern District of California dismissed *Ramos* v. *Nielsen,* No. 18–cv–01554 (N.D. Cal. Dec. 28, 2023). Related litigation in *Bhattarai* v. *Nielsen,* No. 19–cv–731 (N.D. Cal. Mar. 12, 2019) was consolidated with *Ramos* in August 2023. The court agreed with the government position that subsequent Temporary Protected Status designations rendered the pending litigation moot.

[9] Designation of Haiti for Temporary Protected Status, 86 FR 41863 (Aug. 3, 2021).

[10] Extension and Redesignation of Haiti for Temporary Protected Status, 88 FR 5022 (Jan. 26, 2023).

[11] Extension and Redesignation of Haiti for Temporary Protected Status, 89 FR 54484 (July 1, 2024).

[12] Partial Vacatur of 2024 Temporary Protected Status Decision for Haiti, 90 FR 10511 (Feb. 24, 2025).

[13] Termination of the Designation of Haiti for Temporary Protected Status, 90 FR 28760 (July 1, 2025).

U.S.C. 1254a(b)(3)(B). The termination may not take effect earlier than 60 days after the date the **Federal Register** notice of termination is published, or if later, the expiration of the most recent previous extension of the country designation. *See id.* The Secretary may determine the appropriate effective date of the termination and expiration of any Temporary Protected Status-related documentation, such as EADs, issued or renewed after the effective date of termination. *See id.; see also* INA sec. 244(d)(3), 8 U.S.C. 1254a(d)(3) (providing the Secretary the discretionary ''option'' to allow for a certain ''orderly transition'' period if she determines it to be ''appropriate'').

Reasons for the Secretary's Termination of the Temporary Protected Status Designation for Haiti

Consistent with INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A), after consulting with appropriate U.S. Government agencies, the Secretary reviewed country conditions in Haiti and considered whether Haiti continues to meet the conditions for the designation under INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C). This review included examining: (a) whether extraordinary and temporary conditions in Haiti that prevent aliens who are Haitian nationals from returning to Haiti in safety continued to exist, and (b) if permitting Haitian nationals to remain temporarily in the United States was contrary to the national interest of the United States.

Based on the Department's review, the Secretary has determined that there are no extraordinary and temporary conditions in Haiti that prevent Haitian nationals (or aliens having no nationality who last habitually resided in Haiti) from returning in safety. Moreover, even if the Department found that there existed conditions that were extraordinary and temporary that prevented Haitian nationals (or aliens having no nationality who last habitually resided in Haiti) from returning in safety, termination of Temporary Protected Status of Haiti is still required because it is contrary to the national interest of the United States to permit Haitian nationals (or aliens having no nationality who last habitually resided in Haiti) to remain temporarily in the United States.

Certain conditions in Haiti remain concerning. As an example of the challenges still facing the country, during his August 28, 2025 address to the United Nations (UN) Security Council, the UN Secretary-General reported that 1.3 million people—approximately 12% of Haiti's population—have been forced to flee their homes and are internally displaced due to escalating violence and gang violence that has ''engulfed'' Port-au-Prince ''and spreads beyond.'' [14] At the UN Security Council briefing on Haiti on August 28, 2025, the Acting U.S. Ambassador to the UN, Dorothy Shea, commented that ''the United States remains concerned about escalating levels of violence in Haiti'' and ''the territorial expansion of the gangs threatens to undermine gains made by both the Haitian National Police and the Multinational Security Support mission.'' [15] During the most recent UN Security Council briefing on Haiti on October 22, 2025, U.S. Ambassador to the UN Mike Waltz [16] likewise acknowledged that Haiti ''has had a long and difficult history'' and ''truly stands at a crossroad.'' [17] Ambassador Waltz further stated: ''We have gangs that are terrorizing communities, extorting families, recruiting children to commit horrors on behalf of the gang leaders. The spillover effects of this violence threaten not only Haiti but the stability of the wider Caribbean and the Western Hemisphere.'' [18]

