

**In The
Supreme Court of the United States**

KRISTI NOEM, SECRETARY OF HOMELAND SECURITY, ET AL.,

Applicants,

v.

DAHLIA DOE, ET AL.,

Respondents.

**SUPPLEMENTAL APPENDIX OF OPPOSITION TO APPLICATION TO
STAY THE ORDER ISSUED BY THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Dahlia DOE, et al.,
Plaintiffs-Appellees,

v.

Krisi NOEM, et al.,
Defendants-Appellants.

Docket No. 25-2995

**Plaintiffs-Appellees' Opposition to the Government's Motion for
a Stay Pending Appeal and an Immediate Stay
Pending Consideration of the Motion**

INTRODUCTION

More than two weeks after the district court issued its order to postpone the termination of Temporary Protected Status (TPS) for Syria, Defendants filed a belated stay motion that does not and cannot establish any concrete harm to the government. But staying the decision below would cause catastrophic irreparable harm to Plaintiffs by stripping lawful status and employment authorization from more than 6,100 Syrians, many of whom have lived in the United States for more than a decade and have U.S. citizen and resident family members. In addition to abruptly losing jobs, health insurance, drivers licenses, and

educational and career opportunities, many would face immigration detention and deportation to a country the State Department warns is extremely dangerous due to “terrorism, civil unrest, kidnapping, hostage taking, and armed conflict.” ECF 20-19.¹ And for TPS holders pursuing certain forms of alternative status, even a few days without TPS would render them ineligible for relief conditioned on continuous lawful status.

Furthermore, Defendants fail to make a “strong showing” that they are likely to succeed on the merits, *Nken v. Holder*, 556 U.S. 418, 425-26 (2009). Every court to consider Defendants’ jurisdictional argument has rejected it because it ignores both the strong presumption of judicial review and the TPS statute’s specific use of the word “determination.” And a wealth of evidence supports the district court’s conclusions that Defendants violated the Administrative Procedure Act (APA) when they (a) failed to undertake the objective country conditions review and interagency consultation required by the TPS statute; (b) improperly relied on an extra-statutory factor to justify termination; and (c) made termination decisions as part of a political agenda to end TPS. This Court

¹ ECF citations are to the underlying district court docket. The citation to Dkt. 14.1, *infra* page 4, refers to the appellate docket.

should deny Defendants' belated and failed attempt to justify an emergency stay of the district court's well-reasoned order.

STANDARD OF REVIEW

“The party requesting a stay bears the burden of showing that the circumstances justify an exercise of [the Court's] discretion.” *Nken*, 556 U.S. at 433-34 (2009)). To obtain a stay, Defendants must establish that they “will be irreparably injured absent a stay” while the appeal is pending. *Id.* at 434. Defendants also must make a “strong showing that [they are] likely to succeed on the merits,” *id.*, which requires them to overcome the deferential “abuse of discretion” standard, with legal conclusions reviewed “de novo” and factual conclusions reviewed for “clear error.” *New York v. DHS*, 969 F.3d 42, 58 (2d. Cir 2020). The court also considers whether “issuance of the stay will substantially injure the other parties interested in the proceeding,” and “where the public interest lies.” *Nken*, 556 U.S. at 434.

COUNTERSTATEMENT OF FACTS

Plaintiffs generally agree with the statutory and procedural background outlined in Defendants' motion. However, Plaintiffs provide

this counterstatement of facts to clarify and highlight certain key facts for the Court.

The district court held that Plaintiffs were likely to succeed on the merits of their claims that Defendants' decision to terminate Syria's TPS resulted not from the requisite objective country-conditions review and consultation with appropriate agencies, but from an impermissible political and predetermined decision to end TPS. Dkt. No. 14.1 at 24-58, Nov. 19 Oral Decision Tr. ("Tr.") 15-18.

The court relied on several key facts to reach its conclusions. First, President Trump "campaign[ed] on revoking TPS if elected because, in his opinion, it's not legal," while characterizing TPS holders and other immigrants as "poisoning the blood of this country." Tr. 15:21-24. And Vice President Vance "displayed a similar misperception of the TPS program in referring to program participants as illegal immigrants, despite their status in this country." Tr. 15:24-16:2.

The court found that, once in office, the Trump administration acted swiftly and systematically to follow through on its promise to end the TPS program. *See* Tr. 16:11-17:8. On inauguration day, President Trump issued an Executive Order which set out steps to stop the

purported “invasion” of “illegal aliens,” including by reviewing and limiting TPS designations. Tr. 16:11-14; 90 Fed. Reg. 8443, 8446. The administration’s first actions included unprecedented decisions to *reverse* the Biden administration’s TPS extensions for Venezuela and Haiti, Tr. 16:23-25, and a slew of TPS terminations followed, Tr. 16:21-17:8. Since January 2025, the Secretary has terminated every TPS designation up for review, with Defendants’ termination of Syrian TPS as the eighth of now ten TPS terminations. *See* Tr. 16:21-17:3.² Across these terminations, the court noted “the rationales are coordinated” and the “procedural errors are virtually identical[.]” Tr. 13:3-6. And as to at least four countries (Nicaragua, Cameroon, Nepal, and Venezuela) “the record

² Since the district court’s order, the Secretary has terminated TPS for a tenth country—Burma/Myanmar. *See* 90 Fed. Reg. 53378 (Nov. 25, 2025), and the President has announced his intent to terminate Somalia’s TPS. *See* Nicholas Bogel-Burroughs, *Trump Moves to End Temporary Protected Status for Somalis*, N.Y. Times (Nov. 23, 2025).

makes clear that the requisite interagency consultation did not occur.”

Tr. 18:1-5.

ARGUMENT

I. DEFENDANTS CANNOT SHOW A STRONG LIKELIHOOD OF SUCCESS ON THE MERITS.

A. The District Court had jurisdiction over Plaintiffs’ claims and authority to postpone Syria’s TPS termination.

Defendants cannot establish a “strong likelihood” that the district court lacked either jurisdiction over Plaintiffs’ claims or authority to postpone the termination under Section 705 of the APA. The district court correctly held—as has every other court reviewing 8 U.S.C. §1254a(b)(5)(A)—that the TPS statute permits judicial review over both claims that an agency did not adhere to its statutory mandates and constitutional challenges. *See Saget v. Trump*, 375 F.Supp.3d 280, 330-33 (E.D.N.Y. 2019); *Centro Presente v. DHS*, 332 F.Supp.3d 393, 404-09 (D. Mass. 2018); *CASA de Maryland, Inc. v. Trump*, 355 F.Supp.3d 307, 317-22 (D. Md. 2018); *Ramos v. Nielsen*, 321 F.Supp.3d 1083, 1101-08 (N.D. Cal. 2018); *NTPSA v. Noem*, 773 F.Supp.3d 807, 830-33 (N.D. Cal. 2025), *aff’d*, 150 F.4th 1000 (9th Cir. 2025); *CASA, Inc. v. Noem*, 792 F.Supp.3d 576, 589-94 (D. Md. 2025); *HECA v. Trump*, 789 F.Supp.3d

255, 269-70 (E.D.N.Y. 2025). This view is consistent with the strong presumption of judicial review over agency action, the plain text of Section 1254a(b)(5)(A), and Supreme Court decisions interpreting nearly identical language. The recent Supreme Court emergency stay decisions that Defendants rely on do not control, provide no reasoning, and apply to fact-specific and readily distinguishable circumstances absent here. *See Noem v. NTPSA*, 145 S.Ct. 2728 (2025) (Mem.); *Noem v. NTPSA*, No. 25A326, 2025 WL 2812732 (Oct. 3, 2025) (Mem.).

The district court also had authority to postpone Defendants' termination of Syria's TPS notwithstanding 8 U.S.C. §1252(f)(1). Every court of appeals to consider the issue has concluded that the limit on injunctive relief in Section 1252(f)(1) does not bar either postponements or vacatures of agency action under Section 705.

1. Section 1254a(b)(5)(A) of the INA does not apply to Plaintiffs' claims.

Defendants ignore both the well-established and strong presumption that agency actions are reviewable and "the longstanding" requirement that Congress "speak clearly and specifically when it wishes to deprive the federal courts of jurisdiction." *Ozturk v. Hyde*, 136 F.4th 382, 394 (2d Cir. 2025). The TPS statute's jurisdictional bar does not

contain the kind of clear and sweeping language necessary to overcome that presumption. *See McNary v. Haitian Refugee Ctr.*, 498 U.S. 479, 492-94 (1991) (noting statutes precluding review of “all causes ... arising under” them or “review on all questions of law and fact”) (quotations omitted); *see also Am. & Eur. Agencies, Inc. v. Gilliland*, 247 F.2d 95, 96 (D.C. Cir. 1957) (considering statute providing that agency action “shall be final and conclusive on all questions of law and fact and not subject to review by ... any court”) (quotation omitted). Instead, the TPS statute narrowly bars judicial review only “of any determination ... with respect to the designation, or termination or extension of a designation, of a foreign state under [subsection 1254a(b)].” 8 U.S.C. §1254a(b)(5)(A).

As relevant here, 8 U.S.C. §1254a(b)(5)(A) requires the Secretary to make a “determination” concerning whether a country “continues to meet the conditions for designation.” Those conditions involve facts on the ground in the country at issue. *See id.* §1254a(b)(1) (designation turning on whether a country faces ongoing armed conflict, environmental disaster, or other extraordinary and temporary conditions). In other words, the statute thus prohibits review only of the Secretary’s country-

conditions findings—such as the kind of claims commonly litigated in individual asylum cases.

The Supreme Court’s opinion in *McNary v. Haitian Refugee Center*—which Defendants fail to mention—strongly supports that conclusion. *McNary* evaluated a statute barring “review of a determination respecting an application for adjustment of status.” 498 U.S. at 491 (quoting 8 U.S.C. §1160(e)(1)). The Court held that “the reference to ‘a determination’ describes a single act ...”—that is, “the denial of an individual application”—and therefore “general collateral challenges” to agency practices and procedures were not barred. *Id.* at 491-92. The Court reiterated *McNary*’s holding in *Reno v. Cath. Soc. Servs., Inc.*, 509 U.S. 43, 54-56 (1993). Under *McNary* and *Reno*, the claims Plaintiffs bring—statutory and constitutional claims against Defendants’ practices and processes—are reviewable because Congress did not provide the clear and specific language required to strip

jurisdiction over such collateral challenges.³ *See McNary*, 498 U.S. at 483-84.

Ignoring *McNary* and *Reno*, Defendants instead rely on *Patel v. Garland*, 596 U.S. 328 (2022), Mot. 11, which did not address the definition of ‘determination’ and involved meaningfully different statutory language. *See Patel*, 596 U.S. at 336-40 (discussing bar on review of “any judgment regarding the granting of” certain kinds of relief and noting “[t]he outcome of this case largely turns on the scope of the word ‘judgment’”). *Patel* also relied on distinct statutory context clues and legislative history to define the broad scope of that jurisdictional bar. *See, e.g., id.* at 339 (citing amendment history of 8 U.S.C. §1252(a)(2)(D)); *id.* at 344 (pointing to expansive jurisdictional bars in surrounding subsections as “bear[ing] the same relationship” to the language at issue).

³ Contrary to Defendants’ representation, *see* Mot. 14-15, Plaintiffs do challenge a systematic policy—terminating TPS designations without adherence to the statute and based on impermissible extra-statutory factors. Plaintiffs’ references to clear irregularities and contradictions in the Federal Register Notice simply illustrate the impermissible ends-oriented nature of Defendants’ review process. *See infra* Section I.B. Moreover, Defendants’ assertion that the relief Plaintiffs seek somehow proves that their challenge is substantive founders on the fact that APA relief is available for a variety of purely procedural improprieties and never requires a particular substantive outcome.

Patel does not supplant *McNary* and *Reno*, and it cannot provide the clear and convincing evidence required to show that Congress intended to bar all claims related to TPS terminations. *See McNary*, 498 U.S. at 492-94; *see also Bowen v. Mich. Acad. of Fam, Physicians*, 476 U.S. 667, 675-77 (1986) (rejecting “extreme” position foreclosing court review of constitutional claims). Defendants’ reliance on cases interpreting a no-review provision of the Medicare Act, Mot. 12, fails for the same reasons.

To combat the substantial caselaw supporting judicial review over Plaintiffs’ claims, Defendants contend that two unreasoned emergency stays by the Supreme Court concerning challenges to the termination of Venezuela’s TPS, Mot. 12-14, prove that the district court lacked jurisdiction over Plaintiffs’ *arbitrary-and-capricious* claims, *id.* 12-13. That argument is, of course, irrelevant to the district court’s holdings that the termination here was *contrary to law* by violating the TPS statute in multiple ways. *See* Tr. 14-17; *see also infra* Section I.B.

Even as to arbitrary-and-capricious claims, the stays do not control. *See Merrill v. Milligan*, 142 S.Ct. 879, 879 (2022) (Kavanaugh, J., concurring) (“The Court’s [emergency] stay order is not a decision on the merits”). Defendants’ reliance on *Trump v. Boyle*, is misplaced. 145 S.Ct.

2653 (2025). *Boyle* reaffirmed that emergency stays “are not conclusive as to the merits,” *id.* at 2654, involved a case that could overrule existing precedent, and relied on *Trump v. Wilcox*, 145 S.Ct. 1415 (2025), a stay decision with substantive reasoning. *Id.*; accord *Trump v. CASA*, 606 U.S. 831, 874 (Kavanaugh, J., concurring) (decision provides guidance when it involves “the interim legal status of a major new federal statute or executive action”). Here, Plaintiffs seek to maintain a long-standing status quo.

Far from being dispositive, the *NTPSA* stays provide, at most, extremely limited guidance. Defendants’ insistence that the Supreme Court “necessarily concluded” that they were likely to succeed on its jurisdictional argument is incredible. Mot. 12. In their stay applications, Defendants’ “legal arguments,” on which the Court could have based its emergency stay decisions, covered more than jurisdiction.⁴ Defendants

⁴ Gov’t. Stay Appl. at 15-20, *NTPSA*, No. 24A1059 (U.S. May 1, 2025), <https://www.supremecourt.gov/docket/docketfiles/html/public/24a1059.html> (“May Stay Appl.”); Gov’t Stay Appl. at 16-19, *NTPSA*, No. 25A326, (U.S. Sep. 19, 2025), <https://www.supremecourt.gov/docket/docketfiles/html/public/25a326.html> (“Sep. Stay Appl.”).

argued in favor of the Secretary's authority to vacate a prior TPS designation outside the periodic review process, an issue absent here; they also challenged the district court's constitutional analysis. The Supreme Court also could have considered the government's particular interests in immediately implementing a termination for Venezuela. *See NTPSA*, 2025 WL 2812732, at *2 (Mem.) (questioning government's "interest in terminating TPS" for Venezuela) (Jackson, J. dissenting). Indeed, the equities are distinct: the government's purported interest in terminating Venezuela's TPS likely turns on country-specific factors, including particular foreign policy considerations between Venezuela and the U.S. government⁵ and the substantially larger number of Venezuelan TPS holders (approximately 300,000)⁶ as compared to Syria (approximately 6,100).

Moreover, there is strong reason to believe that the stays on which Defendants rely were not based on jurisdictional grounds. The stays apply only to Venezuela even though the lower court's preliminary relief

⁵ May Stay Appl. 36-37; Sep. Stay Appl. 24-25.

⁶ *NTPSA*, 2025 WL 2812732, at *2 (Jackson, J. dissenting).

also applied to Haiti.⁷ *NTPSA*, 145 S.Ct. at 2729 (Mem.). And the first stay does not even apply to every Venezuelan TPS holder; it includes carveouts for some individuals that would make no sense if the Court had acted on jurisdictional grounds. *See id.* (granting stay except for individuals who had already obtained updated TPS documentation). These critical distinctions highlight that the *NTPSA* stays *cannot* “be read to apply equally to this case,” Mot. 13, as well as their limited utility generally. *See Merrill*, 142 S.Ct. at 879; *see also Boyle*, 145 S.Ct. at 2654.

2. Section 1252(f)(1) does not bar postponement or vacatur.

Though Plaintiffs disagree with the district court’s conclusion that Section 1252(f)(1) encompasses the TPS statute, the court correctly held it had authority to postpone the termination of Syria’s TPS. Section 1252(f)(1) applies only to injunctive relief and other “forms of relief that operate *in personam*.” *MRNY v. Noem*, No. 25-5320, slip op. at 33 (D.C. Cir. Nov. 22, 2025); *see* 8 U.S.C. §1252(f)(1) (“no court (other than the

⁷ Defendants did not seek to stay the district court’s postponement of Haiti’s termination, suggesting that even Defendants recognize the country-specific nature of a court’s assessment of the ultimate merits and equities in each case, *see* May Stay Appl. n.8.

Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of part IV of this subchapter”). It does not, as this Court’s sister circuits have held, bar the vacatur or postponement of agency actions, which do not operate on individual actors. *See MRNY*, slip op. at 33 (“When a court enters a stay, it does not direct individual to act or not to act.”); *NTPSA v. Noem*, 150 F.4th 1000, 1018 (9th Cir. 2025) (“[A] stay or postponement of agency action under the APA” is not injunctive relief); *Texas v. United States*, 40 F.4th 205, 219 (5th Cir. 2022) (concluding that §1252(f)(1) does not bar vacatur, which “does nothing” except “re-establish the status quo”).

B. The termination was contrary to law.

The district court properly concluded that Plaintiffs are likely to succeed on their contrary-to-law claim for two reasons: (a) the termination of Syria’s TPS was predetermined and carried out in violation of statutory procedures; Tr. 14-18, and (b) the Secretary improperly justified the termination based on an extra-statutory factor—the national interest, Tr. 18-21.

Defendants’ challenge to the district court’s holding turns on their mischaracterization of the basis for the holding. Defendants invoke the

standards for arbitrary-and-capricious review and cite cases applying those standards. Mot. 18-19. But the district court made clear that it was not conducting an arbitrary-and-capricious review or judging whether the Secretary “weighed the evidence incorrectly” or whether “she came up with the wrong decision.” Tr. 21: 9-13.⁸ Rather, the district court concluded that the termination was likely *contrary to law* because it failed to comply with the requirements of Section 1254a. Tr. 14-18.

First, the district court read the TPS statute as requiring the Secretary to (a) engage in interagency consultation and (b) undertake an objective and good faith review of conditions in the foreign state—and then to base her decision on that consultation and review. *See* Tr. 15:3-9. The court reviewed the factual record and found that the Secretary’s decision to terminate Syria’s TPS was predetermined and made based on a political agenda to end the TPS program—not on the required objective country-conditions review and interagency consultation. Tr. 15-18. The district court made this finding based on the administration’s statements

⁸ The district court did hold that Plaintiffs are likely to succeed on one specific arbitrary-and-capricious claim concerning improper political influence, which is discussed below.

that it believed TPS was unlawful and would end TPS; a day-one executive order directing DHS to limit TPS extensions; the Secretary's statements that she would limit TPS; and the administration's subsequent "coordinated effort to end TPS status if and as each renewal comes up," in a series of terminations with similar rationales and "virtually identical" procedural errors. Tr. 11-13. Defendants challenge the district court's factual conclusions, Mot. 18, 24, but fail to establish clear error.

The district court also found manifest irregularities and omissions in the Syria termination notice itself. For instance, the district court noted that the Secretary failed to mention or consider contemporaneous and relevant conditions evidence from other agencies—like the U.S. State Department "Do Not Travel" advisory, which warned that "no part of Syria is safe," ECF 20-19, due to dangers that are not "citizenship-specific," Tr. 18:10-18. This includes active armed conflict, aerial bombardment, unexploded ordnances, and the destruction of infrastructure, housing and crucial utilities, ECF 20-19. The district court considered this glaring discrepancy between the positions of two federal agencies and other omissions in the termination notice, *see* Mot.

20-21, only for very limited purposes: as illustrative evidence that the Secretary did not conduct the required objective country conditions review and interagency consultation. Tr. 18:6-21.⁹ The Secretary's blatant failure to even consider available and relevant contradictory information is not an unreviewable "foreign affairs" judgment, *see* Mot. 20-21, but rather evidence of non-compliance with the procedural strictures of a domestic statute.¹⁰

As to the national interest justification, the district court did not issue judgment on the persuasiveness of the Secretary's specific national interest rationale. *See* Mot. 23. Rather, the court held that the statute, as a matter of law, precludes the Secretary from terminating a TPS designation based solely on a national-interest justification. Tr. 18-21.

⁹ Contrary to Defendants' assertion, Mot. 24, the court's preliminary conclusion that the Secretary did not engage in the requisite interagency consultation is supported by evidence: the contradiction between the notice and State's contemporaneous statement, as well as significant evidence that consultations did not occur in precursor terminations—clear evidence to displace any presumption of regularity. *See* Tr. 18:1-21.

¹⁰ The Secretary's citation to a press release that post-dated her deadline to make a final decision, Mot. 21 n.6, is notable because this is *the only source* cited for the cursory dismissal of the ongoing humanitarian crisis in Syria, 90 Fed. Reg. 45,398, 45,400 n.22, evidencing the *post-hoc* nature of this otherwise unsupported conclusion.

The district court thus simply fulfilled its fundamental “duty ... to say what the law is.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 369 (2024) (quotation omitted). Specifically, the district court concluded that the statute precludes “reliance on the national interest divorced from an analysis of country conditions” as a justification for termination, because the statute specifically requires that termination decisions be based on agency review and consultations as to “conditions in the foreign state.” Tr. 19:15-21:7; 8 U.S.C. §1254a(b)(3)(A). As the district court noted, 34 years of agency practice support this interpretation of the statutory text. *See* Tr. 20:4-13. The district court found that Defendants improperly justified the termination of TPS for Syria with an overarching national interest justification, divorced from country conditions, and thus violated the direction of the TPS statute.¹¹

The district court has already rejected the alternative interpretation of the statute that Defendants propose. *See* Mot. 22.

¹¹ Defendants’ suggestion that the national interest consideration was in part based in a review of country conditions in Syria, Mot. 23-24, seeks to distract attention from the Secretary’s failure to substantively review or engage with ongoing “extraordinary and temporary conditions in the foreign state”—the “country conditions” that the statute specifies must be the subject of periodic review. 8 U.S.C. §1254a(b)(1)(C), (b)(3).

Because the statute directs a consideration of national interest at the *initial* designation where the designation is based on “extraordinary and temporary conditions,” 8 U.S.C. §1254a(b)(1)(C),¹² Defendants extrapolate that the statute *requires* termination of TPS designations wherever an administration makes a negative national interest determination, Mot. 22. Defendants’ interpretation of the statute would concerningly authorize and require the termination of TPS designations based *only* on the national interest, allowing the Secretary to leapfrog over the clear statutory requirement that periodic review be based on “conditions in the foreign state,” 8 U.S.C. §1254a(b)(3)(A). And this interpretation ignores the considered structure of the TPS statute, which gives the executive discretion to decide whether to designate a country in the first instance, *see id.* §1254a(b)(1), but then places significant procedural guardrails on subsequent decisions to extend or terminate a designation. *Id.* §1254a(b)(3). This structure aligns with congressional

¹² Defendants do not address the uncontestable fact that the TPS statute precludes consideration of the national interest even at the initial designation stage where designation is based on armed conflict or environmental disaster. 8 U.S.C. §1254a(b)(1)(A)-(B).

intent to limit executive discretion and insulate TPS holders from termination decisions based on politics. *NTPSA*, 150 F.4th at 1009. Defendants’ interpretation of the statute would leave TPS holders vulnerable to arbitrary and unexpected terminations of status based on a given administration’s subjective version of the national interest—exactly what happened here.

C. The termination was arbitrary and capricious because of undue political influence.

The Secretary’s termination decision was the result of undue political influence, rendering it arbitrary and capricious under this Court’s precedent. Defendants protest that a new administration may reasonably enact its political priorities through policy changes, Mot. 19, but an agency may only “implement the President’s policy directives *to the extent permitted by law*,” Mot. 19-20 (citing *Sherley v. Sebelius*, 689 F.3d 776, 784 (D.C. Cir. 2012)) (emphasis added). Defendants do not engage with Second Circuit caselaw establishing that political influence is improper where there is a showing that “political pressure was intended to and did cause the agency’s action to be influenced by factors not relevant under the controlling statute.” *Town of Orangetown v. Ruckelshaus*, 740 F.2d 185, 188 (2d. Cir. 1984). Here, political pressure

led the Secretary to go far outside the bounds of law and make her decision based on statutorily improper factors.

Defendants attempt to sanitize the political influence exerted on the Secretary, but they do not establish that the district court's contrary factual findings were clearly erroneous. The President and Vice President did not simply "criticize[] the TPS program," Mot. 19—they made "sweeping and erroneous statements concerning ... the legality of the TPS program," Tr. 25:11-14, and "campaign[ed] on revoking TPS." Tr. 15:20-22. And the Presidential directive instructing the Secretary to reconsider TPS designations was not neutral guidance, Mot. 20—it was instead predicated on a legally erroneous view of TPS holders as illegally present and "paid lip service to the TPS statute while *sub silentio* calling for its demise." Tr. 25: 9-17. The Secretary expressly stated that she was following the President's "directive" as to TPS, ECF 20-30, and would not extend TPS designations, *see* ECF 20-3; Tr. 16:3-10. She has followed through on that promise, terminating not just "several TPS designations," Mot. 19, but *every single TPS designation that has come up for review*, in a "coordinated effort to end TPS status." Tr. 12:22-13:6. The procedurally irregular termination of Syria's TPS was the eighth of

now ten terminations improperly carried out under this political directive.

Congress enacted the TPS statute to formalize a previously discretionary humanitarian protection and to insulate TPS decisions from political influence and meddling. *See NTPSA*, 150 F.4th at 1008. But this administration—determined to end TPS not through legislation but executive action—has turned TPS terminations into wholly political decisions. The political influence led the Secretary to mold her decision to conform to the administration’s anti-immigrant and anti-TPS agenda, rather than basing her decision on the country conditions considerations required under statute. Defendants cannot retroactively cleanse the Secretary’s decisions of the clear and improper political influence and are not likely to succeed on this claim.

II. THE REMAINING STAY FACTORS STRONGLY FAVOR PLAINTIFFS.

The District Court correctly held that Plaintiffs would suffer irreparable harm absent postponement. Tr. 29:15. For the same reasons, Plaintiffs would suffer irreparable harm from a stay of the district court’s order: they would be stripped of legal status, employment authorization, and related benefits; exposed to detention and deportation to a country

plagued by “ongoing armed conflict, food insecurity, lack of healthcare, and widespread displacement”; separated from U.S. citizen children and family members; and unable to pursue many other avenues of immigration relief. Tr. 29:19-30:14. Many of these harms would be irreversible.

Defendants do not dispute that Plaintiffs will suffer catastrophic harms if the terminations go into effect but instead contend that such harm is “inherent” in the temporary nature of the TPS statute. Mot. 26. That is incoherent. Because the statute vests the Secretary with the decision to continue or terminate TPS—and *requires* extension if conditions so warrant, 8 U.S.C. §1254a(b)(3)—Defendants cannot shift harms arising from unlawful termination onto Congress. The fact that “removal alone” does not constitute irreparable harm, Mot. 26, is of no moment given the avalanche of other harms that a stay would inflict on Plaintiffs.

In keeping with their delay in filing a motion for “emergency” relief, Defendants have failed to show that they would suffer any irreparable harm in the absence of a stay pending full resolution of the merits of the postponement. Defendants argue that the government is irreparably

injured any time it is “enjoined ... from effectuating statutes enacted by representatives of [the] people,” Mot. 25 (citing *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)). But the TPS statute was enacted by Congress to constrain agency discretion and protect TPS recipients, see *NTPSA*, 150 F.4th at 1008-09, and the district court held that Defendants are *violating* the statute. Tr. 15:10-17. Defendants have thus not “demonstrated in what way [they are] being ‘enjoined ... from effectuating statutes[.]’” *Mahdawi v. Trump*, 136 F.4th 443, 454 (2d Cir. 2025).

The public interest and balance of the equities also tilt heavily in Plaintiffs’ favor; “[t]here is no public interest in allowing the government to proceed with unlawful or arbitrary and capricious actions that violate the INA or the APA.” Tr. 30:17-20; see also *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). To the contrary, “[t]he public has a substantial interest in ensuring that government agencies comply with federal laws.” Tr. 30:20-21.

Defendants’ argument that the Secretary’s unlawful TPS termination should be allowed to go into effect immediately because of “national interest” concerns, Mot. 25, fares no better. The Secretary’s

TPS decisions must be made in compliance with domestic law, and the Secretary cannot justify clear violations of the TPS statute by invoking the specter of foreign policy or national security. *See A.A.R.P. v. Trump*, 605 U.S. 91, 96 (2025) (“national security interests” must be “pursued in a manner consistent with the Constitution.”). And as the district court correctly held, Defendants have made no concrete showing that allowing 6,100 Syrian TPS holders to remain in the United States while litigation proceeds “would adversely impact national security or compromise the executive's ability to engage in foreign relations.” Tr. 31:6-11. Rather, the public interest in this case is served by upholding the humanitarian principles underlying the TPS statute, *see* Tr. 30:25-31:5, and by allowing TPS holders to continue to contribute to their communities and this nation, *see id.* 30:22-24.¹³

III. THE REQUESTED RELIEF IS PROPER.

Relying on *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), Defendants argue that the district court’s order was “impermissibly overbroad.” Mot. 26-28. But as the district court noted, *CASA*’s holding expressly applied

¹³ The *NTPSA* stays are not dispositive of the equities in this case, *see* Mot. 24-25, for the reasons discussed *supra* 12-14.

only to injunctive relief, not to vacatur or postponement under the APA. Tr. 31:17-32:23; *see also* 606 U.S. at 847 n.10.¹⁴ And as the D.C. Circuit recently explained in rejecting the same argument Defendants raise here, the analysis in *CASA* was likewise specific to injunctions, and “there is good reason to think that Congress did not intend to incorporate” the “background equitable principles” animating *CASA* “into the APA.” *MRNY v. Noem*, No. 25-5320, slip. op at 74, 77 (quotation omitted).

As the D.C. Circuit further explained, Defendants’ attempt to restrict postponements to the parties “ill fits Section 705’s text.” *Id.* at 75. “Section 705 stays operate on the legal source of authority for an agency to act at all” rather than “simply insulat[ing] certain parties from enforcement measures.” *Id.* at 75-76. Further, Section 705 “speaks in terms of ‘the effective date’ of an agency rule or policy”—referring to a single date. *Id.* at 76 (quoting 5 U.S.C. §705). If a court were to order that an agency action only be postponed as to certain individuals, but that the

¹⁴ Even if *CASA* could be applied to Section 705 postponements in theory—and it cannot—nationwide relief would remain appropriate here. Plaintiffs filed this case as a class action, *see* Tr. 32:1-23, challenge a single, unitary policy, and established that interim relief was warranted on grounds that apply equally to all Syrian TPS holders and applicants.

agency can move forward with the action against others, “*the* effective date of the [agency] action” would not have “been postponed.” *Id.*

And both *Make the Road* and the district court’s order here rest on decades of unbroken precedent. *See MRNY*, slip op. at 78-79.

CONCLUSION

The Court should deny Defendants’ Motion.

Dated: December 11, 2025

Respectfully submitted,

INTERNATIONAL REFUGEE
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Certificate of Compliance

Pursuant to Federal Rule of Appellate Procedure 32(g), the above-named counsel, hereby certifies that this memorandum complies with the type-volume limit, typeface requirements, and type-style requirements of the Federal Rules of Appellate Procedure 27(d) and 32(a). As measured by the word processing system used to prepare it, this memorandum contains 5,145 words.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

DAHLIA DOE; SARA DOE; NESMA DOE; LAILA
DOE; WALEED DOE; MUSTAFA DOE; and
AHMAD DOE, on their own behalf and on behalf of
others similarly situated,

Plaintiffs,

– *versus* –

Kristi NOEM, Secretary, United States Department of
Homeland Security, in her official capacity; UNITED
STATES DEPARTMENT OF HOMELAND
SECURITY; UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES; and UNITED STATES
OF AMERICA,

Defendants.

Case No. 1:25-cv-08686

**COMPLAINT
CLASS ACTION**

INTRODUCTION

1. Syria is a country in humanitarian crisis. In recognition of a brutal civil war that began in 2011, the United States has repeatedly granted Syrian nationals a form of statutory and humanitarian protection called Temporary Protected Status (“TPS”), which protects certain individuals from removal to countries designated unsafe on account of dire country conditions like armed conflict, natural disaster, or other extraordinary circumstances. TPS provides eligible beneficiaries with the right to live and work legally in the United States during a period when it is unsafe for them to return to their countries of origin. Over 6,100 Syrian nationals currently have TPS and, as a result, find refuge in the United States; and over 800 Syrian nationals have pending applications hoping for that same protection.

2. Plaintiffs are seven Syrian nationals with TPS or pending applications for TPS, who have lived in the United States for years and have deep ties to this country and their communities. They bring this class action to challenge Defendants’ remarkable and unlawful decision to terminate Syria’s TPS designation, effective November 21, 2025. Defendants’ actions put Plaintiffs with existing TPS at imminent risk of losing the critical humanitarian protection that TPS provides and rob Plaintiffs with pending applications of the opportunity to have their applications adjudicated. Should TPS for Syria be terminated, all Plaintiffs will face impossible choices: to uproot their lives yet again in search of a pathway to safety in a third country; to remain in the United States without lawful immigration status, at risk of imminent immigration detention and removal; or to relocate—some for the first time—to Syria, a country plagued by violent conflict, including air strikes, civil unrest, humanitarian crisis, and volatile country conditions.

3. Department of Homeland Security (“DHS”) Secretary Kristi Noem’s decision to terminate TPS for Syria—giving TPS-holders merely 60 days to plan for life without TPS—is

the latest in a series of premeditated terminations¹ of TPS for several non-white, non-European countries. The decisions to terminate TPS for these countries, including Syria, were made as part of the Trump Administration's ongoing effort to effectively eliminate the Congressionally-authorized TPS program and significantly reduce the number of non-white immigrants in the United States.

4. Specifically, here, Defendants' decision to terminate TPS for Syria—made prior to consulting appropriate executive agencies, without regard to Syria's dire country conditions, and by relying on impermissible factors—violates the TPS program's statutory requirements and the Administrative Procedure Act ("APA"). Defendants' unexplained decision to provide only 60 days' notice before the termination takes effect is a stark departure from past practice of providing an orderly transition period and separately violates the APA. And because these decisions were motivated, at least in part, by racial, ethnic, and national-origin-based animus, they also violate the Constitution. Although it has become alarmingly normalized, Secretary Noem, President Trump, and members of the Trump presidential campaign and Administration have consistently used racist invective to describe and justify their TPS decisions involving immigrants from non-white, non-European countries, including Syria.

5. For these reasons, this Court should set aside DHS's illegal decision terminating TPS for Syrian nationals.

¹ To date, the current Trump Administration has terminated TPS for eight of nine countries whose designations have been up for review. The countries subject to termination are: Syria, Nicaragua, Honduras, Nepal, Cameroon, Afghanistan, Haiti, and Venezuela. Only South Sudan's TPS designation was extended.

THE PARTIES

Plaintiffs

6. **Plaintiff Dahlia Doe** is a Syrian national and TPS holder who has lived in the United States since 2015 and currently resides in Bronx, New York. She works as a research director and is the primary caregiver for her elderly U.S. citizen father, who suffers from Parkinson's disease. Unless her pending application for alternative relief is granted before November 21, she will lose her protection from deportation if TPS for Syria is terminated. Losing TPS will force her to relocate to Syria where she has never lived, has no immediate family ties, and fears she will be targeted as a Syrian Christian religious minority. Dahlia will also be forcibly separated from her immediate U.S. citizen and lawful permanent resident family members.

7. **Plaintiff Sara Doe** is a Syrian national and TPS holder who has lived in the United States since 2014 and currently resides in New York State. Sara moved to the United States after her brothers were killed during the civil war in Syria, and she herself was targeted by the government as a volunteer providing medical services. Sara is a medical practitioner and a highly sought-after pediatrician. She will lose her work authorization, employer-based health insurance, and protection from deportation if TPS is terminated. Losing TPS will mean Sara will be unable to continue working as a highly-specialized pediatrician, a career she has spent decades training for, and will not be able to provide crucial care to children across New York. Sara no longer has a home or anyone to return to in Syria.

8. **Plaintiff Nesma Doe** is a Syrian national and TPS holder who has lived in the United States since 2013 and currently resides in Florida. Nesma is in her late 70s and suffers from various health issues. Members of her close family—including two nieces who serve as her

caregivers—all reside in the United States and most are U.S. citizens. She will lose her protection from deportation and be forcibly separated from her only family in the United States. Losing TPS will force her to relocate to Syria without any family ties and where elderly people have increasingly been targets of crime and armed robberies due to the dire economic instability in the country. She also faces uncertainty over whether she could receive and afford the medical care she requires.

9. **Plaintiff Laila Doe** is a Syrian national and TPS holder who has lived in the United States since 2013 and currently resides in Illinois. She is a full-time special needs teacher and is studying to become a nurse. She is a single mother providing for her minor daughter (also a Syrian TPS holder) and is the primary caregiver for her elderly U.S. citizen mother. She will lose her work authorization and protection from deportation if TPS is terminated. Losing TPS will force Laila and her daughter to return to Syria where she fears for her safety as a divorced single woman, and where her daughter would not be able to pursue her education. She will also be forcibly separated from her U.S. citizen mother and sisters.

10. **Plaintiff Waleed Doe** is a Syrian national and TPS holder who has lived in the United States since 2011 and currently resides in New Jersey. He is the primary breadwinner for his family and supports his wife, who is also a Syrian TPS holder, and three U.S. citizen children, the youngest of whom is nine months old. He works full-time as a senior manager for a private company and recently started his own business. He will lose his work authorization, employer-based health insurance and protection from deportation if TPS is terminated. Losing TPS will prevent Waleed from providing for his family and force him to make the devastating choice of leaving his U.S. citizen children behind or taking them to a country where they would lack medical care, education and basic necessities.

11. **Plaintiff Mustafa Doe** is a Syrian national and TPS holder who has lived in the United States since 2021 and currently resides in New York, New York. He recently graduated from college and has temporary status and work authorization as an extension of his student visa. When that status expires, he will be left without work authorization and protection from detention or deportation and could be forcibly returned to a country where he was sexually trafficked as a child and will face persecution for his LGBTQI identity. Mustafa will also be forcibly separated from his parents who are lawful permanent residents.

12. **Plaintiff Ahmad Doe** is a Syrian citizen with a pending initial application for TPS who has lived in the United States since 2022 and resides in Virginia. Ahmad is a highly sought-after journalist and media producer, but without work authorization cannot accept any of several job offers he has from reputable media companies. Ahmad's only current eligibility for work authorization is through his pending TPS application. If TPS is terminated, Ahmad will lose his protection from deportation as a pending applicant and lose his pathway to obtain work authorization. He fears that, if he is forced to relocate to Syria, he would be killed or targeted due to his criticism of current and past regimes as a journalist. Further, he could be forcibly separated from his non-Syrian national wife.

Defendants

13. **Defendant Kristi Noem** is the Secretary of the Department of Homeland Security. As the highest-ranking officer for DHS, Defendant Noem has ultimate statutory authority over all TPS extension, termination, and designation decisions.² She is sued in her official capacity.

² See 8 U.S.C. § 1254a(b); see also 6 U.S.C. § 557 (transferring certain functions from the Attorney General).

14. **Defendant Department of Homeland Security** is a Cabinet-level department in the U.S. federal government and is an “agency” within the meaning of 5 U.S.C. § 551(1). Its components include U.S. Citizenship and Immigration Services (“USCIS”), U.S. Immigration and Customs Enforcement (“ICE”), and U.S. Customs and Border Protection (“CBP”). DHS, together with its component agencies, is responsible for administering and enforcing the TPS program.

15. **Defendant U.S. Citizenship and Immigration Services** is the sub-agency within DHS charged with adjudicating applications for immigration benefits, including TPS.

16. **Defendant United States of America** includes all other government agencies and departments responsible for changes in TPS policies and the implementation and administration of those policies.

JURISDICTION AND VENUE

17. This Court has jurisdiction under 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States, and the case presents a justiciable case or controversy within the meaning of Article III of the U.S. Constitution. The Court also has jurisdiction over Plaintiffs’ claim under the Fifth Amendment to the U.S. Constitution. The Court has additional remedial authority under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the APA, 5 U.S.C. § 701 *et seq.*

18. The federal government has waived its sovereign immunity and permitted judicial review of agency action under 5 U.S.C. § 702.³ In addition, sovereign immunity does not bar

³ See *Sharkey v. Quarantillo*, 541 F.3d 75, 91 (2d Cir. 2008).

claims against federal officials seeking to prevent violations of federal law, rather than monetary relief.⁴

19. Venue is proper in this district under 28 U.S.C. § 1391(e)(1) because Defendants are agencies of the United States or officers of the United States acting in their official capacity, and because at least one named Plaintiff, as well as unnamed members of the putative class, reside in this judicial district.

THE STATUTORY SCHEME FOR TPS

20. Congress created TPS in response to unconstrained executive discretion in humanitarian relief programs. Prior to 1990, the executive used “extended voluntary departure” to confer blanket nationality-based humanitarian relief. *See* Lynda J. Oswald, *Extended Voluntary Departure: Limiting the Attorney General’s Discretion in Immigration Matters*, 85 Mich. L. Rev. 152, 157–60 (1986). Between 1960 and 1989, the Attorney General granted extended voluntary departure to approximately sixteen countries, with periods of protection ranging from eight months to 15 years.⁵ This practice lacked “any specific ... criteria.” *Id.* at 178 n.153 (quoting Letter from William F. Smith, Att’y Gen., to Lawrence J. Smith, Rep. (July 19, 1983)). The arbitrary, overtly political decisions surrounding extended voluntary departure resulted in congressional pressure to reform the system, particularly in the wake of the Attorney General’s refusal to grant extended voluntary departure for Salvadoran refugees at the time. *See Hotel & Rest. Emps. Union v. Smith*, 846 F.2d 1499, 1510–11 (D.C. Cir. 1988) (discussing termination of extended voluntary departure for El Salvador) (separate opinion of Mikva, J.).

⁴ *See, e.g., id.*; *Lunney v. United States*, 319 F.3d 550, 557–58 (2d Cir. 2003); *Larson v. Domestic & Foreign Com. Corp.*, 337 U.S. 682, 697–99 & nn.18–19 (1949); *Shields v. Utah Idaho Cent. R.R. Co.*, 305 U.S. 177, 183–84 (1938).

⁵ *See* Bill Frelick & Barbara Kohnen, *Filling the Gap: Temporary Protected Status*, 8 J. of Refugee Stud. 339, 362–63 (1995).

21. Congress designed TPS to ensure that future nationality-based protections would be based on “identifiable conditions” rather than “the vagaries of our domestic politics.” 101 Cong. Rec. H25811, 25838 (daily ed. Oct. 25, 1989) (statement of Rep. Sander Levine) (debating the immediate precursor to the TPS statute). Congress also sought to replace the “ad hoc, haphazard . . . procedures” that existed before, and provide beneficiaries with certainty about “what [their] rights are, how the Justice Department determines what countries merit [protected] status,” and “how long they will be able to stay.” *Id.* at 25837 (statement of Rep. Bill Richardson). While establishing criteria to govern blanket humanitarian protection, Congress also overrode the executive branch and statutorily designated El Salvador for TPS. *See* Immigration Act of 1990, Pub. L. 101-649, Title III, §§ 302–303.

22. Since 1990, the TPS statute has given the executive branch authority to provide nationality-based humanitarian relief to certain citizens of countries stricken by war, natural disaster or other catastrophe, who are already present in the United States. *See* 8 U.S.C. § 1254a. The statute provides that the Secretary of DHS may designate a country for TPS where (1) “there is an ongoing armed conflict within the state” and returning nationals “to that state . . . would pose a serious threat to their personal safety”; (2) “there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state” and it is “unable, temporarily, to handle adequately the return” of nationals; and (3) “there exist extraordinary and temporary conditions in the foreign state that prevent . . . nationals of the state from returning to the state in safety, unless the Attorney General finds that permitting the [noncitizens] to remain temporarily in the United States is contrary to the national interest of the United States.” *Id.* § 1254a(b)(1)(A)–(C).

23. Under the statute, the “national interest” provision limits designation only under subsection (C)’s “extraordinary and temporary conditions” ground; it does not apply to designations under subsections (A) (armed conflict) or (B) (natural disasters).

24. In keeping with its intent to free the process of designating countries for humanitarian protection from domestic politics, Congress established a statutory framework that governs the designations of countries for TPS. The statute first requires the Secretary to consult with “appropriate agencies. 8 U.S.C. § 1254a(b)(1). After that, the Secretary “may designate” a country based on armed conflict, environmental disaster, or other extraordinary conditions. *Id.* A designation lasts between six and eighteen months, effective either upon notice in the Federal Register or “such later date as the [Secretary] may specify.” *Id.* §1254a(b)(2).

25. The Secretary thus has substantial discretion over initial TPS designations. So long as she determines certain country conditions exist, she may choose whether and when to designate a country for TPS.

26. By contrast, Congress limited, in important ways, the Secretary’s discretion to review TPS designations after the initial designation is made. *See* U.S. Gov’t Accountability Off., GAO-20-134, *Temporary Protected Status: Steps Taken to Inform and Communicate Secretary of Homeland Security’s Decisions* (2020) (“GAO Report”) at 15–18, 27 (differentiating between the discretion afforded before and after an initial designation). The statutory requirements are clear: “At least 60 days before [the] end of the . . . period of designation, . . . the [Secretary], after consultation with appropriate agencies of the Government, shall review the conditions in the foreign state . . . for which a designation is in effect . . . and shall determine whether the conditions for such designation under this subsection continue to be met.” 8 U.S.C. § 1254a(b)(3)(A).

27. The review process typically begins months before the 60-day deadline. *See* GAO Report at 20–21. As part of the process, both USCIS and the State Department generally prepare country conditions memoranda and recommendations for the Secretary. *See id.* 15–16; *see also Ramos v. Nielsen*, 336 F. Supp. 3d 1075, 1082 (N.D. Cal. 2018) *vacated and remanded sub nom. Ramos v. Wolf*, 975 F.3d 872 (9th Cir. 2020), *reh'g en banc granted, opinion vacated*, 59 F.4th 1010 (9th Cir. 2023) (describing the TPS review process).⁶ Generally, USCIS manages and coordinates the TPS review process for the Secretary, soliciting a country conditions report from the Refugee, Asylum, and International Operations (RAIO) unit within USCIS and soliciting a country conditions report and recommendation from the State Department. *See* GAO Report at 15–21; *see also Saget v. Trump*, 375 F. Supp. 3d 280, 299–300 (E.D.N.Y. 2019). After considering the materials provided, USCIS prepares a detailed recommendation, based on country conditions, for the Secretary. *Id.* USCIS’s recommendation is called a “Director Memo.” *Saget*, 375 F. Supp. 3d at 299–300.

28. Once the Secretary makes her decision, the statute requires that she “shall provide on a timely basis for the publication of notice of each such determination (including the basis for the determination, and, in the case of an affirmative determination, the period of extension of designation under subparagraph (C)) in the Federal Register.” 8 U.S.C. § 1254a(b)(3)(A).

29. Unless the Secretary timely determines and publishes notice of her decision that the country “no longer continues to meet the conditions for designation,” the designation “is extended” automatically for 6 months or “in [her] discretion . . . a period of 12 or 18 months.” 8

⁶ The district court’s decision was reversed on appeal in a 2-1 ruling on jurisdictional grounds, but a majority of active judges voted to rehear the case in banc so the panel decision was vacated. *See Ramos v. Wolf*, 975 F.3d 872 (9th Cir. 2020), *reh'g en banc granted, opinion vacated*, 59 F.4th 1010 (9th Cir. 2023).

U.S.C. § 1254a(b)(3)(C). The statute thus “essentially provides extension as a default.” *Nat’l TPS All. v. Noem*, 773 F. Supp. 3d 807, 851 (N.D. Cal.), *aff’d*, 150 F.4th 1000 (9th Cir. 2025) (“*NTPSA I PI Decision*”).

30. In contrast, if the Secretary timely “determine[s]” that a country “no longer continues to meet the conditions for designation under” § 1254a(b)(1), she “shall terminate the designation by publishing notice in the Federal register.” 8 U.S.C. § 1254a(b)(3)(B). 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.* The statute provides no grounds for the termination of TPS other than a determination that a country no longer meets the conditions for designation.

31. The Secretary has discretion to further postpone the effective date of a termination “in order to provide for an orderly transition.” 8 U.S.C. § 1254a(d)(3). For the twelve most recent terminations of TPS that preceded the Trump Administration’s second term in office, the agency provided at least a six-month period for an orderly transition—and more commonly a twelve- or eighteen-month period. Only four TPS designations have been terminated without any such period, and each of those terminations occurred more than twenty years ago and involved a designation that had been in place for three years or less.

32. Once the Secretary has designated a particular country for TPS, individuals from that country (and persons without nationality who last habitually resided in that country) may apply for immigration status under the program. To be eligible for TPS, individuals from a designated country must meet stringent requirements. These requirements include, among other things, (1) continuous physical presence in the United States from the most recent date of designation; (2) continuous residence in the United States from a (potentially earlier) date

designated by the Secretary; (3) satisfaction of the criteria for admissibility as an immigrant or, for certain grounds of inadmissibility, a waiver of those grounds; (4) a lack of disqualifying criminal history such as convictions for a single felony or multiple misdemeanors; and (5) the submission of an application, extensive documentation, and fees. *See* 8 U.S.C. § 1254a(c)(1); *see also* 8 C.F.R. §§ 244.2, 244.4, 244.9. Further, an individual is not eligible for TPS if “there are reasonable grounds for regarding [them] as a danger to the security of the United States.” *See* 8 U.S.C. § 1254a(c)(2)(B)(ii) (incorporating 8 U.S.C. § 1158(b)(2)(A)).

33. Congress ensured that people who are ultimately granted TPS would enjoy the freedom to live and work in the United States without fear of deportation. Under the statute’s clear directives, anyone who receives and maintains TPS “shall [be] authorize[d]” to work in the United States; “shall not be detained” by the Secretary of Homeland Security on the basis of immigration status; and “shall not [be] remove[d]” from the United States. 8 U.S.C. §§ 1254a(a)(1), (d)(4). The statute affords protection to qualifying individuals regardless of whether they meet the requirements for asylum or other immigration relief. *See id.* § 1254a(b)(1).

34. Individuals who apply for TPS and who are *prima facie* eligible for TPS may receive work authorization and are protected from deportation while the application is pending. *See* 8 U.S.C. § 1254a(a)(4)(B); 8 C.F.R. § 244.10(a), (e).

SYRIA’S PRIOR TPS DESIGNATIONS AND CURRENT COUNTRY CONDITIONS

35. Syria is a Muslim-majority country in southwest Asia. Following its independence from the French colonial empire in 1947, Syria went through decades of political instability, internal conflict, and tumult. In 1970, Syria came under the authoritarian rule of Hafez al-Assad, and upon his death in 2000, the rule of al-Assad’s son, Bashar al-Assad. The

Assad's decades-long rule over Syria was infamous for systemic human rights abuses, war crimes, and repressive policies.

36. In 2011, in response to pro-democracy protests calling for the end of the Assad regime, the Syrian government began killing protestors. Opposition militias formed in response to the government violence, and by the following year, the conflict expanded into a full-fledged civil war. The Assad regime committed grave human rights atrocities: systemic torture, unlawful killings, sexual violence, forced disappearances, and arbitrary detention. These atrocities are well-documented, including by prominent international human rights organizations⁷ and the U.S. Department of State.⁸

37. The Secretary of DHS first designated Syria for TPS in March 2012, in recognition of the country's escalating civil war, widespread civilian casualties, and mass displacement caused by government and non-state armed forces.⁹ The Federal Register notice of designation stated that Syria's armed conflict and humanitarian collapse created "extraordinary and temporary conditions" preventing the safe return of its nationals.¹⁰ In October 2013, DHS extended the initial designation based on "extraordinary and temporary conditions" preventing the safe return of Syrian nationals; in that same Federal Register notice, DHS redesignated Syria for TPS based on its ongoing armed conflict and worsening conditions.¹¹

⁷ See *Syria 2024*, Amnesty Int'l, <https://www.amnesty.org/en/location/middle-east-and-north-africa/middle-east/syria/report-syria/> (last visited Oct. 19, 2025).

