

APPENDIX

Court of appeals order denying stay of judgment pending appeal
(9th Cir. Sept. 17, 2025) 1a

District court order denying stay of judgment pending appeal
(N.D. Cal. Sept. 10, 2025)..... 16a

District court order granting summary judgment
(N.D. Cal. Sept. 5, 2025)..... 23a

Court of appeals order affirming postponement order
(9th Cir. Aug. 29, 2025)..... 92a

Court of appeals order denying stay of postponement order
pending appeal (9th Cir. Apr. 18, 2025) 144a

District court order denying stay of postponement order
pending appeal (N.D. Cal. Apr. 4, 2025)..... 145a

District court order granting motion to postpone agency actions
(N.D. Cal. Mar. 31, 2025) 150a

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FILED

UNITED STATES COURT OF APPEALS

SEP 17 2025

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

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

D.C. No.

3:25-cv-01766-EMC

Northern District of California,
San Francisco

ORDER

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

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*

2a

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 *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.

3a

Noem v. Nat'l TPS Alliance, 145 S. Ct. 2728, 2728-29 (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.

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

4a

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

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.

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.*, 145 S. Ct. 2728, 2728-29 (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. ---, 2025 WL 2578045, at *41, n.23 (N.D. Cal. Sept. 5, 2025).

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 (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

6a

Labor Relations Board (“NLRB”) and Merit Systems Protection Board (“MSPB”). 145 S. Ct. 1415 (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. 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 *10. We reject the

8a

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 (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 *11.

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 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (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 *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 *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 *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 *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 *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 *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 *7-8.

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 *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 *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 *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 *7 (explaining that DHS attempted to create post-hoc rationalizations for the vacatur *after* a decision had already been made by

12a

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 *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 *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 *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

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.

require. *Nken*, 556 U.S. at 426. The record strongly supports the district court’s conclusion that the Secretary’s actions were “preordained.” 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. 2025 WL 2578045, at *7-8.

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 *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 *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

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“[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 *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 *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.

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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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7 NATIONAL TPS ALLIANCE, et al.,

8 Plaintiffs,

9 v.

10 KRISTI NOEM, et al.,

11 Defendants.

Case No. 25-cv-01766-EMC

**ORDER DENYING DEFENDANTS'
MOTION TO STAY**

Docket No. 281

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14 On September 5, 2025, the Court issued an order granting Plaintiffs' motion for summary
15 judgment on their APA claims related to the Venezuela vacatur and termination and the Haiti
16 partial vacatur. The Court also entered a final judgment on those claims under Federal Rule of
17 Civil Procedure 54(b) and stayed the remainder of the case. *See* Docket Nos. 279-80 (order and
18 final judgment). The government now moves for a stay of the judgment as it intends to appeal the
19 judgment to the Ninth Circuit. Having considered the parties' filings, the Court hereby **DENIES**
20 the motion to stay.

21 **I. DISCUSSION**

22 A. Procedural Objections

23 As an initial matter, Plaintiffs raise several procedural objections to the government's
24 motion – *e.g.*, the government filed the motion to stay even though it had not yet filed a notice of
25 appeal, and it did not comply with the Civil Local Rules such as the rule relating to requests for
26 shortened time. Although Plaintiffs' objections are not without any merit, the Court proceeds to
27 adjudicate the merits of the government's motion. The government has now filed a notice of
28 appeal, and it essentially moved for shortened time even if it did not strictly comply with the Local

1 Rules. Moreover, this case has largely been adjudicated on shortened time given each party's
 2 respective interests, and Plaintiffs have not shown that they were prejudiced as a result of the
 3 government seeking shortened time.

4 To the extent Plaintiffs contend that the government is failing to comply with the
 5 judgment, that issue is now teed up in Plaintiffs' motion for compliance which was just recently
 6 filed, although the government has provided some indication of its position in its reply brief. *See*
 7 Reply at 1-2 (arguing that, under Federal Rule of Civil Procedure 62(a), there is an automatic stay
 8 of 30 days on execution of a judgment (unless the Court orders otherwise) and that, although Rule
 9 62(c) carves out an exception for a final judgment in an action for an injunction, this Court has
 10 held that "its order was not injunctive in nature").

11 B. Merits of Stay Motion

12 "A stay is not a matter of right, even if irreparable injury might
 13 otherwise result to the appellant." "The party requesting a stay bears
 14 the burden of showing that the circumstances justify an exercise of
 15 that discretion."

16 To decide whether to grant [a] motion for a stay pending appeal, . . .
 17 case law requires that [a court] consider: (1) whether the [moving
 18 party has] made a *strong* showing that [it is] likely to succeed on the
 19 merits; (2) whether the [moving party] will be irreparably injured
 20 absent a stay; (3) whether issuance of the stay will substantially
 21 injure the other parties interested in the proceeding; and (4) where
 22 the public interest lies.

19 *Index Newspapers LLC v. United States Marshals Serv.*, 977 F.3d 817, 824 (9th Cir. 2020)
 20 (emphasis added; quoting and citing *Nken v. Holder*, 556 U.S. 418, 433-34 (2009)). "[T]he first
 21 two *Nken* factors are the most critical, and that the second two factors are only considered if the
 22 first two factors are satisfied." *Id.*

23 In its motion to stay, the government addresses only the first factor. It does not make any
 24 express argument on the second factor. Based on that fact alone, the Court should arguably deny
 25 the government's motion. To be sure, the government has, in prior proceedings, argued
 26 irreparable injury if agency action were to be postponed under § 705 of the APA, or if this Court's
 27 postponement order were not stayed. Also, the Ninth Circuit panel that upheld the issuance of the
 28 postponement order determined that it had jurisdiction to consider the government's appeal

1 because, *inter alia*, the postponement order had serious, perhaps irreparable, consequences to the
 2 government. *See Nat'l TPS All. v. Noem*, No. 22269, 2025 U.S. App. LEXIS 22269, at *25 (9th
 3 Cir. Aug. 29, 2025) (pointing out that “the mere existence of the Executive Branch's desire to
 4 enact a policy is not sufficient to satisfy the irreparable harm prong,” but, “[b]ecause the Supreme
 5 Court granted a stay in favor of the Government, the Court necessarily held that the Government
 6 would face irreparable harm if the district court's postponement order were to remain in effect”).
 7 But these assessments of injury to the government were all made in the context of Plaintiffs’
 8 seeking preliminary, and not final, relief. Since the issuance of preliminary relief, the record has
 9 been developed. For the government to provide zero evidence – or argument – on irreparable
 10 injury is a matter that is difficult to disregard. It should matter.

11 For purposes of this order, however, the Court need not deny the government’s motion
 12 based on the failure to assert and demonstrate irreparable injury alone. As noted above, *Nken*
 13 requires that there also be a *strong* showing of likelihood of success.

14 According to the government, it is likely to succeed on the merits because of the Supreme
 15 Court’s prior order in this case which stayed this Court’s order postponing agency action under §
 16 705 of the APA. *See Noem v. Nat'l TPS All.*, 221 L. Ed. 2d 981 (2025).¹ But the Supreme Court’s
 17 order did not provide any specific analysis on the merits of Plaintiffs’ case (including whether
 18 judicial review of Plaintiffs’ case is permissible²). We do not know whether the stay was issued

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 20 ¹ The full text of the order is as follows:

21 The March 31, 2025 [postponement] order entered by the United
 22 States District Court for the Northern District of California, case No.
 23 3:25-cv-1766, is stayed pending the disposition of the appeal in the
 24 United States Court of Appeals for the Ninth Circuit and disposition
 25 of a petition for a writ of certiorari, if such a writ is timely sought.
 26 Should certiorari be denied, this stay shall terminate automatically.
 27 In the event certiorari is granted, the stay shall terminate upon the
 28 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.

Noem v. Nat'l TPS All., 221 L. Ed. 2d at 981-82.

² As the Court has previously noted, the Supreme Court’s order, if anything, suggests that there is

1 because of a finding of irreparable injury to the government absent a stay, impropriety of
 2 nationwide relief of postponement of agency action under § 705 of the APA, or an assessment of
 3 Plaintiffs' showing on the merits. Indeed, any attempt to discern much of a take on the merits is
 4 complicated by the second paragraph of the stay order which leaves open a challenge to TPS
 5 beneficiaries who received documentation under the Mayorkas TPS extension, suggesting the
 6 Court did not accept the government's argument for no judicial review. Furthermore, the Ninth
 7 Circuit has now issued its decision on this Court's postponement order, and it found that the
 8 challenged actions of Secretary Noem were subject to judicial review and that Plaintiffs were
 9 likely to succeed on their APA claim that Secretary Noem lacked the statutory authority to vacate
 10 the TPS determinations made by her predecessor, Secretary Mayorkas. *See generally NTPSA v.*
 11 *Noem*, 2025 U.S. App. LEXIS 22269.

12 Even if, as the government argues, the Ninth Circuit's decision is not dispositive until a
 13 mandate issues, it would fare no better. The Supreme Court's order was based on a preliminary
 14 assessment of the case – *and for Venezuela only*. Since that order, the record herein has been
 15 further developed. Since the issuance of the postponement order, discovery has revealed a number
 16 of notable facts, including the following:

- 17 • With respect to the Venezuela vacatur, Secretary Noem had claimed vacatur was
 18 necessary because Secretary Mayorkas's consolidation of proceedings for 2021
 19 and 2023 TPS holders was confusing. However, a document from the Biden era
 20 reflected instead that the Biden administration's consolidation of proceedings was
 21 done precisely to *avoid* confusion. The government provided no evidence
 22 contradicting this.
- 23 • For the Venezuela vacatur, the government presented no evidence in support of its
 24 position on summary judgment as to whether Secretary Noem considered any
 25 alternatives short of vacating Secretary Mayorkas's extension.

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 28 judicial review because the Supreme Court expressly stated that its order was without prejudice to
 a challenge based on invalidation of TPS documentation already issued before the vacatur
 decision.

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- For both the Venezuela and Haiti vacatur, the government produced no evidence suggesting that Secretary Noem consulted with internal or external agencies (including on country conditions) before deciding to vacate, thus underscoring the preordained nature of her TPS decision making.
- For the Venezuela termination, new undisputed evidence establishes that DHS began to draft the decision even before the Venezuela vacatur decision was finalized.
- For the Venezuela termination decision, the undisputed evidence now establishes that there was no meaningful consultation with internal or external agencies, in particular, regarding country conditions.
- There is now undisputed evidence that the TPS decision making by Secretary Noem did not follow the well-established practices of DHS, as reflected in the TPS report prepared by GAO.
- The government presented no evidence of any contemporaneous country conditions report for either Venezuela or Haiti.
- The press release now in the record announcing the Haiti vacatur strongly indicated that termination would be forthcoming, and this underscores the preordained nature of Secretary Noem’s TPS decision making.
- It is now clear that Secretary Noem’s TPS decision-making process for Haiti mimicked that for Venezuela, thus pointing to the lack of true individualized determinations.
- The government submitted no evidence that Secretary Noem considered the reliance interests of TPS holders who had already been issued documentation under Secretary Mayorkas’s TPS determinations.

The Court emphasizes that the development of the record is not only about evidence that was found supporting Plaintiffs’ position but also the utter lack of any evidence to support the government’s arguments. The enhanced record informed this Court’s legal analysis in reaching final judgment. Among other things, it provided a basis for the Court’s finding (not addressed in

1 its postponement order) that the Secretary failed to comply with statutory consultation
2 requirements and that the stated reasons for her actions were, in fact, pretextual.

3 Hence, the final judgment reflects not merely an assessment of likelihood of success based
4 on a preliminary showing by the parties, but a considered conclusion on the merits after full
5 briefing on cross-motions for summary judgment and review of a complete factual record. And,
6 of course, the final judgement was based on §706 of the APA, and not an interim postponement of
7 agency action under Section 705. As explained in this Court’s order, there are significant material
8 differences between the two which may render assessment of postponement inapposite to the final
9 judgment.³

10 Hence, the first two *Nken* factors thus weigh strongly against the government. Moreover,
11 the government has failed to address the last two *Nken* factors, each of which weigh in Plaintiffs’
12 favor. A stay of the judgment would irreparably harm the individual plaintiffs and the thousands
13 of members of NTPSA who would immediately face the prospect of a return to countries that are
14 so dangerous that even the State Department advises against travel (not to mention loss of the
15 ability to work, drive, and so forth). The Ninth Circuit’s decision affirming the Court’s
16 postponement order so found. *See NTPSA v. Noem*, 2025 U.S. App. LEXIS 22269, at *48-51.
17 Moreover, the public interest weighs against a stay because, as the Court explained in its
18 postponement order, Venezuelan and Haitian TPS holders make significant and important
19 economic and social contributions, both to the United States as a whole and to the local

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28 ³ The government notes that the Ninth Circuit and the Fourth Circuit have granted motions to stay pending appeal filed by the government in TPS cases, *see* Reply at 1, but the appeals in those cases both involved postponement orders under § 705, not final judgments under § 706.

1 communities of which they are a part. At the same time, there is no substantiated evidence that
2 their continued presence in this country pursuant to TPS poses any threat to this country.

3 **II. CONCLUSION**

4 Accordingly, the government’s motion to stay pending appeal is denied.

5 This order disposes of Docket No. 281.

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7 **IT IS SO ORDERED.**

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9 Dated: September 10, 2025

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12 EDWARD M. CHEN
13 United States District Judge
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United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NATIONAL TPS ALLIANCE, et al.,

Plaintiffs,

v.

KRISTI NOEM, et al.,

Defendants.

Case No. 25-cv-01766-EMC

**ORDER GRANTING PLAINTIFFS’
MOTION FOR SUMMARY
JUDGMENT AND DENYING
DEFENDANTS’ MOTION FOR
SUMMARY JUDGMENT; AND
DENYING DEFENDANTS’ MOTIONS
TO DISMISS**

Docket Nos. 122, 165, 199, 172, 262

United States District Court
Northern District of California

At issue in this case are the rights of hundreds of thousands of nationals from Venezuela and Haiti who temporarily reside legally in the United States under a law passed by Congress in 1990. That law, the Temporary Protected Status (“TPS”) statute, affords temporary relief to nationals from designated countries who cannot safely return to their home countries due to extraordinary and temporary conditions such as armed conflict, earthquakes, floods, drought, and epidemics. For 35 years, the TPS statute has been faithfully executed by presidential administrations from both parties, affording relief based on the best available information obtained by the Department of Homeland Security (“DHS”) in consultation with the State Department and other agencies, a process that involves careful study and analysis. Until now. This case arose from action taken post haste by the current DHS Secretary, Kristi Noem, to revoke the legal status of Venezuelen and Haitian TPS holders, sending them back to conditions that are so dangerous that even the State Department advises against travel to their home countries. The Secretary’s action in revoking TPS was not only unprecedented in the manner and speed in which it was taken but also violatates the law. For the reasons explained below, the Court find that the Secretary’s

1 actions in vacating the orders of the prior administration and terminating TPS exceeded the
 2 Secretary’s statutory authority and was arbitrary and capricious, and thus must be set aside under
 3 the Administrative Procedure Act (“APA”).

4 I. INTRODUCTION

5 In 1990, Congress enacted the TPS statute, codified at 8 U.S.C. § 1254a, to bring
 6 coherence, discipline, and predicatability to the extended voluntary departure process that existed
 7 prior to 1990. *See National TPS Alliance v. Noem*, No. 25-2120, 2025 U.S. App. LEXIS 22269, at
 8 *10 (9th Cir. Aug. 29, 2025) [hereinafter *NTPSA*] (emphasizing that “Congress designed a system
 9 of temporary status that was predictable, dependable, and insulated from electoral politics”). Prior
 10 to 1990, extended voluntary departure was “the primary mechanism by which the federal
 11 government allowed groups of nationals to remain in the United States for humanitarian reasons.”
 12 *Ramos v. Wolf*, 975 F.3d 872, 879 (9th Cir. 2020), *vacated for rehearing en banc*, 59 F.4th 1010
 13 (9th Cir. 2023); *see also NTPSA*, 2025 U.S. App. LEXIS 22269, at *11 (noting that, for about
 14 three decades before the enactment of the TPS statute, “presidential administrations exercised
 15 prosecutorial discretion to grant protection from deportation to certain groups of noncitizens on an
 16 ad hoc basis,” which was called extended voluntary departure). “Because administrations granted
 17 [extended voluntary departure] on an *ad hoc* basis without ‘any specific criterion or criteria,’ the
 18 practice led to arbitrary results and drew widespread criticism.” *Ramos*, 975 F.3d at 879.
 19 Accordingly, Congress prescribed in the TPS statute the criteria and the process that the Secretary
 20 of DHS is to follow in deciding whether to designate a country for TPS, thus allowing residents of
 21 such country to remain temporarily in the United States.¹ Congress specified the kind of country
 22 conditions severe enough to warrant a designation under the statute. *See* 8 U.S.C. § 1254a(b)(1).
 23 It also prescribed the specific time frame for any such designation. *See id.* § 1254a(b)(2). And it
 24 prescribed with specificity the process for periodic review of a TPS designation, *i.e.*, whether to
 25

26 ¹ The TPS statute “originally provided the Attorney General with this authority,” but, “[w]ith the
 27 Homeland Security Act of 2002, the former Immigration and Naturalization Service was
 28 transferred to the Department of Homeland Security, and the responsibility for administering the
 TPS was transferred from the Attorney General to the Secretary of DHS.” *Ramos*, 975 F.3d at 879
 n.1.

1 terminate or extend such a designation. *See id.* § 1254a(b)(3). Significantly, in both the original
2 designation and periodic review process, Congress expressly required the Secretary of DHS to
3 engage in “consultation with appropriate agencies.” *Id.* § 1254a(b)(1); *id.* § 1254a(b)(3)(A).

4 In view of the gravity of TPS decisions – which profoundly affect the lives of non-U.S.
5 citizens faced with the risk of dangerous or extraordinary conditions were they to return to their
6 home countries – past administrations have for years engaged in a methodical process to carry out
7 the TPS program. This process, consistent with the express directive of the statute, has long
8 included consultation with agencies that have information and expertise on country conditions
9 which inform the designation criteria under the statute – agencies such the Department of State.
10 As described in a 2020 report prepared by the U.S. Government Accountability Office, which was
11 tasked with reviewing the TPS decisionmaking process, *see MacLean Decl., Ex. 16 (GAO TPS*
12 *Rpt. at 18)* (in reviewing the collection of information by DHS, taking into account “26 TPS
13 decisions for . . . eight selected countries”), DHS collects country conditions information from
14 both USCIS (an internal DHS agency) and the Department of State. The State Department
15 process for collecting information in turn involves getting input from the relevant regional bureau
16 of the Bureau of Population, Refugees, and Migration, as well as from the relevant overseas post,
17 which has “on-the-ground” information on the country at issue. As is evident from this brief
18 description, this process is deliberative and takes time. *Cf.* 8 U.S.C. § 1254a(b)(3) (providing that
19 the Secretary shall conduct the periodic review “at least 60 days before end of the initial period of
20 designation, and any extended period of designation,” which is “*after* consultation with
21 appropriate agencies”) (emphasis added).

22 For the first time in the 35-year history of the TPS program, the Trump Administration and
23 DHS Secretary Noem took the extraordinary and unusual act of vacating TPS extensions that had
24 already been granted – specifically, extensions given by the prior administration to Venezuela and
25 Haiti. *See NTPSA*, 2025 U.S. App. LEXIS 22269, at *54 (emphasizing that “the Government has
26 never, in the thirty-five-year history of TPS, sought to vacate a prior extension of TPS”). They did
27 so even though this action is not, as the Ninth Circuit has strongly indicated, statutorily authorized.
28 *See id.* at *39 (stating that “Plaintiffs are likely to succeed in their claim that Congress has

1 displaced any inherent revocation authority by explicitly providing the procedure by which a TPS
2 designation is terminated”). And they did so so that they could then terminate the TPS
3 designations on an unprecedentedly rapid timeline. The decisionmaking process was highly
4 truncated and condensed, taking place over a short period of time (in the case of Venezuela, just
5 days) and, apparently, without the consultation of the appropriate agencies.

6 Specifically:

- 7 • In January 2025, days after the second Trump Administration took over, Secretary
8 Noem vacated a TPS extension for Venezuela that had been given by her
9 predecessor, Secretary Alejandro Mayorkas of the Biden Administration. As
10 discussed below, the decision to vacate the extension was made and steps towards
11 implementation were put in place even before Secretary Noem took office. No
12 meaningful review process took place. Days later, Secretary Noem terminated
13 Venezuela’s TPS designation.
- 14 • In February 2025, following on the heels of the Venezuela termination decision,
15 Secretary Noem partially vacated a TPS extension/redesignation for Haiti that had
16 been given by Secretary Mayorkas – shortening the TPS period from 18 to 12
17 months. As discussed below, this decision appeared to be pre-ordained without any
18 real review of whether there was a basis for vacatur. Subsequently, in July 2025,
19 Secretary Noem terminated the TPS designation for Haiti.

20 Plaintiffs have filed suit challenging each of the above decisions by Secretary Noem.
21 Plaintiffs allege that, in issuing her decisions, the Secretary violated both the APA and the Equal
22 Protection Clause of the U.S. Constitution.

23 Now pending before the Court are several motions: (1) two motions to dismiss filed by the
24 government; (2) Plaintiffs’ motion for summary judgment on the APA claims only; and (3) the
25 government’s motion for summary judgment on both the APA and Equal Protection claims. In
26 addition, in conjunction with their summary judgment briefs, Plaintiffs have filed a motion to
27 consider extra-record evidence. Having considered the papers submitted as well as the oral
28 argument of counsel, the Court hereby **GRANTS** Plaintiffs’ motion to consider extra-record

1 evidence; **GRANTS** Plaintiffs’ motion for summary judgment on the APA claims; **DENIES** the
 2 government’s motion for summary judgment on the APA and Equal Protection claims; and
 3 **DENIES** the government’s motions to dismiss.

4 **II. BACKGROUND ON TPS**

5 As part of the Immigration Act of 1990, Congress created the TPS program. The TPS
 6 program is a humanitarian program. The governing statute is codified at 8 U.S.C. § 1254a. Under
 7 § 1254a,

8 [t]he [DHS Secretary], after consultation with the appropriate
 9 agencies of the Government, may designate any foreign state [for
 TPS] only if

- 10 (A) the [Secretary] finds that there is an ongoing armed conflict
 11 within the state and, due to such conflict, requiring the return
 12 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;
- 13 (B) the [Secretary] finds that –
- 14 (i) there has been an earthquake, flood, drought,
 15 epidemic, or other environmental disaster in the state
 resulting in a substantial, but temporary, disruption of
 living conditions in the area affected,
- 16 (ii) the foreign state is unable, temporarily, to handle
 17 adequately the return to the state of aliens who are
 nationals of the state, and
- 18 (iii) the foreign state officially has requested designation
 under this subparagraph; or
- 19 (C) the [Secretary] finds that there exist extraordinary and
 20 temporary conditions in the foreign state that prevent aliens
 who are nationals of the state from returning to the state in
 21 safety, unless the [Secretary] finds that permitting the aliens
 to remain temporarily in the United States is contrary to the
 22 national interest of the United States.

23 8 U.S.C. § 1254a(b)(1). The initial period of a TPS designation “is the period, specified by the
 24 [Secretary], of not less than 6 months and not more than 18 months.” *Id.* § 1254a(b)(2).

25 Once a foreign country is designated for TPS, individuals from that country may apply for
 26 immigration status. If granted, they may not be removed from the United States; in addition, they
 27 are given authorization to work in the United States. *See id.* § 1254a(a)(1).

28 For individuals to become TPS holders, there are specific requirements that must be met.

1 For example, an individual must have “been continuously physically present in the United States
 2 since the effective date of the most recent designation of that [foreign] state.” *Id.* §
 3 1254a(c)(1)(A)(i). In addition, an individual must be “admissible as an immigrant.” *Id.* §
 4 1254a(c)(1)(A)(iii). An individual is not admissible if, *e.g.*, they have been convicted of certain
 5 crimes (such as a crime involving moral turpitude or drugs) or are a member of a terrorist
 6 organization. *See id.* § 1182(a)(2)-(3). Moreover, an individual is expressly deemed ineligible for
 7 TPS if they have “been convicted of any felony or 2 or more misdemeanors committed in the
 8 United States.” *Id.* § 1254a(c)(2)(B). The Secretary “shall withdraw [TPS] granted to an alien . . .
 9 if [the Secretary] finds that the alien was not in fact eligible for such status.” *Id.* § 1254a(c)(3)(A).

10 After a foreign country has been designated for TPS, that designation is subject to periodic
 11 review to determine if the designation should be terminated or extended. The TPS statute
 12 provides as follows with respect to periodic review.

13 (A) Periodic review

14 At least 60 days before end of the initial period of designation, and
 15 any extended period of designation, of a foreign state . . . under this
 16 section the [Secretary of DHS], after consultation with appropriate
 17 agencies of the Government, shall review the conditions in the
 18 foreign state . . . for which a designation is in effect under this
 19 subsection and shall determine whether the conditions for such
 20 designation under this subsection continue to be met.

21 *Id.* § 1254a(b)(3).

22 The options of termination and extension are then described in the TPS statute as follows:

23 (B) Termination of designation

24 If the [Secretary of DHS] determines under subparagraph (A) that a
 25 foreign state . . . no longer continues to meet the conditions for
 26 designation under [§ 1254a(b)(1)], the [Secretary] shall terminate
 27 the designation by publishing notice in the Federal Register of the
 28 determination under this subparagraph (including the basis for the
 determination). Such termination is effective in accordance with [§
 1254a(d)(3)²], but shall not be effective earlier than 60 days after the

29 _____
 30 ² Section 1254a(d)(3) provides:

31 If the [DHS Secretary] terminates the designation of a foreign state .
 32 . . . under [§ 1254a(b)(3)(B)], such termination shall only apply to
 33 documentation and authorization issued or renewed after the
 34 effective date of the publication of notice of the determination under

1 date the notice is published or, if later, the expiration of the most
 2 recent previous extension under [§ 1254a(b)(3)(C)].

3 (C) Extension of designation

4 If the Attorney General does not determine under [§ 1254a(b)(3)(A)]
 5 that a foreign state . . . no longer meets the conditions for
 6 designation under paragraph (1), the period of designation of the
 7 foreign state is extended for an additional period of 6 months (or, in
 8 the discretion of the Attorney General, a period of 12 or 18 months).

9 *Id.*

10 There is no dispute that a country may be given more than one TPS designation. A TPS
 11 designation for a country that is already designated for TPS is called a redesignation. When a
 12 redesignation is given, that “generally has the effect of expanding the pool of potential
 13 beneficiaries to include individuals who came to the United States after the country was first
 14 designated for TPS.” Docket No. 93 (Order at 5).

15 There is also no dispute about the general process that DHS has long followed when a TPS
 16 designation is subject to periodic review. In or about 2020, the U.S. Government Accountability
 17 Office (“GAO”) was asked to review the TPS decision-making process and, after reviewing
 18 documentation and data related to TPS decisions and interviewing agency officials, published a
 19 report titled “Temporary Protected Status, Steps taken to Inform and Communicate Secretary of
 20 Homeland Security’s Decisions.” *See* MacLean Decl., Ex. 6 (GAO TPS Rpt.). As explained in
 21 the GAO TPS Report, DHS’s practice is to collect four documents to inform each TPS decision
 22 (whether the initial designation or review of an existing designation):

- 23 (1) a country conditions report compiled by USCIS (an agency within DHS);
- 24 (2) a memo with a recommendation from the USCIS Director to the DHS Secretary;
- 25 (3) a country conditions report compiled by the State Department; and
- 26 (4) a letter with a recommendation from the Secretary of State to the Secretary of DHS.

27 that subsection (or, at the [Secretary’s] option, after such period
 28 after the effective date of the determination as the [Secretary]
 determines to be appropriate in order to provide for an orderly
 transition).

8 U.S.C. § 1254a(d)(3).

1 See GAO TPS Rpt. at 18.³ Each document is generally compiled as follows:

- 2 • *USCIS country conditions report.* The Office of Policy & Strategy (“OP&S”) (a
3 division within USCIS) reaches out to the Refugee, Asylum, and International
4 Operations Directorate (“RAIO”) (another division in USCIS) to get input on
5 country conditions. RAIO prepares a country conditions report after collecting
6 information from, *e.g.*, other U.S. agencies, foreign governments, international
7 organizations, nongovernmental organizations, and news articles. The country
8 conditions report is then given to OP&S. See GAO TPS Rpt. at 20-22.
- 9 • *State Department country conditions report and recommendation from the*
10 *Secretary of State to the DHS Secretary.* USCIS reaches out to the State
11 Department’s Bureau of Population, Refugees, and Migration (“PRM”). See GAO
12 TPS Rpt. at 21. PRM asks the relevant regional bureau to communicate with the
13 overseas post to get information about country conditions. The regional bureau has
14 a questionnaire on country conditions for the post to fill out, and the post provides
15 responses to the questionnaire, plus a recommendation, to the regional bureau.
16 Other agencies represented at the overseas post (*e.g.*, the U.S. Agency for
17 International Development) may also provide information to the post to include as
18 part of its input on country conditions. After the regional bureau gets the
19 information from the post, it drafts a country conditions report and
20 recommendation and then works with PRM to compile a joint action memo. PRM
21 provides the joint action memo, which includes a country conditions report, to the
22 Secretary of State. After the Secretary of State determines what the State
23 Department will recommend, a final country conditions report and recommendation
24 letter is provided to the DHS Secretary and OP&S. See GAO TPS Rpt. at 22-23.

25
26 _____
27 ³ See also *Ramos v. Nielsen*, 336 F. Supp. 3d 1075, 1082 (N.D. Cal. 2018) (describing the same
28 general process). The government provides no evidence suggesting the GAO TPS Report or
Ramos was inaccurate. It cites no instance, prior to the current Administration taking office,
where the general procedure of reviewing TPS deviated in any substantial way from that described
by the GAO.

- *USCIS recommendation to the DHS Secretary.* After USCIS receives the input from both RAIO and the State Department, USCIS finalizes its country conditions report and prepares a recommendation memo for the DHS Secretary. *See* GAO TPS Rpt. at 21.

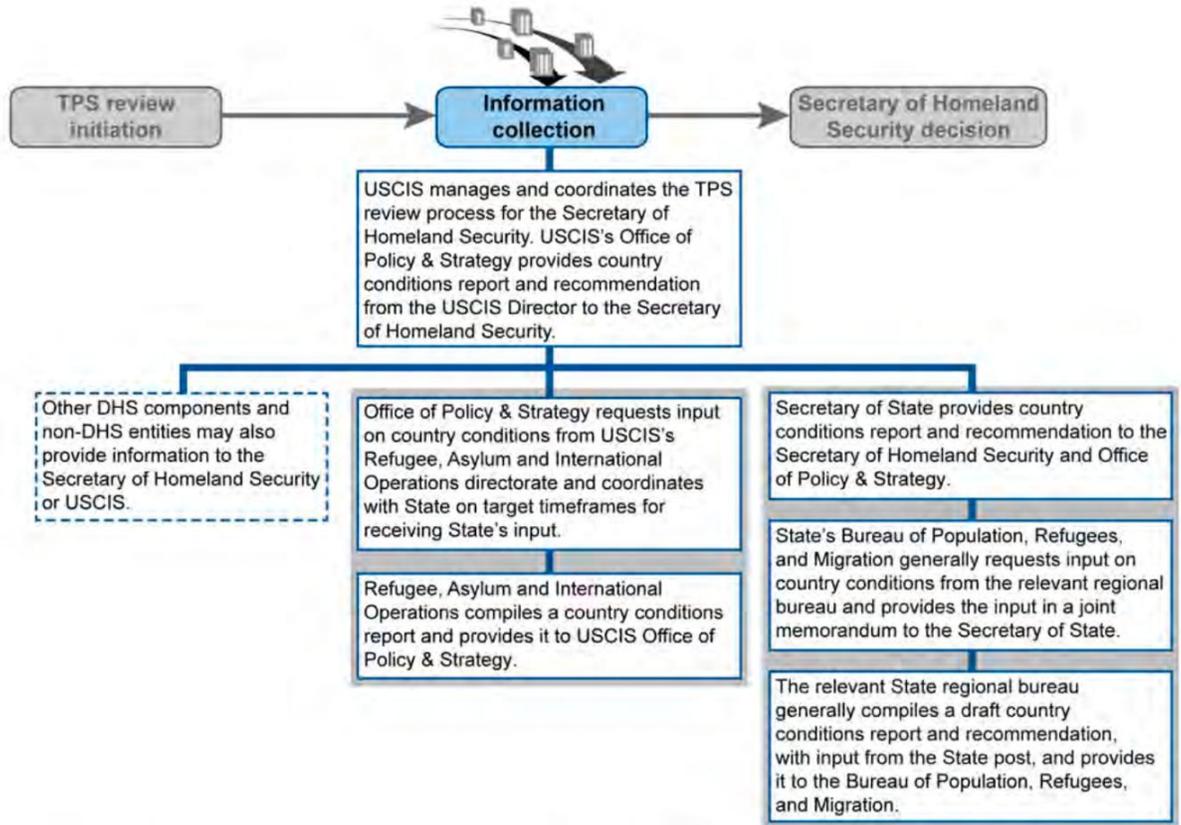
Before the four documents above are given to the DHS Secretary, the documents are reviewed by other components within DHS as part of the standard departmental clearance process. This includes the Office of Strategy, Policy, and Plans; the Office of the General Counsel; and the Management Directorate. *See* GAO TPS Rpt. at 26. In addition, input from other agencies or other entities may be provided to the Secretary or USCIS. *See* GAO TPS Rpt. at 25 (providing as examples U.S. Customs and Border Protection, the Department of Defense, the Centers for Disease Control and Prevention, members of Congress, foreign government officials, and nongovernmental organizations).

Before making a final decision, the DHS Secretary may hold briefings or meetings on TPS reviews, both internally and externally (*e.g.*, with White House officials, foreign government officials, nongovernmental organizations, and advocacy groups). *See* GAO TPS Rpt. at 25-26.

Below is a flow chart from the GAO TPS Report that summarizes the above process.

///

Figure 6: Information Collected for the Secretary of Homeland Security’s Review for Initial or Existing Designation of Temporary Protected Status (TPS)



United States District Court
Northern District of California

GAO TPS Rpt. at 20.

Finally, there is no dispute that a “key factor motivating Congress at the time of the passage of the TPS was the shortcomings of the Extended Voluntary Departure program,” which “allowed the Executive to use its discretion to grant administrative stays of removal for nationals of designated countries.” *Nat’l TPS Alliance v. Noem*, No. C-25-5687 TLT (N.D. Cal.) (Docket No. 73) (Order at 9); *see also NTPSA*, 2025 U.S. App. LEXIS 22269, at *13-14 (taking note of legislators’ concern “about granting unbridled deference to the Executive branch in determining the country designations and time periods for relief” and the TPS statute’s “explicit guidelines, specific procedural steps, and time limitations” that replaced the “prior ad hoc framework”); *Ramos*, 975 F.3d at 879 (noting that “[t]he impetus for the establishment of the TPS program stemmed from concerns with the ‘extended voluntary departure’ (EVD) process, which was the primary mechanism by which the federal government allowed groups of nationals to remain in the

1 United States for humanitarian reasons prior to TPS”). “Because administrations granted EVD on
2 an *ad hoc* basis without ‘any specific criterion or criteria,’ the practice led to arbitrary results and
3 drew widespread criticism.” *Id.*; *see also NTPSA v. Noem*, No. C-25-5687 TLT (Docket No. 73)
4 (Order at 9) (noting that “members of Congress were unhappy with the wide discretion EVD gave
5 to the executive and the arguably arbitrary standards for which EVD designation could be
6 withheld”). The point of the TPS statute was to bring coherence and discipline to the previous
7 process which was ad hoc and undisciplined.

8 **III. VACATUR AND TERMINATION DECISIONS FOR VENEZUELA**

9 As noted above, Plaintiffs challenge two decisions made by Secretary Noem with respect
10 to Venezuela’s TPS designation: (1) a decision to vacate and (2) a decision to terminate. As
11 demonstrated below, these decisions were made with incredible haste and without any meaningful
12 consultation with appropriate agencies. The relevant events leading up to those decisions are as
13 follows.

14 In **March 2021**, Secretary Mayorkas first designated Venezuela for TPS (the “2021 TPS
15 Designation” or “2021 Designation”). *See* Docket No. 93 (Order at 5). The 2021 Designation
16 was extended two times. The second extension gave TPS holders under the 2021 Designation
17 legal status and work authorization through September 10, 2025. *See* Docket No. 93 (Order at 5-
18 6).

19 In **October 2023**, Secretary Mayorkas redesignated Venezuela for TPS (the “2023 TPS
20 Designation” or “2023 Designation”). *See* Docket No. 93 (Order at 6). The redesignation gave
21 TPS holders under the 2023 Designation legal status and work authorization through April 2,
22 2025. “While the 2021 Designation allowed individuals who had been in the United States since
23 March 2021 to apply, [the 2023] [D]esignation . . . allowed individuals to apply if they had
24 continuously resided in the United States since July 31, 2023, and had continuously been
25 physically present since October 3, 2023.” Docket No. 93 (Order at 6).

26 On **January 17, 2025**, shortly before the second Trump Administration was to begin,
27 Secretary Mayorkas extended the 2023 Designation by 18 months, through October 2, 2026. *See*
28 Docket No. 93 (Order at 7). In the extension, Secretary Mayorkas also streamlined the filing

1 processes for the 2021 and 2023 Designations by consolidating them. This meant that 2021 TPS
2 holders also had the opportunity to register and get the benefit of the same October 2, 2026, date.
3 *See* Docket No. 93 (Order at 7-8).

4 On **January 20, 2025**, President Trump began his second administration. *See* Docket No.
5 93 (Order at 8).

6 Just four days later, on **January 24, 2025**, DHS began drafting the decision to vacate the
7 TPS extension that had been given by Secretary Mayorkas. *See* Bansal Reply Decl., Ex. 1 (email)
8 (“We are drafting the TPS vacatur notice [for Venezuela] this evening. We need some input from
9 you, especially operational matters related to TPS. [¶] . . . Joseph Mazzara asked that we submit
10 the document to him by 1pm on Sunday [i.e., within two days].”)⁴ The draft of the vacatur
11 decision was begun before Secretary Noem was confirmed as the DHS Secretary.

12 On **January 25, 2025**, Secretary Noem was confirmed. That same day, the Office of
13 General Counsel within DHS stated that it was “not at all interested in revisiting the substance of
14 whether [the vacatur] should go forward.” Bansal Reply Decl., Ex. 2 (email). In effect, the
15 decision to vacate was already made.

16 The following day, **January 26, 2025**, DHS began to prepare and/or circulate the decision
17 to *terminate* Venezuela’s TPS. *See* MacLean Decl., Ex. 5 (privilege log) (NTPSA-DHS 211); *see*
18 *also* Bansal Reply Decl., Ex. 7 11 (email, dated 1/27/2025) (“I created a shell for a termination
19 notice. Can you start drafting? (I’m going to work on the memo for the vacatur notice.)”). In
20 other words, even before the decision to vacate was finalized, DHS was preparing to terminate
21 Venezuela’s TPS. Furthermore, the draft on the termination decision was being prepared before
22 any country conditions analysis was conducted. *See* Bansal Reply Decl., Ex. 15 (email
23 (providing the “DOS [Department of State] country report” for Venezuela – one prepared in
24 September 2024 during the Biden Administration – on January 29, 2025, *i.e.*, three days after the
25 above email).

26
27 _____
28 ⁴ The email was from Christina McDonald, who appears to be part of the Office of General
Counsel to, *inter alia*, Joseph Edlow. At the time, Mr. Edlow was a Senior Advisor (nominated to
be, and as of mid-July 2025, USCIS Director). *See* Docket No. 132-1.

1 On **January 27, 2025**, the vacatur decision was put into final form. *See* MacLean Decl.,
2 Ex. 2 (email).

3 On **January 28, 2025**, Secretary Noem signed off on the vacatur decision. *See* Docket No.
4 103-1 (ECF Page 5) (administrative record for vacatur); MacLean Decl., Ex. 3 (email); *see also*
5 MacLean Decl., Ex. 4 (DHS Clearance Record). *That same day*, DHS staff was asked to “focus
6 on any improvements in Venezuela,” implicitly to advance and support termination of
7 Venezuela’s TPS. *See* Bansal Reply Decl., Ex. 17 (email).

8 On **January 30, 2025**, DHS staff exchanged email indicating that it was urgent to finalize
9 the termination decision. *See* MacLean Decl., Ex. 9 (email)⁵; *see also* Bansal Reply Decl., Ex. 14
10 (email) (in response to email noting upcoming publication of the vacatur notice in the Federal
11 Register, stating: “Great. Where are we with [Venezuela] termination?”).

12 On **January 31, 2025**, Secretary of State Rubio sent a one-and-a-half page letter to
13 Secretary Noem, recommending termination of TPS for Venezuela on the basis that “permitting
14 nationals of Venezuela to remain temporarily in the United States under 8 U.S.C. 1254a is
15 contrary to the national interest of the United States.” Docket No. 104-4 (ECF Page 75)
16 (administrative record for termination). The letter stated in relevant part:

17 Under Executive Order 14150, "the foreign policy of the United
18 States shall champion core American interests and always put
19 America and American citizens first." Designating Venezuela under
20 8 U.S.C. 1254a(b)(1) does not champion core American interests or
put America and American citizens first, therefore it is contrary to
the foreign policy and the national interest of the United States.

21 In particular, I have determined that the first priority of the foreign
22 policy of the United States is that "we must curb mass migration and
23 secure our borders. The State Department will no longer undertake
24 any activities that facilitate or encourage mass migration. Our
diplomatic relations with other countries, particularly in the Western
Hemisphere, will prioritize securing America's borders, stopping
illegal and destabilizing migration, and negotiating the repatriation
of illegal immigrants."

25 The designation of Venezuela under 8 U.S.C. 1254a(b)(1) facilitates
26 and encourages mass migration because it causes more than 600,000

27 _____
28 ⁵ The title of the email was: “VZ Draft FRN – Due by 3pm TODAY [*i.e.*, January 30, 2025].”
One email, timestamped 4:21 p.m., stated: “For your viz, here is the version I am submitting to
OGC now.”

Venezuelan beneficiaries to remain in the United States.

Moreover, organizations like the Venezuelan transnational criminal organization Tren De Aragua commit "campaigns of violence and terror in the United States and internationally" that "are extraordinarily violent, vicious," and "threaten the stability of the international order in the Western Hemisphere." Under Executive Order 14157, Designating Cartels and Other Organizations as Foreign Terrorist Organizations and Specially Designated Global Terrorists, "it is the policy of the United States to ensure the total elimination of these organizations' presence in the United States and their ability to threaten the territory, safety, and security of the United States."

Docket No. 104-4 (ECF Pages 75-76). Secretary Rubio's letter did *not* address country conditions, nor did the State Department provide any country conditions report to USCIS.

Also on **January 31, 2025**, USCIS recommended termination to Secretary Noem. *See* Dichter Decl., Ex. 2 (memo). The memo stated in relevant part as follows:

Conditions in Venezuela remain challenging, but notable improvements indicate that the conditions that precipitated the initial TPS designation no longer continue. Venezuela no longer continues to meet the statutory requirements for its TPS designation. As such, the statute requires that the TPS designation be terminated. Additionally, USCIS believes that it may be contrary to the national interest of the United States to permit Venezuelan TPS beneficiaries to remain in the United States. This determination differs from the [Department of State] recommendation [provided in September 2024, during the Biden Administration]. Given the noted criminal activity of some Venezuelan nationals, we recommend the Secretary terminate the TPS designation of Venezuela.

Dichter Decl., Ex. 2 (Memo at 5). The 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.

On **February 1, 2025** – just three days after Secretary Noem signed off on the vacatur decision – Secretary Noem signed off on the termination decision. *See* Docket No. 104-1 (administrative record for termination) (ECF Page 6).

On **February 3, 2025**, the vacatur decision was published in the Federal Register. *See* 90 Fed. Reg. 8805 (Feb. 3, 2025).

On **February 5, 2025**, the termination decision was published in the Federal Register. *See*

United States District Court
Northern District of California

1 90 Fed. Reg. 9040 (Feb. 5, 2025). As a formal matter, only the 2023 Designation for Venezuela
 2 was terminated – specifically, as of April 7, 2025. The 2021 Designation was not terminated but
 3 will expire on September 10, 2025. As noted above, the termination of the 2023 Designation was
 4 possible at that time only because Secretary Noem had vacated the extension given by Secretary
 5 Mayorkas.

6 The reason for the vacatur of the extension was stated in the Federal Register as follows:
 7 “The Mayorkas Notice adopted a novel approach of implicitly negating the 2021 Venezuela TPS
 8 designation by effectively subsuming it within the 2023 Venezuela TPS designation.” 90 Fed.
 9 Reg. at 8807.

10 The Mayorkas Notice did not acknowledge the novelty of its
 11 approach or explain how it is consistent with the TPS statute. *See*
 12 INA 244(b)(2)(B), 8 U.S.C. 1254a(b)(2)(B) (providing that a TPS
 13 country designation “shall remain in effect until the effective date of
 14 the termination of the designation under [INA 244(b)(3)(B), 8
 15 U.S.C. 1254a(b)(3)(B)]”). This novel approach has included
 16 multiple notices, overlapping populations, overlapping dates, and
 17 sometimes multiple actions happening in a single document. While
 18 the Mayorkas Notice may have made attempts to address these
 19 overlapping populations, the explanations in the Mayorkas Notice,
 20 particularly the explanation for operational impacts, are thin and
 21 inadequately developed. Given these deficiencies and lack of
 22 clarity, vacatur is warranted to untangle the confusion, and provide
 23 an opportunity for informed determinations regarding the TPS
 24 designations and clear guidance.