The data surrounding internal relocation does indicate parts of the country are suitable to return to. There have also been some other positive developments. For example, in a recent briefing, the UN Secretary General stated that despite continuing violence in Haiti, ''there are emerging signals of hope.'' [19] On September 30, 2025, the UN Security Council approved a resolution which authorized a new multinational Gang Suppression Force to replace the Kenyan-led security support mission. Per the UN, ''under an initial 12-month mandate, the GSF [Gang Suppression Force] will work in close coordination with the Haitian National Police (HNP) and the Haitian armed forces to conduct intelligence-led operations to neutrali[z]e gangs, provide security for critical infrastructure and support humanitarian access. The 5,550-strong force will also protect vulnerable groups, support reintegration of former fighters and help strengthen Haitian institutions.'' [20] On October 1, 2025, Secretary Rubio issued a press statement stating ''this force will address Haiti's immediate security challenges and lay the groundwork for long-term stability. . . moving forward, the GSF, with support from the UNSOH [UN Support Office in Haiti], will transition to an international burden-sharing model with the sufficient resources needed to fight the gangs.'' [21] Further, according to the World Bank, ''modest GDP growth is projected by 2026 as investment increases from a low baseline, assuming improvements on the political and security fronts.'' [22]

Based on the Department's review, the Secretary has determined that while the current situation in Haiti is concerning, the United States must prioritize its national interests and permitting Haitian nationals to remain temporarily in the United States is contrary to the U.S. national interest.

''National interest'' is an expansive standard that may encompass an array of broad considerations, including foreign policy, public safety (*e.g.,* potential nexus to criminal gang membership), national security, migration factors (*e.g.,* pull factors), immigration policy (*e.g.,* enforcement prerogatives), and economic considerations (*e.g.,* adverse effects on U.S. workers, impact on U.S. communities).[23] Determining whether

[14] United Nations, ''Security-General's remarks to the Security Council—on Haiti [trilingual, as delivered; scroll down for all-English and all-French],'' Aug. 28, 2025, *https://www.un.org/sg/en/content/sg/statement/2025-08-28/secretary-generals-remarks-the-security-council-haiti-trilingual-delivered-scroll-down-for-all-english-and-all-french.*

[15] U.S. Mission to the UN, ''Remarks at a UN Security Council Briefing on Haiti'' (Aug. 28, 2025) (further highlighting humanitarian concerns such as displacement, recruitment of children in armed gangs, and food insecurity), *https://ht.usembassy.gov/remarks-at-a-un-security-council-briefing-on-haiti/.*

[16] Ambassador Waltz was officially sworn in as the U.S. Representative to the UN on September 20, 2025.

[17] U.S. Mission to the UN, ''Remarks at a UN Security Council Briefing on Haiti'' (Oct. 22, 2025), *https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-haiti-8/.*

[18] *Id.*

[19] United Nations, '' 'The people of Haiti are in a perfect storm of suffering,' warns UN chief,'' Aug. 28, 2025, *https://news.un.org/en/story/2025/08/1165738.*

[20] United Nations, ''UN Security Council approves new 'suppression force' for Haiti amid spiraling gang violence,'' Sept. 30, 2025, *https://news.un.org/en/story/2025/09/1166006.*

[21] U.S. Dep't of State, ''On the Next Steps to Restoring Security in Haiti,'' Oct. 1, 2025, *https://www.state.gov/releases/office-of-the-spokesperson/2025/10/on-the-next-steps-to-restoring-security-in-haiti/; see also* U.S. Mission to the UN, ''Remarks at a UN Security Council Briefing on Haiti,'' (Oct. 22, 2025) (remarks of Ambassador Waltz applauding the adoption of the resolution supporting the GSF), *https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-haiti-8/.*

[22] World Bank, ''The World Bank in Haiti'' (last updated Apr. 28, 2025), *https://www.worldbank.org/en/country/haiti/overview.*

[23] *See, e.g., Poursina* v. *USCIS,* 936 F.3d 868, 874 (9th Cir. 2019) (observing, in an analogous INA context, ''that the 'national interest' standard invokes broader economic and national-security considerations, and such determinations are firmly committed to the discretion of the Executive Branch—not to federal courts'' (citing *Trump* v.

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permitting a class of aliens to remain temporarily in the United States is contrary to the U.S. national interest therefore calls upon the Secretary's expertise and discretionary judgment.