⁸ See U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., *Syria 2024 Human Rights Report* (2024), https://www.state.gov/wp-content/uploads/2025/08/624521_ISYRIA-2024-HUMAN-RIGHTS-REPORT.pdf.

⁹ See Designation of Syrian Arab Republic for Temporary Protective Status, 77 Fed. Reg. 19,026, 19,026–27 (Mar. 29, 2012).

¹⁰ *Id.*

¹¹ Extension and Redesignation of Syria for Temporary Protected Status, 78 Fed. Reg. 36,223, 36,224–25 (June 17, 2013).

38. Successive Secretaries of Homeland Security repeatedly extended and redesignated Syria for TPS, each time citing ongoing armed conflict, human rights abuses, and humanitarian catastrophe.¹² Each extension and redesignation underscored that conditions of armed conflict and humanitarian collapse in Syria prevent safe return for people in its diaspora.

39. DHS reviewed Syria's TPS on January 29, 2024, and extended TPS for Syria through September 30, 2025. It did so on two bases: (1) an "ongoing armed conflict" and (2) the continuation of "extraordinary and temporary conditions".¹³ As to armed conflict, DHS found that "the ongoing civil war in Syria ... has involved large-scale destruction of infrastructure, widespread civilian casualties, and human rights abuses and violations."¹⁴ DHS also found that an earthquake had further destroyed Syrian infrastructure and deepened its economic collapse, and that food insecurity and limited access to healthcare and clean water persisted, leaving Syria incapable of supporting safe returns.¹⁵

40. Although the Assad regime fell in December 2024, Syria continues to suffer from armed conflict and humanitarian crisis marked by over a decade of civil war. Throughout 2025, civilians in Syria have been routinely killed and displaced by clashes between forces loyal to the interim government that replaced the Assad regime, sectarian militias, and armed groups from other nations.

¹² See, e.g., Extension and Redesignation of Syria for Temporary Protected Status, 89 Fed. Reg. 5,562, 5,565 (Jan. 29, 2024); Extension of the Designation of Syria for Temporary Protected Status, 83 Fed. Reg. 9,329, 9,331–32 (Mar. 5, 2018); Extension and Redesignation of the Syrian Arab Republic for Temporary Protected Status, 80 Fed. Reg. 245, 247–48 (Jan. 5, 2015).

¹³ Extension and Redesignation of Syria for Temporary Protective Status, 89 Fed. Reg. 5,562, 5,565 (Jan. 29, 2024).

¹⁴ *Id.*

¹⁵ See *id.* at 5,565-67.

41. These conditions are well-documented. For example, the Congressional Research Service reported in September 2025 that “instances of sectarian violence involving members of minority communities, Syrian security forces, nonstate armed groups, and armed vigilantes have threatened Syria's stability since March,” with thousands of civilian deaths and more than 200,000 people newly displaced.¹⁶ Indeed, the report makes clear that Syria is not a unified country: the interim government “does not exercise control over all of Syria, with areas of the northeast under the control of ethnic Kurdish-led forces and areas south of the capital, Damascus, controlled by members of [a] religious minority.”¹⁷ In addition, “Turkish forces remain in parts of the north, while Israeli forces have moved into formerly demilitarized areas between Syria and Israel and into some Syrian territory near” the two countries’ shared border.¹⁸ Israel also launches air strikes, and makes ground incursions, deeper into Syria.¹⁹

42. In June 2025, the Council of the European Union found that Syria remains in a “continued catastrophic humanitarian situation.”²⁰ Noting its “alarm[.]” due to “widespread violence in Syria’s coastal region and in other areas around Damascus,” it called on the transitional government to “ensure control over armed groups.”²¹ The Council also warned that conditions in Syria remain dire, with “90 percent of Syrians living below the poverty line, 16.5 million Syrians relying on humanitarian aid, [and] over 7.2 million people internally

¹⁶ Christopher M. Blanchard, Cong. Rsch. Serv., RL33487, *Syria: Transition and U.S. Policy* 2, 9 (2025).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See Danish Immig. Serv., *Syria – Security Situation* 21–22 (2025),

<https://us.dk/media/uhxnvfwf/syria-security-situation-final-20062025.pdf>.

²⁰ Gen. Secretariat of the Council, *Council Conclusions on Syria* 9 (June 23, 2025),

<https://data.consilium.europa.eu/doc/document/ST-10688-2025-INIT/en/pdf>.

²¹ *Id.* at 3.

displaced.”²² The “food security situation continues to deteriorate, the healthcare system is in ruin, access to basic services remains extremely limited, including due to continued hostilities with attacks on critical infrastructure.”²³

43. The U.S. Department of State continues to maintain a Level 4 “Do Not Travel” advisory for Syria, which warns that “no part of Syria is safe from violence” and of risks from “terrorism, civil unrest, kidnapping, hostage taking, and *armed conflict*.”²⁴

DEFENDANTS’ UNLAWFUL TERMINATION OF SYRIA’S TPS DESIGNATION

44. On September 19, 2025, Defendant Noem announced the termination of Syria’s TPS designation. The termination was published in the Federal Register on September 22, 2025, with a termination date of November 21, 2025—a mere 60 days later and the minimum required by statute. *See* Termination of the Designation of Syria for TPS Status, 90 Fed. Reg. 45,398 (Sep. 22, 2025).

45. Defendant Noem acknowledged that “the civil war in Syria displaced over half of the country’s population, resulted in the deaths of more than 500,000 people, destroyed critical infrastructure, and significantly weakened the Syrian economy.”²⁵ However, she stated that, in large part due to the fall of the Assad regime in December 2024, “the situation [in Syria] no

²² *Id.* at 9.

²³ *Id.*

²⁴ *Syria Travel Advisory*, U.S. DEP’T OF STATE, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/syria-travel-advisory.html> (last visited Oct. 19, 2025) (emphasis added).

²⁵ Termination of the Designation of Syria for TPS Status, 90 Fed. Reg. 45,398, 45,400 (Sept. 22, 2025).

longer meets the criteria for an ongoing armed conflict that poses a serious threat to the personal safety of returning Syrian nationals.”²⁶

46. With respect to Syria’s designation due to “extraordinary and temporary conditions,” Defendant Noem dismissed the dire security and humanitarian situation, acknowledging that “most Syrians require some form of humanitarian assistance” but nonetheless concluding that “this does not prevent nationals from returning in safety.”²⁷

47. Defendant Noem also stated that, “even assuming the relevant conditions in Syria remain both ‘extraordinary’ and ‘temporary,’ termination of the Syria [TPS] designation is required because it is contrary to the national interest to permit Syrian nationals . . . to remain temporarily in the United States.”²⁸ To justify this statement, Defendant Noem relied on Syria’s placement on the government’s list of “state sponsors of terrorism,” the lack of U.S. diplomatic presence in Syria, and the purported unavailability of reliable methods by which the U.S. could “meaningful[ly]” vet Syrian nationals.²⁹ Defendant Noem provided two anecdotes of Syrian nationals—neither one identified as a TPS recipient—who had been indicted, charged, or investigated for crimes related to their alleged roles in the Assad regime or their support for designated terrorist organizations.³⁰ She also asserted without elaboration that “there are Syrian nationals . . . who are [TPS] beneficiaries or applicants who are or have been the subject of administrative investigations for fraud, public safety, and national security.”³¹ The same

²⁶ *Id.* (“[W]hile some sporadic and episodic violence occurs in Syria, the situation no longer meets the criteria for an ongoing armed conflict that poses a serious threat to the personal safety of returning Syrian nationals.”).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 45,401.

³⁰ *See id.*

³¹ *Id.*

conclusory statement appears in Defendant Noem’s justification for terminating TPS for Afghanistan, Venezuela, and Haiti.

48. Defendant Noem did not point to any situation in which even one of the more than 6,000 Syrian TPS holders had ever been convicted of a serious crime, implicated in the atrocities perpetrated by the Assad regime, or charged with supporting a terrorist organization.

49. Finally, Secretary Noem noted both domestic and foreign policy reasons for the termination, citing President Trump’s “America First Policy Directive to the Secretary of State,” which mandated that, moving forward, “the foreign policy of the United States shall champion core American interests and always put America and American citizens first.”³²

50. Remarkably, the Trump Administration took a contradictory position regarding Syria’s country conditions on September 30, 2025, days *after* DHS announced the termination of TPS for Syria. On that date, President Trump renewed Syria’s “national emergency” designation pursuant to the International Emergency Economic Powers Act, finding that the “situation in and in relation to Syria undermines the campaign to defeat . . . ISIS, endangers civilians, and threatens to undermine the peace, security, and stability in the region.” Continuation of the National Emergency With Situation in and in Relation to Syria, 90 Fed. Reg. 47,967 (Oct. 2, 2025).

51. On information and belief, Defendant Noem failed to consult with other federal agencies about the presence of armed conflict in Syria, or other country conditions in Syria, before making her decision to terminate TPS for that country. On information and belief, Defendant Noem’s decision also was not based on an objective review of Syria’s country conditions. Rather, the decision to terminate TPS for Syria was made as part of a preordained

³² *Id.* (quoting Exec. Order No. 14150, 90 Fed. Reg. 8,837) (Jan. 29, 2025).

plan to eliminate existing TPS designations consistent with the Trump Administration’s political goals and campaign promises to curb non-white immigration.³³

THE FIRST TRUMP ADMINISTRATION’S EFFORTS TO ELIMINATE TPS PROTECTIONS

52. The first Trump Administration attempted to end TPS designations for six non-white, non-European countries. Between 2017 and 2018, DHS announced terminations of TPS designations for Sudan, Haiti, Nicaragua, El Salvador, Honduras, and Nepal. *See Ramos v. Nielsen*, 709 F. Supp. 3d 871, 877–78 (N.D. Cal. 2023). If the terminations had taken effect, they would have ended TPS protection for approximately 400,000 people, approximately 98 percent of all TPS holders at the time.³⁴ In each case, the Secretary announced either a 12- or 18-month orderly transition period, which would have delayed the effective date of termination.

53. Litigation and congressional investigations subsequently revealed that the termination decisions were not based on an objective review of country conditions as required by statute—and as had been the past practice over multiple administrations, both Democratic and Republican—but rather were part of a “predetermined presidential agenda to end TPS.” *Ramos v. Nielsen*, 336 F. Supp. 3d 1075, 1094–99 (N.D. Cal. 2018) (vacated and remanded on different grounds; quoting then-DHS Secretary Duke’s assurance to the White House that terminating Nicaragua’s TPS would “send a clear signal that TPS in general is coming to a close”).³⁵

³³ *See, e.g.*, Hannah Fingerhut & Ali Swenson, *At Iowa Rally, Trump Doubles Down on Comments About Immigrants Poisoning the Nation’s Blood*, PBS (Dec. 20, 2023), <https://www.pbs.org/newshour/politics/at-iowa-rally-trump-doubles-down-on-comments-about-immigrants-poisoning-the-nations-blood>.

³⁴ Marcela Valdes, *Their Lawsuit Prevented 400,000 Deportations. Now It’s Biden’s Call*, N.Y. TIMES (Apr. 7, 2021), <https://www.nytimes.com/2021/04/07/magazine/immigration-el-salvador.html>.

³⁵ *See also* Minority Staff of S. Comm. on Foreign Rels., 116th Cong., *Playing Politics with Humanitarian Protections: How Political Aims Trumped U.S. National Security and the Safety of TPS Recipients* 41 (U.S. Gov’t Publ’g Off. Wash. 2019) (finding that termination decision was

54. Moreover, every district court to consider the question of whether animus was a motivating factor for the agency action found that the terminations were part of a policy “to decrease the presence of non-white immigrants in the United States.”³⁶

55. DHS Secretaries faced unrelenting pressure from the White House to reach its “desired result of terminating TPS” and responded by ordering pre-textual terminations of TPS designations for nearly everyone who held the status. *Ramos*, 336 F. Supp. 3d at 1101. For example, in terminating TPS for Nepal, career officials were instructed not to devote research to crises not directly related to the earthquake, and when drafts did not adequately support the proposal to terminate, career officials omitted or deemphasized ongoing problems in Nepal.

56. The courts considering challenges to these decisions consistently found that DHS had radically changed the way it approached TPS decisions, justifying the terminations by considering a much narrower range of country conditions than had been considered in the past. *See Saget v. Trump*, 375 F. Supp. 3d 280, 346 (E.D.N.Y. 2019); *Ramos*, 336 F. Supp. 3d at 1097–98; *Centro Presente v. DHS*, 332 F. Supp. 3d 393, 412–14 (D. Mass. 2018); *CASA de Maryland, Inc. v. Trump*, 355 F. Supp. 3d 307, 321 (D. Md. 2018).

influenced by considerations related to upcoming elections and disregarded risks to national security and safety of returnees).

³⁶ *Saget*, 375 F. Supp. 3d at 368–372 (also finding that “evidence of White House . . . animus toward non-white immigrants, including Haitians specifically, raises at the very least serious questions going to the merits of Plaintiffs’ equal protection claim” challenging the termination of TPS for Haiti); *see also Ramos*, 336 F. Supp. 3d at 1100 (noting “evidence that President Trump harbors an animus against non-white, non-European [noncitizens] which influenced his (and thereby the Secretary’s) decision to end . . . TPS designation[s]”); *Centro Presente v. DHS*, 332 F. Supp. 3d 393, 415 (D. Mass. 2018) (“find[ing] that the combination of a disparate impact on particular racial groups, statements of animus by people plausibly alleged to be involved in the decision-making process, and an allegedly unreasoned shift in policy sufficient to allege plausibly that a discriminatory purpose was a motivating factor in a decision” to terminate TPS for Haiti, El Salvador and Honduras).

57. To justify the termination of designations, and undermine the TPS program, political appointees during the first Trump Administration sought to paint TPS holders as criminals and manufactured evidence to support this implausible claim. A court in the Eastern District of New York found that Acting Secretary Duke decided to terminate TPS for Haiti for the sake of “agenda adherence” to the “America first” platform, without regard to her consideration of country conditions under the TPS statute. *Saget*, 375 F. Supp. 3d at 343, 347–48, 359–62. Acting Secretary Duke specifically sought out a rationale to “[s]eparate out Haiti.” *Id.* at 348. Additionally, subordinates of then-DHS Secretary John Kelly covertly sought data on the number of Haitian TPS holders who committed crimes and relied on public assistance, despite the fact that virtually any criminal record is disqualifying for TPS. *Id.* at 307-09. Secretary Kelly and other DHS and USCIS personnel tried to use these data to demonstrate that extending TPS to Haitians would not be in the “national interest.” *See id.* at 352; *cf.* 8 U.S.C. § 1254a (b)(1)(C), (c)(2)(B). Another federal district court found that “[t]he information sought by the Secretary [Kelly] coincides with racial stereotypes – *i.e.*, that non-whites commit crimes and are on the public dole.” *Ramos*, 336 F. Supp. 3d at 1105.

58. After analyzing “a wealth of record evidence” regarding the terminations of TPS for El Salvador, Haiti, Nicaragua, and Sudan, a federal district court found that “DHS made a deliberate choice to base the TPS decision solely on whether the originating conditions or conditions directly related thereto persisted, regardless of other current conditions no matter how bad . . . The evidence . . . suggests this change may have been made in order to implement and justify a pre-ordained result.” *Id.* at 1092, 1097–98; *see also Centro Presente v. DHS*, 332 F. Supp. 3d at 416 (denying motion to dismiss and explaining “there is no justification, explicit or otherwise, for Defendants’ switch to focusing on whether the conditions that caused the initial

designation had abated rather than a fuller evaluation of whether the country would be able to safely accept returnees”). A court in the Eastern District of New York came to the same conclusion after a four-day bench trial regarding Haiti’s TPS termination, finding that the termination “was preordained and pretextual” and “was made in part due to political influence,” violating the TPS statute’s requirement that decisions be based on country conditions. *Saget*, 375 F. Supp. 3d at 346.

59. Indeed, then-Acting Secretary Duke’s writings revealed that “she, in her role at DHS, was largely carrying out or conforming with a predetermined presidential agenda to end TPS.” *Ramos*, 336 F. Supp. 3d at 1099. Specifically, she expressed that her TPS decision-making was based on “an America first view,” a term that invoked President Trump’s preference for immigration from majority-white European countries. *Id.* at 1099–1100, 1104. Notably, Defendant Noem expressly included the same “America First” objectives in the published Federal Register Notice terminating TPS for Syria and other countries in 2025.

60. As a result of injunctions issued in these cases and subsequent stipulated orders, the terminations sought by the first Trump Administration did not go into effect. *See, e.g., Ramos*, 709 F. Supp. 3d at 878–79. And in 2023, DHS rescinded the TPS terminations for Honduras, Nicaragua, Nepal, and El Salvador and extended TPS designations for those countries instead. *See id.* DHS issued new extensions for Haiti and Sudan on May 21, 2021, and April 19, 2022, respectively, effectively overturning their TPS terminations.³⁷ *See id.* In doing so, DHS

³⁷ *See* Designation of Haiti for Temporary Protected Status, 86 Fed. Reg. 41,863 (Aug. 3, 2021); Designation of Sudan for Temporary Protected Status, 87 Fed. Reg. 23,202 (Apr. 19, 2022).

extensively criticized the flawed country-conditions analyses in the termination decisions issued under the first Trump Administration.³⁸

THE SECOND TRUMP ADMINISTRATION'S PROMISE TO END TPS

Secretary Noem, President Trump, and Vice President Vance Publicly Commit to Terminating TPS

61. Even before she became Secretary of DHS, Defendant Noem publicly committed to ending TPS for reasons unrelated to the situation in Syria, or any other country. During her confirmation hearing, she claimed that TPS “has been abused and manipulated by the Biden Administration,” and suggested that the “extensions” of TPS were impermissible because “[t]he program was intended to be temporary.”³⁹

62. Defendant Noem repeatedly insinuated that TPS was an illegal program. In announcing her decision to end TPS for Venezuela, for instance, she said she would not allow Venezuelan TPS holders to “stay here and violate our laws.”⁴⁰ In her press statement announcing the partial vacatur of TPS for Haiti, Defendant Noem emphasized that “TPS is a type of immigration status available to nationals of certain designated countries that allows aliens, *even*

³⁸ See Extension of the Temporary Protected Status Designation for Honduras, 88 Fed. Reg. 40,304, 40,307 (June 21, 2023) (“[T]he conditions in Honduras that gave rise to its TPS designation in 1999 persisted in 2018 and continue to this day.”); Extension of the Temporary Protected Status Designation for Nicaragua, 88 Fed. Reg. 40294, 40,297 (June 21, 2013) (same for Nicaragua); Extension of the Temporary Protected Status Designation for Nepal, 88 Fed. Reg. 40,317 (June 21, 2023) (same for Nepal).

³⁹ *Homeland Security Secretary Nominee Gov. Kristi Noem Testifies at Confirmation Hearing*, C-SPAN (Jan. 15, 2025), <https://www.c-span.org/program/senate-committee/homeland-security-secretary-nominee-governor-kristi-noem-testifies-at-confirmation-hearing/654484> (at approximately 1:50:54); see also NBC News (@NBCNews), *Meet the Press full broadcast – Feb. 2*, YouTube (Feb. 2, 2025), <https://www.youtube.com/watch?v=FpeMXrvxHco> (at approximately 16:25).

⁴⁰ *DHS Sec. Noem Announces End to Temporary Protected Status for Venezuelan Migrants*, Fox & Friends (Jan. 29, 2025), <https://www.foxnews.com/video/6367942790112?msocid=30416397acd261bf24f1707bad686037> (at approximately 1:00).

if they entered the country illegally, the ability to reside *temporarily* in the U.S.”⁴¹ Defendant Noem further cited Haiti as an “example” of the “exploit[ation]” of the system because “Haiti has been designated for TPS since 2010”; and because “more Haitian nationals, even those who entered the U.S. illegally” have benefited from “each extension.”⁴²

63. President Trump, Vice President Vance, and Trump surrogates have likewise expressed their disagreement with TPS, characterizing designations as illegal, or, in the Vice President Vance’s words, “a magic amnesty wand.”⁴³

64. Both the President and the Vice-President made clear their intent to target TPS and TPS designations for termination before taking office.⁴⁴ President Trump, while campaigning, said that he would “[a]bsolutely ... revoke” TPS from Haitians, saying, “You have to remove the people; you cannot destroy our country . . . In my opinion, it’s not legal.”⁴⁵

⁴¹ Press Release, U.S. Dep’t of Homeland Sec., Secretary Noem Rescinds Previous Administration’s Extension of Haiti’s TPS (Feb. 20, 2025), <https://www.dhs.gov/news/2025/02/20/secretary-noem-rescinds-extension-haitis-temporary-protected-status> (emphasis in original).

⁴² *Id.* (Here, Defendant Noem presumably meant each “redesignation,” because an extension does not allow additional Haitian nationals to benefit from TPS).

⁴³ Gabe Whisnant, *JD Vance Confronted on Putting Constituents ‘at Risk’ With Haitian Claims*, NEWSWEEK (Sept. 16, 2024), <https://www.newsweek.com/jd-vance-cnn-confronted-ohio-haitian-immigrant-claims-1954036>.

⁴⁴ See Chris Cameron, *Vance Vows an End to Programs for Legal Immigrants*, N.Y. TIMES (Oct. 22, 2024), <https://www.nytimes.com/2024/10/22/us/politics/vance-trump-legal-immigrants.html>; Miriam Jordan & Hamed Aleaziz, *Trump Immigration Targets: Ukrainians, Venezuelans, Haitians*, N.Y. TIMES (Nov. 15, 2024), <https://www.nytimes.com/2024/11/15/us/trump-immigrants-temporary-protected-status.html>.

⁴⁵ Damita Menezes & Ali Bradley, *Trump on Springfield Haitian Migrants: ‘They Have to Be Removed*, NEWSNATION (Oct. 2, 2024), <https://www.newsnationnow.com/politics/2024-election/trump-springfield-haitian-migrants-removed/> (starting at approximately 12:00); see also Maggie Astor, *Trump Says He Would Try Again to Revoke Haitian Immigrants’ Protections*, N.Y. TIMES (Oct. 3, 2024), <https://www.nytimes.com/2024/10/03/us/politics/trump-haitian-immigrants-legal-status.html>.

He decried TPS as a “little trick,” asserting that Haitian migrants “are illegal immigrants” who were “destroying the town”⁴⁶ and that he would “do large deportations” of Haitian TPS holders.⁴⁷

65. For his part, Vice-President Vance, said that “[w]e’re going to stop doing mass grants of Temporary Protected Status. Of course, you’re going to have people fleeing from tyranny, but that happens on a case-by-case basis, not by waving the magic government wand.”⁴⁸ Given that TPS is, by statute, designed by Congress to be a mass grant for all eligible individuals (unlike asylum and other forms of fear-based immigration relief grounded in individualized assessments), this statement can only be understood as an attack on TPS itself. Vice President Vance expressed this view repeatedly while campaigning.⁴⁹

⁴⁶ Charisma Madarang, *Trump Says Legal Haitian Migrants Are Illegal ‘As Far As I’m Concerned’*, ROLLINGSTONE (Oct. 9, 2024), <https://www.rollingstone.com/politics/politics-news/trump-claims-legal-haitian-migrants-illegal-1235129621/>.

⁴⁷ Soo Rin Kim et al., *Trump calls US ‘garbage can for the world’ in latest anti-immigrant rhetoric*, ABC NEWS (Oct. 24, 2024), <https://abcnews.go.com/Politics/trump-calls-us-garbage-world-latest-anti-immigrant/story?id=115149893>; Alexandra Ulmer et al., *Trump Pledges to Deport Haitians in Ohio City if Elected*, REUTERS, (Sept. 14, 2024), <https://www.reuters.com/world/us/biden-says-attacks-haitian-immigrants-have-stop-2024-09-13/>.

⁴⁸ Timothy Nerozzi, *Trump ends Temporary Protected Status for more than 300,000 Venezuelans in US*, WASH. EXAM’R (Feb. 3, 2025), <https://www.washingtonexaminer.com/policy/immigration/3308462/trump-ends-temporary-protected-status-venezuelans/>.

⁴⁹ See, e.g., CNN-News 18 (@cnnnews18), *CNN’s Dana Bash And JD Vance Clash Over Claims About Haitian Immigrants*, YouTube (Sept. 16, 2024), <http://youtube.com/watch?v=djpTr5r0zMQ> (at approximately 5:10, disputing anchor’s characterization of TPS holders as being in the United States legally and calling TPS designations a “magic amnesty wand.”); *Senator JD Vance Campaigns in Raleigh, North Carolina*, C-SPAN (Sept. 18, 2024), <https://www.c-span.org/program/campaign-2024/senator-jd-vance-campaigns-in-raleigh-north-carolina/649012> (at approximately 41:00, “The media loves to say that the Haitian migrants, hundreds of thousands of them, by the way . . . they are here legally . . . if Kamala Harris waves the wand illegally and says these people are now here legally. I’m still going to call them an illegal alien.”).

66. According to the New York Times, Stephen Miller, President Trump’s Deputy Chief of Staff and chief architect of his immigration policy platform, and other top advisers flagged the revocation of TPS as a priority for the incoming administration, again without consideration of country conditions or the merit of any individual designation.⁵⁰

67. Project 2025, “the 2025 Presidential Transition Project,” a product of current and former Trump political appointees, also called for the “[r]epeal [of] TPS designations” without elaboration as to any consideration of individual country conditions or any other statutory requirements.⁵¹

DEFENDANTS’ RENEWED EFFORTS TO END TPS

68. Neither the adverse decisions of federal courts nor DHS’s 2023 analysis have deterred the second Trump Administration from reinstating its plan to effectively end TPS consistent with campaign promises. To date, the Administration has attempted to terminate eight of nine TPS designations that have come up for review. The termination decisions—including the termination of TPS for Syria—reflect preordained outcomes driven by the very sort of partisan politics the statute is intended to forestall.

69. On his first day in office, President Trump issued an executive order titled “Protecting the American People Against Invasion.” Exec. Order No. 14159 § 16(b), 90 Fed. Reg. 8,443, 8,446 (Jan. 20, 2025) (“Invasion EO”). The supposed “invasion” at issue involved

⁵⁰ See Charlie Savage et al., *Sweeping Raids, Giant Camps and Mass Deportations: Inside Trump’s 2025 Immigration Plans*, N.Y. TIMES (Nov. 11, 2023), <https://www.nytimes.com/2023/11/11/us/politics/trump-2025-immigration-agenda.html> (“People who were granted temporary protected status because they are from certain countries deemed unsafe, allowing them to lawfully live and work in the United States, would have that status revoked.”).

⁵¹ *Mandate for Leadership: The Conservative Promise* 150 (Paul Dans & Steven Groves eds., 2025) (chapter written by Ken Cuccinelli), https://static.project2025.org/2025_MandateForLeadership_FULL.pdf.

purportedly “unprecedented” levels of irregular entry into the United States. *Id.* § 1. The executive order describes immigrants, including lawfully present TPS holders, as invaders committing “vile and heinous acts against innocent Americans.” *Id.* “Invasion” is a “code word” often used to “express[] that Racial/Ethnic Minorities spread something harmful within communities, institutions, or other societal domains.” Deirdre Pfeiffer & Xiaoqian Hu, *Deconstructing Racial Code Words*, 58 L. & Soc’y Rev. 294, 310 (2024).

70. The Executive Order directs the DHS Secretary to “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,” including by reviewing “designations of Temporary Protected Status.” Invasion EO § 16(b). Although TPS holders are, by definition, lawfully present in the United States, the Executive Order demanded that TPS designations be “appropriately limited in scope” to restrict the “continued presence of illegal aliens⁵² in the United States.” *Id.*

71. Immediately after Defendant Noem was confirmed as Secretary of DHS, Defendants began to implement the Executive Order’s mandate and several of Defendant Noem’s termination orders rely explicitly on this order. In fact, when publicizing the Venezuela TPS vacatur described below, Defendant Noem explained that the vacatur reflected President

⁵² “Illegal alien” is widely recognized as a derogatory term used to vilify and dehumanize non-white immigrants without lawful status (or people perceived as such). *See, e.g.*, Kai Wei, et al., *The Role of Language in Anti-Immigrant Prejudice: What Can We Learn from Immigrants’ Historical Experiences?*, 8(3) SOC. SCIS. J. 1, 10–11 (2019), <https://www.mdpi.com/2076-0760/8/3/93#B63-socsci-08-00093>.

The administration’s use of this term “conveys a message of rejection and exclusion” and further evinces its animus against non-white immigrants. *See also infra* ¶¶ 91-113.

Trump’s “desire” to make sure TPS was “used properly,” adding that “when the President gives a directive, the Department of Homeland Security will follow it.”⁵³

Venezuela

72. Within days of taking office, Defendant Noem made the unprecedented decision to *reverse* the prior Administration’s extension of Venezuela’s 2023 TPS designation.⁵⁴ The termination of Venezuelan TPS followed soon after. A federal court later found that Defendant Noem’s official justification for her unprecedented vacatur was a pretext to cover “the desire to totally undo” the redesignation signed by then-Secretary Alejandro Mayorkas.⁵⁵

73. Secretary Noem’s decision was not based on the statutorily required country conditions review. Rather, the limited review the agency conducted was designed to find support for a termination decision that had already been made. The hasty process Defendants’ undertook for Venezuela illustrates the decision’s pretextual nature; “just two days after a draft of the vacatur decision was prepared and/or circulated . . . a draft of the termination decision was prepared and/or circulation,” indeed the termination notice was prepared “even *before* the

⁵³ Secretary Kristi Noem (@Sec_Noem), X (Jan. 29, 2025, 6:57 PM), https://x.com/sec_noem/status/1884752724194963594?s=46&t=DFMGDqrcqeJ4X9klKmN2s (statement appears in posted video clip from CNN interview).

⁵⁴ See *NTPSA I* PI Decision at 819–20.

⁵⁵ *Id.* at 855. This decision issuing preliminary relief was stayed by the Supreme Court in a non-precedential decision with no analysis. See *Noem v. Nat’l TPS All.*, 145 S. Ct. 2728 (2025). The Ninth Circuit later upheld the district court’s preliminary relief decision in a detailed opinion, *Nat’l TPS All. v. Noem*, 150 F.4th 1000 (9th Cir. 2025), terminating the Supreme Court’s stay, 145 S. Ct. at 2729. Meanwhile, the district court issued a decision on summary judgment in the same case, holding that plaintiffs had established that the agency’s vacatur and termination decisions were unlawful and/or arbitrary and capricious. *Nat’l TPS All. v. Noem*, No. 25-CV-01766-EMC, 2025 WL 2578045 (N.D. Cal. Sep. 5, 2025) (“*NTPSA I* SJ Decision”). That merits decision was then stayed as to the vacatur by the Supreme Court in another non-precedential decision with no analysis. *Noem v. Nat’l TPS All.*, No. 25A326, 2025 WL 2812732, at *1 (U.S. Oct. 3, 2025).

vacatur decision was finalized,” and “DHS staff was asked to ‘focus on any improvements in Venezuela,’ implicitly to advance and support termination of Venezuela’s TPS.”⁵⁶

74. A comparison of Venezuela’s two competing decision memos—dated only three weeks apart—is illustrative. USCIS’s earlier decision memo, dated January 9, 2025, recommended extension, describing Venezuela’s country conditions as a “complex, serious and multidimensional humanitarian crisis.” In sharp contrast, USCIS’s January 31, 2025 memo recommended termination and was terse. In justifying its recommendation, it focused on insignificant positive changes, including a “permit for [a U.S. corporation] to operate in Venezuela,” while ignoring relevant country conditions the January 9th memo assessed, including food insecurity, political repression and human rights abuses, and restricted access to certain basic services.

75. Defendants could not even agree on a justification for terminating Venezuelan TPS. USCIS suggested—despite the absence of supporting evidence—that conditions in Venezuela had improved. Defendant Noem, however, based her decision primarily on national interest grounds, asserting that—because Venezuela was designated for TPS on the grounds of extraordinary and temporary conditions (rather than natural disaster or war)—she did not need to find improved conditions in order to terminate its TPS. Termination of the October 3, 2023 Designation of Venezuela for Temporary Protected Status, 90 Fed. Reg. 9,040, 9,042 (“[E]ven assuming the relevant conditions in Venezuela remain both ‘extraordinary’ and ‘temporary,’ termination of the 2023 Venezuela TPS designation is required because it is contrary to the national interest to permit the Venezuelan nationals . . . to remain temporarily in the United

⁵⁶ *NTPSA I* SJ Decision at *29 (emphasis added).

States.”). The Venezuela termination was the first termination in the history of the TPS program based on national-interest grounds.

Haiti

76. Defendants targeted Haiti next. DHS partially vacated an existing TPS extension for Haiti and purported to retroactively shorten the expiration dates of all documents issued under the prior Secretary’s extension by six months. Defendants’ hasty and limited review process for Haiti mirrored that of Venezuela and, as a district court has found, similarly reflects Defendants’ preordained plan to terminate TPS designations.⁵⁷

77. Defendant Noem’s press statement on Haiti’s partial vacatur also underscores the pretextual nature of her decision. The release announced that Secretary Noem “vacated a decision by the previous administration to extend Haiti’s [TPS] by 18 months” as “part of President Trump’s promise to rescind policies that were magnets for illegal immigration and inconsistent with the law.”⁵⁸ The press statement also referenced the rescission of Venezuela’s TPS extension, explicitly linking the two vacaturs as part of the same project to change “the TPS system.”⁵⁹

78. The justifications provided by Defendant Noem in the Federal Register for the partial vacatur of TPS for Haiti had no basis in the TPS statute and were inconsistent with the history of TPS decision-making. For example, Defendant Noem substantially based the vacatur decision on a critique of former DHS Secretary Mayorkas for purportedly failing to explain why

⁵⁷ *NTPSA I* SJ Decision at *34.

⁵⁸ Press Release, U.S. Dep’t of Homeland Sec., Secretary Noem Rescinds Previous Administration’s Extension of Haiti’s Temporary Protected Status (Feb. 20, 2025), <https://www.dhs.gov/news/2025/02/20/secretary-noem-rescinds-extension-haitis-temporary-protected-status> [hereinafter “Haiti Termination Press Release”].

⁵⁹ *Id.*

he chose an 18-month extension period or why extension and redesignation for Haiti’s TPS were not contrary to the national interest. *Partial Vacatur of 2024 Temporary Protected Status Decision for Haiti*, 90 Fed. Reg. 10,511, 10,513–14 (Feb. 24, 2025). But as a federal district court found, “the absence of a specific justification for the length of a [TPS] extension” once that decision has been made, is neither “unusual or impermissible.”⁶⁰ Similarly, “DHS Secretaries typically have not given explanations as to why allowing TPS holders to remain in the United States is not contrary to the national interest.” *Id.* at *34. The court held that Defendants’ decision “was preordained” and made without “any meaning[ful] analysis and review [of country conditions].” *Id.*

79. On June 27, 2025, Defendants terminated Haiti’s TPS designation. Termination of the Designation of Haiti for Temporary Protected Status, 90 Fed. Reg. 28,760 (July 1, 2025). Because Haiti, like Venezuela, was designated for TPS on the grounds of extraordinary and temporary conditions, the Secretary believed she could justify termination based solely on a finding that extension is not in the national interest. And that is what she did—claiming that crisis-level conditions actually *required* termination because continuing TPS for a country facing total societal collapse is contrary to the U.S. national interest. *Id.* at 28,763(terminating Haitian TPS despite acknowledging “[w]idespread gang violence ... sustained by the country’s lack of functional governmental authority” has “destabilized Haiti,” and that ““Haiti in the grip of severe humanitarian and human rights crisis”). Defendant Noem also identified the actions of one individual convicted of numerous violent crimes as “underscor[ing] the broader risk posed by

⁶⁰ *NTPSA I* SJ Decision at *33.

rising Haitian migration.” DHS’ press release, however, proclaimed that “country conditions have improved to the point where Haitians can return home in safety.”⁶¹

Afghanistan

80. On May 12, 2025, DHS announced the termination of TPS for Afghanistan. Despite an ongoing State Department warning against any travel to the country “due to civil unrest, crime, terrorism, risk of wrongful detention, kidnapping, and limited health facilities,”⁶² Defendant Noem claimed that conditions had “notabl[y] improve[d].” She cited the fact that only 23.7 million (rather than 29 million) Afghan nationals relied on humanitarian assistance to support the conclusion that “the return of Afghan nationals to Afghanistan does not pose a threat to their personal safety.” Termination of the Designation of Afghanistan for Temporary Protected Status, 90 Fed. 20,309, 20,310 (May 13, 2025). She also failed to address entire categories of conditions previously identified as bases for Afghanistan’s TPS designation and prior extensions, including human rights abuses and the welfare of women and girls. *Compare* Extension and Redesignation of Afghanistan for Temporary Protected Status, 88 Fed. Reg. 65,728, 65,730–33 (Sept. 25, 2023), *with* Termination of the Designation of Afghanistan for Temporary Protected Status, 90 Fed. Reg. at 20,310.

81. Defendant Noem also asserted that extending TPS would be contrary to the national interest. Her sole explanation for this conclusion was that “DHS records indicate that there are Afghan nationals who are TPS recipients who have been the subject of administrative

⁶¹ See *DHS Terminates Haiti TPS, Encourages Haitians to Obtain Lawful Status*, U.S. Citizenship & Immigr. Serv., <https://www.uscis.gov/newsroom/news-releases/dhs-terminates-haiti-tps-encourages-haitians-to-obtain-lawful-status>.

⁶² *Travel Advisory*, U.S. Dep’t of State, <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/Afghanistan.html>.

investigations for fraud, public safety, and national security.” Termination of the Designation of Afghanistan for Temporary Protected Status, 90 Fed. Reg. at 20,311.

Cameroon

82. Defendants terminated TPS for Cameroon on June 4, 2025. Termination of the Designation of Cameroon for Temporary Protected Status, 90 Fed. Reg. 23,697 (June 4, 2025). Cameroon had been designated for TPS because of the existence of armed conflict and extraordinary and temporary conditions. Defendant Noem issued the termination despite acknowledging that “Cameroon is experiencing two major conflicts” that “remain active.” *Id.* at 23,698. Defendant Noem again failed to address conditions previously cited as a basis for TPS, including human rights abuses, food insecurity, a cholera epidemic, and ongoing mass displacement. *Compare* Extension and Redesignation of Cameroon for Temporary Protected Status, 88 Fed. Reg. 69,945 (Oct. 10, 2023), *with* Termination of the Designation of Cameroon for Temporary Protected Status, 90 Fed. Reg. at 23,697. As with the other terminations, she insisted that continuing TPS would be “contrary to the national interest.” Termination of the Designation of Cameroon for Temporary Protected Status, 90 Fed. Reg. at 23,698. In this instance, Defendant Noem reached her conclusion based solely on the executive order directing her to limit TPS and President’s Trump’s broader “policy imperatives” related to immigration. *Id.*

Nepal

83. On June 6, 2025, Defendants terminated TPS for Nepal. Termination of the Designation of Nepal for Temporary Protected Status, 90 Fed. Reg. 24,151 (June 6, 2025). Repeating the pattern developed in the prior terminations, Defendant Noem claimed that “notable improvements” justified ending Nepal’s designation while ignoring entire categories of

conditions—such as widespread food insecurity and lack of access to sanitation—that DHS had previously considered. *Compare* Extension of the Temporary Protected Status Designation for Nepal, 88 Fed. Reg. 40,317 (June 21, 2023), *with* Termination of the Designation of Nepal for Temporary Protected Status, 90 Fed. Reg. at 24,151.

Honduras and Nicaragua

84. On July 8, 2025, Defendants announced the termination of TPS for Honduras and Nicaragua. Termination of the Designation of Honduras for Temporary Protected Status, 90 Fed. Reg. 30,089 (July 8, 2025) (“Honduras Termination Notice”); Termination of the Designation of Nicaragua for Temporary Protected Status, 90 Fed. Reg. 30,087 (July, 8, 2025) (“Nicaragua Termination Notice”). These notices came two days after the expiration of the most recent previous extension for each country and were thus untimely. *See* 8 U.S.C. § 1254a(b)(3)(B).

85. The Honduras Termination Notice cites to the Invasion E.O., noting that “the Secretary should . . . ensur[e] that designations of Temporary Protected Status . . . are appropriately limited in scope and made for only so long as may be necessarily to fulfill the textual requirements of that statute.”⁶³

86. Repeating the pattern developed in the prior terminations, Secretary Noem identified certain positive indicators—such as increasing tourism and real estate investment—while ignoring major categories of conditions that had previously been considered, including “political violence” and “staggering levels of crime” with “[g]angs that originated in the United States . . . la[y]ing siege to communities and . . . plung[ing] the country into a state of crisis.” Extension of the Temporary Protected Status Designation for Honduras, 88 Fed. Reg. 40,304 (June 21, 2023) (internal quotation marks and citations omitted); *see* Honduras Termination

⁶³ Honduras Termination Notice, n.10.

Notice (not addressing political violence or crime). The Nicaragua Termination Notice similarly relies on the Invasion E.O.⁶⁴ It recognizes that “certain conditions for the TPS designation of Nicaragua may continue,” but nonetheless terminates Nicaragua’s designation on the ground that “notable improvements . . . allow Nicaragua to adequately handle the return of its nationals.” Nicaragua Termination Notice, at 30,088. The Termination Notice fails to acknowledge or consider numerous categories of conditions that formed the basis of prior extensions, including “political instability,” a “deteriorat[ing]” “human rights situation,” and a related “humanitarian crisis.”⁶⁵

87. In finding that Honduras and Nicaragua can “handle adequately the return” of their nationals, *see* 8 U.S.C. § 1254a(b)(1)(B), Secretary Noem adopted a new definition of “adequate,” defining the term to mean “[s]atisfactory, but worthy of no stronger praise or recommendation; barely reaching an acceptable standard; just good enough.”⁶⁶

88. Discovery produced in litigation challenging Defendants’ termination of TPS for Nepal, Honduras and Nicaragua⁶⁷ confirms that USCIS drafted decision memoranda recommending termination for Honduras and Nicaragua *before* drafters had reviewed USCIS country conditions reports—and for Nepal and Nicaragua, without ever receiving any recommendation or contemporaneous conditions report from the State Department. This process violated the statutory directives to engage in interagency consultation and further evidences Defendants’ ends-oriented approach.

⁶⁴ Nicaragua Termination Notice, n.4.

⁶⁵ Extension of the Temporary Protected Status Designation for Nicaragua, 88 Fed. Reg. 40,294, 40,300. *See* Nicaragua Termination Notice (failing to address the political or humanitarian situation).

⁶⁶ *See* Honduras Termination Notice at n.23; Nicaraguan Termination Notice at n.14.

⁶⁷ *See Nat’l TPS All. v. Noem*, No. 25-cv-05687-TLT (N.D. Cal. Aug. 21, 2025) (“*NTPSA II*”).

89. In another break with past practice, Secretary Noem provided that, for every country whose TPS designation was terminated (Venezuela, Haiti, Cameroon, Afghanistan, Nepal, Nicaragua, and Honduras), the TPS termination would take effect in 60 days—the minimum period permitted under the TPS statute. 8 U.S.C. § 1254a(b)(3)(B).

90. With the exception of Afghanistan, Cameroon, and Venezuela,⁶⁸ each terminated country had been designated since at least 2015. Rather than demonstrating awareness of DHS’s longstanding practice of providing at least a six-month orderly transition period when ending a TPS designation of substantial length, the Secretary denied that there was any such practice. *See* Termination of the Designation of Nepal for Temporary Protected Status, 90 Fed. Reg. at 24,153–54 n.24. While acknowledging “that certain previous TPS terminations allowed for an extended transition,” she noted that “certain other TPS designations were terminated without allowing for an extended transition period,” indicating her view that the agency had no particular practice. *Id.* That is incorrect. DHS maintained a clear practice over the past twenty years of providing at least a six-month orderly transition period for any TPS termination, and even before that had provided at least a six-month transition for any country designated for TPS for more than three years.

SECRETARY NOEM AND PRESIDENT TRUMP EXPRESSED DISCRIMINATORY ANIMUS TOWARDS NON-WHITE, NON-EUROPEAN IMMIGRANTS

91. President Trump, Secretary Noem, and other members of the Trump Administration have built their political platforms and public-facing personas on unabashed animus toward non-white people, particularly non-white immigrants. This animus significantly motivated the Trump Administration’s plan to end TPS designations and is evidenced by

⁶⁸ Afghanistan and Cameroon were initially designated in 2022 and Venezuela was initially designated in 2021.

numerous statements made by Defendant Noem, President Trump, and other Administration officials. A limited number of those statements are described herein.

92. Members of the Trump Administration have publicly expressed strong biases against Syrians, communities in the Middle East that encompass Syria, and other Muslim-majority countries.

93. At a campaign event in Iowa in October 2023, President Trump boasted of his successes at excluding non-white migrants, defending his Administration's travel ban for Muslim-majority countries as:

[T]otally constitutional because we want to keep bad people out that want to destroy our country. . . . I banned refugees from Syria. I banned refugees from Somalia, very dangerous places, and from all of the most dangerous places all over the world . . . [I]n my second term, we're going to expand each and every one of those bans because we have no choice. Some very rough people, some very, very rough people come out of these areas. They want to blow up our country. We aren't bringing in anyone from Gaza, Syria, Somalia, Yemen, or Libya or anywhere else that threatens our security.⁶⁹

Throughout his campaign, President Trump repeated similar statements, depicting people from Muslim-majority countries as "dangerous terrorists."⁷⁰

94. In April 2024, at a speech to law enforcement officials in Grand Rapids, Michigan, President Trump claimed that immigrants have "wrecked our country," claiming that other countries were "sending prisoners, murderers, drug dealers, mental patients, and terrorists. . .

⁶⁹ *Speech: Donald Trump Holds a Campaign Event in Clive, Iowa - October 16, 2023*, ROLL CALL, <https://rollcall.com/factbase/trump/transcript/donald-trump-speech-campaign-event-clive-iowa-october-16-2023/#101>.

⁷⁰ *See also Speech: Donald Trump Holds a Political Rally in Robstown, Texas - October 22, 2022*, ROLL CALL, ("They include Syria, Somalia, Yemen, Russia, China, Iran, all of Africa. They're storming our country. They're storming our borders. We have no idea who they are, where they come from.") <https://rollcall.com/factbase/trump/transcript/donald-trump-speech-political-rally-robstown-texas-october-22-2022/#20>.

. this isn't just in South America. They're coming from Congo, from Yemen, from Somalia, from Syria."⁷¹

95. In his Republican Convention speech in July 2024, President Trump, repeating the invasion talking point, stated: "The greatest invasion in history is taking place right here in our country. They are coming in from every corner of the earth, not just from South America, but from Africa, Asia, Middle East. . . . They're coming at levels that we've never seen before. . . . and [the Biden] administration does absolutely nothing to stop them."⁷²

96. At a rally in Arizona in August of 2024, President Trump described immigrants as "mak[ing] our criminals look like the nicest people on earth. That's how tough they are. They come from the Middle East. They come from areas that we're fighting. They come from enemy terrain."⁷³

97. In June 2025, ICE Director Todd Lyons insinuated that Syrians, Iranians, and Somalians as a whole posed threats to national security, warning that the public was "going to see an uptick in Syrian arrests, Somalis, anyone that pose [*sic*] that national security threat."⁷⁴

98. Stephen Miller has long expressed support for white nationalism, has "promoted white nationalist literature," and "pushed racist immigration stories" to the media.⁷⁵ As an

⁷¹ *Speech: Donald Trump Addresses Law Enforcement Officials in Grand Rapids - April 2, 2024*, ROLL CALL, <https://rollcall.com/factbase/trump/transcript/donald-trump-speech-law-enforcement-officials-grand-rapids-michigan-april-2-2024/>.

⁷² *Read the Transcript of Donald J. Trump's Convention Speech*, N.Y. TIMES (July 19, 2024), <https://www.nytimes.com/2024/07/19/us/politics/trump-rnc-speech-transcript.html>.

⁷³ *Speech: Donald Trump Holds a Political Rally in Glendale, Arizona - August 23, 2024*, ROLL CALL, <https://rollcall.com/factbase/trump/transcript/donald-trump-speech-political-rally-glendale-arizona-august-23-2024/#90>.

⁷⁴ Ali Bradley & Jeff Arnaold, *Iranian nationals part of larger ICE enforcement focus: Lyons*, NEWSNATION (June 26, 2025), <https://www.newsnationnow.com/us-news/immigration/iranian-nationals-ice-enforcement-lyons/>.

⁷⁵ Michael Edison Hayden, *Stephen Miller's Affinity for White Nationalism Revealed in Leaked Emails*, SOTHERN POVERTY LAW CENTER (Nov. 12, 2019).

undergrad student at Duke, Miller was the national coordinator for a “Terrorism Awareness Project” whose mission was to “make our fellow students aware of the Islamic jihad and the terrorist threat, and to mobilize support for the defense of America and the civilization of the West.”⁷⁶ Miller also lauded historical immigration laws that imposed quotas based on racist assumptions.⁷⁷

99. Consistent with the support of Miller and other Administration officials for white nationalism, the so-called “replacement theory” is a unifying theme of the Trump Administration’s racist statements and immigration policies. This conspiracy theory turns on the idea that non-white immigrants will “replace” the white race, and in doing so undermine the country’s perceived white foundation, history, and culture.⁷⁸ Secretary Noem has endorsed this core premise, describing irregular immigration across the U.S.-Mexico border as an “invasion happening on purpose . . . to remake the foundation of this country.”⁷⁹

<https://www.splcenter.org/hatewatch/2019/11/12/stephen-millers-affinity-white-nationalism-revealed-leaked-emails>.

⁷⁶ Andrew Kaczynski & Chris Massie, *In college, Trump aide Stephen Miller led controversial ‘Terrorism Awareness Project’ warning of ‘Islamofascism’*, CNN (Feb. 15, 2017, 3:40 PM), <https://edition.cnn.com/2017/02/15/politics/kfile-stephen-miller-terrorism-awareness>; see also Nicole Narea, *Stephen Miller Sought to Link Immigrants to Crime and Terrorism in Private Emails to Breitbart*, VOX (Nov. 25, 2019), <https://www.vox.com/policy-and-politics/2019/11/12/20961458/stephen-miller-white-supremacist-anti-immigrant-emails-breitbart-southern-poverty-law-center>.

⁷⁷ Adam Serwer, *Trump’s White-Nationalist Vanguard*, THE ATLANTIC (Nov. 19, 2019), <https://www.theatlantic.com/ideas/archive/2019/11/stephen-miller-alarming-emails/602242/> (“A cache of Miller’s emails . . . show Miller praising racist immigration reactions from a century ago, while bitterly lamenting the law that repealed them.”).

⁷⁸ See *The ‘Great Replacement’ Theory, Explained*, National Immigration Forum, <https://immigrationforum.org/wp-content/uploads/2021/12/Replacement-Theory-Explainer-1122.pdf>.

⁷⁹ *South Dakota Gov. Kristi Noem Calls on Nikki Haley to Exit 2024 Race*, CBS NEWS (Mar. 5, 2024), <https://www.cbsnews.com/video/kristi-noem-calls-on-nikki-haley-to-exit-2024-race/> (at approximately 4:57).

100. DHS recently posted a one-word tweet: “Remigrate.”⁸⁰ This word “refer[s] to the mass deportation of non-white immigrants,” “has ties to white nationalism and has been seen as a euphemism for ethnic cleansing.”⁸¹ Consistent with the so-called “replacement” theory, President Trump and members of his Administrations have long expressed animus against non-white immigrants in general and non-white TPS-holders in particular.

101. On September 23, 2025, President Trump used his platform at the U.N. General Assembly to critique the United Nations’ humanitarian aid for migrants as “funding an assault on Western countries and their borders,” railing that “immigration and their suicidal energy ideas will be the death of Western Europe.”⁸²

102. Secretary Noem has repeatedly described non-white, non-European immigrants as “dirt bags”⁸³ and TPS holders as criminals.

