No. 25A326

In the Supreme Court of the United States

KRISTI NOEM, SECRETARY, DEPARTMENT OF HOMELAND SECURITY, ET AL., *Applicants*,

v.

NATIONAL TPS ALLIANCE, ET AL., *Respondents.*

ON APPLICATION TO STAY THE ORDER ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRIEF OF MEMBERS OF CONGRESS AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

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Interest of Amici Curiae[1]

Amici are 137 members of the One Hundred Nineteenth Congress, whose full names and titles are listed in Appendix A. Many of the amici have served in the House and Senate through the implementation of Temporary Protected Status (TPS) under Democratic and Republican Administrations.

As members of Congress, amici have a strong and unique interest in ensuring that the Executive Branch faithfully executes the laws Congress enacts and does not usurp Congressional or Judicial authority. Amici offer their perspectives and expertise to assist this Court in resolving questions related to statutory construction and the scope of what Congress delegated to the Executive Branch in the TPS statute. Amici include senators and congresspeople in whose states and districts Venezuelan TPS holders live and work. Amici have a special interest in ensuring that the TPS statute is faithfully followed because of the severe and substantial economic and social impacts that the unlawful revocation of TPS for hundreds of thousands of people would have on their districts and the communities they represent in Congress.

Introduction

Amici, as members of Congress, are keenly aware of the critical role that separation of powers plays in our constitutional democracy as a means to safeguard against the concentration of power within a single government branch. Separation of powers requires that the Executive Branch not usurp Congress's power to make laws;

[1] No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici curiae or its counsel made a monetary contribution to its preparation or submission.

it mandates that the Executive Branch not override the Judiciary's power to declare what the law is; and it obligates the Judiciary to not shy from its duty to prevent Executive Branch overreach that upsets the carefully calibrated role each co-equal branch plays in our constitutional democracy.

The Northern District of California and the Ninth Circuit properly determined that the plain text of the TPS statute does not support the Secretary's argument that her actions are unreviewable. Nor does it support the Secretary's actions with respect to Venezuelan TPS. Instead, the Executive Branch's interpretation of the TPS statute essentially rewrites the statute to claim a power that Congress did not delegate to the Executive Branch.

The Secretary's actions not only violate the TPS statute but also contradict the bipartisan opposition to terminating Venezuela TPS. Members of Congress on both sides of the aisle have long supported temporary protected status for Venezuelans who fled dangerous conditions in their country—conditions that persist today.

Amici Members of Congress join Respondents in urging the Court to deny the Secretary's application for a stay.

Argument

On September 5, 2025, the United States District Court for the Northern District of California granted partial summary judgment to Plaintiffs, setting aside: (1) Secretary Noem's vacatur of Venezuela's TPS extension, and (2) Secretary Noem's decision to terminate Venezuela's TPS status. (N.D. Cal., Dkt. 279 at p. 69). Shortly after, the district court denied the Secretary's request for a stay. *Nat'l TPS All. v. Noem*, No. 25-CV-01766-EMC, 2025 WL 2617231, at *1 (N.D. Cal. Sept. 10, 2025).

The Ninth Circuit likewise denied a stay, concluding that the Secretary was unlikely to succeed on the merits on appeal and that the balance of the equities favored Plaintiffs. *Nat'l TPS All. v. Noem*, No. 25-5724, 2025 WL 2661556, at *2 (9th Cir. Sept. 17, 2025).

In deciding whether to issue a stay, this Court considers: "(1) whether the applicant is likely to succeed on the merits, (2) whether it will suffer irreparable injury without a stay, (3) whether the stay will substantially injure the other parties interested in the proceedings, and (4) where the public interest lies." *Ohio v. Env't Prot. Agency*, 603 U.S. 279, 291 (2024) (citing *Nken v. Holder*, 556 U.S. 418, 434 (2009)); *see also Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (describing standard for a stay). Amici Members of Congress join Plaintiffs in asking this Court to deny the Executive Branch's stay application.

I. The Executive Branch's erroneous claim of "inherent" power to assert its novel TPS interpretation usurps Congressional authority.

Although the power to vacate a TPS extension is not mentioned in the statute, the Secretary contends that she "has inherent authority to vacate an extension . . . ." (Sec.'s Stay App. at 19–22). But this claim of "inherent" power must be assessed against the will of Congress. When the action taken—here by the Secretary—is "incompatible with the expressed or implied will of Congress, . . . [the Executive Branch's] power is at its lowest ebb." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring).