President Trump clearly articulated policy imperatives bearing upon the national interest in his immigration and border-related executive orders and proclamations. In Proclamation 10888 ''Guaranteeing the States Protection Against Invasion,'' President Trump emphasized that Congress has established a complex and comprehensive framework under the INA to regulate the entry and exit of aliens and goods across U.S. borders. Under normal conditions, this framework supports national sovereignty by enabling the admission of aliens whose presence serves the national interest and excluding those who may pose risks to public health, safety, or national security. However, in a high-volume border environment—particularly when the system is overwhelmed—this screening process can become ineffective. Limited access to critical information and significant processing delays hinder the ability of federal officials to reliably assess the criminal histories or national security threats posed by aliens attempting to enter the U.S. illegally. As a result, public safety and national security risks are significantly heightened in such conditions.[24]

In Executive Order (E.O.) 14161 ''Protecting the United States From Foreign Terrorists and Other National Security and Public Safety Threats,'' President Trump instructed the Secretary of State, Attorney General, Secretary of Homeland Security, and Director of National Intelligence to jointly submit to the President a report that identified countries throughout the world ''for which vetting and screening information is so deficient as to warrant a partial or full suspension on the admission of nationals from those countries.'' [25] Proclamation 10949 ''Restricting the Entry of Foreign Nationals to Protect the United States from Foreign Terrorists and Other National Security and Public Safety Threats'' built upon the findings of that review. President Trump determined to fully restrict and limit the entry of nationals from Haiti following his review of the requested report. In support of this decision, President Trump outlined that ''according to the [Fiscal Year 2023 Entry/Exit] Overstay Report [published on August 5, 2024], Haiti had a B–1/B–2 visa overstay rate of 31.38 percent and an F, M, and J visa overstay rate of 25.05 percent.'' [26] In addition, ''as is widely known, Haiti lacks a central authority with sufficient availability and dissemination of law enforcement information necessary to ensure its nationals do not undermine the national security of the United States.'' [27]

Overstaying the terms of the nonimmigrant visa is a violation of U.S. immigration laws and presents challenges for immigration enforcement and resource allocation. Visa overstaying diverts resources from other critical enforcement priorities, such as addressing illegal border crossings. According to the Fiscal Year 2024 Department of Homeland Security Entry/Exit Overstay Report [published on July 16, 2025], Haiti had a Non-Visa Waiver Program Countries Business or Pleasure Visitors (B–1/B–2) visa overstay rate of 24.84% and a Student and Exchange Visitors (F, M, J) visa overstay rate of 22.35%.[28] These figures significantly exceed the global average overstay rates of 2.33% for B–1/B–2 visas and 3.23% for F, M, J visas—over ten times higher for business or pleasure visitors and six times higher for student and exchange visitors.[29] Haiti's visa overstay rates consistently remain very high compared to other nations, reflecting ongoing challenges in enforcing compliance with U.S. visa regulations. Elevated overstay rates present potential risks to U.S. national security and public safety, as aliens who overstay their visas may be harder to locate and monitor, increasing vulnerabilities within immigration enforcement systems. Moreover, aliens who overstay nonimmigrant visas can place an added strain on local communities by increasing demand for public resources, contributing to housing and healthcare pressures, and competing in an already limited job market.

In E.O. 14159 ''Protecting the American People Against Invasion,'' President Trump underscored that enforcing the immigration laws ''is critically important to the national security and public safety of the United States.'' [30] In furtherance of that objective, the President directed the Secretary, along with the Attorney General and Secretary of State, to promptly take all appropriate action, consistent with law, to rescind policies that led to increased or continued presence of illegal aliens in the United States.[31] Among the directed actions are to ensure that the Temporary Protected Status designations are consistent with the Temporary Protected Status statute and ''are appropriately limited in scope and made for only so long as may be necessary to fulfill the textual requirements of that statute.'' [32]

Prior to FY2025, U.S. Border Patrol recorded a consistent year-over-year increase in encounters with Haitian nationals: 56,596 in FY2022, 163,781 in FY2023, and 220,798 in FY2024.[33] For several years, there has been a significant increase in the number of Haitians arriving in the United States illegally, particularly via land. According to one report, ''from 2019 through 2021, Haitians were the top nationality for migrants crossing the dangerous Darien Gap between Colombia and Panama, and they have remained among the three largest groups in 2022 and 2023.'' [34] Another report states: ''the continuation of a devastating political, environmental, social, and economic situation. . . . in Haiti guarantees an unbroken chain migration, particularly to the United States and Canada; and when combined with already heavy backlogs in processing resident status changes, a large and growing flow of Haitians will

Hawaii, 585 U.S. 667, 684–86 (2018)); *Flores* v. *Garland,* 72 F.4th 85, 89–90 (5th Cir. 2023) (same); *Brasil* v. *Sec'y, Dep't of Homeland Sec.,* 28 F.4th 1189, 1193 (11th Cir. 2022) (same); *cf. Matter of D–J–,* 23 I&N Dec. 572, 579–81 (A.G. 2003) (recognizing that taking measures to stem and eliminate possible incentives for potential large-scale migration from a given country is ''sound immigration policy'' and an ''important national security interest''); *Matter of Dhanasar,* 26 I&N Dec. 884, 890–91 (AAO 2016) (taking into account impact on U.S. workers in ''national interest'' assessments).