18 *Id.*

19 As for the termination of the 2023 Designation, the reason therefor was stated in the
 20 Federal Register as follows: “Overall, certain conditions for the 2023 TPS designation of
 21 Venezuela may continue; however, there are notable improvements in several areas such as the
 22 economy, public health, and crime that allow for these nationals to be safely returned to their
 23 home country.” 90 Fed. Reg. at 9042. But, “even assuming the relevant conditions in Venezuela
 24 remain both ‘extraordinary’ and ‘temporary,’ termination of the 2023 Venezuela TPS designation
 25 is required because it is contrary to the national interest to permit the Venezuelan nationals . . . to
 26 remain temporarily in the United States.” *Id.*

27 [First,] TPS has allowed a significant population of inadmissible or
 28 illegal aliens without a path to lawful immigration status to settle in
 the interior of the United States, and the sheer numbers have

1 resulted in associated difficulties in local communities where local
2 resources have been inadequate to meet the demands caused by
3 increased numbers. Among these Venezuelan nationals who have
4 crossed into the United States are members of the Venezuelan gang
5 known as Tren de Aragua. Tren de Aragua has been blamed for sex
6 trafficking, drug smuggling, police shootings, kidnappings, and the
7 exploitation of migrants. The United States has sanctioned the gang
8 and placed it on a list of transnational criminal organizations. In
9 Executive Order 14157, Designating Cartels and Other
10 Organizations as Foreign Terrorist Organizations and Specially
11 Designated Global Terrorists, the President determined that Tren de
12 Aragua’s campaign of violence and terror poses threats to the United
13 States. The Secretary accordingly has considered these important
14 immigration and national interests in terminating the Venezuela
15 parole process.

16 Second, President Trump observed, referring to CHNV [the parole
17 program known as the “Processes for Cubans, Haitians,
18 Nicaraguans, and Venezuelans”] and other policies and processes,
19 that “[o]ver the last 4 years, the prior administration invited,
20 administered, and oversaw an unprecedented flood of illegal
21 immigration into the United States,” including millions who crossed
22 U.S. borders or were allowed to fly to a U.S. airport of entry and
23 allowed to settle in American communities. The prolonged presence
24 of these aliens in the United States “has cost taxpayers billions of
25 dollars at the Federal, State, and local levels.” For example, over
26 180,000 illegal aliens have settled in New York City, approximating
27 that this will cost the city \$10.6 billion through the summer of 2025.
28 Additionally, although mayors from cities across the United States
are attempting to accommodate Venezuelan illegal aliens, city
shelters, police stations, and aid services are at a maximum capacity.

.....

18 Third, President Trump declared a national emergency at the
19 southern border. As the Attorney General and DHS have long
20 understood, the potential “magnet effect” of a TPS determination is
21 a permissible factor under the TPS statute, especially with respect to
22 a redesignation. The same is true for Venezuela. . . . Fourth, as the
23 President directed in Executive Order 14150, “the foreign policy of
24 the United States shall champion core American interests and
25 always put America and American citizens first.” Continuing to
26 permit Venezuelans under the 2023 TPS designation to remain in
27 the United States does not champion core American interests or put
28 American interests first. U.S. foreign policy interests, particularly in
the Western Hemisphere, are best served and protected by curtailing
policies that facilitate or encourage illegal and destabilizing
migration.

25 *Id.* at 9042-43.

26 The government has not submitted any evidence substantiating “there are notable
27 improvements in several areas such as the economy, public health, and crime that allow for these
28 nationals to be safely returned to their home country.” And, as this Court found in its

1 postponement order, the government failed to provide any evidence that Venezuelan TPS holders
 2 constitute a threat to national security. *See* Docket No. 93 (Order at 41-44); *see also* *NTPSA*, 2025
 3 U.S. App. LEXIS 22269, at *53 n.13 (in affirming postponement order, taking note of the absence
 4 of evidence to support the government’s claimed national security concerns). Since that order, the
 5 government has submitted zero additional evidence in this regard.

6 **IV. VACATUR AND TERMINATION DECISIONS FOR HAITI**

7 As with Venezuela’s TPS, Plaintiffs challenge two decisions made by Secretary Noem
 8 with respect to Haiti’s TPS: (1) a decision to partially vacate and (2) a decision to terminate. The
 9 relevant events leading up to those decisions are as follows.

10 In **January 2010**, Haiti was first designated for TPS (based on an earthquake). *See* 75
 11 Fed. Reg. 3476 (Jan. 21, 2010).

12 Thereafter, through **2018**, Haiti’s TPS was extended or there was a redesignation of its
 13 TPS. *See* Opp’n at 5 n.9 (identifying notices published in the Federal Register).

14 In **January 2018**, the first Trump Administration terminated the TPS designation for Haiti.
 15 *See* 83 Fed. Reg. 2648 (Jan. 18, 2018). However, the termination did not take effect because of
 16 litigation that was brought thereafter challenging the termination.

17 In **August 2021**, following the assassination of the Haitian President, Haiti was given a
 18 new TPS designation by the Biden Administration. *See* 86 Fed. Reg. 41863 (Aug. 3, 2021).

19 In **January 2023**, Secretary Mayorkas extended and redesignated TPS for Haiti. *See* 88
 20 Fed. Reg. 5022 (Jan. 26, 2023).

21 In **July 2024**, Secretary Mayorkas again extended and redesignated TPS for Haiti. Under
 22 that decision, Haiti’s TPS designation would last for 18 months, *i.e.*, until February 3, 2026. *See*
 23 89 Fed. Reg. 54484 (July 1, 2024).

24 Approximately six months later, on **January 20, 2025**, President Trump began his second
 25 administration.

26 On **January 25, 2025**, Secretary Noem was confirmed as DHS Secretary.

27 On **February 7, 2025** – just two days after the Venezuela termination was published in the
 28 Federal Register – DHS prepared and/or circulated a draft decision partially vacating Secretary

1 Mayorkas's most recent extension/redesignation of TPS for Haiti. See MacLean Decl., Ex. 6
2 (privilege log) (NTPSA-DHS 2112).

3 Approximately a week later, from **February 14-17, 2025**, high-level staff within DHS
4 signed off on the partial vacatur. See Docket No. 110-3 (ECF Page 27) (administrative record for
5 partial vacatur) (DHS Clearance Record).

6 On **February 18, 2025**, Secretary Noem approved the partial vacatur. See Docket No.
7 110-2 (ECF Page 6) (administrative record for partial vacatur).

8 On **February 20, 2025**, DHS issued a press release announcing the partial vacatur. See
9 MacLean Decl. ¶ 16 & Ex. 15 (press release). The language in the press release implicitly pointed
10 to an anticipated termination of Haiti's TPS, stating, *e.g.*, that the partial vacatur was "part of
11 President Trump's promise to rescind policies that were magnets for illegal immigration and
12 inconsistent with the law"; that, "[f]or decades the TPS system has been exploited and abused";
13 and that, "[l]ast month, Secretary Noem similarly rescinded the previous administration's
14 Venezuela TPS extension." MacLean Decl., Ex. 15.

15 On **February 24, 2025**, the partial vacatur decision was published in the Federal Register.
16 Under the decision, the length of Haiti's TPS designation was shortened from 18 months to 12
17 months; *i.e.*, the designation would now expire on August 3, 2025, instead of February 3, 2026.
18 See 90 Fed. Reg. 10511 (Feb. 24, 2025). Secretary Noem did not have the option of shortening
19 the designation to 6 months because that would have put the expiration date on February 3, 2025 –
20 a date that had already passed.

21 On **July 1, 2025**, Secretary Noem terminated the TPS designation for Haiti. See 90 Fed.
22 Reg. 28760 (July 1, 2025). Under that decision, Haiti's TPS designation will terminate on
23 September 2, 2025.

24 The reason for the partial vacatur of Secretary Mayorkas's extension/redesignation was
25 stated in the Federal Register as follows:

26 First, there is no discussion in the July 1, 2024, Federal Register
27 notice of why the 18-month period was selected in lieu of a 6- or 12-
28 month period. Nor does the administrative record underlying the
June 3, 2024, decision and July 1, 2024, notice bear any discussion
of why the 18-month period was chosen. Allowing aliens from a

1 given country, including aliens who entered the United States
 2 illegally or overstayed their authorized period of admission, to
 3 remain in the United States temporarily with employment
 4 authorization is an extraordinary act. Congress recognized the
 5 gravity of such action under the TPS statute by setting the default
 6 extension period at 6 months, underscoring the uniqueness of this
 7 authority, and limiting its own authority to enact legislation allowing
 8 TPS recipients to adjust to lawful permanent resident status.
 Accordingly, determinations of how long a new designation should
 remain in effect and whether to depart from the default six-month
 period for an extension of an existing designation should take into
 account important considerations relating to the purpose of the
 statute and specific country and country conditions at issue and
 should not rest alone on administrative convenience. Here, there
 was no explanation whatsoever of why the 18-month period was
 selected.

9 Second, and similarly, the July 1, 2024, notice is bereft of any
 10 justification of why permitting the ever-increasing population of
 Haitian TPS recipients, particularly those who entered the country
 11 unlawfully, to remain temporarily in the United States is not
 contrary to the U.S. national interest. The notice simply states that
 12 “it is not contrary to the national interest of the United States.” The
 administrative record underlying Secretary Mayorkas' June 4, 2024,
 13 decision likewise lacks any discussion of the critical national interest
 criterion. Such conclusory determinations do not accord with the
 14 gravity of TPS decisions under the INA. “National interest” is an
 expansive standard that may encompass an array of broad
 15 considerations, including foreign policy, public safety (e.g.,
 potential nexus to criminal gang membership), national security,
 16 migration factors (e.g., pull factors), immigration policy (e.g.,
 enforcement prerogatives), and economic considerations (e.g.,
 17 adverse effects on U.S. workers, impact on U.S. communities).
 Determining whether permitting a class of aliens to remain
 temporarily in the United States is contrary to the U.S. national
 18 interest therefore calls upon the Secretary's expertise and
 discretionary judgment, informed by her consultations with
 19 appropriate U.S. Government agencies.

20 Third, although the July 1, 2024, notice cites some country
 conditions reports that are relatively proximate to the June 4, 2024,
 21 decision, several others date back to early 2023, 2022, or even
 22 earlier. And certain sources upon which DHS relied indicated that
 significant developments were taking place in 2024 that might result
 23 in an improvement in conditions. For example, as stated in the July
 1, 2024, Federal Register notice, the United Nations had recently
 24 authorized a Multinational Security Support (MSS) mission to
 deploy in Haiti in 2024 and support the Haitian National Police in
 capacity building, combatting gang violence, and provide security
 25 for critical infrastructure. The Department of State likewise
 underscored that significant development. Thus, both DHS and the
 26 Department of State contemplated the real possibility of an
 improvement in conditions with the deployment of the United
 Nations MSS mission, yet that important development was not
 27 expressly factored into the determination of the length of the
 extension and designation period.
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United States District Court
Northern District of California

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Eighteen months is the maximum period of designation or extension authorized under the TPS statute. Neither the 2021 new designation, the 2023 extension and new designation, nor the 2024 extension and new designation contained any discussion of national interest considerations or why the 18-month (vs. 6 or 12-month) periods were granted. Given the protracted duration of the “extraordinary and temporary conditions”-based designation for Haiti, the absence of any meaningful appraisal of national interest factors or justification for the 18-month extension, and the fact that eligible Haitians were able to register for TPS under the July 1, 2024, notice for over seven months, the Secretary has determined that a 12-month period is warranted. Abbreviating the period from 18 to 12 months will allow for a fresh review of country conditions in Haiti and of whether such conditions remain both “extraordinary” and “temporary,” whether Haitian may return in safety, and whether it is contrary to the U.S. national interest to continue to permit the Haitian nationals to remain temporarily in the United States.

90 Fed. Reg. at 10513-14. Other than this notice contained in the Federal Register, the government has submitted no evidence about the “real possibility of an improvement in conditions with the deployment of the United Nations MSS mission,” or what has transpired in Haiti since that deployment described nearly a year before, in July 2024.

As for the termination of Haiti’s TPS, the reason given in the Federal Register was as follows:

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.

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.” In Proclamation “Restricting the Entry of Foreign Nationals to Protect the United States from Foreign Terrorists and Other National Security and Public Safety Threats,” 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 overstay report, 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 . . . 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.”

. . . .

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. . . . [A] 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 persist.” This pattern of large-scale irregular migration as a result of “pull factors” has continued for years. . . .

90 Fed. Reg. at 28762.

In addition to the above, the Secretary claimed that, per DHS records, “there are Haitian nationals who are TPS recipients who have been the subject of administrative investigations for fraud, public safety, and national security.” *Id.* The Secretary called out gang members in particular.

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. Coupled with the serious threat posed by Haitian gangs – such as those designated by the State Department as Foreign Terrorist Organizations – continuing TPS for Haiti is not in 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

United States District Court
Northern District of California

crimes.

Id. Again, other than the notice itself, there is nothing else in the public record supporting its stated reasons.

V. PROCEDURAL BACKGROUND

Plaintiffs initiated this lawsuit on February 19, 2025. *See* Docket No. 1 (complaint). At the time, Plaintiffs challenged only the vacatur and termination decisions that Secretary Noem had made with respect to Venezuela. (The Secretary had not yet made her vacatur and termination decisions on Haiti.) The following day, Plaintiffs moved to postpone the decisions on Venezuela pursuant to § 705 of the APA. *See* 5 U.S.C. § 705 (“On such conditions as may be required and to the extent necessary to prevent irreparable injury, the 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.”).

On March 31, 2025, this Court granted Plaintiffs’ motion to postpone. *See* Docket No. 93 (order). The government promptly appealed the postponement order to the Ninth Circuit. *See* Docket No. 94 (notice of appeal). After the Court denied the government’s motion to stay the postponement order pending appeal, *see* Docket No. 102 (order), the government sought a stay from the Ninth Circuit. The appellate court denied the request for a stay. *See* Docket No. 113 (Order at 1) (“Appellants have not demonstrated that they will suffer irreparable harm absent a stay.”).

The government then sought relief from the Supreme Court. On May 19, 2025, the Supreme Court granted the government’s request for a stay of the postponement order. The Supreme Court did not provide any specific rationale for its decision but did state that

[t]his order is without prejudice to any challenge to Secretary Noem’s February 3, 2025 vacatur notice [on Venezuela] insofar as it purports to invalidate EADs [employment authorization documents], Forms I-797, Notices of Action, and Forms I-94 issued with October 2, 2026 expiration dates [*i.e.*, the date provided for by Secretary Mayorkas’s extension]. *See* 8 U.S.C. § 1254a(d)(3).⁶

⁶ Section 1254a(d)(3) provides in relevant part as follows: “If the [Secretary] terminates the designation of a foreign state . . . under subsection (b)(3)(B), such termination shall only apply to documentation and authorization issued or renewed *after* the effective date of the publication of

1 Based on the paragraph above, Plaintiffs filed with this Court a motion to preserve status
 2 and rights for certain Venezuelan TPS holders pursuant to § 705. The Court granted in part and
 3 denied in part the motion to preserve. The Court held that the Secretary had exceeded her
 4 authority when, on February 3, 2025 (as part of the vacatur decision), she effectively canceled
 5 TPS-related documentation that had *already* been issued based on Secretary Mayorkas’s extension
 6 of Venezuela’s TPS to October 2, 2026. *See* 90 Fed. Reg. 8805 (Feb. 3, 2025) (vacatur decision
 7 for Venezuela). The Court granted relief for “those Venezuelan TPS holders who received TPS-
 8 related documentation based on the Mayorkas extension anytime up to and including February 5,
 9 2025 – when the Secretary published notice that the 2023 TPS Designation was being terminated.”
 10 Docket No. 162 (Order at 10).

11 Meanwhile, on March 20, 2025, Plaintiffs had amended their complaint to include the
 12 partial vacatur decision on Haiti. *See* Docket No. 74 (FAC). This was about a week after a case
 13 was filed in the Eastern District of New York, also challenging the partial vacatur decision for
 14 Haiti. Several months later, on July 1, 2025, the New York court granted the plaintiffs’ motions
 15 for summary judgment and for postponement of agency action. The court addressed only part of
 16 the plaintiffs’ APA claims – *i.e.*, that the Secretary lacked the authority to vacate Secretary
 17 Mayorkas’s extension/redesignation. The court did not adjudicate the constitutional claims
 18 asserted by the plaintiffs (based on the Due Process and Equal Protection Clauses). *See Haitian*
 19 *Evangelical Clergy Ass’n v. Trump*, No. 25-cv-1464 (BMC), 2025 U.S. Dist. LEXIS 125511
 20 (E.D.N.Y. July 1, 2025). Subsequently, the New York court entered a final judgment in favor of
 21 the plaintiffs, thus staying the partial vacatur decision on Haiti. *See Haitian Evang.*, No. 25-cv-
 22 1464 (BMC) (Docket No. 65) (final judgment).

23 On July 8, 2025, Plaintiffs filed an amended/supplemental complaint. This complaint
 24 added allegations and claims challenging Secretary Noem’s decision to terminate Haiti’s TPS.

25 Now pending before the Court are (1) two 12(b)(6) motions filed by the government and
 26 (2) two motions for summary judgment, one filed by each party. Both the motions to dismiss and
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 notice of the determination under that subsection” 8 U.S.C. § 1254a(d)(3) (emphasis added).

1 the motions for summary judgment address the Venezuela vacatur and termination decisions.
 2 Both the motions to dismiss and the motions for summary judgment also address the Haiti partial
 3 vacatur decision. Only one motion to dismiss addresses the Haiti termination decision.

4 The Court held a hearing on the above motions on August 1, 2025. Subsequently, the
 5 Court temporarily stayed adjudication of the motions because of the pending appeal of the
 6 postponement order before the Ninth Circuit. *See* Docket No. 276 (order). On August 29, 2025,
 7 the Ninth Circuit issued its decision. The Ninth Circuit affirmed the Court’s postponement order,
 8 holding, *inter alia*, that it had jurisdiction to hear the appeal and that Plaintiffs were likely to
 9 succeed on their claim that Secretary Noem lacked the authority to issue the Venezuela vacatur.
 10 *See generally* *NTPSA*, 2025 U.S. App. LEXIS 22269.

11 VI. JURISDICTION

12 As noted above, pending before the Court are two motions to dismiss filed by the
 13 government and two summary judgment motions, one filed by each party. In both the 12(b)(6)
 14 and summary judgment motions, the government argues that the Court lacks jurisdiction to
 15 consider Plaintiffs’ claims, whether brought under the APA or the Equal Protection Clause. As it
 16 did before (when opposing Plaintiffs’ motion to postpone under § 705), the government argues
 17 there are several jurisdictional bars to Plaintiffs’ suit, including 8 U.S.C. § 1254a(b)(5)(A) and §
 18 1252(f)(1). The government also adds a new jurisdictional argument based on § 701(a)(2) of the
 19 APA. For the reasons stated below, the Court rejects each of the government’s contentions that
 20 jurisdiction is lacking.

21 A. Section 1254a(b)(5)(A)

22 Section 1254a(b)(5)(A) is part of the TPS statute. It provides as follows: “There is no
 23 judicial review of any determination of the Attorney General with respect to the designation, or
 24 termination or extension of a designation, of a foreign state under this subsection.” 8 U.S.C. §
 25 1254a(b)(5)(A). The government argues that the vacatur and termination decisions, both for
 26 Venezuela and Haiti, are subject to § 1254a(b)(5)(A).

27 The Court addressed this issue in its postponement order, holding that § 1254a(b)(5)(A) is
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1 not a bar to either Plaintiffs' APA claims or their Equal Protection claims.⁷ The Court's views
 2 remain the same, particularly in light of the Ninth Circuit's ruling affirming the postponement
 3 order.

4 First, as the panel herein held, there is a strong presumption of judicial review of agency
 5 action. *See NTPSA*, 2025 U.S. App. LEXIS 22269, at *29 (stating that "Courts strongly presume
 6 that Congress intends judicial review of administrative actions"; also stating that the government's
 7 claim that § 1254a(b)(5)(A) bars "substantial statutory and constitution claims is . . . extreme")
 8 (internal quotation marks omitted); *see also* Docket No. 93 (Order at 24) (citing, *inter alia*, *KOLA*,
 9 *Inc. v. United States*, 882 F.2d 361, 363 (9th Cir. 1980), and *Abbott Labs. v. Gardner*, 387 U.S.
 10 136, 141 (1967)). This presumption applies whether Plaintiffs have sought relief under the APA
 11 or the Constitution. As the panel decision herein noted, the presumption of judicial review is
 12 particularly strong "[w]here, as here, [there is a] claim . . . that 'agency action [was] taken in
 13 excess of delegated authority.'" *NTPSA*, 2025 U.S. App. LEXIS 22269, at *29 (emphasis added).
 14 Indeed, the panel underscored that barring judicial review where there is a claim that the Secretary
 15 exceeded her authority would lead to absurd results. *See id.* at *32 n.7 ("[H]olding that we lack
 16 jurisdiction to review questions of statutory interpretation would make unreviewable a Secretary's
 17 decision to authorize a statutorily prohibited thirty-year TPS period.").

18 Second, even if Secretary Noem did not exceed her statutory authority in deciding to
 19 vacate, her decisions to vacate are still subject to judicial review because § 1254(a)(b)(A) bars
 20 judicial review of substantive TPS decisions only. As this Court noted in its postponement order,
 21 "§ 1254a(b)(5)(A) was narrowly designed to bar judicial review of substantive country-specific
 22 conditions in service of TPS designations, terminations, or extensions of a foreign state – not [*e.g.*]
 23 judicial review of general procedures or collateral practices related to such." Docket No. 93
 24 (Order at 25) (citing, *inter alia*, *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479 (1991)
 25 (individual denials on the merits were not challenged but rather the process under which denials

26 _____
 27 ⁷ The Court's postponement order technically addressed only the vacatur and termination
 28 decisions for Venezuela. However, the jurisdictional analysis is the same, whether Venezuela or
 Haiti is at issue.

1 were determined). Courts have consistently held such, including the panel in *Ramos*, 975 F.3d at
2 872, *vacated for rehearing en banc*, 59 F.4th at 1010, and multiple district courts. *See* Docket No.
3 93 (Order at 25-26) (citing decisions). Judge Cogan of the Eastern District of New York recently
4 held the same as well. *See Haitian Evangelical Clergy Ass'n*, No. 25-cv-1464 (BMC), 2025 U.S.
5 Dist. LEXIS 125511, at *16 (holding that § 1254a(b)(5)(A) “does not prevent courts from
6 reviewing and setting aside agency action that is procedurally deficient[;] . . . ‘it is clear from
7 context that the judicial review provision in the TPS statute refers to an individual designation,
8 termination, or extension of a designation with respect to a particular country, not to Defendants’
9 determination practices or adoption of general policies or practices employed in making such
10 determinations”). The challenge here is directed in the first instance to procedural actions taken
11 by the Secretary in vacating orders issued by the prior administration.

12 That is, Plaintiffs’ challenge to the Secretary’s vacatur decisions is based solely on
13 procedural arguments: that the Secretary did not have the authority, statutory or otherwise, to
14 vacate a prior extension of TPS and that her vacatur decision was arbitrary and capricious for
15 procedural reasons, *e.g.*, in failing to consult with the appropriate agencies. These are matters
16 which are entirely collateral to the substantive decision to designate, extend, or terminate a
17 particular country’s TPS based on statutory conditions. *See* Docket No. 93 (Order at 24) (noting
18 that, even in the panel decision in *Ramos*, the Ninth Circuit held that “the scope of §
19 1254a(b)(5)(A)’s bar on judicial review was limited to ‘inquiring into the underlying
20 considerations and reasoning employed by the Secretary in reach[ing] her country-specific TPS
21 determinations’[;] [i]t does not apply to, *e.g.*, a pattern or practice that is ‘collateral to and distinct
22 from the specific [country] TPS decisions and their underlying rationale”). Moreover, it is worth
23 noting that Secretary Noem’s vacatur decisions themselves were based purely on procedural
24 concerns: for Venezuela, Secretary Noem criticized Secretary Mayorkas for, *e.g.*, taking a novel
25 approach and causing confusion, *see* Docket No. 93 (Order at 26); for Haiti, she criticized
26 Secretary Mayorkas for, *e.g.*, not explaining why he extended TPS for 18 months (as opposed to 6
27 or 12), not explaining why it was not contrary to the U.S. national interest to give an extension,
28

1 and not explaining why he could rely on older country conditions reports.⁸

2 Third, the Secretary’s termination decisions are subject to judicial review because
 3 Plaintiffs are not challenging the *substance* of those decisions (based, *e.g.*, on an assessment of
 4 country conditions) *per se*, but rather the *procedure* by which those decisions were reached. For
 5 example, Plaintiffs contend that the terminations were predicated on unlawful vacatur; that, per
 6 the text of the TPS statute, “national interest” is a consideration only at the time of the initial TPS
 7 designation and not on periodic review; and that the Secretary failed to consult, meaningfully or
 8 otherwise, with government agencies or conduct a meaningful country conditions review.

9 In its papers, the government largely makes the same arguments that it did previously in
 10 conjunction with the postponement proceedings. There is, in the motions now pending, one slight
 11 variation. Instead of focusing solely on the use of the word “any” in § 1254a(b)(5)(A), the
 12 government now points to the use of the phrase “with respect to.” *See* 8 U.S.C. § 1254a(b)(5)(A)
 13 (“There is no judicial review of any determination of the Attorney General *with respect to* the
 14 designation, or termination or extension of a designation, of a foreign state under this subsection.”)
 15 (emphasis added). The government emphasizes that the phrase “with respect to” has an expansive
 16 meaning, similar to “related to.” *See, e.g., Lamar, Archer & Cofrin LLP v. Appling*, 584 U.S. 709,
 17 716-17 (2018) (considering the use of the term “respecting” in a bankruptcy statute; noting that,
 18 “[a]s a matter of ordinary usage, ‘respecting’ means ‘in view of: considering; with regard or
 19 relation to: regarding; concerning,’” and “[u]se of the word ‘respecting’ in a legal context
 20 generally has a broadening effect, ensuring that the scope of a provision covers not only its subject
 21 but also matters relating to that subject”). According to the government, a vacatur is literally a
 22 determination “with respect to” – *i.e.*, related to – an extension or designation since in this case, it
 23 is a procedural predicate thereto. The government notes that Congress could have used narrower
 24 language in § 1254a(b)(5)(A) – *e.g.*, “[t]here is no judicial review of a determination to designate,
 25 or terminate or extend” – but it did not. *See* Docket No. 190 (Reply at 4) (omitting use of the

26
 27
 28 ⁸ As the Court stated in its postponement order, it is also clear that Plaintiffs’ challenge to the
 vacatur decisions is collateral in nature based on the factors identified in *Mace v. Skinner*, 34 F.3d
 854 (9th Cir. 1994). *See* Docket No. 93 (Order at 26-27).

1 phrase “with respect to”).

2 The government’s position gives short shrift to how the word “determination” or
3 “determine” is used in the TPS statute. When “determination” or “determine” is used in
4 connection with periodic review, the term describes the *substantive assessment of country*
5 *conditions in reaching a decision on whether to extend or terminate TPS*. For example:

- 6 • The provision on periodic review provides as follows: “Periodic review. At least
7 60 days before end of the initial period of designation, and any extended period of
8 designation, of a foreign state (or part thereof) under this section the [Secretary],
9 after consultation with appropriate agencies of the Government, shall review the
10 conditions in the foreign state (or part of such foreign state) for which a designation
11 is in effect under this subsection and shall **determine** whether the conditions for
12 such designation under this subsection continue to be met. The [Secretary] shall
13 provide on a timely basis for the publication of notice of each such **determination**
14 (including the basis for the determination, and, in the case of an affirmative
15 determination, the period of extension of designation under subparagraph (C)) in
16 the Federal Register.” 8 U.S.C. § 1254a(b)(3)(A) (emphasis added).
- 17 • The provision on termination states: “Termination of designation. If the
18 [Secretary] **determines** under subparagraph (A) that a foreign state (or part of such
19 foreign state) no longer continues to meet the conditions for designation under
20 paragraph (1), the [Secretary] shall terminate the designation by publishing notice
21 in the Federal Register of the **determination** under this subparagraph (including
22 the basis for the determination). Such termination is effective in accordance with
23 subsection (d)(3), but shall not be effective earlier than 60 days after the date the
24 notice is published or, if later, the expiration of the most recent previous extension
25 under subparagraph (C). *Id.* § 1254a(b)(3)(B) (emphasis added).
- 26 • And the provision on extension states: “Extension of designation. If the [Secretary]
27 does not **determine** under subparagraph (A) that a foreign state (or part of such
28 foreign state) no longer meets the conditions for designation under paragraph (1),

1 the period of designation of the foreign state is extended for an additional period of
 2 6 months (or, in the discretion of the [Secretary], a period of 12 or 18 months).” *Id.*
 3 § 1254a(b)(3)(C) (emphasis added).

- 4 • Finally, the provision on the effective date of a termination provides: “Effective
 5 date of terminations. If the [Secretary] terminates the designation of a foreign state
 6 (or part of such foreign state) under subsection (b)(3)(B), such termination shall
 7 only apply to documentation and authorization issued or renewed after the effective
 8 date of the publication of notice of the **determination** under that subsection (or, at
 9 the [Secretary’s] option, after such period after the effective date of the
 10 **determination** as the [Secretary] determines to be appropriate in order to provide
 11 for an orderly transition.” *Id.* § 1254a(d)(3) (emphasis added),

12 As reflected by the above, the term “determination” is used repeatedly to describe the
 13 substantive TPS decision on the status of a given country based on the statutory criteria. *See also*
 14 *Ramos v. Nielsen*, 321 F. Supp. 3d 1083, 1102 (N.D. Cal. 2018) (“The statute does not define
 15 ‘determination,’ but it is evident from the statutory context that this provision refers to the
 16 designation, termination, or extension of a country for TPS. The statute uses the word
 17 ‘determines’ or ‘determination in connection with the Secretary’s initial designation, periodic
 18 review, and termination of a TPS foreign-state designation.”). So understood, the vacatur at issue
 19 here are not covered by § 1254a(b)(5)(A) because they did not render substantive TPS decisions
 20 based on country conditions. A “decision to vacate is, literally and textually, not a ‘designation, or
 21 termination or extension of a designation, of a foreign state.’” Docket No. 93 (Order at 25)
 22 (quoting § 1254a(b)(5)(A)). As noted above, the Secretary’s vacatur were based on *procedural*
 23 concerns (allegedly, a use of a novel and confusing process or an insufficiently explained
 24 extension by the prior administration).

25 The government suggests that this interpretation of “determination” makes the phrase
 26 “with respect to” redundant. However, given context, it is clear that “with respect to” is simply a
 27 connector – *i.e.*, the phrase simply points to what is being “determined.” *See* 8 U.S.C. §
 28 1254a(b)(5)(A) (“There is no judicial review of any determination of the Attorney General with

1 respect to the designation, or termination or extension of a designation, of a foreign state under
2 this subsection.”).

3 The distinction between the propriety of judicial review of the Secretary’s substantive
4 assessment of country conditions and judicial review of procedural errors makes common sense
5 and accords with the purpose and structure of the TPS statute. To shield any procedural
6 nonconformity from any judicial review would undermine the purpose of the statute of imposing
7 coherence and discipline to the process. Furthermore, under the government’s position, there
8 could be no judicial review even if the government were to blatantly violate the statute, *e.g.*, by
9 granting an extension exceeding 18 months or failing to provide the minimum 60 days’ notice of a
10 termination decision. Each of these violations would, in the government’s view, be “with respect
11 to” an extension of termination decision. The government’s interpretation of “with respect to” is
12 thus too sweeping. In short, the purpose of § 1254a(b)(5)(A) is “not to render all aspects of the
13 TPS program unreviewable.” *NTPSA*, 2025 U.S. App. LEXIS 22269, at *32.

14 Finally, the Court notes that, to the extent Plaintiffs are asserting constitutional violations,
15 the presumption of judicial review is particularly strong. *See* Docket No. 93 (Order at 27) (citing
16 *CASA de Md., Inc. v. Trump*, 355 F. Supp. 3d 307, 317 (D. Md. 2018)).

17 For the reasons previously stated in the postponement order and herein, § 1254a(b)(5)(A)
18 does not preclude judicial review of Plaintiffs’ claims herein.

19 B. Section 1252(f)(1)

20 Section 1252 is titled “Judicial review of orders of removal.” Section 1252(f) specifically
21 is titled “Limit on injunctive relief.” It provides in relevant part as follows:

22 In general. Regardless of the nature of the action or claim or of the
23 identity of the party or parties bringing the action, *no court (other*
24 *than the Supreme Court) shall have jurisdiction or authority to*
25 *enjoin or restrain the operation of the provisions of chapter 4 of title*
26 *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.

27 8 U.S.C. § 1252(f)(1) (emphasis added).

28 In its papers, the government makes some of the same arguments that it did previously.

1 The government, however, now spends more time arguing that a vacatur order under §706 of the
2 APA would *functionally* be equivalent to an injunction is subject to § 1252(f)(1). *See* Mot. at 13
3 (“Regardless of how Plaintiffs frame the relief sought, an order that would have the effect of
4 enjoining or restraining DHS’s implementation of the TPS provisions in § 1254a, is
5 jurisdictionally barred under § 1252(f)(1).”); Docket No. 262 (Mot. at 14) (same).

6 The Court’s postponement order addressed the government’s attempt to equate an
7 injunction with an APA vacatur (*i.e.*, setting aside of agency action). *See* Docket No. 93 (Order at
8 16-22). The Court rejected the government’s position, noting first that there is a strong
9 presumption of judicial review of agency action. *See* Docket No. 93 (Order at 17). The Court
10 then pointed out that every court to consider the issue (including the Fifth Circuit and multiple
11 district courts) had also rejected the government’s position. *See* Docket No. 93 (Order at 16, 18).
12 The Court expressed agreement with the Fifth Circuit’s analysis that invalidation of agency action
13 is a less drastic remedy than an injunction because it does not compel nor restrain further agency
14 decision making. *See* Docket No. 93 (Order at 18). The Court also pointed out other differences
15 between a vacatur and an injunction: among other things, “[w]hile a court may only enter a
16 vacatur to re-establish the status quo absent the unlawful agency action, it has ‘broad latitude in
17 fashioning equitable relief [through an injunction] when necessary to remedy an established
18 wrong.’” Docket No. 93 (Order at 19). Also, injunctions may apply not just to parties but also
19 nonparties (specifically, those who act in concert with parties), and both parties and nonparties
20 may be held in contempt for violating an injunction. *See* Docket No. 93 (Order at 19).
21 Furthermore, injunctions may prohibit lawful conduct (not just unlawful conduct) and may evolve
22 and change over time. *See* Docket No. 93 (Order at 20). In short, there are material differences
23 between APA vacaturs and conventional injunctions.

24 Since the Court issued its postponement order, both the Supreme Court and Ninth Circuit
25 have issued decisions supporting the conclusion that there is a difference between injunctions and
26 vacaturs of agency action under the APA. In *Trump v. CASA, Inc.*, 156 S. Ct. 2540 (2025), the
27 Supreme Court indicated in a footnote that its holding on nationwide or universal injunctions did
28 not resolve the distinct question of whether the APA authorizes courts to vacate federal agency

1 action. *See id.* at --- n.10 (stating that “[n]othing we say today resolves the distinct question
2 whether the Administrative Procedure Act authorizes federal courts to vacate federal agency
3 action”; citing 5 U.S.C. §706(2) which authorizes courts to “‘hold unlawful and set aside agency
4 action’”); *see also Haitian Evangelical*, 2025 U.S. Dist. LEXIS 125511, at *20 (taking note of the
5 same).

6 Following *Trump v. CASA*, the Ninth Circuit held in *Immigrant Defenders Law Center v.*
7 *Noem*, No. 25-2581, 2025 U.S. App. LEXIS 17884 (9th Cir. July 18, 2025) [hereinafter *IDL*], that
8 § 1252(f)(1) does not bar a court from staying agency action under § 705 of the APA. The Ninth
9 Circuit pointed out that, in *Biden v. Texas*, 597 U.S. 785 (2022), the Supreme Court stated that §
10 1252(f)(1) is narrow in scope. *See IDL*, 2025 U.S. App. LEXIS 17884, at *26. Furthermore, the
11 court noted that the Supreme Court has “distinguished stays from injunctive relief”:

12 “When a court employs ‘the extraordinary remedy of injunction,’ it
13 directs the conduct of a party, and does so with the backing of its
14 full coercive powers.” . . . A stay, by contrast, “achieves this result
15 by temporarily suspending the source of authority to act – the order
or judgment in question – not by directing an actor’s conduct.” A
stay “simply suspend[s] judicial alteration of the status quo.”

16 *Id.* at *27 (also noting the Fifth Circuit’s comment in *Texas v. United States*, 40 F.4th 205 (5th Cir.
17 2022), that vacatur is a less drastic remedy compared to an injunction). The court also took into
18 account that § 1252(f)(1) refers to injunctive relief only and

19 makes no mention of stays nor other forms of relief under the
20 APA. Congress knows . . . how to limit relief under the APA in
21 other statutory schemes such as the Magnuson-Stevens Act and the
22 Clean Air Act. *See Anglers Conservation Network v. Pritzker*, 809
23 F.3d 664, 668 n.4 (D.C. Cir. 2016) (“The review provision of the
24 Magnuson-Stevens Act also expressly makes § 705 of the APA ‘not
25 applicable.’” (quoting 16 U.S.C. § 1855(f)(1)(A)); *Mexichem
26 Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 562 n.1 (D.C. Cir.
27 2015) (Kavanaugh, J., dissenting in part) (“The Clean Air Act
28 expressly provides that several provisions of the APA – 5 U.S.C. §
553-557 and 706 – ‘shall not, except as expressly provided in this
subsection, apply’” (quoting 42 U.S.C. § 7607(d)(1)). Congress
made no mentioning of limiting APA claims in § 1252(f)(1) and
instead only explicitly limits injunctive relief.

1 *Id.* at *27-28.⁹

2 Should there be any doubt, the Ninth Circuit, in its recent decision affirming this Court’s
3 postponement order, reaffirmed its holding in *IDL*. See *NTPSA*, 2025 U.S. App. LEXIS 22269, at
4 *33-34 (pointing out that, in *IDL*, the Ninth Circuit “held that section 1252(f)(1) does not prohibit
5 relief in the form of a stay or postponement of agency action under the APA”).

6 Though *IDL* technically addressed a stay of agency action under § 705, such a ruling as to
7 stays under § 705 applies equally, and indeed with even more force, to a final judgment of vacatur
8 setting aside agency action (whether under § 706 of the APA or another statute or law). As
9 discussed in greater detail below, a vacatur under §706 is, if anything, less akin than postponement
10 under §705 to the equitable remedy of a preliminary injunction. Hence, the holding of *IDL* and
11 the Ninth Circuit’s decision in this case that § 1252(f)(1) does not bar relief applies *a fortiori* to
12 vacatur. In sum, *IDL* and *NTPSA* constitute binding precedent on this Court – a point that the
13 government conceded at the hearing with respect to *IDL*.¹⁰ Accordingly, the Court holds that §

14 _____
15 ⁹ In this regard, it is worth noting that § 1252(f)(1) was enacted well after § 706 of the APA,
16 which provides for the setting aside of agency action. See *Garland v. Gonzalez*, 596 U.S. 543, 562
17 (2022) (noting that Congress enacted § 1252(f)(1) in 1996); 80 Stat. 378, 392-93 (1966) reflecting
18 addition of § 706 of the APA in 1966). If Congress had intended § 1252(f) to bar a vacatur of
19 agency action under § 706, it could easily have used language to that effect, but it did not do so,
20 instead limiting the reach of the statute to injunctive relief only.

21 ¹⁰ In its papers, the government cited to *Abderdeen & Rockfish R.R. v. Students Challenging*
22 *Regulatory Agency Procs.*, 422 U.S. 289 (1975), in support of its position, but that case is
23 distinguishable. There, the issue was whether the Supreme Court had jurisdiction over an appeal
24 based on 28 U.S.C. § 1253, which allows for an appeal of a preliminary or permanent injunction.
25 The Supreme Court found that the lower court had issued an injunction because the agency (the
26 Interstate Commerce Commission) had been directed to perform certain acts. See *id.* at 307-08.
27 That is not the situation here. Although there was language in *Aberdeen* that suggested the
28 Supreme Court read § 1253 broadly to afford appellate jurisdiction, see *id.* at 308 n.11, § 1253 is
not at issue in the case at bar. More on point is the more recent decision in *Monsanto Co. v.*
Geertson Seed Farms, 561 U.S. 139 (2010), which this Court cited in its postponement order.
There, the Supreme Court stated that

[a]n injunction is a drastic and extraordinary remedy, which should
not be granted as a matter of course. If a less drastic remedy (*such*
as partial or complete vacatur of APHIS’s deregulation decision)
was sufficient to redress respondents’ injury, no recourse to the
additional and extraordinary relief of an injunction was warranted.

Id. at 165-66 (emphasis added). *Monsanto* thus makes a distinction between an injunction and a
vacatur (or set aside), a distinction now crystalized in the Ninth Circuit’s decision in *IDL*.

1 1252(f)(1), which limits injunctive relief in some circumstances,¹¹ does not preclude this Court
2 from ordering a vacatur setting aside of agency action under the APA.

3 Even if a court were to disagree with *IDL* and find that § 1252(f)(1) could limit review of
4 actions under §§ 705 and 706 of the APA, § 1252(f)(1)'s reach would not bar Plaintiffs' suit in its
5 entirety. Rather, as recognized by the Ninth Circuit in its recent decision affirming this Court's
6 postponement order, § 1252(f)(1) has no impact on Plaintiffs' claim that the Secretary's actions
7 exceeded her statutory authority. *See NTPSA*, 2025 U.S. App. LEXIS 22269, at *34 (stating that,
8 "even if the district court's [postponement] order does 'enjoin or restrain,' it is not barred by
9 section 1252(f)(1) if it affects only agency actions that exceed the agency's statutory authority").

10 C. Section 701(a)(2)

11 In moving for summary judgment, the government makes a new jurisdictional argument
12 based on § 701(a)(2) of the APA. The full text of § 701(a) is as follows:

13 This chapter applies, according to the provisions thereof, except to
14 the extent that –

- 15 (1) statutes preclude judicial review; or
16 (2) *agency action is committed to agency discretion by law.*

17 5 U.S.C. § 701(a) (emphasis added).

18 Here, the government invokes § 701(a)(2). The Supreme Court has commented on that
19 provision as follows:

20 The APA provides that "[a] person suffering legal wrong because of
21 agency action, or adversely affected or aggrieved by agency action
22 within the meaning of a relevant statute, is entitled to judicial review
thereof," 5 U.S.C. § 702, and we have read the APA as embodying a
"basic presumption of judicial review," *Abbott Laboratories v.*

23
24 ¹¹ Notably, Section 1252(f)(1) focuses on *individual* orders of removal, as indicated by the title of
25 § 1252 ("Judicial review of orders of removal."). It appears to bar judicial review of other
26 *individualized* determinations such as (1) cancellation of removal and adjustment of status for a
27 noncitizen who is determined to be of good moral character and for whom removal would pose an
28 exceptional and extremely unusual hardship, *see* 8 U.S.C. § 1229b(b); and (2) voluntary departure
for a noncitizen of good moral character. *See id.* § § 1229c(b). TPS differs from such
individualized determinations; it is a broader systemic decision, similar to a regulation. Plaintiffs
also advance additional arguments as to why §1252(f)(1) does not apply here, arguments the Court
need not reach.

1 *Gardner*, 387 U.S. 136, 140 (1967). This is "just" a presumption,
 2 however, *Block v. Community Nutrition Institute*, 467 U.S. 340, 349
 3 (1984), and under § 701(a)(2) agency action is not subject to judicial
 4 review "to the extent that" such action "is committed to agency
 5 discretion by law." As we explained in *Heckler v. Chaney*, 470 U.S.
 6 821, 830 (1985), § 701(a)(2) makes it clear that "review is not to be
 7 had" in those *rare* circumstances where the relevant statute "is
 8 drawn so that a court would have *no meaningful standard against*
 9 *which to judge the agency's exercise of discretion.*" See also
 10 *Webster v. Doe*, 486 U.S. 592, 599-600 (1988); *Citizens to Preserve*
 11 *Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410 (1971). "In such a
 12 case, the statute ('law') can be taken to have 'committed' the
 13 decisionmaking to the agency's judgment absolutely." *Heckler*,
 14 *supra*, at 830.

15 *Lincoln v. Vigil*, 508 U.S. 182, 190-91 (1993) (emphasis added).

16 According to the government, § 701(a)(2) precludes judicial review of the Secretary's
 17 decisions on Venezuela and Haiti's TPS inasmuch as those decisions were predicated on what
 18 was in the "national interest" of the United States.¹² See 8 U.S.C. § 1254(b)(1)(C) (providing that
 19 a country may be given TPS if the Secretary "finds that there exist extraordinary and temporary
 20 conditions in the foreign state that prevent aliens who are nationals of the state from returning to
 21 the state in safety, unless the [Secretary] finds that permitting the aliens to remain temporarily in
 22 the United States is contrary to the national interest of the United States"). The government
 23 asserts that "[t]he determination of 'national interest' is one that calls upon the Secretary's
 24 'expertise and judgment' and is not a manageable legal standard." Mot. at 12.