Instead of granting unfettered authority, Congress enacted the TPS statutory framework to *limit* the Executive Branch's discretion in making decisions related to

temporary protected status, aiming to "replac[e]. . . ad hoc, haphazard regulations and procedures." 135 Cong. Rec. H7501 (daily ed. Oct. 25, 1989) (statement of Rep. Bill Richardson). Congress wanted to ensure that migrants are not "subject to the vagaries of our domestic politics," *id.* (statement of Rep. Sander Levin), and that factors "other than purely political ramifications be considered when granting this status to a nation's people," 133 Cong. Rec. (House) 21334 (1987) (statement of Rep. Mario Biaggi).

The Executive Branch incorrectly interprets the TPS statute to grant itself a power that is neither authorized by Congress nor consistent with the regulatory structure that Congress enacted. And "[w]hen the separation of powers is at stake," this Court does not "just throw up [its] hands." *Gundy v. United States*, 588 U.S. 128, 168 (2019) (Gorsuch, J. dissenting). This Court must continue to guard against the Executive Branch's attempt to rewrite the TPS statute under the guise of "inherent authority."

Contrary to any claim of "inherent power," the Executive Branch does not have the "power to revise clear statutory terms that turn out not to work in practice." *Utility Air Regul. Grp. v. EPA*, 573 U.S. 302, 327 (2014). As discussed below, the TPS statute is clear: if a foreign state's designation is terminated, such termination "shall not be effective earlier than 60 days after the date the notice is published or, if later, the expiration of the most previous extension under subparagraph (C)." 8 U.S.C. § 1254a(b)(3)(B). The Secretary cannot avoid that statutory scheme by granting itself a new power to vacate an extension. *See infra* Part II. And only the Secretary's

"determination[s]" as to designations, terminations, or extensions are excluded from judicial review, 8 U.S.C. § 1254a(b)(5)(A), not the question of statutory interpretation implicated by the Secretary's novel reading of the TPS statute. *See infra* Part II.A.

Allowing the Secretary to rewrite the TPS statute to expand her powers beyond those granted by Congress "would deal a severe blow to the Constitution's separation of powers[,]" *Utility Air*, 573 U.S. at 327, and upend precedent governing the Congress-Executive relationship that pre-dates the Civil War, *see Morrill v. Jones*, 106 U.S. 466, 424–25 (1883) ("The secretary of the treasury cannot by his regulations alter or amend a revenue law. All he can do is regulate the mode of proceeding to carry into effect what congress has enacted."); *United States v. Williamson*, 90 U.S. 411, 416 (1874) ("It is not in the power of the executive department, or any branch of it, to reduce the pay of an officer of the army. The regulation of the compensation . . . belongs to the legislative department of the government.").

Even this Court cannot "rewrite clear statutes"—such as the TPS statute—to address "policy concerns." *Azar v. Allina Health Servs.*, 587 U.S. 566, 581 (2019). Rather than act unilaterally, the executive "must take its complaints" to Congress. *Azar*, 587 U.S. at 581.

II. The Executive Branch intrudes further on congressional and judicial power by contending, contrary to the TPS statute, that the Secretary's decision is unreviewable.

The Executive Branch argues that 8 U.S.C. § 1254a(b)(5)(A) bars judicial review of the Secretary's vacatur of Venezuelan TPS. But as the district court, *Nat'l TPS All.*, 2025 WL 2578045, at *1, and the Ninth Circuit, *Nat'l TPS All.*, 2025 WL

2661556, at *2, correctly concluded, that is incorrect. Instead, the Executive Branch's position further violates the separation of powers because it claims an authority to prevent judicial review that was never granted to it by Congress.

"Congress expects courts to handle technical statutory questions." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 402 (2024). "Courts interpret statutes, no matter the context, based on the traditional tools of statutory construction, not individual policy preferences." *Id.* at 403. This Court "recognize[s] a 'strong presumption in favor of judicial review" in interpreting statutes, "including statutes that may limit or preclude review." *Cuozzo Speed Techs. v. Com. for Intell. Prop.*, 579 U.S. 261, 273 (2016). This presumption may be overcome only "by 'clear and convincing indications, drawn from 'specific language,' 'specific legislative history,' and 'inferences of intent drawn from the statutory scheme as a whole,' that Congress intended to bar review.'" *Id.* (quoting *Block v. Cmty. Nutrition Inst.*, 467 U.S. 340, 349–50 (1984)).