[24] Guaranteeing the States Protection Against Invasion, 90 FR 8333 (Jan. 29, 2025).

[25] Protecting the United States From Foreign Terrorists and Other National Security and Public Safety Threats, 90 FR 8451 (Jan. 30, 2025).

[26] Restricting the Entry of Foreign Nationals to Protect the United States From Foreign Terrorists and Other National Security and Public Safety Threats, 90 FR 24497 (June 10, 2025).

[27] Restricting the Entry of Foreign Nationals to Protect the United States From Foreign Terrorists and Other National Security and Public Safety Threats, 90 FR 24497 (June 10, 2025).

[28] U.S. Customs and Border Protection, Entry/Exit Overstay Report, Department of Homeland Security (July 16, 2025), *https://www.dhs.gov/sites/default/files/2025-08/25_0826_cbp_entry-exit-overstay-report-fiscal-year-2024.pdf.*

[29] *Id.*

[30] Protecting the American People Against Invasion, 90 FR 8443 (Jan. 29, 2025).

[31] *Id.,* sec. 16, 90 FR 8446.

[32] *Id.,* sec. 16, 90 FR 8446.

[33] U.S. Customs and Border Protection, ''U.S. Border Patrol and Office of Field Operations Encounters by Area of Responsibility and Component'' (last updated: Sept. 19, 2025), available at: *https://www.cbp.gov/newsroom/stats/nationwide-encounters.*

[34] Migration Policy Institute, ''Haitian Immigrants in the United States'' (Nov. 8, 2023), available at: *https://www.migrationpolicy.org/article/haitian-immigrants-united-states-2022.*

persist.'' [35] This pattern of large-scale illegal immigration as a result of ''pull factors'' has continued for years.

The numerous new designations of Temporary Protected Status for Haiti in 2011, 2021, and 2023, opened eligibility to those who entered and continued to enter the U.S. many years after the initial 2010 designation.[36] As noted above, illegal immigration from Haiti into the U.S. continued to increase with extremely high numbers seen around the time of and following the latest new designations of Temporary Protected Status for Haiti by then Secretary Mayorkas.

Approximately 67,400 nationals of Haiti have entered the United States since June 3, 2024. Within this population, approximately 3,000 are nonimmigrants in valid status, approximately 1,000 are nonimmigrants out of status, approximately 63,000 were encountered at a border or port of entry and have no lawful immigration status, and it is estimated that 400 crossed the U.S. border without being apprehended.[37] These realities are unsustainable and inconsistent with President Trump's outlined policy priorities as well as U.S. national interests.

Beyond migration factors and immigration policy, public safety and national security are important considerations when assessing if a Temporary Protected Status designation is in line with U.S. national interests. DHS records indicate that there are Haitian nationals who are Temporary Protected Status recipients who have been the subject of administrative investigations for fraud, public safety, and national security. These issues underscore a conflict with the national interest of the United States.

As acknowledged previously in this notice, gang violence in Haiti persists as armed groups operate with impunity, enabled by a weak or effectively absent central government. The Congressional Research Service described the situation in Haiti in a recent report: ''The gangs—some of which are aligned with political elites—amassed control over territory and illicit markets amid political instability following the 2021 assassination of then-President Jovenel Moise. Since April 2024, Haiti has been governed by a Transitional Presidential Council (TPC). The TPC, tasked with governing until elections can be convened, has been plagued by allegations of corruption and infighting.'' [38] As such, it has not been able to effectively crack down on gang violence. However, the revamped international efforts and multinational Gang Suppression Force aim to combat gang violence to improve conditions in Haiti. On May 2, 2025, the Secretary of State announced the State Department's designation of Viv Ansanm and Gran Grif as Foreign Terrorist Organizations and Specially Designated Global Terrorists. In his announcement, the Secretary noted ''Haitian gangs, including the Viv Ansanm coalition and Gran Grif, are the primary source of instability and violence in Haiti. They are a direct threat to U.S. national security interests in our region . . . their ultimate goal is creating a gang-controlled state where illicit trafficking and other criminal activities operate freely and terrorize Haitian citizens.'' [39] In October 2025, Ambassador Waltz said in an interview ''we in the UN Security Council just took action yesterday on the gangs that have taken over Haiti, right off Florida's shores. These gangs are in coordination with all of these transnational groups. They're shipping drugs, money, weapons. They're destabilizing the entire region.'' [40]