25 In support, the government cites, *inter alia*, *Poursina v. USCIS*, 936 F.3d 868 (9th Cir.
 26 2019), where the Ninth Circuit stated that "the invocation of the 'national interest' is a core
 27 example of a consideration that lacks a judicially manageable standard of review." *Id.* at 871; see
 28 also *Webster v. Doe*, 486 U.S. 592, 600 (1988) (noting that § 102(c) of the National Security Act
 "allows termination of an Agency employee whenever the Director 'shall deem such termination
 necessary or advisable in the interests of the United States,' not simply when the dismissal is
 necessary or advisable to those interests[;] [t]his standard fairly exudes deference to the Director,
 and appears to us to foreclose the application of any meaningful judicial standard of review")

¹² See Docket No. 12 (Mot. at 12) ("The determination of 'national interest' is one that calls upon the Secretary's 'expertise and judgment' and is not a manageable legal standard.").

1 (emphasis in original).

2 There are several problems with the government’s argument. First, § 701(a)(2) would at
 3 most apply to Plaintiffs’ APA claims; it would not apply to their Equal Protection claims.¹³ See
 4 *San Francisco Unified Sch. Dist. v. AmeriCorps*, No. 25-cv-02425-EMC, 2025 U.S. Dist. LEXIS
 5 77652, at *15-16 (N.D. Cal. Apr. 23, 2025) (stating that, “absent clear congressional intent to
 6 preclude review of a constitutional claim, § 701(a)(2) does not bar review of colorable
 7 constitutional claims arising from agency actions ‘committed to agency discretion by law’”; citing
 8 *Webster* in support); see also *Webster*, 486 U.S. at 601, 603 (stating that “the language and
 9 structure of § 102(c) [of the National Security Act] indicate that Congress meant to commit
 10 individual employee discharges to the Director's discretion, and that § 701(a)(2) accordingly
 11 precludes judicial review of these decisions under the APA”; but then going on to state that “[w]e
 12 do not think § 102(c) may be read to exclude review of constitutional claims”).

13 Second, as to the APA claims, Plaintiffs have not asserted that the Secretary made an
 14 erroneous finding that the national interest weighed against extending TPS. Rather, Plaintiffs have
 15 made legal or procedural arguments – e.g., that “national interest” is a factor that may be
 16 considered only at the time of initial designation, and not as part of the periodic review used to
 17 determine whether to extend or terminate TPS. See Opp’n at 7 (arguing that “[t]he APA’s
 18 provision limiting review of discretionary decisions does not bar claims that challenge the
 19 agency’s failure to apply the proper statutory criteria”); cf. Docket No. 93 (Order at 24)
 20 (concluding that § 1254a(b)(5)(A) “does not apply to, e.g., a pattern or practice that is ‘collateral
 21 to and distinct from the specific [country] TPS decisions and their underlying rationale’”). In
 22 other words, Plaintiffs have brought legal challenges to the Secretary’s action that are independent
 23 of the Secretary’s assertion of national interest in justifying her termination decisions. Moreover,
 24 the Secretary has not asserted national interest whatsoever in justifying her vacatur decisions.

25 Therefore, § 701(a)(2) is not a bar to judicial review of the claims asserted here.

26 _____
 27 ¹³ And, at most, it would only apply to the extent the termination decisions were at issue, as the
 28 Secretary invoked national interest in those decisions alone, and not in the vacatur decisions. As
 discussed below, the infirmity of the Secretary’s decision to terminate TPS for Venezuela does not
 hinge on the correctness of her determination of national interest.

1 **VII. MOTIONS FOR SUMMARY JUDGMENT**

2 Having rejected the government’s jurisdictional arguments, the Court now turns to the
3 merits of Plaintiffs’ case. The Court first addresses the parties’ motions for summary judgment.
4 Plaintiffs have moved for summary judgment on their APA claims only. The government has
5 moved for summary judgment on both the APA claims and the Equal Protection claims.¹⁴

6 A. Legal Standard

7 Federal Rule of Civil Procedure 56 provides that a “court shall grant summary judgment
8 [to a moving party] if the movant shows that there is no genuine dispute as to any material fact and
9 the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). An issue of fact is
10 genuine only if there is sufficient evidence for a reasonable jury to find for the nonmoving party.
11 *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). “The mere existence of a
12 scintilla of evidence . . . will be insufficient; there must be evidence on which the jury could
13 reasonably find for the [nonmoving party].” *Id.* at 252. At the summary judgment stage, evidence
14 must be viewed in the light most favorable to the nonmoving party and all justifiable inferences
15 are to be drawn in the nonmovant’s favor. *See id.* at 255.

16 Where a plaintiff moves for summary judgment on claims that it has brought (*i.e.*, for
17 which it has the burden of proof), it “must prove each element essential of the claims . . . by
18 undisputed facts.” *Cabo Distrib. Co. v. Brady*, 821 F. Supp. 601, 607 (N.D. Cal. 1992); *see also*
19 *Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194 (5th Cir. 1986) (stating that, “if the movant bears
20 the burden of proof on an issue, either because he is the plaintiff or as a defendant he is asserting
21 an affirmative defense, he must establish beyond peradventure all of the essential elements of the
22 claim or defense to warrant judgment in his favor”) (emphasis omitted).

23
24
25 ¹⁴ The Court acknowledges that the government has filed two 12(b)(6) motions. In a typical case,
26 the Court would address a motion to dismiss before a motion for summary judgment. In this case,
27 however, the motions to dismiss largely overlap with the motions for summary judgment, with one
28 notable exception. Specifically, the second motion to dismiss discusses the Haiti termination; the
other motions do not because, at the time they were filed, the Secretary had not yet terminated
Haiti’s TPS. Given the significant overlap between the motions to dismiss and the motions for
summary judgment, to the Court evaluates the merits of Plaintiffs’ case through the lens of
summary judgment, at least for the vacatur and termination decisions for Venezuela and the partial
vacatur decision for Haiti.

1 Where a defendant moves for summary judgment based on a claim for which the plaintiff
2 bears the burden of proof, the defendant need only point to the plaintiff's failure "to make a
3 showing sufficient to establish the existence of an element essential to [the plaintiff's] case."

4 *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

5 B. Motion to Consider Extra-Record Evidence

6 In conjunction with summary judgment, Plaintiffs have filed a motion asking that the
7 Court extra-record evidence. In the motion, Plaintiffs implicitly acknowledge that an APA claim
8 is usually adjudicated based on the administrative record. *See Cty. of Amador v. United States*
9 *DOI*, 872 F.3d 1012, 1020 (9th Cir. 2017) ("In general, a court reviewing agency action under the
10 APA must limit its review to the administrative record."). However, Plaintiffs contend, it is
11 appropriate to consider evidence outside the administrative record because (1) they have made a
12 showing of bad faith on the part of DHS/Secretary Noem and (2) such evidence is necessary to
13 determine whether DHS/the Secretary considered all relevant factors and explained the TPS
14 decisions. *See Lands Council v. Powell*, 395 F.3d 1019, 1029-30 (9th Cir. 2005) (noting that there
15 are "narrow exceptions" to the "general rule that courts reviewing an agency decision are limited
16 to the administrative record"; "district courts are permitted to admit extra-record evidence: (1) if
17 admission is necessary to determine 'whether the agency has considered all relevant factors and
18 has explained its decision,' (2) if 'the agency has relied on documents not in the record,' (3) 'when
19 supplementing the record is necessary to explain technical terms or complex subject matter,' or (4)
20 'when plaintiffs make a showing of agency bad faith'").

21 As Plaintiffs point out, this Court previously allowed Plaintiffs to take extra-record
22 discovery precisely because of the *Lands Council* standard and Plaintiffs' "significant evidence
23 that the [TPS] decisions were made in bad faith, including repeated discriminatory statements by
24 Secretary Noem and President Trump, the short timeframe in which decisions were made, the lack
25 of legal and/or evidentiary support for the decisions, and the unprecedented nature of the
26 decisions." Docket No. 129 (Order at 5); *see also* Docket No. 129 (Order at 4) ("If any extra-
27 record evidence is admissible under the circumstances [identified in *Lands Council*], then extra-
28 record discovery should be permitted under the same circumstances."); Docket No. 135 (Order at

1 5) (“In the Court’s prior order, it did not categorically bar extra-record discovery for Plaintiffs’
 2 APA claim precisely because there was a factual basis for Plaintiffs’ assertion that Secretary
 3 Noem had acted in bad faith and/or with a discriminatory animus.”).

4 The extra-record evidence that Plaintiffs seek to introduce here falls within this scope. The
 5 Court, therefore, does not limit Plaintiffs to the administrative record in evaluating the APA
 6 claims. This is especially true given that the government did not file a formal opposition to
 7 Plaintiffs’ motion, simply stating in its cross-motion for summary judgment that “Plaintiffs’
 8 reliance on the Court-ordered extra-record discovery is unavailing, as the existing administrative
 9 record already makes clear that the agency acted within its legal authority.” Opp’n at 2.

10 Relevant evidence outside the administrative record is admissible to assess the Equal
 11 Protection claims.

12 C. APA Claim – Venezuela Vacatur

13 Plaintiffs have asserted APA claims challenging the Secretary’s vacatur and termination
 14 decisions for both Venezuela and Haiti. The Court addresses first the APA claim related to the
 15 vacatur decision for Venezuela.

16 For this decision, Plaintiffs argue that (1) Secretary Noem did not have the authority to
 17 vacate the extension that had been given by Secretary Mayorkas; (2) even if she did, she exceeded
 18 her authority to vacate; and (3) even if she did have the authority to vacate and did not exceed her
 19 authority to vacate, her decision was arbitrary and capricious.

20 1. Lack of Authority to Vacate

21 In her decision vacating Secretary Mayorkas’s extension of the 2023 Designation,
 22 Secretary Noem asserted that she had the authority to vacate. *See* 90 Fed. Reg. at 8806. Plaintiffs
 23 argue that the Secretary lacked the authority. In its decision upholding this Court’s issuance of the
 24 postponement order, the Ninth Circuit held that Plaintiffs were likely to succeed on the merits of
 25 this claim. *See generally* *NTPSA*, 2025 U.S. App. LEXIS 22269. This Court is guided by the
 26 Ninth Circuit’s analysis and reaffirms its reasoning in its postponement order.

27 “It is well settled that an agency may only act within the authority granted to it by statute.
 28 This principle is a recognition of the nature of an administrative agency as a ‘creature of statute,

62a

1 having no constitutional or common law existence or authority, but only those authorities
 2 conferred upon it by Congress.” *NRDC v. Nat’l Highway Traffic Safety Admin.*, 894 F.3d 95, 108
 3 (2d Cir. 2018) (emphasis omitted). Where an agency is given the power to decide, that power is
 4 “normally accompanied by the power to reconsider,” *NRDC v. Regan*, 67 F.4th 397, 401 (D.C.
 5 Cir. 2023) (emphasis added); that is, generally speaking, “administrative agencies are assumed to
 6 possess at least some inherent authority to revisit their prior decisions, at least if done in a timely
 7 manner.” *Ivy Sports Med., LLC v. Burwell*, 767 F.3d 81, 86 (D.C. Cir. 2014). However,
 8 “Congress . . . undoubtedly can limit an agency’s discretion to reverse itself.” *NRDC*, 67 F.4th
 9 at 401. “[W]here Congress has spoken as to the proper procedure for reversing a decision,
 10 agencies lack the inherent authority to circumvent the statute.” *NTPSA*, 2025 U.S. App. LEXIS
 11 22269, at *37; *see also Ivy Sports*, 767 F.3d at 86 (noting that “an agency may not rely on inherent
 12 reconsideration authority ‘when Congress has provided a mechanism [in the governing statute that
 13 is] capable of rectifying mistaken actions’”).

14 Whether an agency has the power to reconsider and revoke prior agency action turns on
 15 what the governing statute provides, either expressly or implicitly; this is a matter of statutory
 16 construction. Or, as the Court stated in its postponement order, “[t]o determine whether an agency
 17 has the statutorily implicit authority to reconsider an earlier action depends on the statute and
 18 whether such legislative intent to confer such authority can be inferred.” Docket No. 93 (Order at
 19 47).

20 Here, Secretary Noem’s contention that she has the implicit authority to reconsider a TPS
 21 decision lacks merit. As the Ninth Circuit indicated in its decision affirming the postponement
 22 order herein,

23 Congress has displaced any inherent revocation authority by
 24 explicitly providing the procedure by which a TPS designation is
 25 terminated. The Secretary's assertion of such a power is, as the
 26 district court noted, "at odds with the structure of the TPS statute."
 27 The TPS statute specifically addresses the time frame within which
 28 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

1 the Secretary to terminate a designation "midstream," but that is
 2 exactly what the Secretary purports to do here. And while the
 3 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.

4 *NTPSA*, 2025 U.S. App. LEXIS 22269, at *39-40; *see also* Docket No. 93 (Order at 50-51)
 5 (providing the same reasoning). “A reading of the [TPS] statute that allows for vacatur would
 6 render [the above] terms – and Congress’s design – meaningless.” *NTPSA*, 2025 U.S. App.
 7 LEXIS 22269, at *10; *see also id.* at *41 (explaining that “allowing rescission or vacatur of the
 8 TPS designation here, would empower the agency to indirectly take three separate actions that are
 9 prohibited by statute: designating countries for TPS for a time period under six months, 8 U.S.C. §
 10 1254a(b)(2)(B), (b)(3)(C), terminating TPS before the expiration of the last extension, §
 11 1254a(b)(3)(B), and terminating TPS with less than sixty days’ notice”).

12 The Ninth Circuit’s decision in *China Unicom (Ams.) Ops. Ltd. v. FCC*, 124 F.4th 1128
 13 (9th Cir. 2024) [hereinafter *CUA*], underscores that the Secretary does not have the inherent
 14 authority to vacate here. In *CUA*, the Ninth Circuit emphasized that, where a statute provides for a
 15 right or benefit for a fixed term, such as a license, “[t]he use of a fixed term is . . . *affirmatively*
 16 *inconsistent* with positing an implied power to revoke [that] license at any time.” *Id.* at 1147-48
 17 (emphasis added). Here, the TPS statute has “clear stated terms for extensions and terminations of
 18 TPS designations,” which are “likewise ‘affirmatively inconsistent with positing an implied power
 19 to revoke . . . at any time.’” Docket No. 93 (Order at 51); *see also Haitian Evangelical*, 2025 U.S.
 20 Dist. LEXIS 125511, at *26 (noting that the TPS statute “provides specific instructions for how to
 21 reconsider a TPS designation, and it provides a timeline for doing so”). Furthermore, “[t]o permit
 22 the Secretary unconstrained discretion to revoke, at any time, a prior TPS designation would not
 23 be consistent with Congress’s general intent to cabin such discretion.” Docket No. 93 (Order at
 24 52); *see also Ramos*, 975 F.3d at 890 (stating that “Congress enacted the TPS statute to curb and
 25 control the executive’s previously unconstrained discretion under the [extended voluntary
 26 departure] process”); *Nat’l TPS Alliance v. Noem*, No. C-25-5687 TLT (N.D. Cal.) (Docket No.
 27 73) (Order at 9) (taking note of “congressional dissatisfaction with EVD” – e.g., “members of
 28 Congress were unhappy with the wide discretion EVD gave to the executive and the arguably

1 arbitrary standards for which EVID designation could be withheld”).

2 In its papers, the government suggests that the statutory scheme implicitly gives the
 3 Secretary broad discretion to act (which would include the ability to reconsider) because the TPS
 4 statute gives her discretion in (1) deciding how long an extension/designation should last and (2)
 5 deciding when to conduct the periodic review (so long as it is done at least 60 days in advance of
 6 the expiration of the designation). The government’s argument is not convincing. These facts
 7 underscore that the Secretary does have discretion, but only in limited areas. That the Secretary
 8 has discretion on these limited matters – in deciding prospectively the length of an extension and
 9 whether to make that decision (but not actual termination) earlier than 60 days in advance of the
 10 current expiration date – does not say anything about whether the Secretary has the authority to
 11 revoke an existing TPS designation or extension, a much more significant act. Inferring broader
 12 authority based on the limited discretion would be inconsistent with the statute’s express directive,
 13 and would have a retrospective effect, potentially upsetting reliance interests of those affected.
 14 Indeed, the panel decision in the instant case expressly noted that “[t]he structure and temporal
 15 limitations of the TPS statute protect the important reliance interests of individual TPS holders.”
 16 *NTPSA*, 2025 U.S. App. LEXIS 22269, at *41.

17 The Court thus holds, consistent with the Ninth Circuit’s decision in *NTPSA* upholding the
 18 postponement order, that Secretary Noem lacked the statutory authority to vacate Secretary
 19 Mayorkas’s extension.¹⁵

20 2. Exceeding Statutory Authority to Vacate as to Documents Already Issued

21 As to the subset of Venezuelan TPS beneficiaries who were issued documentation under
 22 the Mayorkas extension, Secretary Noem clearly exceeded the scope of her authority. This Court
 23 so held in its preservation order. *See generally* Docket No. 162 (order).

24 As previously explained, in her decision to vacate issued on February 3, 2025, Secretary
 25

26 _____
 27 ¹⁵ In upholding this Court’s postponement order, the Ninth Circuit analyzed only the claim that the
 28 Secretary lacked authority to vacate and did not address Plaintiffs’ other arguments. This Court
 does address many of Plaintiffs’ arguments placed at issue by the cross-motions for summary
 judgment, particularly because it is now evaluating whether Plaintiffs are entitled to permanent
 relief.

1 Noem stated that “USCIS will invalidate EADs [employment authorization documents]; Forms I-
 2 797, Notice of Action (Approval Notice); and Forms I-94, Arrival/Departure Record (collectively
 3 known as TPS-related documentation) that have been issued with October 2, 2026 expiration dates
 4 under the Mayorkas Notice [issued on January 17, 2025].” 90 Fed. Reg. at 8805. But the TPS
 5 statute does not contain any provision allowing the Secretary to invalidate already-issued TPS
 6 documentation. In fact, “§ 1254a(d)(3), the provision in the TPS statute cited by the Supreme
 7 Court in its stay order, underscores that such action is not permissible because the provision
 8 recognizes that TPS holders have reliance interests when issued TPS-related documentation.”
 9 Docket No. 162 (Order at 4); *cf. NTPSA*, 2025 U.S. App. LEXIS 22269, at *41 (“The structure
 10 and temporal limitations of the TPS statute protect the important reliance interests of individual
 11 TPS holders, and the Government must adhere to these statutory constraints.”); *id.* at *46 (“TPS
 12 holders began to rely upon the extension of their protected status at the opening of this registration
 13 period, giving rise to the strong reliance interests here at stake.”).

14 Therefore, even if Secretary Noem had some implicit authority to vacate, she clearly
 15 exceeded the scope of any such authority by effectively canceling TPS documentation that had
 16 already issued under the Mayorkas extension. *See also* Docket No. 162 (Order at 6) (holding that
 17 the cancelation of already-issued TPS documentation was also arbitrary and capricious: TPS
 18 holders “had a protectible reliance interest or vested right”). That being said, only a subset of
 19 Venezuelan TPS holders were so affected by the Secretary’s unlawful conduct in this regard. *See*
 20 Docket No. 162 (Order at 10) (“grant[ing] relief to those Venezuelan TPS holders who received
 21 TPS-related documentation based on the Mayorkas extension up to and including February 5,
 22 2025 – when the Secretary published notice that the 2023 TPS Designation was being
 23 terminated”).¹⁶

24 _____
 25 ¹⁶ The Court acknowledges that Plaintiffs have offered a separate argument as to how the
 26 Secretary exceeded any authority she had under the TPS statute. Specifically, Plaintiffs contend
 27 that the Secretary exceeded her authority because reconsideration is not permitted simply because
 28 a new administration wants to adopt new policies. *See Am. Trucking Ass’ns v. Frisco Transp. Co.*,
 358 U.S. 133, 145-46 (1958) (stating that “the power to correct 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”). Ultimately, the Court views this argument as a variant of
 Plaintiffs’ arguments that the Secretary lacked the implicit authority to vacate and/or that she did

1 3. Arbitrary and Capricious

2 Finally, Plaintiffs challenge the Venezuela vacatur decision on the ground that, even
3 assuming arguendo the Secretary had the authority to vacate and did not exceed her statutory
4 authority to vacate, her decision was still arbitrary and capricious under the APA. *See Dep't of*
5 *Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 16 (2020) (stating that the APA
6 “requires agencies to engaged in ‘reasoned decisionmaking’ and directs that agency actions be ‘set
7 aside’ if they are ‘arbitrary’ or ‘capricious’”).

8 a. Asserted Novelty, Confusion, and “Thin” Explanation

9 Plaintiffs assert that Secretary Noem’s vacatur decision was not reasoned decision making.
10 When Secretary Mayorkas extended the 2023 Designation for Venezuela, he also streamlined the
11 filing processes for the 2021 and 2023 Designations by consolidating them. This meant that 2021
12 TPS holders, not just 2023 TPS holders, could get the benefit of the October 2, 2026, extension
13 date. In her decision vacating the Mayorkas extension, Secretary Noem characterized the
14 extension as “novel” because of the consolidation. According to Secretary Noem, Secretary
15 Mayorkas had “implicitly negat[ed] the 2021 Venezuela designation by effectively subsuming it
16 within the 2023 Venezuela TPS designation.” 90 Fed. Reg. at 8807. Secretary Noem maintained
17 that

18 [t]he Mayorkas Notice did not acknowledge the novelty of its
19 approach or explain how it is consistent with the TPS statute. *See*
20 INA 244(b)(2)(B), 8 U.S.C. 1254a(b)(2)(B) (providing that a TPS
21 country designation “shall remain in effect until the effective date of
22 the termination of the designation under [INA 244(b)(3)(B), 8
23 U.S.C. 1254a(b)(3)(B)]”). This novel approach has included
24 multiple notices, overlapping populations, overlapping dates, and
25 sometimes multiple actions happening in a single document. While
26 the Mayorkas Notice may have made attempts to address these
27 overlapping populations, the explanations in the Mayorkas Notice,
28 particularly the explanation for operational impacts, are thin and
 inadequately developed. Given 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.

26 *Id.*

28 _____
not engage in reasoned decisionmaking.

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1 Plaintiffs assert that the Secretary’s decision was arbitrary and capricious because the
 2 Mayorkas extension, which included the consolidation of the 2021 and 2023 Designation filing
 3 processes, was not novel, did not engender confusion, and was not “thin” in explanation. For the
 4 reasons stated in its postponement order, the Court agrees.

5 First, “[a]s a factual matter, it was not ‘novel’ for different tracks to be streamlined as part
 6 of a TPS process. Plaintiffs have pointed out that there has been similar streamlining for both the
 7 Sudan and Haiti TPS designations.” Docket No. 93 (Order at 57).

8 Second, as a legal matter, consolidation was not novel because – as Secretary Noem failed
 9 to recognize –

10 a TPS beneficiary under the 2021 Designation was necessarily a
 11 TPS beneficiary under the 2023 Designation.

12 [E]very earlier designation is “subsum[ed]” by a later one because
 13 redesignation expands the pool of potential beneficiaries to include
 14 not only those who qualified under an earlier designation, but also
 15 those who arrived after their country was first designated.

16 Docket No. 93 (Order at 56) (emphasis omitted).

17 Third, “streamlining the two tracks for the two designations into one . . . would tend to
 18 eliminate, not create, confusion – *i.e.*, confusion that could arise based on the fact that there are
 19 two tracks.” Docket No. 93 (Order at 57). Notably, the panel decision affirming this Court’s
 20 postponement order agreed with this Court on this very point. As it explained, “Secretary Noem
 21 ‘failed to recognize that a TPS beneficiary under the 2021 Designation was necessarily a TPS
 22 beneficiary under the 2023 Designation.’ Secretary Mayorkas’s extension thereof consolidated the
 23 two designations, combining the two tracks, thus lessening confusion rather than ‘creating’
 24 confusion as Secretary Noem apparently believed.” *NTPSA*, 2025 U.S. App. LEXIS 22269, at *47
 25 n.12. Indeed, evidence that the *government* submitted in conjunction with the summary judgment
 26 proceedings demonstrates that the Biden Administration consolidated the process for the 2021 and
 27 2023 TPS holders precisely to *avoid* confusion. *See* Opp’n, Ex. 1 (Biden Administration’s
 28 “Options for Venezuela TPS Extension and Redesignation – September 23, 2023”) (in “Option 1 –
 Concurrent Extension/Redesignation Date,” noting as a “pro” in favor of the option, that it would
 be “[l]ess confusing for employers in that they will not have to try to distinguish between TPS

1 beneficiaries with varying EAD end dates”; and, in “Option 2 – Two different designation dates
2 for Venezuela TPS,” noting as a “con” that “[i]t will be difficult to operationalize differentiating
3 these two groups of Venezuela TPS beneficiaries in our existing systems” which “may lead to
4 confusion”).

5 Fourth, although Secretary Noem criticized “the explanations in the Mayorkas Notice,
6 particularly the explanation for operational impacts, [as] thin and inadequately developed,” 90
7 Fed. Reg. at 8807, that criticism is rooted in Secretary Noem’s failure to recognize that 2021 TPS
8 holders were necessarily 2023 TPS holders and that consolidation would thereby tend to avoid
9 confusion and streamline the filing process.

10 Hence, there is no factual or legal support for the Secretary’s asserted reason for the
11 vacatur. *See Lands Council*, 395 F.3d at 1026 (“An agency's action is arbitrary and capricious if
12 the agency fails to consider an important aspect of a problem, if the agency offers an explanation
13 for the decision that is contrary to the evidence, if the agency's decision is so implausible that it
14 could not be ascribed to a difference in view or be the product of agency expertise, or if the
15 agency's decision is contrary to the governing law.”).

16 b. Failure to Consider Alternatives

17 Moreover, as the Court held in its postponement order, the Secretary failed to consider
18 alternatives short of vacatur when she revoked the Mayorkas extension. *See* Docket No. 93 (Order
19 at 58). “Agencies are free to change their existing policies as long as they provide a reasoned
20 explanation for the change,” *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016), but
21 “when an agency rescinds a prior policy[,] its reasoned analysis must consider the ‘alternative[s]’
22 that are ‘within the ambit of the existing [policy].’” *Dep’t of Homeland Sec. v. Regents of the*
23 *Univ. of Cal.*, 591 U.S. 1, 30 (2020). Here, Secretary Noem considered no alternatives to
24 complete vacatur. And the context demonstrates she had no interest in doing so: “if Secretary
25 Noem was truly concerned about confusion arising from Secretary Mayorkas’s decision to allow
26 2021 TPS holders to register as 2023 TPS holders, she easily could have chosen to ‘deconsolidate’
27 the registration process and keep the 2021 and 2023 Designations on two different tracks – with
28 the 2021 Designation ending in September 2025 and with the 2023 Designation still ending in

1 October 2026.” Docket No. 93 (Order at 59). That the Secretary did not do so “effectively
 2 demonstrat[es] that confusion was not her concern so much as the desire to totally undo Secretary
 3 Mayorkas’s decision.” Docket No. 93 (Order at 59). This is also substantiated by the timing of
 4 the vacatur and the termination decisions: most notably, the termination decision was drafted even
 5 before the vacatur decision was finalized, and then was formally issued within days of the
 6 publication of the vacatur decision.

7 c. Failure to Consider Reliance Interests

8 Plaintiffs further argue that the Secretary’s vacatur decision was arbitrary and capricious
 9 because, as part of that decision, she invalidated (*i.e.*, canceled) TPS-related documentation that
 10 had already been issued pursuant to the Mayorkas extension. According to Plaintiffs, this action
 11 was arbitrary and capricious because the Secretary failed to consider reliance interests, interests
 12 which the panel in this case recognized. The Court agrees. This is particularly true of those who
 13 had already been issued the TPS documentation based on the extension. The analysis in Part
 14 VII.C.2, *supra*, is largely applicable here.

15 d. Failure to Consult with Government Agencies or Review Country
 16 Conditions

17 According to Plaintiffs, the Secretary also acted arbitrarily and capriciously because she
 18 made the decision to vacate the Mayorkas extension without first consulting with government
 19 agencies or reviewing country conditions.¹⁷ *Cf.* 8 U.S.C. § 1254a(b)(3)(A) (providing that, on
 20 periodic review, the Secretary, “*after consultation with appropriate agencies of the Government,*
 21 *shall review the conditions in the foreign state . . . for which a designation is in effect under this*
 22 *subsection and shall determine whether the conditions for such designation continue to be met*”)
 23 (emphasis added). In response, the government argues that interagency consultation and review of
 24 country conditions is required only where the Secretary is making a decision on an extension or
 25

26 _____
 27 ¹⁷ The administrative record for the vacatur decision contains no contemporaneous country
 28 conditions report – *i.e.*, a report prepared in conjunction with the vacatur decision made by
 Secretary Noem. Instead, the administrative record includes only a country conditions report from
 the Biden era (dated August 2024), which supported the Mayorkas extension. *See* Docket No.
 103-5 (ECF Pages 162-92) (RAIO report).

1 termination: “The vacatur was neither.” Opp’n at 16. For purposes of this decision, the Court
2 need not resolve this dispute. Even if the government’s position has some merit, the Secretary’s
3 failure to consult is still relevant to Plaintiffs’ pretext argument which is addressed below.

4 e. Vacatur Decision Based on Pretext

5 Finally, the Secretary’s decision to vacate was arbitrary and capricious because it was
6 pretextual – *i.e.*, it was not animated by a concern about, *e.g.*, novelty or confusion as professed,
7 nor was it otherwise the result of reasoned agency decision making. Instead, the Secretary –
8 acting with unprecedented haste and in an unprecedented manner – issued the vacatur for the
9 preordained purpose of expediting termination of Venezuela’s TPS.

10 DHS began drafting the decision to vacate within days after President Trump began his
11 second administration. There is no indication that the Secretary or DHS consulted any other
12 government agencies or conducted an internal evaluation as part of this process. In fact, just two
13 days after a draft of the vacatur decision was prepared and/or circulated, *see* MacLean Decl., Ex. 1
14 (email), a draft of the termination decision was prepared and/or circulated. *See* MacLean Decl.,
15 Ex. 5 (privilege log) (NTPSA-DHS 211). Vacatur (and termination) was a *fait accompli* from the
16 outset. The draft of the termination notice was prepared even *before* the vacatur decision was
17 finalized. The same day that Secretary Noem signed off on the vacatur decision, DHS staff was
18 asked to “focus on any improvements in Venezuela,” implicitly to advance and support
19 termination of Venezuela’s TPS. *See* Bansal Reply Decl., Ex. 17 (email). Within days of the
20 Secretary’s approval of the vacatur decision, DHS staff indicated that it was urgent to finalize the
21 termination decision. The termination decision was approved just three days after the vacatur
22 approval. Altogether, the decision making process for the vacatur through the termination took
23 place over a span of days. *Cf. Dep’t of Commerce v. N.Y.*, 588 U.S. 752, 782-83 (2019) (“The
24 evidence showed that the Secretary was determined to reinstate a citizenship question from the
25 time he entered office; instructed his staff to make it happen; waited while Commerce officials
26 explored whether another agency would request census-based citizenship data; subsequently
27 contacted the Attorney General himself to ask if DOJ would make the request; and adopted the
28 Voting Rights Act rationale late in the process.”).

1 The pretextual nature of Secretary’s asserted rationale for the vacatur is demonstrated by
2 the fact that her criticism of Secretary Mayorkas’s extension and the alleged confusion it caused
3 was entirely baseless as noted above. And there is no evidence of any reasoned decision making
4 behind Secretary Noem’s vacatur. The failure to consult with agencies in regard to the termination
5 decision which ensued immediately after the vacatur – a failure which was highly unusual and
6 unprecedented (as discussed below) – further evinces the pretextual nature of Secretary Noem’s
7 purported rationale for the vacatur.

8 4. Summary

9 As a matter of law, the Secretary lacked the implicit authority to vacate. Even if she had
10 such authority, there is no genuine dispute that she exceeded that authority. Furthermore, even if
11 the Secretary had the authority to vacate, there is no genuine dispute that her decision to vacate
12 was arbitrary and capricious for several reasons as set forth above. Accordingly, the Court grants
13 Plaintiffs’ motion for summary judgment on the APA claim related to the Venezuela vacatur
14 decision, and denies the government’s cross-motion.

15 D. APA Claim – Venezuela Termination

16 Plaintiffs’ second APA claim focuses on the termination decision for Venezuela.
17 According to Plaintiffs, the decision to terminate TPS for Venezuela was unlawful because it was
18 predicated on the unlawful vacatur. Plaintiffs further argue that the termination decision was
19 arbitrary and capricious because it was based on an assessment of the national interest, but
20 national interest is a factor that may be considered only at the time of the original TPS
21 designation, and not on periodic review. Finally, Plaintiffs contend that the termination decision
22 was arbitrary and capricious because the decision was made without any meaningful consultation
23 with other government agencies, nor was there a meaningful review of country conditions.

24 1. Predicated on Unlawful Vacatur

25 Plaintiffs’ first argument has merit. As noted above, the vacatur and termination decisions
26 essentially went hand in hand: Secretary Noem made the decision to vacate in order to advance her
27 ability to terminate. Because termination was predicated on vacatur of the existing extension,
28 Plaintiffs are entitled to relief from the termination decision.

2. Failure to Consult with Government Agencies or Review Country Conditions

Plaintiffs are entitled to relief from the termination decision for an additional reason. Secretary Noem failed to comply with the statutory directive to consult with appropriate agencies in deciding whether to terminate Venezuela’s TPS. As noted above, the TPS statute expressly requires that the DHS Secretary “consult[] with appropriate agencies of the Government” as part of the periodic review and that consultation implicitly includes review of country conditions. It provides: “[T]he [Secretary], after consultation with appropriate agencies of the Government, shall review the conditions in the foreign state . . . and shall determine whether the conditions for such designation . . . continue to be met.” 8 U.S.C. § 1254(b)(3)(A). Moreover, the requirement to consult is not an empty obligation; rather, a consultation required by a statute means that there must be a “meaningful exchange of information.” *Cal. Wilderness Coalition v. U.S. DOE*, 631 F.3d 1072, 1086 (9th Cir. 2011); *see also id.* at 1088 (characterizing a statutory requirement to consult as an “affirmative duty” and stating that the consultation must be “meaningful”).

As an initial matter, the Court finds that the Secretary violated the TPS statute because she effectively made the decision to terminate *before* consultation with any government agency. As noted above, the TPS statute requires that a decision be made only *after* consultation – *i.e.*, the consultation is designed to inform the Secretary’s decision-making. But here, the day after Secretary Noem was confirmed, DHS began to draft the decision to terminate. *See* MacLean Decl., Ex. 5 (privilege log) (NTPSA-DHS 211); *see also* Bansal Reply Decl., Ex. 7 11 (email, dated 1/27/2025) (“I created a shell for a termination notice. Can you start drafting? (I’m going to work on the memo for the vacatur notice.)”). There is no evidence that there was any consultation with, *e.g.*, the State Department prior to the initial drafting of the termination decision.

Moreover, as reflected by the evidence of record, even though DHS belatedly sought input from the State Department and assuming *arguendo* the final decision had not already been made prior to seeking that input, there was no meaningful consultation with the State Department or, for that matter, any other government agency. There is no dispute that the consultation required by the TPS statute typically involves at least the State Department. That has been the practice of DHS, as demonstrated by the GAO TPS Report discussed above. Furthermore, the State

1 Department is the government agency that conducts foreign policy and thus is one of the agencies
2 most likely to have information about conditions in a foreign country. Here, although DHS did
3 reach out to the State Department to get its input (belatedly), the Secretary of State simply
4 provided a one-and-a-half page letter; importantly, the analysis therein failed to include *any*
5 information on country conditions in Venezuela. Instead, it focused solely on the national
6 interests of the United States.

7 To the extent the government points to a State Department country conditions report from
8 September 2024, that report was prepared by the Biden Administration, in conjunction with
9 Secretary Mayorkas's TPS decision to *extend* TPS. *See* Docket No. 104-4 (ECF Pages 53-74)
10 (letter from Secretary of State Blinken). Here, the new administration failed to provide a country
11 conditions report from the State Department that was prepared contemporaneously in conjunction
12 with Secretary Noem's termination decision. Nor did the administration obtain any
13 contemporaneous country conditions report from RAIO. Instead, it appears that the Secretary
14 could have relied at most on a RAIO country conditions report from the Biden era. *See* Docket
15 No. 104-9 (ECF Pages 45-75) (RAIO report, dated August 2024, from the Biden era). Given the
16 RAIO report was part of the Biden administration's decision to *extend* TPS for Venezuela, it
17 seems ironic, if not disingenuous, for Secretary Noem to now rely on that report to *terminate* TPS.
18 In fact, she cited nothing specific in the report from the Biden administration to justify her
19 decision to vacate and terminate Venezuela's TPS.

20 The above demonstrates not only a failure to engage in a meaningful consultation with
21 government agencies but also a failure to conduct a meaningful country conditions review, a
22 rudimentary element of the consultation contemplated by the statute. This not only violates the
23 TPS statute, but also constitutes arbitrary and capricious action by the Secretary. *See Lands*
24 *Council*, 395 F.3d at 1026 ("An agency's action is arbitrary and capricious if the agency fails to
25 consider an important aspect of a problem, if the agency offers an explanation for the decision that
26 is contrary to the evidence, if the agency's decision is so implausible that it could not be ascribed
27 to a difference in view or be the product of agency expertise, or if the agency's decision is contrary
28 to the governing law.").

1 Furthermore, Secretary Noem’s decision-making was arbitrary and capricious because it
 2 reversed DHS’s established practices for TPS decision-making, as described in the 2020 GAO
 3 TPS Report,¹⁸ without providing any explanation for that reversal. *See generally* MacLean Decl.,
 4 Ex. 16 (GAO TPS Rpt.). As discussed above, the GAO TPS Report reviews the four documents
 5 that DHS typically collects for TPS decision-making:

- 6 (1) a country conditions report compiled by USCIS (an agency within DHS);
- 7 (2) a memo with a recommendation from the USCIS Director to the DHS Secretary;
- 8 (3) a country conditions report compiled by the State Department; and
- 9 (4) a letter with a recommendation from the Secretary of State to the Secretary of DHS.

10 DHS did not obtain a contemporaneous or updated country conditions report from the State
 11 Department, nor did it obtain a contemporaneous country conditions report from USCIS
 12 (including RAIO, a division within USCIS). A contemporaneous and updated report from the
 13 State Department would have been included input from the relevant regional bureau for PRM and
 14 the relevant overseas post – which implicitly would have had concrete, reliable on-the-ground
 15 information about country conditions. The failure to do so represented a reversal in practice and
 16 procedure long followed by previous administrations in enforcing the TPS statute.

17 Although “[a]gencies are free to change their existing policies,” they must “provide a
 18 reasoned explanation for the change.” *Encino Motorcars*, 579 U.S. at 221; *see also FCC v. Fox*
 19 *TV Stations, Inc.*, 556 U.S. 502, 515 (2009) (stating that “the requirement that an agency provide
 20 reasoned explanation for its action would ordinarily demand that it display awareness that it is
 21 changing position[;] [a]n agency may not, for example, depart from a prior policy *sub silentio* or
 22 simply disregard rules that are still on the books,” and “the agency must show that there are good
 23 reasons for the new policy”) (emphasis in original); *Ramos v. Nielsen*, 336 F. Supp. 3d 1075, 1089
 24 (N.D. Cal. 2018) (in TPS case involving terminations of TPS for multiple countries, stating that
 25 “[t]he APA constrains an agency’s ability to change its practices or policies without

26
 27
 28 ¹⁸ As indicated above, there is no dispute about what this process entails. The government has not
 objected to the GAO TPS Report, nor has it argued that the report’s description of the TPS
 decision-making process is incorrect.

75a

1 acknowledging the change or providing an explanation), *vacated by Ramos*, 975 F.3d at 872,
 2 *vacated for rehearing en banc*, 59 F.4th at 1010; *cf. Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. St.*
 3 *Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (stating that an agency must “examine the
 4 relevant data and articulate a satisfactory explanation for its action”). Here, Secretary Noem has
 5 not provided any explanation for her reversal of established practices on TPS decision-making.

6 Given the Court’s rulings above, it need not reach Plaintiffs’ additional argument that the
 7 termination decision was unlawful because it was predicated on an assessment of national interest,
 8 which is a factor to be considered only at the time of initial designation, and not as part of a
 9 periodic review. Plaintiffs’ argument is based on a textual reading of the TPS statute which
 10 presents a closer call.

11 3. Summary

12 As a matter of law, the Secretary’s decision to terminate the 2023 Designation was
 13 unlawful because it was based on the unlawful decision to vacate. Even if the Secretary had the
 14 authority to vacate the Mayorkas extension, did not exceed her statutory authority in vacating, and
 15 engaged in reasoned decisionmaking with respect to the vacatur of the Mayorkas extension, there
 16 is no genuine dispute that her subsequent decision to terminate was unlawful and/or arbitrary and
 17 capricious because the Secretary failed to engage in a meaningful consultation with government
 18 agencies or explain her reversal of well-established agency practice.

19 The Court thus grants Plaintiff’s motion for summary judgment on the APA claim based
 20 on the Venezuela termination decision, and denies the government’s cross-motion.

21 E. APA Claim – Haiti Partial Vacatur

22 Plaintiffs’ third APA claim concerns the partial vacatur of Haiti’s TPS designation –
 23 pursuant to which Secretary Noem shortened the extension/redesignation given by Secretary
 24 Mayorkas from 18 to 12 months. Plaintiffs’ challenge to the partial vacatur for Haiti overlaps in
 25 part with their challenge to the vacatur for Venezuela.

26 1. Lack of Authority to Vacate and Exceeding Authority to Vacate

27 The Court agrees with Plaintiffs that the partial vacatur was unlawful because Secretary
 28 Noem lacked the implicit authority to partially revoke the Mayorkas extension/redesignation. *See*

1 Part VII.C.1, *supra*. Furthermore, even if the Secretary had such authority, she exceeded the
 2 scope of that authority by invalidating TPS-related documentation that had *already* issued based
 3 on the February 3, 2026, date given by the Mayorkas extension/redesignation. *See* Part VII.C.2,
 4 *supra*. The analysis of these issues on the Venezuela vacatur decision is equally applicable here.¹⁹

5 2. Arbitrary and Capricious

6 Even if the Secretary had the implicit authority to partially vacate, and did not exceed her
 7 authority to vacate, the vacatur decision is nonetheless problematic, because it was arbitrary and
 8 capricious.

9 The reasons given for the partial vacatur were stated in the Federal Register as follows:

10 First, there is no discussion in the July 1, 2024, Federal Register
 11 notice of why the 18-month period was selected in lieu of a 6- or 12-
 12 month period. Nor does the administrative record underlying the
 13 June 3, 2024, decision and July 1, 2024, notice bear any discussion
 14 of why the 18-month period was chosen. Allowing aliens from a
 15 given country, including aliens who entered the United States
 16 illegally or overstayed their authorized period of admission, to
 17 remain in the United States temporarily with employment
 18 authorization is an extraordinary act. Congress recognized the
 19 gravity of such action under the TPS statute by setting the default
 20 extension period at 6 months, underscoring the uniqueness of this
 21 authority, and limiting its own authority to enact legislation allowing
 22 TPS recipients to adjust to lawful permanent resident status.
 23 Accordingly, determinations of how long a new designation should
 24 remain in effect and whether to depart from the default six-month
 25 period for an extension of an existing designation should take into
 26 account important considerations relating to the purpose of the
 27 statute and specific country and country conditions at issue and
 28 should not rest alone on administrative convenience. Here, there
 was no explanation whatsoever of why the 18-month period was
 selected.

Second, and similarly, the July 1, 2024, notice is bereft of any
 justification of why permitting the ever-increasing population of
 Haitian TPS recipients, particularly those who entered the country
 unlawfully, to remain temporarily in the United States is not
 contrary to the U.S. national interest. The notice simply states that

¹⁹ Plaintiffs also argue that the Secretary exceeded her authority because “the Secretary’s timing for the partial vacatur contravenes the statutory mandate that the Secretary ‘shall’ decide whether to extend or terminate a TPS designation ‘[a]t least 60 days *before*’ the end of the previous period of designation.” Mot. at 21 (emphasis added). It is not altogether clear what Plaintiffs’ contention is here. If Plaintiffs’ point is that Secretary Mayorkas properly made his decision to extend/redesignate *before* the August 3, 2024, expiration date for Haiti’s TPS, but Secretary Noem did not (*i.e.*, because her vacatur decision was made months later on February 18, 2025), the Court agrees that Secretary Noem failed to comply with the timing provided for in the TPS statute.

1 “it is not contrary to the national interest of the United States.” The
 2 administrative record underlying Secretary Mayorkas' June 4, 2024,
 3 decision likewise lacks any discussion of the critical national interest
 4 criterion. Such conclusory determinations do not accord with the
 5 gravity of TPS decisions under the INA. “National interest” is an
 6 expansive standard that may encompass an array of broad
 7 considerations, including foreign policy, public safety (e.g.,
 8 potential nexus to criminal gang membership), national security,
 9 migration factors (e.g., pull factors), immigration policy (e.g.,
 10 enforcement prerogatives), and economic considerations (e.g.,
 11 adverse effects on U.S. workers, impact on U.S. communities).
 12 Determining whether permitting a class of aliens to remain
 13 temporarily in the United States is contrary to the U.S. national
 14 interest therefore calls upon the Secretary's expertise and
 15 discretionary judgment, informed by her consultations with
 16 appropriate U.S. Government agencies.