103. In many comments between February 2024 through the present, Secretary Noem has “equated Venezuelan immigrants and/or TPS holders with gang members, criminals, mentally unstable persons, and the like.” *NTPSA I* PI Decision at *39–45 (finding Plaintiffs likely to succeed on their claim that the Secretary’s decision to vacate and terminate Venezuela’s

⁸⁰ Homeland Security (@DHSgov), X (Oct. 14, 2025, 3:06 PM), <https://x.com/DHSgov/status/1978175527329358094>.

⁸¹ Connor Greene, *Trump’s Department of Homeland Security Embraces a Word with Ties to White Nationalism*, TIME (Oct. 16, 2025), <https://time.com/7326233/trump-remigrate-homeland-security/>.

⁸² *Trump Speaks at U.N.*, REV, <https://www.rev.com/transcripts/trump-speaks-at-un>.

⁸³ Secretary Kristi Noem (@Sec_Noem), X (Jan. 28, 2025, 7:35 AM), https://x.com/Sec_Noem/status/1884264039158800547 (“Getting the dirt bags off the streets.”); CBS Mornings (@CBSMornings), *DHS Secretary Kristi Noem Joins Federal Agents on Immigration Raids in New York*, YouTube (Jan. 29, 2025), <https://www.youtube.com/watch?v=tODarHnNiNs> (“These guys are dirtbags. They have come in and perpetuated violence in this country.”). The CBS reporter who accompanied Secretary Noem on New York City raids she references reported that nearly half of those arrested had no criminal history.

TPS designation was motivated by animus in violation of the Constitution); *see also*, Homeland Security (@DHSgov), X (May 19, 2025, 5:18 PM), <https://x.com/DHSgov/status/1924575437344186612> (criticizing the TPS program for allegedly facilitating the entrance of “half a million poorly vetted migrants into this country—from MS-13 gang members to known terrorists and murderers,” even though TPS is available only to individuals who are already present in the United States and anyone with more than a single misdemeanor conviction is ineligible for protection).

104. President Trump has repeatedly conflated immigrants with “criminals, gang members and terrorists.”⁸⁴ At a rally one week before the 2024 election, President Trump described the country as “occupied,” and as “invaded and conquered” by criminal immigrants.⁸⁵

105. While campaigning in 2023, President Trump repeatedly said that non-white, non-European, and non-Christian immigrants are “poisoning the blood of our country.”⁸⁶ Similar phrases pepper discussions of Jewish people in Adolf Hitler’s infamous book *Mein Kampf*.⁸⁷ President Trump also has repeatedly “retweeted” avowed white nationalists, such as

⁸⁴ *See, e.g.*, Donald Trump, *Donald Trump: This Is How I Will End Joe Biden’s Border Disaster on Day One*, DES MOINES REGISTER (Jan. 3, 2024), <https://www.desmoinesregister.com/story/opinion/columnists/caucus/2024/01/03/donald-trump-joe-biden-border-disaster/72093156007/>; *Read the Full Transcripts of Donald Trump’s Interviews with TIME*, TIME (Apr. 2024), <https://time.com/6972022/donald-trump-transcript-2024-election/> (“This is an invasion of our country. An invasion like probably no country has ever seen before. They’re coming in by the millions.”).

⁸⁵ *FULL LiveNOW from FOX (@kivenowfox)*, *SPEECH: Trump holds MSG rally in NYC*, YouTube (Oct. 27, 2024), <https://www.youtube.com/watch?v=bzVT4YEYsuI> (Speech by Donald Trump at Madison Square Garden presidential campaign rally, at approximately 16:13).

⁸⁶ *Donald Trump on Illegal Immigrants ‘Poisoning the Blood of Our Country’*, C-SPAN (Dec. 16, 2023), <https://www.c-span.org/clip/campaign-2024/donald-trump-on-illegal-immigrants-poisoning-the-blood-of-our-country/5098439> (at approximately 00:15); Raheem J. Kassam (@RaheemKassam), *Raheem Kassam Interviews Donald Trump*, YouTube (Sept. 2023), <https://www.youtube.com/watch?v=v283kLQbe1M&t=89s> (at approximately 1:34 to 1:45).

⁸⁷ *See* ADOLF HITLER, *MEIN KEMPF* (1943).

@WhiteGenocideTM, and publicly dined with prominent, self-declared white supremacists, thereby endorsing their racist views and amplifying their racist message.⁸⁸

106. In October 2024, during an interview with conservative radio host Hugh Hewitt, President Trump further emphasized his belief about the genetic inferiority of non-white, non-European immigrants. Speaking about “allowing people to come to an open border,” he said, “many of them murdered far more than one person, and they’re now happily living in the United States. You know now a murderer, I believe this, it’s in their genes. And we got a lot of bad genes in our country right now.”⁸⁹ By contrast, he told a predominately white crowd at a campaign rally in Minnesota that they have “good genes.”⁹⁰

107. President Trump has used overtly dehumanizing rhetoric to described non-white, non-European immigrants, referring to them as “animals,”⁹¹ including snakes that will bite and kill anyone foolish enough to shelter them.⁹² When discussing undocumented immigrants during

⁸⁸ Benjy Sarlin, *Donald Trump Retweets Apparent Neo-Nazi Supporter*, NBC NEWS (Jan. 22, 2016), <https://www.nbcnews.com/politics/2016-election/donald-trump-tweets-apparent-neo-nazi-supporter-n502136>; Eric Lichtblau, *OPINION: Trump amplifies racist lies, giving neo-Nazis ‘real power.’ Where are GOP leaders?* USA TODAY (Sept. 23, 2024), <https://www.usatoday.com/story/opinion/2024/09/23/trump-far-right-haitian-immigrants-springfield/75301951007/>.

⁸⁹ Jack Traylor et al., *Trump Suggests Immigrants Have ‘Bad Genes’ in Latest Disparagement of Migrants*, NBC NEWS (Oct. 7, 2024), <https://www.nbcnews.com/politics/donald-trump/trumpsuggests-immigrants-bad-genes-latest-disparagement-migrants-rcna174271>.

⁹⁰ *Id.*

⁹¹ Miriam Valverde, *In Context: Donald Trump’s comments about immigrations, ‘animals,’* POLITIFACT (May 17, 2018), <https://www.politifact.com/truth-o-meter/article/2018/may/17/context-donald-trumps-comments-about-immigrants-an/> (relying on MS-13 to claim that undocumented immigrants “aren’t people. These are animals.”).

⁹² *See, e.g.,* Dara Lind, “*The Snake*”: *Donald Trump Brings Back His Favorite Anti-Immigrant Fable at CPAC*, VOX (Feb. 23, 2018), www.vox.com/policy-and-politics/2018/2/23/17044744/trump-snake-speech-cpac; *see also* Julie Hirschfeld Davis, *Trump Calls Some Unauthorized Immigrants ‘Animals’ in Rant*, N.Y. TIMES (May 16, 2018), www.nytimes.com/2018/05/16/us/politics/trump-undocumented-immigrants-animals.html; *see also* John Bennett, “*Dumping Ground*”: *Trump Echoes Conservative “Project 2025” at First Rally as Felon*, ROLL CALL (June 10, 2024), <https://rollcall.com/2024/06/10/dumping-ground->

a March 2024 rally, he stated, “I don’t know if you call them people. In some cases they’re not people, in my opinion, but I’m not allowed to say that[.]”⁹³

108. He has also specifically targeted non-white TPS holders. For months, he repeated and amplified the false claim that Haitian TPS holders were “eating the dogs” “eating the cats,” and “eating the pets of the people that live” in Springfield, Ohio.⁹⁴ President Trump called Haitians in Springfield with lawful TPS status “illegal migrant[s]” who “descended upon a town of 58,000 people, destroying their way of life.”⁹⁵ Following these statements, there were several bomb threats against hospitals, government buildings, and schools in Springfield.⁹⁶

109. Vice President Vance has unapologetically repeated these knowing unfounded rumors, stating that if he “ha[s] to create stories” about Haitian migrants “so that the American media actually pays attention to the suffering of the American people, then that’s what I’m going

trump-echoes-conservative-project-2025-at-first-rally-as-a-felon/ (“[W]e’re taking in people that are a disaster for our country. So it’s all happening at our border. . . . And we’re not going to let it happen, we’re not going to let them ruin our country, we’re not going to let them destroy our country. . . . The whole country is being turned into an absolute dumping ground[.]”).

⁹³ Ariana Figueroa, *Trump Promises Mass Deportations of Undocumented People. How Would That Work?*, MISSOURI INDEPENDENT (Aug. 23, 2024), <https://missouriindependent.com/2024/08/23/trump-promises-mass-deportations-of-undocumented-people-how-would-that-work/>.

⁹⁴ See, e.g., *Simulcast – ABC News Presidential Debate*, C-SPAN (Sept. 10, 2024), <https://www.c-span.org/program/campaign-2024/simulcast-abc-news-presidential-debate/648383> (at approximately 29:26).

⁹⁵ Sam Levine, *‘They’ve Destroyed the Place’: Trump Repeats Racist, Anti-immigrant Lies*, THE GUARDIAN (Sept. 13, 2024), <https://www.theguardian.com/us-news/2024/sep/13/trump-repeats-lies-haitian-immigrants>; see also Damita Menezes & Ali Bradley, *Trump on Springfield Haitian Migrants: ‘They Have to Be Removed,’* NEWSNATION (Oct. 2, 2024), <https://www.newsnationnow.com/politics/2024-election/trump-springfield-haitian-migrants-removed/> (at approximately 12:45, “Springfield is such a beautiful place. Have you seen what’s happened to it? It’s been overrun. You can’t do that to people. . . . I’d revoke [TPS], and I’d bring [the migrants] back to their country.”).

⁹⁶ Edward Helmore, *More bomb threats hit Springfield, Ohio, after Trump elevates false claims about Haitians*, THE GUARDIAN (Sept. 14, 2024), <https://www.theguardian.com/us-news/2024/sep/14/more-bomb-threats-hit-springfield-ohio-after-trump-elevates-false-claims-about-haitians>.

to do.”⁹⁷ Additionally, Vice President Vance disparaged Haitian TPS holders with longstanding stereotypes⁹⁸ of immigrants as dangerous criminals and spreaders of disease. He accused Haitians in Springfield of triggering “a massive rise in communicable diseases, rent prices, car insurance rates, and crime,” stating “[t]his is what happens when you drop 20,000 people into a small community.”⁹⁹ He specifically stated that Haitians caused “TB and HIV” to be “on the rise.”¹⁰⁰

110. During his First Administration, President Trump repeatedly denigrated immigrants from countries designated for TPS. Most infamously, he referred to countries designated for TPS as “shithole” countries in a conversation with legislators about TPS, saying “Why do we need more Haitians?” He asked officials to “take them out” of the immigration proposal. He expressed a preference, instead, for immigrants from countries “such as Norway.”¹⁰¹

⁹⁷ Kit Maher & Chris Boyette, *JD Vance Defends Baseless Rumor About Haitian Immigrants Eating Pets*, CNN (Sept. 15, 2024), <https://www.cnn.com/2024/09/15/politics/vance-immigrants-pets-springfield-ohio-cnn-tv/index.html>; see also Rachel Leingang, *Republicans spread baseless slurs about ‘cat-eating migrants’ in Ohio city*, THE GUARDIAN (Sept. 9, 2024), <https://www.theguardian.com/us-news/article/2024/sep/09/republicans-haitian-migrants-pets-wildlife-ohio>.

⁹⁸ Expert Declaration of Elliott Young in Support of Plaintiff’s Motion to Postpone Effective Date of Agency Action ¶¶ 20, 22, 23, 25, *NTPSA I*, 2025 WL 2578045 (No. 25-CV-01766-EMC) (expert declaration of Professor Elliott Young tracing the historical use of these tropes).

⁹⁹ JD Vance (@JDVance), X (Sept. 13, 2024, 9:25 AM), <https://x.com/jdvance/status/1834584115825226087?s=46>; see also WCNC (@WCNC), *JD Vance Has Heated Exchange Over Claims Migrants Are Eating Pets in Ohio*, YouTube (Sept. 11, 2024), <https://www.youtube.com/watch?v=LqjLoSNkyDs> (“That small migrant community has caused a lot of problems. It’s led to higher rates of communicable diseases, that’s a verifiable fact. It’s led to animals disappearing, many of my constituents have said that has been happening.”).

¹⁰⁰ JD Vance (@JDVance), X (Sept. 10, 2024, 9:58 AM), <https://x.com/jdvance/status/1833505359513661762?s=46>.

¹⁰¹ Josh Dawsey, *Trump derides protections for immigrants from ‘shithole’ countries*, WASH. POST (Jan. 12, 2018), <https://www.washingtonpost.com/politics/trump-attacks-protections-for->

111. During his recent campaign, President Trump doubled down on these remarks, reiterating comparisons between “nice countries, you know like Denmark, Switzerland” and “Norway,” and “unbelievable places and countries, countries that are a disaster,” when speaking about immigrants.¹⁰²

112. President Trump has stated that Venezuelans have “destroyed the fabric of our country.”¹⁰³ In 2024 he asserted that, “[e]very day, Americans . . . are living in fear all because [former Vice President] Kamala Harris decided to empty the slums and prison cells of Caracas [,Venezuela] and many other places And we have to live with these animals, but we’re not going to live with them for long, you watch.”¹⁰⁴ He also stated that he was “talking a lot about Venezuela because Aurora[,Colorado] is really *infected* by Venezuela.”¹⁰⁵ One analysis by Axios

immigrants-from-shithole-countries-in-oval-office-meeting/2018/01/11/bfc0725c-f711-11e7-91af-31ac729add94_story.html?utm_term=.06cbc70bfaec.

¹⁰² Maggie Haberman & Michael Gold, *Trump, at Fund-Raiser, Says He Wants Immigrants from ‘Nice’ Countries*, N.Y. TIMES (Apr. 7, 2024), <https://www.nytimes.com/2024/04/07/us/politics/trump-immigrants-nice-countries.html> (“These are people coming in from prisons and jails. They’re coming in from just unbelievable places and countries, countries that are a disaster.”).

¹⁰³ See also *Simulcast – ABC News Presidential Debate*, C-SPAN (Sept. 10, 2024), <https://www.c-span.org/program/campaign-2024/simulcast-abc-news-presidential-debate/648383> (at approximately 33:40, “They allowed people to come in, drug dealers, to come into our country, and they’re now in the United States. And told by their countries like Venezuela don’t ever come back or we’re going to kill you. . . . There’s never been anything done like this at all. They’ve destroyed the fabric of our country. Millions of people let in.”).

¹⁰⁴ FOX 4 Dallas-Fort Worth (@fox4news), *Trump rally in Aurora, Colorado: FULL SPEECH*, YouTube (Oct. 12, 2024), https://www.youtube.com/watch?v=_xguaneoZ5A (at approximately 41:05); see also NBC News (@NBCNews), *Meet the Press full broadcast — Dec. 8*, YouTube (Dec. 8, 2024), https://www.youtube.com/watch?v=-UsHJWEAj_I (at approximately 8:52, “Did you know that Venezuela their prisons are . . . at the lowest point in terms of emptiness that they’ve ever been? They’re taking their people out of those prisons by the thousands and they’re drop—.”); Fox News (@FoxNews), *Donald Trump delivers remarks at rally in Reading, PA*, YouTube (Oct. 9, 2024), <https://www.youtube.com/live/QuoT6T3fbU0?t=1791s> (at approximately 29:55, 30:07, similar).

¹⁰⁵ FOX 4 Dallas-Fort Worth (@fox4news), *Trump rally in Aurora, Colorado: FULL SPEECH*, YouTube (Oct. 12, 2024), https://www.youtube.com/watch?v=_xguaneoZ5A (emphasis added) (at approximately 43:15).

of 109 of President Trump’s speeches, debates, and interviews found that he called Venezuelan immigrants “criminals” at least seventy times between September 1, 2023 and October 2, 2024.¹⁰⁶

113. In March 2025, the Trump Administration dramatically escalated its rhetoric and actions against Venezuelans, relying on purported Tren de Aragua (“TdA”)¹⁰⁷ membership as justification for deporting more than 200 Venezuelans to an infamous Salvadoran terrorist detention center, in apparent violation of a court order.¹⁰⁸ The Administration cited the Alien Enemies Act—a 1798 law that facilitates deportation during wartime—despite the lack of armed conflict between Venezuela and the United States. In a March 15, 2025 “Proclamation”—“Invocation of the Alien Enemies Act Regarding the Invasion of the United States by Tren de Aragua”—President Trump asserted that TdA members “are conducting irregular warfare and undertaking hostile actions against the United States” and proclaimed them “Alien Enemies” subject to immediate and summary apprehension, detention, and removal if they are not U.S.

¹⁰⁶ Russell Contreras et al., *Trump keeps calling Venezuelan and Congolese migrants criminals*, AXIOS (Oct. 5, 2024), <https://www.axios.com/2024/10/05/trump-migrants-venezuelan-congolese-rhetoric>.

¹⁰⁷ Tren de Aragua reportedly is a criminal group with origins in a Venezuelan prison and whose operations extend past the country. See John Otis, *Tren de Aragua—all you need to know about the Venezuelan Gang*, NPR (Mar. 16, 2025), <https://www.npr.org/2025/03/16/nx-s1-5329777/tren-de-aragua-all-you-need-to-know-about-the-venezuelan-gang>.

¹⁰⁸ *President Trump Delivers Justice to Terrorists, Security for Americans*, THE WHITE HOUSE (Mar. 17, 2025), <https://www.whitehouse.gov/articles/2025/03/president-trump-delivers-justice-for-terrorists-security-for-americans/#:~:text=America%20First%20Legal%3A%20%E2%80%9CPresident%20Trump,the%20country's%20maximum%2Dsecurity%20prison> (“America First Legal: “President Trump has deported 238 criminals in the violent Venezuelan gang Tren de Aragua to El Salvador to be imprisoned in CECOT, the country’s maximum-security prison.”); Nicholas Riccardi & Regina Garcia Cano, *Trump administration deports hundreds of immigrants even as a judge orders their removals be stopped*, AP (Mar. 17, 2025), <https://apnews.com/article/trump-venezuela-el-salvador-immigration-dd4f61999f85c4dd8bcaba7d4fc7c9af>.

citizens or lawful permanent residents.¹⁰⁹ President Trump applauded the deportations on social media, using dehumanizing language. He posted a video of deported Venezuelans being roughly hustled off a plane in El Salvador in the dark of night, bent over, amid a massive security presence, describing the Venezuelans as “monsters.”¹¹⁰

114. In stark contrast, the Trump Administration has shown a strong bias in favor of immigrant populations perceived as white. On February 7, 2025, President Trump signed Executive Order No. 14204, *Addressing Egregious Actions of the Republic of South Africa*, which directs Secretary Noem (among others) to:

[T]ake appropriate steps, consistent with law, to prioritize humanitarian relief, including admission and resettlement through the United States Refugee Admissions Program, for Afrikaners in South Africa who are victims of unjust racial discrimination.¹¹¹

HARMS CAUSED BY DEFENDANTS’ TERMINATION OF TPS FOR SYRIA

Harms to TPS Holders and Their Families

115. Defendants’ decision to terminate TPS for Syria would strip TPS status from more than 6,100 Syrians and prevent over 800 Syrian nationals with pending applications from securing protection. Many of these individuals have lived in the United States for close to or over a decade, have children or close relatives who are U.S. citizens or permanent residents, and are deeply embedded in their communities. Should Defendants’ biased and unlawful termination stand, the harm caused by that action would be massive.

¹⁰⁹ Proclamation by the President, Invocation of the Alien Enemies Act Regarding the Invasion of the United States by Tren de Aragua (Mar. 15, 2025), <https://www.whitehouse.gov/presidential-actions/2025/03/invocation-of-the-alien-enemies-act-regarding-the-invasion-of-the-united-states-by-tren-de-aragua/>.

¹¹⁰ Donald J. Trump (@realDonaldTrump), TRUTH (Mar. 16, 2025), <https://truthsocial.com/@realDonaldTrump/posts/114173862724361939>.

¹¹¹ Exec. Order No. 14204, 90 Fed. Reg. 9497, 9497 (Feb. 12, 2025).

116. With the loss of their legal status, Syrian TPS holders may face imminent detention and/or deportation and must make the impossible choice whether to relocate to a country in dire humanitarian crisis and at the peak of political transition, remain in the United States without lawful immigration status, or uproot themselves once again to find refuge in a third country.

117. Some TPS holders may currently be seeking other legal avenues to remain in this country (such as asylum, adjustment of status, or employment-based nonimmigrant status). However, due to the years-long asylum backlog, affirmative asylum applications remain long pending and do not guarantee protection from either detention or deportation in the interim. Defendants' actions also threaten detention and deportation for TPS holders who do not presently have alternative paths to legal status, even though TPS was established expressly to serve this population—individuals who cannot safely return to Syria but may not fit the specific legal requirements of asylum. The loss of TPS in some instances also limits the possibility of acquiring an alternative legal status for which an individual would otherwise be eligible, but for which present legal status is a prerequisite.¹¹² TPS holders who lose their status may also face a years-long statutory bar to re-entry whether they depart on their own or are deported.¹¹³

118. TPS holders who may be entitled to a fear-based form of immigration relief—such as withholding of removal or protection pursuant to the Convention Against Torture—face the prospect of deportation to unsafe countries. The government has sought to remove people to third countries “without adequate notice and a ‘meaningful opportunity’ to present a claim under

¹¹² See *Temporary Protected Status: An Overview*, AMERICAN IMMIGRATION COUNCIL (June 2025), [Temporary-Protected-Status-An-Overview-0925.pdf](#) (noting some TPS recipients may be eligible to adjust status).

¹¹³ 8 U.S.C. § 1182(a)(9)(A)(ii), (B)(i)(II).

the Convention,” even if they may be subject to a fear-based form of relief. *Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2155 (2025) (Sotomayor, J. dissenting). While this issue is being litigated, the Supreme Court has allowed such third-country removals to move forward, including to South Sudan. *Id.*

119. TPS holders also face the prospect of losing employment authorization. This may result in their summary dismissal from their jobs, jeopardizing their and their families’ financial stability. Without stable employment, some TPS holders risk losing their homes or other material assets, leading to further economic harm. Many TPS holders also face the imminent loss of their driver’s licenses (or state identification cards) and, with them, their mobility and freedom of movement, because in many states driver’s licenses and state-issued identification are limited to those with legal immigration status.¹¹⁴ In addition, because the Secretary’s termination goes into effect so quickly, TPS holders have been afforded almost no time to make alternative arrangements for themselves and their families, including by applying for other forms of immigration relief, employment authorization, or driver’s licenses for which they may be eligible.

120. Compounding the destabilizing harms of loss of legal status, employment authorization, and driver’s licenses and state identification cards are the severe risks of family separation, loss of healthcare, psychological harm, and stigma.

121. The loss of legal status renders TPS holders vulnerable to separation from U.S. citizen children and other loved ones. There are many Syrian TPS holders in mixed-status families—with children, spouses, partners, elderly parents, and other family members who are

¹¹⁴ See, e.g., *REAL ID Checklist*, California DMV, <https://www.dmv.ca.gov/portal/driver-licenses-identification-cards/real-id/real-id-checklist/> (listing documents showing immigration status as requirements for REAL ID driver’s licenses).

U.S. citizens, lawful permanent residents, or who hold other forms of lawful status. These TPS holders face the risk of being forced to leave their family members behind or bringing their U.S. citizen children (or other family members) to a country that is unsafe and in dire straits, where the children have never lived and, in many cases, have never even visited.

122. TPS holders and their families will be deprived of employer-sponsored health insurance and in some cases public health care. Despite having paid into Social Security for decades, in many cases, TPS holders also face the loss of this crucial benefit.

123. Meanwhile, the fear of deportation inflicts severe psychological harm on TPS holders and their loved ones. Syrian TPS holders have been experiencing tremendous emotional and psychological harm since the challenged decision was announced, resulting in heightened anxiety, trauma, insomnia, and depression. The psychological harms resulting from Defendants' actions will only intensify as the effective date approaches.

124. TPS holders have also suffered the additional constitutional harm of being subject to an agency action motivated by racial, ethnic, or national-origin discrimination.

Harms to the Named Plaintiffs

125. Dahlia Doe is a Syrian national in her 20s. She has lived in the United States since 2015 and currently lives in Bronx, New York. She has had TPS since 2021. Dahlia grew up outside of Syria and came to the United States to pursue a bachelor's degree in business. All of her immediate family members are U.S. citizens or lawful permanent residents. Dahlia provides crucial financial and emotional support for her elderly U.S. citizen father who suffers from Parkinson's disease.

126. Dahlia has invested significant time and energy into her career as a market researcher. Over the last 6 years, she has climbed the ranks of her profession and now serves as a

research director at her place of employment, where she manages and mentors several of her colleagues. Without TPS, Dahlia will lose her legal status and fears her job and career will be compromised.

127. Dahlia also fears separation from her immediate family in the United States and forcible return to Syria. Dahlia has never lived in Syria and has no remaining family connections to Syria. As a Syrian-Christian—a minority in Syria—Dahlia would also be a target for violence against minority communities in the country.¹¹⁵

128. Sara Doe is a Syrian national who has had TPS since 2015. She has lived in the United States since 2014 and currently lives in New York state. Sara came to the United States from Aleppo—one of the cities most devastated by the civil war—after her brothers were killed. Following targeted threats from the Assad regime on account of her work in the medical field, Sara fled Syria to seek safety and rebuild her life in the United States.

129. Sara is licensed to practice medicine in the United States and is highly sought after in her field. She leads a team of specialists treating children with serious heart issues.

130. Without TPS, Sara risks losing work authorization and, with it, her ability to practice medicine and treat her patients—work to which she has dedicated her life and for which she was targeted in Syria. Given the short notice of termination, she will not be able to pursue an employment-based change of status applications if TPS ends, which would require her to maintain lawful status until the start date of her new status.

¹¹⁵ See, e.g., *European Parliament resolution of 10 July 2025 on the urgent need to protect religious minorities in Syria following recent terrorist attack on Mar Elias Church in Damascus*, European Parliament, https://www.europarl.europa.eu/doceo/document/TA-10-2025-0163_EN.html.

131. Sara fears for her safety and well-being if she is forced to return to Syria. Aleppo, where she lived before coming to the United States, continues to be a site of armed conflict and lacks basic infrastructure. Given the destruction of the medical system in Syria, Sara fears she will not be able to find employment in her specialty, or in any medical field, if she is deported. Sara has no close family ties in Syria because her family was killed and her house in Aleppo was destroyed. After losing her immediate family to the civil war, she now faces forcible separation from her extended family in the United States, who are U.S. citizens and have served as her support system as she built a new life.

132. Nesma Doe is a Syrian national who has had TPS since 2013. She is in her late 70s and has been living in the United States since 2013. She currently lives in Florida. Nesma fled violence in Syria and sought safety in the United States, where her U.S. citizen siblings have been living for decades. Nesma has significant medical issues, including chronic lung disease, thyroid issues, and arthritis, and she has undergone knee-replacement and shoulder-replacement surgeries.

133. If TPS is terminated, Nesma will lose her status and protection from deportation. Since the announcement of the end of TPS, Nesma has already encountered issues renewing her driver's license, which is her only form of identification. She will also lose her medical insurance and access to necessary medications and medical care.

134. If forcibly returned to Syria, Nesma will not be able to obtain the medical treatment she requires, as the Syrian health-care system has largely collapsed and services are not readily available. Nesma would also be separated from her family, who all live in the United States, including two nieces who serve as her primary caregivers. She has no family in Syria who

could take care of her. As an elderly woman, she faces increased risk of being targeted for crime in Syria.

135. Laila Doe is in her 40s and is a Syrian national. She has both lived in the United States and has had TPS since 2013. She currently lives in Illinois and works full time as an educator working with adults and young people with special needs. Laila is the primary and only available caretaker for her elderly U.S. citizen mother.

136. Laila came to the United States with her minor child fleeing Syria's civil war after her daughter's daycare was bombed. TPS is Laila's (and her child's) only form of protection from confinement and deportation. TPS is also Laila's only form of work authorization. Laila is the only breadwinner in her household and the loss of her work authorization through TPS would jeopardize her ability to provide for her child and mother, including being able to afford her daughter's educational expenses and mother's medical care and medications.

137. If her TPS is terminated, Laila is terrified that she will be forced to relocate to Syria where she and her daughter would be in danger. And as a single mother and divorced woman living alone, Laila faces increased risk of violence if she were to return to Syria.

138. Waleed Doe is in his 40s and is a Syrian national. Even though he was born in the United States, Waleed grew up outside of Syria and has no meaningful connections to Syria. Waleed came to the United States in 2011 on a student visa to obtain a master's degree in business and obtained TPS in 2012 due to the increasing violence from Syria's civil war.

139. Waleed currently lives in New Jersey with his wife (also a Syrian TPS holder) and three U.S. citizen children who are ages seven, four, and nine months. Waleed works as a senior manager at his place of employment and is the primary breadwinner for his family.

140. TPS is Waleed's only form of protection against confinement, deportation, and work authorization. The loss of his TPS would jeopardize his ability to support his family and because his wife also relies on TPS for work authorization they face the loss of any source of income. If Waleed's TPS and work authorization is terminated, his family would also lose their health insurance, which is covered through his employer.

141. The prospect of losing TPS has caused Waleed and his family significant stress and fear. Waleed especially fears being separated from his extended family in the United States and for his and his family's safety if they have to relocate to Syria—a place he's never lived.

142. Mustafa Doe is in his 20s and is a Syrian national. He has had TPS since 2023. Mustafa experienced sexual abuse and trafficking as a minor in Syria, which left him with lasting psychological trauma. He is a member of the LGBTQI community and has found safety and freedom to authentically express his identity in the United States, after he moved in 2021 to pursue his bachelor's degree.

143. Mustafa recently graduated from college and has temporary status and work authorization as an extension of his student visa, which has allowed him to accept a job in philanthropy and social impact at a global corporation. His temporary status expires next summer, at which point he will lose his work authorization and his job, as well as his protection from detention and deportation. Without TPS, Mustafa loses a crucial safety net and is left in limbo, unable to plan for his future in the United States.

144. The possibility of losing TPS and having to return to Syria has caused Mustafa significant anxiety and has triggered his PTSD based on fears of returning to harm and persecution. If returned to Syria, he would face violence from individuals who abused him in the past as well as persecution and prosecution based on his LGBTQI identity. Returning to Syria

would also separate Mustafa from his parents, both of whom live in the United States and are lawful permanent residents, along with his extended family, who are all U.S. citizens.

145. Ahmad Doe is a Syrian citizen in his 40s. He came to the United States on an exchange visitor visa to work as a journalist and has lived in the United States since 2022. Even though he is a Syrian citizen, he was born and raised outside of Syria.

146. Due to layoffs at his prior place of employment in April 2025, Ahmad lost his job, his exchange visitor visa, and work authorization. In May 2025 he applied for TPS.

147. Because Ahmad has built a highly respected career in journalism and speaks several languages, several U.S. media companies have sought his services. However, Ahmad is unable to accept any of the many job offers he has received because he lacks work authorization. Currently, TPS is his only pathway to obtaining work authorization and protection from deportation. Ahmad also cannot renew his driver's license without work authorization.

148. Due to Defendants' unlawful termination of Syria's TPS designation, Ahmad's application cannot be adjudicated. Without access to TPS, Ahmad fears and is a risk of imminent confinement and deportation to a country where he fears he could be killed. Because of this, Ahmad suffers from severe stress and feelings of depression.

149. All Plaintiffs have expressed fear and anxiety over forcibly returning to Syria given the widespread shortages of food, fuel, electricity, clean water; in addition to kidnappings, killings, and violence that have persisted across the country after the Assad regime fell in December 2024.

150. Syrian TPS serves the purpose intended by Congress—providing nationality-based humanitarian relief regardless of whether individuals meet the more stringent eligibility requirements for other forms of humanitarian protection, such as asylum. Immigrants, including

TPS holders, are integral to the social and economic fabric of the United States and, as the named Plaintiffs exemplify, contribute to their communities and this country in countless ways. The length of time TPS holders have lived in the United States and the deep ties they have built with families and communities make the loss of legal status especially devastating and, equally important, highlight the real human cost of Defendants' unlawful actions challenged here.

CLASS ACTION ALLEGATIONS

151. This case is brought as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b) on behalf of Syrian nationals (or individuals having no nationality who last habitually resided in Syria) who had TPS status on September 19, 2025 (recipient class) and Syrian nationals (or individuals having no nationality who last habitually resided in Syria) with pending TPS applications (applicant class).

152. The proposed classes are each sufficiently numerous so as to make joinder impracticable. Based on Defendants' own accounting in the Federal Register notice, the recipient class consists of 6,132 TPS holders and the applicant class consists of 833 people with pending applications.

153. There are common questions of law and fact affecting the members of both classes, including (a) whether Defendants' decision to terminate of Syrian TPS was preordained, without regard to country conditions and prior to consulting with other appropriate agencies in violation of the TPS statute; (b) whether the TPS statute authorizes the Secretary to consider national interest as a sole justification to terminate TPS; (c) whether Defendants' decision to terminate TPS was impermissibly motivated by animus based on race, ethnicity, or national origin; and (d) whether Defendants' failure to provide more than the minimum 60-day notice before terminating Syria's TPS designation violates the APA.

154. The claims of Dahlia Doe, Sara Doe, Nesma Doe, Laila Doe, Waleed Doe, and Mustafa Doe are typical of those of the recipient class with respect to the legality of Defendants' actions. Plaintiffs will fairly and adequately protect the interests of the class. None of the named Plaintiffs are aware of any conflicts that would preclude fair and adequate representation.

155. Plaintiff Ahmad Doe's claims are typical of those of the applicant class with respect to the legality of Defendants' actions. Ahmad Doe will fairly and adequately protect the interests of the class. Ahmad Doe is unaware of any conflicts that would preclude fair and adequate representation.

156. Proposed class counsel has substantial experience litigating both cases involving challenges to federal immigration policies and class actions.

157. Defendants' illegal termination of TPS for Syria applies to the entire class, making class-wide relief appropriate.

CLAIMS FOR RELIEF

FIRST CLAIM (Administrative Procedure Act)

158. The foregoing allegations are repeated and incorporated as though fully set forth herein.

159. The Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*, ensures that executive agencies are accountable to the public by providing a "right of review" to any "person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action." 5 U.S.C. 702.

160. The APA provides that a Court "shall hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or

immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] (D) without observance of procedure required by law.” 5 U.S.C. § 706(2). The right of review under the APA includes a right to judicial review of actions that “fail[] to meet statutory, procedural, or constitutional requirements.”¹¹⁶

161. Defendants’ termination of the TPS designations for Syria is a “final agency action for which there is no other adequate remedy in a court.” 5 U.S.C. § 704.

162. Defendants’ termination of the TPS designation for Syria violate the APA because, among other things:

- a. Defendants’ decision to terminate TPS for Syria occurred prior to the requisite consultation with other appropriate agencies as required by 8 U.S.C. § 1245a(b)(3);
- b. Defendants’ decision to terminate was not based on an objective review of country conditions, as required by 8 U.S.C. § 1254a(b)(3). Rather, it was based on a predetermined, political decision to erode the TPS program writ large; a consideration of extra-statutory factors; and a selective review of country conditions designed to identify only improvements and ignore entire categories of conditions that did not support Defendant’s preordained end goal to terminate TPS;
- c. The research, consultation, and review process leading up to the termination of Syria’s TPS designation deviated dramatically from past practice without explanation;

¹¹⁶ *Widakuswara v. Lake*, 773 F. Supp. 3d 46, 56 (S.D.N.Y. 2025) (quoting *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 414 (1971); *accord FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 513 (2009)).

- d. To the extent Defendants engaged in any process, it was so deficient as to amount to no process at all, defeating the purpose of the TPS statute;
 - e. Defendants' decision to terminate occurred under circumstances and a timeline that reflect that they were pretextual and animated by animus based on the perceived race and ethnicity of Syrian TPS holders;
163. Plaintiffs will suffer irreparable injury from the unlawful termination.
164. Defendants' decision to terminate Syria's TPS designation must therefore be held unlawful, set aside, or otherwise vacated.

SECOND CLAIM
(Administrative Procedure Act)

165. All the foregoing allegations are repeated and realleged as though fully set forth herein.

166. To engage in appropriate decision-making, an agency must ordinarily "display awareness that it *is* changing position."¹¹⁷ Agencies "may not . . . depart from a prior policy *sub silentio* or simply disregard rules that are still on the books."¹¹⁸ And the APA requires a "more detailed justification . . . for disregarding facts and circumstances that underlay . . . the prior policy."¹¹⁹

167. Defendants' termination of the TPS designation for Syria with only 60-days' notice was arbitrary, capricious, and contrary to law in violation of the APA because it represented an unacknowledged and unexplained departure from decades of decision-making practices and ordinary procedures.

¹¹⁷ *Fox Television Stations, Inc.*, 556 U.S. at 515.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 515–16.

168. Plaintiffs will suffer irreparable injury from the unlawful terminations.

**THIRD CLAIM
(Fifth Amendment of the U.S. Constitution)**

169. All the foregoing allegations are repeated and incorporated as though fully set forth herein.

170. The Fifth Amendment contains an implicit guarantee of equal protection that prohibits any official action that motivated in part by a racially discriminatory intent or purpose. Classifications based on race, ethnicity, or national origin receive exacting scrutiny, and even facially neutral policies and practices will be held unconstitutional when they reflect a pattern unexplainable on grounds other than race.¹²⁰

171. Defendants' decision to terminate Syria's TPS designation impermissibly and intentionally discriminates against Plaintiffs because of their race, ethnicity, or national origin.

172. Plaintiffs will suffer irreparable injury resulting from the unlawful termination.

173. Defendants' termination of Syria's TPS designation must therefore be held unlawful, set aside, or otherwise vacated as violative of the Fifth Amendment's guarantee of equal protection.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

174. Declare that Defendants' terminations of TPS for Syria was unlawful under the APA and unconstitutional under the Due Process Clause of the Fifth Amendment;

175. Declare that the decision to provide only 60 days' notice before the terminations of TPS for Syria take effect was unlawful under the APA;

¹²⁰ *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954); *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–66 (1977).

176. Set aside or otherwise vacate the termination of TPS for Syria as beyond Defendants' authority and/or unlawful under the APA;
177. Postpone or stay the termination of TPS for Syria from taking effect or being put into effect;
178. Enjoin and restrain all Defendants, and their officers, agents, servants, employees, attorneys, and all other persons who are in active concert or participation with any of them, from enforcing the termination of TPS for Syria;
179. Order Defendants to take all steps necessary to ensure that the TPS designation for Syria remains in full force and effect;
180. Award Plaintiffs' attorneys' fees and costs under 28 U.S.C. § 2412 and any other applicable statute or regulation; and
181. Award such other and further relief that the Court may deem just, equitable, and proper.

Dated: October 20, 2025

Respectfully submitted,

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PROJECT

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**Application for admission Pro Hac Vice
forthcoming*

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DAHLIA DOE; SARA DOE; NESMA DOE;
LAILA DOE; WALEED DOE; MUSTAFA DOE;
and AHMAD DOE, on their own behalf and on
behalf of others similarly situated,

Plaintiffs,

– *versus* –

Kristi NOEM, Secretary, United States Department
of Homeland Security, in her official capacity;
UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; UNITED STATES
CITIZENSHIP AND IMMIGRATION SERVICES;
and UNITED STATES OF AMERICA,

Defendants.

Case No. 1:25-cv-08686-KPF

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO POSTPONE EFFECTIVE
DATE OF AGENCY ACTION**

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INTRODUCTION

After 13 years of civil war, Syria continues to endure pervasive armed conflict and a humanitarian crisis that the U.S. government itself has stated renders no part of the country safe. Yet Defendants have decided to terminate Temporary Protected Status (“TPS”), effective November 21, 2025, for almost 7,000 Syrians who have lived in the United States for years. There is no reasonable basis in fact for this decision. It is instead part of the Trump Administration’s preordained, political decision—motivated by animus—to end this Congressionally-authorized program by terminating TPS designations across the board.

Plaintiffs are seven Syrian nationals, with family ties in the United States, who face near-certain danger if forced to return to Syria. They urge the Court to order immediate postponement of the effective termination date of Syrian TPS because, absent this Court’s intervention, Syrians and their family members will suffer irreparable harm. On November 21, 2025, Syrian TPS holders and applicants will lose work authorization and protection from detention and deportation, leaving them vulnerable to family separation and removal to a country currently embroiled in conflict and crisis.

Plaintiffs are likely to succeed on the merits of their claims that Defendants’ actions in terminating Syria’s TPS are contrary to law, arbitrary and capricious, and unconstitutional in violation of the Administrative Procedure Act. Defendants’ termination of TPS for Syria violates the TPS statute because Defendants failed to adhere to its statutory mandates. Defendants made their decision to terminate Syria’s TPS *before* undertaking the interagency consultation and objective review of country conditions required by Congress—and then issued a pretextual decision that relied on impermissible extra-statutory factors. In an unacknowledged and

unexplained break with decades of past practice, Defendants arbitrarily provided TPS holders just *60 days* to prepare for loss of status despite their many years residing lawfully in the United States. Moreover, Defendants' actions were motivated by the racial, ethnic, and national origin-based animus that undergirds the Trump Administration's attempts to end TPS for the nationals of non-white, non-European countries and were therefore unconstitutional.

A decision declaring the termination unlawful after it has already gone into effect could never undo the damage done to Plaintiffs and their families and communities. Plaintiffs thus ask that this Court expeditiously enter an order postponing the effective date of the Secretary's termination notice pending final resolution of this case on the merits.

STATEMENT OF THE RELEVANT FACTS

I. Statutory Scheme for Temporary Protected Status

Congress created TPS in 1990 to provide “a more formal and orderly mechanism for the selection, processing, and registration” of individuals “from countries experiencing turmoil,” rather than relying on the prior practice of ad hoc presidential action for those purposes. H.R. Rep. No. 100-627, at 4 (1988). While a country is designated for TPS, beneficiaries receive employment authorization and protection from immigration detention and removal. 8 U.S.C. §§ 1254a(a)(1), (d)(4). The statute affords protection to qualifying individuals regardless of whether they meet the requirements for asylum or other immigration relief. *Id.* § 1254a(b)(1).

The statute provides that the Secretary of Homeland Security, *see* 6 U.S.C. § 557, may designate a country for TPS and its nationals within the United States for temporary immigration relief if the Secretary finds that any of three circumstances are met:

- (a) there is an “ongoing armed conflict within the state” and returning nationals “to that state would pose a serious threat to their personal safety;”

- (b) there has been “an earthquake, flood, drought, epidemic, or other environmental disaster in the state” the foreign state is “unable, temporarily, to handle adequately the return of” nationals; or
- (c) there exist “extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety,” unless the Secretary “finds that permitting the [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)(A)-(C).

In keeping with its intent to free the designation of countries for protection from domestic politics, Congress established a statutory framework governing TPS decision-making. The statute first requires the Secretary to consult with “appropriate” agencies. *Id.* § 1254a(b)(1). After that, she “may designate” a country based on armed conflict, environmental disaster, or other extraordinary conditions. *Id.* A designation lasts 6-18 months, effective either upon notice in the Federal Register or “such later date as [the Secretary] may specify.” *Id.* § 1254a(b)(2). The Secretary has substantial discretion over initial designations. So long as she determines certain country conditions exist, she may choose whether and when to designate a country for TPS.

By contrast, Congress strictly limited the Secretary’s discretion to review existing TPS designations. After a country is designated for TPS, the statute requires periodic review. *Id.* § 1254a(b)(3)(A). At least 60 days before the end of each designation period, the Secretary, “after consultation with appropriate agencies of the Government,” must “review the conditions in the foreign state” and determine whether the conditions for TPS designation “continue to be met.” *Id.* The review process typically begins months before the 60-day deadline. *See* Exh. 1 at 20-21.¹ Generally, USCIS manages and coordinates the periodic review process for the Secretary, compiling a country-conditions report and soliciting materials from the State Department. *See Saget v. Trump*, 375 F. Supp. 3d 280, 299-300 (E.D.N.Y. 2019); Exh. 1 at 20-26. Based on the

¹ Plaintiffs’ exhibits are attached to the declaration of Guadalupe Aguirre, filed concurrently with this motion.

materials provided, USCIS prepares a detailed recommendation for the Secretary. *Id.* USCIS's recommendation is called a "Decision Memo." *Saget*, 375 F. Supp. 3d at 299.

Unless the Secretary determines that the country "no longer continues to meet the conditions for designation," the designation "is extended" automatically for at least 6 months. 8 U.S.C. § 1254a(b)(3)(B), (C). The statute "essentially provides extension as a default." *Nat'l TPS All. v. Noem*, 773 F. Supp. 3d 807, 851 (N.D. Cal. 2025), *aff'd*, 150 F.4th 1000 (9th Cir. 2025) ("*NTPSA I*").² In contrast, if the Secretary timely "determines" that a country "no longer continues to meet the conditions for designation under" § 1254a(b)(1), she "shall terminate the designation by publishing notice in the Federal register." 8 U.S.C. § 1254a(b)(3)(B). 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.*

The Secretary has discretion to postpone the effective date of a termination "in order to provide for an orderly transition." *Id.* § 1254a(d)(3). Prior to 2025, in each of the twelve TPS terminations announced over the past two decades, the agency provided at least a six-month orderly transition period and, more commonly, a twelve- or eighteen-month period. *See* Exh. 2. Prior to 2025, in the 35-year history of the TPS program, only four TPS designations were terminated without an orderly transition period. Each of those terminations occurred more than twenty years ago and involved designations that had been in place for three years or less. *Id.*

II. TPS Designation for Syria

The Department of Homeland Security ("DHS") initially designated Syria for TPS in 2012 based on brutal government repression of Syrian citizens, armed conflict between government

² A subsequent final judgment in the *NTPSA I* case, No. 25-CV-01766-EMC, 2025 WL 2578045 (N.D. Cal. Sep. 5, 2025), has been stayed by the Supreme Court in a non-precedential order that does not include any analysis of the merits of the claims. *See Noem v. Nat'l TPS All.*, No. 25A326, 2025 WL 2812732, at *1 (Oct. 3, 2025).

forces and anti-government groups, and largescale internal displacement. 77 Fed. Reg. 19026, 19027 (Mar. 29, 2012). DHS then extended TPS for Syria, and redesignated it for TPS, numerous times as the initial armed conflict developed into a civil war that saw the destruction of critical infrastructure, mass displacement, human rights abuses, and more than 550,000 civilian casualties. 89 Fed. Reg. 5562, 5565 (Jan. 29, 2024).³ Throughout this period, Syrians suffered from a severe humanitarian crisis, with high levels of food insecurity and limited access to healthcare and clean water, compounded by a major earthquake in February 2023. *Id.*

Then-Secretary Alejandro Mayorkas issued the latest extension and redesignation of TPS for Syria in January 2024, reasoning that Syria still suffered from “ongoing armed conflict” and “extraordinary and temporary conditions.” *Id.* at 5565. Secretary Mayorkas noted the continuing civil war in Syria, then in its thirteenth year, which had displaced 61 percent of Syria’s pre-war population. *Id.* He also considered (1) widespread human rights abuses and civilian deaths; (2) the fact that 85% of the population could not meet their basic needs; (3) dire economic conditions; (4) the continued effects of the February 2023 earthquake; (5) lack of access to healthcare; and (6) lack of access to clean water for more than half the population. *Id.* at 5562-5567.

III. The First Trump Administration’s Attempts to End Access to TPS

The first Trump Administration attempted to end access to TPS for many non-white, non-European countries. Between 2017 and 2018, DHS announced that it would terminate TPS for Sudan, Haiti, Nicaragua, El Salvador, Honduras, and Nepal. *Ramos v. Nielsen*, 709 F. Supp. 3d 871, 876–80 (N.D. Cal. 2023). Litigation and congressional investigations revealed that the termination decisions were based not on an objective review of country conditions as required by

³ See 78 Fed. Reg. 36223 (Jun. 17, 2013); 80 Fed. Reg. 245 (Jan. 5, 2015); 81 Fed. Reg. 50533 (Aug. 1, 2016); 83 Fed. Reg. 9329 (Mar. 5, 2018); 84 Fed. Reg. 49751 (Sep. 23, 2019); 86 Fed. Reg. 14946 (Mar. 19, 2021); 87 Fed. Reg. 46982 (Aug. 1, 2022); 89 Fed. Reg. 5562 (Jan. 29, 2024).

statute but rather on a “predetermined decision to terminate TPS and abate the presence of non-white immigrants in the country.” *Saget*, 375 F. Supp. 3d at 369; *see Ramos v. Nielsen*, 336 F. Supp. 3d 1075, 1094 (N.D. Cal. 2018). That attempt to end TPS failed; court orders prevented all the terminations from taking effect. *See, e.g., Ramos*, 709 F. Supp. 3d at 878.

IV. Defendants’ Ongoing Project to End Access to TPS

The second Trump administration arrived in office with explicit plans to end TPS for nationalities it deems undesirable. At her confirmation hearing, DHS Secretary Kristi Noem asserted that “[TPS] has been abused and manipulated by the Biden Administration and that will no longer be allowed.” Exh. 3 at 27,18-20. Her assertion echoed statements made by President Trump and Vice President Vance during the campaign. *See* Exhs. 4, 5. Indeed, in an October 2024 interview, then-candidate Trump stated that he intended to “revoke” TPS if elected because— notwithstanding TPS’s clear statutory basis—“in my opinion, it’s not legal.” Exh. 6.

On the day he took office, President Trump issued Executive Order 14159, “Protecting the American People Against Invasion.” E.O. 14159 § 16(b), 90 Fed. Reg. 8443, 8446. The so-called “invasion” in the President’s view was the purported “unprecedented flood of illegal immigration into the United States.” *Id.* § 1. The Order directed the DHS Secretary to “promptly take all appropriate action,” to rescind prior administrations’ decisions that allegedly “increased or continued [the] presence of illegal aliens in the United States,” including by reviewing “designations of Temporary Protected Status.” *Id.* § 16. Although TPS holders are by definition lawfully present, the Order mandated that TPS designations be “appropriately limited in scope” to ameliorate the “continued presence of illegal aliens in the United States.” *Id.*

Even before Defendant Noem was confirmed on January 25, 2025, DHS had begun to terminate TPS. DHS began drafting the decision to vacate the TPS extension for Venezuela on

January 24th. *NTPSA I*, 2025 WL 2578045, at *7. Vacatur of TPS was unprecedented. By January 25, when Defendant Noem was confirmed, the decision to vacate the extension of TPS for Venezuela had already been made. *Id.*

The same day, DHS began to draft a notice terminating TPS for Venezuela—before the required country conditions analysis was conducted. *Id.* Notably, this termination was based in part on the assertion that it is “contrary to the national interest” to continue TPS for Venezuela, 90 Fed. Reg. at 9040, 9042, the first time in the program’s 35-year history that this factor, distinct from “conditions in the foreign state,” 8 U.S.C. § 1254a(b)(3)(B), was relied upon at termination. *See* Exh. 7 ¶¶ 5-6.⁴

Less than a month later, on February 24, 2025, Defendant Noem announced a partial vacatur of the July 2024 extension of TPS for Haiti. *Haitian Evangelical Clergy Ass’n v. Trump*, No. 25-CV-1464, 2025 WL 1808743, at *1 (E.D.N.Y. July 1, 2025) (“*HECA*”). DHS’s press statement reiterated Defendant Noem’s pre-confirmation assertions that “for decades the TPS system has been exploited and abused” and claimed that it was “returning integrity to the TPS system” and “returning TPS to its original status: temporary.” Exh. 9. The statement linked the decisions concerning Haiti and Venezuela to the administration’s project to shrink “the TPS system.” *Id.*

Between May and July 2025, Defendant Noem issued decision after decision terminating TPS for six countries, all of which are acknowledged by the administration to suffer from significant instability and dire humanitarian conditions.