Widespread gang violence in Haiti is sustained by the country's lack of functional government authority. This breakdown in governance directly impacts U.S. national security interests, particularly in the context of uncontrolled migration. As previously outlined, when immigration flows exceed our capacity to properly vet aliens at the border, the risks are compounded by the inability to access reliable law enforcement or security information from the alien's country of origin. The joint assessment by the Secretary of State, Secretary of Homeland Security, and Director of National Intelligence has found that Haiti lacks a functioning central authority capable of maintaining or sharing such critical information, severely limiting the U.S. government's ability to screen and vet Haitians in the United States with Temporary Protected Status. And Haitian gangs—such as those designated by the State Department as Foreign Terrorist Organizations—pose a serious threat to U.S. interests. These challenges support the determination that permitting Haitian nationals to remain temporarily in the United States is contrary to the national interest.

This lack of government control has not only destabilized Haiti internally but has also had direct consequences for U.S. public safety. Haitian gang members have already been identified among those who have entered the United States and, in some cases, have been apprehended by law enforcement for committing serious and violent crimes. For example, in January 2025, U.S. Immigration and Customs Enforcement (ICE) apprehended Wisteguens Jean Quely Charles, a member of a violent Haitian street gang, who had been arrested, charged and convicted for 17 crimes between August 2022 and August 2024 including both ''possession of and possession to distribute controlled substances, distribution of controlled substances, trespassing, carrying dangerous weapon to wit brass knuckles, possession of a firearm without a permit, possession of ammunition without a permit, assault and battery with a dangerous weapon, assault and battery, and resisting arrest.'' [41] This case underscores the broader risk posed by rising Haitian migration, particularly in light of multiple large-scale prison breaks in Haiti [42] and the increasing numbers of

[35] IOM, ''Engaging the Haitian Diaspora'' (Sept 10, 2013), available at: *https://environmentalmigration.iom.int/resources/engaging-haitian-diaspora.*

[36] The intent of Temporary Protected Status was to create a temporary safe haven for aliens who are already in the United States. *See* INA sec. 244(c)(1)(A)(i) (limiting Temporary Protected Status eligibility to aliens continuously physically present in the United States since the country's designation), (c)(5) (clarifying that a Temporary Protected Status designation does not authorize aliens to come to the United States to apply for such status). Using TPS to grant temporary status to successive waves of new arrivals from a designated country may generate a significant pull factor for illegal immigration and act in tension with the congressional design.

[37] Office of Homeland Security Statistics, estimate as of September 30, 2025.

[38] Library of Congress, Congressional Research Service, ''Haiti in Crisis: Developments Related to the Multinational Security Support Mission'' (June 3, 2025), available at: *https://www.congress.gov/crs-product/IN12331#:~:text=Between%20January%20and%20March%202025,attributed%20to%20gang%2Drelated%20violence.*

[39] U.S. Department of State, ''Terrorist Designations of Viv Ansanm and Gran Grif'' (May 2, 2025), available at: *https://www.state.gov/releases/office-of-the-spokesperson/2025/05/terrorist-designations-of-viv-ansanm-and-gran-grif/.*

[40] U.S. Mission to the UN, ''U.S. Representative to the United Nations, Ambassador Mike Waltz's Interview with Martha Maccallum on Fox News'' (Oct. 1, 2025), *https://usun.usmission.gov/u-s-representative-to-the-united-nations-ambassador-mike-waltzs-interview-with-martha-maccallum-on-fox-news/.*

[41] U.S. Immigration and Customs Enforcement, ''ICE ERO Boston arrests Haitian gang member with numerous convictions'' (Jan. 24, 2025), available at: *https://www.ice.gov/news/releases/ice-ero-boston-arrests-haitian-gang-member-numerous-convictions.*

[42] *See* The Guardian ''Haiti declares state of emergency after thousands of dangerous inmates escape'' (Mar. 4, 2024) (''Haiti has declared a three-day state of emergency and a night-time curfew after armed gangs stormed the country's two biggest jails, allowing more than 3,000 dangerous criminals, including murderers and kidnappers, to escape back on to the streets of the poor and violence-racked Caribbean nation.''), available at: *https://www.theguardian.com/world/2024/mar/04/*

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encounters reported by U.S. Customs and Border Protection. The inability of the previous administration to reliably screen aliens from a country with limited law enforcement infrastructure and widespread gang activity presents a clear and growing threat to U.S. public safety.