17 Third, although the July 1, 2024, notice cites some country
 18 conditions reports that are relatively proximate to the June 4, 2024,
 19 decision, several others date back to early 2023, 2022, or even
 20 earlier. And certain sources upon which DHS relied indicated that
 21 significant developments were taking place in 2024 that might result
 22 in an improvement in conditions. For example, as stated in the July
 23 1, 2024, Federal Register notice, the United Nations had recently
 24 authorized a Multinational Security Support (MSS) mission to
 25 deploy in Haiti in 2024 and support the Haitian National Police in
 26 capacity building, combatting gang violence, and provide security
 27 for critical infrastructure. The Department of State likewise
 28 underscored that significant development. Thus, both DHS and the
 Department of State contemplated the real possibility of an
 improvement in conditions with the deployment of the United
 Nations MSS mission, yet that important development was not
 expressly factored into the determination of the length of the
 extension and designation period.

18 Eighteen months is the maximum period of designation or extension
 19 authorized under the TPS statute. Neither the 2021 new designation,
 20 the 2023 extension and new designation, nor the 2024 extension and
 21 new designation contained any discussion of national interest
 22 considerations or why the 18-month (vs. 6 or 12-month) periods
 23 were granted. Given the protracted duration of the “extraordinary
 24 and temporary conditions”-based designation for Haiti, the absence
 25 of any meaningful appraisal of national interest factors or
 26 justification for the 18-month extension, and the fact that eligible
 27 Haitians were able to register for TPS under the July 1, 2024, notice
 28 for over seven months, the Secretary has determined that a 12-month
 period is warranted. Abbreviating the period from 18 to 12 months
 will allow for a fresh review of country conditions in Haiti and of
 whether such conditions remain both “extraordinary” and
 “temporary,” whether Haitian may return in safety, and whether it is
 contrary to the U.S. national interest to continue to permit the
 Haitian nationals to remain temporarily in the United States.

90 Fed. Reg. at 10513-14.

None of these reasons reflect reasoned agency decision making. For example, the

1 Secretary claimed that the Mayorkas extension/redesignation should have given specific reasons
2 why the period was set at 18 months, particularly when the default was only 6 months. But 6
3 months is the default only if the Secretary does *not* affirmatively make a decision on whether to
4 extend or terminate. *See* 8 U.S.C. § 1254a(b)(3)(C) (“If the [Secretary] does not determine under
5 subparagraph (A) that a foreign state (or part of such foreign state) no longer meets the conditions
6 for designation under paragraph (1), the period of designation of the foreign state is extended for
7 an additional period of 6 months (or, in the discretion of the Attorney General, a period of 12 or 18
8 months).”). That was not the situation here: Secretary Mayorkas did make an affirmative decision
9 – *i.e.*, to extend. Furthermore, Secretary Noem failed to acknowledge that, in prior TPS decision
10 making spanning the course of the 35 years, there typically has been no explanation as to why a
11 certain period of time was chosen. *See* MacLean Decl. ¶ 30 (testifying that TPS decisions over the
12 course of 35 years were reviewed, and, “in virtually all instances where a DHS Secretary
13 announced the length of a TPS designation or extension, they did so without elaborating their
14 reasons for choosing that duration and not another duration length[;] [t]here are only exceedingly
15 rare instances where Secretaries have provided any explanation for the duration of a designation or
16 extension”). The government has provided no evidence to the contrary. Thus, there is nothing in
17 the record that suggests the absence of a specific justification for the length of an extension, once
18 the decision to extend has been made, is unusual or impermissible.

19 Secretary Noem’s criticism that the Mayorkas extension/redesignation failed to explain
20 why it was not contrary to national interest to extend TPS suffers from the same basic flaw. That
21 is, in prior TPS decision making, DHS Secretaries typically have not given explanations as to why
22 allowing TPS holders to remain in the United States is not contrary to the national interest. *See*
23 MacLean Decl. ¶ 30 (“Secretaries have never explained their conclusion that ‘permitting [TPS
24 beneficiaries] to remain temporarily in the United States’ is not ‘contrary to the national
25 interest.’”).²⁰ The government presents no evidence that the Mayorkas decision was contrary to
26 established practice.

27 _____
28 ²⁰ Plaintiffs also fairly note that this would require a Secretary to prove a negative.

1 In addition to the above, the partial vacatur decision arbitrary and capricious because (like
2 the vacatur decision for Venezuela) it was preordained without any meaning analysis and review.
3 It was, *inter alia*, made without consultation with government agencies or country conditions
4 review. As with the administrative record for the Venezuela vacatur, there was no
5 contemporaneous country conditions report in the administrative record for the Haiti partial
6 vacatur. Rather, there was only a country conditions report from the Biden era that *supported* the
7 Mayorkas extension/redesignation. *See* Docket No. 110-5 (RAIO report, dated January 2024)
8 (ECF Pages 29-43). As in the case of Venezuela, it is ironic, if not disingenuous, for Secretary
9 Noem to rely on a report which supported the Mayorkas extension/redesignation to *vacate* that
10 extension/redesignation. She has cited nothing specific in those reports to support her decision to
11 vacate, with a single exception: reference to that fact that the United Nations had authorized a
12 Multinational Security Support (MSS) mission to deploy in Haiti in 2024. But Secretary Noem
13 cited no evidence on the status of the deployment and if so whether by 2025 it has had any real
14 impact on the crime and lawlessness which had plagued Haiti in recent years. There is no evidence
15 that she obtained or even requested a current update on the MSS mission. Simply put, in deciding
16 to partially vacate the TPS extension, Secretary Noem had no regard for the facts and actual
17 conditions.

18 Instead, like her decision to vacate Venezuela's TPS, the Secretary's decision to partially
19 vacate was simply driven by her predetermined desire to terminate Haiti's TPS on a hastened
20 timeline. DHS began to draft the vacatur decision within days of the Venezuela termination. The
21 decision to vacate was made approximately two weeks later. A press release, dated February 20,
22 2025, announcing the partial vacatur included statements that the vacatur was "part of President
23 Trump's promise to *rescind* policies that were magnets for illegal immigration and inconsistent
24 with the law" – effectively noting that termination would be forthcoming. MacLean Decl., Ex. 15
25 (press release) (emphasis added; also asserting that, "[f]or decades the TPS system has been
26 exploited and abused" and pointing out that, "[l]ast month, Secretary Norm similarly rescinded the
27 previous administration's Venezuela TPS extension").

28 To be sure, the timeline for Haiti is, on its face, not as stark as that for Venezuela – *i.e.*, it

1 does not appear as compressed; this might suggest that there was less of an urgency to terminate
 2 than in the case of Venezuela. However, a closer look establishes that the path laid out for Haiti
 3 was not materially different from that carried out for Venezuela. Secretary Noem was able to
 4 effectuate a full vacatur of the Mayorkas extension for Venezuela only because the period for the
 5 extension had not yet begun. (The period for the extension would have run from April 2025 to
 6 October 2026. Secretary Noem vacated the extension in February 2025.) The full vacatur is what
 7 enabled the Secretary to then immediately terminate. In contrast, Secretary Noem was not able to
 8 do a full vacatur of the Mayorkas extension/redesignation for Haiti because the period for that
 9 extension/redesignation had already begun (starting in August 2024) by the time she made the
 10 decision to vacate in February 2025. Nor did Secretary Noem have the option of shortening the
 11 extension/redesignation to 6 months (instead of 12) for the partial vacatur because that deadline
 12 had already passed as well. Thus, Secretary Noem was effectively forced to do a partial vacatur
 13 that shortened the extension/redesignation period to 12 months (instead of 18, as provided for by
 14 Secretary Mayorkas). Once that 12-month period was soon due to expire, Secretary Noem did not
 15 waste time in proceeding with the termination of Haiti's TPS.

16 3. Summary

17 The Court grants Plaintiffs' motion for summary judgment on the APA claim related to the
 18 partial vacatur for Haiti, and denies the government's cross-motion. The Secretary lacked the
 19 authority to partially vacate and/or exceeded her authority to vacate. Even if she had statutory
 20 authority to vacate, the decision to partially vacate was arbitrary and capricious.

21 F. Equal Protection Claims

22 Only the government has moved for summary judgment on the Equal Protection claims;
 23 Plaintiffs have not.²¹ The Court denies the government's motion for summary judgment because,
 24 consistent with its postponement order, it holds that *Trump v. Hawaii*, 585 U.S. 667 (2018), does
 25 not provide the governing standard. *See* Docket No. 93 (Order at 60-61) (distinguishing *Trump v.*

26 _____
 27 ²¹ Although the APA provides that a court shall set aside agency action that is "contrary to
 28 constitutional right," 5 U.S.C. § 706(2)(B), Plaintiffs' complaint does not appear to expressly
 allege a violation of the APA predicated on a constitutional violation. Rather, Plaintiffs seem to
 have asserted constitutional claims separate from and independent of the APA claims.

1 *Hawaii* because it dealt with the admission and exclusion of foreign nationals whereas TPS
 2 holders are already present in the United States; adding that the *Ramos* panel invoked similar
 3 reasoning).

4 Under the applicable analytical framework set forth in *Arlington Heights v. Metropolitan*
 5 *Housing Development Corp.*, 429 U.S. 252, 265 (1977), the Court finds that there is a genuine
 6 dispute of material fact as to whether the decisions to vacate and terminate were based on racial,
 7 ethnic, and/or national origin animus. Such animus can reasonably be inferred from the
 8 discriminatory statements made by Secretary Noem and/or President Trump alone. *See* Docket
 9 No. 93 (Order at 64-69) (surveying some of the discriminatory statements – *e.g.*, statements by
 10 Secretary Noem that “Venezuela didn’t send us their best” but rather sent “criminals” and that the
 11 TPS program resulted in Venezuelan gang members being present in the United States); *see also*
 12 Docket No. 93 (Order at 70-71) (noting that President Trump influenced TPS policy and/or
 13 decision-making). Notably, at least some of these statements were made when the Secretary or
 14 President was discussing TPS, either expressly or implicitly.

15 For example, during a January 29, 2025, interview on Fox, when Secretary Noem
 16 announced the vacatur decision for Venezuela, the Secretary stated:

17 [F]or 18 months, they were going to extend this protection to people
 18 that are in temporary protected status, which meant they were going
 19 to be able to stay here and violate our laws for another 18 months,
 20 and we stopped that. Today we signed an executive order within the
 21 Department of Homeland Security in a direction that we were not
 22 going to follow through on what he did to tie our hands, that we are
 going to follow the process, evaluate all of these individuals that are
 in our country, including the Venezuelans that are here and members
 of [TdA]. Listen, I was in New York City yesterday and the people
 of this country want these dirt bags out.

23 MacLean Decl., Ex. 18 (transcript). As noted in the Court’s postponement order, Secretary
 24 Noem’s generalization of the alleged acts of a few (for which there is little or no evidence) to the
 25 entire population of Venezuelan TPS holders who have lower rates of criminality and higher rates
 26 of college education and workforce participation than the general population is a classic form of
 27 racism. *Cf. Hirabayashi v. United States*, 320 U.S. 81, 96-99 (1943) (describing why Japanese
 28 Americans as a group, despite the fact that most were American citizens, were susceptible to

1 disloyalty and thus constitute a security threat, relying on assumed stereotypes); *Korematsu v.*
 2 *United States*, 323 U.S. 214, 233, 235 (1944) (Murphy, J., dissenting) (characterizing the majority
 3 decision upholding the mass internment of Japanese Americans as falling into the “ugly abyss of
 4 racism”; noting that the “forced exclusion [of Japanese Americans] was the result in good measure
 5 of the erroneous assumption of racial guilt . . .”). The government has suggested that the Secretary
 6 was simply calling the members of the TdA gang members “dirt bags,” but there is at the very
 7 least ambiguity as to whether she was calling only gang members dirt bags, or instead referring to
 8 the larger Venezuelan TPS population in the United States. *See* Docket No. 93 (Order at 65 n.26).
 9 In any event, even if the government were right, a reasonable jury could still infer racial animus
 10 from the Secretary’s statement because she was choosing to strip legal status from all Venezuelan
 11 TPS holders – numbering in the hundreds of thousands – based off her assessment of a limited
 12 number of individuals, and with no proof that any alleged gang member was a TPS holder.

13 As for President Trump, his comments included derogatory and baseless claims that
 14 Haitian immigrants in Springfield, Ohio – TPS holders – were eating people’s pets. *See* Docket
 15 No. 129 (Order at 5); *see also* MacLean, Decl., Ex. 19 (article, dated October 2024; Docket No. 93
 16 (Order at 67). Also, during his first administration – when there were also a number of attempts to
 17 terminate TPS – there was a discussion about protecting immigrants from Haiti, El Salvador and
 18 African countries, and President Trump asked: “Why are we having all these people from shithole
 19 countries come here?” Docket No. 93 (Order at 66) (internal quotation marks omitted). He then
 20 suggested that the “United States should instead bring more people from countries such as Norway
 21” Docket No. 93 (Order at 66) (internal quotation marks omitted).

22 To be clear, the record from which a reasonable inference of animus can be made consists
 23 of more than just the discriminatory statements of Secretary Noem and President Trump, some of
 24 which were proximate in time to the decisions challenged herein. As discussed in the Court’s
 25 postponement order, a number of other *Arlington Heights* factors suggest animus including “the
 26 anomalous procedures followed (the highly compressed time in which the decisions to vacate and
 27 then terminate were made and the precedential and unique nature of the decisions made), and the
 28 lack of bona fides for the decisions to vacate and then terminate.” Docket No. 93 (Order at 75).

1 The government's motion for summary judgment on the Equal Protection Claims is
2 denied.

3 VIII. MOTIONS TO DISMISS

4 A. Legal Standard

5 Federal Rule of Civil Procedure 8(a)(2) requires a complaint to include "a short and plain
6 statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). A
7 complaint that fails to meet this standard may be dismissed pursuant to Federal Rule of Civil
8 Procedure 12(b)(6). *See* Fed. R. Civ. P. 12(b)(6). To overcome a Rule 12(b)(6) motion to dismiss
9 after the Supreme Court's decisions in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atlantic*
10 *Corp. v. Twombly*, 550 U.S. 544 (2007), a plaintiff's "factual allegations [in the complaint] 'must . .
11 . suggest that the claim has at least a plausible chance of success.'" *Levitt v. Yelp! Inc.*, 765 F.3d
12 1123, 1135 (9th Cir. 2014). The court "accept[s] factual allegations in the complaint as true and
13 construe[s] the pleadings in the light most favorable to the nonmoving party." *Manzarek v. St.*
14 *Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). "A claim has facial
15 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable
16 inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. "The
17 plausibility standard is not akin to a probability requirement, but it asks for more than a sheer
18 possibility that a defendant has acted unlawfully." *Id.* (internal quotation marks omitted).

19 B. Termination of Haiti's TPS

20 The government has filed two motions to dismiss. The original motion to dismiss and
21 briefing related thereto were all completed before the Secretary terminated Haiti's TPS. After
22 Haiti's TPS was terminated, the parties stipulated that Plaintiffs could file an
23 amended/supplemental complaint to include the termination. Plaintiffs did so, after which the
24 government filed a new motion to dismiss. The new motion to dismiss is largely the same as the
25 original motion to dismiss, except that it also addresses the Haiti termination.

26 As an initial matter, Plaintiffs argue that their filing of a supplemental complaint did not
27 moot out the original motion to dismiss. Practically speaking, this procedural issue is not material.
28 Plaintiffs do not argue that the government should be barred from moving to dismiss with respect

1 to the Haiti termination. Thus, the Court can consider the government’s arguments in favor of
2 dismissal, whether in the original motion to dismiss or in the new one.

3 As for those arguments, those related to the Venezuela vacatur, Venezuela termination, and
4 Haiti partial vacatur lack merit for the reasons discussed in the Court’s summary judgment
5 analysis.

6 Turning to the Haiti termination, the government’s arguments in favor of dismissal also
7 lack merit. Indeed, because the Court has found the Haiti partial vacatur unlawful, the Haiti
8 termination – which was possible only because of the vacatur – is necessarily unlawful too.
9 Plaintiffs’ APA and Equal Protection claims related to the Haiti termination are also plausible as
10 there are allegations in the operative complaint suggesting pretext. For example, Plaintiffs have
11 alleged that, on June 7, 2025, DHS announced in a press release that Haiti’s TPS would be
12 terminated, *both* because country conditions had improved and because allowing Haitians to
13 remain temporarily in the United States was against national interest. *See* FASC ¶ 106. However,
14 on July 1, 2025, when the decision to terminate was published in the Federal Register, no mention
15 was made of improved conditions; the decision rested on a national interest assessment alone. *See*
16 FASC ¶ 107. Country conditions were referenced only indirectly in the context of the Secretary’s
17 national interest findings – and here there was no mention of any improved conditions; rather, the
18 clear suggestion that there was significant instability in the country. *See, e.g.*, 90 Fed. Reg. at
19 28763 (stating that “[g]ang violence in Haiti persists as armed groups operate with impunity,
20 enabled by a weak or effectively absent central government”; “[w]idespread gang violence in Haiti
21 is sustained by the country’s lack of functional government authority”); *id.* at 28762 (stating that
22 “Haiti lacks a central authority with sufficient availability and dissemination of law enforcement
23 information necessary to ensure its nationals do not undermine the national security of the United
24 States”). As Plaintiffs argue, “Defendants’ simultaneous promulgation of two directly
25 contradictory explanations for the Haiti termination suffices to demonstrate, at least for purposes
26 of a motion to dismiss, that the reasons given were pretextual.” Docket No. 264 (Opp’n at 3).
27 Pretext may further be inferred from the facts discussed above in regard to the partial vacatur.

28 The motions to dismiss are, therefore, denied.

1 **IX. SCOPE OF RELIEF**

2 Because the Court has granted Plaintiffs’ summary judgment motion on the APA claims
3 related to the Venezuela vacatur, the Venezuela termination, and the Haiti partial vacatur, the
4 Court must also consider the to which relief Plaintiffs are entitled. Section 706 of the APA
5 specifies that a court “shall . . . hold unlawful and set aside agency action . . . found to be,” *e.g.*,
6 arbitrary or capricious, not in accordance with the law, in excess of statutory authority, and
7 without observance of procedure required by law. 5 U.S.C. § 706(2). Based on this statutory
8 language, the Court sets aside, or vacates, each of the above decisions made by Secretary Noem.

9 The Court first rejects the government’s contention that relief as a legal matter should
10 categorically be limited in scope to only Plaintiffs – *i.e.*, the individual plaintiffs and the members
11 of the National TPS Alliance (“NTPSA”). As noted above, in *Trump v. CASA*, where the Supreme
12 Court addressed the viability of nationwide or universal injunctions, it expressly stated its holding
13 therein did not “resolve[] the distinct question whether the Administrative Procedure Act
14 authorizes federal courts to vacate federal agency action.” *Trump v. CASA*, 156 S. Ct. at --- n.10.
15 The government has also cited no authority to suggest that § 706 of the APA incorporates
16 equitable principles, which were the basis of the Supreme Court’s holding in *Trump v. CASA*. In
17 fact, the Fifth Circuit has stated that

18 vacatur under § 706 is, as we have repeatedly described it, the
19 “default” remedy for unlawful agency action. Thus, contrary to
20 what the Government and the amici represent, we do not read our
precedent to require consideration of the various equities at stake
before determining whether a party is entitled to vacatur.

21 *Braidwood Mgmt., Inc. v. Becerra*, 104 F.4th 930, 952 (5th Cir. 2024), *rev’d and remanded on*
22 *other grounds sub nom. Kennedy v. Braidwood Mgmt., Inc.*, 145 S. Ct. 2427 (2025); *see also*
23 *Cabrera v. U.S. DOL*, No. 25-cv-1909 (DLF), 2025 U.S. Dist. LEXIS 141992, at *23-24 (D.D.C.
24 July 25, 2025) (noting that, “[i]n non-APA cases, ‘background equitable principles may control’
25 because ‘Congress has rarely authorized courts to act directly on federal statutes or to prohibit
26 their enforcement against nonparties,’” but “the APA permits courts to act directly on agency
27 actions”); *Ksanka Kupaqa XA v. U.S. Fish & Wildlife Serv.*, 534 F. Supp. 3d 1261, 1273 (D. Mont.
28 2021) (rejecting defendant’s argument that plaintiff had to show irreparable harm: “[t]hat

1 argument misses the mark” because “the APA directs that the ‘reviewing court shall . . . set aside
2 agency action, findings, and conclusions found to be’ arbitrary, capricious, or contrary to law”).

3 Furthermore, the Court finds persuasive Justice Kavanaugh’s concurrence in *Corner Post,*
4 *Inc. v. Board of Governors of the Federal Reserve System*, 603 U.S. 799 (2024). There, Justice
5 Kavanaugh rejected the government’s contention that “the APA’s authorization to ‘set aside’
6 agency action [under § 706] does not allow vacatur, but instead permits a court only to enjoin an
7 agency from enforcing a rule against the plaintiff.” *Id.* at 827 (Kavanaugh, J., concurring). Justice
8 Kavanaugh characterized that argument as “far-reaching,” “novel,” and “wrong. It ‘disregards a
9 lot of history and a lot of law.’” *Id.* He then explained that the APA does in fact authorize vacatur
10 of unlawful agency action, including agency rules, based on “the text and history of the APA, the
11 longstanding and settled precedent adhering to that text and history, and the radical consequences
12 for administrative law and individual liberty that would ensue if vacatur were suddenly no longer
13 available.” *Id.* at 829. In short, it is hard to imagine, textually and logically, how a singular rule
14 or order issued by an agency which has uniform national application can be “held unlawful and set
15 aside” under § 706 only as to some and not others equally subject to and affected by such unlawful
16 rule or order.

17 At the hearing in the instant case, the government argued for the first time that § 703
18 defines the authority of the court to issue relief, and not § 706. That argument was not raised in
19 the government’s papers and therefore has been waived. In any event, on the merits, the argument
20 is without merit for the reasons stated in Justice Kavanaugh’s concurrence in *Corner Post*.

21 Section 703 determines the “form of proceeding” for suits under the
22 APA and identifies the federal actors against whom an “action for
23 judicial review may be brought.” But “no court has ever held that
24 Section 703 implicitly delimits the kinds of remedies available in an
25 APA suit. For good reason: As explained above, the ordinary
26 meaning of “set aside” in §706(2) has long been understood to refer
27 to the remedy of vacatur. The conclusion that §706 governs
28 remedies is also supported by §706(1), which authorizes courts to
“compel agency action unlawfully withheld or unreasonably
delayed” – unmistakably a remedy. By contrast, the text of §703
“speaks to venue and forms of proceedings, not to remedies, and
regardless, its listing of the available forms of proceedings is
nonexhaustive.”

1 *Id.* at 838-39.²²

2 The government contends that the Ninth Circuit’s recent decision in *IDL*, 2025 U.S. App.
 3 LEXIS 17884, precludes this Court from setting aside the Secretary’s orders in their entirety and
 4 requires the Court to limit relief to Plaintiffs herein. The Court disagrees. The plaintiffs in *IDL*
 5 filed suit challenging the implementation of the Trump Administration’s “Remain in Mexico”
 6 policy (also known as the Migrant Protection Protocols or MPP). Under the policy, persons from
 7 Mexico seeking asylum in the United States had to remain in Mexico pending adjudication of their
 8 asylum proceedings – even though this made it difficult for the individuals to access counsel to
 9 represent them in their asylum proceedings. The plaintiffs moved for a stay of the implementation
 10 of the policy pending the conclusion of the litigation. The district court granted a nationwide stay
 11 pursuant to 5 U.S.C. § 705. The government appealed that decision.

12 On appeal, the government argued, *inter alia*, that the stay should be limited to only the
 13 organizational plaintiff’s clients. The Ninth Circuit agreed with the government, stating that, “*at*
 14 *this stage in the litigation*, . . . limiting the district court’s order to [IDF]’s current and future
 15 clients is the more equitable approach ‘to preserve status [and] rights pending conclusion of the
 16 review proceedings.’” *Id.* at *41 (emphasis added; quoting § 705). The Ninth Circuit
 17 acknowledged that, in *Trump v. CASA, Inc.*, 145 S. Ct. 2540 (2025), the Supreme Court expressly
 18 stated that “[n]othing we say today resolves the distinct question whether the Administrative
 19 Procedure Act authorizes federal courts to vacate federal agency action.” *Id.* at 945 n.10 (citing §
 20 706). However, the Ninth Circuit stated that *Trump v. CASA* still provided some guidance in the
 21

22 ²² A number of lower courts have agreed with Justice Kavanaugh, whether explicitly or implicitly.
 23 *See, e.g., N.Y. Legal Assistance Grp. v. Cardona*, No. 20 Civ. 1414 (LGS), 2025 U.S. Dist. LEXIS
 24 51632, at *10 (S.D.N.Y. Mar. 20, 2025) (citing, *inter alia*, Justice Kavanaugh’s concurrence in
 25 rejecting defendant’s interpretation of §§ 706 and 703); *Refugee & Immigrant Ctr. for Educ. &*
 26 *Legal Servs. v. Noem*, No. CV 25-306 (RDM), 2025 WL 1825431, at *50 (D.D.C. July 2, 2025)
 27 (stating that “[t]he D.C. Circuit has ‘made clear that “[w]hen a reviewing court determines that
 28 agency regulations are unlawful, the ordinary result is that the rules are vacated – not that their
 application to the individual petitioners is proscribed”). Nevertheless, the Court acknowledges
 that not all Justices on the Supreme Court are in agreement with Justice Kavanaugh. Justice
 Gorsuch, for example, seems to agree with the government’s position. *See United States v. Texas*,
 599 U.S. 670, 696-98 (2023) (Gorsuch, J., concurring) (asserting that “[t]here are many reasons to
 think § 706(2) uses ‘set aside’ to mean ‘disregard’ rather than ‘vacate’”; also asserting that § 703
 “is where the APA most clearly discusses remedies” and it does not provide for vacatur).

1 context of that case “because the factors used to determine whether to issue a § 705 stay under the
2 APA are the same equitable factors used to consider whether to issue a preliminary
3 injunction.” *IDL*, 2025 U.S. App. LEXIS 17884, at *42.

4 *IDL* does not require that relief in this case – a final judgment under § 706, not an interim
5 postponement order under § 705 – be limited to the individual plaintiffs and members of the
6 plaintiff National TPS Alliance. *IDL*’s holding was clearly informed by the procedural posture of
7 that case, where the plaintiffs were seeking *preliminary* relief to preserve the status quo under §
8 705. *IDL*’s ruling applies to preliminary relief where such relief is predicated on equitable
9 considerations similar to that which apply to preliminary injunctions under *Winter v. NRDC*, 555
10 U.S. 7 2008; *see also Colorado v. United States EPA*, 989 F.3d 874, 883 (10th Cir. 2021) (stating
11 that the preliminary injunction “factors also determine when a court should grant a stay of agency
12 action under section 705 of the APA”); *Cook Cnty. v. Wolf*, 962 F.3d 208, 221 (7th Cir. 2020)
13 (stating that the standard for a stay under § 705 is “the same” as the standard for a preliminary
14 injunction); *Immigrant Legal Res. Ctr. v. Wolf*, 491 F. Supp. 3d 520, 529 (N.D. Cal. 2020) (stating
15 that factors considered in determining whether to postpone pursuant to § 705 “substantially
16 overlap with the . . . factors for a preliminary injunction”). That similarity makes *CASA* apposite
17 to stays under § 705, but inapposite to the instant case where final relief under § 706 is not
18 anchored to the equitable *Winter* factors. Section 706 directs that the court “must” “[h]old
19 unlawful and set aside agency actions” if they are unlawful for the reasons set forth in § 706(2).
20 *Trump v. CASA*, informed by historic equitable remedies, does not apply to § 706 of the APA
21 which contains a clear statutory directive.

22 Even if, as a legal matter, *Trump v. CASA*’s restriction on the scope of relief were to guide
23 the scope of relief under § 706, the Ninth Circuit – in affirming this Court’s postponement order –
24 indicated that relief should be nationwide in scope *in this case* because (1) full relief for the
25 NTPSA and its tens of thousands of members who reside in all fifty states and the District of
26 Columbia could not be obtained otherwise and (2) limiting relief as proposed by the government
27 was not a workable solution under the TPS statute. *See NTPSA*, 2025 U.S. App. LEXIS 22269, at
28 *56. The court stated as follows:

1 Plaintiffs have demonstrated that a postponement of the Vacatur
2 Notice, effective nationwide, is the only remedy that provides
3 complete relief to the parties before the court and complies with the
4 TPS statute. First, Plaintiff NTPSA, a membership organization,
5 brings this challenge on behalf of its more than 84,000 members
6 who are Venezuelan TPS holders in all fifty states and the District of
7 Columbia. As the district court reasoned, "[f]ull relief for the
8 NTPSA and its members cannot be obtained absent application to all
9 fifty states and the District of Columbia."

10 Second, limiting the relief to individual plaintiffs and NTPSA
11 members is not a workable solution under the TPS statute. Plaintiffs
12 challenge a single act: Secretary Noem's vacatur of the prior
13 extension of Venezuelan TPS. They do not challenge the eligibility
14 determination for any particular TPS holder. Limiting Secretary
15 Noem's decision to affect only certain individuals would effectively
16 mean rewriting it in a way that does not comply with the TPS
17 statute. Although the TPS statute contemplates only a single binary
18 determination for each country's TPS designation, we would be
19 replacing Secretary Mayorkas's positive determination, and
20 Secretary Noem's negative determination, with a judicially created
21 patchwork.

22 These statutory constraints distinguish this appeal from those arising
23 in otherwise similar contexts. In *Immigrant Defenders*, the plaintiff
24 organization challenged the enrollment of asylum seekers in the
25 "Remain in Mexico" program. There, we limited the scope of the
26 order postponing the implementation of the "Remain in Mexico"
27 program to the organization's individual clients, as doing so awarded
28 the plaintiffs complete relief. The statute at issue in *Immigrant
Defenders* stated that the Secretary of Homeland Security "may
return the [noncitizen]" to Mexico pending removal proceedings.
Thus, the statute did not prohibit the Secretary from adopting a
piecemeal approach by returning some, but not all, noncitizens to
Mexico. 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. 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. 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.

"Where relief can be structured on an individual basis, it must be
narrowly tailored to remedy the specific harm shown." 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

1 only if the court expressly determines that there is no just reason for delay.”). **The Clerk of the**
2 **Court is directed to enter a final judgment in favor of Plaintiffs on the APA claims related to**
3 **(1) the Venezuela vacatur, (2) the Venezuela termination, and (3) the Haiti vacatur.**²³

4 As for the remaining claims – *i.e.*, (4) the APA claim related to the Haiti termination, (5)
5 the Equal Protection claim related to the Venezuela TPS decisions, and (6) the Equal Protection
6 claim related to the Haiti TPS decisions – the Court temporarily stays continued litigation. Given
7 the prior proceedings in this case, it seems likely that the government will appeal this order. A
8 temporary stay will help conserve judicial and party resources and further will allow the appellate
9 courts to adjudicate most of the statutory claims before the constitutional ones.²⁴ *Cf. Califano v.*
10 *Yamasaki*, 442 U.S. 682, 692 (1979) (stating that “[a] court presented with both statutory and
11 constitutional grounds to support the relief requested usually should pass on the statutory claim
12 before considering the constitutional question”).

13 This order disposes of Docket Nos. 122, 165, 199, 172, and 262.

14
15 **IT IS SO ORDERED.**

16
17 Dated: September 5, 2025

18
19 

20 EDWARD M. CHEN
21 United States District Judge

22
23
24
25 ²³ The Court acknowledges the Supreme Court’s order staying enforcement of the postponement
26 order. However, the Supreme Court’s order only concerns the preliminary relief ordered by this
27 Court in postponing agency action. The Supreme Court’s order did not bar this Court from
adjudicating the case on the merits and entering a final judgment issuing relief under § 706 of the
APA.

28 ²⁴ The APA claim based on the Haiti termination is not a constitutional claim, but, as discussed
above, the Haiti termination will be unlawful if the Haiti vacatur is deemed unlawful.

92a

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE 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

D.C. No.
3:25-cv-01766-
EMC

OPINION

Appeal from the United States District Court
for the Northern District of California
Edward M. Chen, District Judge, Presiding

93a

Argued and Submitted July 16, 2025
Pasadena, California

August 29, 2025

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

Opinion by Judge Wardlaw

SUMMARY*

Immigration

The panel affirmed the district court's order granting preliminary relief in the form of a postponement of the effective dates of actions by the Secretary of Homeland Security to terminate Temporary Protected Status ("TPS") for Venezuelan nationals.

The district court postponed the agency's actions under Administrative Procedure Act section 705. Applying the test set out in *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7 (2008), for the grant of preliminary relief, the district court held that (1) Plaintiffs established a likelihood of success on the merits; (2) TPS beneficiaries would suffer irreparable injury if relief were not granted; and (3) the public interest

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

and balance of equities tipped sharply in favor of postponement.

The panel held that it had appellate jurisdiction to consider this appeal, explaining that the Government had shown that the order (1) had the practical effect of the grant of an injunction; (2) had serious, perhaps irreparable consequences; and (3) could be effectively challenged only by immediate appeal.

The panel also concluded that neither the TPS statute nor 8 U.S.C. § 1252(f)(1) precluded the court's power to review the merits of Plaintiffs' claim that the Secretary exceeded her statutory authority.

Turning to the merits, the panel held that Plaintiffs are likely to succeed on the merits of their claim that the Secretary lacked authority to vacate a prior extension of TPS. The panel explained that agencies lack the authority to undo their actions where, as here, Congress has spoken and said otherwise. The panel held that it need not proceed to Plaintiffs' additional claims because the panel's holding that the Secretary lacks vacatur authority under the TPS statute moots Plaintiffs' other claims.

Addressing the remaining *Winter* factors, the panel held that 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 favored Plaintiffs.

With respect to the scope of the injunction, the panel held that anything short of a nationwide postponement is incongruent with the TPS statute, and it would not provide Plaintiffs with the complete relief they seek.

Accordingly, the panel held that the district court did not abuse its discretion by postponing the vacatur and termination of Venezuelan TPS.

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98a

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OPINION

WARDLAW, Circuit Judge:

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 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 action¹ 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

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

100a

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 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 (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. *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

106a

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

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.

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, 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

108a

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 “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

110a

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. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (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 (1981). *Imm. Defs. Law Ctr. v. Noem*, No. 25-2581, --- F.4th ---, 2025 WL 2080742, at *5, (9th Cir. July 18, 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

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.*, No. 24A1059, 2025 WL 1427560 (U.S. May 19, 2025).

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 [i]mplementation of” agency action. *Imm. Defs.*, 2025 WL 2080742, at *5. 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 (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.*, 2025 WL 2080742, at *6. 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

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.*, 2025 WL 2080742, at *5 n.6.

113a

U.S. 183, 190 (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”); *Noem v. Nat’l TPS All.*, No. 24A1059, 2025 WL 1427560 (May 19, 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 (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.*, 2025 WL 2080742, at *6. 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

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

114a

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

TPS and the change in administrations, we never conclusively resolved the merits of the preliminary injunction, much less the final merits determination.

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.*, 2025 WL 2080742, at *7. 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.” *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*, No. 25-807, --- F.4th ---, 2025 WL 2061447, at *3 (9th Cir. July 23, 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 (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 (1958)); *Leedom*, 358 U.S. at 190 (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 (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.” *Hyatt*, 908 F.3d at 1171 (quoting *Block*, 467 U.S. at 345). We begin, and can end, with the “natural meaning of the text.” *Patel v. Garland*, 596 U.S. 328, 340 (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 (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

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.*

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. 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. Here, the text of the TPS statute counsels in favor of drawing the same

Vishay Intertechnology Inc., 584 F.3d 1208, 1219 (9th Cir. 2009) (quoting *Stock W., Inc. v. Confederate 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.”).

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 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

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.

120a

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

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.

121a

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.*, 2025 WL 2080742, at *11. 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. 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 (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.

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

125a

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 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

126a

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 (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 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 (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

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.

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 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

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.

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’n v. Frisco Transp. Co.*, 358 U.S. 133, 146 (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

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.

131a

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.*, No. 24A1059, 2025 WL 1427560, at *1. 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 (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 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 (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

132a

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

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.").

133a

“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 (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 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.*, 2025 WL 2080742, at *7 (applying *Winter* factors to APA section 705 postponement action) (citing *Winter*, 555 U.S. at 20).

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’ un rebutted 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

134a

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 (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

135a

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 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*, No. 25-807, 2025 WL 2061447, at *3.

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

137a

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 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

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").

138a

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 APA relief in its recent *Trump v. CASA, Inc.* decision, 145 S. Ct. 2540, 2554 n.10 (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.*, 2025 WL 2080742, at *15. “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 (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. 2025 WL 2080742, at *3. 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 *15. The statute at issue in *Immigrant Defenders* stated that the Secretary of Homeland Security “may return the [noncitizen]” to Mexico pending removal proceedings. 2025 WL 2080742, at *3 (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. 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*, 843 F.2d at 1170. 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

142a

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.

143a

* * *

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.

AFFIRMED.¹⁴

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

144a

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 18 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NATIONAL TPS ALLIANCE; et al.,

Plaintiffs - Appellees,

v.

KRISTI NOEM, in her official capacity as
Secretary of Homeland Security; et al.,

Defendants - Appellants.

No. 25-2120

D.C. No.

3:25-cv-01766-EMC

Northern District of California,
San Francisco

ORDER

Before: TASHIMA, OWENS, and DESAI, Circuit Judges.

The emergency motion (Docket Entry No. 3) to stay the district court’s March 31, 2025 order is denied. *See Nken v. Holder*, 556 U.S. 418, 434 (2009) (defining standard for stay pending appeal). Appellants have not demonstrated that they will suffer irreparable harm absent a stay. *See Doe #1 v. Trump*, 957 F.3d 1050, 1059 (9th Cir. 2020) (“[I]f we were to adopt the government’s assertion that the irreparable harm standard is satisfied by the fact of executive action alone, no act of the executive branch asserted to be inconsistent with a legislative enactment could be the subject of a preliminary injunction. That cannot be so.”); *see also E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 778 (9th Cir. 2018).

The existing briefing schedule remains in effect. The clerk will place this case on the calendar for July 2025. *See* 9th Cir. Gen Ord. 3.3(g).

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NATIONAL TPS ALLIANCE, et al.,
Plaintiffs,
v.
KRISTI NOEM, et al.,
Defendants.

Case No. 25-cv-01766-EMC

**ORDER DENYING DEFENDANTS’
MOTION TO STAY**

Docket No. 95

United States District Court
Northern District of California

The government has appealed the Court’s order granting Plaintiffs’ motion to postpone the Secretary’s actions. The government has moved to stay the postponement order pending appeal. The instant motion is being heard on shortened time as requested by the government.

Absent the postponement, the Secretary’s termination of the 2023 TPS Designation would take effect on April 7, 2025. In considering the stay motion, the Court considers the following factors:

“(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, 434 (2009).

The Court’s analysis in its postponement order effectively addresses the factors above. That analysis weighs against the government and in favor of Plaintiffs – even more so here for two reasons. First, for a stay pending appeal, the government is required to make a *strong showing* of likelihood of success on the merits. *See id.* Second, if the Court were to order a stay of the postponement order pending appeal, that would mean hundreds of thousands of Venezuelan TPS

146a

1 holders would lose legal status in just a few days and thus be subject to removal – removal would
2 effectively *moot out* the postponement order and the appeal thereof (at least with respect to the
3 2023 Designation). Any removal likely could not be “undone” should Plaintiffs ultimately
4 prevail. In fact, just recently, the government mistakenly deported an individual, who has legal
5 status to be in the United States, to El Salvador but has essentially taken the position that it cannot
6 do anything to address that mistake.

7 To the extent the government suggests the loss of legal status does not automatically mean
8 removal, *see* Mot. at 8 (arguing that “neither the 2025 Vacatur nor 2025 Termination is equivalent
9 to requiring Plaintiffs to depart the United States”), that is a disingenuous argument. The entire
10 point of Secretary Noem’s vacatur and termination decisions was to enable the removal of
11 Venezuelan TPS holders on a schedule well in advance of the schedule set by Secretary Mayorkas.
12 *See, e.g.*, Docket No. 37 (McLean Decl. ¶ 15 & Ex. 14) (Secretary Noem stating, during an
13 interview where she announced the decision to vacate the extension of the 2023 Designation, that
14 “people of this country want these dirt bags out”). Nor has the government stated that, if the Court
15 were to stay its postponement order, it will not immediately move forward with removal of any
16 Venezuelan TPS holder. In seeking to stay the postponement, even in light of the expedited
17 briefing schedule set by the Ninth Circuit, the government impliedly intends to do so.

18 Furthermore, in addition to the risk of removal, there is another significant harm that will
19 befall TPS beneficiaries if the stay were granted: the loss of work authorization that follows the
20 loss of legal status. This would jeopardize beneficiaries’ ability to sustain themselves and/or their
21 families. It will also cause dislocation and harm to the economy as described in the Court’s
22 postponement order.

23 Although, the Court’s postponement order addresses the arguments raised in the pending
24 motion to stay (indeed, the motion to stay reads to a large extent like a motion to reconsider), the
25 Court notes the following.

- 26 • With respect to the issue of whether 8 U.S.C. § 1252(f)(1) is a jurisdictional bar,
27 the government asserts that the Court mistakenly relied on *Texas v. United States*,
28 40 F.4th 205, 219 (5th Cir. 2022), because “the Supreme Court reversed that

147a

1 decision on expedited review and Justice Gorsuch criticized the district court’s
 2 evasion of § 1252(f)(1)” Mot. at 5. But the Fifth Circuit reaffirmed its view
 3 that a vacatur and an injunction are distinct in *Texas v. United States*, 126 F.4th
 4 392, 419 n.40 (5th Cir. 2025) (“Section 1252(f)(1) is inapplicable to vacatur
 5 because it is a ‘limit on injunctive relief,’ and vacatur is different from injunctive
 6 relief.”). As for Justice Gorsuch’s criticism, that was part of a concurrence and his
 7 criticism was rooted in an analysis of standing: the “clever work around” did not
 8 “succeed” because “a vacatur order still does nothing to *redress* the States’
 9 injuries” and, therefore, standing was still a problem. *United States v. Texas*, 599
 10 U.S. 670, 691 (2023) (Gorsuch, J., concurring) (emphasis added).

- 11 • With respect to the issue of whether 8 U.S.C. § 1254a(b)(5)(A) is a jurisdictional
 12 bar, the government contends that it did not make any concession – specifically,
 13 with respect to Plaintiffs’ claim that Secretary Noem lacked the implicit authority
 14 to vacate the decision to extend the 2023 Designation. *See* Mot. at 3 n.3. But the
 15 record of the hearing is clear. In any event, even if the government could withdraw
 16 its concession, the government’s asserted argument fails. As the Court stated in its
 17 postponement order, “§ 1254a(b)(A)(A) was designed to bar judicial review of
 18 substantive country-specific conditions in service of TPS designations,
 19 terminations, or extensions of a foreign state – not judicial review of general
 20 procedures or collateral practices related to such.” Docket No. 93 (Order at 25).
- 21 • With respect to the issue of whether Secretary Noem had the implicit authority to
 22 vacate the extension of the 2023 Designation, the government cites, *inter alia*, *SKF*
 23 *USA, Inc. v. United States*, 254 F.3d 1022 (Fed. Cir. 2001). *See* Mot. at 5. But
 24 *SKF* is not on point (which the government implicitly acknowledges given its use
 25 of the “cf.” cite), because the issue there was whether an “agency may request [*a*
 26 *court* for] a remand because it believes that its original decision was incorrect on
 27 the merits and it wishes to change the result.” *Id.* at 1028. That is not the situation
 28 here. Secretary Noem did not ask a court for relief before vacating and then

148a

1 terminating the 2023 Designation.

- 2 • According to the government, the Court’s postponement order is flawed because
3 the Court made “irreconcilable” holdings: to wit, that “the Secretary *could*
4 ‘deconsolidate’ Secretary Mayorkas’s TPS designations for Venezuela and that the
5 TPS statute forbids reconsideration.” Mot. at 5 (emphasis in original). This
6 argument ignores the express language in the order that, “*even if vacatur were*
7 *permitted* and not founded on any legal error, the vacatur was still arbitrary and
8 capricious because, in revoking the prior action, the Secretary failed to consider
9 alternatives short of termination.” Docket No. 93 (Order at 58) (emphasis added).
- 10 • On the equal protection claim, *even if* the deferential review of *Trump v. Hawaii*,
11 585 U.S. 667 (2018), were to apply (the Court held it did not), Secretary Noem’s
12 decisions would still be subject to rational basis review – *i.e.*, the Court would have
13 to consider whether the Secretary’s decisions are “plausibly related to the
14 Government’s stated objective[s].” *Id.* at 704-05. Based on the record evidence on
15 the motion to postpone, Plaintiffs have raised at least a serious question whether, in
16 fact, the Secretary’s actions are plausibly related to her stated objective. *See, e.g.*,
17 Docket No. 93 (Order at 73-74) (addressing lack of support for the decisions to
18 vacate and terminate).
- 19 • Regarding the nationwide scope of relief, Plaintiffs correctly note that the
20 government argued in its opposition to the motion to postpone that relief should be
21 afforded to only the named individual plaintiffs. *See* Docket No. 60 (Opp’n at 25).
22 Thus, the government has waived the argument that it now makes in its motion to
23 stay – *i.e.*, that, at most, relief should be limited to the named individual plaintiffs
24 *and* the “associated members” of NTPSA (the organizational plaintiff). In any
25 event, the government still has not “explained how, as a practical matter, relief
26 could be afforded to some subset of all Venezuelan TPS holders,” Docket No. 93
27 (Order at 76), particularly in light of the number of NTPSA members located in
28 states throughout the country.