- **Afghanistan** (May 13, 2025): Despite an ongoing Level 4 State Department “Do

⁴ On September 8, 2025, the Secretary issued a second termination notice for TPS for Venezuela, terminating the 2021 designation, ensuring that all Venezuelan TPS holders will lose their TPS by November 7, 2025. 90 Fed. Reg. 43225.

Not Travel” warning “due to civil unrest, crime, terrorism, risk of wrongful detention, kidnapping, and limited health facilities,” Exh. 10, Defendant Noem concluded “that requiring the return of Afghan nationals to Afghanistan does not pose a threat to their personal safety” and, citing E.O. 14159, stated that permitting Afghans to stay was “contrary to the national interest.” 90 Fed. Reg. 20309, 20310.

- **Cameroon** (June 4, 2025): The Secretary found TPS holders could safely return to the country even though “two major [armed] conflicts” . . . “remain active” and, citing E.O. 14159., stated that permitting them to stay was “contrary to the national interest.” 90 Fed. Reg. 23697, 23698. The State Department’s travel advisory urges “increased caution . . . due to armed violence, civil unrest, crime, health, kidnapping, and terrorism.” Exh. 11.
- **Nepal** (June 6, 2025): Just three months after the termination notice, 90 Fed. Reg. 24151, the State Department urged the public to “reconsider travel” to Nepal due to “civil unrest.” Exh. 12.
- **Haiti** (July 1, 2025): The Secretary justified termination based solely on a finding, citing to E.O. 14159, that extension is not in the national interest—claiming that crisis-level conditions actually *required* termination because continuing TPS for a country facing total societal collapse is “contrary to the U.S. national interest.” 90 Fed. Reg. 28760, 28762-64 (acknowledging “widespread gang violence . . . sustained by the country’s lack of functional government authority” has “destabilized Haiti” and that “Haiti is in the grip of severe humanitarian and human rights crisis,” but nonetheless terminating TPS). Two weeks later, the State Department issued a Level 4 travel advisory, advising “Do Not Travel” due to

“kidnapping, crime, civil unrest, and limited health care.” Exh. 13.

- **Honduras** (July 8, 2025): The State Department maintains a travel advisory urging the public to “reconsider travel” to Honduras due to “violent crime.” Exh. 14; *cf.* 90 Fed. Reg. 30089 (Honduras Termination Notice).
- **Nicaragua** (July 8, 2025): The State Department maintains a travel advisory, urging the public to “reconsider travel” due to “arbitrary enforcement of laws, the risk of wrongful detentions, and limited healthcare availability.” Exh. 15; *cf.* 90 Fed. Reg. 30086 (Nicaragua Termination Notice).

V. Preordained Termination of TPS for Syria

On September 19, 2025, Defendant Noem announced the termination of TPS for Syria, presenting the termination as a measure to “restor[e] sanity to America’s immigration system[.]” Exh. 16. The Secretary reached two remarkable conclusions: first, that an armed conflict no longer exists in Syria; and second, that although “most Syrians require some form of humanitarian assistance,” nothing prevents the safe return of Syrian nationals. 90 Fed. Reg. 45398, 45400 (Sep. 22, 2025).

In reaching these conclusions, the Secretary minimized the scope of continuing violence. Although the Assad regime fell in December 2024, armed conflict permeates Syria, as “sectarian violence involving members of minority communities, Syrian security forces, nonstate armed groups, and armed vigilantes have threatened Syria’s stability since March,” with thousands of civilian deaths and more than 200,000 newly displaced people. Exh. 17 at 2, 9-12. Moreover, the interim government “does not exercise control over all of Syria,” with areas of the country under control of different armed factions. *Id.* at 1; *see also* Exh. 25 (recent Reuters investigation describing eastern Syria as a “lawless frontier under the control of armed groups with scores to

settle.”). In addition, Turkish and Israeli forces control portions of Syria, Exh. 17 at 1, and Israel launches airstrikes and ground incursions deeper into Syria, Exh. 18 at 21-22. The Secretary’s assessment contradicts the State Department’s Level 4 “Do Not Travel” advisory, issued in July 2025, which warns that “No part of Syria is safe from violence” due to “terrorism, civil unrest, kidnapping, hostage taking, and armed conflict.” Exh. 19.

The termination notice failed to address many factors considered in the January 29, 2024, redesignation, including human rights abuses; infrastructure destruction; widespread food insecurity and lack of clean water; the ongoing effects of the earthquake; the devastated economy; and lack of healthcare access. *Compare* 89 Fed. Reg. 5562 *with* 90 Fed. Reg. 45398. The Secretary asserted that country conditions were irrelevant, because “even assuming the relevant conditions remain both ‘extraordinary’ and ‘temporary,’” termination of TPS is “required because it is contrary to the national interest” to allow Syrian nationals to remain in the United States. 90 Fed. Reg. at 45400. To support this finding, the notice cited purported difficulties vetting Syrian nationals and the prosecutions of two Syrian nationals in the United States, neither of whom is identified as a TPS recipient. *Id.* Further, the termination pointed to “foreign policy reasons” for ending TPS and cited a directive instructing the Department of State to “put American citizens first,” *Id.* at 45401-02.

LEGAL STANDARD

“The standard for a stay” postponing the effective date of agency action pending adjudication of underlying claims “under 5 U.S.C. § 705 is the same as the standard for a preliminary injunction.” *New York v. United States Dep’t of Educ.*, 477 F. Supp. 3d 279, 294 (S.D.N.Y. 2020). Plaintiffs are therefore entitled to a stay if they show “(1) irreparable harm; (2) either (a) a likelihood of success on the merits or (b) both serious questions on the merits and a

balance of hardships decidedly favoring the moving party; and (3) that a preliminary injunction is in the public interest.” *N. Am. Soccer League, LLC v. U.S. Soccer Fed’n, Inc.*, 883 F.3d 32, 37 (2d Cir. 2018).

ARGUMENT

I. Plaintiffs Are Likely to Succeed on the Merits.

A. The Court Has Jurisdiction Over Plaintiffs’ Claims.

A strong presumption of judicial review of agency action applies in this case, which is unaffected by the TPS statute’s narrow jurisdiction-stripping provision. That carveout provides that “[t]here is no judicial review of any *determination* of the Attorney General with respect to the designation, or termination or extension of a designation, of a foreign state under this subsection.” 8 U.S.C. § 1254a(b)(5)(A) (emphasis added). The operative word is “determination,” which the Supreme Court has interpreted to mean “*a single act* rather than a group of decisions or a practice or procedure employed in making decisions.” *McNary v. Haitian Refugee Cent., Inc.*, 498 U.S. 479, 492 (1991) (emphasis added). The “determination” in the TPS statute is “whether conditions” in a given country meet or “continue to” meet the “conditions for such designation.” 8 U.S.C. § 1254a(b)(3)(A); *see also id.* § 1254a(b)(3)(B) (“determines . . . that a foreign state . . . no longer meets the conditions for designation”); *id.* § 1254a(b)(3)(C) (“does not determine . . . that a foreign state . . . no longer meets the conditions for designation.”).

Every court to consider the scope of Section 1254a(b)(5)(A) has found that the provision does not bar courts from reviewing collateral challenges to the process underlying TPS determinations and ensuring that agency actions conform to the requirements of the APA and the Constitution. *See Saget*, 375 F. Supp. 3d at 330-33; *Centro Presente v. DHS*, 332 F. Supp. 3d 393, 405-409 (D. Mass. 2018); *CASA de Maryland, Inc. v. Trump*, 355 F. Supp. 3d 307, 319-322 (D. Md. 2018); *Ramos v. Nielsen*, 321 F. Supp. 3d 1083, 1101-08 (N.D. Cal. 2018); *NTPSA I*, 773 F.

Supp. 3d at 830-31; *CASA, Inc. v. Noem*, 2025 WL 1907378, at *10 (D. Md. July 10, 2025); *HECA*, 2025 WL 1808743, at *5-6; *Nat'l TPS All. v. Noem*, 2025 WL 2233985 at *9-11 (N.D. Cal. July 31, 2025) (“*NTPSA II*”).⁵

B. The Termination Violates the APA Because it is Contrary to Law and Arbitrary and Capricious.

i. The termination was pre-determined and thus contrary to law.

The Immigration and Nationality Act (“INA”) directs the Secretary to review TPS designations prior to the expiration of each extension period to determine whether TPS protections will remain available to people whom DHS previously found could not safely return to their home countries. The statute requires that the Secretary’s decision to extend or terminate TPS designations be made *after*, and based on, “consultation with appropriate agencies” and a “review [of] the conditions in the foreign state.” 8 U.S.C. § 1254a(b)(3)(A). And Congress’s directive that the Secretary “shall review the conditions in the foreign state,” *id.*, “evinces Congressional intent that the Secretary undertake a periodic review grounded in fact—*i.e.*, based on objective conditions in the foreign country and regardless of any government official’s political motives—and in good faith.” *Saget*, 375 F. Supp. 3d at 346. Finally, the statute requires the Secretary to publish “the true and factual basis for termination” in the Federal Register. *Id.* at 346-47; *see* 8 U.S.C. § 1254a(b)(3)(B). If the Secretary instead issues a predetermined and pretextual termination notice, she violates these statutory mandates, and her decision is “not in accordance with the law.” *Saget*, 375 F. Supp. 3d at 345-46.

The statements and actions of the Secretary, the President, and others make clear that the decision to terminate TPS for Syria was a predetermined *fait accompli*. President Trump campaigned

⁵ The *NTPSA II* decision has been stayed, pending appeal, by the Ninth Circuit in a non-precedential order with no reasoning. *NTPSA II*, No. 25-4901, Dkt. No. 19.1 (9th Cir. Aug. 20, 2025).

on a message that if elected, he would end humanitarian immigration programs across the board, including by “revok[ing] TPS.” Exh. 6; *see supra* pages 9-10. At her confirmation hearing, Defendant Noem asserted that TPS “had been abused and manipulated” and suggested that TPS extensions “will no longer be allowed.” Exh. 3 at 27.

Once in office, the Secretary followed through on her promises to end TPS, terminating the designation for eight countries in as many months. Rather than making individualized and objective determinations about conditions in particular countries, as required by statute, the Secretary approached all of these decisions as part of one overarching, political effort to “return[] integrity to the *TPS system*.” Exh. 9 (emphasis added). And she celebrated her decisions to revoke TPS as putting an end to an “immigration scheme[] that make[s] Americans less safe.” Exh 8.

In their rush to end TPS, Defendants have repeatedly failed to engage in the interagency consultations and objective country-conditions review that Congress required. Defendants have routinely failed to consult with other agencies. *See NTPSA I*, 2025 WL 2578045 at *7, *30 (Venezuela termination decision made without any recommendation from State); Exhs. 20 & 21 (same as to Nicaragua); *cf.* Exh. 1 at 18-23 (detailing usual consultation process). USCIS—the subcomponent of DHS that heads and coordinates the periodic review process—has recommended termination *before* receiving any country-conditions materials to review. *NTPSA I*, 2025 WL 2578045 at *7 (Venezuela); Exh. 20 & Exh. 21 (USCIS Decision Memo recommending termination for Nicaragua written before reviewing country conditions); Exh. 22 (same, as to Honduras). And Defendants have wildly distorted the objective review process to cherry pick “positive improvements,” *see, e.g.*, Exh. 23, while disregarding entire categories of country conditions that do not suit their goal of terminating TPS. This has resulted in country conditions assessments that directly contradict those of the U.S. State Department and contrast sharply with

explicit “Do Not Travel” advisories to the public. *Compare* 90 Fed. Reg. at 20311 (justifying termination of Afghanistan’s TPS based on the Taliban’s promotion of tourism and social media images of the “peaceful countryside”) *with* Exh. 10 (warning against travel to Afghanistan “for any reason” because of “civil unrest, crime, terrorism, risk of wrongful detention, kidnapping, and limited health facilities”).

The termination of Syrian TPS is no different. Defendant Noem was told to end TPS, and she wanted to end TPS, so she did—without the required objective review of country conditions. The Federal Register notice leaves little room to doubt these conclusions. The Secretary found no “ongoing armed conflict” in Syria, contrary to the U.S. State Department’s own Do Not Travel warning that warns of “active armed conflict” *see* Exh. 19 (July 23, 2025) (“[n]o part of Syria is safe from violence” due to “[h]ostage taking by armed groups, terrorism, remnants of war such as unexploded ordnance, and aerial bombardment.”); *see also* Exhs. 17 & 18. Indeed, the very sources on which the Secretary relies make clear that violence and armed conflict, far from being “sporadic” and “episodic” in Syria, 90 Fed. Reg. at 45400, remain widespread and systematic. *See* Exhs. 17; 24 (cited in 90 Fed. Reg. at 45400 ns. 10, 11). Further, the Secretary entirely ignored a specific armed conflict—Israel’s ongoing ground incursions and air strikes across Syria. *See* Exh. 18 at 21-22; Exh. 26.

As to “extraordinary and temporary conditions,” the termination notice does not meaningfully dispute that such conditions exist and prevent safe return to Syria. In a single paragraph, the Secretary acknowledged that “most Syrians require some form of humanitarian assistance” but claimed that the humanitarian crisis did not prevent nationals from returning safely. 90 Fed. Reg. at 45400. And the termination notice does not acknowledge that even the paltry sources it cites discuss ongoing displacements of Syrians, Exh. 27, and portray a “humanitarian

situation” that “remains dire,” with limited access to life-saving resources, Exh. 28—because those facts run contrary to the goal of termination. *See also* Exh. 29 (documenting a “deeply concerning [] humanitarian situation” with “escalation of violence,” “unprecedented levels [of] food insecurity,” and “severe drought”).

Defendants’ decision to end TPS for Syria was clearly predetermined—based on express promises to end TPS, systematic terminations of similarly-situated countries, and the flawed and selective country conditions analysis—and this predetermined decision contravenes the mandates of the TPS statute and violates the APA.

ii. The termination’s reliance on the “national interest” is contrary to law and arbitrary and capricious.

The termination notice’s incredible conclusions make clear that Syria’s country conditions were not considered relevant to the termination decision. Rather, the driving factor justifying the termination is the purported “national interest”—which Defendant Noem claimed, without statutory basis, “require[s]” termination regardless of ongoing conditions in Syria. 90 Fed. Reg. at 45400. Defendant Noem’s reliance on the “national interest” to terminate the TPS designation is both contrary to the TPS statute and arbitrary and capricious.

At initial designation, the INA allows the Secretary to consider whether allowing noncitizens to remain in the country “is contrary to the national interest of the United States” only when the Secretary is designating a country for TPS under the “extraordinary and temporary conditions” provision. 8 U.S.C. § 1254a(b)(1)(C). The Secretary may not consider “national interest” when designating a country for TPS based on ongoing armed conflict, nor when designating based on environmental disaster. *Compare id.* § 1254a(b)(1)(C) *with* § 1254a(b)(1)(A)-(B). Syria has been designated for TPS based on both the “ongoing armed conflict” and “extraordinary and temporary conditions” criteria since its first redesignation in

2013. *See supra* n. 3.

That limitation carries over to termination decisions: the Secretary can consider only whether the country “continues to meet the conditions for designation.” 8 U.S.C. § 1254a(b)(1)(A). The “national interest” therefore can play no part in revoking a designation made on the basis of an armed conflict. But here, it did. As made clear from the Secretary’s numerous statements about TPS, she wanted to end TPS to serve the Trump administration’s view of the “national interest.” The entire termination decision—including the decision to ignore the ongoing armed conflict in Syria—reflects the primacy of this single criterion. Indeed, the Secretary gave the game away by admitting that country conditions were simply not relevant because the national interest “required” termination. 90 Fed. Reg. at 45400. In reviewing a designation based on “ongoing armed conflict,” this reliance on the “national interest” violates the TPS statute.

Even as to “extraordinary and temporary conditions,” Congress did not permit consideration of the “national interest” during the periodic review process. Rather, when conducting the periodic review and determining whether to extend or terminate TPS for an already-designated country, the Secretary must review “the conditions in the foreign state” and determine if those conditions for designation continue to be met. 8 U.S.C. § 1254a(b)(3)(A). In other words, when reviewing TPS for an already-designated country, the statute directs the Secretary to focus solely on conditions in *that* country—not in the United States.

The reliance on “national interest” to terminate is also arbitrary and capricious. No prior Secretary had ever terminated a TPS designation on the basis that extending TPS was “contrary to the national interest.” *See* Exh. 7. When an agency breaks with long-standing past practice, the agency must “display awareness that it *is* changing position,” offer “good reasons for the new policy,” and consider “serious reliance interests” engendered by the prior policy. *FDA v. Wages &*

White Lion Invs., LLC., 604 U.S. 542, 570 (2025). Failure to do so renders an agency action arbitrary and capricious. *Id.* at 567. Here, the Secretary failed across the board. She did not acknowledge her break with past practice, offered no reasons for that break, and did not consider the reliance interests of TPS holders who expected that TPS would be terminated only based on improved country conditions.

iii. The termination decision was arbitrary and capricious because it was politically influenced and pretextual.

A TPS decision is arbitrary and capricious if it is based on “improper political influence”—where political pressure “caused the agency’s action to be influenced by factors not relevant under the controlling statute.” *Saget*, 375 F. Supp. 3d at 359-60 (quoting *Town of Orangetown v. Ruckelshaus*, 740 F.2d 185, 188 (2d Cir. 1984)). Here, the President gave a political direction to terminate TPS to advance his own anti-immigrant agenda, without regard for the country conditions considerations required by statute. *See supra* pages 9-10. Defendant Noem expressly stated that she would follow the President’s “directive” to terminate TPS. *Id.*; *see also* Exh. 30. And once in office, she immediately proceeded to revoke and terminate TPS designations, explicitly linking her decisions to the President’s instructions to “limit[] TPS.” *See* 90 Fed. Reg. at 9043 (Venezuela); *id.* at 28762 (Haiti); *id.* at 20310 n.3 (Afghanistan); *id.* at 23698 (Cameroon); *id.* at 24152 n. 10; (Nepal); *id.* at 30088 n. 4 (Nicaragua); *id.* at 30091 n.10 (Honduras) (all citing E.O. 14159).⁶ The otherwise unjustifiable termination of Syria’s TPS was the latest casualty of this same political directive, and was therefore “influenced by factors not relevant under the controlling statute.” *See Saget*, 375 F. Supp. 3d at 359-60.

⁶ The termination notice for Syria is the first that does not directly cite to E.O. 14159, as a justification for termination—likely in an attempt to mask the unlawful policy to mass-terminate TPS from judicial review. *See NTPSA II*, 2025 WL 2233985 at *12 (holding that citation of E.O. 14159 supported finding that Secretary was following Presidential directive).

The termination decision is also arbitrary and capricious because it is pretextual. As the Supreme Court has made clear, “[t]he reasoned explanation requirement of administrative law . . . is meant to ensure that agencies offer genuine justifications for important decisions.” *Dep’t of Com. v. New York*, 588 U.S. 752, 785 (2019). “Accepting contrived reasons would defeat the purpose of the enterprise.” *Id.*; *accord Saget*, 375 F. Supp. 3d at 359-362. The complete disconnect between what the Secretary and the Trump Administration have said about TPS outside the confines of the Federal Register and the deeply implausible reasoning in the termination notice leave no doubt that the Secretary’s stated justifications are pretextual.

iv. The termination impermissibly broke with past practice regarding orderly transition periods without explanation and is therefore arbitrary and capricious.

In an unjustified and arbitrary break with past practice, Defendant Noem gave Syrian TPS holders only 60 days to pack up their bags and leave. Prior to 2025, no termination that ended a TPS designation that had been in place for longer than three years provided affected TPS holders with less than six-months’ notice. *See* Exh. 2. Between 2004 and 2025, all terminations of a designation of *any length* provided at least a six-month transition period, and more commonly a 12 or 18-month transition period. *Id.* (four six-month transition periods, four 12-month periods, and four 18-month periods); *see also NTSPA II*, 2025 WL 2233985 at *13 (finding no dispute that agency’s prevailing practice was to provide at least a six-month orderly transition). Here, the TPS designation for Syria has been in place for well over a decade, and many Syrian TPS holders have significant roots in the United States. *See generally* Exhs. 39-45.

Agencies may change their policies. But when an agency breaks with long-standing past practice, the agency must offer “good reasons for the new policy,” and consider “serious reliance interests” engendered by the prior policy. *FDA*, 604 U.S. at 570. The Secretary has complied with none of these requirements. Rather than “display[ing] awareness” of the longstanding past practice

of providing at least a six-month orderly transition period when ending a TPS designation, she acknowledged that the agency had “allowed for an additional transition period . . . under certain previous [TPS] terminations” but did not recognize that providing at least a six-month transition period had been the agencies’ practice, without exception, for more than two decades. 90 Fed. Reg. at 45402.

Further, the termination notice does not offer a “good reason” for the shift in a decades-long policy. The notice justifies the 60-day period as “sufficient and warranted” based only on the “Secretary’s finding that continuing to permit Syrian nationals to remain temporarily in the United States is contrary to the U.S. national interest.” *Id.* Defendants do not provide any explanation for why this finding justifies this extreme and harmful shift from past practice, nor does they explain why allowing for a longer transition period would harm the national interest. *Id.* Nor does the notice address the rationale DHS previously provided in support of an “orderly transition” period—allowing TPS recipients time to apply for other immigration benefits for which they are eligible, or to prepare for and arrange their departure. *See, e.g.*, 81 Fed. Reg. 66054 (Sep. 26, 2016) (Sierra Leone).

Finally, while the termination notice pays lip service to the reliance interests of TPS holders, 90 Fed. Reg. at 45402, it fails to actually “assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns.” *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 33 (2020). It does not consider that TPS holders from countries of longstanding designation, like Syria, would reasonably expect that, if TPS were terminated, that they would have at least six months to take care of their affairs, apply for another status, or plan to depart the country. By ignoring these important reliance interests and decades of past practice without acknowledgment or justification, Defendants’ failure to provide an

orderly transition period runs afoul of the APA.

C. The Termination Is Contrary to Law Because it Violates the Fifth Amendment.

The Fifth Amendment’s Due Process Clause “contains an equal protection component” that prohibits federal government officials from discriminating on the basis of certain immutable characteristics, including race, ethnicity, and national origin. *Washington v. Davis*, 426 U.S. 229, 239 (1976); *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).⁷ Here, Defendants’ decision to terminate TPS for Syria violates Plaintiffs’ equal protection rights because it was motivated by discriminatory animus and resulted in disparate impact against noncitizens who are not white or of European origin.

Courts apply strict scrutiny to assess government decisions motivated by discriminatory purpose. *Jana-Rock Constr., Inc. v. New York State Dep’t of Econ. Dev.*, 438 F.3d 195, 204 (2d Cir. 2006). The limited exception for deferential review adopted in *Trump v. Hawaii*, 585 U.S. 667 (2018), applies only to restrictions on entry *into* the United States and does not apply to TPS determinations, which concern individuals already in the country. *See Saget*, 375 F. Supp. 3d at 367; *NTPSA I*, 2025 WL 2578045, at *35; *NTPSA II*, 2025 WL 2233985 at 14-15; *see also United States v. Suquilanda*, 116 F.4th 129, 140 (2d Cir. 2024) (applying strict scrutiny to equal protection challenge to domestic immigration law).

To establish an equal protection claim, plaintiffs must allege that a government actor intentionally discriminated against them because of race, ethnicity, or national origin. *Jana-Rock*, 438 F.3d at 204. Plaintiffs can show this intentional discrimination by, among other things,

⁷ The doctrinal and factual analysis is the same whether this claim is viewed as about race, ethnicity, or national origin discrimination. *See, e.g., United States v. Virginia*, 518 U.S. 515, 532 n.6 (1996) (strict scrutiny applies to classifications based on national origin); *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 223–24 (1995) (strict scrutiny applies to classifications by ethnicity).

establishing that “a discriminatory purpose [was] a motivating factor” in the challenged government action. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977); see *Brown v. City of Oneonta, N.Y.*, 221 F.3d 329, 337 (2d Cir. 2000).

Discriminatory purpose can be demonstrated by “sensitive inquiry into such circumstantial and direct evidence of intent as may be available.” *Arlington Heights*, 429 U.S. at 266. Evidence of discriminatory intent can include the sequence of events leading to a decision, departures from normal procedures or substantive conclusions, the background of a decision, and disparate impact. *Id.* at 266–67. For instance, “the combination of a disparate impact on particular racial groups, statements of animus by people plausibly alleged to be involved in the decision-making process, and an allegedly unreasoned shift in policy” can in tandem establish that “a discriminatory purpose was a motivating factor in a decision.” *Deide v. Day*, 676 F. Supp. 3d 196, 221 (S.D.N.Y. 2023) (quoting *Centro Presente*, 332 F. Supp. 3d at 415). Defendants’ use of “charged code words” may serve as “evidence of discriminatory intent by sending a clear message and carrying the distinct tone of racial motivations and implications.” *Mhany Mgmt., Inc. v. Cnty. of Nassau*, 819 F.3d 581, 609 (2d Cir. 2016) (internal citation omitted).

Plaintiffs have—even before discovery—marshalled compelling evidence of discriminatory intent. Both Defendant Noem and President Trump have repeatedly used charged code words in describing policy goals that dehumanize non-white, non-European noncitizens and lay bare their animus. Defendant Noem has described immigration as an “invasion happening on purpose . . . to remake the foundation of this country,” Exh. 31, and her agency has encouraged noncitizens to “[r]emigrate,” Exh. 49, a term that invokes white nationalism and ethnic cleansing via “mass deportation of non-white immigrants,” Exh. 50. See also Exh. 32 (explaining that invasion rhetoric echoes the “great replacement theory” that non-white immigrants will “replace”

the white race, and in doing so undermine the country’s perceived white foundation, history, and culture). Defendant Noem has described TPS as an “immigration scheme that makes Americans less safe,” Exh. 8, and her agency has described TPS holders as “poorly vetted migrants” that include “known terrorists,” “MS-13 gang members,” and “murderers.” Exh. 33. These statements “reflect the Secretary’s animus against immigrants and the TPS program even though individuals with TPS hold lawful status.” *NTPSA II*, 2025 WL 2233985 at *16. “By stereotyping the TPS program and immigrants as invaders that are criminal . . . Defendant Noem’s statements perpetuate the discriminatory belief that certain immigrant populations will replace the white population.” *Id.*

President Trump, who instructed the Secretary to end TPS, has repeatedly expressed racist and xenophobic animus, including campaigning on a message that migrants are “poisoning the blood of our country.” Exh. 34; *see also* Compl. ¶¶ 90-93; 101-110. He has employed rhetoric equating immigrants from Muslim-majority countries with enemies and terrorists—often specifically naming Syria. Compl. ¶¶ 89-93. During his campaign, President Trump promised to reinstate his previous ban on the entry of nationals from Muslim-majority countries, including Syria, claiming that some “very, very rough people come out of these areas” and generalizing that all Syrians “want to blow up our country.” Exh. 35. And with E.O. 14159, issued on day one of his presidency, President Trump directly “connected TPS” with an “invasion,” painting TPS holders, among other immigrants, as presenting ““significant threats to national security and public safety, committing vile and heinous acts against innocent Americans.” *NTPSA II*, 2025 WL 2233985, at *17 (citing E.O. 14159).

Further, the “historical background of the decision” shows this is the latest decision in “a series of official actions taken for invidious purposes.” *Arlington Heights*, 429 U.S. at 267. The termination of TPS for Syria is the eighth in as many months—and courts have already found the

preceding terminations were motivated by improper animus. *NTPSA I*, 773 F. Supp. 3d at 855-866; *NTPSA II*, 2025 WL 2233985 at *14-17; *see also NTPSA I*, 2025 WL 2578045 at *35-36 (denying government’s motion for summary judgment on equal protection claims). Defendants have not been able to provide a reasoned or lawful explanation for the shift in policy to mass-terminate TPS designations that have been in place for decades—because their policy shift can only be explained by discriminatory motive. *Centro Presente*, 332 F. Supp. 3d at 415 (plaintiffs plausibly alleged that TPS terminations violated equal protection where terminations rested on an “unreasoned shift in policy”). And simultaneous to their attempts to rapidly terminate TPS (a humanitarian protection) for noncitizens from majority non-white countries, the administration has coopted the United States’ longstanding overseas refugee program to accelerate new admissions of only one population—white Christian Afrikaners from South Africa—all the while suspending admissions for refugees from non-white countries. Exh. 36; 37; *see also* Exh. 38 (suspending parole program *en masse* for Cubans, Haitians, Nicaraguans, and Venezuelans, while leaving similar program for Ukrainians intact).

Finally, the disparate “impact of the official action,” and “whether it bears more heavily on one race,” is relevant in assessing discriminatory intent. *Arlington Heights*, 429 U.S. at 266 (internal quotation marks omitted). Here, Defendant Noem’s decision to terminate TPS for thousands of Syrians—both individually and in combination with the decision to terminate TPS for seven other countries with non-white majorities—“bears more heavily” on people perceived in this country as non-white. *Id.*

The historical and contemporaneous evidence of decision-makers’ animus towards non-white, non-European immigrants in general, and TPS holders in particular; the charged code words used to justify the termination of TPS; the unreasoned shift in policy to terminate TPS across the

board for non-European countries; and the disparate impact of the termination policy support the conclusion that Plaintiffs are likely to succeed on the merits of their equal protection claim. At the very least, there are serious questions going to the merits that justify postponement of the termination notice.

II. Syrian TPS Holders and Applicants Face Irreparable Harm Without Postponement.

“A showing of irreparable harm is the single most important prerequisite” for the issuance of preliminary relief pending disposition of the merits of the case. *Faiveley Transp. Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009) (cleaned up). A party seeking preliminary relief must show that “but for the grant of equitable relief, there is a substantial chance that upon final resolution of the action the parties cannot be returned to the position they previously occupied.” *Brenntag Int’l Chems., Inc. v. Bank of India*, 175 F.3d 245, 249 (2d Cir. 1999). The harm must be “actual and imminent.” *Freedom Holdings, Inc. v. Spitzer*, 408 F.3d 112, 114 (2d Cir. 2005) (internal citation omitted).

The substantial and imminent irreparable harm that Plaintiffs face on November 21 could not be clearer. First, Plaintiffs have established *per se* irreparable harm because they allege cognizable violations of their constitutional rights. “[T]he alleged violation of a constitutional right triggers a finding of irreparable injury.” *Conn. Dep’t of Env’t. Prot. v. O.S.H.A.*, 356 F.3d 226, 231 (2d Cir. 2004) (internal citations and quotation marks omitted).

Furthermore, the termination of TPS will immediately trigger the loss of Plaintiffs’ lawful status to reside in the United States, and with it, their permission to work, their livelihoods, and ability to pursue long-held professions.⁸ See *Arizona Dream Act Coal. v. Brewer*, 855 F.3d 957,

⁸ Individuals with pending applications for TPS, like Plaintiff Ahmad, are protected from deportation and eligible for work authorization while their TPS application is pending. See 8 U.S.C. § 1254a(a)(4)(B); 8 C.F.R. § 244.10.

978 (9th Cir. 2017) (“[l]oss of opportunity to pursue one’s chosen profession constitutes irreparable harm.”). Plaintiffs will lose jobs and careers into which they have invested years, including plaintiffs who work as a highly-specialized pediatrician, Exh. 40 ¶¶ 3, 11, as a journalist, Exh. 45 ¶¶ 3, 7, 9, as a behavioral health specialist for adults with special needs, Exh. 42 ¶¶ 4, 9, and in a senior management role at private company, Exh. 43 ¶¶ 7-8. In addition to losing her job, Plaintiff Laila Doe will have to abandon the nursing degree she has been working towards for years. Exh. 42 ¶ 17. As the sole breadwinner in her family, Laila will no longer be able to provide for her elderly U.S. citizen mother and her teenage daughter if she loses TPS. *Id.* ¶¶ 12-13. Similarly, Plaintiff Waleed Doe will lose his senior management job, leaving him and his wife, also a TPS holder, without the ability to work and provide for their three U.S. citizen children. Exh. 43 ¶¶ 4, 7. Plaintiffs will lose access to essential health care where eligibility is linked to their work or their status. *See, e.g.*, Exh. 43 ¶ 17. In many states, TPS holders will lose their drivers’ licenses—losing both their mobility and their only state-issued identification. *See* Exh. 41 ¶ 7; *see also Brewer*, 855 F.3d at 978 (loss of driver’s licenses causes cascading and irreparable harms).

In addition, Plaintiffs without any other immediate status will be subject to arrest and detention pending deportation as of November 21, 2025. Exh. 46 ¶¶ 14, 23; *see* Exhs. 39-45 (plaintiffs have no other status). “The deprivation of [a noncitizen’s] liberty is, in and of itself, irreparable harm.” *Torres-Jurado v. Biden*, 2023 WL 7130898, at *5 (S.D.N.Y. Oct. 29, 2023) (internal citation omitted). Plaintiffs will be subject to placement in removal proceedings and could soon face deportation to a country where violence and human-rights abuse are pervasive while food, housing, water, and medical care are scarce. *See supra* pages 12-13; 17-18. Plaintiff Sara Doe faces deportation to a country that she previously fled after family members were killed and

TPS applicants also face irreparable harm from the termination of TPS, as they will lose this crucial protection and work authorization.

where she faced threats for her medical work. Exh. 40 ¶¶ 5-6. Laila faces return to her sister's home in Damascus, in a neighborhood that was hit by airstrikes only two months ago. Exh. 42 ¶¶ 14-15. Plaintiff Nesma, age 77 and with chronic health conditions, faces loss of all family connection and support, with no way to survive as an elderly single woman in Syria. Exh. 41 ¶¶ 13-15. And TPS holders who grew up outside of Syria—but have no residency or citizenship status in any other country—face return to a wholly unfamiliar and hostile country. *See* Exhs. 39, 45.

Many Plaintiffs will suddenly find themselves unable to apply for other types of immigration relief, either because the alternative form of relief depends on maintaining lawful immigration status, or because they are subject to detention or deportation while they wait. *See* Exh. ¶¶ 16-23; *see also* Exhs. 40-45. For many TPS holders with other potential pathways to status, the rapid termination of TPS has left them without time to pursue or complete these complex, multi-step processes. *See, e.g.*, Exh. 40 ¶¶ 12, 18.

TPS holders also face harmful choices concerning family separation. Because they have lived here for years, many TPS holders have U.S. citizen children who have never been to Syria. *See* Exh. 43 ¶¶ 4, 11-15. These TPS holders “will confront the impossible choice of either leaving their [U.S. citizen] children behind or taking their children with them to a country [in] which they may not be safe.” *Saget*, 375 F. Supp. 3d at 75 (finding irreparable harm). And many TPS holders have extensive U.S. citizen and permanent resident family members and dread the separation and isolation that will result from leaving them behind in the United States. *See* Exhs. 39-44. The possibility of being separated from loved ones, giving up one's life in the United States, and returning to danger has caused Plaintiffs enormous mental anguish. *See* Exhs. 39-45.

All of these injuries are severe and irreparable and weigh heavily in favor of postponement.

III. The Balance of Hardships and Public Interest Weigh Heavily in Favor of Postponement

The final considerations—the balance of hardships and public interest—merge when the government is a party. *Nken v. Holder*, 556 U.S. 418, 435 (2009). These considerations weigh heavily in favor of Plaintiffs.

“[T]here is no public interest in allowing Defendants to proceed with unlawful, arbitrary, and capricious executive or agency actions that exceed their statutory authority.” *Make the Road N.Y. v. Pompeo*, 475 F. Supp. 3d 232, 269 (S.D.N.Y. 2020); *accord, e.g., Saget*, 375 F. Supp. 3d at 377. “To the contrary, there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.” *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (internal citation omitted).

In contrast, there is strong public interest in allowing Plaintiffs to retain TPS pending a final resolution of this case on the merits. To start, “there is a public interest in maintaining families together,” *You v. Nielsen*, 321 F. Supp. 3d 451, 469 (S.D.N.Y. 2018); *accord, e.g., Torres-Jurado*, 2023 WL 7130898 at *5. Plaintiffs here face separation from their elderly parents, spouses or minor children who rely on them, putting this interest in stark relief. *See supra* page 29. Moreover, the public has an interest in avoiding “economic and public health harms.” *Make the Road N.Y. v. Cuccinelli*, 419 F. Supp. 3d 647, 665–66 (S.D.N.Y. 2019), *aff’d as modified sub nom. New York v. DHS*, 969 F.3d 42 (2d Cir. 2020). If removed to Syria, TPS holders will likely experience worse health outcomes, malnutrition, poverty, and poor educational attainment. *See Exhs. 28, 29, 47.*

Additionally, postponement of the termination is in the public interest because the Secretary’s unlawful termination of Syria’s TPS designation will impose significant economic costs—both direct and indirect—on the communities where Syrian TPS holders currently live.

TPS holders are both employed at high rates, Exh. 48, and ineligible for public assistance. *See* 8 U.S.C. § 1254a(f)(2). Syrian TPS holders hold crucial jobs in their communities. *See supra* page 28. The termination of Syria’s TPS designation, and the corresponding end to TPS holders’ work authorization, will cause economic harm in communities where Syrian TPS holders have settled. The termination would also inflict non-economic harm on those communities, given that “immigrants without legal status are less likely to report crimes or testify in court, reducing public safety and making effective law enforcement more difficult.” *NTPSA I*, 773 F. Supp. 3d at 841.

For these reasons, the public interest and balance of the equities—like each of the other factors to be considered—strongly favors postponement of the termination of TPS for Syria.

CONCLUSION

For all the foregoing reasons this Court should grant Plaintiffs’ motion.

Dated: October 21, 2025

Respectfully submitted,

INTERNATIONAL REFUGEE ASSISTANCE
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CERTIFICATION OF WORD COUNT

I hereby certify that the word count of this motion Memorandum of Law in support of Plaintiffs' motion to postpone complies with the word limits of Local Rules of the United States District Courts for the Southern & Eastern Districts of New York § 7.1(c) and United States District Judge Katherine Polk Failla, Individual Rules of Practice of Civil Cases § 4(B). According to the word-processing system used to prepare this Memorandum of Law, the total word count for all printed text exclusive of the material omitted under Loc. R S.D.N.Y & E.D.N.Y § 7(c) and U.S. Dist. J. Katherine Polk Failla, Individual Rules of Practice of Civil Cases § 4(B) is 8,750 words.

Dated: October 21, 2025
New York City, New York

/s/ Guadalupe Aguirre
Guadalupe Aguirre

Exhibit 1



April 2020

TEMPORARY PROTECTED STATUS

Steps Taken to Inform and Communicate Secretary of Homeland Security's Decisions

GAO Highlights

Highlights of [GAO-20-134](#), a report to congressional requesters

Why GAO Did This Study

The INA includes provisions for eligible foreign nationals residing in the United States to obtain temporary humanitarian protection from removal, as well as work authorization, when their country of origin is designated for TPS. Since 1990, nationals of 22 countries have received TPS. The Secretary of Homeland Security may designate a country for TPS after consulting with other agencies and determining that the country meets statutory criteria related to armed conflict, environmental disaster, or extraordinary or temporary conditions that prevent its nationals from returning in safety. The Secretary may designate a country for TPS for periods of 6 to 18 months and can extend a TPS designation if deemed appropriate.

GAO was asked to review the TPS decision process. This report, among other things, (1) describes the approach DHS takes to inform the Secretary of Homeland Security's TPS reviews and (2) examines DHS's communication to the public regarding TPS decisions and related information, including employment authorization. GAO reviewed documentation and data related to TPS decisions, including a nongeneralizable sample of 26 decisions for eight countries in fiscal years 2014 through 2018. GAO selected the countries to reflect various types of TPS decisions, among other factors. GAO also interviewed agency officials.

What GAO Recommends

GAO recommends USCIS consistently identify in published guidance the mechanisms used to communicate automatic extensions of TPS employment authorization documents. DHS concurred with GAO's recommendation.

View [GAO-20-134](#). For more information, contact Chelsa Gurkin at (202) 512-2964 or GurkinC@gao.gov, or Rebecca Gambler at (202) 512-6912 or GamblerR@gao.gov.

April 2020

TEMPORARY PROTECTED STATUS

Steps Taken to Inform and Communicate Secretary of Homeland Security's Decisions

What GAO Found

The Department of Homeland Security's (DHS) reviews of countries for Temporary Protected Status (TPS) include three main steps, according to DHS and other agencies' documents and officials. First, the Secretary of Homeland Security may initiate a review of a country for TPS designation in response to various triggering factors, such as a request from a foreign government, on the basis of one or more statutory conditions. The Immigration and Nationality Act (INA) requires subsequent reviews after an initial designation. Second, U.S. Citizenship and Immigration Services (USCIS)—which manages and coordinates the TPS review process for DHS—and the Department of State (State) compile country conditions reports and recommendations to inform the Secretary's decision. Although the INA does not prescribe the other agencies that must be consulted for a TPS review, State generally has a role in providing input for the Secretary of Homeland Security's consideration. GAO found DHS collected country conditions reports and recommendations from USCIS and State for all eight of the countries GAO selected for its review. Other DHS components and non-DHS entities may also provide information. Third, under the INA, the Secretary of Homeland Security exercises discretion in deciding whether to initially designate a country for TPS. For an existing designation, the Secretary determines whether country conditions warrant an extension or termination of TPS. DHS provides official notice of decisions in the Federal Register.

Three Primary Steps in the Secretary of Homeland Security's Temporary Protected Status (TPS) Reviews



Source: GAO analysis of documentary and testimonial information from the Department of Homeland Security and the Department of State. | [GAO-20-134](#)

DHS has communicated TPS decisions to the public through required Federal Register notices as well as other mechanisms. However, DHS has not provided consistent guidance regarding mechanisms it uses to communicate automatic extensions of TPS employment authorization documents. USCIS officials stated that the agency has typically communicated these extensions of documents for TPS beneficiaries through Federal Register notices. However, for five recent automatic extensions, USCIS instead mailed individual notifications to thousands of beneficiaries. USCIS guidance on its website identifies the individual notifications as a mechanism for communicating automatic extensions, but an employers' handbook and related guidance do not. As a result, some employers reportedly terminated TPS beneficiaries' employment because the employers did not understand or accept the notifications as proof of employment authorization. Consistent guidance about the mechanisms USCIS uses could help reduce the risk that TPS beneficiaries will lose their jobs because of confusion about their authorization to work in the United States.

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Abbreviations

DHS	Department of Homeland Security
INA	Immigration and Nationality Act
OMB	Office of Management and Budget
PRM	Bureau of Population, Refugees, and Migration
RAIO	Refugee, Asylum and International Operations Directorate
State	Department of State
TPS	Temporary Protected Status
USAID	U.S. Agency for International Development
USCIS	U.S. Citizenship and Immigration Services

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U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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April 3, 2020

Congressional Requesters

Temporary Protected Status (TPS) is a form of humanitarian protection that provides a temporary benefit to eligible foreign nationals from designated countries who are residing in the United States. TPS protects beneficiaries from removal and permits work authorization.¹ Countries may be designated for TPS on the basis of statutory criteria related to armed conflict, such as civil war; an environmental disaster, such as an earthquake or hurricane; or extraordinary and temporary conditions in the country that prevent nationals from returning in safety.² Under the Immigration and Nationality Act (INA),³ the Secretary of Homeland

¹Pub. L. No. 82-414, title II, ch. 5, § 244, 66 Stat. 163 (1952), as added by the Immigration Act of 1990, Pub. L. No. 101-649, title III, § 302(a), 104 Stat. 4978, 5030-5036 (classified, as amended by the Immigration Act of 1990 and subsequent acts, at 8 U.S.C. § 1254a).

²Under 8 U.S.C. § 1254a, the Secretary of Homeland Security may designate a country (or a part of a country) for TPS, after consultation with appropriate agencies of the government, when the Secretary finds that conditions in a country meet certain statutory criteria related to ongoing armed conflict, an environmental disaster, or extraordinary and temporary conditions that prevent nationals from returning in safety. Specifically, regarding armed conflict, the Secretary may designate a country for TPS if the Secretary finds that there is an ongoing armed conflict within the foreign country and that, because of the conflict, requiring the return of foreign nationals to that country would pose a serious threat to their personal safety. Regarding environmental disaster, the Secretary may designate a country for TPS if the Secretary finds that there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the foreign country resulting in a substantial, but temporary, disruption in living conditions; the foreign country is temporarily unable to adequately handle the return of foreign nationals to the country; and the foreign country has officially requested TPS designation. Regarding extraordinary and temporary conditions, the Secretary may designate a country for TPS if the Secretary finds that there are extraordinary and temporary conditions in the foreign country that prevent foreign nationals from returning to the country safely, unless the Secretary finds that permitting foreign nationals to remain temporarily in the United States is contrary to the national interests of the United States.

³Unless specified otherwise, all references to the INA in this report refer to section 244 of the act.

Security,⁴ after consultation with other agencies, may grant TPS to eligible foreign nationals in the United States from foreign countries that the Secretary has designated for TPS.⁵ Although the INA does not prescribe the other agencies that must be consulted, the Department of State (State) generally has a role in providing input for the Secretary of Homeland Security's TPS reviews.⁶

Since TPS was established in 1990, 22 countries have received TPS designations.⁷ In fiscal year 2018, more than 400,000 TPS beneficiaries were living in the United States, according to data from DHS's U.S. Citizenship and Immigration Services (USCIS). These beneficiaries were from 10 countries—El Salvador, Haiti, Honduras, Nepal, Nicaragua, Somalia, South Sudan, Sudan, Syria, and Yemen—with the majority from El Salvador, Honduras, and Haiti.⁸ Since the beginning of fiscal year 2018, the Secretary of Homeland Security has announced decisions to terminate TPS for six countries—El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan; these decisions are currently the subject of litigation.

You asked us to review the decision-making process for TPS designations. This report (1) describes TPS determinations and numbers

⁴The authority to designate countries for TPS was transferred from the Attorney General to the Secretary of Homeland Security in 2003, after the Department of Justice's Immigration and Naturalization Service was abolished and its immigration services and enforcement functions were transferred to the Department of Homeland Security pursuant to the Homeland Security Act of 2002. Pub. L. No. 107-296, title I & IV, §§ 101, 102, 456, 471, 478, 116 Stat. 2135, 2142, 2143-44, 2200-01, 2205, 2211-12 (2002) (classified, as amended, at 6 U.S.C. §§ 111, 112, 275, 291, 298). See also 8 U.S.C. § 1103(a) (powers and duties of the Secretary of Homeland Security).

⁵According to 8 U.S.C. § 1254a(a)(1), the Secretary of Homeland Security may grant TPS to nationals of a foreign state designated for TPS by the Secretary or to stateless individuals whose last habitual residence was in a foreign state designated for TPS.

⁶The Secretary of Homeland Security is required to consult with appropriate agencies of the government before making a designation according to 8 U.S.C. § 1254a(b)(1), and prior to periodic reviews of existing designations, according to 8 U.S.C. § 1254a(b)(3). The statute does not prescribe the other agencies that must be consulted.

⁷Deferred Enforcement Departure is another example of discretionary humanitarian protection from removal that allows eligible foreign nationals from designated countries to remain in the United States on a temporary basis. Deferred Enforcement Departure is not within the scope of this review.

⁸TPS designations for the remaining 12 countries had been terminated as of the beginning of fiscal year 2018.

of beneficiaries since TPS was established; (2) describes the approach that DHS, in consultation with State and other relevant agencies, uses to inform the Secretary of Homeland Security's TPS reviews; and (3) examines DHS's public communication regarding TPS decisions and related information, including work authorization.

To describe TPS determinations and numbers of beneficiaries since TPS was established, we reviewed information and data in Federal Register notices for TPS designations for fiscal years 1990 through 2019 and analyzed USCIS data on numbers of TPS beneficiaries for fiscal years 1990 through 2018.⁹ To assess the reliability of the USCIS data, we reviewed related documentation and interviewed USCIS officials to identify any missing or erroneous data and resolve any discrepancies. We determined that the data for fiscal years 2000 through 2018 were sufficiently reliable to provide general information about the size and characteristics of TPS beneficiaries.

To describe the approach that DHS uses to inform TPS reviews, we reviewed provisions in the INA related to TPS as well as DHS and State documentation related to the processes they have used since fiscal year 2014 to collect information for these reviews. This documentation included information that DHS and State provided for a judgmental, nongeneralizable sample of eight countries (El Salvador, Haiti, Honduras, Nepal, Nicaragua, Syria, and Yemen), representing 26 TPS decisions in fiscal years 2014 through 2018.¹⁰ We selected this sample to represent a range of decision types and designation reasons, among other factors. While this sample cannot be generalized to the countries or decisions we did not review, it provided information about the approach DHS uses for TPS reviews. Additionally, we reviewed examples of information that other agencies—for example, the Department of Defense, the Department of Health and Human Services Centers for Disease Control and Prevention, and the U.S. Agency for International Development—and entities such as members of Congress or nongovernmental organizations

⁹Fiscal year 1990 is the year when TPS was established under the INA, and fiscal year 2018 is the most recent year for which data on TPS beneficiaries were available.

¹⁰We selected a judgmental, nongeneralizable sample of eight countries with initial or existing TPS designations in fiscal years 2014 through 2018, representing 26 of a total of 42 TPS decisions for eight of 13 countries in that period, to incorporate a range of decision types and reasons in recent years, among other factors. Because of ongoing litigation related to TPS, certain information had been redacted from some of the documentation that we reviewed. See appendix I for additional details of our objectives, scope, and methodology.

provided to DHS to inform TPS reviews. We also interviewed officials from DHS, State, the Department of Defense, the Department of Health and Human Services Centers for Disease Control and Prevention, and the U.S. Agency for International Development.

To examine DHS's public communication regarding TPS decisions and related information, we reviewed information that DHS published in Federal Register notices from November 29, 1990, through October 1, 2019. We also examined DHS guidance published on its website and DHS procedures as of fiscal year 2019 for communicating TPS work authorization. We compared DHS's guidance and procedures with relevant federal internal control standards.¹¹ Additionally, we reviewed information from the Department of Justice Civil Rights Division's website related to automatic extensions of employment authorization documents for TPS beneficiaries.¹² We also interviewed DHS officials.

We conducted this performance audit from September 2018 to March 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that our evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Immigration and Nationality Act Provisions for Temporary Protected Status

The INA provides for the Secretary of Homeland Security, after consultation with other agencies, to designate a foreign country for TPS if the conditions in that country fall into one or more of three statutory categories. These categories are generally described as consisting of (1) ongoing armed conflict, (2) environmental disaster, and (3) extraordinary

¹¹GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: September 2014).

¹²Department of Justice Civil Rights Division, "Telephone Interventions," accessed June 27, 2019, <https://www.justice.gov/crt/telephone-interventions-2>.

and temporary conditions.¹³ The Secretary may designate a country for a period of at least 6 months but no more than 18 months.

At least 60 days before the end of the designation period, the Secretary is required, after consulting with other appropriate agencies, to undertake a review of the conditions in the foreign country for which a designation is in effect and to determine whether the conditions for such designation continue to be met. The Secretary must subsequently take one of the following actions:

- Extend the country's TPS designation for a period of 6, 12, or 18 months, if the Secretary determines that country conditions warrant an extension of TPS.¹⁴ This provides TPS beneficiaries with an extended period of protection from removal.
- Terminate the country's TPS designation, if the Secretary determines that the country no longer meets the statutory criteria. This results in an expiration of the period of protection for foreign nationals who were granted TPS under a country's designation.¹⁵

In addition, the Secretary may exercise his or her discretion, on the basis of this review, to redesignate the country for TPS.¹⁶ With a redesignation, the Secretary allows eligible nationals from the designated foreign country who have arrived in the United States since the initial designation, or another date established by the Secretary, to apply for TPS.

¹³See 8 U.S.C. § 1254a(b), which provides that the Secretary of Homeland Security may designate a country for TPS if nationals are unable to return safely to the country because of armed conflict or extraordinary and temporary conditions or if an environmental disaster in the country temporarily prevents a country from adequately handling the return of its nationals. In addition, 8 U.S.C. § 1254a(b)(1)(B)(3) requires that a designation based on environmental disaster must be officially requested by a foreign state. According to USCIS officials, such a request is generally submitted in writing and may be provided to DHS through State. USCIS officials stated that this request is required only for an initial designation based on environmental disaster and that official requests from the foreign government are not required for any subsequent TPS extensions.