Moreover, since the U.S. designated Viv Ansanm and Gran Grif as foreign terrorist organizations, the Department of Homeland Security, Department of Justice, and Department of State have announced arrests and indictments of aliens linked to these gangs. These actions demonstrate that these groups pose not just an overseas threat but a tangible national security and public safety risk within our borders. In addition, that these aliens were able to operate inside the United States raises serious concerns about how they entered or remained in the United States, potentially due to inadequate screening at the border or a lack of actionable intelligence from Haitian authorities on known gang affiliates. In July 2025, State announced deportation actions against U.S. lawful permanent residents who were found to be affiliated with Viv Ansanm.[43] In September 2025, ICE announced the arrest of a Haitian alien who ''engaged in a campaign of violence and gang support that contributed to Haiti's destabilization.'' [44]

In E.O. 14150 ''America First Policy Directive to the Secretary of State,'' President Trump declared ''from this day forward, the foreign policy of the United States shall champion core American interests and always put America and American citizens first.'' Moreover, it instructed ''as soon as practicable, the Secretary of State shall issue guidance bringing the Department of State's policies, programs, personnel, and operations in line with an America First foreign policy, which puts America and its interests first.'' [45] As mentioned, the UN Security Council adopted a resolution to transition the Multinational Security Support mission to a Gang Suppression Force and authorized the establishment of a UN Support Office in Haiti.[46] On October 1, 2025, Secretary Rubio released a press statement commending the adoption of the resolution: ''The message from the Security Council is clear: the era of impunity for those who seek to destabilize Haiti is over. The United States remains committed to working with international stakeholders to support Haiti's path toward peace, stability, and democratic governance. We call on all nations to join us in this critical effort.'' [47] Ending Temporary Protected Status for Haiti reflects a necessary and strategic vote of confidence in the new chapter Haiti is turning. The United States cannot call for bold change on the ground while signaling doubt from afar. Our immigration policy must align with our foreign policy vision of a secure, sovereign, and self-reliant Haiti and not a country that Haitian citizens continue to leave in large numbers to seek opportunities in the United States.

In summary, the current situation in Haiti is concerning. However, the United States must prioritize its national interests, which includes assessing foreign policy, public safety, national security, migration factors, immigration policy, and economic considerations. In considering these factors individually and cumulatively, the Secretary has determined that permitting Haitian nationals to remain temporarily in the United States is contrary to the U.S. national interest.

DHS estimates that there are approximately 352,959 nationals of Haiti (and aliens having no nationality who last habitually resided in Haiti) who hold Temporary Protected Status under Haiti's designation.[48]

Effective Date of Termination of the Designation

The Temporary Protected Status statute provides that the termination of a country's Temporary Protected Status designation may not be effective earlier than 60 days after the notice is published in the **Federal Register** or, if later, the expiration of the most-recent previous extension. *See* INA sec. 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

The Temporary Protected Status statute authorizes the Secretary, at her discretion, to allow for an ''orderly transition'' period with respect to the termination and the expiration of any Temporary Protected Status-related documentation, such as EADs. The Secretary has determined, in her discretion, that the statutory minimum transition period of 60 days is sufficient and warranted here given the Secretary's finding that continuing to permit Haitian nationals to remain temporarily in the United States is contrary to the U.S. national interest. *See* INA sec. 244(d)(3), 8 U.S.C. 1254a(d)(3).[49] Accordingly, the termination of the Haiti Temporary Protected Status designation will be effective February 3, 2026.[50]

DHS recognizes that Haiti Temporary Protected Status beneficiaries under the

haiti-mass-jailbreak-violence-port-au-prince-gangs; Al Jazeera, ''Haiti declares curfew after 4,000 inmates escape jail amid rising violence'' (Mar. 4, 2024) (''Haiti's government has declared a state of emergency and imposed a curfew after an explosion of gang-led violence over the weekend saw thousands of prisoners escape after assaults on the country's two biggest prisons.''), available at: *https://www.aljazeera.com/news/2024/3/4/thousands-of-inmates-escape-prison-amid-deepening-haiti-violence; see also* Reuters, ''Haiti prison break leaves 12 dead as inmates go hungry'' (Aug. 16, 2024) (''A prison break in the Haitian city of Saint-Marc left 12 inmates dead on Friday, Mayor Myriam Fievre said, the third such incident in Haiti in recent months amid a protracted humanitarian crisis fueled by gang violence.''), available at: *https://www.reuters.com/world/americas/haitian-inmates-escape-prison-third-recent-jailbreak-miami-herald-says-2024-08-16/.*