149a

- The government’s request to stay discovery pending appeal (so that the government may pursue a stay pending appeal with the Ninth Circuit) is premature. The Court has already held that the first step is for the parties to compile the administrative record. There is no motion before the Court in regard to that compilation. Nor is there any pending motion for discovery beyond the record.

For the foregoing reasons, the government’s motion to stay the postponement order pending appeal is denied.

IT IS SO ORDERED.

Dated: April 4, 2025



EDWARD M. CHEN
United States District Judge

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NATIONAL TPS ALLIANCE, et al.,
Plaintiffs,
v.
KRISTI NOEM, et al.,
Defendants.

Case No. 25-cv-01766-EMC

**ORDER GRANTING PLAINTIFFS’
MOTION TO POSTPONE**

Docket No. 16

I. INTRODUCTION

At issue is whether this Court should temporarily postpone actions by Kristi Noem, Secretary of the Department of Homeland Security, taken against over 600,000 Venezuelan nationals who have legal status to reside and work temporarily in the United States. The Secretary’s actions will shortly strip nearly 350,000 of these residents of their protection under the Temporary Protected Status (“TPS”) program, subjecting them to possible imminent deportation back to Venezuela, a country so rife with economic and political upheaval and danger that the State Department has categorized Venezuela as a “Level 4: Do Not Travel” country “due to the high risk of wrongful detentions, terrorism, kidnapping, the arbitrary enforcement of local laws, crime, civil unrest, poor health infrastructure.” <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/venezuela-travel-advisory.html> (last visited 3/30/2025). The unprecedented action of vacating existing TPS (a step never taken by any previous administration in the 35 years of the TPS program), initiated just three days after Secretary Noem took office, reverses actions taken by the Biden administration to extend temporary protection of Venezuelan nationals that have been in place since 2021.

United States District Court
Northern District of California

151a

1 Although the Secretary’s actions appear predicated on negative stereotypes casting class-wide
 2 aspersions on their character (insinuating they were released from Venezuelan prisons and mental
 3 health facilities and imposed huge financial burdens on local communities), the undisputed record
 4 establishes that Venezuelan TPS beneficiaries, in fact, have higher education attainment than most
 5 U.S. citizens (40-54% have bachelor degrees), have high labor participation rates (80-96%), earn
 6 nearly all their personal income (96%), and annually contribute billions of dollars to the U.S.
 7 economy and pay hundreds of millions, if not billions, in social security taxes. They also have
 8 lower rates of criminality than the general U.S. population.

9 Following Secretary Noem’s actions, Plaintiffs filed the instant action. Plaintiffs are seven
 10 individuals from Venezuela who are TPS holders, plus the National TPS Alliance (“NTPSA”).
 11 The NTPSA is “a member-led organization representing Temporary Protected Status (“TPS”)
 12 holders across the country.” Compl. ¶ 2. NTPSA’s members include over 84,000 Venezuelan
 13 TPS holders living in all fifty states and the District of Columbia. *See Jimenez Decl.* ¶ 13.
 14 Among other things, NTPSA “engages in advocacy to defend TPS and win a path to permanent
 15 status for TPS holders.”¹ *Jimenez Decl.* ¶ 21.

16 Having considered the parties’ briefs and accompanying submissions, the oral argument of
 17 counsel, and the views of Amici (a collection of various states, cities, and counties throughout the
 18 United States),² the Court hereby **GRANTS** Plaintiffs’ motion. For the reasons stated below, the

19 _____
 20 ¹ NTPSA has submitted a declaration from Jose A. Palma Jimenez, the Co-Coordinator of the
 organization. In his declaration, Mr. Jimenez explains that NTPSA also

21 organizes actions to raise public awareness about TPS and the
 22 contributions TPS holders make to this country; facilitates
 23 community and civic engagement by TPS holders; and provides
 access to timely and accurate TPS-related information and services
 to its members.

24 *Jimenez Decl.* ¶ 21. The government has not contested NTPSA’s standing to bring suit. *See*
 25 *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 199
 (2023) (noting that, “where the plaintiff is an organization, the standing requirements of Article III
 26 can be satisfied in two ways[:] [e]ither the organization can claim that it suffered an injury in its
 own right or, alternatively, it can assert ‘standing solely as the representative of its members’”).

27 ² There are two sets of Amici: (1) the Amici States and (2) the Amici Cities and Counties. The
 28 Amici States are California, New York, Connecticut, Delaware, Hawaii, Illinois, Maine,
 Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, Oregon, Rhode Island,

1 Court finds that the Secretary’s action threatens to: inflict irreparable harm on hundreds of
 2 thousands of persons whose lives, families, and livelihoods will be severely disrupted, cost the
 3 United States billions in economic activity, and injure public health and safety in communities
 4 throughout the United States. At the same time, the government has failed to identify any real
 5 countervailing harm in continuing TPS for Venezuelan beneficiaries. Plaintiffs have also shown
 6 they will likely succeed in demonstrating that the actions taken by the Secretary are unauthorized
 7 by law, arbitrary and capricious, and motivated by unconstitutional animus. For these reasons, the
 8 Court grants Plaintiffs’ request to postpone the challenged actions pending final adjudication of
 9 the merits of this case.

10 II. FACTUAL & PROCEDURAL BACKGROUND

11 A. Background on TPS

12 As part of the Immigration Act of 1990, Congress created the TPS program. The TPS
 13 program is a humanitarian program; the governing statute is codified at 8 U.S.C. § 1254a.

14 Under § 1254a, the Secretary of DHS may **designate** a foreign country for TPS when
 15 individuals from that country cannot safely return due to armed conflict, natural disaster, or other
 16 extraordinary and temporary circumstances. *See* 8 U.S.C. § 1254a(b). The initial designation lasts
 17 for 6, 12, or 18 months, at the Secretary’s discretion. *See id.* § 1254a(b)(2).

18 Once a foreign country is given a TPS designation, individuals from that country may
 19 apply for immigration status. If granted, they may not be removed from the United States;
 20 furthermore, they are given authorization to work in the United States. *See id.* § 1254a(a)(1).

21 For individuals to become TPS holders, there are specific requirements that must be met.
 22 For example, an individual must have “been continuously physically present in the United States
 23 since the effective date of the most recent designation of that [foreign] state.” *Id.* §
 24 1254a(c)(1)(A)(i). In addition, an individual must be “admissible as an immigrant.” *Id.* §
 25 1254a(c)(1)(A)(iii). An individual is inadmissible if, *e.g.*, they have been convicted of certain

26
 27 Vermont, Washington, and the District of Columbia. The Amici Cities and Counties are Denver,
 28 San Francisco, Hartford, Cambridge, San Diego, Chicago, Iowa City, Minneapolis, Saint Paul,
 Boston, and Santa Clara. Both Amici have submitted briefs in support of Plaintiffs’ motion.

153a

1 crimes (such as a crime involving moral turpitude or drugs) or are a member of a terrorist
 2 organization.³ *See id.* § 1182(a)(2)-(3). Moreover, an individual is expressly deemed ineligible
 3 for TPS if they have “been convicted of any felony or 2 or more misdemeanors committed in the
 4 United States.” *Id.* § 1254a(c)(2)(B). The Secretary “shall withdraw [TPS] granted to an alien . . .
 5 if [the Secretary] finds that the alien was not in fact eligible for such status.” *Id.* § 1254a(c)(3)(A).

6 After a foreign country has been given a TPS designation, that designation is subject to
 7 periodic review to determine if the TPS designation should be **terminated** or **extended**.

8 At least 60 days before end of the initial period of designation, and
 9 any extended period of designation, of a foreign state (or part
 10 thereof) under this section the [Secretary of DHS⁴], after
 11 consultation with appropriate agencies of the Government, shall
 12 review the conditions in the foreign state (or part of such foreign
 13 state) for which a designation is in effect under this subsection and
 14 shall determine whether the conditions for such designation under
 15 this subsection continue to be met.

13 *Id.* § 1254a(b)(3)(A).

- 14 • “If the [Secretary] determines . . . that a foreign state (or part of such foreign state)
 15 no longer continues to meet the conditions for designation under paragraph (1), the
 16 [Secretary] shall terminate the designation” *Id.* § 1254a(b)(3)(B).
- 17 • “If the [Secretary] does not determine . . . that a foreign state (or part of such
 18 foreign state) no longer meets the conditions for designation under paragraph (1),
 19 the period of designation of the foreign state is extended for an additional period of
 20 6 months (or, in the discretion of the [Secretary], a period of 12 or 18 months).” *Id.*
 21 § 1254a(b)(3)(C).

22 ///

24 _____
 25 ³ The TPS statute bars the Secretary from waiving certain inadmissibility grounds. *See* 8 U.S.C. § 1254a(c)(2)(A)(iii).

26 ⁴ The TPS statute “originally provided the Attorney General with this authority” but, “[w]ith the
 27 Homeland Security Act of 2002 (Pub. L. No. 107-296, 116 Stat. 2135), the former Immigration
 28 and Naturalization Service was transferred to the Department of Homeland Security, and the
 responsibility for administering the TPS was transferred from the Attorney General to the
 Secretary of DHS.” *Ramos v. Wolf*, 975 F.3d 872, 879 n.1 (9th Cir. 2020), *vacated for rehearing*
en banc, 59 F.4th 1010 (9th Cir. 2023).

154a

1 In addition, it is possible for a country to be given more than one TPS designation. As
2 explained by Plaintiffs (with no dispute by the government),

3 [a] TPS designation for a country that is already designated for TPS
4 is called a “**redesignation**.” When DHS redesignates a country for
5 TPS, it generally has the effect of expanding the pool of potential
beneficiaries to include individuals who came to the United States
after the country was first designated for TPS.

6 Compl. ¶ 26 n.4 (emphasis added).

7 B. TPS Designation for Venezuela

8 1. 2021 TPS Designation

9 In March 2021, Secretary Mayorkas (the Secretary of DHS under the Biden
10 administration) first designated Venezuela for TPS – specifically, for 18 months, from March 9,
11 2021, through September 9, 2022. *See* 86 Fed. Reg. 13574, 13577 (Mar. 9, 2021). The
12 designation allowed those “who have continuously resided in the United States since March 8,
13 2021, and have been continuously physically present in the United States since March 9, 2021, to
14 apply for TPS.” *Id.* at 13575. U.S. Citizenship and Immigration Services (“USCIS”) estimated
15 that “approximately 323,000 individuals are eligible to file applications for TPS under the
16 designation of Venezuela.” *Id.*

17 The basis for the designation was stated as follows:

18 Venezuela is currently facing a severe humanitarian emergency.
19 Under Nicolás Maduro’s influence, the country “has been in the
20 midst of a severe political and economic crisis for several years.”
21 Venezuela’s crisis has been marked by a wide range of factors,
22 including: Economic contraction; inflation and hyperinflation;
23 deepening poverty; high levels of unemployment; reduced access to
24 and shortages of food and medicine; a severely weakened medical
25 system; the reappearance or increased incidence of certain
communicable diseases; a collapse in basic services; water,
electricity, and fuel shortages; political polarization; institutional
and political tensions; human rights abuses and repression; crime
and violence; corruption; increased human mobility and
displacement (including internal migration, emigration, and return);
and the impact of the COVID-19 pandemic, among other factors.

26 *Id.* at 13576.

27 The parties refer to this designation as the “2021 Designation.”
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155a

1 2. First and Second Extensions of the 2021 Designation

2 The 2021 Designation was set to expire, as noted above, in September 2022. However, on
3 September 8, 2022, before expiration, DHS **extended** the 2021 Designation for 18 months – *i.e.*,
4 from September 10, 2022, through March 10, 2024. *See* 87 Fed. Reg. 55024, 55027 (Sept. 8,
5 2022). The basis for the extension was as follows: “Extraordinary and temporary conditions that
6 prevent Venezuelan nationals from returning in safety include severe economic and political crises
7 ongoing within Venezuela, which have an impact across sectors, including limited access to food,
8 basic services, and adequate healthcare, and the deterioration of the rule of law and protection of
9 human rights.” *Id.* at 55026. As Plaintiffs point out, “because the decision [here] was only an
10 extension, and not also a re-designation, it did not provide protection to Venezuelans who had
11 arrived in the U.S. *after* March 9, 2021 [*i.e.*, the date of the 2021 Designation].” Compl. ¶ 42
12 (emphasis added).

13 DHS **extended** the 2021 Designation a second time on October 3, 2023, for another 18
14 months. The extension ran from March 11, 2024 (when the first extension above would end) to
15 September 10, 2025. *See* 88 Fed. Reg. 68130, 68131 (Oct. 3, 2023).

16 3. 2023 TPS Designation

17 At the same time as the second extension of the 2021 Designation, DHS also **redesignated**
18 Venezuela for TPS. *See id.* The redesignation covered an 18-month period, from October 3,
19 2023, through April 2, 2025. *See id.* While the 2021 Designation allowed individuals who had
20 been in the United States since March 2021 to apply, this designation – which the parties refer to
21 as the “2023 Designation” – allowed individuals to apply if they had continuously resided in the
22 United States since July 31, 2023, and had continuously been physically present since October 3,
23 2023. *See id.* DHS estimated that “approximately 472,000 additional individuals may be eligible
24 for TPS under the redesignation of Venezuela.” *Id.* at 68134.

25 For both (1) the second extension of the 2021 Designation and (2) the 2023 Designation,
26 the basis was the same:

27 Venezuela continues to face a severe humanitarian emergency due
28 to a political and economic crisis, as well as human rights violations
 and abuses and high levels of crime and violence, that impacts

156a

1 access to food, medicine, healthcare, water, electricity, and fuel, and
 2 has led to high levels of poverty. Additionally, Venezuela has
 3 recently experienced heavy rainfall in the spring and summer of
 2023 which triggered flooding and landslides. Given the current
 conditions in Venezuela, these issues contribute to the country's
 existing challenges.

4 Venezuela is experiencing “an unprecedented political, economic,
 5 and humanitarian crisis.” “Venezuela is suffering one of the worst
 humanitarian crises in the history of the Western Hemisphere,”
 6 which has been characterized by “[h]igh levels of poverty, food
 insecurity, malnutrition, and infant mortality, together with frequent
 7 electricity outages and the collapse of health infrastructure.”
 Though there were some positive developments in Venezuela in
 2022 “as the economy stabilized and showed signs of economic
 8 growth,” the effects of these changes were not felt across the
 Venezuelan population and did not offset the impact of the large-
 9 scale economic contraction which resulted in significant
 humanitarian challenges that continue today and will take time to
 10 address.

11 *Id.* at 68132.

12 4. Extension of the 2023 Designation

13 On January 17, 2025, shortly before the second Trump administration was to begin,
 14 Secretary Mayorkas **extended** the 2023 Designation by 18 months, through October 2, 2026. *See*
 15 90 Fed. Reg. 5961 (Jan. 17, 2025). As indicated above, without an extension, the 2023
 16 Designation would end on April 2, 2025. The basis for the extension was as follows:

17 Venezuela is experiencing “a complex, serious and
 18 multidimensional humanitarian crisis.” The crisis has reportedly
 disrupted every aspect of life in Venezuela. “Basic services like
 19 electricity, internet access, and water are patchy; malnutrition is on
 the rise; the healthcare system has collapsed; and children receive
 20 poor or no education. Inflation rates are also among the highest in
 the world.” Venezuela’s “complex crisis” has pushed Venezuelans
 21 into “poverty, hunger, poor health, crime, desperation and
 migration.” Moreover, Nicolás Maduro’s declaration of victory in
 the July 28, 2024 presidential election – which has been contested as
 22 fraudulent by the opposition – “has been followed by yet another
 sweeping crackdown on dissent.”
 23

24 *Id.* at 5963.

25 In the extension, DHS also clarified the relationship between the two designations for
 26 Venezuela – (1) the 2021 Designation and (2) the 2023 Designation – both of which had been
 27 subject to extensions. DHS addressed the following question:

28 ///

157a

1 **Will there continue to be two separate filing processes for TPS**
 2 **designations for Venezuela?**

3 No. USCIS has evaluated the operational feasibility and resulting
 4 impact on stakeholders of having two separate filing processes.
 5 Operational challenges in the identification and adjudication of
 6 Venezuela TPS filings and confusion among stakeholders exist
 7 because of the two separate TPS designations. To date, USCIS has
 8 created operational measures to process Venezuela TPS cases for
 9 both designations; however, it can most efficiently process these
 10 cases by consolidating the filing processes for the two Venezuela
 11 TPS populations. To decrease confusion among stakeholders,
 12 ensure optimal operational processes, and maintain the same
 13 eligibility requirements, upon publication of this Notice, **individuals
 14 registered under either the March 9, 2021 TPS designation or
 15 the October 3, 2023 TPS designation will be allowed to re-
 16 register under this extension.** This would not, however, require
 17 that a beneficiary registered under the March 9, 2021 designation to
 18 re-register at this time. Rather, it would provide such individuals
 19 with the option of doing so. **Venezuela TPS beneficiaries who
 20 appropriately apply for TPS or re-register under this Notice and
 21 are approved by USCIS will obtain TPS through the same
 22 extension date of October 2, 2026.**

23 *Id.* at 5964 (some emphasis added).

24 5. Vacatur of the Extension of the 2023 Designation

25 On January 20, 2025, President Trump began his second administration. That same day,
 26 President Trump issued an Executive Order titled “Protecting the American People Against
 27 Invasion.” See [https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-
 28 american-people-against-invasion/](https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-american-people-against-invasion/) (last visited 3/30/2025). Section 16 of the Executive Order
 states as follows:

Addressing Actions by the Previous Administration. The Secretary
 of State, the Attorney General, and the Secretary of Homeland
 Security shall promptly take 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, and align any and all departmental activities with the
 policies set out by this order and the immigration laws. Such action
 should include, but is not limited to:

.....

(b) ensuring that designations of Temporary Protected Status are
 consistent with the provisions of section 244 of the INA (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 . . .

1 *Id.*

2 Secretary Noem was sworn in as Secretary of DHS on January 25, 2025. Three days later,
3 on January 28, 2025, the Secretary vacated the extension of the 2023 Designation. DHS formally
4 published notice of the vacatur on February 3, 2025. *See* 90 Fed. Reg. 8805 (Feb. 3, 2025). This
5 is the first time – in TPS’s thirty-five-year history – that an extension of a TPS designation has
6 ever been vacated.

7 The notice began by stating that:

8 The Venezuela 2023 TPS designation expires on April 2, 2025, and
9 the Secretary must make a decision by February 1, 2025 [*i.e.*, 60
10 days in advance]. The Venezuela 2021 TPS designation expires on
11 September 10, 2025, and the Secretary must make a decision by July
12 12, 2025. Notwithstanding the fact that these are both decisions that
13 would lie with new Secretary of Homeland Security Kristi Noem,
14 Secretary Mayorkas [the DHS Secretary under the Biden
15 administration] took action with respect to both designations.

16 On January 17, 2025, Secretary Mayorkas issued a notice extending
17 the 2023 designation of Venezuela for TPS for 18 months
18 (Mayorkas Notice). The notice was based on Secretary Mayorkas’
19 January 10, 2025, determination that the conditions for the
20 designation continued to be met. *See* INA 244(b)(3)(A), 8 U.S.C.
21 1254a(b)(3)(A). In the Mayorkas Notice, Secretary Mayorkas did
22 not expressly extend or terminate the 2021 designation. Instead, the
23 notice allowed for a consolidation of filing processes such that all
24 eligible Venezuela TPS beneficiaries (whether under the 2021 or
25 2023 designations) could obtain TPS through the same extension
26 date of October 2, 2026. *See* Extension of the 2023 Designation of
27 Venezuela for Temporary Protected Status, 90 FR 5961 (Jan. 17,
28 2025). The notice also extended certain EADs [employment
authorization documents]. The effect of Secretary Mayorkas’
actions, however, resulted in an extension of the 2021 Venezuela
TPS designation.

21 *Id.* at 8806.

22 The notice then stated that the extension given by Secretary Mayorkas was vacated:

23 The Secretary of Homeland Security is vacating the January 10,
24 2025 decision of Secretary Mayorkas which (1) extended the 2023
25 Venezuela TPS designation and (2) allowed the consolidation of
26 filing processes for both designations, which had the effect of
27 extending the 2021 Venezuela TPS designation, and (3) extended
28 certain EADs. An agency has inherent (that is, statutorily implicit)
authority to revisit its prior decisions unless Congress has expressly
limited that authority. The TPS statute does not limit the Secretary’s
inherent authority under the INA to reconsider any TPS-related
determination, and upon reconsideration, to vacate or amend the
determination.

159a

1 *Id.*

2 The reason for the vacatur was stated as follows: “The Mayorkas Notice adopted a novel
3 approach of implicitly negating the 2021 Venezuela TPS designation by effectively subsuming it
4 within the 2023 Venezuela TPS designation.” *Id.* at 8807.

5 The Mayorkas Notice did not acknowledge the novelty of its
6 approach or explain how it is consistent with the TPS statute. *See*
7 INA 244(b)(2)(B), 8 U.S.C. 1254a(b)(2)(B) (providing that a TPS
8 country designation “shall remain in effect until the effective date of
9 the termination of the designation under [INA 244(b)(3)(B), 8
10 U.S.C. 1254a(b)(3)(B)]”). This novel approach has included
11 multiple notices, overlapping populations, overlapping dates, and
12 sometimes multiple actions happening in a single document. While
13 the Mayorkas Notice may have made attempts to address these
14 overlapping populations, the explanations in the Mayorkas Notice,
15 particularly the explanation for operational impacts, are thin and
16 inadequately developed. Given these deficiencies and lack of
17 clarity, vacatur is warranted to untangle the confusion, and provide
18 an opportunity for informed determinations regarding the TPS
19 designations and clear guidance.

13 *Id.*

14 The effect of the vacatur was stated as follows:

15 As a result of the vacatur, the 2021 Venezuela TPS designation and
16 the 2023 Venezuela designation remain in effect and their associated
17 statutory deadlines remain in effect. The statutory deadline for each
18 of those designations is as follows: The Secretary (1) must
19 determine, by February 1, 2025, whether to extend or terminate the
20 2023 Venezuela TPS designation and (2) must determine, by July
21 12, 2025, whether to extend or terminate the 2021 Venezuela TPS
22 designation.

20 *Id.* In its papers, the government characterizes the vacatur as a “restor[ation] [of] the status quo.”

21 Opp’n at 6.

22 6. Termination of the 2023 Designation

23 On February 1, 2025 (*i.e.*, just three days after the vacatur was first announced), Secretary
24 Noem decided to terminate the 2023 Designation, effective in April 2025 (*i.e.*, 60 days after
25 publication of the termination notice). DHS formally published noticed on February 5, 2025. *See*
26 90 Fed. Reg. 9040 (Feb. 5, 2025).

27 In explaining the basis for the termination, DHS began by stating as follows:

28 Consistent with section 244(b)(3)(A) of the INA, 8 U.S.C.

160a

1 1254a(b)(3)(A), after consulting with appropriate U.S. Government
2 agencies, DHS reviewed conditions in Venezuela and considered
3 whether permitting the Venezuelan nationals to remain temporarily
4 in the United States is contrary to the national interest of the United
5 States.

6 The Department, in consultation with the Department of State, has
7 reviewed conditions in Venezuela and has considered whether
8 permitting Venezuelan nationals to remain temporarily in the United
9 States is contrary to the U.S. national interest. Overall, certain
10 conditions for the 2023 TPS designation of Venezuela may
11 continue; however, there are notable improvements in several areas
12 such as the economy, public health, and crime that allow for these
13 nationals to be safely returned to their home country.

14 *Id.* at 9042. Although DHS referred to a consultation with other agencies and suggested there was
15 review of a country conditions report, the government failed to provide any evidence in
16 conjunction with the pending motion to support such claims. *See Ramos v. Nielsen*, 336 F. Supp.
17 3d 1075, 1082 (N.D. Cal. 2018) (noting that the general process for a TPS designation (on
18 periodic review) includes the following: RAIO (a division within USCIS) provides a Country
19 Conditions Memo, OPS (another division within USCIS) drafts a Decision Memo, and the State
20 Department provides further input). It is difficult to imagine how such a considered process could
21 have been accomplished in such a short period.

22 DHS continued its explanation for the termination as follows:

23 Based on the Department's review, the Secretary has determined
24 that, even assuming the relevant conditions in Venezuela remain
25 both "extraordinary" and "temporary," termination of the 2023
26 Venezuela TPS designation is required because it is contrary to the
27 national interest to permit the Venezuelan nationals (or aliens having
28 no nationality who last habitually resided in Venezuela) to remain
temporarily in the United States.

In the TPS statute, Congress expressly prohibits the Secretary from
designating a country for TPS or extending a TPS designation if she
finds that "permitting the aliens to remain temporarily in the United
States is contrary to the national interest of the United States." INA
244(b)(1), 8 U.S.C. 1254a(b)(1). . . .

Id. at 9042.

The notice continued in relevant part:

"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.,

161a

adverse effects on U.S. workers, impact on U.S. communities). Determining whether 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, informed by her consultations with appropriate U.S. Government agencies.

....

[First,] TPS has allowed a significant population of inadmissible or illegal aliens without a path to lawful immigration status to settle in the interior of the United States, and the sheer numbers have resulted in associated difficulties in local communities where local resources have been inadequate to meet the demands caused by increased numbers. Among these Venezuelan nationals who have crossed into the United States are members of the Venezuelan gang known as Tren de Aragua. Tren de Aragua has been blamed for sex trafficking, drug smuggling, police shootings, kidnappings, and the exploitation of migrants. The United States has sanctioned the gang and placed it on a list of transnational criminal organizations. In Executive Order 14157, Designating Cartels and Other Organizations as Foreign Terrorist Organizations and Specially Designated Global Terrorists, the President determined that Tren de Aragua's campaign of violence and terror poses threats to the United States. The Secretary accordingly has considered these important immigration and national interests in terminating the Venezuela parole process.

Second, President Trump observed, referring to CHNV [the parole program known as the "Processes for Cubans, Haitians, Nicaraguans, and Venezuelans"] and other policies and processes, that "[o]ver the last 4 years, the prior administration invited, administered, and oversaw an unprecedented flood of illegal immigration into the United States," including millions who crossed U.S. borders or were allowed to fly to a U.S. airport of entry and allowed to settle in American communities. The prolonged presence of these aliens in the United States "has cost taxpayers billions of dollars at the Federal, State, and local levels." For example, over 180,000 illegal aliens have settled in New York City, approximating that this will cost the city \$10.6 billion through the summer of 2025. Additionally, although mayors from cities across the United States are attempting to accommodate Venezuelan illegal aliens, city shelters, police stations, and aid services are at a maximum capacity.

....

Third, President Trump declared a national emergency at the southern border. As the Attorney General and DHS have long understood, the potential "magnet effect" of a TPS determination is a permissible factor under the TPS statute, especially with respect to a redesignation. The same is true for Venezuela. . . .

Fourth, as the President directed in Executive Order 14150, "the foreign policy of the United States shall champion core American interests and always put America and American citizens first."

Continuing to permit Venezuelans under the 2023 TPS designation

162a

1 to remain in the United States does not champion core American
 2 interests or put American interests first. U.S. foreign policy
 3 interests, particularly in the Western Hemisphere, are best served
 and protected by curtailing policies that facilitate or encourage
 illegal and destabilizing migration.

4 *Id.* at 9042-43.

5 The notice concluded with the statement that “DHS is terminating only the October 3,
 6 2023 Venezuela TPS designation. The 2021 Venezuela TPS designation remains in effect until
 7 September 10, 2025.” *Id.* at 9044. Because of the decision to terminate (which was possible only
 8 because of the decision to vacate Secretary Mayorkas’s extension in the first place), the 2023
 9 Designation will end on April 7, 2025. *See id.*

10 C. Causes of Action

11 Following the vacatur and termination decisions made by Secretary Noem, Plaintiffs filed
 12 suit. In their complaint, Plaintiffs assert three claims for relief:

13 (1) The government violated the APA because the Secretary’s decision to vacate the
 14 extension of the 2023 Designation was arbitrary and capricious. Most
 15 fundamentally, the Secretary did not have inherent authority to reconsider the prior
 16 Secretary’s extension. “The TPS statute carefully regulates the length of TPS
 17 extensions, the conditions under which they may be terminated, and the timetable
 18 for doing so. Defendants had no authority to annul a TPS extension under the
 19 timetable and procedures they utilized here.” Compl. ¶ 149(a). In addition, the
 20 Secretary “objected to the . . . extension for allowing 2021 TPS holders to re-
 21 register under the 2023 extension, but failed to consider that 2021 TPS holders
 22 were necessarily eligible for TPS under the 2023 designation as well.” Compl. ¶
 23 149(b).

24 (2) The government further violated the APA because the Secretary’s decision to
 25 terminate the 2023 Designation was arbitrary and capricious. For example, the
 26 decision assumed that TPS designations are illegal, and “[t]he research,
 27 consultation, and review process leading up to the decision deviated dramatically
 28 from past practice without explanation.” Compl. ¶ 153(a), (c).

163a

1 (3) The government violated the Equal Protection Clause because the “decisions to
 2 vacate the . . . TPS extension for Venezuela, and to terminate the 2023 Venezuela
 3 Designation . . . were motivated, at least in part, by intentional discrimination based
 4 on race, ethnicity, or national origin.” Compl. ¶ 157.

5 In the pending motion, Plaintiffs largely focus on the first and third claims above. To be
 6 clear, however, the relief Plaintiffs seek would result in postponement of both (1) Secretary
 7 Noem’s decision to vacate the extension of the 2023 Designation and (2) the decision to terminate
 8 the 2023 Designation.

9 III. DISCUSSION

10 As indicated by the above, Plaintiffs’ case is founded in large part on the APA. The APA
 11 provides in relevant part that a court shall “hold unlawful and set aside agency action, findings,
 12 and conclusions found to be – (A) arbitrary, capricious, an abuse of discretion, or otherwise not in
 13 accordance with law; [or] (B) contrary to constitutional right, power, privilege or immunity
 14 5 U.S.C. § 706(2).” 5 U.S.C. § 706(2). Plaintiffs’ present motion seeks temporary relief pursuant
 15 to § 705 of the APA. Section 705 provides as follows:

16 When an agency finds that justice so requires, it may postpone the
 17 effective date of action taken by it, pending judicial review. On
 18 such conditions as may be required and to the extent necessary to
 19 prevent irreparable injury, the reviewing court, including the court to
 20 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.

21 5 U.S.C. § 705.

22 A. Jurisdiction

23 Although § 705 expressly authorizes a court to postpone the effective date of any agency
 24 action, or to preserve status or rights pending judicial review, the government contends that the
 25 Court lacks jurisdiction to grant the relief sought by Plaintiffs. The government raises two
 26 jurisdictional arguments, one based on 8 U.S.C. § 1252(f)(1) and the other based on §
 27 1254a(b)(5)(A).
 28

164a

1 1. Section 1252(f)(1)

2 According to the government, Plaintiffs are effectively seeking “classwide” injunctive
3 relief in their motion, and thus their motion must be denied pursuant to § 1252(f)(1) which
4 prohibits such relief. Section 1252(f)(1) provides as follows:

5 (f) Limit on injunctive relief.

- 6 (1) In general. Regardless of the nature of the action or
7 claim or of the identity of the party or parties
8 bringing the action, no court (other than the Supreme
9 Court) shall have jurisdiction or authority to enjoin or
10 restrain the operation of the provisions of part IV of
11 this subchapter, as amended by the Illegal
Immigration Reform and Immigrant Responsibility
Act of 1996 [“IIRIRA”], other than with respect to
the application of such provisions to an individual
alien against whom proceedings under such chapter
have been initiated.

12 8 U.S.C. § 1252(f)(1). As the Supreme Court has explained, § 1252(f)(1) “generally prohibits
13 lower courts from entering injunctions that order federal officials to take or to refrain from taking
14 actions to enforce, implement, or otherwise carry out the specified statutory provisions.” *Garland*
15 *v. Aleman Gonzalez*, 596 U.S. 543, 550 (2022).

16 The government maintains that the TPS statute (§ 1254a) is one of the specified provisions
17 to which § 1252(f)(1) applies – *i.e.*, that the TPS statute falls within “part IV of this subchapter.”

18 8 U.S.C. § 1252(f)(1). The government acknowledges that the U.S. Code places the TPS statute
19 within part V, not part IV, which is consistent with the statements by a number of courts that part
20 IV covers only §§ 1221-32.⁵ No court has yet to hold that § 1252(f)(1) applies to § 1254a, which,
21 as a facial matter, is reasonable given that § 1252 is titled “Judicial review of orders of removal”
22 and TPS does not directly involve orders of removal. *Cf. Bhd. of R.R. Trainmen v. Balt. & Ohio*

23
24
25 ⁵ See, e.g., *Gonzalez v. U.S. Immigration & Customs Enf’t*, 975 F.3d 788, 812 (9th Cir. 2020)
26 (stating that “‘Part IV’ [as used in § 1252(f)(1)] is a reference to the provisions titled ‘Inspection,
27 Apprehension, Examination, Exclusion, and Removal,’ which currently include 8 U.S.C. §§ 1221-
28 1232 of the INA”); see also *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 481
(1999) (stating that § 1252(f)(1) “prohibits federal courts from granting classwide injunctive relief
against the operation of §§ 1221-1231”); *Biden v. Texas*, 597 U.S. 785, 798 (2022) (discussing §
1252(f)(1) and its impact on a court’s power to hear claims “brought under sections 1221 through
1232”).

165a

1 *R.R.*, 331 U.S. 519, 529 (1947) (noting that “the title of a statute and the heading of a section
2 cannot limit the plain meaning of the text” but they can be of use “when they shed light on some
3 ambiguous word or phrase”).

4 Nevertheless, the government argues that the U.S. Code contains an error; that the IIRIRA,
5 when it amended the INA in 1996, designated the TPS statute, among other sections, under part
6 IV, *see* 110 Stat. 3009, at 3009-548, 614-15 (Sept. 30, 1996) (in § 308 of the IIRIRA, amending
7 the table of contents); and that “the text of the United States Code ‘cannot prevail over the Statutes
8 at Large [*i.e.*, the IIRIRA/INA] when the two are inconsistent.’” *Galvez v. Jaddou*, 52 F.4th 821,
9 830 (9th Cir. 2022). Yet, it appears that the codification of §1254a into part V may well have
10 been consistent with IIRIRA and the INA. Part IV is titled “Inspection, Apprehension,
11 Examination, Exclusion, and Removal” whereas Part V is titled “Adjustment and Change of
12 Status.” TPS is more akin to an adjustment of status (albeit temporary) than a deportation
13 proceeding.

14 In any event, because Plaintiffs opted at this juncture not to focus on this aspect of the
15 government’s argument, the Court shall turn to and analyze in greater depth Plaintiffs’ assertion
16 that § 1252(f)(1) has no application where a court is simply called upon to vacate an agency action
17 as opposed to issue an “injunction” that would, *inter alia*, govern the conduct of a government
18 official. *See Aleman Gonzalez*, 596 U.S. at 548 (noting that “[t]he term ‘to enjoin’ ordinarily
19 means to ‘require,’ ‘command,’ or ‘positively direct’ an action or to ‘require a person to perform, .
20 . . or to abstain or desist from, some act’[;] [w]hen a court ‘enjoins’ conduct, it issues an
21 ‘injunction,’ which is a judicial order that ‘tells someone what to do or not to do’”). In other
22 words, according to Plaintiffs, there is a material distinction between vacatur of a specific agency
23 action under §706 (and likewise postponement of such action under §705) and an injunction under
24 Federal Rule of Civil Procedure 65. Plaintiffs emphasize that “[e]very court to consider the
25 question – including the Fifth Circuit and at least five district courts – has rejected [the
26 government’s] view that APA relief is functionally an injunction barred by Section 1252(f)(1).”

27 Reply at 2.

28 ///

166a

1 In assessing Plaintiffs’ position, the Court must begin with the “strong presumption . . .
 2 that the actions of federal agencies are reviewable in federal court.” *KOLA, Inc. v. United States*,
 3 882 F.2d 361, 363 (9th Cir. 1980); *see also Sackett v. E.P.A.*, 566 U.S. 120, 128 (2012) (stating
 4 that “[t]he APA . . . creates a presumption favoring judicial review of administrative action”).
 5 “[O]nly upon a showing of ‘clear and convincing evidence’ of a contrary legislative intent should
 6 the courts restrict access to judicial review.” *Abbott Labs. v. Gardner*, 387 U.S. 136, 141 (1967).
 7 Moreover, where there is no other forum for a litigant to raise their claim, that should also factor
 8 into a court’s determination as to whether judicial review is available. *Cf. Veterans for Common*
 9 *Sense v. Shinseki*, 678 F.3d 1013, 1034-35 (9th Cir. 2012) (noting that, “because [a veterans
 10 organization] cannot bring its suit in the Veterans Court, that court cannot claim exclusive
 11 jurisdiction over the suit,” and, “[b]ecause [the organization] would be unable to assert its claim in
 12 the review scheme established by the [Veterans’ Judicial Review Act], that scheme does not
 13 operate to divest us of jurisdiction”).

14 The Court also bears in mind that the Supreme Court has, to date, declined to address the
 15 issue of whether § 1252(f)(1) is a bar to a court issuing relief pursuant to the APA. For example,
 16 in *Aleman Gonzalez*, the Supreme Court held that § 1252(f)(1) barred a lower court from entering
 17 an injunction requiring the government to provide bond hearings for not only plaintiffs but also all
 18 other class members (all of whom had been detained under 8 U.S.C. § 1231(a)(6)). But, as Justice
 19 Sotomayor pointed out in her concurrence/dissent, the majority decision did

20 not purport to hold that §1252(f)(1) affects courts’ ability to “hold
 21 unlawful and set aside agency action, findings, and conclusions”
 22 under the Administrative Procedure Act. 5 U. S. C. §706(2). . . . In
 23 addition, the Court rightly does not embrace the Government’s
 24 eleventh-hour suggestion at oral argument to hold that §1252(f)(1)
 bars even classwide declaratory relief, a suggestion that would (if
 accepted) leave many noncitizens with no practical remedy
 whatsoever against clear violations by the Executive Branch.

25 *Aleman Gonzalez*, 596 U.S. at 571-72 (Sotomayor, J., concurring in part and dissenting in part).
 26 Justice Barrett made the same point as part of her dissent in *Biden v. Texas*, 597 U.S. at 785
 27 (where the Supreme Court held that § 1252(f)(1) did not deprive lower courts of all subject matter
 28 jurisdiction but rather simply withdrew the authority to grant a particular form of relief).

167a

1 Specifically, she noted that the majority “reserves the question whether §1252(f)(1) bars
2 declaratory relief, an issue on which there are conflicting views” and further “avoids a position on
3 whether §1252(f)(1) prevents a lower court from vacating or setting aside an agency action under
4 the Administrative Procedure Act.” *Id.* 839 (Barrett, J., dissenting). The Supreme Court,
5 therefore, has not adopted any view of § 1252(f)(1) that would preclude Plaintiffs from obtaining
6 relief. *See also Biden v. Texas*, 597 U.S. at 801 n.4 (“At our request, the parties briefed several
7 additional questions regarding the operation of section 1252(f)(1), namely, whether its limitation
8 on ‘jurisdiction or authority’ is subject to forfeiture and whether that limitation extends to other
9 specific remedies, such as declaratory relief and relief under section 706 of the APA. We express
10 no view on those questions.”).

11 No court has adopted the construction of § 1252(f)(1) advanced by the government.
12 Rather, all courts that have addressed the issue have rejected the government’s construction of the
13 statute. For example, in a decision issued after *Aleman Gonzalez* and *Biden v. Texas*, the Fifth
14 Circuit rejected DHS’s contention that vacatur of an agency action is a de facto enjoining or
15 restraining of an agency enforcement decision. The Fifth Circuit explained:

16 There are meaningful differences between an injunction, which is a
17 “drastic and extraordinary remedy,” and vacatur, which is “a less
18 drastic remedy.” The Supreme Court has indicated that § 1252(f) is
19 to be interpreted relatively narrowly. Indeed, the Court described §
20 1252(f) as “nothing more or less than a limit on injunctive relief.”

21 *Texas v. United States*, 40 F.4th 205, 219 (5th Cir. 2022) (addressing DHS’s memoranda regarding
22 immigration guidance for the apprehension and removal of noncitizens). The Fifth Circuit added:

23 [A] vacatur does nothing but re-establish the status quo absent the
24 unlawful agency action. Apart from the constitutional or statutory
25 basis on which the court invalidated an agency action, vacatur
26 neither compels nor restrains further agency decision-making. We
27 decline to extend *Aleman Gonzalez* to such judicial orders,
28 especially when doing so would be contrary to the “strong
presumption favoring judicial review of administrative action.”

29 *Id.* at 220; *see also Texas v. United States*, 126 F.4th 392, 419 n.40 (5th Cir. 2025) (reaffirming the
30 same); *Florida v. United States*, 660 F. Supp. 3d 1239, 1284-85 (N.D. Fla. 2023) (stating that
31 “[v]acatur is ‘a less drastic remedy’ than an injunction, and the Fifth Circuit concluded in the
32 opinion currently on review at the Supreme Court that §1252(f)(1) does not preclude vacatur

168a

1 under the APA because vacatur ‘does nothing but re-establish the status quo absent the unlawful
2 agency action’ and ‘neither compels nor restrains further agency decision-making’”).

3 Notably, the Fifth Circuit’s holding is directly supported by the Supreme Court’s decision
4 in *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139 (2010). There, the Supreme Court noted
5 that

6 [a]n injunction is a drastic and extraordinary remedy, which should
7 not be granted as a matter of course. If a less drastic remedy (**such
8 as partial or complete vacatur of APHIS’s deregulation
9 decision**) was sufficient to redress respondents’ injury, no recourse
to the additional and extraordinary relief of an injunction was
warranted.

10 *Id.* at 165-66 (emphasis added).

11 Furthermore, while *Monsanto* itself did not explain why a vacatur is a less drastic remedy,
12 it is clear that there are material differences between a vacatur and an injunction. While a court
13 may only enter a vacatur to re-establish the status quo absent the unlawful agency action, *see*
14 *Texas v. United States*, 40 F.4th at 220, it has “broad latitude in fashioning equitable relief
15 [through an injunction] when necessary to remedy an established wrong.” *Boardman v. Pac.*
16 *Seafood Grp.*, 822 F.3d 1011, 1024 (9th Cir. 2016) (collecting cases). Injunctions may apply to
17 parties and nonparties who act “in concert with” named parties. *See, e.g., SEC v. Wencke*, 622
18 F.2d 1363, 1368 (9th Cir. 1980) (“[Federal Rule of Civil Procedure 65 is] binding only upon the
19 parties to the action, their officers, agents, servants, employees, and attorneys, and upon those
20 persons in active concert or participation with them who receive actual notice of the order by
21 personal service or otherwise.”); *Bresgal v. Brock*, 843 F.2d 1163, 1170-71 (9th Cir. 1987) (“[A]n
22 injunction is not necessarily made over-broad by extending benefit or protection to persons other
23 than prevailing parties in the lawsuit – even if it is not a class action – *if such breadth is necessary*
24 *to give prevailing parties the relief to which they are entitled.*”) (emphasis in original). Courts
25 may hold both parties and nonparties in contempt for violating an injunction. *See Portland*
26 *Feminist Women’s Health Ctr. v. Advocs. for Life, Inc.*, 877 F.2d 787, 788-89 (9th Cir. 1989)
27 (affirming a lower court’s imposition of sanctions on a nonparty held “in civil contempt for
28 disobeying the injunction by acting in concert with the named defendants”); *Inst. of Cetacean*

1 *Rsch. v. Sea Shepherd Conservation Soc’y*, 774 F.3d 935, 949-50 (9th Cir. 2014) (affirming courts
2 may hold nonparties in contempt for “aiding and abetting violations” of the injunction, and courts
3 may also hold parties in contempt for “giving a non-party the means to violate an injunction”).
4 Injunctions may be mandatory, compelling a wide range of affirmative conduct. *See Dahl v. HEM*
5 *Pharms. Corp.*, 7 F.3d 1399, 1403 (9th Cir. 1993) (affirming lower court’s injunction that required
6 affirmative conduct by drug manufacturer to continue providing drug to participants after clinical
7 trial). Injunctions may compel or restrain further agency decision-making. *See Kidd v. Mayorkas*,
8 734 F. Supp. 3d 967, 987 (C.D. Cal. 2024) (noting that although a vacatur or injunction would
9 strike down ICE’s “knock and talk” policy, “only an injunction would restrain Defendants from, in
10 the future, attempting to institute a modified or amended version of the “knock and talk” policy
11 that complies with constitutional limitations.”). Injunctions may prohibit “otherwise lawful
12 conduct” as well as unlawful conduct. *Russian Media Grp., LLC v. Cable Am., Inc.*, 598 F.3d 302,
13 307 (7th Cir. 2010) (“The district court may even enjoin certain otherwise lawful conduct when
14 the defendant’s conduct has demonstrated that prohibiting only unlawful conduct would not
15 effectively protect the plaintiff’s rights against future encroachment.”). And injunctions may
16 evolve and morph over time. *See Brown v. Plata*, 563 U.S. 493, 542-43 (2011) (“The three-judge
17 court . . . retains the authority, and the responsibility, to make further amendments to the existing
18 order or any modified decree it may enter as warranted by the exercise of its sound discretion. . . .
19 A court that invokes equity’s power to remedy a constitutional violation by an injunction
20 mandating systemic changes to an institution has the continuing duty and responsibility to assess
21 the efficacy and consequences of its order.”). Conversely, none of the above is true of a court’s
22 vacatur of unlawful agency action under § 706(2) involved here. *See, e.g., Ctr. for Food Safety v.*
23 *Vilsack*, 734 F. Supp. 2d 948, 954-55 (N.D. Cal. 2010) (finding that a vacatur was more
24 appropriate as to an injunction, but noting that the court’s “[o]rder is without prejudice to
25 Plaintiffs seeking further redress if, after the deregulation decision is vacated, Plaintiffs can
26 demonstrate that Defendant-Intervenors or other third parties have in fact violated the vacatur”).