The crux of the Executive Branch's argument is that the Secretary's vacatur is encompassed in the determination of whether to extend a designation, such that judicial review of its interpretation of the TPS statute is barred. But that tautology presumes the answer to the question at hand: namely, does the TPS statute allow the Secretary to vacate a previous determination to extend a designation? That question—apart from any particular "determination" of a designation, termination, or extension—is one of statutory construction. It therefore falls within the province of judicial review. Proper analysis of a statute must defer to principles of statutory

construction, including legislative intent, *not* the self-serving interpretation of an Executive Branch officer.

A. The plain language of Section 1254a(b)(5)(A) does not bar judicial review of the Secretary's vacatur.

Section 1254a(b)(5)(A) states, "There is no judicial review of any determination of the [Secretary] with respect to the designation, or termination or extension of a designation, of a foreign state." 8 U.S.C. § 1254a(b)(5)(A). The Executive Branch argues that the statute unambiguously gives the Secretary unreviewable authority such that her decision to vacate the 2023 Designation extension is unreviewable.

But Congress drafted the bar on judicial review narrowly. First, the word "vacatur" was excluded from the types of determinations the Secretary makes, indicating that the Secretary's vacatur is outside of the scope of Section 1254a(b)(5)(A). *Cf. Leatherman v. Tarrant Cnty. Narcotics Intel. & Coordination Unit*, 507 U.S. 163, 168 (1993) (applying the principle of *expressio unius est exclusion alterius* or expression of one is the exclusion of the other).

Second, the Executive Branch has asserted that the word "any" has an expansive meaning and captures "determinations of whatever kind." This argument ignores the principle that courts "must give effect to ***every*** word of a statute wherever possible," *Leocal v. Ashcroft*, 543 U.S. 1, 12 (2004) (emphasis added), and ignores that "any" will mean "different things depending on the setting," *Nixon v. Missouri Mun. League*, 541 U.S. 125, 132 (2004). Here, Congress expressly included a qualification: "with respect to designations, or terminations or extensions." 8 U.S.C. § 1254a(b)(5)(A). These are categorical limitations—the statute does not extend to

"determinations of whatever kind," but rather any determinations to designate, terminate or extend TPS. Any other interpretation renders the remaining words of Section 1254a(b)(5)(A) superfluous. *See, e.g.*, *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("[It is] a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.").

Third, the phrase "with respect to" does not have the "broadening effect" that the Executive Branch asserts. "[T]he words of a statute must be read in their context and with a view to their place in the overall statutory scheme," *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989). Here, the subject of "with respect to" is "any determination" of a "designation, or termination or extension of a designation." 8 U.S.C. § 1254a(b)(5)(A). But the Executive Branch wants to extend the bar on judicial review to whether the TPS statute includes the unenumerated action, "vacate," not to matters relating to the determination of designation, termination, or extension. Accepting the Executive Branch's interpretation of "with respect to" means that Congress's qualification of "any determination" would necessarily submit to the whims of whatever the Executive Branch says is encompassed by the text of the statute. *Cf. United States v. Miller*, 145 S. Ct. 839, 853 (2025) (rejecting a broad reading of "with respect to" when doing so defied the principle "that sovereign-immunity waiver must be construed narrowly").

Finally, a narrow reading of Section 1254a(b)(5)(A) to allow limited judicial review is consistent with the understanding that "Congress acts intentionally and

purposely." *Russello v. United States*, 464 U.S. 16, 23 (1983). If Congress intended to limit judicial review in all instances, Congress could "easily have used broader statutory language." *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 494 (1991) (holding 8 U.S.C. § 1160(e)(1) barred judicial review only to "direct review of individual denials of SAW status" and not collateral challenges to unconstitutional practices); *see also Reno v. Catholic Soc. Servs., Inc.*, 509 U.S. 43, 53–56 (1993) (finding 8 U.S.C. § 1255a(f) only barred judicial review of "the denial of an individual application" while broader challenges not tied to such denials were not barred from judicial review); *cf. Ramos v. Wolf*, 975 F.3d 872, 888–92 (9th Cir. 2020), *aff'g*, *Ramos v. Nielsen*, 321 F. Supp. 3d 1083 (N.D. Cal. 2018), *vacated*, 59 F.4th 1010 (9th Cir. 2023) (agreeing with lower court that section 1254a(b)(5)(A) only barred judicial review of inquiries "into the underlying considerations and reasoning employed by the Secretary in reaching her country-specific TPS determinations" but challenges to unconstitutional practices and policies considered collateral were reviewable). Because the plain reading of Section 1254a(b)(5)(A) supports a narrow interpretation, the Court is not barred from reviewing the Secretary's vacatur of the 2023 Designation extension.