[43] U.S. Department of State, ''Deportation Actions Against U.S. Legal Permanent Residents Affiliated with Haitian Foreign Terrorist Organization Viv Ansanm'' (July 21, 2025), *https://www.state.gov/releases/office-of-the-spokesperson/2025/07/deportation-actions-against-u-s-legal-permanent-residents-affiliated-with-haitian-foreign-terrorist-organization-viv-ansanm/.*

[44] ICE, ''ICE arrests illegal alien from Haiti connected to criminal terrorist organizations'' (Sept. 25, 2025), *https://www.ice.gov/news/releases/ice-arrests-illegal-alien-haiti-connected-criminal-terrorist-organizations.*

[45] America First Policy Directive to the Secretary of State, 90 FR 8337 (Jan. 29, 2025).

[46] United Nations, ''UN Security Council approves new 'suppression force' for Haiti amid spiraling gang violence'' Sept. 30, 2025, *https://news.un.org/en/story/2025/09/1166006.*

[47] U.S. Department of State, ''On the Next Steps to Restoring Security in Haiti'' (Oct. 1, 2025), *https://www.state.gov/releases/2025/10/on-the-next-steps-to-restoring-security-in-haiti/.*

[48] As of November 10, 2025, approximately 18,068 of these nationals of Haiti (and aliens having no nationality who last habitually resided in Haiti) are also approved as Lawful Permanent Residents. Data queried by Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality November 2025.

[49] Whether to allow for an additional ''orderly departure'' period following a Temporary Protected Status designation termination (beyond the statutory minimum of 60 days) is an ''option'' left to the Secretary's unfettered discretion. INA 244(d)(3), 8 U.S.C. 1254a(d)(3). Although DHS has allowed such extended periods for certain Temporary Protected Status terminations, *see, e.g., Termination of the Designation of Sudan for Temporary Protected Status,* 82 FR 47228 (Oct. 11, 2017) (12-month orderly transition period); *Termination of the Designation of Sierra Leone Under the Temporary Protected Status Program; Extension of Employment Authorization Documentation,* 68 FR 52407 (Sept. 3, 2003) (6-month orderly transition period), certain other Temporary Protected Status designations were terminated without allowing for such transition periods, *see, e.g., Termination of Designation of Angola Under the Temporary Protected Status Program,* 68 FR 3896 (Jan. 27, 2003) (no orderly transition period); *Termination of Designation of Lebanon Under Temporary Protected Status Program,* 58 FR 7582 (Feb. 8, 1993) (same). The Secretary has determined that a 60-day period is appropriate under the circumstances.

[50] *See* 8 CFR 244.19 (''Upon the termination of designation of a foreign state, those nationals afforded temporary Protected Status shall, upon the sixtieth (60th) day after the date notice of termination is published in the **Federal Register**, or on the last day of the most recent extension of designation by the [Secretary of Homeland Security], automatically and without further notice or right of appeal, lose Temporary Protected Status in the United States. Such termination of a foreign state's designation is not subject to appeal.'').

designation continue to be employment authorized until the designation ends on February 3, 2026.[51] Accordingly, through this **Federal Register** notice, DHS automatically extends the validity of certain Employment Authorization Documents previously issued under the Temporary Protected Status designation of Haiti through February 3, 2026. Therefore, as proof of continued employment authorization through February 3, 2026, Temporary Protected Status beneficiaries can show their EADs that have the notation A–12 or C–19 under Category and a ''Card Expires'' date of February 3, 2026, August 3, 2025, August 3, 2024, June 30, 2024, February 3, 2023, December 31, 2022, October 4, 2021, January 4, 2021, January 2, 2020, July 22, 2019, January 22, 2018, or July 22, 2017.

The Secretary has considered putative reliance interests in the Haiti Temporary Protected Status designation, especially when considering whether to allow for an additional transition period akin to that allowed under certain previous Temporary Protected Status terminations. Temporary Protected Status, as the name itself makes clear, is an inherently temporary status. Temporary Protected Status designations are time-limited and must be periodically reviewed, as frequently as every six months in some cases, and Temporary Protected Status notices clearly notify aliens of the designations' expiration dates. Further, whether to allow for an orderly transition period is left to the Secretary's unfettered discretion. *See* INA sec. 244(b)(3), (d)(3); 8 U.S.C. 1254a(b)(3), (d)(3). The statute inherently contemplates advance notice of a termination by requiring timely publication of the Secretary's determination and delaying the effective date of the termination by at least 60 days after publication of a **Federal Register** notice of the termination or, if later, the existing expiration date. *See* INA sec. 244(b)(3), (d)(3); 8 U.S.C. 1254a(b)(3), (d)(3).