27 In addition, as Plaintiffs argued at the hearing, the Supreme Court’s decision in *Nken v.*
28 *Holder*, 556 U.S. 418 (2009), lends further support. In *Nken*, the plaintiff asked the Supreme

1 Court to stay his removal pending an adjudication of his petition for a review of a BIA order. The
 2 government argued that the plaintiff could not obtain a stay of removal because of 8 U.S.C. §
 3 1252(f)(2), which provides that “no court shall *enjoin* the removal of any alien pursuant to a final
 4 order under this section unless the alien shows by clear and convincing evidence that the entry or
 5 execution of such order is prohibited as a matter of law.” 8 U.S.C. § 1252(f)(2) (emphasis added).
 6 The Supreme Court did not agree with the government, explaining that a stay and an injunction
 7 cannot be equated with one another.

8 An injunction and a stay have typically been understood to serve
 9 different purposes. The former is a means by which a court tells
 10 someone what to do or not to do. When a court employs “the
 11 extraordinary remedy of injunction,” it directs the conduct of a
 12 party, and does so with the backing of its full coercive powers.

13 It is true that “[i]n a general sense, every order of a court which
 14 commands or forbids is an injunction; but in its accepted legal sense,
 15 an injunction is a judicial process or mandate operating *in*
 16 *personam*.” This is so whether the injunction is preliminary or
 17 final; in both contexts, the order is directed at someone, and governs
 18 that party’s conduct.

19 By contrast, instead of directing the conduct of a particular actor, a
 20 stay operates upon the judicial proceeding itself. It does so either by
 21 halting or postponing some portion of the proceeding, or by
 22 temporarily divesting an order of enforceability.

23 A stay pending appeal certainly has some functional overlap with an
 24 injunction, particularly a preliminary one. Both can have the
 25 practical effect of preventing some action before the legality of that
 26 action has been conclusively determined. But a stay achieves this
 27 result by temporarily suspending the source of authority to act – the
 28 order or judgment in question – not by directing an actor’s conduct.
 A stay “simply suspend[s] judicial alteration of the status quo,”
 while injunctive relief “grants judicial intervention that has been
 withheld by lower courts.”

29 *Nken*, 556 U.S. at 428-49. Although the instant case concerns § 1252(f)(1), while *Nken*
 30 considered § 1252(f)(2), the point that the *Nken* Court made has force in the case at bar: to wit, an
 31 injunction has a specific legal meaning, and the fact that a different procedural mechanism can
 32 achieve the same result as an injunction does not mean that the two should be deemed the same. A
 33 material distinction still obtains. The fact that the title of Section 1252(f)(1) is a “limit on
 34 *injunctive relief*” (emphasis added) specifically suggests the distinction between an injunction and
 35 a vacatur is material. *Cf. Bhd. of R.R. Trainmen*, 331 U.S. at 529 (noting that “the title of a statute

171a

1 and the heading of a section cannot limit the plain meaning of the text” but they can be of use
 2 “when they shed light on some ambiguous word or phrase”). Moreover, the operative language of
 3 § 1252(f)(1) limiting a court’s authority “to enjoin or restrain” operations tracks Federal Rule of
 4 Civil Procedure 65 which governs preliminary *injunctions* and temporary *restraining* orders. It
 5 does not track §§ 705 and 706(2) of the APA which only grant courts the authority to “set aside”
 6 (*i.e.*, vacate) and “postpone” agency action.

7 Finally, the Court takes note that, under binding Ninth Circuit law, § 1252(f)(1)’s bar on
 8 classwide injunctive relief does not preclude a court from issuing declaratory relief. *See Al Otro*
 9 *Lado v. Exec. Off. for Immigr. Review*, 120 F.4th 606, 625 (9th Cir. 2024) (stating that “§
 10 1252(f)(1) does not ‘bar classwide declaratory relief’”); *see also Kidd v. Mayorkas*, 734 F. Supp.
 11 3d 967, 986 (C.D. Cal. 2024) (stating that “the Court can issue declaratory relief – which is not
 12 precluded by § 1252(f)”; *Immigrant Defenders Law Ctr. v. Mayorkas*, No. CV 20-9893 JGB
 13 (SHKx), 2023 U.S. Dist. LEXIS 75206, at *40 (C.D. Cal. Mar. 15, 2023) (stating that “[t]he best
 14 reading of *Biden v. Texas* and *Aleman Gonzalez* is that district courts like this one retain
 15 jurisdiction to award declaratory relief in immigration class actions”).⁶ Here, Plaintiffs do seek
 16 declaratory relief. *See* Compl., Prayer ¶¶ 1-3; FAC, Prayer ¶¶ 1-3. Thus, if the Court were to
 17 deny Plaintiffs’ motion to postpone based on § 1252(f)(1) – as the government requests – that
 18 would effectively render any declaratory relief moot. The TPS of the 2023 Designation
 19 beneficiaries, if the Secretary’s vacatur is not postponed, will expire in early April 2025, long
 20 before any final judgment ordering declaratory relief could be obtained herein.

21 Accordingly, the Court rejects the government’s contention that § 1252(f)(1) is a bar to
 22 Plaintiffs’ request for relief.

23
 24
 25 ⁶ The Supreme Court has not yet addressed this issue. *See Aleman Gonzalez*, 596 U.S. at 551 n.2
 26 (“At oral argument, the Government suggested that §1252(f)(1) not only bars class-wide
 27 injunctive relief but also prohibits any other form of relief that is ‘practically similar to an
 28 injunction,’ including class-wide declaratory relief. . . . Because only injunctive relief was entered
 here, we have no occasion to address this argument.”); *Biden v. Texas*, 597 U.S. at 801 n.4 (“At
 our request, the parties briefed several additional questions regarding the operation of section
 1252(f)(1), namely, whether its limitation on ‘jurisdiction or authority’ is subject to forfeiture and
 whether that limitation extends to other specific remedies, such as declaratory relief and relief
 under section 706 of the APA. We express no view on those questions.”).

1 2. Section 1254a(b)(5)(A)

2 The government argues that, even if § 1252(f)(1) is not a bar to Plaintiffs’ case, there is
3 another jurisdictional hurdle – specifically, § 1254a(b)(5)(A). Section 1254a(b)(5)(A) is part of
4 the TPS statute. It provides that “[t]here is no judicial review of any determination of the Attorney
5 General with respect to the designation, or termination or extension of a designation, of a foreign
6 state under this subsection.” 8 U.S.C. § 1254a(b)(5)(A).

7 In assessing the government’s argument based on § 1254a(b)(5)(A), the Court must first
8 separate out the challenges being made by Plaintiffs in the case at bar. Plaintiffs are contesting (1)
9 Secretary Noem’s decision to vacate the extension of the 2023 Designation and (2) her decision to
10 terminate the 2023 Designation. With respect to (1), Plaintiffs have multiple arguments: (a) the
11 Secretary lacked the inherent authority to vacate the extension; (b) even if she had the authority,
12 the rationale to vacate the extension was arbitrary and capricious; and (c) even if she had the
13 authority, the decision to vacate was motivated at least in part by unconstitutional animus based on
14 race, ethnicity, and/or national origin. With respect to (2), Plaintiffs assert, *inter alia*, that the
15 decision to terminate (like the decision to vacate) was infected by unconstitutional animus.

16 At the hearing, the government explicitly conceded that § 1254a(b)(5)(A) does *not* bar the
17 Court from entertaining Plaintiffs’ contention that the Secretary lacked the inherent authority to
18 vacate the extension of the 2023 Designation. The government acknowledged that whether the
19 Secretary had such authority is purely a matter of statutory construction (*i.e.*, of the TPS statute)
20 and is not a “determination” with respect to a TPS designation, termination, or extension.

21 The government, however, contends that § 1254a(b)(5)(A) bars the other claims asserted
22 by Plaintiffs (*i.e.*, whether the vacatur was arbitrary and capricious and/or whether the vacatur or
23 termination was unconstitutionally motivated). The Court does not agree. The Court previously
24 addressed the scope of § 1254a(b)(5)(A) in *Ramos v. Nielsen*, 321 F. Supp. 3d 1083 (N.D. Cal.
25 2018), another case that involved TPS terminations but during the first Trump administration.
26 When *Ramos* was appealed, the Ninth Circuit panel also addressed the scope of § 1254a(b)(5)(A),
27 *see Ramos v. Wolf*, 975 F.3d 872 (9th Cir. 2020). However, the panel decision was later vacated
28 so that the matter could be reheard en banc. *See Ramos v. Wolf*, 59 F.4th 1010 (9th Cir. 2023).

173a

1 Ultimately, the en banc hearing did not take place because the government, having transitioned to
 2 the Biden administration, made new decisions regarding the TPS designations and terminations at
 3 issue. *See Ramos v. Nielsen*, 709 F. Supp. 3d 871, 876 (N.D. Cal. 2023) (reviewing history of
 4 proceedings).

5 Because the *Ramos* panel decision was vacated and no en banc ruling ever issued, this
 6 Court’s decision in *Ramos* has not been overturned. Moreover, although the Ninth Circuit panel in
 7 *Ramos* ultimately held that § 1254a(b)(5)(A) did bar Plaintiffs from proceeding based on the
 8 particular nature of the claims asserted, the panel basically agreed with this Court that the scope of
 9 § 1254a(b)(5)(A)’s bar on judicial review was limited to “inquiring into the underlying
 10 considerations and reasoning employed by the Secretary in reach her country-specific TPS
 11 determinations.” *Ramos*, 975 F.3d at 891. It does not apply to, *e.g.*, a pattern or practice that is
 12 “collateral to and distinct from the specific [country] TPS decisions and their underlying
 13 rationale.”⁷ *Id.* at 891-92.

14 Given these circumstances, the Court adheres to its prior views on the scope of §
 15 1254a(b)(5)(A). Nothing in the government’s papers or oral arguments presented in the case at
 16 bar persuade the Court that § 1252a(b)(5)(A) should be construed differently.⁸ Thus, here, the
 17 government’s argument that § 1254a(b)(5)(A) is a jurisdictional bar lacks merit for several
 18 reasons.

19 a. Presumption of Judicial Review

20 First, as noted above, there is a “strong presumption . . . that the actions of federal agencies
 21 are reviewable in federal court,” *KOLA*, 882 F.2d at 363, and “only upon a showing of ‘clear and
 22 convincing evidence’ of a contrary legislative intent should the courts restrict access to judicial
 23

24 ⁷ In her dissent in *Ramos*, Judge Christen agreed that § 1254a(b)(5)(A) “bars review of TPS
 25 determinations only, not collateral challenges,” *Ramos*, 975 F.3d at 911, but she disagreed with the
 majority that the plaintiffs’ claims constituted direct challenges instead of collateral ones.

26 ⁸ For example, the government argues that, because § 1254a(b)(5)(A) refers to “any
 27 determination” and “any” is a word with an expansive meaning, *see* Opp’n at 12 (citing *Patel v.*
 28 *Garland*, 596 U.S. 328, 338 (2022)), § 1254a(b)(5)(A) must be construed broadly. But the word
 “any” cannot overcome the fact that, as discussed below, § 1254a(b)(5)(A) refers to “any
 determination . . . with respect to the designation, or termination or extension of a designation.” 8
 U.S.C. § 1254a(b)(5)(A). The key is what constitutes “determination.”

174a

1 review.” *Abbott Labs.*, 387 U.S. at 141.

2 b. Applicability to Plaintiffs’ APA Claim

3 Second, Plaintiffs’ claim that the Secretary’s decision to vacate was arbitrary and
4 capricious does not fall within the scope of § 1254a(b)(5)(A) because the statute bars judicial
5 review of determinations made with respect to TPS designations, terminations, or extensions only.
6 A decision to vacate (a matter not expressly authorized by the TPS statute) is, literally and
7 textually, not a “designation, or termination or extension of a designation, of a foreign state under
8 this subsection.” 5 U.S.C. § 1254a(b)(5)(A).

9 Furthermore, as the Court held in *Ramos*, § 1254a(b)(5)(A) was designed to bar judicial
10 review of substantive country-specific conditions in service of TPS designations, terminations, or
11 extensions of a foreign state – not judicial review of general procedures or collateral practices
12 related to such. *See Ramos*, 321 F. Supp. 3d at 1102 (taking note of Supreme Court cases holding
13 that “similar statutes which preclude review of a ‘determination’ of immigration status did not
14 preclude review of collateral practices and policies”; citing, *e.g.*, *McNary v. Haitian Refugee Ctr.,*
15 *Inc.*, 498 U.S. 479 (1991) (individual denials on the merits were not challenged but rather the
16 process under which denials were determined)). This holding is consistent with the panel decision
17 in *Ramos*. *See Ramos*, 975 F.3d at 891-92 (“[A court] may still have jurisdiction over a broad
18 challenge to the agency’s procedures or practices. To the extent a claim purports to challenge an
19 agency pattern or practice rather than a specific TPS determination, we may review it only if the
20 challenged pattern or practice is indeed collateral to, and distinct from, the specific TPS decisions
21 and their underlying rationale, which the statute shields from judicial scrutiny.”) (internal
22 quotation marks omitted). It is also consistent with the understanding of multiple district courts
23 who have addressed TPS cases. *See, e.g., Saget v. Trump*, 375 F. Supp. 3d 280, 330-32 (E.D.N.Y.
24 2019) (stating that “the jurisdiction-stripping provision proscribes only direct review of individual
25 TPS determinations” but does not block challenges based on deficiencies in the process employed
26 to terminate TPS); *CASA de Md., Inc. v. Trump*, 355 F. Supp. 3d 307, 317-21 (D. Md. 2018)
27 (concluding that the TPS jurisdiction-stripping provision “is best read as barring judicial review of
28 the merits of the determination itself, but not whether the determination was made through

175a

1 ‘unconstitutional practices and policies’”; adding that “Plaintiffs’ constitutional and APA claims
2 do not threaten the ‘agency’s primacy over its core statutory function’”); *Centro Presente v.*
3 *United States Dep’t of Homeland Sec.*, 332 F. Supp. 3d 393, 404-09 (D. Mass. 2018) (noting that
4 plaintiffs’ “constitutional and statutory claims [are] frame[d] as challenges to Defendants’ process
5 of adjudication rather than the content of any particular adjudication”).

6 In the case at bar, Plaintiffs’ contention that the decision to vacate was arbitrary or
7 capricious – and thus should be set aside – does not dictate how the Secretary should ultimately
8 rule on a TPS designation, termination, or extension. Indeed, Secretary Noem’s vacatur decision
9 was based purely on procedural concerns (*e.g.*, whether Secretary Mayorkas had taken a “novel
10 approach” or caused confusion) and did not turn, *e.g.*, on country conditions in Venezuela or a
11 concern about U.S. interests. Therefore, Plaintiffs are simply making a collateral challenge, not a
12 direct one, and § 1254a(b)(5)(A) is not implicated.

13 That Plaintiffs’ challenge to the vacatur decision is collateral in nature is underscored by
14 *Mace v. Skinner*, 34 F.3d 854 (9th Cir. 1994), where the Ninth Circuit considered the following
15 factors in determining whether a challenge is direct or collateral: (1) whether the plaintiff’s claims
16 are based on the “merits of his individual situation” or, instead, a “broad challenge to allegedly
17 [improper agency] practices”; (2) whether the administrative record “for a single [decision] would
18 have . . . relevance” to the plaintiff’s claims; and (3) whether the claims raised matters “peculiarly
19 within the agency’s ‘special expertise’” or “an integral part of its ‘institutional competence.’” *Id.*
20 at 859; *see also Ramos*, 975 F.3d at 892 (panel decision) (considering the above factors); *id.* at
21 912-13 (Christen, J., dissenting) (same). *City of Rialto v. West Coast Loading Corp.*, 581 F.3d
22 865 (9th Cir. 2009), added a fourth consideration: whether there is another forum where a
23 plaintiff’s claim may be heard. *See id.* at 874 (taking note that, in a prior decision, “we rejected
24 jurisdiction over the plaintiffs’ claim in part because we held that the claim ‘can be effectively
25 advanced in the context of an appeal from an individual order of deportation’”); *see also Ramos*,
26 975 F.3d at 913 (stating that “*City of Rialto* teaches that we must consider whether another forum
27 exists where plaintiffs’ claim may be heard”).

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176a

1 In the case at bar, the first factor points to a collateral challenge for the reasons stated
2 above. The second factor also weighs in favor of a collateral challenge; for instance, whether
3 Secretary Mayorkas had taken a “novel approach,” as claimed by Secretary Noem when she
4 vacated the extension, will likely require consideration of matters outside the administrative
5 record. The same is true for the third factor – *e.g.*, whether Secretary Mayorkas’s decision
6 engendered confusion was not something particularly within DHS’s expertise. Finally, there does
7 not appear to be any other forum where Secretary Noem’s decision to vacate could be challenged.
8 *Cf. Ramos*, 975 F.3d at 894 (panel decision) (“recogniz[ing] that Plaintiffs cannot raise their APA
9 challenge in another forum or at a different stage in the proceedings”); *id.* at 913 (Christen, J.,
10 dissenting) (noting that “[t]he TPS statute includes an administrative review process for
11 challenging denials of individual noncitizen TPS applications, but it does not include a path for
12 challenging the termination of a foreign state’s TPS designation”).

13 The Court, therefore, holds that § 1254a(b)(5)(A) does not bar judicial review of Plaintiffs’
14 challenge to the Secretary’s decision to vacate.

15 c. Applicability to Plaintiffs’ Equal Protection Claim

16 Finally, § 1254a(b)(5)(A) does not preclude judicial review of Plaintiffs’ separate claim for
17 violation of equal protection, whether based on the decision to vacate or the decision to terminate.
18 “The presumption in favor of judicial review [of agency action] is particularly important in regards
19 to constitutional claims.” *CASA de Md.*, 355 F. Supp. 3d at 317. Here, “there is no ‘clear and
20 convincing’ evidence that Congress intended to preclude the Court from reviewing constitutional
21 challenges of the nature alleged. Indeed, as Plaintiffs point out, where Congress otherwise
22 intended to preclude review of all constitutional claims in the INA, it said so explicitly.” *Ramos*,
23 321 F. Supp. 3d at 1105. As above, the panel decision in *Ramos* is in accord. *See Ramos*, 975
24 F.3d at 895 (entertaining the equal protection claim on the merits – *i.e.*, not applying a
25 jurisdictional bar under § 1254a(b)(5)(A)). It is also notable that the APA expressly provides that
26 agency action shall be set aside if unconstitutional. *See* 5 U.S.C. § 706(2)(B) (providing that a
27 court shall “hold unlawful and set aside agency action . . . found to be . . . contrary to
28 constitutional right, power, privilege, or immunity”).

177a

1 The Court, therefore, rejects the government’s contention that jurisdiction is lacking based
2 on § 1254a(b)(5)(A) for both Plaintiffs’ APA claim and their equal protection claim.

3 B. Section 705 of the APA

4 According to the government, even if there is no jurisdictional bar to Plaintiffs’ suit, § 705
5 of the APA still cannot provide them with any relief because the statute “by its own terms does not
6 authorize relief [where] the challenged actions *have already taken effect*.” Opp’n at 9 (emphasis
7 added). The government’s position here seems to be that, because the Secretary’s vacatur decision
8 took effect *immediately* (as reflected in the Federal Register notice), *see* 90 Fed. Reg. at 8807
9 (stating that “[t]he vacatur is effective immediately”), it is impossible to postpone the effective
10 date of the vacatur pursuant to § 705. *See* 5 U.S.C. § 705 (providing that “the reviewing court . . .
11 may issue all necessary and appropriate process to postpone the effective date of an agency action
12 or to preserve status or rights pending conclusion of the review proceedings”).

13 There are several problems with the government’s position.

14 First, although Plaintiffs may technically be asking for postponement of the effective date
15 of the vacatur decision (which enabled the termination decision), what they are ultimately seeking
16 is postponement of the *impact* of the vacatur decision – *i.e.*, the actual termination of the 2023
17 TPS Designation. As the actual termination of the 2023 Designation has not yet gone into effect,
18 since the challenged actions have yet not changed the status of TPS beneficiaries, Plaintiffs should
19 be able to seek postponement.⁹

20 Second, the government’s reliance on *Center for Biological Diversity v. Regan*, 597 F.
21 Supp. 3d 173 (D.D.C. 2022), in support of its position is flawed because that case focused on
22 when an *agency* – and not a *court* – can postpone agency action (*i.e.*, pending judicial review).
23 *See id.* at 204 (“The D.C. Circuit has declared – albeit in a non-precedential order – that Section
24 705 ‘permits an *agency* to postpone the effective date of a not yet effective rule, pending judicial
25 review,’ but ‘it does not permit the agency to suspend without notice and comment a promulgated
26

27 ⁹ Ironically, at the hearing, the government argued that Secretary Noem had the authority to
28 reconsider the extension of the 2023 Designation because that extension had not yet gone into
effect.

178a

1 rule.”) (emphasis added). To be sure, § 705 of the APA does address both postponement by an
 2 agency and postponement by a court.¹⁰ However, that does not mean that postponement by an
 3 agency and postponement by a court are treated the same under §705.

4 The district court in *Texas v. Biden*, 646 F. Supp. 3d 753 (N.D. Tex. 2022), made this very
 5 point.¹¹ In *Texas v. Biden*, as here, the government argued that “Section 705 may only remedy an
 6 agency action that has *yet* to take effect.” *Id.* at 769 (emphasis added). The court disagreed,
 7 stating that “[w]hether the effective date of the [DHS’s] October 29 Memoranda [which
 8 terminated an immigration program] has passed is irrelevant to this *Court’s* ability to issue a
 9 Section 705 stay. Courts – including the Supreme Court – routinely stay *already-effective* agency
 10 action under Section 705.” *Id.* at 770 (emphasis added).

11 The *Texas v. Biden* court pointed out that

12 [t]he cases Defendants cite [including *Center for Biological*
 13 *Diversity*] preclude *agencies* – not *courts* – from staying the
 14 effective date of agency actions after the effective date. [This was
 15 reasonable because] [a]uthorizing an agency to stay an already-taken
 16 action would allow the agency to evade notice-and-comment
 17 requirements. An agency’s “order delaying [a] rule’s effective date .
 18 . . [is] tantamount to amending or revoking a rule.” The APA
 19 “mandate[s] that agencies use the same procedures when they
 20 amend or repeal a rule as they used to issue the rule in the first
 21 instance.” This includes the general requirement that rules be
 22 subject to notice-and-comment procedures.

23 The limitation on agencies contrasts with courts’ inherent authority
 24 to stay agency action to facilitate judicial review.

25 _____
 26 ¹⁰ As stated above, the full text of § 705 is as follows:

27 When an agency finds that justice so requires, it may postpone the
 28 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.

29 5 U.S.C. § 705.

¹¹ The case was ultimately appealed the Supreme Court, *see Biden v. Texas*, 597 U.S. at 785, but
 the matter at issue here was not presented as part of the appeal.

1 *Id.* at 770-71 (emphasis added). *See, e.g., GB Int’l, Inc. v. Crandall*, No. 19-35866, 2020 U.S.
 2 App. LEXIS 20008, at *1 (9th Cir. June 25, 2020) (“The renewed motion to postpone the effective
 3 date of agency action is granted. *See* 5 U.S.C. § 705. The effective date of the USCIS’ denial of
 4 appellants’ adjustment of status applications is postponed pending resolution of this appeal.”).

5 Finally, the government gives short shrift to the fact,

6 [w]hereas an agency may only “postpone the effective date of action
 7 taken by it, pending judicial review,” a federal court has broader
 8 power to “issue all necessary and appropriate process to postpone
 9 the effective date of an agency action *or to preserve status or rights*
 10 *pending conclusion of the review proceedings.*” 5 U.S.C. § 705
 (emphasis added). The greater limitation on agencies exists because
 “agencies are creatures of statute” and, thus, “possess only the
 authority that Congress has provided.”

11 *Id.* at 770 (emphasis in original). In its opposition, the government contends that the latter
 12 provision still cannot save Plaintiffs’ case because “[a]n order staying a policy after it has already
 13 gone into effect . . . does not preserve the status quo, but rather, *alters* it.” Opp’n at 10 (emphasis
 14 in original). This argument, however, is without merit because, traditionally, “[t]he ‘status quo’ to
 15 be restored is ‘the last peaceable uncontested status existing between the parties *before* the dispute
 16 developed.’” *Texas v. Biden*, 646 F. Supp. 3d at 771 (emphasis added); *cf. Boardman v. Pac.*
 17 *Seafood Grp.*, 822 F.3d 1011, 1024 (9th Cir. 2061) (stating that “[t]he ‘purpose of a preliminary
 18 injunction is to preserve the status quo ante litem pending a determination of the action on the
 19 merits,’” and “[s]tatus quo ante litem’ refers to ‘the last uncontested status which *preceded* the
 20 pending controversy’”) (emphasis added). Here, the last uncontested status that preceded the
 21 pending controversy was the state of the TPS designations at the time Secretary Mayorkas
 22 extended the 2023 Designation in January 2025 – *i.e., before* Secretary Noem took the contested
 23 action of vacating the extension and then terminated the 2023 Designation.

24 C. Section 705 Factors in Determining Postponement

25 Having addressed the government’s procedural challenges to Plaintiffs’ motion to
 26 postpone, the Court may now turn to the merits of the motion. The factors considered in
 27 determining whether to postpone pursuant to § 705 “substantially overlap with the . . . factors for
 28 a preliminary injunction.” *Immigrant Legal Res. Ctr. v. Wolf*, 491 F. Supp. 3d 520, 529 (N.D.

180a

1 Cal. 2020); *see also Colorado v. United States EPA*, 989 F.3d 874, 883 (10th Cir. 2021) (stating
 2 that the preliminary injunction “factors also determine when a court should grant a stay of agency
 3 action under section 705 of the APA”); *Cook Cnty. v. Wolf*, 962 F.3d 208, 221 (7th Cir. 2020)
 4 (stating that the standard for a stay under § 705 is “the same” as the standard for a preliminary
 5 injunction).

6 The Ninth Circuit has explained the standard for a preliminary injunction as follows:

7 A party seeking a preliminary injunction must meet one of two
 8 variants of the same standard. Under the original *Winter* standard, a
 9 party must show “that he is likely to succeed on the merits, that he is
 10 likely to suffer irreparable harm in the absence of preliminary relief,
 11 that the balance of equities tips in his favor, and that an injunction is
 12 in the public interest.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 20, 129 S.
 13 Ct. 365, 172 L. Ed. 2d 249 (2008). Under the “sliding scale” variant
 14 of the *Winter* standard, “if a plaintiff can only show that there are
 15 ‘serious questions going to the merits’ – a lesser showing than
 16 likelihood of success on the merits – then a preliminary injunction
 17 may still issue if the ‘balance of hardships tips sharply in the
 18 plaintiff’s favor,’ and the other two *Winter* factors are satisfied.”

19 *All. for the Wild Rockies v. Pena*, 865 F.3d 1211, 1217 (9th Cir. 2017). Neither party disputed that
 20 this framework would also apply to a motion brought pursuant to § 705 of the APA.

21 1. Irreparable Injury

22 The Court considers first the factor of irreparable injury. Irreparable injury is particularly
 23 important as § 705 explicitly invokes it as a basis to issue relief. Plaintiffs have submitted a
 24 number of declarations establishing that, without postponement of the agency actions, TPS
 25 beneficiaries will suffer irreparable injury. The declarations have been submitted by, *e.g.*, TPS
 26 holders (including the named Plaintiffs), experts, and leaders of community organizations.

27 The declarations reflect that TPS beneficiaries feel stuck between a rock and a hard place
 28 because of DHS’s actions. Absent relief from the Court, TPS beneficiaries will no longer have
 authorization to work in the United States and thus will lose their jobs – which in turn imperils
 their livelihoods, housing, and health care. Absent relief from the Court, they will no longer have
 legal status, which means not only loss of, *e.g.*, driver’s licenses and educational opportunities, but
 also – and most significantly – the prospect of removal from the United States.

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181a

1 Removal is a concrete reality because, for many TPS holders, TPS is their only avenue for
 2 legal status in the United States. For example, those with asylum cases have been waiting for
 3 years for their adjudications. *See* Watson & Veuger Decl. ¶ 11 (Senior Fellow at the Brookings
 4 Institution in Economic Studies and Senior Fellow in economic policy studies at American
 5 Enterprise Institute) (testifying that, “[a]s of 2024[,] it was estimated that 132,272 Venezuelans
 6 had filed asylum cases which had not yet been adjudicated, consistent with the well-documented
 7 backlogs in the immigration system”). Even if an individual could obtain asylum – or even parole
 8 – these legal mechanisms do not provide the same protections as TPS. *See* Tolchin Decl. ¶ 11
 9 (immigration attorney) (testifying that, “[a]lthough many Venezuelan TPS holders may . . . be
 10 eligible for protection from removal and work authorization through other avenues [*e.g.*, asylum
 11 and parole], only a small minority will actually receive relief, and it is very likely that many
 12 Venezuelans TPS holders would *not* be protected to the same degree by any other statute”)
 13 (emphasis in original).

14 Removal presents significant hardship for several reasons. First, removal would mean
 15 separation from family, friends, and communities. *See* *Washington v. Trump*, 847 F.3d 1151,
 16 1168-69 (9th Cir. 2017) (recognizing the separation of families as “substantial injuries and even
 17 irreparable harms”).¹² Some TPS holders have been in the United States for years; some TPS
 18 holders who are children have known or remembered only the United States as their home. *See*,
 19 *e.g.*, M.R. Decl. ¶¶ 3, 7, 18 (arrived in 2015 with her then two-year-old daughter, both of whom
 20

21 ¹² In *Washington v. Trump*, the district court temporarily enjoined an executive order that banned
 22 entry into the United States of individuals from seven countries. The government moved for an
 23 emergency stay of the district court decision pending appeal. In evaluating, *inter alia*, the balance
 of hardships and the public interest, the Ninth Circuit noted:

24 the States have offered ample evidence that if the Executive Order
 25 were reinstated even temporarily, it would substantially injure the
 States and multiple “other parties interested in the proceeding.”
 26 When the Executive Order was in effect, the States contend that the
 travel prohibitions harmed the States’ university employees and
 students, separated families, and stranded the States’ residents
 27 abroad. These are substantial injuries and even irreparable harms.

28 *Washington v. Trump*, 847 F.3d at 1168-69.

182a

1 have TPS). Furthermore, separation is particularly complicated because many TPS holders live in
 2 mixed-status families – *i.e.*, some family members, including partners and/or some children, are
 3 U.S. citizens. *See* Docket No. 62 (Amicus Br. at 4) (noting that, “[i]n 2022, approximately 54,000
 4 U.S. citizen children and 80,000 U.S. citizen adults lived with a Venezuelan TPS holder”).
 5 Decisions, therefore, would have to be made about whether families should stay together or split
 6 apart. Decisions would also have to be made how to provide for families in either scenario, both
 7 in terms of economic and emotional support. *Cf.* Docket No. 62 (Amicus Br. at 6) (noting that
 8 “parental deportation is a deeply traumatic and disruptive event, linked to extreme psychological
 9 distress, anxiety, depression, post-traumatic stress disorder (PTSD), externalizing behaviors (such
 10 as aggression), and difficulties sleeping”).

11 Second, removal presents a great deal of uncertainty because it is not clear where TPS
 12 holders stripped of their legal status in the United States can go. Removal could mean a return to
 13 Venezuela which has been in the throes of a political and economic crisis for years, *see, e.g.*,
 14 Young Decl. ¶¶ 3, 13-18 (opining that “the political and economic crisis that Venezuela has been
 15 experiencing for the last decade continues to this day”; discussing, *inter alia*, political repression
 16 in Venezuela throughout the Hugo Chávez and Nicolás Maduro regimes, fraudulent election in
 17 July 2024, and mismanaged economy and U.S. economic sanctions that have left over 80% of
 18 Venezuelans in poverty and over 50% in extreme poverty); Watson & Veuger Decl. ¶¶ 8-9
 19 (describing economic crisis that began under Hugo Chávez and worsened under Nicolás Maduro,
 20 Nicolás Maduro’s use of anti-democratic means to maintain power, and fraudulent election in
 21 2024) – **and** which is still classified by the U.S. State Department as a “Level 4: Do Not Travel”
 22 country.¹³ *See*

23 <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/venezuela-travel->
 24 [advisory.html](https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/venezuela-travel-advisory.html) (Venezuela travel advisory reissued in September 2024) (designating Venezuela a
 25 Level 4 country and stating: “Do not travel to Venezuela due to the high risk of wrongful
 26

27 ¹³ The Watson & Veuger Declaration fairly points out that it is not clear how TPS holders could
 28 return to Venezuela given that this would “require cooperation with the Maduro regime,” which
 the United States does not recognize and on which the United States has imposed sanctions.
 Watson & Veuger Decl. ¶ 24.

1 detentions, terrorism, kidnapping, the arbitrary enforcement of local laws, crime, civil unrest, poor
2 health infrastructure”). Removal to a different country is not a readily available option because
3 there is no Venezuelan consulate in the United States where to update or get passports. *See Ferro*
4 *Decl.* ¶ 16 (Executive Director of Venezuelan American Caucus). And even if there were such an
5 option, the prospect of rebuilding in a new place – finding a job, health care, basic necessities – is
6 no easy task.

7 The declarations detailing hardships are compelling. For example, Plaintiff M.H. and her
8 seven-year-old daughter are TPS beneficiaries from Venezuela. *See M.H. Decl.* ¶ 2. TPS is their
9 only form of legal status because of long waits and delays in the asylum and green card processes.
10 *See id.* ¶¶ 11-16. M.H.’s Venezuelan passport is expired, and she has no way to renew it because
11 the U.S. severed diplomatic relations with Venezuela, so she cannot travel to another country. *See*
12 *id.* ¶ 24. Her husband and two-year-old son are U.S. citizens. *See id.* ¶ 2. M.H. left Venezuela
13 because of political repression for working with an opposition party, including facing a warrant for
14 her arrest. *See id.* ¶¶ 5, 6. Currently, the family lives in Tennessee, where M.H. cares for the
15 children full-time and volunteers at a local health clinic, while her husband works a full-time job
16 to provide for the family and is gone all day at work. *See id.* ¶ 7. Both roles require M.H. to have
17 a driver’s license (which is dependent on her having legal status) to drive her severely asthmatic
18 son to the hospital, her daughter to school, and herself to the clinic to volunteer. *See id.* ¶¶ 7, 8.
19 The son requires M.H.’s daily care because of the risk of asthma attacks. *See id.* ¶ 18. Her family
20 in Venezuela tells her about the ongoing political and economic crisis in the country, including
21 facing shortages of basic necessities and water and power shut offs. *See id.* ¶ 10. These family
22 members rely on remittances from M.H. to survive. *See id.* Without postponement, the DHS
23 actions would result in her TPS expiring on April 7, 2025. *See id.* ¶ 2. This prospect has brought
24 M.H. fear and sadness of being separated from her family and traumatizing her children. *See id.*
25 ¶¶ 19-23. M.H. would lose her driver’s license, crucial to her caring for her son’s asthma attacks.
26 *See id.* ¶ 18. If removed to Venezuela with her daughter, she fears political persecution, hunger,
27 and facing a lack of housing, healthcare, and basic goods. *See id.* ¶¶ 19-23. The family would be
28 forced to make the difficult decision of separating or all moving to Venezuela, a country that lacks

1 the medical infrastructure to meet the son's needs. *See id.* If the husband remains in the United
2 States, he will have to leave his job to care for the son, leaving both sides of the family without
3 income and health insurance. *See id.*

4 Plaintiff Freddy Jose Arape Rivas has lived in the U.S. since January 2023 and registered
5 for TPS pursuant to the 2023 Designation. *See Rivas Decl.* ¶ 2. TPS is his sole legal authorization
6 to remain and work in the U.S. *See id.* ¶ 14. In Venezuela, he studied computer science in college
7 but was forced to flee Venezuela due to repression for supporting the opposition party and
8 inability to obtain necessities. *See id.* ¶¶ 5-7. In the United States, he has worked an IT job for an
9 energy and technology company in Texas, and the company is so pleased with his performance
10 that that they sponsored him for an H1B visa application, which is still pending. *See id.* ¶ 8. He
11 has filed a tax return for each year he has lived in the U.S. *See id.* ¶ 9. He is the sole source of
12 economic support for his parents, who have chronic health conditions, and other family members
13 still in Venezuela. *See id.* ¶ 10. Based on the extension of the 2023 Designation (in January
14 2025), he renewed his lease for his house and extended his employment. *See id.* ¶ 11. Without
15 TPS, Mr. Rivas would lose his job, home, and driver's license; live under constant fear of
16 deportation, particularly to Venezuela where he could be tortured for his prior political opposition;
17 and would no longer be able to provide for his parents and family in Venezuela, including paying
18 for life-saving medications. *Id.* ¶¶ 15-17, 19. Mr. Rivas also has many family members in Texas
19 who are TPS holders themselves, including a cousin who works at a hospital and has a seven-year-
20 old child protected by TPS and two young U.S.-born children. For the child who has TPS, the
21 United States is the only country she remembers. *See id.* ¶ 13.

22 Plaintiff Cecilia Daniela González Herrera has lived her entire adult life in the U.S. and
23 relies on TPS for legal status because her family's asylum application has been pending for eight
24 years. *See Gonzalez Herrera Decl.* ¶ 2. She and her parents fled political persecution in
25 Venezuela in 2017. *See id.* ¶¶ 4-6. She attends university and works as a voting rights advocacy
26 coordinator. *See id.* ¶ 9. TPS allows her to pay in-state tuition and be eligible for scholarships;
27 without TPS, she would likely be forced to abandon her studies. *See id.* ¶ 10. Ms. Herrera feels
28 scared to go outside for fear of being racially profiled and detained by ICE, and a decline in

185a

1 mental health has caused an inability to focus on schoolwork. *See id.* ¶¶ 14-16. She has no family
2 or home in Venezuela and fears returning to Venezuela and facing violence or harm from the
3 government. *See id.* ¶ 17.

4 The Executive Director of the Venezuelan American Caucus takes note of even more
5 hardships faced by numerous Venezuelan TPS holders to whom she has spoken:

6 small business owners unsure whether to sell their businesses or
7 close their doors; employees who will lose their employment
8 authorization, and their livelihood, in a matter of weeks; students
9 fearful of the loss of financial aid which guarantees their ability to
10 pursue their education; individuals terrified that they will be
11 deported without this essential legal status, and trying to determine
12 whether to stay or flee to avoid this outcome; business owners with
13 employees unsure whether to lay them off in preparation for closure;
14 Venezuelans who have taken out significant loans from banks to
15 start businesses or buy homes and properties, now unable to sleep at
16 night, wondering what to do and how to resolve these matters; and
17 Venezuelans who honestly know they have no grounds to apply for
18 political asylum, and who, wanting to do things the right way, have
19 turned to TPS while they wait for a real solution to the political and
20 humanitarian crisis caused by the dictatorship of Nicolás Maduro,
21 especially after the largest electoral fraud ever perpetrated in the
22 region in July 2024.

23 Ferro Decl. ¶ 13.

24 Notably, the government offers no evidence to counter Plaintiffs' showing of irreparable
25 injury. The government conceded at the hearing that it had no counter-evidence and no basis to
26 doubt the bona fides of the factual declarations filed herein. Its main assertion at the hearing was
27 that most of these facts are not relevant, an assertion the Court rejects. They are indeed relevant to
28 the issue of irreparable injury, the public interest, and the balance of hardships.

At best, the government makes a passing claim that conditions have improved in
Venezuela, *see* 90 Fed. Reg. at 9042 (in decision to terminate the 2023 Designation, stating that
there was "consultation with the Department of the State," that conditions in Venezuela were
reviewed, and that "[o]verall, certain conditions for the 2023 TPS designation of Venezuela may
continue; however, 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"), but

186a

1 there is no evidence – not even a country conditions report – to support that claim.¹⁴ The claim is
 2 also squarely contradicted by the expert declarations submitted by Plaintiffs, *see, e.g.*, Young
 3 Decl. ¶ 3 (opining that “the political and economic crisis that Venezuela has been experiencing for
 4 the last decade continues to this day”), and the U.S. State Department’s classification of
 5 Venezuela as a “Level 4: Do Not Travel” country because of its dangerous conditions.

6 The government also tenders a legal argument – to wit, that the harms identified by
 7 Plaintiffs are not cognizable because they are inherent to the temporary nature of TPS. *See* Opp’n
 8 at 22-23 (arguing that, “[w]hile Plaintiffs heavily focus on the burden that TPS beneficiaries will
 9 face should the termination be permitted to go into effect, the underlying cause of this harm flows
 10 from the statute (‘temporary’ protected status) itself” – *i.e.*, “the alleged harms would exist with or
 11 without the termination at issue” because “a country’s TPS designation must be reviewed at least
 12 every 18 months, and there is no guarantee of renewal”). The Court previously rejected this
 13 argument in *Ramos*, *see Ramos*, 336 F. Supp. 3d at 1087 (noting that, “[a]lthough the TPS
 14 program is temporary in nature, that does not mean that Plaintiffs’ injuries claimed herein are the
 15 purely result of the temporary nature of the program as opposed to the government’s actions”), and
 16 it fares no better here. Although the TPS designations for Venezuela are only temporary, they still
 17 afford TPS holders with concrete, meaningful relief: for a fixed period of time, TPS holders have
 18 both the right to work and the right to be free from removal, which give not only stability but also
 19 security in their lives and time with their families otherwise threatened by Secretary Noem’s
 20 actions. In short, time matters, even if that time is limited. Certainly, anyone who, for instance,
 21 has experienced the loss of a loved one to a terminal illness understands the preciousness of time,
 22 even if short.¹⁵

23 _____
 24 ¹⁴ To be clear, the government represents that Secretary Noem found there to be improvements
 25 after examining DHS’s “review of country conditions,” Opp’n at 6, but no country conditions
 26 report has been provided to the Court in conjunction with the pending motion. To the extent the
 27 government suggested at the hearing that Secretary Mayorkas found improved conditions when he
 28 extended the 2023 Designation, that is not accurate. The Federal Register notice for the extension
 stated: “Recently, Venezuela’s economy has shown some signs of recovery; however, it is still in a
 precarious condition.” 88 Fed. Reg. at 68133.

¹⁵ At the hearing, Plaintiffs also pointed out that time matters in practical terms because some TPS
 holders have, *e.g.*, asylum applications pending which would provide for longer-term relief. It is

187a

1 Faced with the above, the government’s remaining argument is that the interests of TPS
 2 holders are outweighed by other interests – in particular, the public interest in national security.
 3 The public interest factor is addressed below. To the extent the government argues the Secretary
 4 has an interest in having her actions enforced, that would only be if her actions were lawful. As
 5 discussed below, the Plaintiffs have made a showing that the Secretary has acted unlawfully.

6 2. Public Interest

7 Contrary to what the government argues, the public interest weighs in favor of, not against,
 8 postponement of the agency actions.

9 a. Economic Impacts

10 As reflected in the declarations submitted by Plaintiffs and the two Amici briefs
 11 (representing the views of a number of states, cities, and counties), Venezuelan TPS holders are
 12 integrated into the U.S. communities in which they live. Many are married to, or are parents of,
 13 U.S. citizens. A great number work – and in diverse settings. *See also* Morten Decl. ¶ 4
 14 (Professor of Economics at Stanford University) (noting that employment rates associated with
 15 TPS holders generally is estimated to be between 81 and 96%); Ferro Decl. ¶ 11 (noting that, “[i]n
 16 the United States, TPS holders work in frontline jobs, hospitality, delivery, customer service,
 17 retail, restaurants, transportation, construction, factories, and manufacturing, among many other
 18 professional fields”).

19 By virtue of their work alone, Venezuelan TPS holders make significant economic
 20 contributions to their communities. For example, if one were to consider only the 360,000
 21 Venezuelans who arrived in the United States between 2021 and 2023 (the two TPS designations
 22 for Venezuela), “there were approximately 195,000 people age 16 and over who had earnings in
 23 the United States in the year before they were interviewed in the [2023 American Community
 24 Survey],” and “[t]heir average earnings were \$17,981 per person. Termination of their TPS status

25
 26 _____
 27 possible that adjudications on such applications could be made during the time TPS holders are
 28 still present in the United States, *i.e.*, if the Court postpones the agency actions pending judicial
 review. Removal before the application is acted upon could impact the application, if only as a
 practical matter.