¹⁴See 8 U.S.C. § 1254a(b)(3)(C). Under this section of the INA, a designation period is automatically extended for 6 months if the Secretary does not make a determination to terminate a country's TPS designation before the end date of the current designation.

¹⁵See 8 U.S.C. § 1254a(b)(3)(B).

¹⁶See 8 U.S.C. § 1254a(b). According to USCIS officials, from 1997 through 2017, DHS used the term "redesignate" for instances in which the Secretary of Homeland Security newly designated a country for TPS after an initial designation or extension period. Beginning in 2018, DHS began using the term "newly designate" for these decisions.

TPS provides temporary humanitarian protection to eligible foreign nationals in the United States who, for various reasons, may not have otherwise lawful status and therefore, in the absence of TPS, would be subject to enforcement and removal under the INA. Foreign nationals may be present in the United States without valid status and potentially removable for various reasons, such as having entered without inspection and admission at a port of entry or having remained in the country beyond the expiration of previous temporary status (e.g., tourist, foreign student). Eligible foreign nationals may also seek TPS when they currently have another lawful status, according to USCIS officials. USCIS officials noted that this may occur, for example, when a foreign national has a temporary nonimmigrant status nearing its end date when TPS is designated for his or her country and applies for TPS before the existing status expires.

Under the INA, applicants for TPS must apply during the registration period established by the Secretary of Homeland Security for a particular country designation. To be eligible for TPS, an applicant from a designated country must have been physically present in the United States continuously since the most recent designation's effective date and must have resided in the United States continuously since the date established by the Secretary of Homeland Security.¹⁷ The INA also specifies that an individual is ineligible for TPS if he or she has been convicted of any felony or of two or more misdemeanors committed in the United States; if any of the statutory bars to asylum apply, such as involvement in persecution of others; or if he or she is reasonably regarded as a danger to the security of the United States, among other bases.¹⁸

¹⁷See 8 U.S.C. § 1254a(c). In accordance with the statute, applicants must have been continuously physically present since the effective date of the most recent TPS designation of their country of origin. The Secretary of Homeland Security sets the continuous physical presence date as either the publication date of the Federal Register notice or such later date as the Secretary determines. In addition, applicants must have been living, or continuously residing, in the United States as of the date prescribed by the Secretary of Homeland Security. For example, Yemen's initial TPS designation had an effective date and continuous physical presence date of September 3, 2015; the Secretary of Homeland Security prescribed the same date for continuous residence. See 80 Fed. Reg. 53319 (Sept. 3, 2015). For Yemen's 2017 redesignation, with an effective date and continuous physical presence date of March 4, 2017, the Secretary of Homeland Security prescribed January 4, 2017, as the continuous residence date. See 82 Fed. Reg. 859 (Jan. 4, 2017).

¹⁸See 8 U.S.C. §1254a(c)(2).

In addition to protecting beneficiaries from removal, TPS authorizes them to work in the United States for the designation period.¹⁹ To receive evidence of work authorization, TPS beneficiaries generally apply to USCIS for an employment authorization document, Form I-766. USCIS provides this document as a plastic card that shows proof of the individual's authorization to work in the United States and includes a photograph of the individual.²⁰ Although USCIS does not require beneficiaries to apply for an employment authorization document, according to USCIS officials, beneficiaries typically apply to obtain these cards as evidence of their authorization to work in the United States. Figure 1 shows an example of an employment authorization document issued by USCIS.

¹⁹TPS allows beneficiaries to work in the United States and protects them from removal for the designation period, provided that they continue to meet TPS eligibility criteria and are not otherwise subject to removal proceedings or withdrawal of their status. See INA § 244(c)(3)(A-B); 8 C.F.R. § 244.14 regarding withdrawal of TPS.

²⁰A TPS beneficiary continues to be authorized to work for as long as he or she has TPS. See INA § 244(a)(1)(B). TPS beneficiaries, like all employees, must provide a document or combination of documents to their employers evidencing their identity and employment authorization from a list of acceptable documents. An employment authorization document (Form I-766) is one of the acceptable documents that may be used to establish both identity and authorization to work in the United States. However, TPS beneficiaries may present any document from the list of acceptable documents that are available to demonstrate identity and eligibility to work in the United States. To apply for an employment authorization document, TPS beneficiaries must submit a completed Form I-765, "Application for Employment Authorization" (OMB Control No. 1615-0040), to USCIS, which has jurisdiction over the form, within the current TPS designation period. According to USCIS officials, applicants do not have to submit Form I-765 concurrently with an application to reregister for TPS.

^bState has six regional bureaus that support the department's mission in specific global regions: the Bureau of African Affairs, the Bureau of European and Eurasian Affairs, the Bureau of East Asian and Pacific Affairs, the Bureau of Near Eastern Affairs, the Bureau of South and Central Asian Affairs, and the Bureau of Western Hemisphere Affairs.

^cOverseas posts include U.S. embassies and other posts in many countries.

Foreign Nationals from 22 Countries Have Received TPS, Totaling About 430,000 Beneficiaries in Fiscal Years 2000-2018

TPS Has Been Granted to Foreign Nationals from 22 Countries since It Was Established

Since TPS was established in 1990, foreign nationals in the United States from 22 countries²¹ have been granted TPS.²² Our review of Federal Register notices published in fiscal years 1990 through 2019 found varying bases for the 22 countries' TPS designations. We also found that designations for 20 of these countries were subsequently extended or the countries were redesignated one or more times.²³ Somalia, first designated for TPS in September 1991, had the longest overall designation period since TPS was established. As of the end of fiscal

²¹The 22 countries designated for TPS in fiscal years 1990 through 2019 included El Salvador, Kuwait, Lebanon, Liberia, Somalia, Bosnia-Herzegovina, Rwanda, Montserrat, Burundi, Sierra Leone, Sudan, Kosovo, Honduras, Nicaragua, Guinea-Bissau, Angola, Haiti, South Sudan, Syria, Guinea, Nepal, and Yemen. When Kosovo was designated for TPS in 1998, it was a province of Serbia. In February 2008, the Kosovo Parliament declared Kosovo independent and the United States recognized Kosovo as an independent state.

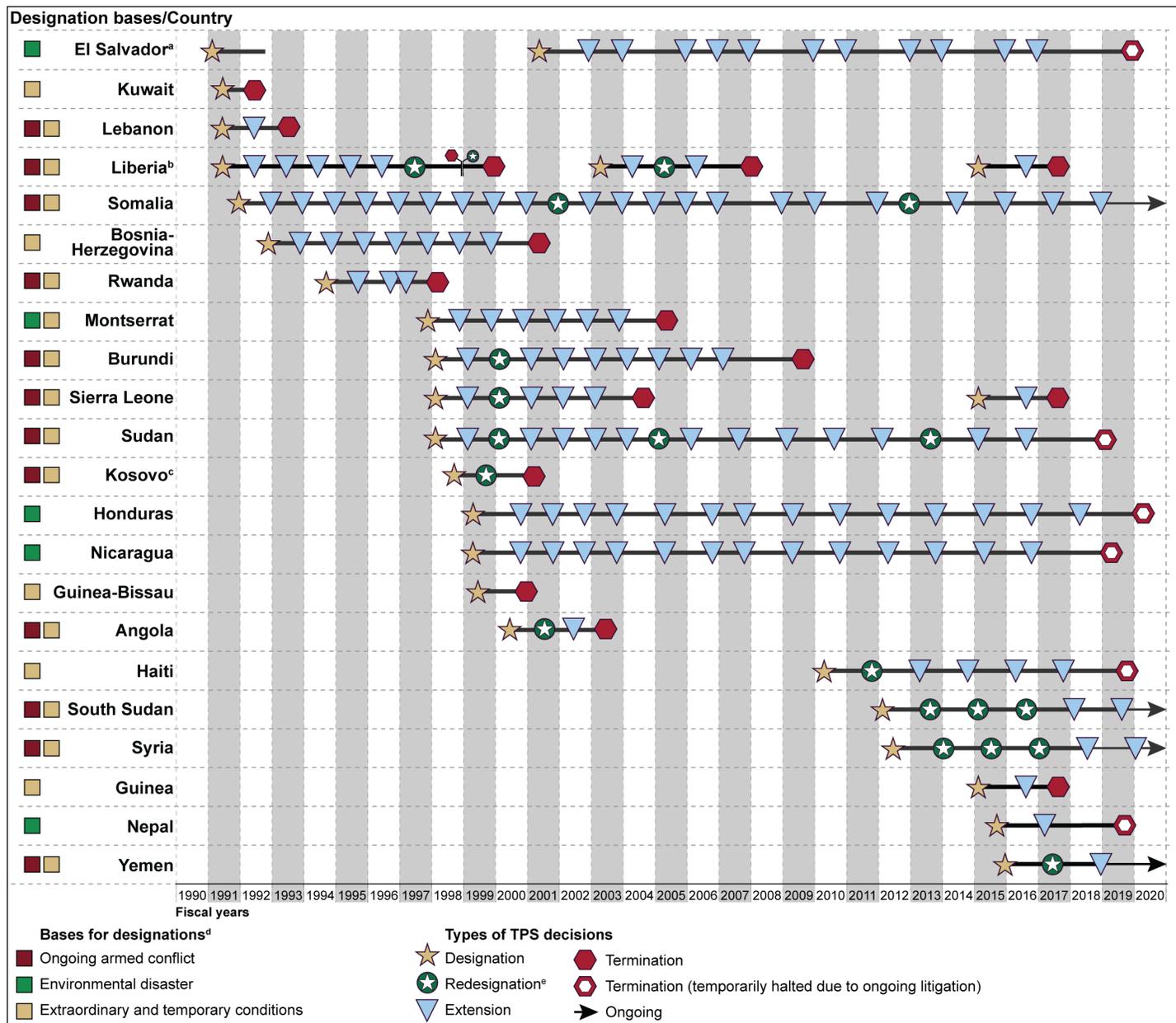
²²The authority to designate countries for TPS was transferred from the Attorney General to the Secretary of Homeland Security in 2003, after the Department of Justice's Immigration and Naturalization Service was abolished and its immigration services and enforcement functions were transferred to DHS pursuant to the Homeland Security Act of 2002. Pub. L. No. 107-296, title I & IV, §§ 101, 102, 456, 471, 478, 116 Stat. 2135, 2142, 2143-44, 2200-01, 2205, 2211-12 (2002) (classified, as amended, at 6 U.S.C. §§ 111, 112, 275, 291, 298). See also 8 U.S.C. § 1103(a) (powers and duties of the Secretary of Homeland Security).

²³A redesignation of TPS may allow eligible nationals from the designated foreign country who have arrived in the United States since the date of the initial designation to apply for TPS, whereas an extension allows existing beneficiaries to retain TPS as long as they continue to meet eligibility requirements.

year 2019, Somalia's designation had been extended 21 times and the country had been redesignated twice;²⁴ its most recent extension was set to expire in March 2020. Designations for only two countries were terminated without any extensions or redesignations—Kuwait, designated in 1991, and Guinea-Bissau, designated in 1999. Figure 2 shows all effective dates of TPS designations and subsequent decisions, including extensions, terminations, and redesignations, as well as the bases for the designations for each of the 22 countries in fiscal years 1990 through 2019.

²⁴Somalia's redesignations were coupled with simultaneous extensions of TPS.

Figure 2: Effective Dates, Designation Bases, and Types of Temporary Protected Status (TPS) Decisions, Fiscal Years 1990-2019



Source: GAO analysis of information provided in Department of Homeland Security Federal Register notices. | GAO-20-134

^aEl Salvador was first designated for TPS in the Immigration Act of 1990. When the original 18-month designation expired in 1992, it was not extended and the country was not redesignated.

^bOne redesignation of Liberia followed a prior termination of the previous designation (1998), and another redesignation of the country was coupled with a simultaneous termination of the previous

designation (2004). Section 7611 of the National Defense Authorization Act for Fiscal Year 2020 allows Liberian nationals who meet all applicable eligibility criteria—including continuous presence in the United States from November 20, 2014, until the date an application is timely filed—and their qualifying family members to become lawful permanent residents (i.e., Green Card holders). See Pub. L. No. 116-92, div. F, title LXXVI, subtitle B, § 7611, 133 Stat. 1198 (2019).

^cWhen Kosovo was designated for TPS in 1998, it was a province of Serbia. In February 2008, the Kosovo Parliament declared Kosovo independent and the United States recognized Kosovo as an independent state.

^dThe listed designation bases represent statutorily defined categories of conditions on which a TPS designation—either an initial designation or any subsequent redesignation—may be based. When more than one designation basis is shown for a country, the bases shown do not distinguish between the category for the initial designation and categories that were added or removed at the time of any redesignations or subsequent designations.

^eAccording to USCIS officials, from 1997 through 2017, “redesignation” was used to describe the Secretary of Homeland Security’s designation of a country for TPS after an initial designation or extension period. Officials stated that in 2018, the Department of Homeland Security began using the term “newly designate” for these decisions. From fiscal year 1990, when TPS was established, through fiscal year 2019, all TPS redesignations except two for Liberia were coupled with a simultaneous extension of TPS. Extensions or terminations that occurred with a redesignation are not marked as such in the graphic.

As figure 2 shows, 26 TPS designations occurred in fiscal years 1990 through 2019, and 22 designations were extended at least once. As of September 30, 2019, the designations for all but four countries had been terminated and the termination of six countries’ designations since fiscal year 2018 had been temporarily halted because of ongoing litigation. Redesignations occurred 20 times.²⁵

- **Designations.** Of the 26 TPS designations, three were for one country, Liberia, and four were for two countries, El Salvador and Sierra Leone, that were each designated twice.
- **Extensions.** The majority of TPS designations (17 of 26 designations) were extended up to eight times. Designations for five countries—El Salvador, Honduras, Nicaragua, Somalia, and Sudan—were extended more than 10 times each. Three of the 22 countries’ designations were not extended before termination.
- **Terminations.** The TPS designations for all countries except Somalia, South Sudan, Syria, and Yemen had been terminated as of September 30, 2019. The termination of six countries’ designations

²⁵Since fiscal year 1990, when TPS was established, through fiscal year 2019, all redesignations except two for Liberia were coupled with a simultaneous extension of TPS. One redesignation for Liberia followed a prior termination of the previous designation, and another redesignation for Liberia was coupled with a simultaneous termination of the previous designation. For the purposes of our review, in counting any extensions or terminations for each country, we did not include an extension or termination that occurred simultaneously with a redesignation.

since fiscal year 2018 had been temporarily halted because of ongoing litigation. Several lawsuits had been filed regarding the Secretary of Homeland Security's decisions to terminate TPS for El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan.²⁶ In October 2018, a U.S. district judge in California issued a preliminary injunction for one of the lawsuits, temporarily blocking DHS from enforcing the Secretary's TPS termination decisions for El Salvador, Haiti, Nicaragua, and Sudan. The U.S. government filed an appeal in response to the preliminary injunction. According to USCIS officials, DHS has regularly published notices of its continued compliance with the court's injunction and has stated that it will continue to publish such notices pending resolution of the case. In April 2019, a district court judge in New York issued a second preliminary injunction covering Haiti, which the U.S. government appealed in June 2019. Additionally, under an agreement to stay the proceedings in response to a lawsuit filed in California in February 2019, the government stipulated that it would temporarily halt terminations for Honduras and Nepal until the appeal of the October 2018 injunction had been resolved.

- **Redesignations.** Of the 20 TPS redesignations, six were for countries that were redesignated once, two were for one country that was redesignated twice, and twelve were for four countries that each were redesignated thrice—the largest number of TPS redesignations.²⁷

About 430,000 Eligible Foreign Nationals Received TPS in Fiscal Years 2000-2018

USCIS data show that applications for TPS were approved for a total of 431,848 foreign nationals in fiscal years 2000 through 2018 and that the number of TPS beneficiaries each year²⁸ grew from about 70,000 in fiscal

²⁶We previously reported on issues related to the reintegration of migrants in Central America, including potential returnees affected by recent terminations of TPS designations for El Salvador and Honduras. See GAO, *Central America: USAID Assists Migrants Returning to their Home Countries, but Effectiveness of Reintegration Efforts Remains to Be Determined*, [GAO-19-62](#) (Washington, D.C.: Nov. 8, 2018).

²⁷All but two of these redesignations were coupled with a simultaneous extension of TPS.

²⁸The data on TPS beneficiaries in a given fiscal year include individuals who had been granted TPS as of September 30 of each fiscal year, including beneficiaries who were granted TPS in prior years and whose status was not withdrawn.

year 2000 to about 420,000 in fiscal year 2018.²⁹ The number of TPS beneficiaries increased most rapidly in fiscal years 2000 through 2005, particularly after the designation of Honduras in 1999 and El Salvador in 2001. According to USCIS officials, because adjudicating all TPS applications can take years, depending on the number of applicants from a country, the number of TPS beneficiaries for a designated country may continue rising after the established registration period for the specific designation. For example, although Honduras was initially designated for TPS in 1999, with an applicant registration period that ended on July 5, 1999, USCIS data show that the number of beneficiaries from Honduras who were granted TPS peaked in 2007 at 85,759 foreign nationals. See appendix II for additional information on the numbers of TPS beneficiaries in fiscal years 2000 through 2018, by country.

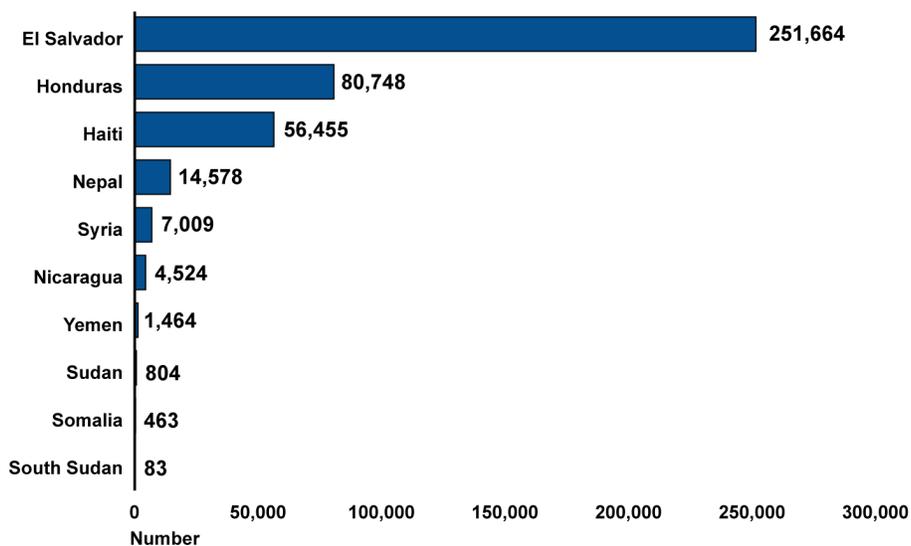
Data on the number of TPS beneficiaries for fiscal year 2018—the most recent available—show that the majority of TPS beneficiaries were from three countries (El Salvador, Honduras, and Haiti), as figure 3 shows.³⁰ About 98 percent of beneficiaries from six countries (Sudan, Honduras, Nicaragua, El Salvador, Haiti, and Nepal) in fiscal year 2018—408,773 foreign nationals—held TPS because the termination of their country’s TPS designation was temporarily halted because of ongoing litigation. In addition, about 2 percent of beneficiaries from four countries (Somalia, South Sudan, Syria, and Yemen) in fiscal year 2018—9,019 foreign

²⁹According to USCIS officials, USCIS data on TPS beneficiaries during this period may include some individuals who adjusted to another immigration status as well as some who left the United States or died. We determined that USCIS data for fiscal years 2000 through 2018 were sufficiently reliable to provide general information on numbers of TPS beneficiaries. USCIS was not able to provide reliable data on numbers of TPS beneficiaries before fiscal year 2000 because, according to USCIS officials, these data were not consistently entered electronically in USCIS information systems before fiscal year 2000. Some of the individuals may have later had their TPS withdrawn because of individual ineligibility or because they became naturalized U.S. citizens. According to USCIS officials, TPS beneficiaries who become U.S. citizens or whose status has been withdrawn, either because they no longer meet eligibility requirements or because they requested that USCIS withdraw their status, are removed from USCIS data in the fiscal year that their status changes.

³⁰El Salvador was designated for TPS in 1990, in the statute that created TPS, and was designated again in 2001 after two major earthquakes in the country. Haiti was initially designated for TPS in 2010, after a major earthquake; the Secretary of Homeland Security redesignated Haiti in 2011 to allow eligible Haitians who arrived in the United States up to 1 year after the earthquake to apply for TPS. Honduras was initially designated for TPS after Hurricane Mitch struck the country in 1999. Ongoing insecurity due to violence and criminal activity, lack of economic opportunity, weak governance, and recurrent natural disasters have contributed to continual flows of migrants from Central American countries, including El Salvador and Honduras, as well as from Haiti, to the United States in recent years.

nationals—held TPS because their country’s designation was extended. See appendix II for additional information about beneficiary characteristics in fiscal year 2018, including age, gender, and location.

Figure 3: Temporary Protected Status Beneficiaries, by Country of Citizenship, Fiscal Year 2018



Source: GAO analysis of U.S. Citizenship and Immigration Services data. | GAO-20-134

Note: The data shown reflect eligible foreign nationals who had been granted Temporary Protected Status as of September 30, 2018. According to USCIS officials, these data may include some foreign nationals who had an additional immigration status, as well as some who had left the United States or died, since receiving TPS.

DHS’s Approach to Inform the Secretary’s TPS Reviews Includes Three Primary Steps

Our review of documentation for selected TPS decisions in fiscal years 2014 through 2018 and our interviews with DHS, USCIS, and State officials indicated that DHS’s approach for initial or subsequent reviews of countries for TPS consists of three primary steps:

1. The Secretary of Homeland Security initiates a review of a country for TPS. For an initial TPS designation, the Secretary may initiate consideration of a country in response to various triggering factors. Such factors may include, for example, a request from a U.S. government entity or a foreign government for a TPS designation based on the statutory conditions for TPS (i.e., armed conflict, environmental disaster, or extraordinary and temporary conditions). For an existing designation approaching its end date, a statutory deadline requires the Secretary to undertake a review.

2. DHS collects information on country conditions and recommendations from USCIS and State and provides this information to the Secretary of Homeland Security to inform his or her decision regarding an initial or existing TPS designation. Other DHS components and non-DHS entities, including other agencies and nongovernmental organizations, may also provide information to the Secretary or USCIS.
3. The Secretary of Homeland Security receives the information and recommendations and makes a decision about TPS for the country. The Secretary exercises discretion in determining whether to initially designate a country for TPS. For an existing designation, under the INA, the Secretary is required to determine whether country conditions warrant an extension of TPS or whether the country no longer meets the statutory criteria and TPS must be terminated. Also, the Secretary exercises discretion in determining whether to redesignate a country that was previously designated for TPS.

Figure 4 illustrates these three steps.

Figure 4: Three Primary Steps in Secretary of Homeland Security's Review for Initial or Existing Designation of Temporary Protected Status (TPS)



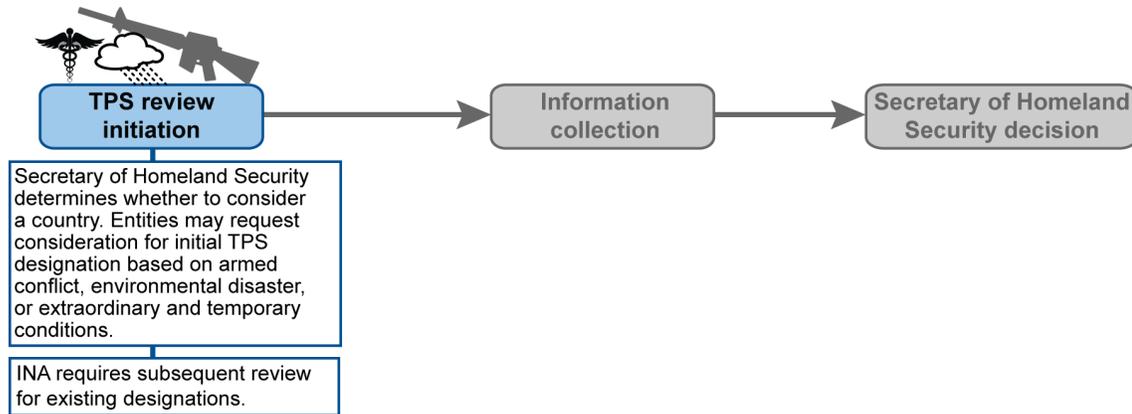
Source: GAO analysis of documentary and testimonial information from the Department of Homeland Security and the Department of State. | GAO-20-134

Note: For an initial TPS designation, the Secretary of Homeland Security may initiate consideration of a country for TPS in response to various triggering factors. For an existing designation, a statutory deadline requires the Secretary to undertake a review. See 8 U.S.C. §1254a (b).

Secretary of Homeland Security May Consider a Country for Initial TPS Designation in Response to Various Factors, and Statute Requires Subsequent Reviews

Various factors may trigger consideration of a country for an initial TPS designation, according to USCIS officials. Officials stated that the Secretary of Homeland Security's consideration of a country for an initial designation is discretionary. However, subsequent reviews of existing designations are required by statute. See figure 5.

Figure 5: Initiation of Secretary of Homeland Security’s Review for Initial or Existing Designation of Temporary Protected Status (TPS)



Legend: INA = Immigration and Nationality Act.

Source: GAO analysis of documentary and testimonial information from Department of Homeland Security and Department of State. | GAO-20-134

Note: For an initial TPS designation, the Secretary of Homeland Security may initiate consideration of a country for TPS in response to various triggering factors, such as a request from a U.S. government entity or a foreign government. For an existing TPS designation, the Secretary is required, after consulting with appropriate agencies, to undertake a review of the conditions in the designated country at least 60 days before the designation’s end date. 8 U.S.C. § 1254a(b)(3).

USCIS and State officials stated that for initial TPS designations, a request from DHS, State, the White House, members of Congress, or foreign governments may trigger consideration of whether to designate a country on the basis of one or more of the three statutory categories (i.e., armed conflict, environmental disaster, or extraordinary and temporary conditions).³¹ USCIS officials added that, under the INA, the Secretary of Homeland Security has the sole authority to determine whether and when to consider a country for an initial TPS designation. Further, they noted that a request does not automatically result in a formal review of a country for TPS even if the country has experienced country conditions specified in one or more of the statutory categories, such as an armed conflict or environmental disaster.

For subsequent reviews of existing TPS designations, at least 60 days before the end of the designation period, the Secretary is required, after

³¹USCIS officials noted that a request from a foreign government is not required for DHS to consider a country for an initial TPS designation. They added that in some cases, DHS does not receive a request from any entity before the Secretary makes a determination to consider a country for an initial TPS designation.

consulting with other appropriate agencies, to undertake a review of the conditions in the foreign country for which a designation is in effect.³²

DHS Collects Country Conditions Reports and Recommendations to Inform the Secretary's TPS Decision

DHS collects similar information for each review of a country for TPS, according to DHS officials and our review of selected decisions. DHS officials identified four primary sources of information that the department collects to inform the Secretary of Homeland Security's TPS decisions: country conditions reports compiled by USCIS and State and recommendations from USCIS and State leadership. According to DHS and State officials, DHS generally consults with State on TPS decisions, although it is not specifically required to do so under the statute.³³ Our review of 26 TPS decisions for the eight selected countries found that DHS collected the following documents to inform each decision:

1. a country conditions report compiled by USCIS,
2. a memo with a recommendation from the USCIS Director to the Secretary of Homeland Security,
3. a country conditions report compiled by State, and
4. a letter with a recommendation from the Secretary of State to the Secretary of Homeland Security.³⁴

USCIS manages and coordinates the TPS information-gathering process for the Secretary of Homeland Security. While State formally provides its input through the Secretary of State's letter and recommendation to the

³²8 U.S.C. § 1254a(b)(3).

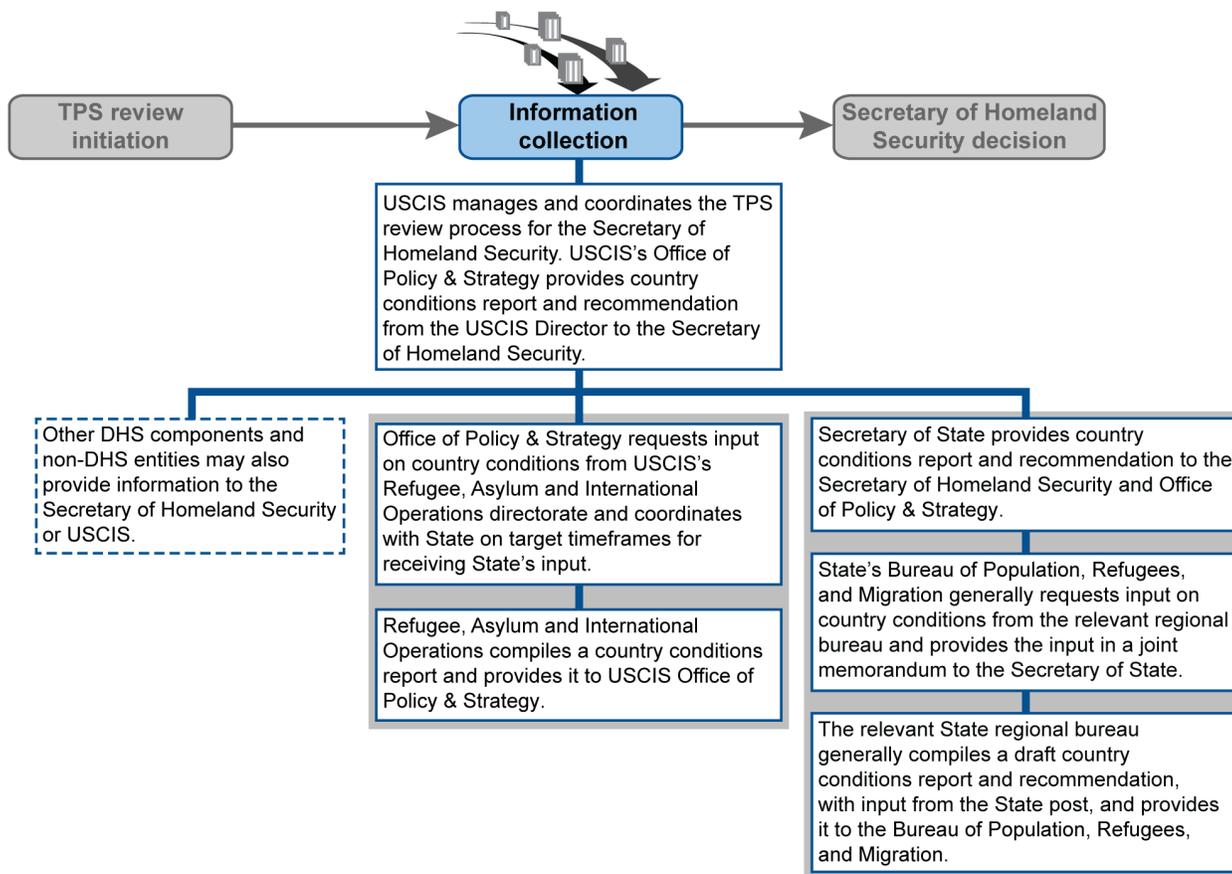
³³The Secretary of Homeland Security is required to consult with appropriate agencies of the government before making a designation according to 8 U.S.C. § 1254a(b)(1), and prior to periodic reviews of existing designations, according to 8 U.S.C. § 1254a(b)(3). The statute does not prescribe the other agencies that must be consulted.

³⁴Although the INA does not prescribe the type of input that must be provided by any agencies that the Secretary of Homeland Security consults with for a TPS review, we found that State generally has a role in providing input, including a country conditions report and recommendation, for the Secretary of Homeland Security's TPS reviews. We reviewed documentation that DHS collected to inform the Secretary's decisions for a judgmental, nongeneralizable sample of eight of the 13 countries for which TPS decisions were rendered in fiscal years 2014 through 2018. Our sample included 26 TPS decisions (specifically, two initial designation decisions, three redesignation decisions, 15 extension decisions, and six termination decisions) from a total of 42 decisions during that period. Because of ongoing litigation, certain information had been redacted from documents for 13 of the 26 TPS decisions in our judgmental sample. See appendix I for additional details of our objectives, scope, and methodology.

Secretary of Homeland Security, USCIS officials said that USCIS generally incorporates the input from State into USCIS's country conditions report and recommendation on TPS.³⁵ DHS officials noted that other internal DHS components, government agencies, and other entities may also provide information about country conditions or other factors to inform the Secretary of Homeland Security's decisions. Figure 6 shows the information collected to support the Secretary of Homeland Security's TPS reviews.

³⁵According to USCIS officials, the Secretary of State's letter and recommendation to the Secretary of Homeland Security, as well as State's country conditions report, are generally attached to USCIS's country conditions report and recommendation to inform the Secretary of Homeland Security's review.

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



Legend: DHS = Department of Homeland Security; INA = Immigration and Nationality Act; State = Department of State; USCIS = U.S. Citizenship and Immigration Services.
 Source: GAO analysis of documentary and testimonial information from DHS and State. | GAO-20-134

Note: The Secretary of Homeland Security is required to consult with appropriate agencies of the government before making a TPS designation, according to 8 U.S.C. § 1254a(b)(1), and prior to periodic reviews of existing designations, according to 8 U.S.C. § 1254a(b)(3). Although the INA does not prescribe the other agencies that must be consulted, State generally has a role in providing input for the Secretary of Homeland Security’s TPS reviews, based on our review of documentation for selected TPS decisions in fiscal years 2014 through 2018 and our interviews with DHS, USCIS, and State officials.

USCIS officials indicated that the time frames for conducting TPS reviews may vary. They noted that a review for an initial designation may have a shorter time frame than a review for an existing designation, depending on the situation. In addition, the officials noted that USCIS generally starts the review process for an existing TPS designation about 6 months to a year before the end date of the country’s current designation. They added

that they generally start the review process within this timeframe, given the INA requirement that the Secretary of Homeland Security either undertake a review and make a determination regarding country conditions at least 60 days in advance of the prior designation's end date or automatically extend the designation for 6 months.³⁶ According to USCIS officials, at the start of a review for an initial or existing designation, USCIS's Office of Policy & Strategy generally reaches out to USCIS's Refugee, Asylum and International Operations Directorate (RAIO) to request input on country conditions. USCIS officials also said that the office coordinates with State's Bureau of Population, Refugees, and Migration regarding the target time frame for receiving State's input. In general, once USCIS receives the input from RAIO and State, USCIS finalizes its country conditions report and recommendation memo for the Secretary of Homeland Security.

Our review of documentation for the eight countries in our nongeneralizable sample of 26 TPS decisions found variation in the time frames for USCIS's recommendation memos and for State's recommendation letters. For the 24 reviews of existing TPS designations, USCIS provided recommendation memos to the Secretary of Homeland Security about 2 to 7 months before the end date of the prior

³⁶According to 8 U.S.C. § 1254a(b)(1)(C), after the Secretary of Homeland Security makes a decision regarding an initial TPS designation, the designation shall not become effective unless notice of the designation is published in the Federal Register. With regard to decisions to terminate or extend a designation after a required periodic review of an existing designation, the Secretary of Homeland Security is required to provide for the publication of notice of the determination in the Federal Register on a timely basis. Under the law, terminations may not take effect earlier than 60 days after the date of publication of the Federal Register notice announcing the termination decision or, if later, the expiration of the most recent previous extension. See 8 U.S.C. § 1254a(b)(3).

designations.³⁷ Most of State's 26 recommendation letters were dated about 2 days to 6 months before the USCIS recommendation memos.³⁸

RAIO officials noted that they use an internal template as informal guidance for the draft country conditions reports that they compile for USCIS's Office of Policy & Strategy for reviews for initial or existing TPS designations. We reviewed the RAIO template and found, for example, that for reporting on a country being considered for a TPS designation on the basis of an environmental disaster, the template includes sections (e.g., several paragraphs) about the population harmed, damage to infrastructure, disruption in services, and status of disaster response and reconstruction. Officials added that country conditions reports may deviate from the template, because its use is not required; instead, it serves as general, informal guidance. RAIO officials also noted that information in the country conditions reports they compile is generally based on publicly available information or data related to country conditions. According to the officials, sources for such information may include U.S. agencies, foreign governments, international organizations, nongovernmental organizations, and news articles.

According to State officials, after State initiates its internal process for compiling information for the Secretary of Homeland Security's TPS

³⁷Specifically, of the 24 TPS decisions for existing designations in our sample, nine of the USCIS recommendation memos were dated about 2 to 2.5 months in advance of the prior designation end date; six were dated about 3 to 4.5 months in advance of the prior designation end date; and eight were dated about 5 to 7 months in advance of the prior designation end date. One of the 24 USCIS recommendation memos provided to us was not dated, although USCIS provided an earlier draft memo for that TPS decision to us that was dated about 1.5 months in advance of the prior designation end date. Our sample also included two TPS decisions for initial designations (for a total of 26 decisions); because those designations did not have a prior end date, we did not include them in our analysis.

³⁸Specifically, State's recommendation letters for 23 of the 26 TPS decisions were dated in advance of the USCIS recommendation memos for those reviews. Six State letters were dated 2 days to 2 weeks in advance of the USCIS recommendation memo, six were dated 1 to 2 months in advance, seven were dated 2.5 to 4 months in advance, and four were dated 4.5 to 6 months in advance. Three of the 26 State recommendation letters were dated about 1 to 2 weeks after the USCIS recommendation memo. For those three instances, USCIS officials indicated that USCIS officials had communicated with State officials at the working level about the ongoing TPS reviews; however, USCIS did not receive State's final letters in time to incorporate the input into USCIS's memos for the Secretary of Homeland Security. They added that, because State formally provides its input directly to the Secretary of Homeland Security, the Secretary has always received State's input in advance of a TPS decision. State officials indicated that although State strives to adhere to USCIS timelines, complex TPS cases with significant foreign policy considerations may require additional time for internal review.

review, the Bureau of Population, Refugees, and Migration generally requests input internally from the relevant regional bureau and post before compiling information for the Secretary of State's consideration. See the text box for more details of State's internal process for developing country conditions reports and recommendation letters to inform the Secretary of Homeland Security's TPS reviews.

State Department's Internal Process for Compiling Information for the Secretary of Homeland Security's Temporary Protected Status Reviews

The Department of State's (State) internal process for developing input for the Secretary of Homeland Security's Temporary Protected Status (TPS) reviews generally includes compiling information on country conditions as well as proposed recommendations from the relevant regional bureau and overseas post, according to documentation for selected TPS decisions in fiscal years 2014 through 2018 and our interviews with DHS, USCIS, and State officials. State's Bureau of Population, Refugees and Migration (PRM) facilitates and coordinates State's internal process for developing this input, according to informal guidance, which State officials said the bureau has used at the working level since 2012, as well as our interviews with State officials.

After DHS initiates a TPS review, PRM generally directs the relevant regional bureau to reach out to overseas posts for information about country conditions, according to State officials. State officials noted that in some cases, the regional bureau's country desk officer takes the lead in drafting the country conditions report, depending on the country context. Officials stated that the regional bureau generally uses a questionnaire on country conditions to request information from the post for a TPS review and that the post generally also provides a recommendation, in addition to the questionnaire responses, via cable or email to the regional bureau. For example, for a country that had an existing TPS designation based on ongoing armed conflict in the country, a country conditions cable provided, among other things, information about the status of the armed conflict, an assessment of whether the return of foreign nationals would pose a serious threat to their personal safety and whether the country was unable to handle the return of nationals, and information about the impact of the conflict on economic and humanitarian conditions. State and U.S. Agency for International Development (USAID) officials noted that other agencies represented at the overseas posts, such as USAID, may provide information for a post's input on country conditions, including information gathered "on the ground" as well as from publicly available sources.

Once the regional bureau receives any input from post, the bureau desk officer prepares a draft country conditions report and recommendation, and the regional bureau works with PRM to compile a joint action memo. PRM generally provides the joint action memo, which includes a country conditions report, to the Secretary of State, according to State officials. The memo may include a joint recommendation or varying recommendations (e.g., from PRM and the regional bureau) for the Secretary's consideration. After the Secretary determines what the department will recommend, State provides a final country conditions report and recommendation letter to the Secretary of Homeland Security as well as to U.S. Citizenship and Immigration Services' Office of Policy & Strategy.

Source: GAO summary of documentary and testimonial information provided by State and USAID. | GAO-20-134

We found that the USCIS and State country conditions reports and recommendation memos or letters that DHS and State provided for our nongeneralizable sample of 26 TPS decisions included information such as background on the cause (or reason for consideration) of the initial

TPS designation and a summary of the country's recovery from, or the status of, the situation to date. In addition, documentation provided to us for some of the TPS decisions included other information, such as certain economic indicators or broader country context. Specifically:

- **Cause and recovery or status.** USCIS and State documentation for each of the 26 TPS decisions in our review generally included (1) information related to the cause (or reason for consideration) of the initial TPS designation and (2) a summary of the country's recovery from, or the status of, the situation to date. For example, documentation for a country designated on the basis of armed conflict described the status of the conflict and ceasefire agreements; provided information about violence against civilians and recruitment of child soldiers; provided an update on civilian casualties since the prior review; and described humanitarian challenges stemming from the conflict, such as the risk of famine. For a country designated on the basis of environmental disaster, documentation described the status of investments in recovery and efforts to rebuild after the disaster, including the number of houses and schools that had been rebuilt or repaired. This documentation also included assessments of disruption in living conditions and the extent to which economic activity and basic services had been restored.
- **Economic indicators.** USCIS documentation for 16 TPS decisions and State documentation for 12 TPS decisions in our review included information about economic indicators. Examples of such information included an estimate of damages from an environmental disaster as a percentage of a country's gross domestic product, a summary of growth in a country's gross domestic product in recent years, and data on the increase in food prices as a result of armed conflict in a country.³⁹
- **Broader country context.** USCIS documentation for 23 TPS decisions in our review and State documentation for 20 TPS decisions provided information about broader country context. For example, documentation for a country designated on the basis of armed conflict included broader context regarding topics such as recent natural disasters and the country's geography. As another example, documentation for a country designated on the basis of environmental

³⁹We determined that USCIS and State documentation (e.g., country conditions reports and recommendation memos or letters) for a TPS decision included information about economic indicators if the documentation provided information about one or more indicators, such as gross domestic product, consumer prices, or unemployment statistics.

disaster provided information about subsequent natural disasters as well as violence, criminal activity, and corruption in the country.

In addition to USCIS and State, other DHS offices and components and non-DHS entities may provide information to inform the Secretary's decision. DHS officials noted that such information varies, may be solicited or unsolicited, and may be provided directly to the Secretary of Homeland Security or to USCIS. We reviewed examples of such information for several of the TPS decisions in our nongeneralizable sample.⁴⁰ This information included items such as

- immigration data or intelligence analyses from other DHS offices and components—for example, the Office of Immigration Statistics, U.S. Customs and Border Protection, and U.S. Immigration and Customs Enforcement;
- updates from the Department of Defense on the security situation in a country;
- technical input from the Centers for Disease Control and Prevention regarding the status of an epidemic; and
- input from other entities, including letters from members of Congress, foreign government officials, and nongovernmental organizations.⁴¹

In addition, DHS officials stated that the Secretary of Homeland Security may hold briefings or meetings on TPS reviews both internally and with

⁴⁰DHS and State provided examples of other information compiled for each of the eight countries in our nongeneralizable sample, representing 15 of 26 TPS decisions.

⁴¹For example, a senior official from DHS's Office of Immigration Statistics provided us with several examples of immigration data that the office provided to DHS and USCIS officials for recent TPS reviews. The official noted that the office routinely provides immigration data—in particular, estimates of unauthorized individuals residing in the United States who would be eligible for an initial designation or redesignation—to both DHS and USCIS for TPS reviews. In addition, DHS's Office of Intelligence and Analysis developed an intelligence assessment that provided an overview of implications, including homeland security considerations and operational considerations for law enforcement, if TPS were to expire for certain countries. According to officials from the Office of Intelligence and Analysis, the office developed the assessment on its own initiative, and it was provided to the Secretary of Homeland Security as part of a daily briefing book as well as posted to an internal dissemination portal for cleared users. As another example, DHS's Office of the Military Advisor requested and received information from the Commander of a Department of Defense combatant command about the security situation, humanitarian challenges, and implications of terminating TPS for a country. Department of Defense officials stated that the department has not provided formal input for TPS reviews.

external entities, such as White House officials, foreign government officials, and nongovernmental organizations or advocacy groups.⁴²

According to DHS officials, after USCIS and State compile their country conditions reports and recommendations for the Secretary of Homeland Security's consideration, other DHS components—including the Office of Strategy, Policy, and Plans; the Office of the General Counsel; and the Management Directorate—review the documents as part of the standard departmental clearance process before providing them to the Secretary. Officials from these DHS components noted that the purpose of their review is generally to provide relevant technical comments and ensure that complete information has been gathered for the Secretary's review.

Secretary of Homeland Security Makes a TPS Decision

According to USCIS officials, after receiving the information and recommendations from USCIS and State, as well as information from any other sources, the Secretary of Homeland Security makes a decision regarding a country's initial or existing TPS designation.⁴³ USCIS officials indicated that the Secretary's decisions may not always follow the recommendations of the USCIS Director or the Secretary of State. For example, among the 26 TPS decisions from 2014 through 2018 that we reviewed, the Secretary of Homeland Security's decision was the same as State's recommendation in 21 cases and differed from State's recommendation in five cases.⁴⁴

- **Initial designation.** USCIS officials stated that if the Secretary of Homeland Security determines a country meets the statutory criteria

⁴²For example, we reviewed an agenda and materials for a briefing related to a TPS review for a country. Participants included officials from the White House, DHS, State, and the Department of Justice. The agenda included an overview of TPS and discussion of decision options. Attached materials included background on TPS and the statutory authorities governing TPS, as well as a summary of country conditions and decision options.

⁴³Although we reviewed the steps that DHS takes to inform the Secretary of Homeland Security's TPS decisions, we did not review the Secretary's decision-making for specific TPS decisions for the countries we selected for our review. See appendix I for additional details of our objectives, scope, and methodology.

⁴⁴The Secretary of State's recommendations in the five cases varied. These cases included instances when State recommended terminating a designation that DHS decided to extend or when State recommended extending a designation that DHS decided to terminate. Because of redactions that had been made in the information we received, we were unable to discern whether any of the Secretary of Homeland Security's TPS decisions differed from USCIS's recommendations.

for designation, the Secretary may then exercise discretion in deciding whether to initially designate the country for TPS.

- **Existing designation.** According to USCIS officials, the Secretary of Homeland Security exercises discretion in determining whether the conditions in a country satisfy statutory conditions for retaining an existing designation. However, the officials indicated that if the Secretary determines that the conditions for TPS designation continue to be met, the Secretary is required under the INA to extend the designation.⁴⁵ Additionally, USCIS officials stated that if the Secretary determines a country no longer meets conditions for TPS designation, the Secretary is required under the INA to terminate the designation. Finally, USCIS officials stated that the Secretary may exercise discretion in deciding to redesignate a country with an existing designation and that factors such as a significant deterioration in country conditions may weigh in favor of a redesignation.⁴⁶

Once the Secretary of Homeland Security decides whether to designate a country or to extend or terminate TPS, the decision may be documented through a signed memorandum or communicated orally to USCIS, according to USCIS officials. DHS provided memorandums or notices documenting the Secretary's TPS decisions for all 26 decisions in our nongeneralizable sample.⁴⁷ After the Secretary makes a TPS decision, DHS typically communicates the decision to State before announcing it to the general public. Either DHS or State then communicates the decision to the foreign embassy in Washington, D.C., and State may communicate it to the foreign government overseas. Finally, under INA provisions

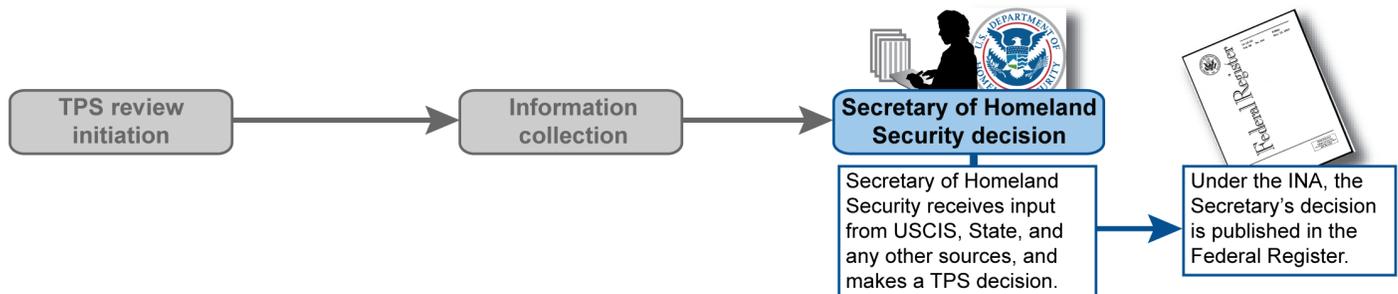
⁴⁵8 U.S.C. § 1254a(b)(3).

⁴⁶USCIS officials noted that, while factors such as a significant deterioration in country conditions may weigh in favor of a redesignation, there is no single factor that the Secretary of Homeland Security has generally considered in exercising discretion to redesignate a country for TPS.

⁴⁷Specifically, DHS provided a completed signature page from a USCIS recommendation memo as documentation of the Secretary of Homeland Security's decisions in six cases. DHS provided a separate memorandum from the Secretary to the Director of USCIS documenting the TPS decision in two cases, a completed signature page for a memorandum from DHS's Office of the General Counsel documenting the Secretary's decision in another case, and completed signature pages for draft Federal Register notices documenting the Secretary's decisions in 17 cases.

related to TPS, the Secretary's decision is published in the Federal Register (see fig. 7).⁴⁸

Figure 7: Secretary of Homeland Security's Decision on Temporary Protected Status (TPS)



Legend: INA = Immigration and Nationality Act; State = Department of State; USCIS = U.S. Citizenship and Immigration Services.

Source: GAO analysis of documentary and testimonial information from the Department of Homeland Security and from State. | GAO-20-134

Note: The Secretary of Homeland Security exercises discretion in determining whether to initially designate or redesignate a country for TPS. For an existing designation, under the INA, the Secretary of Homeland Security is required to determine whether country conditions warrant an extension of TPS or whether the country no longer meets the statutory criteria and TPS must be terminated. The INA requires DHS to provide official notice of TPS decisions through the Federal Register. A decision to designate a country for TPS is effective once published in the Federal Register or on a later date specified by the Secretary of Homeland Security. For subsequent TPS reviews of existing designations, DHS is required to provide timely notice of the Secretary of Homeland Security's decision in the Federal Register, and the effective date is generally the day after the end date of the current designation period. The INA provides that a termination shall not be effective earlier than 60 days after the date that a Federal Register notice is published or, if later, the expiration of the most recent previous extension. 8 U.S.C. § 1254a(b).

⁴⁸According to 8 U.S.C. §1254A (b)(1), after the Secretary of Homeland Security makes a decision regarding an initial TPS designation, the designation shall not become effective unless notice of the designation is published in the Federal Register. With regard to decisions to extend or terminate a designation after a required periodic review of an existing designation, the Secretary of Homeland Security is required to provide for the publication of notice of the determination in the Federal Register on a timely basis. Under the law, terminations may not take effect earlier than 60 days after the date of publication of the Federal Register notice announcing the termination decision or, if later, the expiration of the most recent previous extension. See 8 U.S.C. § 1254a(b)(3).

DHS Has Communicated TPS Decisions through Required Federal Register Notices but Provided Inconsistent Guidance on Employment Authorizations

DHS Has Communicated TPS Decisions to the Public through Required Federal Register Notices and Other Mechanisms

Since 1990, all TPS decisions have been communicated to the public through statutorily required notices in the Federal Register.⁴⁹ DHS has also used other mechanisms, including press releases and its website, to help disseminate TPS-related information to the public.