B. Legislative history supports a narrow interpretation of the bar on judicial review.

Beyond the statutory text, a narrow interpretation of Section 1254a(b)(5)(A) is supported by this Court's "well-settled" and "strong presumption" favoring judicial review of administrative actions. *McNary*, 498 U.S. at 496. This Court has long held that "when a statutory provision is reasonably susceptible to divergent

interpretation, we adopt the reading that accords with traditional understandings and basic principles: that executive determinations generally are subject to judicial review." *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 229 (2020) (citing *Kucana v. Holder*, 558 U.S. 233, 251 (2010)) (internal quotations marks omitted). This presumption can only be overcome by "clear and convincing evidence" of congressional intent to preclude judicial review. *Abbott Labs. v. Gardner*, 387 U.S. 136, 141 (1967).

Despite the Executive Branch's argument that it has long exercised inherent authority in this arena, Congress expressly enacted TPS to address prior concerns about the lack of criteria guiding the Executive Branch and the lack of transparency in the then-existing ad hoc process. Although Congress recognized the Executive Branch's unique role in matters of foreign policy, it understood that the Executive Branch could not have unfettered discretion in TPS determinations. As Representative Richardson explained in discussion over a predecessor safe haven bill in 1989, the goal was to "establish an orderly, systematic procedure for providing temporary protected status for nationals of countries undergoing civil war or extreme tragedy, because we need to replace the current ad hoc, haphazard regulations and procedures that exist today." 135 Cong. Rec. H7501 (daily ed. Oct. 25, 1989) (statement of Rep. Bill Richardson). The Executive Branch's position amounts to an assertion that Congress created a detailed statutory scheme but then eliminated any mechanism to ensure the process was followed.

That is not the best reading of either the text or the relevant history. Instead, in Section 1254a(b)(5)(A) Congress preserved the Secretary's authority in matters

uniquely within her purview while preserving judicial review on procedural issues arising under the TPS statute. Section 1254a(b)(5)(A) only bars judicial review of the Secretary's specific "determination" to designate, extend, or terminate designation of a particular foreign state based on the enumerated statutory framework. But acknowledgment of Executive authority in one respect does not equal an abdication of judicial authority in all.

Where "Congress has made its intent clear, the Court must give effect to that intent." *Miller v. French*, 530 U.S. 327, 328 (2000). Barring judicial review of the Secretary's vacatur ignores the congressional intent behind creating the TPS statute in the first place: to eliminate ad hoc designations and ensure the Executive follows a statutorily prescribed procedure. Because there are no "'clear and convincing indications, drawn from 'specific language,' 'specific legislative history,' and 'inferences of intent drawn from the statutory scheme as a whole,' that Congress intended to bar review,'" the presumption favoring judicial review controls. *Cuozzo Speed Techs.*, 579 U.S. at 273.

III. The TPS statute does not allow for vacatur.

A. The plain language of the TPS statute does not authorize the Secretary to vacate designations or extensions of designations.

"Statutory interpretation must 'begi[n] with,' and ultimately heed, what a statute actually says." *Groff v. DeJoy*, 600 U.S. 447, 468 (2023) (quoting *Nat'l Assn. of Mfrs. v. Dep't of Def.*, 583 U.S. 109, 127 (2018)). This Court "must presume that [the] legislature says in a statute what it means and means in a statute what it says

there." *Dodd v. United States*, 545 U.S. 353, 357 (2005) (quoting *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (2005)) (internal quotation marks omitted).

"Federal agencies are creatures of statute. They possess only those powers that Congress confers upon them." *Judge Rotenberg Educ. Ctr., Inc. v. FDA*, 3 F.4th 390, 399 (D.C. Cir. 2021). Where, as here, there exists a question requiring statutory interpretation, "as in any field of statutory interpretation, it is [the Court's] duty to respect not only what Congress wrote ***but, as importantly, what it didn't write***." *Virginia Uranium, Inc. v. Warren*, 587 U.S. 761, 765 (2019) (emphasis added).