188a

1 would result in an estimated 3.5 billion dollar annual loss to the U.S. economy, and an annual loss
 2 of 434.8 million dollars in Social Security taxes.” Card Decl. ¶ 9(i) (emphasis omitted); *cf.*
 3 Watson & Veuger Decl. ¶ 20 (“Economists largely agree that immigration is good for the U.S.
 4 economy overall, promoting GDP growth and if anything raising wages for the average U.S. born
 5 worker.”). If one were to consider the additional 320,000 Venezuelans who were present in the
 6 United States in 2023 and who arrived in the country between 2013 (when Nicolás Maduro
 7 assumed power) and 2020, there were approximately 230,000 people age 16 and over who had
 8 earnings in the United States, and

9 [t]heir average earnings were \$37,161 per person. Assuming a
 10 fraction x of this group would lose TPS status as a result of the
 11 proposed termination, there would be an estimated 8.55 x billion
 12 dollar[] annual loss to the U.S. economy, and an annual loss of
 1.06 x billion dollars in Social Security taxes.

12 Card Decl. ¶ 9(ii).¹⁶

13 The two Amici briefs underscore the economic contributions made by TPS holders
 14 generally, and Venezuelan TPS holders specifically, because they work, spend, and pay taxes.
 15 *See, e.g.*, Docket No. 62 (Amici Br. at 8) (“California TPS households earned \$2.1 billion in
 16 income, paid \$291.2 million in federal taxes, \$226.5 million in state and local taxes, and
 17 contributed \$1.6 billion in spending power. In New York, TPS households earned \$2.3 billion in
 18 income, paid \$348.9 million in federal taxes, \$305.5 million in state and local taxes, and also
 19 contributed \$1.6 billion in spending power. Moreover, at least 41 percent of TPS households are
 20 homeowners and pay taxes on property having a total value of approximately \$19 billion.”);
 21 Docket No. 71 (Amici Br. at 6) (“It is . . . reasonable to estimate that the 344,335 Venezuelans
 22 with approved TPS in 2024 had spending power of approximately \$8 billion, if not more given
 23 their higher participation in the work force and higher percentage of educational attainment
 24 relative to other populations.”).

25 ///

26 _____
 27 ¹⁶ In his declaration, Professor Card also explains that Venezuelan TPS holders who work do not
 28 pose a “significant threat to the labor market opportunities of native workers” (*i.e.*, because they
 “have about the same education as natives” do). Card Decl. ¶ 9(iv).

1 The evidence above on the economic contributions of Venezuelan TPS holders is
2 consistent with evidence that Venezuelan TPS holders have a relatively high level of educational
3 attainment and receive only modest public assistance benefits. *See* Card Decl. ¶ 9(iv) (noting that,
4 with respect to 366,000 Venezuelans who arrived in the United States between 2021 and 2023,
5 40% have bachelor’s degrees and that, with respect to 320,000 additional Venezuelans who
6 arrived between 2013 and 2020, 54% have bachelor’s degrees); Card Decl. ¶ 9(vi) (testifying that
7 Venezuelans who arrived in the United States between 2021 and 2023 “received an average of
8 \$56.9 in public assistance payments over the previous 12 months” and, “[o]n average, over 96% of
9 their personal income was attributable to their own earnings”).

10 If TPS holders from Venezuela lose their work authorization under the TPS program, there
11 would be additional economic impacts on the United States and the communities where the TPS
12 holders currently live. The cost to companies to replace laid-off TPS employees could be as high
13 as \$1.3 billion, *see* Morten Decl. ¶ 7(a) (citing in support a 2017 report from the Immigration
14 Legal Resource Center), and “[e]nding TPS would also impose costs on the government due to
15 deportation expenses. . . . Deporting approximately 350,000 Venezuelan TPS holders could . . .
16 cost taxpayers an estimated \$4.8 billion.” Morten Decl. ¶ 7(b). Moreover, if TPS holders no
17 longer have jobs, they or their families may need to seek public assistance. *See* Watson & Veuger
18 Decl. ¶ 27 (“Terminating TPS will increase, not decrease, the burden on localities by preventing
19 TPS holders from working in the formal sector, thus increasing the number of people needing
20 assistance (*e.g.*, the U.S.-citizen children of deported TPS holders and TPS holders who lose their
21 work permit but are not yet removed).”). Without jobs, TPS holders and their families would also
22 lose employer-sponsored health insurance, which would likely increase health care expenditures
23 for local governments. *See* Docket No. 62 (Amici Br. at 9) (explaining that health care
24 expenditures for Amici States would increase “both by increasing the proportion of Venezuelan
25 immigrants who are on public health insurance . . . and by increasing public expenditures on
26 emergency care provided to uninsured patients”).

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190a

1 b. Public Safety

2 Termination of the Venezuelan TPS designations would also have more than just an
3 economic impact on the United States and the local communities where TPS holders live. Public
4 safety would also be implicated. Fears of detention and deportation cause undocumented
5 immigrants to forego medical care, such as diagnostic testing and vaccinations, which increases
6 health risks to the broader community. *See, e.g.,* Watson & Veuger Decl. ¶ 16 (stating that public
7 health would suffer from terminating TPS for Venezuelans because immigrants without legal
8 status forego healthcare for fear of being apprehended at medical facilities); Docket No. 62 (Amici
9 Br. at 10-11). In addition, immigrants without legal status are less likely to report crimes or testify
10 in court, reducing public safety and making effective law enforcement more difficult. *See* Docket
11 No. 62 (Amici Br. at 12); Docket No. 71 (Amici Br. at 7-8).

12 c. National Security

13 Similar to above, the government has offered no evidence to counter that provided by
14 Plaintiffs and Amici. The government conceded, at the hearing, that they had no counter-
15 evidence.¹⁷ Instead, the government simply contends that the public interest weighs against
16 postponement of the agency actions because of national security interests. But the government’s
17 assertion that Venezuelan TPS holders pose some kind of danger to the country or the
18 communities where they live is entirely unsubstantiated. In fact, an individual must be
19 “admissible as an immigrant,” 8 U.S.C. § 1254a(c)(1)(A)(iii), in order to be eligible for TPS,
20 which means, *inter alia*, they cannot have been convicted of certain crimes (*e.g.*, a crime involving
21 moral turpitude or drugs) or a member of a terrorist organization. *See id.* § 1182(a)(2)-(3). In
22 addition, an individual is expressly deemed ineligible for TPS if they have “been convicted of any
23 felony or 2 or more misdemeanors committed in the United States.” *Id.* § 1254a(c)(2)(B). It is not
24 surprising, therefore, that Amici state and local jurisdictions from across the United States
25 expressly state they have not faced any “crime wave” because of Venezuelan TPS holders. *See*

26 _____
27 ¹⁷ At the hearing, the government appeared to refer to the Federal Register notice for the
28 termination of the 2023 Designation, which stated that “over 180,000 illegal aliens have settled in
New York City, [which will] cost the city [approximately] \$10.6 billion through the summer of
2025.” 90 Fed. Reg. at 9043. But TPS holders are not in the United States illegally.

191a

1 Docket No. 62 (Amici Br. at 13); *see also* Perez Decl. ¶ 7 (noting that “immigrants have had lower
2 incarceration rates than the U.S.-born throughout American history (including lower incarceration
3 rates than U.S. born whites)” and that “immigrants’ relative incarceration rates have actually
4 declined since the 1960s in the U.S.”) (emphasis omitted). The government’s attempt to cast
5 Venezuelan TPS holders as criminals is also in tension with record evidence reflecting that
6 Venezuelan TPS holders are largely employed and have relatively high education levels. It is a
7 form of group defamation.

8 To the extent the government contends that there is a threat from the Venezuelan gang
9 Tren de Aragua (“TdA”), it has made no showing that any Venezuelan TPS holders are members
10 of the gang or otherwise have ties to the gang. In fact, Plaintiffs have submitted evidence that,
11 although the TdA gang is “a powerful criminal organization in Venezuela and some other parts of
12 South America, there is no evidence of a structured or operational presence in the United States.”
13 Dudley Decl. ¶ 16 (Co-Director of InSight Crime). According to the Co-Director of InSight
14 Crime, a think tank that specializes in investigating and analyzing organized crime in the
15 Americas and assessing state efforts to combat these organizations, *see* Dudley Decl. ¶ 4, “local
16 police we have spoken to in the United States have not asserted that [TdA] has any significant
17 criminal operations in the country,” and “[t]he few crimes attributed to alleged [TdA] members in
18 the United States appear to have no connection with the larger group or its leadership in
19 Venezuela.” Dudley Decl. ¶ 16; *see also id.* ¶ 20 (stating that “[i]t is rare – indeed, practically
20 unheard of – for foreign street and prison gangs from Latin America to gain a significant foothold
21 in the United States in light of a complex array of factors”). InSight Crime also reports that, “[i]n
22 March 2024, a review of all federal and state court databases found only two criminal cases which
23 even mentioned [TdA],” and,

24 [b]y February 18, 2025, we had identified only five federal cases of
25 an alleged [TdA] connection. However, none of these cases
26 appeared to be connected to each other or the international structure
27 of the gang outside of the U.S. What’s more, the details of the cases
28 do not suggest any sophisticated criminal operations or *modus operandi*, and there was no discernable pattern of criminal behavior
or indications these individuals were seeking to regroup with [TdA]
members or other gangs.

1 *Id.* ¶ 19.

2 Finally, even assuming a legitimate concern about the presence of TdA gang members in
3 the United States, the government has failed to show that it cannot deal with that specific problem
4 through other means. As noted above, anyone who is convicted of a felony or two misdemeanors
5 or an act of terrorism will be ineligible for TPS status. The government has made no showing the
6 traditional law enforcement and immigration measures cannot handle criminal problems that
7 might be caused by the TdA and that *en masse* action stripping all Venezuelan nationals of TPS
8 status is necessary. In addition, the government has shown no basis for attributing criminality to
9 the entire population of Venezuelans or Venezuelan TPS holders in the United States and seeking
10 their exclusion wholesale instead of focusing on specific TdA gang members. *Cf. Korematsu v.*
11 *United States*, 323 U.S. 214, 218-19 (1944) (stating that “exclusion of those of Japanese origin
12 [from the West Coast war area] was deemed necessary because of the presence of an
13 unascertained number of disloyal members of the group, most of whom we have no doubt were
14 loyal to this country”), *abrogated by Trump v. Hawaii*, 585 U.S. 667, 710 (2018) (stating that
15 “*Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history,
16 and – to be clear – ‘has no place in law under the Constitution’”).

17 Indeed, there is uncontradicted evidence in the record that stripping Venezuelan
18 beneficiaries of TPS protection would impede law enforcement and threaten public safety. As
19 noted above, immigrants without legal status are less likely to report crimes or testify in court,
20 reducing public safety and making effective law enforcement more difficult. *See* Docket No. 62
21 (Amici Br. at 12); Docket No. 71 (Amici Br. at 7-8).

22 Finally, the government’s interest in national security is unclear. Terminating TPS could
23 actually have adverse ramifications to national security (in addition to impeding domestic
24 prosecutions) because “deporting Venezuelan TPS holders will require cooperation with the
25 Maduro regime.” Watson & Veuger Decl. ¶ 24. Since taking office in January 2025, the Trump
26 administration has made an agreement with the Maduro government to resume deportations to
27 Venezuela. *See id.* And yet, this action would seem to contradict U.S. foreign policies that have
28 refused to recognize Nicolás Maduro as the legitimate president of Venezuela since 2019. *See id.*

193a

1 ¶¶ 8, 24. Indeed, the U.S. is still offering a \$25 million reward for information leading to Nicolás
 2 Maduro’s arrest and/or conviction. *See id.* ¶ 8. Therefore, it would seem that normalizing
 3 relations with Nicolás Maduro to deport immigrants “to a place known for human rights abuses
 4 may also weaken the standing of the United States in the international community and adversely
 5 affect national security.” *See id.* ¶ 24. It is hard to discern precisely what the U.S. interest is in
 6 this instance.

7 3. Balance of Hardships

8 As discussed above, Plaintiffs have provided significant evidence that TPS holders and
 9 their families would suffer irreparable harm if they are not afforded temporary relief, and the
 10 public interest also weighs in favor of Plaintiffs because of the substantial economic, public safety,
 11 and humanitarian ramifications. In contrast, the government’s contention that the public interest
 12 weighs in its favor is not convincing because the government lacks any evidence of national
 13 security harms. Accordingly, the balance of hardships (including consideration of the public
 14 interest) tips sharply in Plaintiffs’ favor.

15 4. Likelihood of Success on the Merits

16 Because the balance of hardships tips sharply in their favor, Plaintiffs need only show
 17 serious questions going to the merits of their claims. *See All. for the Wild Rockies*, 865 F.3d at
 18 1217. But as discussed below, Plaintiffs have not only shown that there are such serious
 19 questions; they have also established a likelihood of success on the merits, thus entitling them to
 20 postponement of the Secretary’s vacatur and termination even without the benefit of the sliding
 21 scale test.

22 a. Authority to Vacate Extension of 2023 Designation

23 The threshold question is whether Secretary Noem lacked the authority to vacate the
 24 extension of the 2023 Designation.¹⁸ Plaintiffs are likely to succeed on the merits of this issue.
 25 As noted above, this is the first time that an extension of a TPS designation has ever been vacated
 26

27 _____
 28 ¹⁸ As noted above, the government has conceded that § 1254a(b)(5)(A) does not preclude judicial
 review of Plaintiffs’ claim that the Secretary lacked the inherent authority to vacate the extension
 of the 2023 Designation.

194a

1 in the statute’s history. While the Secretary has the ultimate authority to terminate a TPS
 2 designation and can “change her mind,” she may do so only under the terms and timeframe set
 3 forth in the TPS statute.

4 i. Notice of Vacatur

5 In the notice of vacatur, the Secretary stated: “An agency has inherent (that is, statutorily
 6 implicit) authority to revisit its prior decisions unless Congress has expressly limited that
 7 authority. The TPS statute does not limit the Secretary’s inherent authority under the INA to
 8 reconsider any TPS-related determination, and upon reconsideration, to vacate or amend the
 9 determination.” 90 Fed. Reg. at 8806. In a footnote, she cited the following:

10 *See* INA 103(a), 244(b)(3), (b)(5)(A); 8 U.S.C. 1103(a),
 11 1254a(b)(3), (b)(5)(A); Reconsideration and Rescission of
 12 Termination of the Designation of El Salvador for Temporary
 13 Protected Status; Extension of the Temporary Protected Status
 14 Designation for El Salvador, 88 FR 40282, 40285 (June 21, 2023)
 15 (“An agency has inherent (that is, statutorily implicit) authority to
 16 revisit its prior decisions unless Congress has expressly limited that
 17 authority. The TPS statute does not limit the Secretary’s inherent
 18 authority to reconsider any TPS-related determination, and upon
 19 reconsideration, to change the determination.”); *see also, e.g., Ivy*
 20 *Sports Medicine, LLC v. Burwell*, 767 F.3d 81, 86 (D.C. Cir. 2014)
 21 (Kavanaugh, J.) (“[A]dministrative agencies are assumed to possess
 22 at least some inherent authority to revisit their prior decisions, at
 23 least if done in a timely fashion. . . . “[I]nherent authority for timely
 24 administrative reconsideration is premised on the notion that the
 25 power to reconsider is inherent in the power to decide.” (quotation
 26 marks and citations omitted)); *Macktal v. Chao*, 286 F.3d 822, 825-
 27 26 (5th Cir. 2002) (“It is generally accepted that in the absence of a
 28 specific statutory limitation, an administrative agency has the
 inherent authority to reconsider its decisions.”) (collecting cases);
Mazaleski v. Treusdell, 562 F.2d 701, 720 (D.C. Cir. 1977) (“We
 have many times held that an agency has the inherent power to
 reconsider and change a decision if it does so within a reasonable
 period of time.”); *cf. Last Best Beef, LLC v. Dudas*, 506 F.3d 333,
 340 (4th Cir. 2007) (agencies possess especially “broad authority to
 correct their prior errors”).

24 *Id.* at 8806 n.2.

25 ii. Authorities Cited by the Secretary

26 As an initial matter, the Court takes note that the statutes cited by the Secretary do not give
 27 her the authority to vacate.

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195a

- 1 • 8 U.S.C. § 1103(a)(1) is simply a general provision stating that “[t]he Secretary of
- 2 Homeland Security shall be charged with the administration and enforcement of
- 3 this Act and all other laws relating to the immigration and naturalization of aliens . .
- 4 . . .”
- 5 • 8 U.S.C. § 1254a(b)(3) is about periodic review, terminations, and extensions of
- 6 TPS.
- 7 • 8 U.S.C. § 1254a(b)(5) is the jurisdictional provision – stating that “[t]here is no
- 8 judicial review of any determination of the Attorney General with respect to the
- 9 designation, or termination or extension of a designation, of a foreign state under
- 10 this subsection.”

11 Thus, ultimately, the Secretary’s claim for authority to vacate rests on the concept of inherent
 12 authority to reconsider.

13 As a general matter, the government is correct that “administrative agencies are assumed to
 14 possess at least some inherent authority to revisit their prior decisions, at least if done in a timely
 15 fashion.” *Ivy Sports Med., LLC v. Burwell*, 767 F.3d 81, 86 (D.C. Cir. 2014). But

16 the term “inherent” is misleading because “it is ‘axiomatic’ that
 17 ‘administrative agencies may act only pursuant to authority
 18 delegated to them by Congress.’” Thus, “the more accurate label”
 19 for the power EPA describes “is ‘**statutorily implicit**.’” And
 although the power to decide is **normally** accompanied by the
 power to reconsider, “**Congress . . . undoubtedly can limit an
 agency’s discretion to reverse itself.**”

20 *NRDC v. Regan*, 67 F.4th 397, 401 (D.C. Cir. 2023) (emphasis added); *see also Ivy Sports*, 767
 21 F.3d at 86 (stating that “any inherent reconsideration authority does not apply in cases where
 22 Congress has spoken”). Thus, the power to reconsider and revoke prior agency decision is not
 23 universally inherent, but is “statutorily inherent” – it turns on construction of the governing
 24 statute. For instance, “an agency may not rely on inherent reconsideration authority ‘when
 25 Congress has provided a mechanism capable of rectifying mistaken actions.’” *Id.*; *see also id.* at
 26 87 (stating that “it would be unreasonable under [the] statutory scheme to infer that FDA retains
 27 inherent authority to short-circuit or end-run **the carefully prescribed statutory reclassification**
 28 **process** [for a medical device] in order to correct the same mistake”) (emphasis added).

1 Ninth Circuit authority is consistent with that of the D.C. Circuit. To determine whether
2 an agency has the statutorily implicit authority to reconsider an earlier agency decision depends on
3 the statute and whether such legislative intent to confer such authority can be inferred. For
4 example, in *Gorbach v. Reno*, 219 F.3d 1087 (9th Cir. 2000) (en banc), the Ninth Circuit
5 considered whether the Attorney General’s “power to confer citizenship through the process of
6 naturalization necessarily includes the power to revoke that citizenship.” *Id.* at 1089. The Ninth
7 Circuit noted that, “[b]ecause ‘an agency may not confer power upon itself,’ the Attorney General
8 needs some statutory authority to have the power to take away an individual’s American
9 citizenship.” *Id.* at 1092-93. The court reviewed the “established and carefully constructed
10 statutory scheme” which provided, *inter alia*, that U.S. attorneys could institute actions to revoke
11 naturalization in federal court and that the Attorney General could cancel “certificates of
12 citizenship”¹⁹ but such cancellations affected only the document and not the citizenship status
13 itself. The Ninth Circuit held that “implying authority for the Attorney General to take away
14 people’s citizenship administratively would gravely upset this carefully constructed legislative
15 arrangement.” *Id.* at 1094.

16 Notably, the court recognized the “heart” of the government’s argument was that “the
17 power to denaturalize is ‘inherent’ in the power to naturalize” but it explicitly rejected that
18 contention. *Id.* at 1095.

19 The formula the government urges, that what one can do, one can
20 undo, is sometimes true, sometimes not. A person can give a gift,
21 but cannot take it back. A minister, priest, or rabbi can marry
22 people, but cannot grant divorces and annulments for civil purposes.
23 A jury can acquit, but cannot revoke its acquittal and convict.
24 Whether the Attorney General can undo what she has the power to
25 do, naturalize citizens, depends on whether Congress said she could.

26 *Id.* at 1095. The agency power to revoke prior action was sufficiently circumscribed to preclude
27 an inference of statutorily implicit power to reconsider the grant of citizenship.

28 ///

¹⁹ “The certificate of naturalization is issued ‘by the Commissioner of Immigration and Naturalization. It says, ‘the Attorney General having found that’ the person is entitled to citizenship and has met the requirements and taken the oath of allegiance, ‘such person is admitted as a citizen of the United States of America.’” *Gorbach*, 219 F.3d at 1090.

1 In *China Unicom (Ams.) Ops. Ltd. v. FCC*, 124 F.4th 1128 (9th Cir. 2024) [hereinafter
2 *CUA*], the Ninth Circuit held that the agency *did* have the implicit authority to reconsider the
3 decision at issue but, again, only after reviewing the statutory scheme to determine what was
4 Congress’s intent. *See, e.g., id.* at 1149 (noting that, “[w]here Congress has provided a particular
5 mechanism, with specified procedures, for an agency to make such alterations, ‘it is not reasonable
6 to infer’ an implied authority that would allow an agency to circumvent those statutory procedural
7 protections”). *CUA*, the plaintiff in the case, was a California company but ultimately owned by
8 the Chinese government. It “was authorized to provide domestic and international
9 telecommunications services pursuant to certificates granted to it many years ago” by the FCC
10 under § 214 of the Communications Act of 1934. *Id.* at 1132. In 2020, the FCC “issued an order
11 directing *CUA* to show cause why the FCC should not revoke its § 214 certificates” based on
12 “national security concerns,” as articulated during proceedings in which the agency had denied an
13 application for a § 214 authorization submitted by a *different* Chinese government-owned carrier.
14 *Id.*; *see also id.* at 1136 (noting that the other proceedings raised concerns about “the susceptibility
15 of Chinese state-owned enterprises, including subsidiaries, to Chinese government influence,
16 control, and exploitation”). Ultimately, in 2022, the FCC revoked *CUA*’s certificates “on the
17 grounds that *CUA*’s retention of them presented an unreasonable national security risk and,
18 separately, that *CUA* had exhibited a lack of candor and trustworthiness over the course of the
19 proceedings.” *Id.* at 1132; *see also id.* at 1141.

20 Before the Ninth Circuit, *CUA* argued that, “as a matter of law, the FCC lacks any
21 statutory authority [including implicit] to revoke a § 214 certificate, except as a penalty imposed in
22 connection with adjudicated violations of applicable law.” *Id.* at 1142. The court disagreed after
23 reviewing the statutory text and structure. The Ninth Circuit acknowledged that, in a different title
24 in the Communications Act that dealt with radio licensing, there was an express provision that
25 empowered the FCC to revoke any station license for a variety of reasons. But,

26 [i]n our view, no negative inference can be drawn from the fact that
27 the “radio” licensing provisions in Title III of the Communications
28 Act contain an express revocation provision, while the common-
carrier certificate provisions in Title II do not. As the Supreme
Court has noted, the two distinct regulatory systems established

198a

1 under Title II and Title III are very different, because, in
 2 “contradistinction” to wire-telecommunications carriers, the Act
 3 recognizes that “broadcasters are not common carriers and are not to
 4 be dealt with as such.” *FCC v. Sanders Bros. Radio Station*, 309
 5 U.S. 470, 474 (1940) (footnote omitted). . . . **Indeed, given that**
 6 **broadcast licenses are generally issued for fixed, renewable**
 7 **terms of up to eight years, see 47 U.S.C. § 307(c)(1), the statute**
 8 **reflects a clear temporal expectation that, absent contrary**
 9 **indication in the statutory text, such a license will endure for the**
 10 **length of that term. The use of a fixed term is thus affirmatively**
 11 **inconsistent with positing an implied power to revoke a license**
 12 **at any time, and it is therefore unsurprising that Title III**
 13 **contains a provision expressly recognizing an agency power of**
 14 **revocation.** By contrast, as noted earlier, Title II’s silence on the
 15 temporal duration of common-carrier certificates, which have
 16 traditionally been open-ended in length, is a factor that weighs in
 17 favor of an implied power of revocation.

18 *Id.* at 1147-48 (emphasis added). The court thus held that

19 the FCC possesses statutory authority to revoke a § 214(a)
 20 certificate by invoking grounds that it may properly consider in
 21 denying issuance of such a certificate as an original matter. Of
 22 course, any actual exercise of such authority must consider the
 23 relevant constraints that may be placed upon that action by the
 24 Constitution, other statutes, or applicable principles of
 25 administrative law. In some cases, such as ones involving
 26 substantial reliance interests, those constraints may be significant
 27 and may preclude a particular exercise of such authority.

28 *Id.* at 1150-51; *see also id.* at 1160-61 (Bea, J., dissenting) (noting that carriers may develop
 reliance interests in their § 214 certificates).²⁰

²⁰ As indicated above, Judge Bea issued a dissent in *CUA*. Judge Bea stated that “the specificity of § 214’s provision of authority to the FCC to grant a certificate to start, to modify, to change, or to end services only upon a telecommunications carrier’s application would normally imply Congress intended not to grant the FCC the authority to take a different course of action with respect to such certificates.” *CUA*, 124 F.4th at 1158. He also rejected

the premise that the power to refuse certification is the functional equivalent of the power to revoke certification . . . because it ignores the reliance interests carriers may develop in their § 214 certificates.

A business that is refused a certificate can decide to expend no further capital – money – for its proposed enterprise. But a business that has been granted a certificate is likely to have invested further capital, time, and resources into existing infrastructure in reasonable reliance on the vested right to build a telecommunications line pursuant to its duly granted § 214 certificate. Simply put, there is a material difference between the power to refuse and the power to revoke. It is not reasonable to assume that the power to grant, to refuse, or to condition a grant also encapsulates the power to revoke.

1 Hence, the critical question in the instant case is whether there is anything in the statutory
 2 scheme of the INA suggesting that the Secretary does or does not have the inherent authority to
 3 vacate a TPS designation or extension.

4 iii. Statutory Analysis

5 Plaintiffs argue that the Secretary does not have the implicit authority because the TPS
 6 statute lays out specific timelines and processes for TPS designations, extensions, and
 7 terminations.

8 The fixed terms of TPS designations, extensions, and terminations,
 9 and the statutorily prescribed processes governing how the Secretary
 10 must proceed after an initial TPS designation, are inconsistent with
 11 implicit vacatur authority. Unless otherwise specified in the original
 12 notice, an initial designation “take[s] effect upon the date of
 13 publication of the designation” and “shall remain in effect until the
 14 effective date of the termination of the designation.” 8 U.S.C. §
 15 1254a(b)(2). The same is true of extensions. 8 U.S.C. §
 16 1254a(b)(3)(C). “At least 60 days before the end of the initial
 17 period of designation, and any extended period of designation,” the
 18 Secretary “after consultation with appropriate agencies of the
 19 Government, shall review the conditions in the foreign state . . . and
 20 shall determine whether the conditions for such designation under
 21 this subsection continue to be met.” 8 U.S.C. § 1254a(b)(3)(A).
 The Secretary must “provide on a timely basis for the publication of
 notice of such determination . . . in the Federal Register.” *Id.* If the
 Secretary determines “that a foreign state . . . no longer continues to
 meet the conditions for designation” the Secretary “shall terminate
 the designation by publishing a notice in the Federal Register.” 8
 U.S.C. § 1254a(b)(3)(B). Without such a determination, the
 designation “is extended.” 8 U.S.C. § 1254a(b)(3)(A) & (C).
 Extensions take effect immediately, and last for the length of time
 specified in the notice, up to 18 months. *Id.* In contrast, 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.*” 8 U.S.C. § 1254a(b)(3)(B) (emphasis added).

22 Mot. at 6 (italics in original).

23 Plaintiffs’ analysis is compelling. Secretary Noem’s claim that she had the inherent right
 24 to vacate the extension of the 2023 Designation effectively gave her the power to countermand
 25 Secretary Mayorkas’s decision and in practical terms terminate the TPS designation given to
 26 Venezuela is at odds with the structure of the TPS statute. The TPS statute is specifically

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Id. at 1161 (citing *Gorbach*).

200a

1 prescriptive as to the time frame within which a TPS designation may be terminated. *See* 8 U.S.C.
 2 § 1254a(b)(3)(B) (providing that a termination “shall not be effective earlier than 60 days after the
 3 date the notice is published or, if later, the expiration of the most recent previous extension”). It
 4 expressly provides that termination of TPS designation can be *no earlier* than the *expiration* of the
 5 most recent extension. It does not permit the Secretary to terminate a TPS designation
 6 “midstream” during the term of the prior designation. Yet, the upshot of the Secretary’s action
 7 herein does just that. And while the statute carefully and expressly sets forth in detail the process
 8 of “designation,” “extension,” and “termination,” it says *nothing* about vacatur.

9 The Ninth Circuit’s *CUA* decision is particularly instructive here. As noted above, in
 10 *CUA*, the Ninth Circuit reasoned that,

11 **given that broadcast licenses are generally issued for fixed,**
 12 **renewable terms of up to eight years, *see* 47 U.S.C. § 307(c)(1),**
 13 **the statute reflects a clear temporal expectation that, absent**
 14 **contrary indication in the statutory text, such a license will**
 15 **endure for the length of that term. The use of a fixed term is**
 16 **thus affirmatively inconsistent with positing an implied power to**
 17 **revoke a license at any time, and it is therefore unsurprising that**
 18 **Title III [addressing radio licensing] contains a provision**
 19 **expressly recognizing an agency power of revocation. By**
 20 **contrast, as noted earlier, Title II’s silence on the temporal duration**
 21 **of common-carrier certificates, which have traditionally been open-**
 22 **ended in length, is a factor that weighs in favor of an implied power**
 23 **of revocation.**

24 *CUA*, 124 F.4th at 1148 (emphasis added). Here, “clear temporal expectations” are reflected in
 25 the TPS statute, and the clear stated terms for extensions and terminations of TPS designations are
 26 likewise “affirmatively inconsistent with the positing an implied power to revoke” or vacate a
 27 prior designation (or extension). *Id.*

28 It is also worth noting that, in the vacated *Ramos* decision, the panel noted that “Congress
 enacted the TPS statute to curb and control the executive’s **previously unconstrained discretion**
 under the [extended voluntary departure] process” *Ramos*, 975 F.3d at 890 (emphasis
 added); *cf. NRDC v. Regan*, 67 F.4th at 401-02 (noting that, “[i]n 2011, EPA determined that
 perchlorate satisfied the statutory criteria for regulating,” and, therefore, “[u]nder the statute, . . .
 EPA has one authorized course of action: it ‘shall’ propose and promulgate the MCLG and
 regulations, and it ‘shall’ do so by the statutory deadlines”; “[t]o read into the statute another

201a

1 course of action – one that allows EPA to withdraw its regulatory determination entirely and
 2 decide that it ‘shall not’ regulate – would be to contravene the statute’s clear language and
 3 structure and ‘nullif[y] textually applicable provisions **meant to limit [EPA’s] discretion**’”) (emphasis added). To permit the Secretary unconstrained discretion to revoke, at any time, a prior
 4 TPS designation would not be consistent with Congress’s general intent to cabin such discretion.²¹

6 To the extent the government relies on a prior claim by the Biden administration of the
 7 implicit authority to reconsider – specifically, when dealing with the TPS designation for El
 8 Salvador, *see* 88 Fed. Reg. 40282, 40285 (June 21, 2023) – that reliance is misplaced for several
 9 reasons. First, prior agency practice is not dispositive. *See New Jersey v. EPA*, 517 F.3d 574, 583
 10 (D.C. Cir. 2008) (“[P]revious statutory violations cannot excuse the one now before the court.
 11 ‘[W]e do not see how merely applying an unreasonable statutory interpretation for several years
 12 can transform it into a reasonable interpretation.’”). Simply put, the legality of the action by the
 13 Biden administration was not tested in court.

14 Second, assuming the action of the Biden administration was legally authorized, the Biden
 15 administration reconsidered a decision to *terminate* a TPS designation, not a decision to *extend* a
 16 TPS designation. This difference is significant. Where a TPS extension is given, it creates
 17 important reliance interests.²² *See, e.g.,* Rivas Decl. ¶ 12 (testifying that, the day the extension of
 18 the 2023 Designation was given, he submitted his renewal application, he thereafter received a
 19 receipt that confirmed his work authorization was extended for 540 days, he provided that
 20 information to his employer so he could continue to work, and, “[w]ith that assurance, [he]
 21 renewed [his] lease on [his] home”).²³ Indeed, the TPS statute itself implicitly recognizes the

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 23 ²¹ To be sure, the *Ramos* panel also stated that, “to the extent the TPS statute places constraints on
 24 the Secretary’s discretion, it does so in favor of limiting unwarranted designations or extensions of
 25 TPS.” *Ramos*, 975 F.3d at 891. Nevertheless, the limitations that Congress established by setting
 forth the specific circumstances under which designations, extensions, or terminations evidence a
 more general intent to constrain discretion.

26 ²² *Cf. CUA*, 124 F.4th at 1150-51 (recognizing that, “[i]n some cases, such as ones involving
 27 substantial reliance interests, . . . constraints [on an agency’s authority to revoke] may be
 28 significant and may preclude a particular exercise of such authority [to revoke]”); *id.* at 1160-61
 (Bea, J., dissenting) (noting that carriers may develop reliance interests in their § 214 certificates).

²³ The government has suggested that there cannot be any real reliance interests in the instant case

202a

1 importance of such reliance interests because it provides that, during periodic review of a TPS
 2 designation, if the Secretary does not make an express decision that the foreign country “no longer
 3 meets the conditions for designation . . . , the period of designation of the foreign [country] is
 4 extended for an additional period of 6 months (or, in the discretion of the [Secretary], a period of
 5 12 to 18 months).” 8 U.S.C. § 1254a(b)(3)(C). It essentially provides extension as a default and
 6 its effect can be immediate. In contrast, the TPS statute partially builds in some delay before
 7 termination of TPS becomes effective: termination does not take effect until the later of 60 days
 8 from the date of notice or the expiration of the most recent previous extension. *See* 8 U.S.C. §
 9 1254a(b)(3)(B). Thus, given the difference in reliance interests (between extensions and
 10 terminations) and the structure of the statute, even if there is room to argue that the Secretary has
 11 the implicit authority to vacate a decision to terminate, the same cannot necessarily be said for a
 12 decision to extend.

13 Third, as Plaintiffs point out, it is notable that the Biden administration reconsidered
 14 terminations only after they had already been

15 *enjoined for five years; [the terminations] never took effect.*
 16 *Agencies have flexibility to undo decisions already found unlawful*
 17 *by courts. United Gas Improvement Co. v. Callery Props., Inc., 382*
 18 *U.S. 223, 229-30 (1965) (agency had power to “undo what is*
wrongfully done” when original decision never became final and
was overturned on judicial review).

19 Mot. at 7 (emphasis in original).

20 Ultimately, the government’s main response to Plaintiffs’ position is that it is extreme –
 21 *i.e.*, under Plaintiffs’ position, “no Secretary of Homeland Security could ever vacate a designation
 22 or extension of a designation, no matter the type of national security threat posed or the
 23 seriousness of the error or legal defect in the prior determination” (unless the specific timeline
 24 under the TPS statute allowed for a new determination to be made). Opp’n at 15. The
 25 government’s argument may have some surface appeal, but it is ultimately unpersuasive.

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 27 _____
 28 because Secretary Noem vacated Secretary Mayorkas’s extension shortly after it was given. The
 Rivas Declaration is but one example of why that argument lacks merit.

203a

1 First, Secretary Noem’s decision to vacate the extension of the 2023 Designation was not
2 based on any claimed national security interest. While this rationale may have been one basis of
3 her subsequent decision to terminate (a basis which, as discussed below, is unsupported by any
4 evidence), her decision to vacate the extension was based on her purported belief that Secretary
5 Mayorkas’s decision was novel, possibly in violation of the TPS statute, and engendered
6 confusion regarding registration process. It was not based on any claim of national security.

7 Second, “[r]egardless of how serious the problem an administrative agency seeks to
8 address, . . . it may not exercise its authority in a manner that is inconsistent with the
9 administrative structure that Congress enacted into law.” *FDA v. Brown & Williamson Tobacco*
10 *Corp.*, 529 U.S. 120, 125 (2000) (internal quotation marks omitted). Thus, as Plaintiffs point out,
11 in spite of possible national security interests, the Secretary does not have the ability, *e.g.*, to
12 “revoke en masse green cards, H-1B visas, or student visas; such authority resides with Congress.”
13 Reply at 7. Congress did not create a national security exception to the framework it prescribed
14 for the termination of TPS status. Instead, under the TPS statute, national security is an explicit
15 consideration in one circumstance: when granting TPS to a foreign country on the basis of
16 extraordinary and temporary conditions. *See* 8 U.S.C. § 1254a(b)(1)(C) (providing for TPS
17 designation if the Secretary “finds that there exist extraordinary and temporary conditions in the
18 foreign state that prevent aliens who are nationals of the state from returning to the state in safety,
19 unless the [Secretary] finds that permitting the aliens to remain temporarily in the United States is
20 contrary to the national interest of the United States”).

21 Third, to the extent concern for national security comes into play, the TPS statute accounts
22 for that in several ways: (a) TPS is temporary, not permanent, in nature; (b) the Secretary is to
23 consult with other government agencies before making a decision on TPS designations,
24 terminations, or extensions, and, presumably, the agencies would alert her to any potential for
25 concern; and (c) if there are any concerns, the Secretary can issue a TPS designation of short
26 duration (*e.g.*, 6 months instead of 18).

27 Perhaps more to the point, the Secretary maintains the authority to *withdraw* a TPS
28 holder’s status if a beneficiary presents a danger to national security: the Secretary “shall withdraw

204a

1 [TPS] granted to an alien . . . if [the Secretary] finds that the alien was not in fact eligible for such
 2 status,” 8 U.S.C. § 1254a(c)(3)(A), and ineligibility includes, *e.g.*, committing a crime involving
 3 moral turpitude, committing a felony, or being a member of a terrorist organization. Moreover,
 4 the government, of course, has law enforcement resources to address any such threat posed by an
 5 individual or group of individuals. Indeed, the government has already attempted to employ
 6 extraordinary means against putative TdA gang members. *See generally J.G.G. v. Trump*, No. 25-
 7 766 (JEB) (D.D.C.) (addressing claim brought by Venezuelan noncitizens fearing removal
 8 pursuant to the Alien Enemies Act of 1798 instead of the INA). Revocation/vacatur of TPS status
 9 en masse because of the suspect acts of a few would be statutory overkill. Nothing in the TPS
 10 statute indicates there is an exception to its statutorily imposed temporal limitations and
 11 expectations that would implicitly permit the Secretary to vacate at will, in midstream, a TPS
 12 designation still in effect.

13 Accordingly, the Court concludes that Plaintiffs have established a likelihood of success on
 14 the merits for their claim that Secretary Noem lacked the inherent authority to vacate the extension
 15 of the 2023 Designation. And if Secretary Noem lacked the authority to vacate the extension, she
 16 necessarily did not have the authority to terminate the 2023 Designation thereafter, which
 17 Secretary Mayorkas had extended to October 2026.

18 b. Arbitrary and Capricious – Legal Error

19 Given the Secretary did not have the legal right to vacate the 2023 extension, the Plaintiffs
 20 have established a likelihood of success on the merits. But even if, contrary to the above analysis,
 21 the Secretary had the implicit authority to reconsider and vacate the extension of the 2023
 22 Designation (*i.e.*, could supplant Secretary Mayorkas’s decision on whether to terminate or extend
 23 with her own), Plaintiffs would still be entitled to relief. This is because, as Plaintiffs argue, even
 24 if the Secretary had the authority to vacate the extension, her vacatur was founded on legal error
 25 and thus was arbitrary and capricious. *See* 5 U.S.C. § 706(2).

26 In vacating the extension of the 2023 Designation, the Secretary claimed that the extension
 27 did not simply extend the 2023 Designation to October 2026 but also, in effect, extended the 2021
 28 Designation to the same 2026 date. *See* Opp’n at 16 (“By consolidating the registration processes

205a

1 for both the 2021 and 2023 TPS designations, the notice had the practical effect of extending the
 2 2021 Designation by up to 13 months and allowing for employment authorization for that period
 3 as well.”). She characterized this as a “novel approach.” 90 Fed. Reg. at 8807 (“The Mayorkas
 4 Notice adopted a novel approach of implicitly negating the 2021 Venezuela TPS designation by
 5 effectively subsuming it within the 2023 Venezuela TPS designation.”).

6 The Mayorkas Notice did not acknowledge the novelty of its
 7 approach or explain how it is consistent with the TPS statute. *See*
 8 INA 244(b)(2)(B), 8 U.S.C. 1254a(b)(2)(B) (providing that a TPS
 9 country designation “shall remain in effect until the effective date of
 10 the termination of the designation under [INA 244(b)(3)(B), 8
 11 U.S.C. 1254a(b)(3)(B)]”). This novel approach has included
 12 multiple notices, overlapping populations, overlapping dates, and
 13 sometimes multiple actions happening in a single document. While
 14 the Mayorkas Notice may have made attempts to address these
 15 overlapping populations, the explanations in the Mayorkas Notice,
 16 particularly the explanation for operational impacts, are thin and
 17 inadequately developed. Given these deficiencies and lack of
 18 clarity, vacatur is warranted to untangle the confusion, and provide
 19 an opportunity for informed determinations regarding the TPS
 20 designations and clear guidance.

21 *Id.*

22 But Secretary Noem’s stated rationale was legally erroneous. As Plaintiffs argued in their
 23 papers and at the hearing, the Secretary failed to recognize that a TPS beneficiary under the 2021
 24 Designation was necessarily a TPS beneficiary under the 2023 Designation.

25 [E]very earlier designation is “subsum[ed]” by a later one because
 26 redesignation expands the pool of potential beneficiaries **to include**
 27 **not only those who qualified under an earlier designation, but**
 28 **also those who arrived after their country was first designated.**
See 8 U.S.C. § 1254a(c)(1)(A)(i) (TPS applicants must have been
 “continuously physically present in the United States since the
 effective date of the most recent designation of [their country]”).
 Thus, TPS holders who initially registered for TPS under
 Venezuela’s 2021 designation had to prove they remained
 continuously present since March 9, 2021. 86 Fed. Reg. 13575.
 Accordingly, they **necessarily** also satisfied the later continuous
 presence requirement in Venezuela’s 2023 re-designation.”

29 Mot. at 9 (emphasis added). When Secretary Mayorkas extended the 2023 Designation, he simply
 30 recognized that a TPS holder under the 2021 Designation could choose to register as a TPS holder
 31 under the 2023 Designation:

32 ///

1 **Will there continue to be two separate filing processes for TPS**
 2 **designations for Venezuela?**

3 No. USCIS has evaluated the operational feasibility and resulting
 4 impact on stakeholders of having two separate filing processes.
 5 Operational challenges in the identification and adjudication of
 6 Venezuela TPS filings and confusion among stakeholders exist
 7 because of the two separate TPS designations. To date, USCIS has
 8 created operational measures to process Venezuela TPS cases for
 9 both designations; however, it can most efficiently process these
 10 cases by consolidating the filing processes for the two Venezuela
 11 TPS populations. To decrease confusion among stakeholders,
 12 ensure optimal operational processes, and maintain the same
 13 eligibility requirements, upon publication of this Notice, **individuals**
 14 **registered under either the March 9, 2021 TPS designation or**
 15 **the October 3, 2023 TPS designation will be allowed to re-**
 16 **register under this extension.** This would not, however, require
 17 that a beneficiary registered under the March 9, 2021 designation to
 18 re-register at this time. Rather, it would provide such individuals
 19 with the option of doing so. **Venezuela TPS beneficiaries who**
 20 **appropriately apply for TPS or re-register under this Notice and**
 21 **are approved by USCIS will obtain TPS through the same**
 22 **extension date of October 2, 2026.**

23 *Id.* at 5964 (some emphasis added).

24 Contrary to what Secretary Noem suggested, streamlining the two tracks for the two
 25 designations into one (so long as a TPS holder under the 2021 Designation was willing to register
 26 under the 2023 Designation) would tend to eliminate, not create, confusion – *i.e.*, confusion that
 27 could arise based on the fact that there are two tracks. Moreover, contrary to what Secretary
 28 Noem suggested, as a factual matter, it was not “novel” for different tracks to be streamlined as
 part of a TPS process. Plaintiffs have pointed out that there has been similar streamlining for both
 the Sudan and Haiti TPS designations. *See, e.g.*, 79 Fed. Reg. 52027, at 52028-29 (Sept. 2, 2014)
 (extending Sudan’s TPS designation and establishing one process for re-registration, regardless of
 which designation individual initially registered under); 88 Fed. Reg. 5022, at 5028 (Jan. 26,
 2023) (permitting “[i]ndividuals who [initially registered for TPS under Haiti’s 2010 or 2011
 designation and] currently retain their TPS [through June 30, 2024] under the *Ramos* injunction”
 to “re-register” under a later redesignation to receive TPS through August 3, 2024).

Furthermore, nothing in the TPS statute prevents the Secretary from extending TPS
 designation of a country well in advance of the natural expiration date of the prior designation.
 The statute only requires that the Secretary review the designation at least 60 days in advance of

1 the expiration. *See* 5 U.S.C. § 1254a(b)(3)(A) (“*At least* 60 days before end of the initial period of
2 designation, and any extended period of designation, of a foreign state (or part thereof) under this
3 section the Attorney General, after consultation with appropriate agencies of the Government,
4 shall review the conditions in the foreign state (or part of such foreign state) for which a
5 designation is in effect under this subsection and shall determine whether the conditions for such
6 designation under this subsection continue to be met.”) (emphasis added). It does not place a limit
7 on how far in advance the extension may be considered and granted. Thus, to the extent the
8 extension of the 2023 Designation had the independent effect of extending the status of the 2021
9 Designation 8 months in advance of the September 2025 expiration date, it was entirely consistent
10 with the TPS statute.