We found that a Federal Register notice was published for all TPS decisions, as required under the INA, from November 1990 to September 2019.⁵⁰ In addition, DHS frequently used Federal Register notices as a mechanism for communicating other related information, such as effective dates for TPS designation periods, applicant registration periods, TPS beneficiary eligibility requirements, and information about employment authorization for beneficiaries. For example, the Federal Register notice

⁴⁹The authority to designate countries for TPS was transferred from the Attorney General to the Secretary of Homeland Security in 2003, after the Department of Justice's Immigration and Naturalization Service was abolished and its immigration services and enforcement functions were transferred to the Department of Homeland Security pursuant to the Homeland Security Act of 2002. Pub. L. No. 107-296, title I & IV, §§ 101, 102, 456, 471, 478, 116 Stat. 2135, 2142, 2143-44, 2200-01, 2205, 2211-12 (2002) (classified, as amended, at 6 U.S.C. §§ 111, 112, 275, 291, 298). See also 8 U.S.C. § 1103(a) (powers and duties of the Secretary of Homeland Security).

⁵⁰INA provisions related to TPS state that TPS decisions, including designations, extensions, and terminations, shall be published in the Federal Register. The effective dates of TPS decisions may vary, in accordance with the statute. See 8 U.S.C. § 1254a(b).

extending the TPS designation of El Salvador, published on July 8, 2016, included the following⁵¹:

- summary information about the extension, such as the period of extension and the start and end date of the extension;
- procedures and eligibility information for beneficiaries to register or reregister for TPS and to apply for renewal of employment authorization documents, including required forms and fees to register or reregister;⁵²
- directions for obtaining additional information and help with questions by accessing the USCIS website or by contacting an identified USCIS official or a USCIS customer contact center; and
- general information about TPS as well as information about El Salvador's initial TPS designation and about the Secretary's authority and reason for extending TPS for El Salvador.

For a Federal Register notice of a TPS decision, according to USCIS officials, USCIS generally takes about 2 weeks to draft the notice. DHS then completes an internal review before submitting the notice to the Office of Management and Budget (OMB) for interagency review, according to officials. OMB's Office of Information and Regulatory Affairs coordinates the notice review process, including gathering comments or proposed revisions from relevant executive branch agencies. For example, we reviewed examples of technical comments from the Centers for Disease Control and Prevention regarding draft notices of TPS decisions for the Ebola-affected countries that included information and data on the status of the epidemic and an assessment of health care infrastructure. According to USCIS officials, OMB comments are returned to DHS without identifying the agency that made each comment, and additional interagency review and comment may occur before DHS publishes the notice in the Federal Register. USCIS officials also noted that, under regulation, OMB can take up to 90 days to complete the

⁵¹See 81 Fed. Reg. 44645 (July 8, 2016).

⁵²Once granted TPS, an individual must reregister during each reregistration period, in the case of an extension or redesignation, to maintain TPS benefits. TPS beneficiaries generally have 60 days to reregister. However, late reregistration is permitted if good cause is met and USCIS officials are instructed to give beneficiaries the benefit of any doubt, according to USCIS officials. According to USCIS officials, because of ongoing TPS litigation, eligible beneficiaries from six countries (Haiti, El Salvador, Sudan, Nicaragua, Honduras, and Nepal) are allowed to maintain their TPS, provided they have reregistered during at least one or more of the reregistration periods specified in footnote 1 of the Federal Register notice published at 84 Fed. Reg. 59403 (Nov. 4, 2019).

interagency review, although the officials added that OMB aims to complete the process in a timely manner for TPS notices and generally takes about a month.

According to USCIS officials, to help raise awareness of TPS decisions, USCIS has generally also issued press releases announcing all TPS decisions and published them on its website in addition to publishing Federal Register notices. Table 2 summarizes information from DHS's publication of a press release and Federal Register notice for a 2016 TPS decision.

Table 2: Department of Homeland Security's Public Communication of Temporary Protected Status (TPS) Extension for Honduras in 2016

Type of communication	Publication date	Description
Press release	May 16, 2016	The prior extension of Honduras's TPS designation was set to end on July 5, 2016. In May, the Department of Homeland Security (DHS) published a press release on its website announcing that the Secretary of Homeland Security had extended TPS for eligible nationals of Honduras for an additional 18 months, effective July 6, 2016, through Jan. 5, 2018. The press release included guidance for TPS beneficiaries regarding TPS reregistration requirements. In addition, the press release stated that, for eligible foreign nationals who reregistered for TPS, U.S. Citizenship and Immigration Services would issue new employment authorization documents with a Jan. 5, 2018, expiration date.
Federal Register notice	May 16, 2016	DHS published a Federal Register notice of the decision to extend the designation of Honduras for TPS. The notice included additional details of the decision as well as guidance for TPS beneficiaries regarding reregistration requirements.

Source: GAO analysis of DHS documentation and information provided in Federal Register notices. | GAO-20-134

USCIS has also taken other steps to communicate TPS decisions and related information to the public. USCIS has updated its TPS country-specific webpages with alerts about the latest TPS decisions and registration periods, among other information. Further, according to USCIS officials, the Office of Public Affairs hosted periodic national TPS teleconferences for stakeholders and conducted outreach meetings to respond to questions and discuss TPS information in communities where there might be a large number of TPS beneficiaries. For example, a teleconference invitation from USCIS to stakeholders to discuss the extension of Haiti's TPS designation in May 2017 indicated that USCIS officials would share information about the TPS reregistration period and procedures for eligible Haitian nationals and would respond to stakeholder questions. Officials from USCIS's Office of Public Affairs also stated that the office has drafted guidance for communicating most TPS decisions. We reviewed examples of the guidance, which included planned time lines for publishing the press releases and information to

USCIS's website as well as for conducting outreach to Congress, stakeholder groups, and TPS beneficiaries.

DHS Published Most Federal Register Notices of Decisions on Existing TPS Designations before Previous Designations' End Date

USCIS officials noted that once the Secretary of Homeland Security makes a TPS decision, time frames for publishing the Federal Register notice may vary.⁵³ USCIS officials stated that, in an effort to ensure public awareness of the decisions as soon as possible, USCIS has in some cases published a press release before the Federal Register notice of a decision was finalized and published.

In reviewing TPS decisions for existing designations (i.e., extensions, terminations, and redesignations) in fiscal years 1990 through 2019, we found the following:

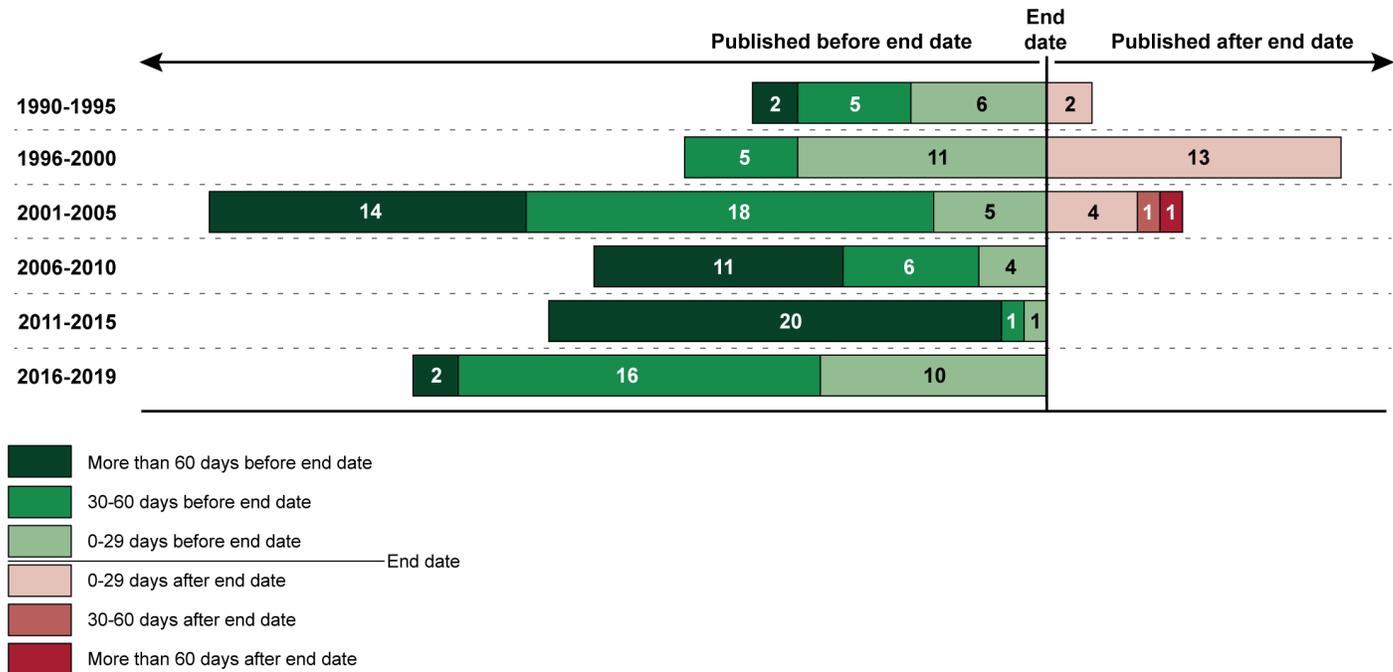
- About two-thirds of Federal Register notices announcing TPS decisions for these existing designations were published at least 30 days before the end date of the previous designation period (100 of 158 total notices).
- In fiscal years 1990 through 2005, 21 Federal Register notices announcing TPS decisions for existing designations were published after the end of the previous designation period.⁵⁴
- In fiscal years 2006 through 2019, all 71 Federal Register notices announcing TPS decisions for existing designations were published 4 to 159 days before the end date of the previous designation period.

See figure 8 for more details.

⁵³The INA requires the Secretary of Homeland Security to undertake a review of country conditions for an existing TPS designation at least 60 days before the end of the current designation period. Under the INA, DHS must publish decisions to extend or terminate a country's TPS designation in the Federal Register on a "timely basis." 8 U.S.C. § 1254a(b)(3). USCIS officials noted that they aim to publish a Federal Register notice as expeditiously as possible after the Secretary makes a TPS decision. However, the officials said that timeframes for publishing the Federal Register notice of a TPS decision may vary, depending on the OMB interagency review process, among other factors.

⁵⁴Under 8 U.S.C. § 1254a, a TPS country designation shall remain in effect until the effective date of the termination of the designation. Therefore, in instances in which the publication of a notice in the Federal Register occurred after the end date of the previous TPS designation, such TPS designation would continue unless and until terminated by the Secretary of Homeland Security.

Figure 8: Numbers of Federal Register Notices of Extensions, Terminations, or Redesignations of Temporary Protected Status (TPS) Designations Published before and after End Dates of Previous Designation Periods, Fiscal Years 1990-2019



Source: GAO analysis of information provided in Department of Homeland Security Federal Register notices. | GAO-20-134

Note: Under 8 U.S.C. § 1254a, DHS must publish decisions to extend or terminate a country's TPS designation in the Federal Register on a timely basis. A TPS country designation remains in effect until the effective date of the termination of the designation. Therefore, while publication of a notice in the Federal Register may occur after the previous period of TPS designation has lapsed, the TPS designation will continue unless and until terminated by the Secretary of Homeland Security.

USCIS Published Guidance Has Not Consistently Identified All Mechanisms Used to Communicate Automatic Extensions of TPS Employment Authorization Documents

Since 1990, two mechanisms—Federal Register notices and individually mailed notifications, which TPS beneficiaries may use as evidence of their eligibility for employment—have been used to communicate automatic extensions of employment authorization documents. However, USCIS's published guidance has not consistently identified each of these as official mechanisms to verify eligibility, resulting in confusion among employers about TPS beneficiaries' employment eligibility. The INA states that DHS shall provide TPS beneficiaries with "an 'employment authorized' endorsement or other appropriate work permit" but does not specify the mechanisms that DHS should use to communicate TPS employment authorization. To receive documentation of work authorization, TPS beneficiaries generally apply for an employment authorization document after an initial TPS designation and also after any

subsequent extensions or redesignations of TPS.⁵⁵ See the text box for a description of the process that TPS beneficiaries and employers must follow to verify beneficiaries' employment eligibility.

⁵⁵According to USCIS officials, TPS registrants and reregistrants are not required to apply for an employment authorization document; however, TPS beneficiaries typically apply for the document to obtain evidence of authorization to work in the United States.

Employment Eligibility Verification (Form I-9) Process

Form I-9 lays out a process for verifying that an employee is authorized to work in the United States. First, Form I-9 requires the employee to attest to his or her citizenship or immigration status and provide acceptable documentation of identity and employment authorization. Such documents may establish both identity and employment eligibility (e.g., an employment authorization document—Form I-766—that contains a photograph) or may establish identity only (e.g., a driver’s license) or employment eligibility only (e.g., a Social Security card).

Next, Form I-9 requires the employer to attest that he or she has examined the documents presented by the employee; that the documents appear to be genuine and relate to the employee; and that, to the best of the employer’s knowledge, the employee is authorized to work in the United States. In examining the documents, the employer must reject any that do not reasonably appear to be genuine and to relate to the individual presenting them or that are not on the list of acceptable documents; the employer must then ask for other documents that satisfy the requirements of Form I-9.

		Employment Eligibility Verification Department of Homeland Security U.S. Citizenship and Immigration Services			USCIS Form I-9 <small>OMB No. 1615-0047</small> <small>Expires 10/31/2022</small>	
		<p>▶ START HERE: Read instructions carefully before completing this form. The instructions must be available, either in paper or electronically, during completion of this form. Employers are liable for errors in the completion of this form.</p> <p>ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) an employee may present to establish employment authorization and identity. The refusal to hire or continue to employ an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.</p>				
<p>Section 1. Employee Information and Attestation <i>(Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)</i></p>						
Last Name (Family Name)		First Name (Given Name)		Middle Initial	Other Last Names Used (if any)	
Address (Street Number and Name)			Apt. Number	City or Town	State	ZIP Code
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number		Employee's E-mail Address		Employee's Telephone Number	
<input type="checkbox"/> 1. A citizen of the United States		<input type="checkbox"/> 2. A noncitizen national of the United States <i>(See instructions)</i>				
<input type="checkbox"/> 3. A lawful permanent resident <i>(Alien Registration Number/USCIS Number):</i> _____		<input type="checkbox"/> 4. An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy): _____ <small>Some aliens may write "N/A" in the expiration date field. (See instructions)</small>				
<small>Aliens authorized to work must provide only one of the following document numbers to complete Form I-9: An Alien's Alien Registration Number (A-Number), USCIS Number, or Form I-94 Admission Number OR Foreign Passport Number</small>						<small>QR Code - Section 1 Do Not Write In This Space</small>

Source: GAO summary of U.S. Citizenship and Immigration Services documents and guidance. | GAO-20-134

According to USCIS officials, USCIS aims to adjudicate both initial employment authorization applications and renewal applications within 90 days after receiving an application. When it is unable to process the adjudications in this time frame, USCIS issues automatic extensions of expiring employment authorization documents for TPS beneficiaries from

a specific country, to allow time for USCIS to process the volume of applications associated with a TPS reregistration period.⁵⁶ In some instances, USCIS may issue additional automatic extensions of employment authorization documents for specific countries if it has been unable to process all pending applications within the initial automatic extension period, according to USCIS officials.

When employment authorization documents are automatically extended for eligible TPS beneficiaries, the documents may appear to have expired even though they remain valid. According to USCIS officials, DHS has used the Federal Register notices announcing TPS decisions to communicate most automatic extensions of TPS employment authorization documents. For example, on January 17, 2017, DHS published a Federal Register notice extending the TPS designation of Somalia for 18 months and, in the same notice, automatically extended for 6 months the validity of employment authorization documents issued under Somalia's TPS designation.⁵⁷ DHS has also communicated automatic extensions of TPS employment authorization documents through Federal Register notices independent of a TPS decision. Generally, Federal Register notices announcing automatic extensions of TPS employment authorization documents include instructions for employers for completing the Form I-9, among other things. Additionally, some notices state that, to reduce employer confusion regarding automatic extensions of TPS employment authorization documents, beneficiaries should explain the extension to their employer and may also provide their employer with a copy of the relevant Federal Register notice.

⁵⁶According to USCIS guidance, automatic extensions of employment authorization documents for TPS beneficiaries may be valid for up to 180 days. USCIS officials told us that beneficiaries must generally reregister during the reregistration period for an extension of their status and that reregistration is required for beneficiaries to obtain a new employment authorization document with the validity dates of the new TPS designation period. Individual TPS beneficiaries may also receive an automatic extension of their expiring employment authorization document on the basis of timely filing of a renewal application. According to USCIS officials, these extensions are issued on an individual basis. See 8 CFR 274a.13(d).

⁵⁷According to USCIS officials, the majority of Federal Register notices announcing TPS decisions have included an automatic extension of employment authorization documents. However, some automatic extensions have been announced through Federal Register notices independent of TPS decisions. For example, on July 7, 2005, DHS published a Federal Register notice solely to announce an automatic extension of employment authorization documentation for Honduran and Nicaraguan TPS beneficiaries. See 70 Fed. Reg. 39325 (July 7, 2005).

In five cases, beginning in fiscal year 2018, USCIS mailed notifications of automatic extensions of employment authorization documents to thousands of TPS beneficiaries from Haiti, El Salvador, Syria, and Honduras as an alternative or a supplement to posting the information in Federal Register notices.⁵⁸ USCIS officials told us that in these cases, they mailed individual notifications of the automatic extensions to ensure that the beneficiaries would not experience any gaps in employment authorization. According to the officials, they began this practice because of the large number of affected beneficiaries. Our examination of USCIS documents found that in four of these five cases, USCIS mailed individual notifications to the TPS beneficiaries without also posting a Federal Register notice communicating the automatic extension.

In all five cases, USCIS published guidance on its website to inform TPS beneficiaries and employers about the use of individually mailed notifications to communicate employment authorization document extensions. USCIS's website states that TPS beneficiaries may present the Federal Register notice or individually mailed notification to their employer along with their expired employment authorization documents to show proof of continued employment authorization. The individual notifications also state that beneficiaries may show the notifications, along with the expired employment authorization document, to any U.S. employer as proof of continued employment authorization.⁵⁹

However, a USCIS handbook for employers and related guidance do not specifically identify the individually mailed notifications as an official means of communicating these extensions.

- USCIS's *Handbook for Employers: Guidance for Completing Form I-9 (M-274)* provides guidance for employers on how to properly complete Form I-9, which helps employers verify that individuals are authorized to work in the United States. The handbook contains a section about

⁵⁸Specifically, USCIS mailed notifications of automatic extensions of employment authorization documents for Haiti on January 22, 2018, and on July 18, 2018; for El Salvador on August 23, 2018; for Syria on September 11, 2018; and for Honduras on December 6, 2018. USCIS communicated an automatic extension of employment authorization documents for TPS beneficiaries from Haiti through the individually mailed notification, sent on January 22, 2018, as well as through a Federal Register notice published on January 18, 2018.

⁵⁹USCIS officials noted that USCIS also provides information about automatic extensions of TPS employment authorization documents in E-Verify, a voluntary web-based system that allows employers to confirm the eligibility of their employees to work in the United States.

automatic employment authorization document extensions for TPS beneficiaries that references USCIS's use of Federal Register notices to inform the public of these extensions. However, the handbook for employers does not mention USCIS's use of individually mailed notifications to communicate the automatic extensions.

- USCIS's *Instructions for Form I-9, Employment Eligibility Verification* notes that certain employees, including TPS beneficiaries, may present an expired employment authorization document, which may be considered unexpired if the document has been extended by USCIS. The guidance also notes that employees should enter the expiration date of an automatic extension on Form I-9. However, the instructions for Form I-9 do not detail USCIS's mechanisms for communicating these extensions, including its use of individually mailed notifications.

Some employers have reportedly refused to accept expired employment authorization documents as proof of work authorization when the documents had been automatically extended. For example, the Department of Justice's Civil Rights Division telephone interventions website indicates that on approximately 50 occasions from September 2017 through May 2019, the Immigrant and Employee Rights Section intervened to deter employers or medical licensing boards from rejecting valid work authorization documents and, in some cases, from terminating employment for TPS beneficiaries whose employment authorization documents had been automatically extended.⁶⁰ Also, a letter to USCIS signed by 70 law professors and scholars states that some legal service providers have reported instances of employers' terminating TPS beneficiaries' employment because the employer did not understand or accept the individually mailed notifications.⁶¹ Further, USCIS has received feedback from certain stakeholders concerned that beneficiaries might not be receiving the individual notifications in time to avoid any potential gaps in work authorization, according to USCIS officials.

USCIS officials told us that the Federal Register process may be beneficial for communicating employment authorization in some cases but that they may also continue to use the individually mailed notifications

⁶⁰Department of Justice Civil Rights Division, "Telephone Interventions," accessed June 27, 2019, <https://www.justice.gov/crt/telephone-interventions-2>.

⁶¹Catholic Legal Immigration Network, letter to Secretary of Homeland Security and Director of U.S. Citizenship and Immigration Services, November 28, 2018, accessed March 27, 2019, <https://cliniclegal.org/resources/humanitarian-relief/letter-70-law-professors-and-scholars-uscis-and-dhs-regarding-work>.

as a mechanism to communicate future extensions, depending on the circumstances. USCIS has acknowledged the potential benefits of updating external guidance regarding automatic extensions of TPS employment authorization documents. However, as of December 2019, USCIS had not taken action to do so. Replying to a letter of concern from an advocacy group, USCIS stated that it could consider updating the handbook for employers to add additional guidance regarding individually mailed notifications.⁶²

Effective information and communication are vital for an entity to achieve its objectives. According to *Standards for Internal Control in the Federal Government*, management should document policies in the appropriate level of detail and externally communicate the necessary quality information to achieve an entity's objectives.⁶³ Updating external guidance, such as the employer handbook, to clearly identify each of the official mechanisms that USCIS may use to communicate automatic extensions of TPS employment authorization documents could help USCIS ensure that employers understand and accept each of its official mechanisms for communicating these automatic extensions. This, in turn, would help to reduce the risk of employers' terminating beneficiaries from their jobs as a result of confusion caused by unclear or inconsistent guidance.

Conclusions

The Secretary of Homeland Security has granted TPS, providing work authorization and protection from removal, to foreign nationals from 22 countries since TPS was established in 1990. DHS has generally communicated information about employment authorization for TPS beneficiaries in a Federal Register notice, although in some cases USCIS used individually mailed notifications to communicate automatic extensions of employment authorization documents. However, USCIS's published guidance has not consistently identified individually mailed notifications as a mechanism that may be used, leading to confusion about beneficiaries' employment eligibility and reportedly resulting in termination of some beneficiaries' employment. Consistent published guidance that clearly identifies each of the mechanisms used to communicate automatic extensions of TPS employment authorization

⁶²U.S. Citizenship and Immigration Services, letter to Director of Advocacy at the Catholic Legal Immigration Network, December 6, 2018, accessed June 27, 2019, https://www.uscis.gov/sites/default/files/files/nativedocuments/Work_Authorization_extensions_for_individuals_with_TPS_from_Haiti_El_Salvador_and_Syria_-_Bussey.pdf.

⁶³GAO-14-704G.

documents could help USCIS ensure that employers understand and accept the evidence USCIS provides for employment authorization, reducing the risk of erroneous termination of beneficiaries' employment.

Recommendation for Executive Action

The Director of USCIS should update published guidance, such as *Handbook for Employers: Guidance for Completing Form I-9 (M-274)*, to consistently identify each of the official mechanisms that USCIS may use to communicate automatic extensions of TPS employment authorization documents.

(Recommendation 1)

Agency Comments

We provided a draft of this report to DHS, State, the Department of Defense, the Department of Health and Human Services, and the U.S. Agency for International Development for review and comment. In its written comments, reproduced in appendix III, DHS agreed with our recommendation and noted planned actions to implement it, including updating guidance in DHS's M-274 handbook. DHS's planned actions will address the intent of our recommendation if they include updating guidance regarding each of the official mechanisms that USCIS may use to communicate automatic extensions of TPS employment authorization documents, including the use of individually mailed notifications. The U.S. Agency for International Development also provided written comments, which are reproduced in appendix IV. In addition, DHS and State provided technical comments that we incorporated as appropriate. The Department of Defense and the Department of Health and Human Services did not provide comments.

We are sending copies of this report to the appropriate congressional committees, and the Acting Secretary of Homeland Security and Secretary of State, as well as the Secretary of Defense, the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, and the Administrator of the U.S. Agency for International Development.

If you or your staff have any questions about this report, please contact Chelsa Gurkin at (202) 512-2964 or GurkinC@gao.gov, or Rebecca Gambler at (202) 512-6912 or GamblerR@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this reports are listed in appendix V.



Chelsa Gurkin
Director, International Affairs and Trade



Rebecca Gambler
Director, Homeland Security and Justice

List of Requesters

The Honorable Benjamin L. Cardin
Ranking Member
Subcommittee on Western Hemisphere, Transnational Crime, Civilian
Security, Democracy, Human Rights, and Global Women's Issues
Committee on Foreign Relations
United States Senate

The Honorable Richard Blumenthal
United States Senate

The Honorable Cory A. Booker
United States Senate

The Honorable Richard J. Durbin
United States Senate

The Honorable Kirsten Gillibrand
United States Senate

The Honorable Edward J. Markey
United States Senate

The Honorable Jeffrey A. Merkley
United States Senate

The Honorable Gary C. Peters
United States Senate

Appendix I: Objectives, Scope, and Methodology

Our objectives were to (1) describe Temporary Protected Status (TPS) determinations and numbers of beneficiaries since TPS was established in 1990; (2) describe the approach that the Department of Homeland Security (DHS), in consultation with the Department of State (State) and other relevant agencies, takes to inform the Secretary of Homeland Security's TPS reviews; and (3) examine DHS's public communication regarding TPS decisions and related information, including work authorization.

To describe TPS determinations since TPS was established in 1990, we reviewed information and data in Federal Register notices for all TPS designations in fiscal years 1990 through 2019. Specifically, we reviewed the designation time frames and bases (i.e., ongoing armed conflict, environmental disaster, or extraordinary and temporary conditions) for each designation since TPS was established. We also analyzed U.S. Citizenship and Immigration Services (USCIS) data on numbers of TPS beneficiaries for fiscal years 1990 through 2018. In addition, we analyzed USCIS data on TPS beneficiaries' characteristics, such as numbers, location, age, and gender of foreign nationals granted TPS, for fiscal year 2018.¹

To assess the reliability of USCIS data on TPS beneficiaries, we reviewed documentation and interviewed USCIS officials to identify and rectify any missing or erroneous data. According to USCIS officials, USCIS removes from its data on TPS beneficiaries any who become U.S. citizens or whose status is withdrawn, either because they no longer meet eligibility requirements or because they requested that USCIS withdraw their status. However, according to officials, the data may include foreign nationals who have since died, moved out of the country, or have an additional immigration status. Additionally, because the data comprise information provided by TPS applicants, the data may include a small number of applicant errors, according to officials. We determined that the data for fiscal years 2000 through 2018 were sufficiently reliable to provide general information about the size and characteristics of TPS

¹We selected this time period to include data on beneficiaries from the fiscal year when TPS was established through the most recent fiscal year for which data were available.

Appendix I: Objectives, Scope, and Methodology

beneficiaries.² USCIS was not able to provide reliable data on numbers of TPS beneficiaries before fiscal year 2000 because, according to USCIS officials, these data were not consistently entered electronically in USCIS information systems.

To describe the approach that DHS, in consultation with State and other relevant agencies, takes to inform the Secretary of Homeland Security's TPS reviews, we reviewed provisions in the Immigration and Nationality Act (INA) related to TPS as well as DHS and State documentation, such as informal guidance documents used since fiscal year 2014 or earlier regarding steps taken for a TPS review.³ We also conducted interviews with DHS and State officials related to the processes they have used to collect information for TPS reviews since fiscal year 2014. Specifically, we interviewed DHS officials from U.S. Customs and Border Protection; the U.S. Coast Guard; U.S. Immigration and Customs Enforcement; the Management Directorate; the Office of the Executive Secretary; the Office of Intelligence and Analysis; the Office of Legislative Affairs; the Office of Partnership and Engagement; the Office of Public Affairs; the Office of Strategy, Policy, and Plans, including the Office of Immigration Statistics; and USCIS—in particular, USCIS's Office of Policy and Strategy and USCIS's Refugees, Asylum, and International Operations Directorate. We interviewed State officials from the Bureau of Population, Refugees, and Migration and several regional bureaus, including desk officers from the Bureaus of African Affairs, Near Eastern Affairs, South and Central Asian Affairs, and Western Hemisphere Affairs. We also interviewed State

²USCIS also compiles estimates of expected TPS reregistrants based on reregistration trends; according to USCIS officials, these estimates help USCIS to forecast its budget. According to officials, USCIS recently stopped including expected TPS reregistration numbers in the Federal Register notices because the public found the data confusing. The officials added that the estimates could also be misleading depending on the circumstances, because, although the estimates are based largely on numbers of prior reregistrants, additional individuals from a country that is redesignated for TPS may be able to newly register for TPS. Therefore, we have not included USCIS data on expected TPS reregistrants in this report.

³We reviewed an internal template that USCIS's Refugee, Asylum and International Operations Directorate (RAIO) officials told us that they use as informal guidance for the draft country conditions reports that they compile for USCIS's Office of Policy & Strategy for reviews for initial or existing TPS designations. We did not assess the extent to which the RAIO country condition reports in our judgmental sample aligned with RAIO's internal template for these reports; rather, our methodology consisted of reviewing the reports in our sample to provide a general overview of the content and types of information included in each report.

Appendix I: Objectives, Scope, and Methodology

officials from overseas posts for countries that we selected for our review, including El Salvador, Haiti, Honduras, Nepal, Sudan, and Yemen.⁴

We reviewed documentation that DHS and State provided for a judgmental, nongeneralizable sample of eight countries for which DHS rendered TPS decisions in fiscal years 2014 through 2018 (El Salvador, Haiti, Honduras, Nepal, Nicaragua, Sudan, Syria, and Yemen); the TPS decisions for these eight countries represented 26 of a total of 42 TPS decisions for 13 countries in that period.⁵ We selected this sample to represent a range of decision types and designation reasons, among other factors. While this sample cannot be generalized to the countries or decisions we did not review, it provided valuable information about the approach that DHS uses for TPS reviews. The primary documents that we reviewed for each decision included information about country conditions that USCIS and State had compiled and recommendations that USCIS and State leadership had provided to the Secretary of Homeland Security. Some of the documents that we received had been redacted because of ongoing litigation related to TPS. Table 3 provides additional details of the decisions in our judgmental sample.

⁴We were not able to interview officials from the post in Nicaragua, because the mission had been evacuated after the latest TPS review and State officials informed us that those present at the post at the time of our review would not be able to respond to our questions. However, we were able to interview the regional bureau desk officer for Nicaragua, who was previously posted in Nicaragua during the latest TPS review for Nicaragua. In addition, regional bureau officials told us that State did not obtain country conditions information directly from the post for TPS reviews for Syria, because the embassy was closed due to hostilities in the country.

⁵Although we reviewed the approach that DHS takes to inform the Secretary of Homeland Security's TPS reviews, we did not review the Secretary of Homeland Security's decision-making for specific TPS decisions for the eight countries in our sample.

**Appendix I: Objectives, Scope, and
Methodology**

Table 3: Judgmental Sample of Temporary Protected Status (TPS) Decisions

No.	Country	Decision type	Designation basis	Federal Register notice date
1	El Salvador	Extension	Environmental disaster	Jan. 7, 2015
2	El Salvador	Extension	Environmental disaster	July 8, 2016
3	El Salvador	Termination	Environmental disaster	Jan. 18, 2018
4	Haiti	Extension	Extraordinary and temporary conditions	Mar. 3, 2014
5	Haiti	Extension	Extraordinary and temporary conditions	Aug. 25, 2015
6	Haiti	Extension	Extraordinary and temporary conditions	May 24, 2017
7	Haiti	Termination	Extraordinary and temporary conditions	Jan. 18, 2018
8	Honduras	Extension	Environmental disaster	Oct. 16, 2014
9	Honduras	Extension	Environmental disaster	May 16, 2016
10	Honduras	Extension	Environmental disaster	Dec. 15, 2017
11	Honduras	Termination	Environmental disaster	June 5, 2018
12	Nepal	Designation	Environmental disaster	June 24, 2015
13	Nepal	Extension	Environmental disaster	Oct. 26, 2016
14	Nepal	Termination	Environmental disaster	May 22, 2018
15	Nicaragua	Extension	Environmental disaster	Oct. 16, 2014
16	Nicaragua	Extension	Environmental disaster	May 16, 2016
17	Nicaragua	Termination	Environmental disaster	Dec. 15, 2017
18	Sudan	Extension	Armed conflict; extraordinary and temporary conditions	Sept. 2, 2014
19	Sudan	Extension	Armed conflict; extraordinary and temporary conditions	Jan. 25, 2016
20	Sudan	Termination	Armed conflict; extraordinary and temporary conditions	Oct. 11, 2017
21	Syria	Extension, redesignation ^a	Armed conflict; extraordinary and temporary conditions	Jan. 5, 2015
22	Syria	Extension, redesignation	Armed conflict; extraordinary and temporary conditions	Aug. 1, 2016
23	Syria	Extension	Armed conflict; extraordinary and temporary conditions	Mar. 5, 2018
24	Yemen	Designation	Armed conflict	Sept. 3, 2015
25	Yemen	Extension, redesignation	Armed conflict; extraordinary and temporary conditions	Jan. 4, 2017
26	Yemen	Extension	Armed conflict; extraordinary and temporary conditions	Aug. 14, 2018

Source: GAO summary of information about our judgmental sample of TPS decisions. | GAO-20-134

^aAccording to USCIS officials, from 1997 through 2017, DHS used the term “redesignate” for instances in which the Secretary of Homeland Security newly designated a country for TPS after an initial designation or extension period. Beginning in 2018, DHS began using the term “newly designate” for these decisions. See 8 U.S.C. §1254a(b).

Appendix I: Objectives, Scope, and Methodology

In addition, we reviewed examples of other information that may be provided for a TPS review, including examples of input from other DHS components, other U.S. agencies, the White House, members of Congress, foreign governments, and nongovernmental organizations. Specifically, we received examples of this type of information for each of the eight countries in our judgmental, nongeneralizable sample, representing 15 of the 26 TPS decisions. For example, this information included immigration data and internal intelligence analyses compiled by DHS's Office of Immigration Statistics, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and Office of Intelligence and Analysis. We also reviewed examples of updates provided by senior Department of Defense officials for the Secretary of Homeland Security regarding the security situation in a country; technical input from the Department of Health and Human Services Centers for Disease Control and Prevention about the status of an epidemic in a country; and information from the U.S. Agency for International Development about country conditions on the ground. In addition, we interviewed officials from these three agencies regarding the types of information that they may provide for TPS reviews. Further, we reviewed examples of letters from members of Congress, foreign government officials, and nongovernmental organizations related to TPS reviews. Moreover, we reviewed examples of briefing or meeting agendas and related materials for internal and external briefings, including external briefings with White House officials, foreign government officials, and nongovernmental organizations.

To examine DHS's public communication regarding TPS decisions and related information, including work authorization, we reviewed DHS's public communications related to TPS, including Federal Register notices, press releases, and USCIS's website, among other information. We analyzed information in Federal Register notices published from November 29, 1990, through October 1, 2019 (the most recent available at the time of our review), to determine the timing of notices for TPS decisions and the types of information included in the notices. We reviewed examples of USCIS's Office of Public Affairs guidance for public communication of TPS decisions. We also interviewed USCIS officials regarding the mechanisms that DHS used to communicate TPS decisions and related information, including DHS's process for drafting and publishing Federal Register notices.

Further, we examined DHS's guidance and procedures as of fiscal year 2019 for communicating TPS employment authorization, including automatic extensions of employment authorization. We reviewed USCIS's

Appendix I: Objectives, Scope, and Methodology

public communications related to automatic extensions of TPS employment authorization for both beneficiaries and employers in Federal Register notices, individually mailed notifications, an employer handbook, and information published on USCIS's website. We interviewed USCIS officials regarding USCIS's approach to communicating TPS employment authorization, including automatic extensions. We also reviewed information from the Department of Justice Civil Rights Division's website related to confusion over automatic extensions of employment authorization documents for TPS beneficiaries.⁶ Additionally, we reviewed a letter to USCIS signed by 70 law professors and scholars related to instances of employers terminating TPS beneficiaries.⁷ Finally, we compared DHS's guidance and procedures with federal internal control standards related to documenting policies and externally communicating information.⁸

We conducted this performance audit from September 2018 to March 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁶Department of Justice Civil Rights Division, "Telephone Interventions," accessed June 27, 2019, <https://www.justice.gov/crt/telephone-interventions-2>.

⁷Catholic Legal Immigration Network, letter to Secretary of DHS and Director of USCIS, November 18, 2018, accessed March 27, 2019, <https://cliniclegal.org/resources/humanitarian-relief/letter-70-law-professors-and-scholars-uscis-and-dhs-regarding-work>. We did not independently verify the issues cited in this letter.

⁸GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: September 2014).

Appendix II: Numbers and Characteristics of Temporary Protected Status Beneficiaries, Fiscal Years 2000-2018

Table 4 lists the numbers of TPS beneficiaries, by country of citizenship, in fiscal years 2000 through 2018. During this period, the country with the largest number of TPS beneficiaries in any given fiscal year was El Salvador, with 262,262 in fiscal year 2010; followed by Honduras, with 85,759 in fiscal year 2007; and Haiti, with 58,294 in fiscal year 2014. In contrast, during the same period, Montserrat had the smallest maximum number of TPS beneficiaries in any given fiscal year, with a maximum of 21 in fiscal year 2004; followed by Angola, with a maximum of 47 in fiscal year 2002; and Burundi, with a maximum of 50 in fiscal year 2007.

Appendix II: Numbers and Characteristics of Temporary Protected Status Beneficiaries, Fiscal Years 2000-2018

Table 4: Temporary Protected Status (TPS) Beneficiaries, by Country of Citizenship, Fiscal Years 2000-2018

Year	Somalia	Montserrat	Burundi	Sierra Leone	Sudan	Honduras	Nicaragua ^a	Angola	El Salvador	Haiti	South Sudan	Syria	Guinea	Liberia	Nepal	Yemen
2000	10	15	19	961	179	65,874	3,581	22	-	-	-	-	-	-	-	-
2001	10	20	25	1,048	191	69,573	3,751	39	21,890	-	-	-	-	-	-	-
2002	37	20	25	1,082	193	72,812	4,013	47	98,364	-	-	-	-	-	-	-
2003	156	20	29	1,113	193	75,467	4,209	-	166,654	-	-	-	-	1,596	-	-
2004	167	21	29	-	192	78,183	4,433	-	225,301	-	-	-	-	1,959	-	-
2005	173	-	31	-	222	83,874	4,734	-	242,713	-	-	-	-	2,081	-	-
2006	385	-	49	-	603	85,414	4,850	-	252,786	-	-	-	-	4,474	-	-
2007	408	-	50	-	637	85,759	4,910	-	257,345	-	-	-	-	4,508	-	-
2008	414	-	49	-	645	85,461	4,935	-	261,181	-	-	-	-	-	-	-
2009	421	-	-	-	658	85,101	4,970	-	262,006	-	-	-	-	-	-	-
2010	440	-	-	-	668	85,150	4,966	-	262,262	42,132	-	-	-	-	-	-
2011	440	-	-	-	659	84,498	4,925	-	261,227	48,695	-	-	-	-	-	-
2012	436	-	-	-	659	84,005	4,891	-	260,476	58,031	1	177	-	-	-	-
2013	461	-	-	-	682	83,747	4,850	-	259,926	58,232	3	2,036	-	-	-	-
2014	479	-	-	-	829	83,049	4,790	-	258,071	58,294	20	4,471	-	-	-	-
2015	476	-	-	840	834	82,515	4,730	-	256,631	57,987	26	4,830	542	1,612	1,085	-
2016	480	-	-	1,256	830	81,635	4,657	-	253,619	57,638	42	6,008	1,013	2,303	12,139	780
2017	477	-	-	-	829	80,637	4,567	-	250,932	57,152	74	6,831	-	-	14,516	1,090
2018	463	-	-	-	804	80,748	4,524	-	251,664	56,455	83	7,009	-	-	14,578	1,464

Legend: - = no TPS beneficiaries.

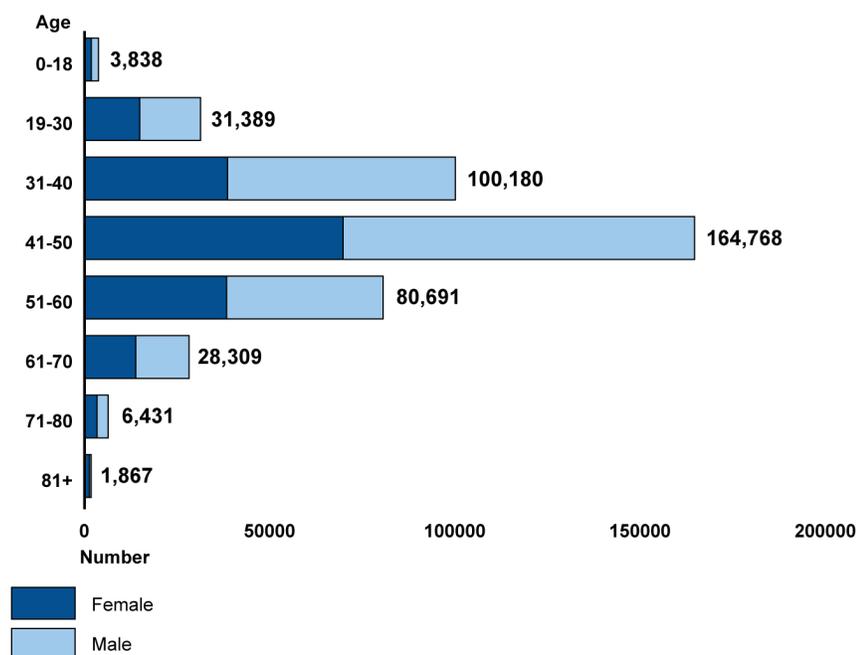
Source: GAO analysis of U.S. Citizenship and Immigration Services data. | GAO-20-134

Notes: The data shown for each fiscal year represent eligible foreign nationals who were granted TPS and whose status was valid as of September 30 of that fiscal year. According to U.S. Citizenship and Immigration Services officials, foreign nationals granted TPS may be included in the data for multiple fiscal years as long as they maintain valid status. Officials noted that, depending on the population size, it may take USCIS years to adjudicate all applications for TPS from nationals of a given country. Therefore, numbers of TPS beneficiaries may continue to increase after the established registration period for a specific designation. The data shown may also include some eligible foreign nationals who have an additional immigration status as well as some who have left the United States or died, according to USCIS officials. USCIS officials noted that TPS beneficiaries who become U.S. citizens or whose status is withdrawn, either because they no longer meet eligibility requirements or because they requested that USCIS withdraw their status, are removed from the data in the fiscal year that their status changes. According to USCIS officials, data for TPS beneficiaries were not consistently entered electronically in USCIS's information system before fiscal year 2000. As a result, we determined that USCIS data on numbers of TPS beneficiaries before fiscal year 2000 were not sufficiently reliable for our purposes.

Appendix II: Numbers and Characteristics of Temporary Protected Status Beneficiaries, Fiscal Years 2000-2018

Figure 9 presents the ages and genders of Temporary Protected Status (TPS) beneficiaries in fiscal year 2018, based on U.S. Citizenship and Immigration Services information and data. The majority of TPS beneficiaries in fiscal year 2018 were 31 to 50 years of age (62 percent) and male (55 percent).

Figure 9: Age and Gender of Temporary Protected Status (TPS) Beneficiaries, Fiscal Year 2018



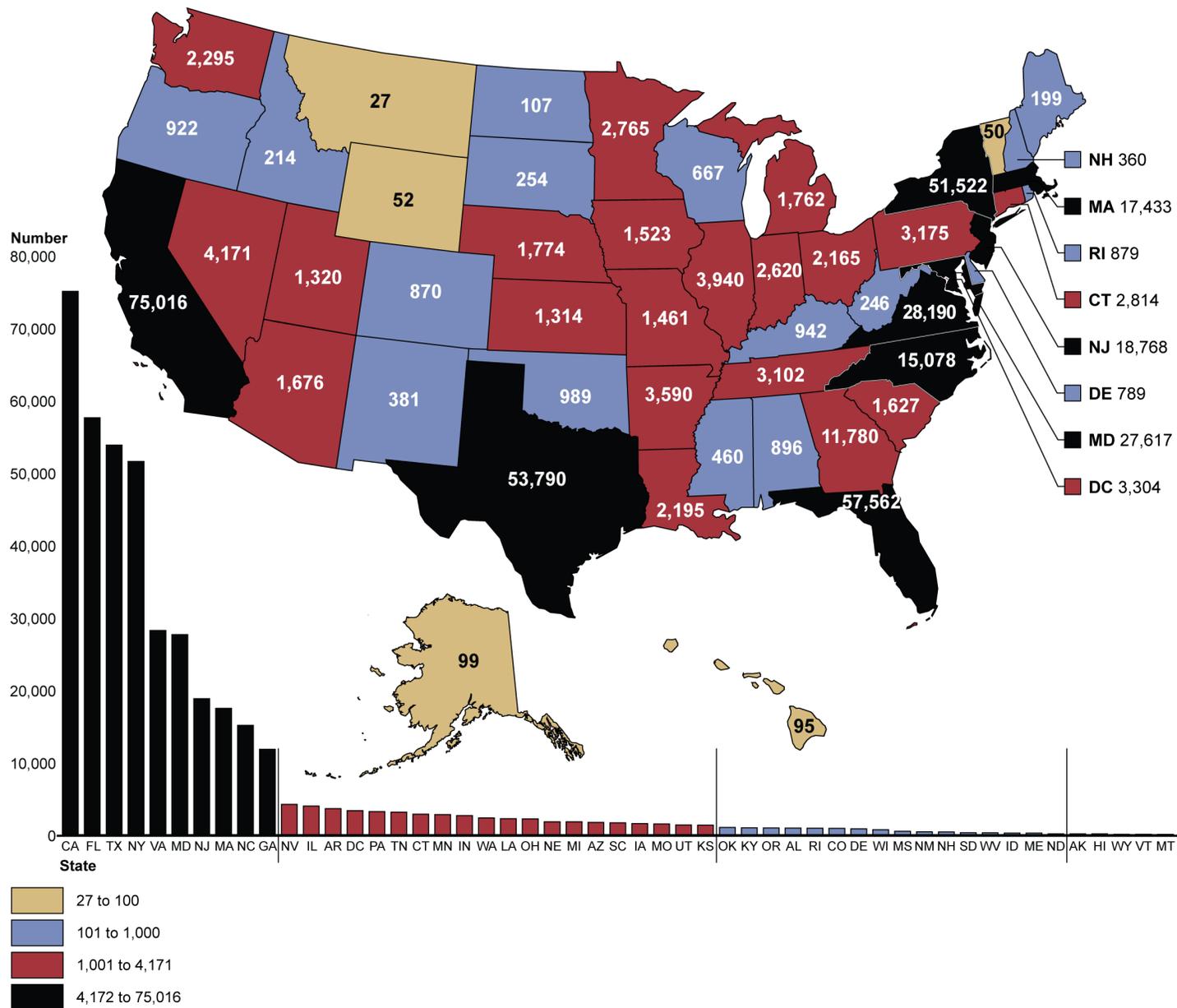
Source: GAO analysis of U.S. Citizenship and Immigration Services data. | GAO-20-134

Note: The data shown represent foreign nationals who were granted TPS as of September 30, 2018. According to U.S. Citizenship and Immigration Services (USCIS), data are self-reported by Temporary Protected Status beneficiaries and may therefore include a small number of records with applicant error. As a result, the data shown do not sum precisely to the total number of TPS beneficiaries in fiscal year 2018 (417,792). According to USCIS officials, data may include some eligible foreign nationals who have an additional immigration status as well as some who have left the United States or died.

Figure 10 shows the location, by state of residency, of TPS beneficiaries in fiscal year 2018. TPS beneficiaries resided in all 50 states and the District of Columbia in fiscal year 2018, with the highest populations in California, Florida, Texas, and New York.

Appendix II: Numbers and Characteristics of Temporary Protected Status Beneficiaries, Fiscal Years 2000-2018

Figure 10: Temporary Protected Status (TPS) Beneficiaries, by State of Residency, Fiscal Year 2018



Source: GAO analysis of U.S. Citizenship and Immigration Services data. | GAO-20-134

Note: The data shown reflect addresses in U.S. Citizenship and Immigration Services' (USCIS) information system at the time of the most recently approved TPS applications for eligible foreign nationals who were granted TPS as of September 30, 2018. According to USCIS officials, the data do not reflect any address changes after the most recently approved application. The data shown are

Appendix II: Numbers and Characteristics of Temporary Protected Status Beneficiaries, Fiscal Years 2000-2018

self-reported by TPS beneficiaries and therefore may include a small number of records with applicant error, according to USCIS officials. Additionally, the data do not reflect TPS beneficiaries residing in U.S. territories or serving in the U.S. armed forces. As a result, the data shown do not sum precisely to the total number of TPS beneficiaries in fiscal year 2018 (417,792). According to officials, the data may include some eligible foreign nationals who have an additional immigration status as well as some who have left the United States or died.

Appendix III: Comments from Department of Homeland Security



March 6, 2020

Chelsa Gurkin
Director, International Affairs and Trade
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Rebecca Gambler
Director, Homeland Security and Justice
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Management Response to Draft Report GAO-20-134, "TEMPORARY PROTECTED STATUS: Steps Taken to Inform and Communicate Secretary of Homeland Security's Decisions"

Dear Ms. Gurkin and Ms. Gambler:

Thank you for the opportunity to comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

The Department is pleased to note GAO's (1) reporting of DHS's decision-making process for determining whether to designate, extend, or terminate a foreign state's designation for Temporary Protected Status (TPS), and (2) recognition that DHS communicates all TPS decisions to the public through required Federal Register notices and other mechanisms, such as website postings. DHS remains committed to making all TPS determinations in full compliance with the law.

The draft report contained one recommendation with which the Department concurs. Attached find our detailed response to the recommendation. DHS previously submitted technical comments under a separate cover for GAO's consideration.

**Appendix III: Comments from Department of
Homeland Security**

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,



JIM H. CRUMPACKER, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

Attachment

**Appendix III: Comments from Department of
Homeland Security**

**Attachment: Management Response to Recommendation
Contained in GAO-20-134**

GAO recommended that the Director of U.S. Citizenship and Immigration Services (USCIS):

Recommendation 1: Update published guidance, such as Handbook for Employers: Guidance for Completing Form I-9 (M-274), to consistently identify each of the official mechanisms that USCIS may use to communicate automatic extensions of TPS employment authorization documents.

Response: Concur. USCIS's Immigration Records and Identity Services Directorate (IRIS)-Verification Division is currently revising the M-274. The revised M-274 will provide additional information on completing the Employment Eligibility Verification (Form I-9) for TPS beneficiaries. Specifically, these revisions will include additional subsections of instructions for completing Form I-9 when a TPS beneficiary's Employment Authorization Document (EAD) is automatically extended by a Federal Register notice and/or a TPS beneficiary receives a Notice of Action, Form I-797C, automatically extending their expired EAD after applying for a new EAD. Also, the IRIS-Verification Division will revise TPS guidance on I-9 Central, the online Form I-9 resource center, to reflect the information added to the M-274. Estimated Completion Date: April 30, 2020.

Appendix IV: Comments from U.S. Agency for International Development



USAID
FROM THE AMERICAN PEOPLE

MAR 10 2020

Thomas Melito
Managing Director, International Affairs and Trade
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20226

Re: TEMPORARY PROTECTED STATUS – Steps Taken to Inform and Communicate
Secretary of Homeland Security’s Decisions (GAO-20-134)

Dear Mr. Melito:

Thank you for providing the U.S. Agency for International Development (USAID) with an opportunity to review and comment on the draft report produced by the U.S. Government Accountability Office (GAO) titled, *Temporary Protected Status: Steps Taken to Inform and Communicate Secretary of Homeland Security’s Decisions* (GAO-20-134). USAID does not have any comments on the draft report.