Here, the plain text and purpose of the TPS statute demonstrates that Congress did not authorize the Secretary to *vacate* an already-granted TPS extension or designation. The TPS statute describes a detailed process and time frame for the Secretary to implement designations, extensions, and terminations. It says nothing, however, about vacatur of extensions or designations that have already been granted.

Even though the statute says nothing of vacatur, the Executive Branch argues that the Secretary has "inherent authority" to reconsider past decisions. Although it is true that administrative agencies possess "some" inherent authority to revisit their prior decisions, this argument oversimplifies the law and fails to recognize that "any inherent reconsideration authority does not apply in cases where Congress has spoken." *Ivy Sports Med., LLC v. Burwell*, 767 F.3d 81, 86 (D.C. Cir. 2014).

Careful review of the Immigration and Nationality Act's ("INA") statutory framework belies any argument that the TPS statute impliedly authorizes the Secretary to vacate prior designations and extensions. The TPS statute meticulously

describes how the Secretary may designate, extend, and terminate temporary protected status, when such determinations take effect, and provides specific time periods that apply to each. For example, an initial designation "take[s] effect upon the date of publication of the designation" and "shall remain in effect until the effective date of the termination of the designation." 8 U.S.C. § 1254a(b)(2).

The TPS statute is similarly prescriptive with respect to extensions and terminations. "At least 60 days before the end of the initial period of designation, and any extended period of designation," the 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 under 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." *Id.* § 1254a(b)(3)(B). Without such a determination, the designation "***is extended***." *Id.* § 1254a(b)(3)(A) & (C) (emphasis added). 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***." *Id.* § 1254a(b)(3)(B) (emphasis added). Against this backdrop, the Executive Branch's claim that Secretary Noem had inherent authority to vacate

the extension of the 2023 Designation is plainly at odds with this statutory framework. As noted, the statute expressly provides that termination of the TPS designation cannot occur earlier than the expiration of the "most recent previous extension"—that is, the 18-month extension that former Secretary Mayorkas granted on January 17, 2025.

Although the Executive Branch complains that former Secretary Mayorkas extended the 2023 Designation before the statute required action, nothing in the TPS statute requires the Secretary to wait until the last second to review and grant extensions. Indeed, to the extent the Secretary seeks to extend an expiring designation extension, the TPS statute requires the Secretary to act "***[a]t least*** 60 days before end of the initial period of designation, and any extended period of designation." 8 U.S.C. § 1254a(b)(3)(a) (emphasis added). That is, while the TPS statute sets the minimum amount of time before the expiration of a designation or extension to act (at least 60 days), it does not dictate how far in advance the Secretary may act. Secretary Noem's vacatur thus operates as an end-run around the statutory framework adopted by Congress because it effectively terminates a designation before its "most recent previous extension" in violation of the TPS statute.

The lack of implied or inherent authority to vacate TPS designations or extensions is further confirmed by the language that Congress used to grant the Secretary revocation authority elsewhere in the INA. "Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in

the disparate inclusion or exclusion." *Russello*, 464 U.S. at 23 (internal quotation marks and citation omitted); *see also Leatherman*, 507 U.S. at 168.

Other sections of the INA demonstrate that Congress granted the Secretary the authority to revisit and revoke prior approvals in more narrow circumstances. Under 8 U.S.C. § 1155, the Secretary "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 1154 of this title." 8 U.S.C.A. § 1155. Congress could have, but did not, include similar language in the TPS statute. Exclusion of similar language in the TPS statute evinces Congress's intent to limit the Secretary's ability to revoke or vacate a prior approval outside of the termination procedure prescribed by Section 1254a(b)(3)(B).

B. Congress created the TPS statutory framework to limit the Executive Branch from making arbitrary decisions and shield TPS from domestic politics.

The TPS statute's prohibition against the type of ad hoc vacatur attempted by Secretary Noem is further supported by the legislative history leading up to the TPS statute's passage. As discussed above, Congress's rationale behind passing TPS was to eliminate the Executive Branch's prior practice of granting humanitarian protection on an ad hoc basis through the practice of "extended voluntary departure." *See supra* (discussing statement of Rep. Bill Richardson); *see also* 136 Cong. Rec. (House) 8686 (statement of Rep. Mary Rose Oakar) ("An orderly, systematic procedure for providing temporary protected status for nationals of countries undergoing war, civil war, or other extreme tragedy is needed to replace the current ad hoc haphazard procedure."). Specifically, Congress recognized the need to

regularize the process of awarding humanitarian protection based on enumerated criteria to protect the decision from political pressures.