11 Thus, the practical operation of the extension of the 2023 Designation was not “novel,” did
12 not engender undue confusion as to registration, and was entirely consistent and compliant with
13 the TPS statute. The Court therefore concludes that Plaintiffs are likely to succeed on their claim
14 that the decision to vacate (assuming the Secretary had implicit authority to vacate) was arbitrary
15 and capricious because it was based on legal (as well as factual) error.

16 c. Arbitrary and Capricious – Failure to Consider Alternatives Short of
17 Termination

18 Even if vacatur were permitted and not founded on any legal error, the vacatur was still
19 arbitrary and capricious because, in revoking prior action, the Secretary failed to consider
20 alternatives short of termination.

21 As a general matter, “[a]gencies are free to change their existing policies as long as they
22 provide a reasoned explanation for the change.” *Encino Motorcars, LLC v. Navarro*, 579 U.S.
23 211, 221 (2016). But “when an agency rescinds a prior policy its reasoned analysis must consider
24 the ‘alternative[s]’ that are ‘within the ambit of the existing [policy].’” *Dep’t of Homeland Sec. v.*
25 *Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020).

26 Here, there were alternatives within the ambit of the existing policy that the Secretary
27 failed to consider. Most notably, if Secretary Noem was truly concerned about confusion arising
28 from Secretary Mayorkas’s decision to allow 2021 TPS holders to register as 2023 TPS holders,

208a

1 she easily could have chosen to “deconsolidate” the registration process and keep the 2021 and
 2 2023 Designations on two different tracks – with the 2021 Designation ending in September 2025
 3 and with the 2023 Designation still ending in October 2026. But Secretary Noem did not so act –
 4 effectively demonstrating that confusion was not her concern so much as the desire to totally undo
 5 Secretary Mayorkas’s decision.

6 The government admitted as much at the hearing. The government conceded the
 7 Secretary’s ultimate goal extended beyond minimizing registration confusion; it was to revisit and
 8 undo Secretary’s Mayorkas’s decision to extend the TPS designation for Venezuela to October
 9 2026. The government also effectively conceded as much in its papers. In the opposition brief,
 10 the government asserted:

11 In issuing the Vacatur, Secretary Noem indicated that the decision to
 12 vacate provided “an opportunity for informed determinations
 13 regarding the TPS designations and clear guidance.” 2025 Vacatur,
 14 90 Fed. Reg. at 8807 (citing Exec. Order No. 14159, Protecting the
 15 American People Against Invasion, § 16(b), 90 Fed. Reg. 8443 (Jan.
 20, 2025)). Thus, the alternative of simply deconsolidating the re-
 registration periods would not meet the stated reasons for the 2025
 Vacatur and is neither arbitrary and capricious nor an impermissible
 decision.

16 Opp’n at 17. The failure to consider the alternative action to address the stated reasons for the
 17 vacatur further renders the vacatur arbitrary and capricious.

18 d. Equal Protection – APA and Constitutional Claims

19 Finally, Plaintiffs contend that they are likely to succeed on their equal protection claim²⁴ –
 20 *i.e.*, that the Secretary’s decisions to vacate and terminate TPS for Venezuelans are
 21 unconstitutional because they were motivated at least in part by animus based on race, ethnicity, or
 22 national origin. Based on the extensive record provided by Plaintiffs, the Court finds that
 23 Plaintiffs have raised a substantial claim of unconstitutional animus.

24 “As a general matter, where an equal protection claim is based on membership in a suspect
 25

26 _____
 27 ²⁴ Plaintiffs’ complaint could suggest that the equal protection claim is a constitutional claim alone
 28 but, as Plaintiffs noted at the hearing, an APA claim can also be based on a constitutional
 violation. *See* 5 U.S.C. § 706(2) (providing that a court may hold unlawful and set aside agency
 action “contrary to constitutional right, power, privilege, or immunity”).

1 class such as race [or ethnicity or national origin] or the burdening of a fundamental right, then
 2 strict scrutiny is applied; otherwise there is only rational review.” *Litmon v. Brown*, No. C-10-
 3 3894 EMC, 2012 U.S. Dist. LEXIS 8381, at *4-5 (N.D. Cal. Jan. 25, 2012); *see also Kahawaiolaa*
 4 *v. Norton*, 386 F.3d 1271, 1277-78 (9th Cir. 2005) (stating that, “[w]hen no suspect class is
 5 involved and no fundamental right is burdened, we apply a rational basis test to determine the
 6 legitimacy of the classifications”).

7 In spite of this general principle, the government argues that a deferential review should
 8 still apply in the instant case because the DHS’s actions were based on national security interests.
 9 In support, it cites *Trump v. Hawaii*, 585 U.S. 667 (2018). This Court, however, rejected
 10 application of *Trump v. Hawaii* in the *Ramos* case, and so did the Ninth Circuit (vacated) panel
 11 decision. Central to the Court’s reasoning was that

12 the TPS-beneficiaries here, unlike those affected by the
 13 Proclamation in *Trump [v. Hawaii]*, are already in the United States.
 14 They are not aliens abroad seeking entry or admission who “have no
 15 constitutional right of entry”; TPS-beneficiaries have been admitted
 16 to the United States. As Plaintiffs currently reside lawfully in the
 17 United States, this case is unlike *Trump [v. Hawaii]*; it does not
 18 implicate “the admission and exclusion of foreign nationals,” who
 19 have “no constitutional rights regarding [their] application” in light
 20 of the “sovereign prerogative” “to admit or exclude aliens.” Hence,
 21 the basis for invoking broad judicial deference to executive action in
 22 excluding aliens does not apply.

23 *Ramos*, 321 F. Supp. 3d at 1129; *see also id.* (adding that “aliens *within* the United States have
 24 greater constitutional protections than those *outside* who are seeking admission for the first time”)
 25 (emphasis added). The Court also noted that

26 the executive order at issue in *Trump [v. Hawaii]* was issued
 27 pursuant to a very broad grant of statutory discretion: Section
 28 1182(f) “exudes deference to the President in every clause” by
 “entrust[ing] to the President the decisions whether and when to
 suspend entry . . . ; whose entry to suspend . . . ; for how long . . . ;
 and on what conditions.” In contrast, Congress has not given the
 Secretary *carte blanche* to terminate TPS for any reason whatsoever.
 Rather, the TPS statute empowers the Secretary of Homeland
 Security discretion to initiate, extend, and terminate TPS in specific
 enumerated circumstances. Even though the statute circumscribes
 judicial review, Congress prescribed the discretion of the Secretary
 in administering TPS.

Id. at 1130. The Ninth Circuit panel in *Ramos* invoked similar reasoning, stating that “the level of

1 deference that courts owe to the President in his executive decision to exclude foreign nationals
 2 who have not yet entered the United States may be greater than the deference to an agency in its
 3 administration of a humanitarian relief program established by Congress for foreign nationals who
 4 have lawfully resided in the United States for some time.” *Ramos*, 975 F.3d at 896.

5 To be sure, in *Ramos*, there was a further confluence of the fact that the government had
 6 asserted “to a lesser extent” national security and foreign policy reasons as a basis to terminate
 7 TPS. *Ramos*, 975 F.3d at 896; *cf. Ramos*, 321 F. Supp. at 1129. Here, the government does assert,
 8 perhaps more strenuously than in *Ramos*, that the Secretary’s decisions in vacating the extension
 9 of the 2023 Designation and in terminating the designation were informed by these additional
 10 concerns.

11 However, as noted above, the decision to vacate the extension did not cite national security
 12 as a rationale therefor. Nor did it cite an interest in effecting foreign relations in connection with
 13 the vacatur decision. Thus, the deferential standard of *Trump v. Hawaii* does not apply to
 14 Secretary Noem’s vacatur decision.

15 As to Secretary’s Noem’s second decision – to terminate the 2023 Designation – the
 16 invocation of national security and foreign relations is insufficient to implicate *Trump v. Hawaii*’s
 17 deferential standard.²⁵ The government does not get a free pass to deferential review under *Trump*
 18 *v. Hawaii* simply because it makes an *ipse dixit* assertion that there is a national security interest.
 19 There must be some basis for such a claim, but, as the Court has discussed above, the
 20 government’s claim of a national security interest is not supported by any concrete evidence. The
 21 government has referred to the TdA gang, but (1) “the danger of criminal conduct by an alien is
 22 [not] automatically a matter of national security,” *Thai v. Ashcroft*, 366 F.3d 790, 796 (9th Cir.
 23 2004), and (2) even if the TdA is a foreign terrorist organization that poses a national security
 24 threat (as claimed by President Trump in Executive Order 14157 (*see* 90 Fed. Reg. at 9042-93)),

25 _____
 26 ²⁵ As discussed above, § 1254a(b)(5)(A) does not bar judicial review of Plaintiffs’ equal protection
 27 claim because “there is no ‘clear and convincing’ evidence that Congress intended to preclude the
 28 Court from reviewing constitutional challenges of the nature alleged.” *Ramos*, 321 F. Supp. 3d at
 1105; *see also Ramos*, 975 F.3d at 895 (panel decision entertaining the equal protection claim on
 the merits); *accord* 5 U.S.C. § 706(2)(B) (providing that a court shall “hold unlawful and set aside
 agency action . . . found to be . . . contrary to constitutional right, power, privilege, or immunity”).

211a

1 there is no evidence to tie TPS holders to TdA or even to establish that TdA has a substantial
2 presence in the United States. *See generally* Dudley Decl. ¶ 16. Nor has the government
3 demonstrated that its employment of law enforcement resources cannot handle the criminal threat
4 posed by members of the TdA. *See* page 54, *supra*.

5 Nor is there any basis to the government’s claim that the vacatur and termination of
6 Venezuelan TPS status effected relations with Venezuela. The government suggests that there is a
7 “magnet effect” associated with a TPS designation, but that assertion does not address how there
8 is a magnet effect for an *extension* of TPS (not a designation or redesignation) which does not
9 make more people eligible for TPS. *See* Watson & Veuger Decl. ¶ 26 (“We do not see any reason
10 that the extension of an existing TPS designation would act as an immigration magnet. TPS status
11 is not available to those arriving after the 2023 designation.”).

12 The government also seems to suggest that there can be no equal protection violation
13 because Secretary Noem’s actions were focused on the nation of Venezuela, and not the race of its
14 people, and “[n]ational origin is inherently part of TPS.” Opp’n at 21. This argument misses the
15 point. The point is not that a person has been treated on the basis of national origin, which as the
16 government asserts, is inherent in the TPS decisions which are made on a country-by-country
17 basis. Rather, the claim here is that the decisions made against Venezuelan TPS beneficiaries are
18 driven by animus and generalized stereotypes directed against them. Plaintiffs also claim that the
19 decisions made by Secretary Noem are infected by racial animus. Moreover, courts must be
20 mindful of the fact that there can be overlap between national origin and race. *See, e.g., St.*
21 *Francis College v. Al-Khazraji*, 481 U.S. 604, 614 (1987) (Brennan, J., concurring) (noting that
22 “the line between discrimination based on ‘ancestry or ethnic characteristics,’ and discrimination
23 based on ‘place or nation of . . . origin,’ is not a bright one”); *Deravin v. Kerik*, 335 F.3d 195, 201
24 (2d Cir. 2003) (stating that “race and national origin discrimination claims may substantially
25 overlap or even be indistinguishable depending on the specific facts of a case” – *e.g.*, “[r]ace and
26 national origin discrimination may present identical factual issues when a victim is “born in a
27 nation whose primary stock is one’s own ethnic group”“); *Krowel v. Palm Beach Cnty.*, No. 22-
28 cv-81958, 2023 U.S. Dist. LEXIS 76203, at *7-8 (S.D. Fla. Apr. 27, 2023) (stating that, as

1 recognized by other courts, “discrimination based on national origin often overlaps with other
2 forms of racial discrimination”).

3 Animus and stereotypes based on national origin and/or race trigger strict scrutiny. *See*
4 *Valeria v. Davis*, 320 F.3d 1014, 1020 (9th Cir. 2003) (“[D]iscriminatory intent, by itself, triggers
5 strict scrutiny”). Strict scrutiny applies if such discriminatory purpose is a motivating factor.
6 *Cf. Cal. v. U.S. Dep’t of Homeland Sec.*, 476 F. Supp. 3d 994, 1023 (N.D. Cal. 2020). The
7 framework for discerning whether a discriminatory purpose was a motivating factor is set forth in
8 *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 265
9 (1977) (stating that “[p]roof of racially discriminatory intent or purpose is required to show a
10 violation of the Equal Protection Clause.”); *id.* at 265-66 (noting that a plaintiff does not have to
11 “prove that the challenged action rested solely on racially discriminatory purposes” or that such
12 was a dominant or primary purpose). That is, *Arlington Heights* provides a methodology for
13 determining whether a discriminatory purpose was a motivating factor.

14 In *Arlington Heights*, the Supreme Court indicated that there could be either direct or
15 circumstantial evidence of a discriminatory purpose and further provided examples of what
16 evidence would support a discriminatory purpose – *e.g.*:

- 17 • “The impact of the official action – whether it ‘bears more heavily on one race than
18 another.’” *Id.* at 266.
- 19 • “The historical background of the decision . . . , particularly if it reveals a series of
20 official actions taken for invidious purposes.” *Id.* at 267.
- 21 • “The specific sequence of events leading up to the challenged decision,” including
22 “[d]epartures from the normal procedural sequence” and “[s]ubstantive departures .
23 . . . , particularly if the factors usually considered important by the decisionmaker
24 strongly favor a decision contrary to the one reached.” *Id.*
- 25 • “The legislative or administrative history . . . , especially where there are
26 contemporary statements by members of the decisionmaking body, minutes of its
27 meetings, or reports.” *Id.* at 268.

28 In the instant case, there is evidence of discriminatory animus by the decisionmaker at

1 issue, Secretary Noem. There is also evidence of discriminatory animus by President Trump and
 2 that his intent and actions bore a direct nexus to the actions taken by Secretary Noem in the instant
 3 case.

4 i. Discriminatory Statements by Secretary Noem

5 Plaintiffs have catalogued a number of discriminatory statements made by Secretary
 6 Noem, beginning as early as February 2024 as part of the 2024 presidential race and continuing
 7 through early 2025, when she issued her decisions to vacate the extension of the 2023 Designation
 8 and then terminate the designation. *See, e.g.*, MacLean Decl. ¶¶ 2-7, 12, 14-15. In many of these
 9 comments, the Secretary equated Venezuelan immigrants and/or TPS holders with gang members,
 10 criminals, mentally unstable persons, and the like. Such statements play on “longstanding tropes
 11 or stereotypes that certain races have inherently immoral traits.” MacLean Decl., Ex. 20, at 19
 12 (2020 article titled “The Racialization of Crimes Involving Moral Turpitude); *see also* Young
 13 Decl. ¶ 3 (noting that “characterizing Venezuelan TPS holders as dangerous criminals who harm
 14 the U.S. economy is a false narrative, and one reflecting racist tropes that have long been wielded
 15 against immigrants to the United States”); *cf. United States v. Taveras*, 585 F. Supp. 2d 327, 338
 16 (E.D.N.Y. 2008) (stating that, “[w]hen government officials are permitted to use race [or ethnicity
 17 and national origin] as a proxy for gang membership and violence . . . society as a whole
 18 suffers”). Furthermore, as discussed above, there is no evidence that Venezuelan TPS holders are
 19 tied to gangs or are criminals. Indeed, “[i]t is well documented that immigrants are much less
 20 likely to commit crimes than U.S.-born Americans, and TPS recipients in particular have passed a
 21 criminal background check and have a clear incentive to stay out of legal trouble to maintain their
 22 status.” Watson & Veuger Decl. ¶ 15.

23 Examples of discriminatory statements by Secretary Noem include the following.

- 24 • MacLean Decl. ¶ 3 & Ex. 2. A social media post from February 28, 2024, that
 25 stated: “Venezuela didn’t send us their best. They emptied their prisons and sent
 26 criminals to America. [¶] Deportations need to start on DAY ONE of [President
 27 Trump’s] term’ in office.”
- 28 • MacLean Decl. ¶ 13 & Ex. 12 (Tr. at 104-05). Testimony during her January 15,

214a

1 2025, confirmation hearing such as: “[The TPS] program has been abused and
 2 manipulated by the Biden administration and that will no longer be allowed to
 3 allow that and these extensions going forward the way that they are, the program
 4 was intended to be temporary and this extension of over 600,000 Venezuelans as
 5 well is alarming when you look at what we’ve seen in different states, including
 6 Colorado with gangs doing damage and harming the individuals and the people that
 7 live there.”

- 8 • MacLean Decl. ¶ 15 & Ex. 14 (Tr. at 3). A statement during a January 29, 2025,
 9 interview on Fox that: “Today we signed an executive order within the Department
 10 of Homeland Security in a direction that we were not going to follow through on
 11 what he did to tie our hands, that we are going to follow the process, evaluate all of
 12 these individuals that are in our country, including the Venezuelans that are here
 13 and members of [TdA]. Listen, I was in New York City yesterday and the people
 14 of this country want these dirt bags out.” This statement is particularly notable
 15 because, as Plaintiffs point out, “Secretary Noem called Venezuelans ‘dirt bags’
 16 when announcing [her] very decision [to vacate the extension of the 2023
 17 Designation].” Reply at 1.²⁶
- 18 • MacLean Decl. ¶ 16 & Ex. 15 (Tr. at 18-19). A statement during a February 2,
 19 2025, interview on Meet the Press that: “[T]he TPP program has been abused, and
 20 it doesn’t have integrity right now. And folks from Venezuela that have come into
 21 this country are members of [TdA]. And remember, Venezuela purposely emptied
 22 out their prisons, emptied out their mental health facilities and sent them to the
 23 United States of America. So we are ending that extension of that program, adding
 24 some integrity back to it. And this administration’s evaluating all of our programs
 25 to make sure they truly are something that’s to the benefit of the United States, so

26 _____
 27 ²⁶ Though the government claims this statement was taken out of context and that Secretary Noem
 28 was referring to the TdA, not to Venezuelan TPS beneficiaries generally, there is a reasonable
 inference that her reference was not so narrowly confined. The Secretary has not submitted any
 declaration under oath elucidating her intended message.

215a

1 that they're not to benefit of criminals.” Similar to above, this statement is notable
 2 because it was effectively made contemporaneously with the decision to terminate
 3 the 2023 Designation.

4 It is evident that the Secretary made sweeping negative generalizations about Venezuelan
 5 TPS beneficiaries *in toto*. This is evident not only in what she said, but also in the fact that she
 6 decided to take *en masse* actions against all Venezuelan TPS beneficiaries, who number in the
 7 hundreds of thousands. Acting on the basis of a negative group stereotype and generalizing such
 8 stereotype to the entire group is the classic example of racism. *Cf. Hirabayashi v. United States*,
 9 320 U.S. 81, 96-99 (1943) (describing why Japanese Americans as a group, despite the fact that
 10 most were American citizens, were susceptible to disloyalty and thus constitute a security threat,
 11 relying on assumed stereotypes); *Korematsu*, 323 U.S. at 233, 235 (Murphy, J., dissenting)
 12 (characterizing the majority decision upholding the mass internment of Japanese Americans as
 13 falling into the “ugly abyss of racism”; noting that the “forced exclusion [of Japanese Americans]
 14 was the result in good measure of the erroneous assumption of racial guilt . . .”).

15 ii. Discriminatory Statements by President Trump

16 Like Secretary Noem, President Trump also made a number of discriminatory statements –
 17 and not only about Venezuelan immigrants and/or TPS holders specifically, but also about non-
 18 white immigrants and/or TPS holders generally. President Trump’s statements span years, starting
 19 with his first administration when he terminated the TPS designations of Sudan, Haiti, Nicaragua,
 20 El Salvador, Honduras, and Nepal, and continuing through the start of his second administration
 21 where one of the first actions he endorsed was ending TPS designations to put “America first.”

22 Examples of discriminatory statements by President Trump targeting non-white
 23 immigrants generally include the following.

- 24 • MacLean Decl. ¶ 17 & Ex. 16. A Washington Post article from January 12, 2018,
 25 indicating that, during a discussion about “protecting immigrants from Haiti, El
 26 Salvador and African countries,” President Trump stated: ““Why are we having all
 27 these people from shithole countries come here?”” He “then suggested that the
 28 United States should instead bring more people from countries such as Norway . . .

216a

1 .”

- 2 • MacLean Decl. ¶ 19 & Ex. 18. A New York Times article from May 16, 2018,
3 indicating that President Trump claimed “dangerous people were clamoring to
4 breach the country’s borders and brand[ed] such people ‘animals.’”
- 5 • MacLean Decl. ¶ 25 & Ex. 24. A New York Times article from April 7, 2024,
6 reflecting that President Trump stated that “people were not immigrating to the
7 United States from ‘nice’ countries like ‘Denmark’” as well as Switzerland and
8 Norway. President Trump also stated with respect to immigrants from the Southern
9 border that “[t]hese are people coming in from prisons and jails. They’re coming
10 in from just unbelievable places and countries, countries that are a disaster.”
- 11 • MacLean Decl. ¶ 9 & Ex. 8 (Tr. at 29, 34-35). Statements during the presidential
12 debate on September 10, 2024, that Haitian immigrants – TPS holders – living in
13 Springfield, Ohio, are “eating the dogs,” “eating the cats,” and “eating the pets of
14 the people that live’ in Springfield, Ohio.” President Trump also stated: “They
15 allowed people to come in, drug dealers, to come into our country, and they’re now
16 in the United States. And told by their countries like Venezuela don’t ever come
17 back or we’re going to kill you. Do you know that crime in Venezuela and crime
18 in countries all over the world is way down? You know why? Because they’ve
19 taken their criminals off the street, and they’ve given them to her to put into our
20 country. . . . [T]hey’re destroying the fabric of our country by what they’ve done.
21 There’s never been anything done like this at all. They’ve destroyed the fabric of
22 our country. Millions of people let in.”

23 Examples of discriminatory statements by President Trump targeting Venezuelan
24 noncitizens specifically include the following.

- 25 • MacLean Decl. ¶ 10 & Ex. 9 (Tr. at 32-33). Statements during a campaign speech
26 held on October 11, 2024, that: “[E]very day, Americans . . . are living in fear all
27 because Kamala Harris decided to empty the slums and prison cells of Caracas
28 [Venezuela] and many other places happening all over the world. . . . [¶] You

217a

1 know, prison populations all over the world are down. Crime all over the world is
 2 down because they take the world's criminals, gang members, drug dealers, and
 3 they deposit them into the United States bus after bus after bus. In Venezuela, their
 4 crime rate went down 72 percent. You know why? Because they took the
 5 criminals out of Caracas and they put them along your border and they said, 'If you
 6 ever come back, we're going to kill you.' [¶] Think of that. And we have to live
 7 with these animals, but we're not going to live with them for long, you watch."

- 8 • MacLean Decl. ¶ 11 & Ex. 10 (Tr. at 6, 12-13). Statements during a campaign
 9 speech held on October 27, 2024, that the Venezuelan gang TdA is "savage."
 10 President Trump also stated: "The United States is now an occupied country, but it
 11 will soon be an occupied country no longer. Not going to be happening. Not going
 12 to be happening. November 5th, 2024, nine days from now will be Liberation Day
 13 in America. It's going to be Liberation Day. [¶] On day one, I will launch the
 14 largest deportation program in American history to get these criminals out. I will
 15 rescue every city and town that has been invaded and conquered, and we will put
 16 these vicious and bloodthirsty criminals in jail. We're going to kick them the hell
 17 out of our country as fast as possible."
- 18 • President Trump's Executive Order, issued on the first day of his second
 19 administration, which claimed that Americans needed protection from an
 20 immigrant "invasion," stated that "[t]he American people deserve a Federal
 21 Government that puts their interests first," and specifically identified the TPS
 22 program as a problem. [https://www.whitehouse.gov/presidential-](https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-american-people-against-invasion/)
 23 [actions/2025/01/protecting-the-american-people-against-invasion/](https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-american-people-against-invasion/); cf. *Ramos*, 336
 24 F. Supp. 3d at 1104 (where plaintiffs argued that "America first" was "a code word
 25 for removal of immigrants who are non-white and/or non-European, and counsel
 26 for the government could not articulate a "clear and direct response" to what "an
 27 America first view of the TPS decision" meant).

28 The Court also takes note of an article from Axios, dated October 2024, that analyzed 109

1 of President Trump’s speeches, interviews, debates, and rallies from September 1, 2023, to
2 October 2, 2024, and found that he called Venezuelan migrants “criminals” at least 70 times. *See*
3 MacLean Decl. ¶ 33 & Ex. 32.

4 Significantly, the vacated panel decision in *Ramos* declined to find that President Trump’s
5 statements made in 2018 were not evidence of racial discrimination. Instead, the panel found
6 there was an insufficient showing of a nexus between President Trump’s statements and intent and
7 the specific TPS decisions made by the Secretary of DHS. *See Ramos*, 975 F.3d at 897 (stating
8 that “Plaintiffs’ EPC claim fails predominantly due to the glaring lack of evidence tying the
9 President’s alleged discriminatory intent to the specific TPS terminations – such as evidence that
10 the President personally sought to influence the TPS terminations, or that any administration
11 officials involved in the TPS decision-making process were themselves motivated by animus
12 against ‘non-white, non-European’ countries”).

13 Relying on the vacated panel decision in *Ramos*, the government suggests that President
14 Trump’s statements cited here should likewise not be given any consideration because (1) the
15 statements were not sufficiently tied or linked to TPS policy or decision-making specifically; (2)
16 there is insufficient evidence that “the President personally sought to influence the TPS
17 terminations”; and (3) even if so, “[t]he mere fact that the White House exerted pressure on the
18 Secretaries’ TPS decisions does not in itself support the conclusion that the President’s alleged
19 racial animus was a motivating factor in the TPS decisions” because “[i]t is expected – perhaps
20 even critical to the functioning of government – for executive officials to conform their decisions
21 to the administration’s policies.” *Id.* at 897-98.

22 None of these arguments is convincing. First, contrary to what the government suggests,
23 some of President Trump’s statements *did* relate to TPS policy or decision-making (*e.g.*,
24 statements about Haitian immigrants present in Springfield because of the TPS program,
25 statements in the Executive Order about an “invasion” and targeting, *inter alia*, the TPS program).
26 Furthermore, even if other statements did not directly relate to TPS policy or decision-making,
27 there is no principled reason to hold that these statements should thereby be ignored, especially
28 when the discriminatory statements still addressed the issue of immigration and, further, were not

1 isolated occurrences but rather comments made repeatedly over time – including in the several
 2 months immediately preceding Secretary Noem’s decisions to vacate and then terminate.²⁷ The
 3 length of time over which discriminatory statements were made, including those in close temporal
 4 proximity to Secretary Noem’s actions, differentiate this case from *Ramos*.

5 More than that, there is evidence *in this case* that President Trump directly influenced TPS
 6 policy and/or decision-making at issue. This is apparent from both his Executive Order addressed
 7 above *and* Secretary Noem’s decision to terminate, which expressly took note of President
 8 Trump’s

9 recent, immigration and border-related executive orders and
 10 proclamations [which] clearly articulated an array of policy
 imperatives bearing upon the national interest. . . .

11 [A]s the President directed in Executive Order 14150, “the foreign
 12 policy of the United States shall champion core American interests
 and always put America and American citizens first.” Continuing to
 13 permit Venezuelans under the 2023 TPS designation to remain in
 the United States does not champion core American interests or put
 14 American interests first. U.S. foreign policy interests, particularly in
 the Western Hemisphere, are best served and protected by curtailing
 15 policies that facilitate or encourage illegal and destabilizing
 migration.

16 90 Fed. Reg. at 9042 (also stating that “President Trump in his recent, immigration and border-
 17 related executive orders and proclamations clearly articulated an array of policy imperatives
 18 bearing upon the national interest”). The challenged actions by Secretary Noem were instituted
 19 shortly after issuance of the Executive Order and almost immediately upon her taking office. The
 20 inference of a nexus here between President Trump and the TPS vacatur and termination, is, more
 21 so than in *Ramos*, compelling. Thus, the *Ramos* panel’s rejection of the “cat’s paw” theory, *see*

22
 23 _____
 24 ²⁷ The Ninth Circuit panel in *Ramos* suggested that there must be a close nexus between a
 25 discriminatory statement and the challenged action, citing in support *Mendiola-Martinez v.*
 26 *Arpaio*, 836 F.3d 1239, 1261 (9th Cir. 2016) (stating that, even if “offensive quotes about Mexican
 27 nationals attributed to Sheriff Arpaio and published in newspapers” were admissible, “they do not
 28 mention the Restraint Policy and do not otherwise lead to any inference that Sheriff Arpaio’s 2006
 Restraint Policy was promulgated to discriminate against Mexican nationals”). But *Mendiola-*
Martinez is distinguishable because, there, the Restraint Policy at issue was facially neutral,
 “mandat[ing] that . . . officers restrain all inmates during transport, including those who are ‘sick
 or injured.’” *Id.* at 1245; *see also id.* at 1261 (acknowledging that the Restraint Policy was “a
 facially neutral policy”). Here, the TPS-related decisions were not facially neutral as they
 specifically targeted Venezuelan TPS holders.

1 *Ramos*, 975 F.3d at 897-98, applies with far less force to the case at bar. And notably, numerous
2 district courts that considered TPS designations and terminations during the first Trump
3 administration still applied the cat’s paw theory and found the plaintiffs’ equal protection claims
4 viable. *See, e.g., Saget v. Trump*, 375 F. Supp. 3d 280, 368-69 (E.D.N.Y. 2019) (in TPS case,
5 noting that “the evidence suggests the Secretary was influenced by the White House and White
6 House policy to ignore statutory guidelines, contort data, and disregard objective reason to reach a
7 predetermined decision to terminate TPS and abate the presence of non-white immigrants in the
8 country”); *CASA de Md., Inc. v. Trump*, 355 F. Supp. 3d 307, 326 (D. Md. 2018) (in TPS case,
9 noting that President Trump made racially discriminatory statements about Latino immigrants and
10 he was allegedly “involved in the decision to terminate TPS for El Salvador”; adding that, “if, as
11 alleged, the President influenced the decision to terminate El Salvador’s TPS, the discriminatory
12 motivation cannot be laundered through the Secretary”); *Centro Presente v. United States Dep’t of*
13 *Homeland Sec.*, 332 F. Supp. 3d 393, 414, 416 (D. Mass. 2018) (in TPS case, stating that
14 “liability for discrimination will lie when a biased individual manipulates a non-biased decision-
15 maker into taking discriminatory action”; “find[ing] that the combination of a disparate impact on
16 particular racial groups, statements of animus by people plausibly alleged to be involved in the
17 decision-making process, and an allegedly unreasoned shift in policy sufficient to allege plausibly
18 that a discriminatory purpose was a motivating factor in a decision”).

19 Accordingly, the Court rejects the government’s attempt to avoid consideration of
20 President Trump’s statements. That being said, the Court emphasizes that, even without
21 consideration of these statements, Plaintiffs have sufficiently established animus based on, *inter*
22 *alia*, Secretary Noem’s discriminatory statements. That Secretary Noem – the clear decision-
23 maker on the vacatur and termination – made discriminatory comments herself (some
24 contemporaneously with her decisions to vacate and terminate) further distinguishes the instant
25 case from *Ramos*. *See Ramos*, 975 F.3d at 897 (stating there was no evidence that “any
26 administration officials involved in the TPS decision-making process were themselves motivated
27 by animus against ‘non-white, non-European’ countries”).

28 ///

1 iii. Historical Background

2 Consistent with the above, the Court also considers the historical background of the first
3 Trump administration and its termination of TPS for non-white, non-European TPS holders from
4 Sudan, Haiti, Nicaragua, El Salvador, Honduras, and Nepal. As the Court held in *Ramos*, there
5 was “sufficient evidence to raise serious questions as to whether a discriminatory purpose was a
6 motivating factor in the decisions to terminate [these] TPS designations” based on, *e.g.*, President
7 Trump’s discriminatory statements, irregular decision making, and departures from prior practice.
8 *See Ramos*, 336 F. Supp. 3d at 1098-105. *But see Ramos*, 975 F.3d at 896-99 (vacated panel
9 decision disagreeing with this Court’s equal protection analysis). Secretary Noem’s decision here
10 to vacate the extension of the 2023 Designation and then terminate the designation continues a
11 pattern of the Trump administration’s targeting of non-white, non-European TPS holders.

12 iv. Sequence of Events

13 Even putting aside the general historical background, the sequence of events related to
14 Secretary Noem’s decision-making on the TPS designations here is clearly anomalous. As
15 Plaintiffs note, the decision-making process for the vacatur and termination “took place over a
16 week, at most” and at the very outset of the second Trump administration. Opp’n at 14. The
17 Secretary vacated the extension of the 2023 Designation only three days after she was confirmed.
18 Then just a few days later, she terminated the TPS designation for Venezuela (even though, under
19 the TPS statute, she was required to, *e.g.*, consult with other government agencies before making a
20 decision). This was a clear departure from longstanding prior practice which included obtaining
21 the considered analysis from constituent agencies and the State Department before reaching a
22 decision on TPS status of a particular country. *See, e.g., Ramos*, 336 F. Supp. 3d at 1082 (taking
23 note that the parties agreed on the general process for a TPS designation (on periodic review):
24 “RAIO (a division within USCIS) provides a Country Conditions Memo [for the Secretary]” while
25 “OP&S (another division within USCIS) drafts a Decision Memo that contains USCIS’s
26 recommendation on what to do about the TPS designation”; “[t]he State Department provides
27 further input (*e.g.*, country conditions, recommendations” and, “[a]t times input can also come
28 from other government sources”). Moreover, as noted above, Secretary Noem’s vacatur was the

222a

1 first-ever vacatur of an extension of TPS over the TPS program’s thirty-five-year history.

2 v. Lack of Support for Both the Vacatur of the Extension and for the
3 Termination of the 2023 Designation

4 The lack of support for the vacatur – both legal and evidentiary – has already been
5 discussed above. In addition, the lack of evidentiary support for the termination of the 2023
6 Designation further indicates that the termination was motivated at least in part by animus. In the
7 Federal Register, Secretary Noem justified the termination of the 2023 Designation on the
8 following grounds: (1) members of the Venezuelan TdA gang have crossed into the United States;
9 (2) the resources of local communities have not been adequate to “meet the demands” of the
10 Venezuelan TPS holders, and their presence has cost local communities billions of dollars; (3) a
11 TPS designation has a potential “magnet effect” – *i.e.*, it is a “pull factor[] driving Venezuelan
12 nationals to the United States”; and (4) an extension of the TPS designation is contrary to the
13 Trump administration’s policy of “America first” as it “facilitate[s] or encourage[s] illegal and
14 destabilizing migration.” 90 Fed. Reg. at 9042-43.

15 As discussed in other parts of this order, the Secretary’s rationale is entirely lacking in
16 evidentiary support. For example, there is no evidence that Venezuelan TPS holders are members
17 of the TdA gang, have connections to the gang, and/or commit crimes. Venezuelan TPS holders
18 have lower rates of criminality than the general population. Generalization of criminality to the
19 Venezuelan TPS population as a whole is baseless and smacks of racism predicated on generalized
20 false stereotypes. Moreover, Venezuelan TPS holders are critical contributors to both the national
21 and local economies: they work, spend money, and pay taxes. Barring these TPS beneficiaries
22 from the labor market in which they enjoy higher rates of participation than the general
23 population, *see* Docket No. 71 (Amici Br. at 5), will cost the United States billions in taxes. *See*,
24 Card Decl. ¶ 9(i) (stating that termination of TPS for just those Venezuelans who arrived in the
25 U.S. between 2021 and 2023 would result in an estimated \$3.5 billion annual loss to the U.S.
26 economy and a \$434.8 million annual loss in social security taxes); *see also* Docket No. 62 (Amici
27 Br. at 7) (noting that, “[i]n 2023, TPS holders from all countries paid \$3.1 billion in federal taxes,
28 contributing to programs like Social Security and Medicare, and paid \$2.1 billion in state and local

1 taxes”); Docket No. 71 (Amici Br. at 6) (noting that, “[i]n 2021, the approximately 354,000 TPS
 2 holders in the United States from all countries paid an estimated \$966.5 million in state and local
 3 taxes”). Far from being a burden, a number of jurisdictions – states, cities, and counties – have
 4 emphasized the value that Venezuelan TPS holders bring to their communities. They have
 5 documented the adverse impact on the economy, public health, and public safety of terminating
 6 TPS status of these beneficiaries. *See generally* Docket No. 62 (Amici Br.); Docket No. 71
 7 (Amici Br.). And as noted above, the purported “magnet effect” of TPS designation makes no
 8 sense because a mere *extension* of TPS (not a designation or redesignation) does not make more
 9 people eligible for TPS. *See* Watson & Veuger Decl. ¶ 26 (“We do not see any reason that the
 10 extension of an existing TPS designation would act as an immigration magnet. TPS status is not
 11 available to those arriving after the 2023 designation. The current administration’s termination of
 12 the parole program makes it clear it is not interested in facilitating additional migration from
 13 Venezuela, and a reasonable migrant would not believe that a TPS designation for new
 14 Venezuelan immigrants is likely to be issued by this administration. TPS status does not allow
 15 individuals to sponsor relatives for migration.”). Finally, the Trump administration’s invocation
 16 of “America first” raises a further inference of animus given the historical connotation of that
 17 phrase. *See Ramos*, 336 F. Supp. 3d at 1104 (noting that the government could not articulate a
 18 “clear and direct response” to what “an America first view of the TPS decision” meant). The
 19 lack of bona fides of purported justifications gives rise to an inference of pretext. *See*
 20 *Swackhammer v. Sprint/United Mgmt. Co.*, 493 F.3d 1160, 1168 (10th Cir. 2007) (in Title VII
 21 case, noting that “the fact of pretext alone may allow the inference of discrimination”).

22 vi. Disparate Impact of Agency’s Action

23 Finally, it is clear that the agency’s action has a disparate impact, bearing more heavily on
 24 one race/ethnicity/national origin than others. *See, e.g., Saget*, 375 F. Supp. 3d at 367 (stating that
 25 “it is axiomatic the decision to terminate TPS for Haitians impacts one race, namely non-white
 26 Haitians, more than another”). To be sure, this factor is less probative where, by definition, a TPS
 27 decision by country will have an inherent disparate impact based on national origin. Any
 28 relevance of disparate impact in this context is instead rooted in the racially charged historical

1 context discussed above – the invocation of a pattern of adverse TPS decision directed at non-
2 whites – those from so-called “shithole countries.”

3 vii. Summary

4 Taking into account the *Arlington Height* factors, including but not limited to the direct
5 animus of Secretary Noem, the animus of President Trump that appears to have directly influenced
6 the Secretary’s decision making, the anomalous procedures followed (the highly compressed time
7 in which the decisions to vacate and then terminate were made and the precedential and unique
8 nature of the decisions made), and the lack of bona fides for the decisions to vacate and then
9 terminate, the Court concludes that Plaintiffs have established a likelihood of success on their
10 equal protection claim directed against both the decision to vacate and the decision to terminate.

11 D. Nationwide Relief

12 Because the § 705 factors weigh strongly in Plaintiffs’ favor, the Court holds that Plaintiffs
13 are entitled to relief. Although § 705 expressly states that relief that may be afforded is
14 postponement of the effective date of agency action, without limitation, the government asserts
15 that the Court should nevertheless restrict the relief given – specifically, to only the named
16 individual Plaintiffs. The government takes the position that “universal relief benefitting non-
17 parties” is “broader than necessary to remedy actual harm shown by specific Plaintiffs.” Opp’n at
18 25.

19 The government’s position lacks merit. As a preliminary matter, its position is predicated
20 on criticisms made of nationwide injunctions but, as discussed above, Plaintiffs are seeking to
21 postpone or set aside agency actions, and vacatur of agency action is not the same thing as an
22 injunction. More importantly, where agency action is challenged as a violation of the APA,
23 nationwide relief is commonplace. *See E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 680-
24 81 (9th Cir. 2021) (in APA case, noting that there is “no general requirement that an injunction
25 affect only the parties in suit” and, “[w]hen a reviewing court determines that agency regulations
26 are unlawful, the ordinary result is that the rules are vacated – not that their application to the
27 individual petitioners is proscribed”); *see also Cook Cnty. v. Wolf*, 498 F. Supp. 3d 999, 1006-07
28 (N.D. Ill. 2020) (noting that “vacatur will prevent DHS from enforcing the Rule against

225a

1 nonparties,” but “that is a consequence not of the court’s choice to grant relief that is broader than
2 necessary, but of the APA’s mandate that flawed agency action must be ‘h[e]ld unlawful and set
3 aside”).

4 Nationwide relief is also warranted because the agency actions here have had a uniform
5 and nationwide impact on all Venezuelan TPS holders located across the United States. And
6 here, NTPSA – the named organizational plaintiff – advocates for Venezuelan TPS holders
7 nationwide and has more than 84,000 members who are Venezuelan TPS holders *in all fifty states,*
8 *plus the District of Columbia.* See Jimenez Decl. ¶ 13; *cf. City & Cnty. Of San Francisco v.*
9 *Trump*, 897 F.3d 1225, 1244 (9th Cir. 2018) (indicating that, to support a nationwide injunction,
10 record must be sufficiently developed on nationwide impact of challenged actions); *E. Bay*
11 *Sanctuary*, 993 F.3d at 680 (noting that organizational plaintiffs did “not operate in a fashion that
12 permits neat geographic boundaries”). Full relief for the NTPSA and its members cannot be
13 obtained absent application to all fifty states and the District of Columbia. Nor has the
14 government explained how, as a practical matter, relief could be afforded to some subset of all
15 Venezuelan TPS holders, particularly given that NTPSA has tens of thousands of members located
16 across the country. See *id.* at 680-81 (criticizing the government for failing to propose a workable
17 alternative form of injunction).

18 Finally, there is an interest in uniformity in the immigration system. See *id.* at 681 (noting
19 that, “in immigration cases, we ‘consistently recognize[] the authority of the district courts to
20 enjoin unlawful policies on a universal basis’”); *Texas v. United States*, 40 F.4th at 229 n.18
21 (“reject[ing] DHS’s contention that the nationwide vacatur is overbroad[;] [i]n the context of
22 immigration law, broad relief is appropriate to ensure uniformity and consistent in enforcement”).

23 Accordingly, consistent with the text of section 705, the Court grants Plaintiffs’ motion to
24 postpone the agency actions at issue, and the relief afforded here is nationwide in scope. The
25 Court acknowledges that there are at least three other recent TPS cases that have been filed against
26 the Trump administration, with at least two related to Venezuela specifically. See *Casa, Inc. v.*
27 *Noem*, No. C-25-0525 GLR (D. Md.); *Haitian Ams. United Inc. v. Trump*, No. C-25-10498 RGS
28 (D. Mass.). How the courts in those cases should proceed in light of the relief that the Court

226a

1 orders here will be up to those courts to decide; the Court is confident these sister courts are aware
2 of the various proceedings and will be mindful of the issues.

3 E. Motion to Shorten Time to Confer

4 Finally, the Court addresses a motion that Plaintiffs filed shortly before the hearing on their
5 motion to postpone. In the new motion, Plaintiffs ask that the Court shorten the deadline for the
6 parties to begin their Rule 26(f) conference and/or open discovery now. The Court holds as
7 follows. (Some of the rulings were made during the hearing on the motion to postpone.)

- 8 • Given the Court's ruling on the jurisdictional arguments raised by the government,
9 there is no reason to delay production of the administrative record, even if the
10 government intends to file a motion to dismiss. The parties shall meet and confer
11 regarding production of the administrative record (to the extent they have not
12 already) and the record shall be produced by the government within one week of
13 the date of this order. There is an interest in moving this case forward promptly.
- 14 • At this time, the Court does not opine on what discovery, if any, Plaintiffs may be
15 entitled to beyond the administrative record. The administrative record should be
16 produced in the first instance. What the administrative record does or does not
17 reveal will likely inform whether additional discovery is warranted. The Court
18 does not bar Plaintiffs from serving discovery requests on the government now, but
19 the government is not required at this point to respond to those requests.
- 20 • Although the Court is not requiring the government to respond to any discovery
21 requests at this juncture, the parties shall meet and confer (if they have not already)
22 and reach agreement on a stipulated document preservation order.

23 **IV. CONCLUSION**

24 For the foregoing reasons, the Court grants Plaintiffs' motion to postpone the actions taken
25 by Secretary Noem, specifically, her decisions to vacate the extension of the 2023 Designation and
26 to terminate the 2023 Designation.

27 Within one week of the date of this order, the parties shall file a joint status report (after
28 meeting and conferring), addressing (1) whether the government intends to appeal this Court's

227a

1 order; (2) whether Plaintiffs will be filing a motion to postpone with respect to agency action
2 related to Haiti's TPS designation (which is within the scope of the newly filed amended
3 complaint); and (3) a proposed date for the initial case management conference in which the Court
4 and the parties will discuss ways in which adjudication of the merits of this case can be expedited.

5 This order disposes of Docket Nos. 16 and 79.

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7 **IT IS SO ORDERED.**

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9 Dated: March 31, 2025

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12 EDWARD M. CHEN
13 United States District Judge
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United States District Court
Northern District of California