In this engagement, the GAO reviewed the internal decision-making process at the U.S. Department of State for designating and/or extending Temporary Protected Status (TPS) for select nationalities. The GAO also reviewed the State Department’s process for seeking input for the review of TPS by the Secretary for Homeland Security. USAID is not involved in the decision-making process for TPS designations; however, the State Department might ask the Agency to provide information gathered “on the ground” or from publicly available sources.

Thank you for the opportunity to respond to the draft report.

Sincerely,

A handwritten signature in blue ink that reads "Frederick M. Nutt".

Frederick M. Nutt
Assistant Administrator,
Bureau for Management

Enclosure: a/s

Appendix V: GAO Contacts and Staff Acknowledgments

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Rebecca Gambler, (202) 512-6912 or GamblerR@gao.gov

Staff Acknowledgments

In addition to the contacts named above, Miriam Carroll Fenton and Taylor Matheson (Assistant Directors), Elisabeth Helmer, Cristina Norland, Ben DeYoung, Martin De Alteriis, Neil Doherty, Jenny Grover, Reid Lowe, Mary Moutsos, Jan Montgomery, Jon Najmi, Nicole Willems, and Bailey Wong made key contributions to this report. Alana Miller and Danielle Rudstein provided technical assistance.

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Exhibit 3

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January 15, 2025
Confirmation Hearing of Homeland Security
Secretary Nominee Gov. Kristi Noem

1 SENATOR PAUL: ... that the department
 2 and its components engage in. In other words, we
 3 do so much stuff and we're so big we can't
 4 describe it for you. But if we can't describe
 5 what we have, we got a problem. In plain
 6 language, the DHS had really no idea. Think
 7 about it. An agency commanding over \$110 billion
 8 annually can't account for its own activities.
 9 This is not just bureaucratic incompetence, it's
 10 emblematic of a deeper issue, an agency unsure of
 11 its own boundaries and commitments. How can an
 12 agency fulfill its mission or earn the American
 13 people's trust if it doesn't even know the extent
 14 of its own operations?
 15 But the problems don't stop there.
 16 Instead of focusing on critical threats like
 17 securing the southwest border, DHS has shifted
 18 its gaze inward, targeting law-abiding Americans.
 19 DHS, under the Biden administration, has often
 20 used its vast powers to target Americans
 21 exercising their constitutional rights. It's
 22 become an agency more focused on policing speech,
 23 monitoring social media, and labeling political
 24 dissent as "domestic terrorism" than addressing
 25 genuine security threats. While cartels traffic

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1 people and fentanyl across an unguarded border,
 2 DHS has spent its time and resources creating
 3 partisan disinformation boards, spying on
 4 Americans through invasive surveillance
 5 technologies. The mission drift is dangerous.
 6 Every dollar spent monitoring law-abiding
 7 citizens is a dollar not spent securing the
 8 homeland. Every moment spent targeting political
 9 opponents is a moment not addressing real threats
 10 like border security, cyber-attacks, or the
 11 rising influence of adversarial nation states.
 12 The priorities of DHS have been deeply distorted,
 13 and the American people are paying the price.
 14 And what about DHS's response to COVID-
 15 19, arguably one of the greatest threats to
 16 homeland security? The answer is clear:
 17 nothing. They knew nothing of the origins, they
 18 didn't study the issue, and they had no
 19 information about gain-of-function research.
 20 We've seen firsthand how unchecked government
 21 overreach leads to waste, fraud, and abuse. We
 22 cannot let DHS become yet another agency that
 23 operates behind a veil of secrecy. The American
 24 people deserve transparency, accountability, and
 25 leadership that puts national security and

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1 liberty hand in hand, not at odds with each
 2 other.
 3 Today we gather to consider the
 4 nomination of Governor Kristi Noem to serve as
 5 the Secretary of Department of Homeland Security.
 6 I hope this hearing will set the tone for this
 7 committee's work in the new Congress to restore
 8 transparency and accountability to an executive
 9 branch that has grown unchecked. Governor Noem,
 10 if confirmed, you will lead an agency that has
 11 lost its way. Your record as governor of South
 12 Dakota and a former member of Congress
 13 demonstrates your willingness to make difficult
 14 decisions in the face of significant political
 15 pressure, and to put the interest of American
 16 people first. You have the opportunity today to
 17 address how your background and vision will
 18 translate to leading one of the most critical and
 19 scrutinized departments in the federal
 20 government.
 21 This is the first of many consequential
 22 moments for this committee as we renew our
 23 commitment to the constitutional oversight role
 24 that Congress must assert. I have no doubt that
 25 the nominee we'll consider in the coming weeks

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1 and months that you will be up for the challenge.
 2 Governor Noem, thank you for your willingness to
 3 serve, and I yield to the Ranking Member for his
 4 opening remarks.
 5 SENATOR PETERS: Thank you, Chairman
 6 Paul. Governor Noem, it's great to see you here
 7 today, and I want to first thank you for making
 8 yourself available not only to the entire
 9 committee, but to the discussions that we had in
 10 my office. Going perhaps a little more in-depth
 11 on the issues than is possible in a hearing like
 12 this and having that open and frank conversation
 13 is something that I appreciate. Also appreciate
 14 your willingness to spend time with committee
 15 staff as we conduct our due diligence and review
 16 of your qualifications and the background to
 17 serve as secretary of the Department of Homeland
 18 Security.
 19 As our third-largest federal agency,
 20 with more than 240,000 employees and an operating
 21 budget of more than \$100 billion, the Department
 22 of Homeland Security requires strong, stable, and
 23 principled leadership. Our nation faces serious
 24 threats and security challenges, from securing
 25 our borders and combating terrorism to preventing

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1 cyber-attacks and responding to our nation's
 2 increasing number of natural disasters, and DHS
 3 is the first line of defense in all of those
 4 areas. I appreciated the conversations we had at
 5 today's hearing, where we discussed the
 6 importance of ensuring that our nation's borders
 7 are safe and secure. And while we must address
 8 the significant challenges we face on the
 9 southern border, we also need to ensure that
 10 there are sufficient resources to secure our
 11 northern border, something I know you're very
 12 familiar with as the governor of your state,
 13 including building out our Northern Border
 14 Mission Center.

15 This is especially important in my home
 16 state of Michigan, which has two of the nation's
 17 busiest border crossings, and we're going to be
 18 adding another span shortly, the Gordie Howe
 19 International Bridge, which will open later this
 20 year. To facilitate the lawful trade and travel
 21 out those ports of entry that are absolutely
 22 critical to our economy, I've worked on
 23 legislation to hire additional U.S. Customs and
 24 Border Protection officers to meet increased
 25 staffing demands. We must secure our borders,

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1 companies. There's no question that DHS must
 2 continue to lead the way in protecting our
 3 networks from foreign adversaries, cyber
 4 criminals, and so-called "hacktivists" to prevent
 5 cyber-attacks from becoming increasingly
 6 devastating to our security as well as to our
 7 economy.

8 And finally, the Department of Federal
 9 Emergency Management Agency must continue to work
 10 hard to address the increasing number of natural
 11 disasters affecting our communities as a result
 12 of climate change. From violent storms like
 13 hurricanes that brought destruction to states
 14 across the South, to the devastating wildfires in
 15 California, and countless other severe storms and
 16 flooding events all across our country, we need
 17 leadership at the department that will ensure our
 18 nation effectively responds to communities when
 19 disaster strikes them.

20 The safety and security of our nation
 21 and the American people depend on the
 22 department's ability to effectively address these
 23 wide-ranging threats. So, Governor Noem, thank
 24 you again for your willingness to serve in this
 25 incredibly important position, and thank you for

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1 but we also know it is well time passed to
 2 streamline our immigration and our asylum process
 3 as well.

4 In addition to border security, DHS is
 5 responsible for addressing many threats that face
 6 our nation. Just a few weeks ago, unfortunately,
 7 Americans were shocked to see two horrific
 8 incidents in New Orleans and Las Vegas, a deadly
 9 reminder that terrorism and radicalization remain
 10 very real and ongoing threats to our homeland.

11 In my role on this committee, I've made combating
 12 foreign and domestic terrorism, as well as
 13 extremism, a top priority. In this complex
 14 environment, it is essential that DHS continue to
 15 focus on all terrorism threats, track, and report
 16 data to Congress and to the American people, and
 17 coordinate between all components to ensure the
 18 department is effectively addressing all types of
 19 terrorist threats.

20 We've also seen that persistent cyber-
 21 attacks are still a very serious threat. In
 22 fact, an increasing threat. A recent attack from
 23 Chinese-based hackers infiltrated the Treasury
 24 Department, on top of ongoing Salt Typhoon hack
 25 that comprised numerous U.S. telecommunications

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1 being here today. I look forward to having a
 2 comprehensive discussion about how you intend to
 3 lead this critical department through a series of
 4 national security challenges, if indeed you are
 5 confirmed.

6 SENATOR PAUL: This morning, Governor
 7 Noem will be introduced by Majority Leader John
 8 Thune and Senator Kevin Cramer. Senator Thune,
 9 you're recognized.

10 SENATOR THUNE: Thank you, Mr.
 11 Chairman, and Ranking Member Peters, and members
 12 of the committee. I'm very pleased to be able to
 13 be here today to introduce South Dakota's
 14 outstanding governor who has been nominated by
 15 President Trump to serve as the Secretary of the
 16 Department of Homeland Security. I've known
 17 Kristi Noem for a long time. She has a very
 18 compelling personal and family story, which
 19 inspired her entrance into the public arena, and
 20 I'm sure you'll hear a little bit more about that
 21 from her. But I've observed as she has gone
 22 through the state legislature as a leader there,
 23 state House of Representatives, the U.S. House of
 24 Representatives, where she was our only member
 25 from South Dakota representing our state's

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1 interests there for eight years, and now
 2 currently as South Dakota's governor, and I think
 3 she brings to this job a number of things that
 4 are going to be really essential.
 5 And one is obviously a skill set when
 6 it comes to managing hard problems. She led our
 7 state through the pandemic, managed what were
 8 extraordinary circumstances all across this
 9 country in a way that made South Dakota, frankly,
 10 a magnet for people from other states who were
 11 trying to flee or get away from some of the
 12 heavy-handed requirements that were imposed in
 13 other states around the country. Our state
 14 stayed open, stayed free, and that was largely
 15 due to her leadership.
 16 And I would say too, as we tackle what
 17 is an enormously complicated and hard issue,
 18 which is our southern border, it's going to
 19 require a skill set which I believe she
 20 possesses, it's going to require a tremendous
 21 amount of persistence and determination, which I
 22 think she has, an enormous amount of energy,
 23 which she has in abundance. And frankly, what I
 24 would say is just absolute toughness. It's going
 25 to take some tough and hard leadership to get

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1 things back in order.
 2 And I want to refer to something she
 3 said in her state of the state address earlier
 4 this week to South Dakotans, and that is that
 5 "Over the past four years, we've seen a complete
 6 disregard for the security of our borders and the
 7 safety of the American people, to say nothing for
 8 the rule of law. Chaos at our southern border
 9 and the Biden administration has left our country
 10 vulnerable to a whole host of security concerns,
 11 from terrorist entries to cross-border criminal
 12 activity like drug trafficking." I think it's
 13 well documented, and I think it's high time that
 14 it gets fixed, and we have somebody nominated by
 15 the President that I believe has the
 16 capabilities, the qualities, the experience, and
 17 again, frankly, the determination and toughness
 18 to solve what is a very, very tough issue, and
 19 one which is desperately in need of solutions.
 20 So, I'm pleased to be able to be here
 21 today to introduce our great governor and to
 22 thank you for your consideration. I look forward
 23 to this committee acting on her nomination, and I
 24 look forward to voting for her on the floor of
 25 the United States Senate to be the next Secretary

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1 of the Department of Homeland Security. Thank
 2 you, Mr. Chairman.
 3 SENATOR PAUL: Senator Cramer?
 4 SENATOR CRAMER: Thank you, Chairman
 5 Paul, Ranking Member Peters, colleagues. Once
 6 again, I find myself in full agreement with the
 7 majority leader. It's a good place to be in our
 8 business.
 9 So, this is a very special opportunity
 10 for me, and first thing I want to do is thank
 11 nearly all of you. I got into almost every one
 12 of your offices with Kristi as her very
 13 amateurish sitting Senator Sherpa. And the
 14 blessing for me was not only to be with my good
 15 friend and former colleague, but to learn a lot
 16 about this committee that I'm not on and to get
 17 an inside view. And Gary, especially learning
 18 how we can work together at the northern border
 19 and how similar, although very different,
 20 Michigan and North Dakota are. So, thank you for
 21 your hospitality, you were all very kind to
 22 Kristi and to me.
 23 But Kristi is a former colleague. When
 24 you're the only member of a body of 435 from an
 25 entire state, it's really important to have

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1 friends. So, together, Kristi and I were two,
 2 two out of 435, and if we could get Montana,
 3 Wyoming, and Alaska, there'd be five of us that
 4 could take on the fight. But I know this. I
 5 remember our very first year, my first year, it
 6 was not hers, my first year in the House, the
 7 unthinkable happened, and the House of
 8 Representatives failed to pass a farm bill. And
 9 all I can tell you was the least secure homeland
 10 person in America was the Speaker of the House
 11 and the Majority Leader the next day, when Kristi
 12 and I doubled up, and eventually we got a farm
 13 bill done.
 14 I say that because we are living at a
 15 time, and Senator Peters, you used the words
 16 "strong, stable, and principled". I can't think
 17 of three better words to describe Kristi Noem
 18 than those three words. I would add this. I'm
 19 not surprised that President Trump turned to
 20 Governor Noem. Securing the homeland is the
 21 number one priority, our number one priority, our
 22 number one constitutional priority, as a
 23 Congress. And it is for sure the number one
 24 priority of the voters in the last election. And
 25 it is the number one priority for President

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1 Donald Trump. So, naturally he would say, "Hmm,
 2 who is the toughest, smartest, most capable
 3 protector that I know? I think I'd like to find
 4 a ranch woman, mom, grandmother, who knows how to
 5 protect her own." And when you grow up on a
 6 ranch in the prairies or the West, nobody else is
 7 going to look out for your critters. No one else
 8 is protecting your family. You do it.
 9 And she brings this skill set, as
 10 Senator Thune said, as a leader, as a legislator,
 11 as a member of Congress, as a governor, a very
 12 important... By the way, when I get into the room
 13 with other governors, Senator Hassan, I might as
 14 well have just left, because I was not part of a
 15 club where I don't belong. But anyway, it was
 16 very, very rich, because there's an alliance
 17 there that's really, really important. And so,
 18 for me, it's just a really special opportunity to
 19 be able to be here with her and to have had this
 20 time in your offices introducing her to you.
 21 But I want to wrap up with this,
 22 because last night I received a very touching
 23 letter, unsolicited by either Kristi or me, from
 24 the tribal chairwoman from the Standing Rock
 25 Sioux Tribe, which straddles North Dakota and

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1 South Dakota. They don't really care who wins
 2 the South Dakota State/North Dakota State
 3 football game, but they do care about their
 4 reservation. And Chairwoman Alkire sent me this
 5 letter. Standing Rock is the home of Sitting
 6 Bull in case you were wondering about the
 7 credentials of their ability to protect the
 8 homeland.
 9 I'll just read a few words. "On
 10 multiple occasions, Governor Noem has invited the
 11 Standing Rock Sioux Tribe to her table at the
 12 South Dakota State Capitol to enter into
 13 meaningful discussions." That's what I witnessed
 14 when she came to your offices. And Janet writes,
 15 "It is of great excitement and enthusiasm that
 16 our North Dakota Governor Doug Burgum will be at
 17 the helm of the Department of Interior, and my
 18 hopes remain high that you will feel the same
 19 about Governor Kristi Noem at the helm of the
 20 Department of Homeland Security. These two
 21 governors understand the needs in Indian country,
 22 and what words like tribal sovereignty,
 23 jurisdiction, and consultation mean to the
 24 Indigenous people." Speaks volumes to her
 25 leadership and to her character. It's my honor

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1 to support her and turn it over to her.
 2 SENATOR PAUL: Thank you for those
 3 great introductions. The committee has also
 4 received several statements in support of
 5 Governor Noem's nomination, including a letter
 6 from 22 fellow governors, the International
 7 Association of Firefighters, and six other
 8 organizations. Without objection, these letters
 9 of support will be made part of the hearing
 10 record. And I know our Senators are going to
 11 have to go but thank you for coming and doing
 12 those introductions.
 13 It's the practice of this committee to
 14 swear in the witnesses. Governor Noem, please
 15 stand and raise your right hand. Do you swear
 16 that the testimony you will give before this
 17 committee will be the truth, the whole truth, and
 18 nothing but the truth, so help you God?
 19 GOVERNOR NOEM: I will.
 20 SENATOR PAUL: Governor Noem, you are
 21 now recognized for your opening statement.
 22 GOVERNOR NOEM: Thank you, and good
 23 morning, Chairman Paul, Ranking Member Peters,
 24 and the distinguished members of this committee.
 25 I'm honored to appear before all of you today as

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1 the nominee for the Secretary of Homeland
 2 Security. I want to thank President-elect Donald
 3 J. Trump for his confidence in my leadership, and
 4 the people of South Dakota for their fantastic
 5 support throughout my time in public service. I
 6 would also like to express my sincere gratitude
 7 to Senator Cramer. He has been an invaluable
 8 resource to me throughout this process, and given
 9 me much wisdom, as well as insight, into the
 10 thoughts and the procedures of the Senate and
 11 this body. And I'd also like to express my
 12 gratitude to Senator Thune, the Majority Leader
 13 of this esteemed body. He's been an advisor to
 14 me for many years, as well as a friend, and I'm
 15 so grateful for the generous support of these two
 16 men and their willingness to be here this morning
 17 to speak on my behalf, and to introduce me to
 18 this committee.
 19 Now, I'm a wife and a mother and a
 20 grandmother; a farmer, rancher, businessperson.
 21 I've served in our state legislature, in Congress
 22 for eight years, and also a governor. I've spent
 23 my entire life in rural America. I understand
 24 what it means to work hard every single day, and
 25 to build a better future for your kids and for

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1 all of our communities. I come before you today
 2 with a deep sense of responsibility and a
 3 humility, as the nominee, to lead the Department
 4 of Homeland Security, and also a commitment to
 5 the more than 330 Americans who we will work
 6 together to help serve and to keep safe and
 7 secure in their homes and in their communities.
 8 Now, before I proceed, I want to
 9 introduce to you my husband, Bryon, who's here
 10 with me today. He is my constant 24/7 reminder
 11 of our dedication to public service, and that
 12 it's not a solo effort or done alone. He has
 13 been a rock by my side, and I appreciate all of
 14 his love over so many years. I'm grateful that
 15 he's here with me today.
 16 Now, securing our homeland is a
 17 serious, sacred trust that must be relentlessly
 18 pursued, and can never be taken for granted.
 19 Being safe within our borders here in America is
 20 critical, and yet Americans feel less safe than
 21 they have felt in decades. For the first time in
 22 30 years, more than 40 percent of Americans are
 23 afraid to walk alone at night within a mile of
 24 their homes. President-elect Trump is going to
 25 change that. I've seen firsthand the challenges

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1 and the opportunities facing our great nation.
 2 In the 20 years since the Department of Homeland
 3 Security was formed, the nature of the threats to
 4 our homeland has grown and they've evolved. This
 5 department was created in response to the
 6 failures of the government that led to the
 7 September 11th 2001 terrorist attacks, and that
 8 reality is not lost on me, especially in the wake
 9 of the recent terrorist attacks over New Year's.
 10 Now, I've led South Dakota for the last
 11 six years, with a focus every day on making our
 12 state safer, stronger, and freer. I've focused
 13 every day on making the best decisions, not just
 14 for right now, but for generations to come. I've
 15 overseen a state budget of over \$7 billion, and a
 16 state employee workforce of more than 13,000,
 17 including more than 7,000 that report directly to
 18 the governor. I've addressed important issues
 19 like cyber security, human trafficking, drug
 20 interdiction, and also natural disasters, the
 21 same challenges that are facing so many of you
 22 and the people that you represent back home.
 23 I've secured our state and supported the rule of
 24 law, and if confirmed as the eighth secretary,
 25 that is the same approach that I will take to

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1 leading the Department of Homeland Security.
 2 As we face the evolving threats of the
 3 21st century, the mission and the success of DHS
 4 is more critical than ever. We must be vigilant
 5 and proactive and innovative to protect the
 6 homeland. The challenges in front of us are
 7 extremely significant, and we must secure our
 8 borders against illegal trafficking and
 9 immigration. We must safeguard our critical
 10 infrastructure to make sure that we're protected
 11 against cyber-attacks, respond to natural
 12 disasters, and also terrorism. I firmly believe
 13 that we can meet those challenges head on with
 14 resolve. Innovation, we can use collaboration
 15 with federal and with state partners. And
 16 Senators, I want your input. Border security
 17 must remain a top priority. As a nation, we have
 18 the right and the responsibility to secure our
 19 borders against those who would do us harm, and
 20 we must create a fair and a lawful immigration
 21 system that is efficient, and is effective, and
 22 that reflects our values.
 23 President Trump was elected with a
 24 clear mandate. He needs to achieve this mission,
 25 because two-thirds of Americans support his

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1 immigration and border policies, including the
 2 majority of Hispanic Americans. I was the first
 3 governor to send National Guard troops to our
 4 southern border when Texas asked for help and
 5 when they were being overwhelmed by an
 6 unprecedented border crisis. If confirmed as
 7 secretary, I'll ensure that our exceptional,
 8 extraordinary Border Patrol agents have all the
 9 tools and resources and support that they need to
 10 carry out their mission effectively. The same is
 11 true of my commitment to the outstanding men and
 12 women of the U.S. Immigration and Customs
 13 Enforcement. They are responsible for
 14 apprehending, detaining, and deporting illegal
 15 immigrants, and getting criminal aliens off of
 16 our streets and out of the country will help
 17 American communities be safer again. The bravery
 18 and the dedication of the Border Patrol and ICE
 19 are unmatched, and I will restore dignity to
 20 their work. The rising threat of cyberattacks
 21 also demands our utmost attention, and our
 22 critical infrastructure, from energy grids to
 23 financial institutions, is under constant attack
 24 by foreign adversaries and criminal actors. As
 25 secretary, I will prioritize a comprehensive,

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1 whole-of-government approach to cybersecurity.
 2 In fact, in the coming days, we have to plan
 3 bigger and think faster and smarter. I fully
 4 acknowledge that people in Washington D.C. do not
 5 have all of the answers, and therefore, I will
 6 leverage private-public partnerships, I'll
 7 advance cutting-edge, state-of-the-art
 8 technologies to protect our nation's digital
 9 landscape, and I will have a proven track record
 10 of doing this in South Dakota to back me up.
 11 I've helped make Dakota State University a global
 12 leader in cybersecurity education, because we
 13 recognize the need to address this emerging
 14 threat. And I will take a proactive approach if
 15 given the opportunity to serve as secretary.
 16 Now, President-elect Trump has been a tremendous
 17 friend to law enforcement over the years, and I
 18 will do the same in my role as secretary. As
 19 governor, I've worked closely with law
 20 enforcement to make South Dakota safer. I've
 21 overseen hundreds of state troopers in the South
 22 Dakota Highway Patrol, and on several occasions,
 23 I've convened groups of law enforcement from
 24 across our state to address policies that will
 25 make our people safer. In fact, while some in

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1 homeland security isn't just about prevention,
 2 but it's also about resilience. When disasters
 3 strike, as we know they will, the Department of
 4 Homeland Security must be ready to respond
 5 swiftly, efficiently, and effectively to protect
 6 the lives and the property of Americans. As
 7 governor, I've worked with FEMA in response to a
 8 dozen natural disasters in South Dakota. These
 9 have included historic floods, tornadoes,
 10 blizzards, wildfires, a derecho, and even a
 11 global pandemic. As secretary, I will enhance
 12 our emergency preparedness and strengthen FEMA's
 13 capabilities, and we will ensure that no
 14 community is left behind, and that life-saving
 15 services, like electricity and water, are quickly
 16 restored.
 17 As secretary, I will oversee the Secret
 18 Service, an agency that is in serious need of
 19 reforms. We all saw the threats to President-
 20 elect Trump last year and the consequences of
 21 failure. Now, that should never happen again,
 22 and I've worked closely with my own gubernatorial
 23 protective detail, and I'm familiar with what
 24 works and what doesn't work, and I'll bring that
 25 experience towards strengthening the Secret

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1 this country were attacking law enforcement and
 2 defunding them, we took the opposite approach in
 3 South Dakota. We recruited law enforcement
 4 officers to move to South Dakota, a state that
 5 respects their service and their sacrifice, and
 6 we revamped our law enforcement training to
 7 provide the first ever state-led tribal-focused
 8 law enforcement training academy. I'm very proud
 9 of the work that we've done in cooperation with
 10 our tribes to help make their communities more
 11 safe.
 12 And we must remain vigilant against
 13 terrorism and against others who wish to do us
 14 harm to our country and to our great people.
 15 I'll ensure that our intelligence and our law
 16 enforcement agencies are working together hand-
 17 in-hand, that they're fully equipped to detect,
 18 prevent, and respond to threats from radical
 19 ideologies and foreign adversaries. This
 20 requires resources, coordination, and
 21 collaboration across all levels of government.
 22 And once again, I will seek your wisdom, and I
 23 will seek your input into the months ahead. For
 24 the sake of the people that we both represent, we
 25 have to get this right. Now, I recognize that

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1 Service once again.
 2 I'm committed to working with this
 3 committee, with Congress, and with the dedicated
 4 men and women of the Department of Homeland
 5 Security to fulfill our mission. And together,
 6 we can ensure that the United States remains a
 7 beacon of freedom, safety, and security for
 8 generations to come. So, thank you for the
 9 opportunity and the honor to appear before you
 10 today. Thank you for the meetings and the time
 11 that you took in your office to discuss the
 12 department and what we can do in the future to
 13 make the American homeland much more secure. I
 14 look forward to your questions, and I hope to
 15 earn your trust, and hopefully also your vote, as
 16 we embark on this critical work together. With
 17 that, Mr. Chairman, I yield back.
 18 SENATOR PAUL: Thank you, Governor
 19 Noem. We will now proceed to questions. Each
 20 member will have seven minutes. We will have a
 21 vote that will start at 10:00 a.m., but we're
 22 going to continue the hearing and keep people in
 23 line; as you come and go to vote, we'll keep the
 24 hearing moving. I want to be clear from the
 25 outset that we will not tolerate any disruptions.

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1 The Capitol Police have been asked to escort
 2 anyone immediately from the room if they disrupt
 3 the hearing.
 4 This is a standard question, Governor
 5 Noem, that we ask of all nominees. Governor
 6 Noem, do you agree without reservation to comply
 7 with any request or summons to appear and testify
 8 before any duly constituted Committee of Congress
 9 if you are confirmed?
 10 GOVERNOR NOEM: Yes, Mr. Chairman,
 11 SENATOR PAUL: I'm going to reserve the
 12 rest of my time for my questions and go to
 13 Senator Peters.
 14 SENATOR PETERS: Thank you, Mr.
 15 Chairman. Governor Noem, the DHS Secretary, has
 16 many competing priorities, as you well know, and
 17 you outlined, certainly, in your opening
 18 comments, from our borders to wildfires to cyber-
 19 attacks. But as you and I discussed at length,
 20 and I appreciate you bringing it up in your
 21 opening comments as well, we do have a northern
 22 border in addition to a southern border, that's
 23 absolutely essential that the DHS has the
 24 resources necessary at the northern border to
 25 carry out its mission, both between ports of

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1 entry and all along the border. In fact, we've
 2 seen an increase in unauthorized crossings in
 3 recent years at the northern border.
 4 So, my question for you is, if
 5 confirmed, do you commit to ensuring, along with
 6 the southern border, that the northern border is
 7 sufficiently staffed to maintain its security and
 8 robust trade between the U.S. and its neighbors,
 9 including at the Gordie Howe International Bridge
 10 in my home state of Michigan, have the resources
 11 they need to facilitate trade, while keeping
 12 Americans safe?
 13 GOVERNOR NOEM: Yes, Senator Peters,
 14 you and I talked about this in your office, and
 15 also with Senator Slotkin as well, how important
 16 it is to continue to remain focused on our
 17 northern border, and all borders and ports of
 18 entry that the United States has. I think
 19 there's been some universal concern from some of
 20 the committee members that as we focus on the
 21 southern border and what we're seeing, as far as
 22 the invasion there and the amount of people
 23 crossing, that the northern border would lose
 24 focus. But that will not happen, and we will
 25 ensure that our borders are secure, and we're

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1 addressing all threats that may come in from any
 2 direction. And also, with the bridge as well and
 3 staffing up on that, that as well, and I've
 4 assured Senator Slotkin as well that our focus is
 5 there to make sure that it is staffed
 6 appropriately.
 7 SENATOR PETERS: Very good. And as we
 8 discussed, the department is diligently working
 9 to stand up the Northern Border Mission Center at
 10 Selfridge Air National Guard Base in Michigan,
 11 following the authorization and funding that I
 12 was able to secure in the last Congress. This
 13 center is critical to supporting the Department's
 14 northern border security missions and addressing
 15 evolving threats. So, quick question: if
 16 confirmed, do you commit to working with me to
 17 fully build out the Northern Border Mission
 18 Center?
 19 GOVERNOR NOEM: Yes, Senator, we will
 20 look forward, and I look forward, to working with
 21 you to ensure that that is a priority, and that
 22 it's adequately resourced, and working with
 23 Congress and Senators to make sure that we have
 24 what we need to make sure that that mission for
 25 that base is fully fulfilled.

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1 SENATOR PETERS: Great. Thank you. On
 2 New Year's, we witnessed two incidents that
 3 reminded us that terrorism and extremism remain
 4 serious threats to all Americans. Both DHS and
 5 the FBI have consistently said that the most
 6 persistent threat to the homeland is from U.S.-
 7 based individuals or small groups radicalized by
 8 a variety of ideologies, from white supremacy to
 9 ISIS to al-Qaeda. We must certainly continue to
 10 focus on people who are radicalized here in the
 11 United States with the intent of terrorizing our
 12 communities. So, my question for you, ma'am, is
 13 how do you plan to address this threat of U.S.-
 14 based terrorists?
 15 GOVERNOR NOEM: Senator, this is a
 16 grave concern for our country, as we all agree
 17 that the number one threat to our homeland
 18 security is the southern border. In fact, since
 19 Joe Biden has been president, we've seen 382
 20 individuals that have come over that border that
 21 are on the terrorist watch list. I, behind me,
 22 have the governor of Louisiana with me, and he
 23 and his state and people in this country went
 24 through a horrific event on New Year's Day, and
 25 one that we never want to see repeated again.

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1 But this governor behind me is concerned also
 2 about an upcoming event, which is the Super Bowl,
 3 coming shortly, which we need to do all that we
 4 can to work together, that he has the reassurance
 5 that the federal government, that the Department
 6 of Homeland Security, is prepared to help him
 7 protect that event, and to keep people safe while
 8 they are there.

9 Those 382 terrorists are known
 10 terrorists that have come over our border. We
 11 don't know necessarily where they are because of
 12 what has been happening under Joe Biden's
 13 policies. Now, President Trump obviously won the
 14 last election with a clear mandate, and that
 15 mandate is for the American people to secure that
 16 border. But also, we need to focus on domestic
 17 terrorism and homegrown terrorism, which you just
 18 referenced in your question. Homegrown

19 GOVERNOR NOEM: Homegrown terrorism is
 20 on the rise. We see more and more incidents of
 21 people that are U.S. citizens that have become
 22 radicalized. And knowing when people are leaving
 23 the country and coming back and changes to their
 24 behaviors and what their actions are is
 25 critically important.

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1 So, the resources that the Department
 2 of Homeland Security has needs to be utilized as
 3 far as identifying those threats and being
 4 proactive to prevent them but also protecting
 5 civil rights and liberties in that process and
 6 making sure that the department is on mission to
 7 do what it was called to do, why it was created,
 8 and what authorities that Congress and the Senate
 9 has given them.

10 My hope is that Governor Landry and his
 11 staff and his people and the people that attend
 12 the Super Bowl know that the Department of
 13 Homeland Security is their partner, is on watch
 14 to protect them and to keep that event safe. I
 15 hope all Americans know that leadership has
 16 consequences. I hope that we can get through and
 17 get your support for this nomination and get
 18 confirmed quickly so that we can address the
 19 threats that we currently face and make sure we
 20 don't have any repeats of the day that we saw
 21 just starting this year on New Year's Day.

22 SENATOR PETERS: In the last two years,
 23 we have seen increasingly aggressive and
 24 expansive cyber-attacks against our federal
 25 agencies. Just last month, Chinese hackers

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1 infiltrated the Department of Treasury and stole
 2 potentially thousands of unclassified documents.
 3 So, given these concerning trends by the PRC to
 4 hold our federal networks' hostage, do you
 5 believe that federal agencies should be required
 6 to implement cybersecurity upgrades and maintain
 7 the highest cybersecurity standards to protect
 8 sensitive or classified data and U.S. citizen
 9 information as well?

10 GOVERNOR NOEM: Well, Senator, the
 11 mission of CISA, which is the Cybersecurity and
 12 Infrastructure Agency, the mission of it is to
 13 hunt and harden. It's to find those bad actors
 14 and help work with local and state
 15 infrastructure, critical infrastructure entities
 16 so that they can help them be prepared for such
 17 cyber-attacks and that they can make sure that
 18 they're hardening their systems to protect them
 19 in the future, recognizing the vulnerabilities
 20 that they have.

21 CISA has gotten far off mission.
 22 They're using their resources in ways that was
 23 never intended. The misinformation and
 24 disinformation that they have stuck their toe
 25 into and meddled with should be refocused back

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1 onto what their job is, and that is to support
 2 critical infrastructure and to help our local and
 3 small businesses and critical infrastructure at
 4 the state level to have the resources and be
 5 prepared for those cyber-attacks that they will
 6 face.

7 Salt Typhoon was a campaign of
 8 espionage by the PRC in China against our
 9 telecoms where large amount of data was stolen
 10 and taken, and people's private information was
 11 taken as well. And we've also seen China and the
 12 PRC go after our critical infrastructure with the
 13 Volt Typhoon hack, and that was extremely
 14 dangerous because there was no reason for them to
 15 do that, just to steal people's data and
 16 information.

17 The reason for them to go after that
 18 was to control our critical infrastructure for
 19 the ability to see if they could shut down a
 20 water plant, a utility company. And that was to
 21 cripple our country. So, these threats are real.
 22 CISA needs to be much more effective, smaller,
 23 more nimble to really fulfill their mission,
 24 which is to hunt and to help harden our nation's
 25 critical infrastructure.

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1 SENATOR PETERS: Thank you.
 2 GOVERNOR NOEM: Thank you.
 3 SENATOR JOHNSON: Senator Scott.
 4 SENATOR SCOTT: Governor,
 5 congratulations on your nomination.
 6 GOVERNOR NOEM: Thank you.
 7 SENATOR SCOTT: I think you're going to
 8 do a great job.
 9 GOVERNOR NOEM: Thank you.
 10 SENATOR SCOTT: I think it's great that
 11 you're a governor and you bring that expertise to
 12 the table. So, I just went through the campaign
 13 to get reelected, and it was after the Butler
 14 shooting. I had asked people at all my events.
 15 I say, "Raise your hand if you think the acting
 16 director of the Secret Service is going to tell
 17 us what happened." Not one person. I said,
 18 "What about Mayorkas? He's running HHS, what do
 19 you think, or Homeland Security. What do you
 20 think?" I said, "How about Christopher Wray,
 21 head of the FBI?" Not one person. Can you just
 22 talk about the importance of transparency and
 23 accountability in government and how you're going
 24 to bring that to the table?
 25 GOVERNOR NOEM: Yeah. Senator, Scott,

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1 people there and being adequately staffed and
 2 resourced.
 3 But frankly, the leadership hasn't been
 4 honest about talking about it. We saw this with
 5 the drones over New Jersey as well, the federal
 6 government not answering the questions from the
 7 public. And when they finally got a straight
 8 answer out of President Trump, they felt
 9 reassured that somebody recognized that this was
 10 something they were questioning and that they
 11 deserved answers.
 12 My goal and my mission is to build
 13 trust. We will undertake a large job and a large
 14 duty that we have to fulfill, that the American
 15 people expect us to do by securing our border to
 16 make sure that our nation is a nation with
 17 borders or we're no nation at all, and that we
 18 are making sure that those criminal actors that
 19 are perpetuating violence in our communities and
 20 in our cities and towns and states are removed
 21 from this country, that there's consequences for
 22 breaking the law in our country again.
 23 There has to be consequences because
 24 when Americans break the law, there's
 25 consequences. And why would we ever allow

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1 thank you for that question because that's what I
 2 have found across the country as well, and I know
 3 it's certainly true in my home state of South
 4 Dakota, is that people don't trust the federal
 5 government. They don't trust our leadership and
 6 this current administration that's in the White
 7 House right now to tell them the truth, to tell
 8 them the truth about what the threats really are
 9 about our agencies and departments when there are
 10 failures, addressing them and fixing it.
 11 The Secret Service is one of those
 12 perfect examples. They need leadership that
 13 understands why that Secret Service was created
 14 and what it needs to do. There's two elements
 15 really that the Secret Service is tasked with,
 16 and that is protective detail and then also
 17 investigations. Yet we see investigators within
 18 the Secret Service out there investigating
 19 antiquities and other things that are off mission
 20 when they should be focused on making sure we're
 21 addressing national security events with the
 22 protocols that are necessary and protecting the
 23 individuals that they're charged with and getting
 24 that skill set and training that are necessary.
 25 That's been compromised by not having enough

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1 someone to come in from another country and not
 2 have consequences or allow them to continue to go
 3 forward and to commit rape and murders and other
 4 break other laws that endanger our society? So,
 5 we've had over 13,000 murders that are loose in
 6 this country that have come over that border.
 7 We've had almost 16,000 rapists and sexual
 8 assault perpetrators that are loose in this
 9 country right now. 425,000 plus people have
 10 criminal convictions that are here illegally in
 11 this country that our current administration's
 12 doing nothing to round them up and get them out
 13 of our country.
 14 We will be doing that immediately, and
 15 that will be the priority, and that is one of the
 16 reasons that today the American people have lost
 17 their trust. President Trump will build it back
 18 and know that their federal government is
 19 accountable to them and is working to put America
 20 first again.
 21 SENATOR SCOTT: So, Joe Biden
 22 completely opened on our southern border and
 23 dismantled our entire immigration system. As a
 24 former governor, I know that when the federal
 25 government policies are broken and failing

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1 Americans, you see the impacts in your state just
 2 like I did when I was a governor, and you take
 3 the steps necessary to protect the families in
 4 your state. I know you've done that.
 5 One thing you did is you talked about
 6 before you sent troops, our National Guard, to
 7 the southern border. Can you talk more about how
 8 Biden's open border policy has affected your
 9 state and communities and the role your state
 10 resources placed in helping secure the border?
 11 GOVERNOR NOEM: We certainly have seen
 12 the effects in South Dakota that many of your
 13 states did. And I would say every state has seen
 14 the effects of an open border in the policies
 15 that have been under the Biden administration.
 16 We saw increased crime, but we also saw increased
 17 drug activity. We saw cartel in their affiliates
 18 moving into our state to proliferate trafficking,
 19 and we saw people being victimized and a lack of
 20 accountability with the federal government.
 21 So, when Texas was addressing the
 22 situation and asked other governors for help, we
 23 sent help. I know many of the other governors at
 24 the time were sending law enforcement, but I made
 25 the decision that at that time that it was more

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1 security operations. They also did building of
 2 the wall and partnered with Texas recognizing the
 3 failures of the federal government.
 4 The failures of the federal government
 5 are significant, and we've seen our families and
 6 communities devastated by those effects, by the
 7 drug epidemic, by the trafficking that's going
 8 on. They increased crime. And we recognize that
 9 just because the federal government wasn't doing
 10 their job, we could not fail our state. And I
 11 needed to protect the people of South Dakota.
 12 And the people of South Dakota were
 13 overwhelmingly supportive of these deployments
 14 and very proud of our National Guard.
 15 SENATOR SCOTT: When I was governor of
 16 Florida, there was a terrorist hack in Paris by
 17 Syrian refugees. So, President Obama was
 18 president, and I said, "I'd like to know if
 19 you're going to send refugees to my state that
 20 you give us some background on them." I assume
 21 you vetted them and tell us what's going on. You
 22 have to tell me, but you ought to tell our state
 23 law enforcement and our local law enforcement
 24 that they said, "Go jump in the lake."
 25 (Indiscernible) meaner than that, but they said,

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1 appropriate to send the National Guard that our
 2 National Guard could be activated under Title 32
 3 and sent to assist another state from the
 4 invasion that was happening and because the
 5 National Guard is trained for just such a
 6 mission.
 7 Because of this invasion, that it is a
 8 war zone down there with what they are going to
 9 see, the threats that they would see and that
 10 they are trained specifically to interact with
 11 other agencies, the National Guard is used to
 12 falling in with other agencies and cooperating
 13 with them and could do that seamlessly, and their
 14 families and their communities are normalized to
 15 them being deployed.
 16 So, we have in South Dakota deployed
 17 our National Guard to the southern border eight
 18 different times. Two of them were federal
 19 deployments that the Biden administration sent
 20 them down there. One was to send our Lakota
 21 helicopters, which were used for surveillance in
 22 the drug interdiction that was going on down
 23 there. But six other times, I sent them under
 24 state activation to partner with Texas and other
 25 states in securing our southern border. They did

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1 "You have no rights as a governor," which had
 2 made no sense. We had over 70,000 people come
 3 here after Afghanistan on planes into this
 4 country completely unvetted. They've never given
 5 our governors any information. So, would you
 6 change that?
 7 GOVERNOR NOEM: Yes. The communication
 8 between states and the federal government has
 9 been absolutely broken, and that's what I love
 10 about this committee, is you do have governors
 11 sitting on this committee that have been in that
 12 role as a commander in chief and have the
 13 responsibility for being the CEOs of their state.
 14 It's a different perspective than
 15 serving. I served in Congress too, and both are
 16 extremely important, and they're just different
 17 in that responsibility that weighs on your
 18 shoulder. I often told folks that that is the
 19 thing that most times if something was going to
 20 keep me up at night, it was the responsibility
 21 that I had being commander in chief, recognizing
 22 the decisions that I made. And I'm sure you had
 23 this feeling as well, Senator Scott, as governor,
 24 that impacted those families, those soldiers.
 25 And it impacted their communities when we pulled

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1 them out and the importance of that.
 2 And when they were bringing refugees
 3 into the country, I as well communicated that to
 4 the federal government. They were bringing
 5 refugees, and I asked how they were vetted, how
 6 we were working with their home countries to find
 7 out who they really were, what their intentions
 8 were and why they were coming to the United
 9 States and received no information from this
 10 administration that that vetting process was
 11 being done, that we knew where they're going.
 12 In fact, they kept us in the dark and
 13 didn't communicate to us even what states and
 14 where those refugees were being placed. So, that
 15 is something that we need to change when we have
 16 programs that fall under the purview of the
 17 Department of Homeland Security. There needs to
 18 be communication, especially with the governor,
 19 so that we can coordinate to ensure that it's the
 20 right thing for that state.
 21 SENATOR SCOTT: Thank you.
 22 SENATOR JOHNSON: Senator Hassan.
 23 SENATOR HASSAN: Thank you, Mr. Chair.
 24 And welcome, Governor Noem. I really appreciate
 25 you being here. Welcome to your family as well.

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1 at the northern border recently, law enforcement
 2 told me about the need for more personnel and
 3 resources. We still don't have cell phone
 4 coverage in a lot of the stretch of our northern
 5 border. I've worked with Senator Kramer on
 6 bipartisan legislation to strengthen our northern
 7 border strategy because it's clear more support
 8 is needed. So, Governor, if you're confirmed,
 9 would you deploy additional full-time personnel
 10 and upgrade equipment along the northern border?
 11 GOVERNOR NOEM: Senator, I enjoyed our
 12 meeting that we had and you identifying the
 13 northern border issues that are going on, the
 14 lack of security and the lack of technologies
 15 that you really need to cover, some of the
 16 landscapes that are there very different than the
 17 southern border, some just as equally challenging
 18 but all need to be addressed.
 19 So, I definitely will be working with
 20 you to ensure that our northern border is
 21 adequately resourced as well, and we do have to
 22 have the resources in order to be successful.
 23 SENATOR HASSAN: Right.
 24 GOVERNOR NOEM: That's something I want
 25 to work with Congress, with the Senate and the

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1 GOVERNOR NOEM: Thank you.
 2 SENATOR HASSAN: And families do share
 3 in this kind of public service, and we appreciate
 4 them very much. As we discussed at our meeting
 5 last month, as a former governor, I appreciate
 6 the important responsibilities that governors
 7 have to ensure the safety and security of their
 8 communities, including by managing public safety
 9 and emergency agencies.
 10 And I will say that, in many ways, I
 11 agree with some of the things that Senator Scott
 12 just said about improving communication between
 13 the Department of Homeland Security and governors
 14 around who is being sent to states. It's a
 15 critical issue and something that I was
 16 frustrated by when I was governor. So, I look
 17 forward to hearing more today about your
 18 priorities if confirmed about how your experience
 19 as governor would help you run the Department of
 20 Homeland Security.
 21 Let me just start by following up with
 22 a question that Senator Peters had also touched
 23 on. We have recently, in New Hampshire, seen a
 24 dramatic increase in unauthorized border
 25 crossings at the northern border. And when I was

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1 House on to ensure that the resources are there
 2 to meet the challenges that we have. We have not
 3 fully utilized the technologies that are
 4 available that are necessary to really secure
 5 this country and to compete with those bad actors
 6 which wish to infiltrate our country and having
 7 the ability to utilize them will make us much
 8 more safe. So, I'll work with you most
 9 definitely ensuring the northern border is
 10 protected.
 11 SENATOR HASSAN: Well, I appreciate
 12 that, and I just note too that at the same time,
 13 there's real concern in New Hampshire and all
 14 along the northern border that we strengthen the
 15 border and have the resources we need. We also
 16 have a really strong economic relationship with
 17 our friends to the north and a lot of family
 18 relationships.
 19 So, I think it's important that we're
 20 smart in the deployment of technology. We don't
 21 want to impede that flow of economy and people
 22 that's lawful, but we do want to make sure that
 23 we have the resources we need. I want to turn to
 24 the southern border now.
 25

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1 At the southern border, we need
 2 significant technological investments to support
 3 law enforcement personnel in their efforts to
 4 catch fentanyl smugglers to stop human
 5 traffickers and seize the cash and illegal guns
 6 that criminals traffic southward to the cartels.
 7 And we talked about this a little bit.
 8 There's bipartisan support for these
 9 investments, and I've worked with colleagues
 10 including Senators Lankford and Cornyn on
 11 legislation around these issues. Governor Noem,
 12 could you identify specific technological
 13 investments that you would make at the southern
 14 border and are you willing to work with me on
 15 increasing southbound inspections if you're
 16 confirmed?
 17 GOVERNOR NOEM: Yes. Certainly,
 18 Senator. You've heard President Trump talk about
 19 the need to build a wall. And the wall and
 20 infrastructure is critically important. But
 21 also, at our 382 legal ports of entry, we need to
 22 have technology so that flow can happen north and
 23 south, and it can happen in a legal manner to
 24 ensure that our commerce can continue to operate,
 25 and that we can continue to make sure that we're

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1 also secure.
 2 I think de minimis shipments are a
 3 concern and the need to look at those and how
 4 traffickers and fentanyl distributors are using
 5 that. I think we also need to use scanners
 6 surveillance operations. There's new
 7 technologies out there to cooperate with
 8 satellites in some area where the topography does
 9 not necessarily facilitate having actual
 10 infrastructure and then also the ability to make
 11 sure that we're utilizing that technology that
 12 allows us to know what is going south that might
 13 be fueling some of the violence that ends up
 14 coming back north and ensuring that we're
 15 stopping that before it has the chance to supply
 16 those cartel and bad actors that would come in.
 17 SENATOR HASSAN: Yeah. I really
 18 appreciate that because the southbound flow,
 19 particularly of cash and weapons, fuels the
 20 cartels and strengthens them.
 21 GOVERNOR NOEM: Absolutely.
 22 SENATOR HASSAN: And it's something
 23 that we really have to focus on. I also want to
 24 follow up on the issue of cyber security.
 25 Recently, criminals launched a successful cyber-

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1 attack on power school, a cloud-based record
 2 management system that contains personal
 3 information about tens of millions of
 4 kindergartners through high school seniors,
 5 including many students and teachers in New
 6 Hampshire.
 7 This cyber-attack on power school comes
 8 as schools and local governments across the
 9 country have seen a surge in cyber-attacks on
 10 their systems. And when a small of maybe a
 11 thousand students or so has to pay \$2 million in
 12 ransom, I want you to think about what that does
 13 to one of our small communities. Right? So,
 14 Governor Noem, if you're confirmed, how will you
 15 empower the cybersecurity and infrastructure
 16 security agency to improve the cybersecurity of
 17 state and local governments in the United States?
 18 GOVERNOR NOEM: Well, thank you,
 19 Senator. If I am confirmed and have the
 20 opportunity to serve as secretary of this
 21 department, I'll be following the constitution
 22 and the rule of law and then getting these
 23 departments back on mission to why they were
 24 created and why they are existing.
 25 What CISA should be doing is helping

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1 those small entities, those schools, those local
 2 city governments, the state governments, and the
 3 small businesses that are critical infrastructure
 4 that don't have the resources to stay on top of
 5 the critical protections that they need to enact.
 6 SENATOR HASSAN: Well, let me follow up
 7 just quickly on that one point. It's something
 8 we discussed when we had our meeting. I worked
 9 with Senator Cornyn on a bipartisan bill. It
 10 became law that created a cybersecurity grant
 11 program for state and local governments. This is
 12 an addition to each state getting a cyber
 13 coordinator to help on the ground.
 14 We discussed this program, and I know
 15 you as governor had some reservations about the
 16 structure of the program, but if confirmed, will
 17 you commit to working with Congress to adjust it?
 18 I'd love your input about what gave you pause as
 19 governor. I think there were only two governors
 20 who didn't participate in the program. And I
 21 hope that as we work on the concerns you have,
 22 you'd work with me to adjust and reauthorize the
 23 program.
 24 GOVERNOR NOEM: Yes. All grants within
 25 the department will be evaluated when I come in

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1 and be looked at to see what we can do to make
 2 sure that they're actually fulfilling the mission
 3 to which they were established. What I would say
 4 about the cybersecurity grants in South Dakota,
 5 when I came in as governor, one of my main
 6 priorities was to bring the next industry into
 7 the state. And I determined that that would be
 8 technology and cybersecurity.
 9 In fact, we have Dakota State
 10 University in our state, which is a cybersecurity
 11 national leader in training those cyber warriors
 12 that we need to protect us and keep us safe.
 13 I've since then partnered to grow and double the
 14 size of that school. We train a lot of NSA
 15 employees in South Dakota. And so, understanding
 16 cybersecurity and my experience and that I think
 17 is critically important to the department and
 18 bringing it to the table to do this.
 19 You talked about why we didn't take
 20 that cybersecurity grant in South Dakota, and
 21 it's because the requirements of that grant
 22 would've caused me to grow my state government.
 23 The administration costs of it would've been much
 24 more than what it been able to facilitate at the
 25 local level. And our state was already

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1 proactively helping these individuals that needed
 2 the resources to secure their systems.
 3 SENATOR HASSAN: Well, I appreciate
 4 that. I'm way over time. There were very few
 5 requirements purposely in that grant program
 6 other than to make sure the money was being spent
 7 the way we authorized. But let's continue to
 8 talk about that.
 9 GOVERNOR NOEM: Thank you.
 10 SENATOR HASSAN: Thank you.
 11 SENATOR JOHNSON: Senator Hawley.
 12 SENATOR HAWLEY: Thank you, Mr.
 13 Chairman. Governor Noem, welcome.
 14 Congratulations on your nomination. I'm
 15 delighted to see you here. I do notice the
 16 Chairman of the Ways and Means Committee is over
 17 your shoulder there. I have to question your
 18 judgment about who your friends are based on that
 19 through the great Chairman from the state of
 20 Missouri. It's fantastic to have you here.
 21 The Department of Homeland Security is
 22 not particularly old, but you already have the,
 23 what I hope, will soon be the distinction of
 24 succeeding the worst secretary in the history of
 25 the Department of Homeland Security. Alejandro

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1 Mayorkas has been an absolute disgrace to that
 2 department and frankly to this country. And I'm
 3 delighted to see you willing to step up and
 4 serve. Let me just ask you something. I
 5 repeatedly asked your predecessor when he sat
 6 where you're sitting, whether the southern border
 7 was secure. And he repeatedly told me under
 8 oath, "It is secure, Senator." And he repeatedly
 9 said under oath, "Our policies are working,
 10 Senator," meaning the Biden administration
 11 policies that, of course, gave us this
 12 devastating open border. So, let me just ask
 13 you, is the southern border secure as we find it
 14 today?
 15 GOVERNOR NOEM: Senator, no. The
 16 southern border is not secure today. But in just
 17 three days, we will have a new president in this
 18 country, President Donald J. Trump. And he will
 19 secure our border.
 20 SENATOR HAWLEY: That is refreshing
 21 candor. I'm glad to hear it. Let me ask you
 22 about a young man from my state. This is Travis
 23 Wolfe who's 12 years old when he was killed just
 24 over a year ago by an illegal migrant who mowed
 25 him down, and I choose my words carefully, mowed

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1 him down in a motor vehicle, hit him head on
 2 doing 75 and a 40, killed him. Others were
 3 severely injured. Just yesterday, a witness
 4 sitting where you are sitting today told this
 5 committee that migrant crime is and I quote, "Not
 6 an actual concern." Not an actual concern.
 7 In a hearing before this committee
 8 advising us to drop the Laken Riley act and not
 9 focus on migrant crime. In my state with the
 10 death of people like Travis Wolfe and Officer
 11 David Lee who was assaulted and killed in St.
 12 Louis and officers in Kansas City who have been
 13 assaulted by illegal migrants and others who have
 14 been carjacked and stabbed, would you agree with
 15 me that migrant crime sure as heck is an actual
 16 concern and that you intend to do something about
 17 it?
 18 GOVERNOR NOEM: Yes, Senator.
 19 Absolutely. And I'm so sorry about Travis. My
 20 prayers go out to his family. I can't even
 21 imagine what that is like, and thank you for
 22 telling his story because there's so many
 23 families in this country that have that same
 24 story, and they don't understand why the federal
 25 government is allowing people to come into this

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1 country illegally and then perpetuate crimes
 2 against their people, and then give them
 3 resources and shelter and food and debit cards to
 4 go take care of their families when they go to
 5 work every single day to make sure that they're
 6 providing for their families and are held
 7 accountable to when they break our laws.
 8 SENATOR HAWLEY: Let me ask you this,
 9 will you work with President Trump to reinstate
 10 the Remain in Mexico program that the President
 11 had in place in his first term, which does so
 12 much to ensure that those who would seek to abuse
 13 our asylum system are not allowed into the
 14 country and those who have legitimate asylum
 15 claims, their claims are processed in due order
 16 and in due course, but they wait in Mexico until
 17 those claims are fully processed. Will you work
 18 to reinstate that program?
 19 GOVERNOR NOEM: Yes, Senator. The
 20 president and I have talked extensively about
 21 this, and we'll 100 percent partner with him to
 22 reinstate the Remain in Mexico policy and make
 23 sure that it's in place.
 24 SENATOR HAWLEY: Fantastic. I think
 25 Travis might be alive today if that policy had

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1 GOVERNOR NOEM: Yes, Senator. If
 2 confirmed, and I have the opportunity to be
 3 secretary on day one, CBP One will be shut down.
 4 There's data and information in there that we
 5 will preserve so that we can ensure we know who's
 6 coming into this country and who's already here
 7 that we need to go find. But also, we make sure
 8 that there's another program, CHNV, which I'm
 9 sure you're very familiar with, where our federal
 10 government actually paid to fly people into this
 11 country directly from other countries without any
 12 vetting or knowing who they are. So, there's
 13 several of these programs that need to be
 14 eliminated, and we need to ensure that we're
 15 following legal immigration laws.
 16 SENATOR HAWLEY: I'm glad you just
 17 mentioned CHNV. This is a mass parole program.
 18 Of course, as you know, our law allows parole in
 19 only very limited circumstances. There are two
 20 circumstances, and it requires case by case
 21 evaluation. The present administration soon to
 22 be gone has granted mass parole in direct
 23 defiance of the law, not case by case evaluation.
 24 The CHNV program is one of those instances. Will
 25 you put a stop to this abuse of our parole law

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1 been in place. Let me ask you about CBP One, the
 2 phone app, that I've called concierge service for
 3 illegal Immigrants. I'm sure you're familiar
 4 with it. This was the Biden administration's
 5 effort to allow asylum seekers to apply ahead of
 6 time using their phones but not actually to
 7 provide any evidence that they needed asylum.
 8 There is a newspaper report, a press report that
 9 said the only problem with the app is it never
 10 asks users are you seeking asylum? They don't
 11 ask for any asylum evidence. They simply release
 12 these so-called asylum seekers who use the app
 13 into the country on parole.
 14 Sometimes, they're never given a
 15 hearing. The Inspector General actually did a
 16 report, a full investigation report on CBP One
 17 and found that, frequently, users of this app
 18 were claiming the same addresses in the United
 19 States as their intended destination, even though
 20 they didn't know each other, they weren't family
 21 connections. In other words, it has been
 22 completely abused. And the idea that the federal
 23 government would pay for this kind of concierge
 24 service for Illegals, I think, is outrageous.
 25 Will you end the use of the CBP One app?