As is evident from the legislative history of the TPS statute, Congress anticipated the current political situation, where the current Secretary seeks to vacate TPS for a class of Venezuelan migrants even though the previous Secretary found, following the statutory framework of the TPS statute, that extending the designation of Venezuela was warranted. Venezuelans covered by the TPS extension are thus subject to the changing political winds and arbitrary action by the Executive Branch. This is precisely what Congress sought to avoid by passing the TPS statute.

For example, Representative Levin stated, "Perhaps the most important aspect of this bill is that it will standardize the procedure for granting temporary stays of deportation. Refugees, spawned by the sad and tragic forces of warfare, ***should not be subject to the vagaries of our domestic politics*** as well. . . . Our recent domestic political squabble over the relative merits of Salvadorans and Nicaraguans as political refugees should never be repeated." 135 Cong. Rec. H7501 (daily ed. Oct. 25, 1989) (statement of Rep. Sander Levin) (emphasis added). Similarly, Representative Brennan warned that the prior process of "extended voluntary departure" potentially sent migrants "mixed messages which result from a vague or arbitrary policy." 135 Cong. Rec. H7501 (daily ed. Oct. 25, 1989) (statement of Rep. Joseph Brennan).

These contemporaneous statements of various members of Congress reflect clear legislative intent to constrain executive discretion and replace the prior practice

of providing nationality-based humanitarian protection on an ad hoc and opaque basis. The Executive Branch asks this Court to defer to its judgment and allow it to reinterpret the TPS statute in a way that will effectively negate it and return to the pre-TPS era. In the Secretary's view, the outcome of the last election justifies her ability to vacate her predecessor's extension decision, which if upheld, would result in the immediate termination of TPS for the approximately 472,000 individuals previously subject to the 2023 Designation. *See* 88 Fed. Reg. 68130, 68134 (Oct. 3, 2023). Overnight, these individuals' lives would be completely upended. That is precisely the kind of "haphazard" process the TPS statute was designed to prevent from occurring to individuals deserving of humanitarian protection.

C. Congress intended TPS status to fill gaps in immigration law where asylum would not provide adequate protections.

The Executive Branch also suggests respondents have not established irreparable harm because they may apply for asylum if they are afraid to return to Venezuela. This assertion also contravenes Congress's intent in passing the TPS statute. Congress specifically designed TPS to provide a statutory framework allowing relief to individuals facing serious but generalized forms of harm as opposed to the targeted persecution necessary to receive asylum.

The Refugee Act of 1980 allows asylum seekers to receive limited immigration benefits on a case-by-case basis. 8 U.S.C. § 1101(a)(42)(A). Asylum applicants bear the burden of showing that they meet the definition of "refugee" under the INA. *Id.* § 1158(b)(1)(B)(ii). The INA defines refugee as any person outside of their country of origin "who is unable or unwilling to return to, and is unable or unwilling to avail

himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1101(a)(42)(A).

To establish a well-founded fear of persecution, asylum applicants must demonstrate that they face both a subjective and objective fear of returning to their country of origin. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 430–31 (1987). Analyzing persecution is highly fact-dependent and generally only includes individuals who can demonstrate individualized and targeted persecution. *See generally* Matthew E. Price, *Persecution Complex: Justifying Asylum Law's Preference for Persecuted People*, 47 Harv. Int'l L.J. 413, 427 (2006); Peter C. Diamond, *Temporary Protected Status Under the Immigration Act of 1990*, 28 Willamette L. Rev. 857, 861 (1992). Thus, individuals who face generalized forms of harm—no matter how life-threatening—would not qualify for asylum. *See, e.g.*, H.R. Rep. No. 100-627, 100th Cong., 2d Sess. at 5 (1988).

In response, Congress created the TPS program to provide temporary protection to individuals unable to return to their country of origin because of ongoing armed conflict, natural disaster, or other extraordinary circumstances. 8 U.S.C. § 1254a. The drafters of the TPS statute recognized that "not everyone who needs protection meets the strict standard of asylum." *See* 136 Cong. Rec. (House) 8686 (statement of Rep. William H. Gray).