Notice of the Termination of the Temporary Protected Status Designation of Haiti

By the authority vested in me as Secretary under INA section 244(b)(3), 8 U.S.C. 1254a(b)(3), I have reviewed, in consultation with the appropriate U.S. Government agencies, (a) conditions in Haiti; and (b) whether permitting the nationals of Haiti (and aliens having no nationality who last habitually resided in Haiti) to remain temporarily in the United States is contrary to the national interest of the United States. Based on my review, I have determined that Haiti no longer continues to meet the conditions for Temporary Protected Status under INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).

Accordingly, I order as follows:

(1) Pursuant to INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(1)(B), and considering INA section 244(d)(3), 8 U.S.C. 1254a(d)(3), the designation of Haiti for Temporary Protected Status is terminated effective at 11:59 p.m., local time, on February 3, 2026.

(2) Information concerning the termination of Temporary Protected Status for nationals of Haiti (and aliens having no nationality who last habitually resided in Haiti) will be available at local USCIS office upon publication of this notice and through the USCIS Contact Center at 1–800–375–5283.This information will be published on the USCIS website at *www.uscis.gov*.

Kristi Noem,

Secretary of Homeland Security.

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BILLING CODE 9111–97–P

[51] *See* INA 244(a)(1)(B), 8 U.S.C. 1254a(a)(1)(B); *see also* 8 CFR 244.13(b).

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A2407–014–004–065516; #O2412–014–004–047181.1; LLNM920000]

Notice of Proposed Reinstatement of BLM New Mexico Terminated Oil and Gas Leases: NMNM 141402

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of lease reinstatement.

SUMMARY: In accordance with the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement of terminated competitive oil and gas lease NMNM 141402 from Tascosa Energy Partners, LLC . The lessee timely filed a petition for reinstatement of the competitive oil and gas lease located in Eddy County, New Mexico. The lessee paid the required rentals accruing from the date of termination. No leases have been issued that affect these lands. The BLM proposes to reinstate the lease.

FOR FURTHER INFORMATION CONTACT: Julieann Serrano, Supervisory Land Law Examiner, Branch of Adjudication, Bureau of Land Management New Mexico State Office, 301 Dinosaur Trail, Santa Fe, New Mexico 87508, (505) 954–2149, *jserrano@blm.gov*. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The lessee agrees to new lease terms for rental of $20 per acre, or fraction thereof, per year, and a royalty rate of 16.67 percent. The lessee agreed to amended stipulations. The lessee paid the required administration fee and has reimbursed the BLM for the cost of publishing this notice.

The lessee meets the requirements for reinstatement of the lease per sec. 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). The BLM is proposing to reinstate lease NMNM 141402 effective January 1, 2022, for the remainder of the primary term, subject to: the original terms and conditions of the lease; amended stipulations; increased rental of $20 per acre; and increased royalty of 16.67 percent.

(Authority: 30 U.S.C. 188 (e)(4) and 43 CFR 3108.23.)

Joseph B. Peterson,

Acting Deputy State Director, Minerals.

[FR Doc. 2025–21454 Filed 11–26–25; 8:45 am]

BILLING CODE 4331–23–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

Renewals of Information Collections Under the Paperwork Reduction Act

AGENCY: National Indian Gaming Commission.

ACTION: Notice of renewal of information collections; second request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the National Indian Gaming Commission (NIGC or Commission) is providing notice to, and seeking comments from, the general public about its submission, concurrently with the publication of this notice or soon thereafter, of the following information collection renewal requests to the Office of Management and Budget (OMB) for OMB review and approval: (i) Indian gaming management contract-related submissions, as authorized by Office of Management and Budget (OMB) Control Number 3141–0004 (expires on February 28, 2026); (ii) Indian gaming fee payments-related submissions, as

CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2026, undersigned counsel electronically filed this Petition for Rehearing En Banc with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the ACMS system and that service will be accomplished via the ACMS system.

/s/ Jeffrey M. Hartman
JEFFREY M. HARTMAN
Trial Attorney
Office of Immigration Litigation
Attorney for Appellants