In fact, Congress noted that despite the severe conditions in El Salvador at the time, the asylum approval rate for Salvadorans averaged less than five percent. H.R.

Rep. No. 244, 101st Cong., 1st Sess. pt. 1, at 11 (1989). Congress therefore intended the TPS statute to "fill[] an important gap in our immigration and refugee laws." 135 Cong. Rec. H7501 (daily ed. Oct. 25, 1989) (statement of Rep. Hamilton Fish).

The Secretary's improper vacatur of Respondents' TPS status causes them to suffer irreparable harm despite the potential availability of asylum (or other relief) that may be presented under the immigration laws. Vacatur of Respondents' TPS status defies both the letter and the well-established legislative intent behind Section 1254a. Asylum (or other relief) cannot negate the irreparable harm by the Secretary reopening a "gap" in the immigration laws that Congress sought to fill.

IV. Venezuela TPS has long enjoyed bipartisan congressional support.

Members on both sides of the Congressional aisle have long recognized the on-going interest in maintaining the Venezuela TPS designation. On March 7, 2019, for example, then-Senator Marco Rubio, alongside Senators Durbin, Menendez, and Schumer, led a bipartisan group of 24 senators urging President Trump to designate Venezuela for Temporary Protected Status, highlighting the country's deteriorating security and humanitarian conditions.[2]

Not long afterward, on July 25, 2019, the U.S. House of Representatives passed H.R. 549, the Venezuela TPS Act of 2019. *See* H.R. 549, 116th Cong. (2019). Rep. Mario Diaz-Balart commented, "Today, the House of Representatives was able to gather the strong, bipartisan support needed to pass [the Act which would grant]

[2] Press Release, U.S. Sen. Dick Durbin, Durbin, Rubio, Menendez, Schumer Lead 24 Senators in Pressing President Trump to Designate Venezuela for TPS (Mar. 7, 2019), https://www.durbin.senate.gov/newsroom/press-releases/durbin-rubio-menendez-schumer-lead-24-senators-in-pressing-president-trump-to-designate-venezuela-for-tps.

temporary protected status in the United States until it is safe for them to return to Venezuela."[3] Unfortunately, despite several efforts, the Senate was unable to pass the Act, and it was left to President Trump on his last day in office to provide temporary legal status through a different pathway, the Deferred Enforced Departure program. Memorandum on Deferred Enforced Departure for Certain Venezuelans, 86 Fed. Reg. 6845 (Jan. 19, 2021).

In March 2021, the Department of Homeland Security granted TPS eligibility to Venezuelans. This grant received bipartisan acclaim, including from then-Senator Rubio, who underscored that it was President Trump who had first offered Venezuelans protection from deportation. Then-Senator Rubio further stated he was "glad the Biden administration share[d] that commitment" to Venezuelans.[4] Along with then-Senator Bob Menendez, in March 2022 then-Senator Rubio urged Secretary Mayorkas to "redesignate Venezuela for Temporary Protected Status," explaining that "[e]xtending this designation is absolutely essential for eligible Venezuelans currently in the United States who are unable to return to their homeland due to the dire conditions in that country."[5]

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[3] Press Release, U.S. Rep. Darren Soto, Venezuela TPS Act Passes U.S. House of Representatives (July 25, 2019), https://soto.house.gov/media/press-releases/venezuela-tps-act-passes-us-house-representatives.

[4] Sabrina Rodriguez, *Biden Administration Grants Venezuelans Temporary Protected Status,* Politico (Mar. 8, 2021), https://www.politico.com/news/2021/03/08/biden-venezuelans-temporary-protected-status-474424.

[5] U.S. Sen. Marco Rubio and U.S. Sen. Robert Menedez, Letter to U.S. Department of Homeland Security (Mar. 31, 2022), https://www.foreign.senate.gov/imo/media/doc/menendez-rubio-letter-to-dhs-re-venezuela-tps-april12022.pdf.

Since then, members of Congress from both sides of the aisle have continued to support Venezuela TPS and the communities in this country where many Venezuelans have found temporary refuge.[6] Shortly after President Trump took office in January 2025, three Republican representatives from Florida, Representatives Mario Díaz-Balart (FL-26), Carlos A. Giménez (FL-28), and María Elvira Salazar (FL-27), released a joint statement in support of Venezuela TPS, observing that, as a result of the TPS designation, "many Venezuelans have arrived in our country and have integrated into our communities, respecting our laws and contributing to the prosperity of our great country."[7]

That support has continued during this litigation. Following the Northern District of California's March 31, 2025, order postponing Secretary Noem's attempted vacatur of Venezuela TPS, Representative Salazar posted about the Secretary's preliminary loss on X: "GREAT NEWS! @DHSgov and @SecNoem will be extending TPS status for Venezuelans for another 18 months. I've led the fight on this and been asking for MONTHS! Thank you to the Administration for doing the right thing."[8]

After this Court's May 21, 2025, ruling on the Secretary's first stay application, Representatives Díaz-Balart, Giménez, and Salazar issued another joint statement

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[6] *E.g.*, Press Release, U.S. Rep. María Elvira Salazar, Reps. Salazar, Soto, and Wasserman Schultz Introduce Legislation to Designate TPS for Venezuelans (May 9, 2025), https://salazar.house.gov/media/press-releases/reps-salazar-soto-and-wasserman-schultz-introduce-legislation-designate-tps.

[7] Press Release, U.S. Rep. Mario Díaz-Balart, English/Español: Díaz-Balart, Giménez, and Salazar Stand in Solidarity with the Venezuelan People (Jan.29, 2925), https://mariodiazbalart.house.gov/media-center/press-releases/englishespanol-diaz-balart-gimenez-and-salazar-stand-solidarity.

[8] U.S. Rep. María Elvira Salazar (@RepMariaSalazar), X Post (Apr. 3, 2025), https://x.com/RepMariaSalazar/status/1907799660489822402; see also U.S. Rep. María Elvira Salazar (@RepMariaSalazar), X Post (Feb. 15, 2025), https://x.com/maelvirasalazar/status/1890816800075505748?s=46&t=gKSaOrBBWYDpYJUIuMRvrA.

in support of Venezuela TPS, emphasizing that they "will continue . . . working with the Trump administration on a permanent solution."[9] Rep. Giménez has even written directly to Secretary Noem "to address the urgent situation regarding the decision to end the Temporary Protected Status (TPS) for roughly 600,000 Venezuelans living here in the United States," urging the Trump Administration to find a solution.[10] And in May 2025, a bipartisan group of members of the House of Representatives introduced the Venezuela TPS Act of 2025, which proposed to designate TPS for Venezuelans to "protect approximately 600,000 Venezuelans in the United States from deportation."[11]

This bipartisan support is so strong because not much has changed in Venezuela since then-Senator Rubio wrote in March 2022, that extending Venezuela TPS was "absolutely essential . . . due to the dire conditions" there.[12] As of May 12, 2025, the State Department's Level 4: Do not Travel warning for Venezuela states: "Do not travel to or remain in Venezuela due to the high risk of wrongful detention, torture in detention, terrorism, kidnapping, arbitrary enforcement of local laws, crime, civil unrest, and poor health infrastructure."[13]

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[9] Press Release, U.S. Rep. Mario Díaz-Balart, Díaz-Balart, Giménez, and Salazar Statement on SCOTUS Ruling on TPS for Venezuelans (May 21, 2025), https://mariodiazbalart.house.gov/media-center/press-releases/diaz-balart-gimenez-and-salazar-statement-scotus-ruling-tps-venezuelans.

[10] Press Release, U.S. Rep. Carlos A. Giménez, Congressman Carlos Giménez Sends Letter on TPS (Jan. 31, 2025), https://gimenez.house.gov/2025/1/congressman-carlos-gimenez-sends-letter-on-tps; see also U.S. Rep. Carlos A. Giménez (@RepCarlos), X Post (Mar. 26, 2024), https://x.com/RepCarlos/status/1907840313743265910; U.S. Rep. Carlos A. Giménez (@RepCarlos), X Post (Jan. 31, 2025), https://x.com/RepCarlos/status/1885381441803923809.

[11] Salazar, *supra* n.6.

[12] Rubio, *supra* at n.5.

[13] Venezuela Travel Advisory, U.S. Department of State (May 12, 2025), https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/venezuela-travel-advisory.html.

Amici Members of Congress have a strong interest not only in preserving the benefits that Venezuela TPS affords their constituents' communities but also in protecting the designation and termination process that is enshrined in the TPS statute and that guards against the type of arbitrary and political vacatur that took place here. Amici urge this Court to deny the Secretary's stay application.

Conclusion

Amici Members of Congress ask this Court to deny the Executive Branch's request for a stay.

September 29, 2025

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