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1 and our asylum system?
 2 GOVERNOR NOEM: Yes, we will go back to
 3 case by case evaluation of these parole cases and
 4 ensure that we have more resources, if you will
 5 partner with us to make sure that our legal
 6 immigration system is fully utilized, that we
 7 have more judges, more immigration courts so that
 8 we can process people legally and make sure that
 9 they are going through that process rather than
 10 like Joe Biden has done, use this an excuse to
 11 allow people to come into our country with no
 12 consequences.
 13 SENATOR HAWLEY: Let me ask you about
 14 another low light, not a highlight, but a low
 15 light of this last administration and DHS. Your
 16 predecessor, the current secretary of DHS,
 17 established a disinformation board using taxpayer
 18 resources to police speech on the internet and
 19 elsewhere to tag American citizens' viewpoints as
 20 either legitimate or not legitimate and use the
 21 power of the state to censor them, including
 22 having them removed and perhaps penalized.
 23 This has got to be the darkest chapter,
 24 I think, in DHS's short history. He eventually
 25 withdrew the board under intense criticism but

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1 has never fully repudiated it and never promised
 2 not to do it again. Will you pledge to us here
 3 today that, under your leadership, there will
 4 never be a disinformation board or anything like
 5 it at DHS, and you will be a champion for the
 6 free speech and first amendment rights of all
 7 Americans?
 8 GOVERNOR NOEM: Senator, there will not
 9 be a board such as that under my leadership at
 10 the Department of Homeland Security.
 11 SENATOR HAWLEY: Fantastic. Let me ask
 12 you my remaining seconds, just one more thing
 13 about the Secret Service. You've mentioned this,
 14 and I'm so glad that you did this committee. And
 15 it has been bipartisan. This committee has done
 16 bipartisan work on the attempted assassinations
 17 or the assassination attempts, I should perhaps
 18 say, of the former president, the future
 19 president, soon to be the president, President
 20 Trump. We were stymied at every turn, and I
 21 should use the present tense. We are currently
 22 being stymied at every turn by the current Secret
 23 Service leadership and, frankly, by the
 24 leadership of DHS who have refused to turn over
 25 documents who refused to make people available

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1 for interviews.
 2 We finally had to pass my own law in
 3 this committee, which we unanimously adopted a
 4 law statute, mind you, which would require DHS
 5 and Secret Service to turn over relevant
 6 information to us about the assassination
 7 attempts. It's unbelievable. When you come to
 8 office to this office, I hope very soon will you
 9 pledge to us that you will open the books on all
 10 of the facts associated and around these
 11 assassination attempts that you will make
 12 available to us and to the public, most
 13 importantly, all the facts so that we can ensure
 14 that this never happens again and that the needed
 15 reforms in the Secret Service are put into
 16 effect.
 17 GOVERNOR NOEM: Yeah. Senator, if I am
 18 the Secretary of Homeland Security, I will
 19 certainly work with you to build transparency and
 20 make sure the facts are shared with you and your
 21 committee. I know that you've been very
 22 frustrated by the lack of transparency from the
 23 department. And I want to thank those of you
 24 that have worked on that report that was put
 25 together on these assassination attempts. I know

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1 it was a bipartisan report, an investigation that
 2 this committee conducted. And I appreciate you
 3 focusing on that, and I'll work with you to get
 4 the information so that you have the truth of
 5 really what happened there in the failures so
 6 they can be fixed.
 7 SENATOR HAWLEY: Thank you. That's a
 8 great place to end in a high note as I see my
 9 friend, Senator Blumenthal, who did fantastic
 10 work on this effort, and it will be an incredible
 11 new day and incredibly refreshing day to have a
 12 DHA secretary who will tell us the truth, who
 13 will be honest with us about the facts, honest
 14 with the American people and who will enforce our
 15 law. And I know you'll do that. Governor Noem,
 16 I look forward to supporting your nomination.
 17 Congratulations.
 18 GOVERNOR NOEM: Thank you.
 19 SENATOR JOHNSON: Senator Blumenthal.
 20 SENATOR BLUMENTHAL: Thanks, Senator
 21 Johnson. Welcome, Governor Noem. And thank you
 22 for being here. Thank you for visiting with me
 23 and thank you to your family for their service as
 24 well. Let me begin on a high note thanking
 25 Senator Hawley for his leadership on the effort

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1 that I led with him to essentially get some basic
 2 facts out of the Secret Service when we were
 3 investigating Senator Johnson and I as leaders of
 4 the permanent subcommittee on investigation,
 5 helping you lead it with the Chairman and ranking
 6 member here.
 7 And I'm hoping that you've read our
 8 report and that you will agree to begin
 9 implementing its recommendations, which call for
 10 major reforms, in my view, a house cleaning top
 11 to bottom in the Secret Service and greater
 12 transparency with this committee and with the
 13 American public.
 14 GOVERNOR NOEM: Yes, sir. I will
 15 certainly work with you to do that and to work to
 16 make sure that we have that transparency, and the
 17 committee has the information that it needs to do
 18 due diligence of its oversight.
 19 SENATOR BLUMENTHAL: Our investigation
 20 is continuing, Senator Johnson, and I have
 21 discussed it. And we will be making more
 22 requests to pursue the fact-finding that is so
 23 important. I want to ask you about disaster
 24 relief. California is on fire. The fire's
 25 raging. There are going to leave destruction and

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1 devastation that is heartbreaking.
 2 I am really disappointed with some of
 3 the statements that President-elect Trump has
 4 made, for example, saying that quote, "We won't
 5 give him," referring to Governor Newsom, "money
 6 to put out all his fires. And if we don't give
 7 him money to put out fires, he's got.
 8 SENATOR BLUMENTHAL: ... a problem.
 9 The specter is there of potential discrimination
 10 based on politics, withholding money from
 11 California or other states. It's not an
 12 unfounded fear. In the last administration,
 13 there were public reports about President Trump
 14 withholding money from the State of Washington
 15 because of his disagreements with Governor
 16 Inslee. Connecticut, like the rest of the
 17 nation, suffers from these natural disasters.
 18 Most recently in August, we were hit by major
 19 flooding, and these natural disasters are going
 20 to become more frequent, as will be the need for
 21 the federal government to meet the requests for
 22 declarations of natural disaster. I assume you
 23 will agree with me that withholding disaster
 24 relief by President Trump or any other chief
 25 executive of the United States is a violation of

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1 his duty and of law.
 2 GOVERNOR NOEM: Well, Senator
 3 leadership has consequences and looking at the
 4 tragedy that's happening in California is --
 5 SENATOR BLUMENTHAL: I want to ask you
 6 yes or no, with all due respect, it's an easy --
 7 GOVERNOR NOEM: What's happening in
 8 California is the ramification of many decisions
 9 over many years. But under my leadership at the
 10 Department of Homeland Security, there will be no
 11 political bias to how disaster relief is
 12 delivered to the American people.
 13 SENATOR BLUMENTHAL: So, if President
 14 Trump were to say to you, "We're going to
 15 withhold money from Connecticut or Michigan or
 16 any of the states, Iowa, because we don't like
 17 the governor or we don't like the politics of the
 18 state," you would stand up to him and say, "Mr.
 19 president, we need to allocate that money."
 20 GOVERNOR NOEM: Senator, in three days,
 21 President Trump will take an oath to uphold the
 22 Constitution and the rule of law in this country,
 23 and he will do that, and I'll be glad to have him
 24 back.
 25 SENATOR BLUMENTHAL: And I assume

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1 that's a yes.
 2 GOVERNOR NOEM: I don't speak to
 3 hypotheticals, which is what you're asking me to
 4 do. But what I will tell you is that as
 5 secretary, I will do the same. I will deliver
 6 the programs as the laws dictate.
 7 SENATOR BLUMENTHAL: Well, it's more
 8 than a hypothetical, with all due respect, and I
 9 apologize for interrupting you, but my time is
 10 limited, as you know, as a veteran of these
 11 hearings. It's more than a hypothetical. It's
 12 based on experience with President Trump
 13 withholding money from Washington State and
 14 elsewhere. I need to know from you, will you
 15 stand up to the President and say, "No, the
 16 Constitution and the Impoundment Act requires us,
 17 for example, to allocate the 100 billion dollars
 18 that we have just appropriated in the last
 19 session to states like Connecticut \$3 million,
 20 Texas, \$10 million, almost every one of the
 21 states represented here." Will you say no to the
 22 President if he withholds that money?
 23 GOVERNOR NOEM: Sir, I don't know about
 24 the scenarios that you're referencing with
 25 President Trump, but what I will tell you is that

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1 if given the chance to be Secretary of Homeland
 2 Security, that I will deliver the programs
 3 according to the law and that it will be done
 4 with no political bias, and if the programs
 5 change or if you decide to change the rule of
 6 law, then I will follow that while adhering to
 7 the Constitution.
 8 SENATOR BLUMENTHAL: So, you pledge to
 9 allocate and distribute that 100 billion dollars?
 10 GOVERNOR NOEM: According to how the
 11 program is written with no political bias.
 12 SENATOR BLUMENTHAL: Thank you.
 13 GOVERNOR NOEM: Every American deserves
 14 to be there and have disaster relief the same as
 15 their neighbors.
 16 SENATOR BLUMENTHAL: Basically,
 17 following the law.
 18 GOVERNOR NOEM: Yes.
 19 SENATOR BLUMENTHAL: Let me ask you,
 20 Senator Peters asked you about homegrown
 21 terrorists. The New Orleans tragedy was the
 22 result of a homegrown terrorist born in this
 23 country radicalized by ISIS and it reflects the
 24 reason why the intelligence community, the FBI,
 25 almost all of our law enforcement has said

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1 repeatedly, domestic violent extremism is the
2 most lethal and persistent threat to our
3 security. That terrorist was radicalized by
4 ISIS. The investigation is underway, we don't
5 know all the facts, but we do know that he was a
6 military veteran, and ISIS was responsible for
7 radicalizing him. Shouldn't we focus on ISIS as
8 a threat to this country's security?
9 GOVERNOR NOEM: Senator, certainly we
10 should be focused on all threats to this nation's
11 security. That's the mission of the Department
12 of Homeland Security and homegrown terrorism is
13 growing. We have more and more incidences. The
14 tragedy we saw and the terrorist attack in New
15 Orleans was --
16 SENATOR BLUMENTHAL: What will you do
17 to combat it? What will you do to stop ISIS and
18 other extremist organization from radicalizing
19 people in this country?
20 GOVERNOR NOEM: Well, certainly
21 Senator, I'll continue to work with the
22 administration and our partners and the
23 Department of Defense, the intelligence agencies
24 also within Secretary of State and the other
25 branches and cabinet officials to make sure we're

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1 bringing all resources to bear to identify and to
2 stop these types of terrorist activities. What I
3 would say is the cybersecurity and intelligence
4 elements that we have within the Department of
5 Homeland Security have been incredibly siloed.
6 They have not communicated with other
7 intelligence agencies like they should and
8 partnered. INA has some interaction but not
9 enough and we also need to have CISA have
10 interaction with the FBI, CIA to make sure
11 they're working together to stop these types of
12 threats and identify when they're growing among
13 our citizens and how they become radicalized.
14 SENATOR BLUMENTHAL: My time has
15 expired. This area of questioning I think is
16 supremely important. I know there's a lot of
17 focus on the border. We all want more border
18 security. We want to stop migrant crime, but
19 let's not take our eye off the ball. The
20 governor of Louisiana for the Super Bowl ought to
21 be really riveted on the potential for homegrown
22 terrorism as a threat, and I hope that you will
23 help him and other governors to do their duty to
24 protect the people of the United States from that
25 homegrown terrorist threat. Thank you.

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1 GOVERNOR NOEM: Yeah, I look forward to
2 working with you.
3 SENATOR PAUL: Senator Ernst.
4 SENATOR ERNST: Thank you, Senator
5 Johnson. Governor Noem, thank you so much for
6 being here today and I want to thank you for your
7 continuing service, the service that you had as a
8 member of Congress, the service that you have
9 displayed as a governor of the great State of
10 South Dakota, our neighbor to the northwest, and
11 for being willing to step up and take on this
12 immense responsibility. So, thank you so very
13 much.
14 We had such a good discussion when you
15 came to my office in the last several weeks, and
16 we talked about the importance of securing our
17 border and fixing our broken immigration system.
18 And I'd like to start today by sharing a story
19 about one of my constituents from Council Bluffs,
20 Iowa. And what we have seen through this broken
21 border is tragedy that strikes so many families
22 across the United States. So, very similar to
23 the story that was shared by my colleague from
24 Missouri with his constituent Mr. Wolf. I have a
25 young woman by the name of Sarah Root who

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1 encountered tragedy on January 31st, 9 years ago.
2 So, Sarah Root was struck and killed by an
3 illegal immigrant who was drunk driving. He was
4 driving at three times the legal limit of
5 alcohol, and Sarah's killer was bonded out,
6 bonded out before the Roots laid her to rest. He
7 fled the country and has not been seen or heard
8 from since. The Root family has not seen
9 justice. So, Governor, how do you plan to
10 prioritize the detention and deportation of
11 illegal immigrants like Sarah's killer?
12 GOVERNOR NOEM: Well, yes, Senator,
13 thank you for telling Sarah's story. I remember
14 when this happened because it was so close to
15 home and so devastating for her and her family
16 and the entire State of Iowa and our country.
17 President Trump is focused on making sure that
18 these types of situations don't happen again,
19 that we don't continue to lose our children and
20 our family members to illegal immigrants that
21 come in and perpetuate crime with no
22 accountability and then are released with no
23 consequences. So, the number one priority of the
24 president is to secure the border and to deport
25 these criminal actors immediately and as soon as

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1 possible. They will be the number one priority
 2 to make our communities safer and so that we
 3 don't have this kind of situation going forward.
 4 In fact, people, I think when they
 5 first heard my name being mentioned and nominated
 6 for the Department of Homeland Security, maybe
 7 thought it was a little bit of a surprise, like,
 8 "Oh, I didn't think about Kristi doing that job."
 9 But I tell people the reason that I asked for it
 10 is because I knew it was the President's number
 11 one priority. I knew that it needed to have
 12 someone in the position that would do what the
 13 President promised the American people, would be
 14 strong enough to do it and follow through to make
 15 sure that we're protecting our communities and
 16 America. But that also came at it from a
 17 perspective of how these families feel, that was
 18 a wife and a mom and a grandmother and would be
 19 able to stand up and communicate to the American
 20 people what we were doing and why we were,
 21 because it's what they asked us to do.
 22 I have three grandchildren and one more
 23 on the way, and when I look at Little Miss Addie
 24 every day, I just think, "What kind of a country
 25 is she going to grow up in? What kind of a

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1 country will we leave her and her brother and a
 2 sister?" And I don't want them to think that
 3 their grandma sat on the sidelines and didn't do
 4 all that she could. So, I will enforce the
 5 Constitution and the law, and I will make sure
 6 that when people enact horrific things like this
 7 that happened to Sarah and her family, that there
 8 will be consequences for it.
 9 SENATOR ERNST: Yeah, absolutely. And
 10 as a fellow grandma, I know that you are
 11 perfectly positioned to enforce this.
 12 I do want to move on to another topic
 13 that we visited about in my office. So, I'm the
 14 founder and the chair of the DOGE Senate Caucus,
 15 and so we do need greater government efficiency,
 16 and I do believe in order to do that, we need
 17 less of our employees teleworking and more of
 18 those government workers back in the office
 19 working for our constituents. And to that end,
 20 it ties together then too. We just found out
 21 that the Treasury Department had a cyber-attack
 22 on December 8th from China, and no surprise here,
 23 they access servers through work from home
 24 software. So, it all ties together.
 25 We need more people back in the offices

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1 making sure that any communications are secured,
 2 any work is secured. And to that, I know the
 3 Biden Administration has put a huge emphasis on
 4 the cyber bureaucracy, but they haven't really
 5 done anything about it, and they haven't given
 6 any authority to those that are enforcing the
 7 standards. So, we need to enforce the standards
 8 that are set forth to make sure the cyber
 9 security is truly there, but what can DHS do one,
 10 with telework how do we get the employees back,
 11 and then two, how do we make sure that our
 12 systems are secure from these cyber-attacks?
 13 GOVERNOR NOEM: Well, Senator, thank
 14 you for focusing on remote work and the need to
 15 get people back in their offices and accountable
 16 to the work that they do. In fact, I've heard
 17 since being nominated for this position that many
 18 of the agencies within the department are not
 19 showing up. They're not doing their jobs. But
 20 even FEMA, who is responsible for disaster
 21 response, that they have the alternative, some of
 22 these employees do not even respond to a
 23 disaster, which might explain the horrific
 24 results that we saw in North Carolina when they
 25 had such a terrible disaster that impacted

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1 families and communities, and FEMA failed them so
 2 miserably. If it's not even responsibility of
 3 them to show up when terrible things happen, what
 4 other day-to-day activities are not getting done
 5 because they're working from home or not doing
 6 their job at all?
 7 You talked about cyber security and the
 8 need to ensure that our systems are safe and
 9 secure. One of the things that disturbs me the
 10 most is that we don't necessarily even know how
 11 some of these espionage attacks that have
 12 infiltrated our systems have happened. We don't
 13 know how to stop them yet. We don't have the
 14 knowledge and that our departments and
 15 intelligence agencies and cybersecurity agencies
 16 have become siloed and aren't working together to
 17 stay in front of these bad actors. But many
 18 times, our most vulnerable area happens at the
 19 state and local level. Some of these smaller
 20 entities that feeds information into our systems
 21 is where they choose to infiltrate and get our
 22 data and to really hold for ransom many of these
 23 companies and then impact our federal systems as
 24 well.
 25 So, one of the first meetings I had

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1 when I was elected governor with the former
 2 governor during the transition was, he said, "The
 3 number one priority you're going to have as
 4 governor is to secure our systems."
 5 SENATOR ERNST: Yes.
 6 GOVERNOR NOEM: He said, "Our systems
 7 are so antiquated, and we've had over 16,000
 8 hacking attempts in just the last month. You
 9 need to secure our systems to get it done." So,
 10 that was a priority for me and to do that, and we
 11 fully funded it and got it done in South Dakota
 12 and it's being implemented today. I look forward
 13 to doing that at the federal level to make sure
 14 that people's data and information is safe, but
 15 also our country is safe from these bad actors
 16 that have a plan to take us out.
 17 SENATOR ERNST: Well, thank you. My
 18 time has expired, but I do want to end on a note
 19 that another thing that I do truly appreciate
 20 about you and your nomination is that as a
 21 governor, you have worked with those local
 22 constituencies as well and those local
 23 governments, and I know that this will be an
 24 incredible strength that will ensure continued
 25 success for you within the department. So, thank

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1 that he's in charge of our nation's borders. So,
 2 I guess, again, I'd just like to go back to you.
 3 How are you going to work with Mr. Homan? What
 4 is the division there? I'm trying to get a
 5 better sense of who's in charge.
 6 GOVERNOR NOEM: Yeah. Tom Homan is an
 7 incredible human being who has over 30 years of
 8 experience at the border and the insight and
 9 wisdom and he --
 10 SENATOR KIM: Incredible experience, I
 11 get that. I'm just trying to think through
 12 decision-making process when it comes to your
 13 work. For instance, will he be giving orders
 14 directly to CBP, ICE, USCIS?
 15 GOVERNOR NOEM: Tom Homan has a direct
 16 line to the President. He is an advisor to the
 17 President, the border Czar. I, obviously, will
 18 be if nominated and confirmed and put into the
 19 position of being the Department of Homeland
 20 Security Secretary and responsible for the
 21 authorities that we have and the actions that we
 22 take.
 23 SENATOR KIM: I say this because I
 24 actually want to make sure that we're empowering
 25 the next Secretary of Homeland Security.

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1 you, Governor, very much. Thank you, Mr. Chair.
 2 SENATOR PAUL: Senator Kim.
 3 SENATOR KIM: Thank you, Chairman.
 4 Governor, it's good to see you.
 5 GOVERNOR NOEM: Good to see you again
 6 too.
 7 SENATOR KIM: Thanks for coming before
 8 our committee. I wanted to just ask you not just
 9 about your work, but how it's going to fit into
 10 the broader incoming Trump Administration and
 11 particular, I guess, I'm uncertain about roles
 12 and responsibilities regarding your position and
 13 Tom Homan's. I guess, I just want to ask you
 14 just point-blank who's going to be in charge of
 15 the border?
 16 GOVERNOR NOEM: Well, the president
 17 will be in charge of the border. It's a national
 18 security issue, and the president is in charge of
 19 this country and has made a promise to the
 20 American people, and we will fulfill his agenda.
 21 SENATOR KIM: Well, that was a good
 22 answer, it's the answer I would've given as well,
 23 but I guess I got confused. When Trump made the
 24 announcement about Tom Homan, he said, "I'm
 25 pleased to announce that Tom Homan," and said

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1 GOVERNOR NOEM: Yes.
 2 SENATOR KIM: In the legislation that
 3 was codified by Congress and moved forward that
 4 started this after September 11th, said "All
 5 functions of all offices, employees and
 6 organizational units of the department are vested
 7 in the secretary." So, I guess the reason why I
 8 mentioned this is I've just seen some quotes from
 9 Mr. Homan where he said, "I'll be making
 10 decisions on border security and deportation."
 11 He was asked in another interview about the
 12 stronger role that he'll play, and he said,
 13 "Absolutely, I'll be making decisions on how we
 14 do the border."
 15 So, I just raise that as a concern of
 16 mine because not only is that about the function
 17 of our executive branch, but also the
 18 capabilities of this committee to be able to
 19 properly do our constitutional duties for
 20 oversight. The ability for us to be able to have
 21 that conversation. We can talk to you, engage
 22 with you, that is the direct way, but if he is
 23 going to be making decisions, then he should come
 24 before this committee as well. And I know that
 25 that's something where, as far as I know, his

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1 role will be directly at the White House, is not
 2 something that will be under the purview directly
 3 of this committee. So, I just wanted to raise
 4 those concerns.
 5 GOVERNOR NOEM: Yeah, yeah. Tom and I
 6 work very well together and talk and communicate
 7 all the time, and we'll be working together on a
 8 daily basis when we're in our positions under the
 9 new administration. And I would say there's no
 10 authorities being planned to be taken away from
 11 the department or myself if I'm in the role, and
 12 we'll continue to oversee CPP --
 13 SENATOR KIM: But it sends some mixed
 14 signals. You can understand how people in my
 15 home state, maybe around the country, when they
 16 hear Mr. Homan saying, "I'm making the
 17 decisions." When they hear President-elect Trump
 18 say he's in charge of our border. So, I urge
 19 that we're going to try to do our best to try to
 20 make sure we're empowering the department,
 21 empowering the next secretary because that's
 22 where our laws are invested in our decision-
 23 making.
 24 GOVERNOR NOEM: Yeah. Well, thank you
 25 Senator, and we'll make sure you have all the

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1 information that you need. And Tom working
 2 directly with the president and I working
 3 directly with the president, hope to help you get
 4 all that you need to reassured that the
 5 authorities will stay the same as they currently
 6 are, but we will continue to work to secure that
 7 border and make sure that we're working together
 8 in that way.
 9 SENATOR KIM: I want to just switch
 10 gears about you raised the concerns about
 11 terrorism, especially foreign terrorist groups.
 12 I guess I just want to ask you, what are the
 13 major foreign terrorist groups that are... Well,
 14 first of all, what are the major foreign
 15 terrorist groups that are out there that we're
 16 tracking, which are the ones that are concerns to
 17 us in terms of potentially trying to inspire or
 18 coordinate an attack upon us? And if you can,
 19 just give me a sense of what their current
 20 capabilities are to try to enact that.
 21 GOVERNOR NOEM: Well, I think we face a
 22 lot of threats, Senator, and since I'm not in the
 23 role today, I shouldn't get into specifics with
 24 you, but I think over years the --
 25 SENATOR KIM: Well, you can at least

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1 get into specifics about what organizations that
 2 are out there. So, I just wanted to get a sense
 3 of your knowledge of the organizations.
 4 GOVERNOR NOEM: Yes, sir. You have all
 5 the traditional terrorist organizations that have
 6 always threatened the United States, but I would
 7 also say --
 8 SENATOR KIM: Such as?
 9 GOVERNOR NOEM: I would say Hamas,
 10 ISIS, continuing down that path of those
 11 terrorist organizations. But we'll continue to
 12 also focus though not just on those, but also the
 13 cartels, their partnership with the Chinese and
 14 what they are doing. Listen, I've told people
 15 for years, for over 30 years, I've worked on
 16 national policy, on food policy, on agriculture
 17 policy, and I've seen the Chinese agenda to
 18 infiltrate our country, control our food supply
 19 chain, but also their manipulation of their
 20 currency and stealing our IP. And now I believe
 21 that this fentanyl crisis that they have flooded
 22 our country with is geared and the purpose of it
 23 is to kill our next generation of Americans. It
 24 is to control us.
 25 SENATOR KIM: No, I don't discount the

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1 importance of those --
 2 GOVERNOR NOEM: So, when you focus on
 3 one or two groups, I think it takes your eye off
 4 the ball as to where all the threats could come
 5 from. We just spent a significant amount of time
 6 talking about homegrown terrorism as well and
 7 about --
 8 SENATOR KIM: Correct. And I'm glad
 9 we're having that conversation. But the reason
 10 why I mentioned it, I was not trying to quiz you
 11 or anything of that nature. It's just that when
 12 the Department of Homeland Security, when their
 13 threat assessment for 2025 lists three
 14 organizations, lists Al Qaeda, lists ISIS, in
 15 particular ISIS Khorasan, and the IRGC, and the
 16 threat from Iran, I just want to make sure that I
 17 get it. You're talking about the importance of
 18 the border. We all understand that we want to
 19 work with the incoming administration to try to
 20 have an orderly process with that. But I just
 21 want to make sure in particular with DHS, the
 22 primary mission, if we look at the founding
 23 legislation, the primary mission, the very first
 24 mission is prevent terrorist attacks within the
 25 United States and do everything we can to

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1 minimize that type of threat.
 2 So, yes, I do think it's important for
 3 us to focus in on one, two, or three or just
 4 wherever these terrorist groups are at. Yes,
 5 yes, I know that part of that effort to try to
 6 minimize terrorist attacks is through the work
 7 that we try to do to secure our borders, all of
 8 them: air, sea, and land. But the primary
 9 mission still is about preventing terrorism, not
 10 just the border security. That's a tool to be
 11 able to accomplish that. So, I just raised that
 12 with you. I want to make sure that the next
 13 Homeland Security Secretary has a very detailed
 14 knowledge and understanding about the terrorist
 15 groups, their capabilities, and is tracking that
 16 on a absolute daily basis, and that they
 17 understand that is their top mission. And with
 18 that, I'll yield back to the Chairman.
 19 SENATOR PAUL: Senator Johnson.
 20 SENATOR JOHNSON: Governor Noem,
 21 welcome and thank you --
 22 GOVERNOR NOEM: Thank you.
 23 SENATOR JOHNSON: ... for your
 24 willingness to serve. You'll be taking over a
 25 massive federal government agency, 240,000

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1 been a big topic of conversation in most of the
 2 meetings that I've had with the members of this
 3 committee was how do we fix this agency which the
 4 reputation is that it's broken and dysfunctional.
 5 I think that was the question I get asked the
 6 most is why would you want to head up such a
 7 dysfunctional department? And I would say that
 8 because the mission of the department is to
 9 secure the homeland and our people, it's our
 10 biggest vulnerability right now, and we have a
 11 president that's not enforcing the law, and I
 12 don't believe the law should be unequally
 13 applied. Everyone should be subject to our laws,
 14 and a nation without laws and without borders is
 15 not a nation at all. So, I will work by ensuring
 16 one of the things that Senator Ernst talked
 17 about, people have to show up for work.
 18 I think there's going to be a majority
 19 of people who don't have their primary mission to
 20 secure the homeland, that if they don't want to
 21 show up for work, then maybe they're just not
 22 truly passionate about protecting America. I
 23 think they need to do that, and they need to
 24 recognize what their job is. The morale in DHS
 25 is very low. I'm going to let people do their

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1 employees. It's probably too massive. I think
 2 had I been there back then, I don't think I
 3 would've assembled these 22 different agencies in
 4 this massive department, but that's what we've
 5 got. It's a department that the previous
 6 administration, I think, has completely misused.
 7 Instead of using customs and border protection to
 8 do that, to protect our border and secure it,
 9 they've utilized those resources to incentivize a
 10 massive influx of illegal immigration. Instead
 11 of using the Cybersecurity Infrastructure
 12 Security Agency to do that, they instead engage
 13 in mission creep and utilized it to censor
 14 Americans with the misinformation board. I am
 15 concerned about disaster relief, just federal
 16 disaster relief in general, creating greater and
 17 greater and increasing levels of moral hazard
 18 resulting in higher costs of these disasters.
 19 So, let's cover each one of those kind of in
 20 order. How do you gain control over a massive
 21 agency whose resources and personnel have been
 22 misused? I mean, how do you root out those
 23 individuals who instead of securing our border
 24 opened it up and facilitated this?
 25 GOVERNOR NOEM: Well, Senator, this has

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1 jobs. I'm going to remind them what their jobs
 2 are. Some of these border patrol agents haven't
 3 been able to do their jobs for a very long time.
 4 They've been processing paperwork and
 5 facilitating an invasion when they should be back
 6 securing our border, which is why they were
 7 recruited and wanted to serve there to begin
 8 with.
 9 We're going to build partnerships with
 10 local law enforcement, with ICE and task forces.
 11 So, we're communicating again with local sheriffs
 12 and mayors and law enforcement to partner
 13 together. When you talk about the fact that this
 14 is such a broken agency that needs so much
 15 improvement, a lot of it goes back to why we're
 16 recreated and are we fulfilling that mission and
 17 making sure that these individuals are getting
 18 back on task.
 19 SENATOR JOHNSON: So, under my
 20 Chairmanship and under the Trump Administration,
 21 we did rename a part of DHS, so the Cybersecurity
 22 Information Security Agency. I in no way, shape
 23 or form ever contemplated that the sub-agency
 24 within DHS that was really focused on securing us
 25 against the cyber threats and other threats to

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1 our infrastructure would ever be used to violate
 2 the Constitution the way it was used to violate
 3 the Constitution under the Biden Administration.
 4 This administration's been completely opaque. We
 5 do not have the information to know and the
 6 communication in terms of what all happened here.
 7 So, my question is relates to how they misused
 8 CISA. Will you commit to providing the
 9 transparency, providing the information,
 10 investigate it yourself, but provide this
 11 committee, my subcommittee, the information to
 12 expose the truth of the American public, but even
 13 more importantly, propose a piece of legislation
 14 based on our investigation, based on those
 15 results to fix it so that no administration can
 16 ever misuse the language of the law to commit
 17 that kind of unconstitutional act and violate
 18 people's First Amendment rights?
 19 GOVERNOR NOEM: Yeah, Senator, I look
 20 forward to working with you on that. And I think
 21 what we saw during the COVID pandemic, the
 22 actions of CISA, their misinformation and
 23 disinformation campaign, the materials they were
 24 putting out was shocking. Shocking at what they
 25 were doing to decide what was truth, what wasn't,

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1 their lives, the hundreds of billions of dollars'
 2 worth of property damage. It's not just
 3 California though. I mean, again, that was
 4 grotesque mismanagement, that could have been
 5 prevented. You can't prevent a hurricane, you
 6 can't prevent floods, but you certainly can try
 7 and start reducing the moral hazard that we've
 8 allowed to explode, quite honestly, by the
 9 federal government rushing in immediately, no
 10 questions asked, just tell us how big a check you
 11 want. What can you do in your new role to try
 12 and start reducing over time the moral hazard
 13 that we have created in this country with federal
 14 disaster relief?
 15 GOVERNOR NOEM: Well, Senator
 16 emergencies and disasters are always locally led.
 17 They're led by the local communities and leaders,
 18 and that's because they're much more responsive
 19 and much better informed on how to bring relief
 20 and to get those emergency services there to meet
 21 the need. Then it's state supported and
 22 federally resourced, which means that when we
 23 come in that we're supporting what the mission
 24 is, what those emergency operations and plans
 25 are, that the local city and county, and then

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1 and how they were trying to manipulate the
 2 American people. We saw it in elections and
 3 Russia influence as well, and so ensuring that
 4 they can't do that in the future under any
 5 administration would be a priority, that they
 6 stay doing what they're supposed to do and
 7 hardening our systems and working with local
 8 officials to do that is a priority, and I'd look
 9 forward to working with you on legislation should
 10 you wish to rein them in.
 11 SENATOR JOHNSON: So, the first step in
 12 that process is to expose the truth to find out
 13 who these backed actors were, expose who they
 14 were, hold them accountable.
 15 GOVERNOR NOEM: Yes.
 16 SENATOR JOHNSON: I mean, that is
 17 crucial that we take that first step. So, again,
 18 look forward to working with you on that. The
 19 tragedy of the California fires, the more we
 20 learn, the more we understand that not only was
 21 it predictable, it was predicted, which means it
 22 was preventable. Again, you can't prevent the
 23 initiation of those fires, but you certainly
 24 prevent them from raging into the tragedy that
 25 they became, the dozens of people who've lost

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1 also the state has implemented and do what we can
 2 to fulfill the mission of our programs.
 3 One of the things that FEMA's not doing
 4 today that I think we should be doing is
 5 streamlining communications. We saw this in New
 6 Orleans, we saw it in other terrorist attacks in
 7 the country, and you just referenced it as well
 8 about the American people not getting the truth,
 9 Senators not getting the truth and the
 10 transparency that we need is that I believe FEMA
 11 can always put out a blueprint for what a
 12 response would be should something terrible
 13 happen.
 14 And when we look at the Secret Service,
 15 what happened in Butler, we saw that
 16 communication was an issue, that the Secret
 17 Service wasn't communicating, and balls were
 18 getting dropped with local authorities, local law
 19 enforcement, and we can put forward a blueprint
 20 for how communication can happen and be
 21 streamlined between the federal government, the
 22 state, and the local entities. So, that should
 23 something happen, this is how we talk to each
 24 other, to make sure that the public has the
 25 facts, they're not getting misinformation, which

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1 happened with the New Orleans terror attack just
 2 recently, but also up in Pennsylvania as well.
 3 That blueprint is what we do at the
 4 state level that FEMA has failed to do, to
 5 proactively educate the public on what
 6 everybody's roles are, what we do should
 7 something happen, whether it be a natural
 8 disaster or a terrorist attack or an emergency
 9 response is needed, that we can put out those
 10 blueprints ahead of time, educate people, train
 11 those local entities, which they currently do to
 12 a certain extent today, but not good enough to
 13 really know that not only can the resources be
 14 pre-deployed in many of these situations so that
 15 they're more readily accessible, but also how are
 16 we going to communicate and make sure everybody's
 17 on the same page so that we can be much more
 18 efficient.
 19 I wish that we would've had different
 20 leadership and a different governor in
 21 California, or we might have a different result
 22 there. But in the Department of Homeland
 23 Security, we can do all that we can to make sure
 24 that the people that live in California know that
 25 they're going to get a response from the federal

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1 government that's appropriate, and we did all
 2 that we could to make sure that they had the
 3 information ahead of time so they could protect
 4 themselves when they do have a failure in
 5 leadership like we've seen.
 6 SENATOR JOHNSON: Thank you and good
 7 luck.
 8 GOVERNOR NOEM: You bet.
 9 SENATOR PAUL: Since Senator Johnson
 10 brought up California fires, I have to interject
 11 here. We talked about burn policies, these are
 12 local policies, how we try to not have so much
 13 brush and things like that. They're also next to
 14 the largest body of water in the world, the
 15 Pacific Ocean. So, I see these homes all burning
 16 on the beach in Malibu, and I'm like, "Wow, if
 17 they just had a generator and a hose, you start
 18 sucking the water out of the Pacific Ocean." But
 19 you could do more than that. You could pump it
 20 and put it in cisterns up in the hills a mile or
 21 two in. It doesn't rain very much there, but why
 22 don't they take the ocean water, put it in
 23 cisterns and have a bunch of water ready when a
 24 wildfire shows up, but it's like once again, bad
 25 local government. Senator Gallego.

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1 SENATOR GALLEGO: Thank you, Chairman.
 2 Thank you, Governor, for your attendance and I
 3 appreciate us meeting last week and our frank
 4 conversation. So, following up to our
 5 conversation, in recent years, I've been in very
 6 close contact with our Arizona border
 7 communities, which are unlike other border
 8 communities and about the funding needs to
 9 address migrant influxes through the shelter and
 10 services program or SSP. Without this funding
 11 border communities must bear all the financial
 12 burden for national immigration challenges and
 13 the broken border in general. So, that means
 14 police, fire, hospital systems in general,
 15 anything of that. And at the same time, they'll
 16 also face the potential challenges of street
 17 releases. And again, these are very small towns
 18 on the border, so having thousands of people
 19 being released becomes both burdensome security
 20 issues and just not fair to them. And we get
 21 lumped in with places like New York and Chicago
 22 about how they do their shelter programs.
 23 Our shelter programs are not the same
 24 as New York and Chicago. We do not permanently
 25 put people in apartments or anything of that

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1 nature. We are trying to move people away from
 2 the border so that way they don't become a burden
 3 on these very, very small communities. So, I'm
 4 very highly concerned, as I told you in our
 5 meeting when the SSP program becomes politicized
 6 and to the point where we get lumped in with
 7 those programs, I don't think are effective and
 8 are actually counterproductive and it ends up
 9 depriving our small Arizona borders of these
 10 very, very vital funds that they need. So, as
 11 DHS Secretary, how would you ensure that border
 12 communities are not left to respond to and pay
 13 for these immigration influxes, the broken border
 14 system on their own? And when you commit to
 15 helping really not politicize or just join the
 16 SSP program to the point where places that are
 17 doing things correctly like Yuma, Arizona, like
 18 Pima County, like Cochise County, aren't lumped
 19 in with the people that are doing things
 20 incorrectly like New York State and Chicago.
 21 GOVERNOR NOEM: Well, Senator, thank
 22 you for the conversation in your office about the
 23 program, FEMA, the southern border, and the
 24 challenges and then also the difference between
 25 your state and how you utilize funds versus other

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1 states. I would say that, my hope is that if
2 given the opportunity to serve as secretary, that
3 the federal government would no longer, and I
4 believe as President Trump has promised the
5 American people facilitate an illegal alien
6 invasion and that your communities in Arizona
7 would no longer have the issue with having people
8 in your small towns and communities that you need
9 to figure out how to take care of and get them to
10 where they want to go in other places of the
11 country.

12 The President has promised he will
13 secure the border that we will uphold our
14 nation's laws and that he will do that to the
15 benefit and be putting America first again. So,
16 I know we talked extensively about the SSP
17 program and how you've utilized it, but getting
18 these programs back to what they were intended is
19 important to FEMA as a disaster response agency,
20 and some of the facilities that have been
21 utilizing these types of funds and dollars need
22 to be reevaluated and to make sure that it's
23 truly doing the service that is upholding our
24 nation's laws.

25 SENATOR GALLEGRO: And certainly, I
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1 think the mistakes that other states have taken
2 on. Moving on, in Arizona, we have large parts
3 of the board, they run through tribal lands. We
4 have 22 federally recognized tribes. We have
5 great relationships with these tribes. They want
6 to be collaborative partners when it comes to
7 border security. And then we have some great
8 programs that have worked in the past. For
9 example, the Shadow Wolves Program with the
10 Tohono O'odham Nation is a really good example,
11 collaborative program of tribal law enforcement
12 that worked with DHS to make sure they stop human
13 smuggling and cartels going through the borders.
14 But as DHS Secretary, what is your plan to
15 consult with our border tribes and work together
16 to balance both national security but also their
17 sovereignty?

18 GOVERNOR NOEM: Yeah. Well, Senator, I
19 believe that my experience as governor and my
20 relationship with working with our tribes is
21 going to be an incredible powerful tool for me to
22 bring to bear at the Department of Homeland
23 Security to work on how we secure our southern
24 border but still respect their sovereignty and
25 still be able to work with them. This year, when
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1 understand reevaluating especially how some of
2 these states have been using it and in an ideal
3 world, we don't have to have a program like that
4 because we don't have this mass of humanity
5 that's coming towards our borders, but even under
6 the first Trump administration, we actually still
7 needed it also. So, this is why my concern is to
8 not get rid of this program because again, these
9 small communities, I'm talking communities of
10 maybe 10,000 people, maybe only six or seven cops
11 are going to end up really bearing the brunt and
12 we are not a big state. We can't really
13 compensate for these types of losses. These
14 small communities are also largely, you come from
15 a rural state, counties that are largely rural
16 and with a lot of federal land so that actually
17 don't even have a tax base.

18 So, when the broken immigration system
19 sends people to these borders and these
20 communities don't have enough money to pay for
21 cops, firefighters over time for hospital
22 systems, it's that type of program that keeps
23 these small communities afloat. So, just want to
24 make sure that again, this doesn't not become
25 politicized and that we are kept separate from I
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1 looking at public safety issues that we had in
2 South Dakota and their lack of ability to hire
3 tribal officers on our reservations in South
4 Dakota, I offered to train federal law
5 enforcement officers, BIA officers, but also
6 their tribal police in South Dakota at no cost to
7 our tribes. And it's been an incredible powerful
8 tool that we've had to build relationships.
9 Those tribal police had the chance to go through
10 academy with the local maybe deputies from the
11 counties and the state highway patrol troopers
12 that were coming on board, and those
13 relationships have built partnerships in our
14 state that we didn't have before.

15 The Shadow Wolf training opportunity is
16 incredible. That was down in Arizona that you
17 spoke of too, and in looking into that program,
18 I'd like to continue to build on that and
19 perpetuate in the future so that our tribes have
20 an opportunity to have a secure border but also
21 have it reflect their values and their culture
22 and have their own people be a part of the
23 solution and then even when it comes to the
24 infrastructure of the wall that we're respecting
25 that and their landscapes and their land as well.
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1 So, I look forward to working with you as we move
 2 into this next administration to be able to
 3 protect our country and then work and respect our
 4 tribes as we do so.
 5 SENATOR GALLEGRO: Thank you. And the
 6 President Trump and some of his other potential
 7 staff and advisors have been very vocal about
 8 implementing a mass deportation strategy, talking
 9 to my agricultural community, my dairy community,
 10 they have concerns that this approach will lead
 11 to workforce shortages that will further drive up
 12 the costs of everything and something that we
 13 have really been working hard to cross, I think a
 14 bipartisan and a bipartisan manner to bring down
 15 the costs of everything and unfortunately this
 16 would reignite inflation. What is your plan to
 17 ensure safe and legal immigration processes for
 18 agricultural workers while protecting local
 19 agricultural operations, including those both of
 20 our home states?
 21 GOVERNOR NOEM: Well, Senator, the
 22 President and President Trump has been very clear
 23 that his priority is going to be deporting
 24 criminals, those who have broken our laws and
 25 perpetuated violence in our communities. That'll

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1 be the priority. And as I spoke earlier with our
 2 statistics, having over 425,000 of those with
 3 criminal convictions in our country, that will be
 4 a focus that we need to tackle right away, and
 5 it'll be a big one. Beyond that, his next
 6 priority is going to be those with final removal
 7 orders and focus on those individuals who have
 8 long overstayed and that there is a consequence
 9 for ignoring our federal laws. Beyond that,
 10 we'll continue conversations. As you know, I'm a
 11 farmer and a rancher and come from an
 12 agricultural state and we'll work together to
 13 make sure that laws are followed. It is the
 14 Senate and the house that puts forward the laws.
 15 I as secretary uphold the law, so you determine
 16 what that is and debate and discussion. I'll be
 17 transparent and share as much information and
 18 insight as I have with my background and
 19 experience and continue to work with you.
 20 SENATOR GALLEGRO: (Indiscernible).
 21 SENATOR PAUL: Senator Moreno.
 22 SENATOR MORENO: First of all, thank
 23 you, Governor, for being here for testifying
 24 before this committee and for your service, not
 25 just to your state but to America. Nine years

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1 ago today, we met in probably the coldest day
 2 I've ever been in my life in Iowa --
 3 GOVERNOR NOEM: Yeah, that's true.
 4 SENATOR MORENO: ... as you and I were
 5 making phone calls and whipping up votes for
 6 Republicans in Iowa, my wife Bridget, who's here,
 7 got a chance to meet you and we left Iowa saying,
 8 "That person's really going to go far," and here
 9 we are nine years later, you've been an amazing
 10 governor, amazing Congresswoman, and now you're
 11 going to make an even better Secretary of the
 12 Department of Homeland Security. So, I think
 13 sometimes in D.C. we tend to complicate things.
 14 There is a current Secretary of Homeland
 15 Security, so why don't we take this opportunity
 16 to do a little job review and compare and
 17 contrast him to you. So, if you don't mind, I'll
 18 ask you some questions and you can give me an
 19 answer. Secretary Mayorkas allowed about, you
 20 said it, just about 400 people on the terror
 21 watch list to come into this country legally. If
 22 you were confirmed as Secretary of Homeland
 23 Security, how many people on the terror watch
 24 list would you allow into this country?
 25 GOVERNOR NOEM: Well, Senator, we would

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1 work every single day until that number was zero.
 2 And if you look at the previous Trump
 3 administration over his entire four years in
 4 comparison to Joe Biden's number President Trump,
 5 it was 11 that were then removed from the country
 6 and faced consequences. When you look at the 382
 7 that Joe Biden has let in and the policies
 8 continue, is shocking and needs to be changed
 9 immediately.
 10 SENATOR MORENO: Mayorkas let in about
 11 12,000 murderers, how many would you target to
 12 let into this country?
 13 GOVERNOR NOEM: My goal every day would
 14 be to have no murderers allowed into this country
 15 and our communities.
 16 SENATOR MORENO: Mayorkas allowed
 17 16,000 rapists, how many would you target to let
 18 in?
 19 GOVERNOR NOEM: Every day I'd work to
 20 make sure that there was none let into this
 21 country.
 22 SENATOR MORENO: He let 600,000 --
 23 Mayorkas, 600,000, people with criminal
 24 convictions, how many would you allow in?
 25 GOVERNOR NOEM: We would work every day

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1 to make sure people are safe and that those with
 2 criminal convictions are immediately removed.
 3 SENATOR MORENO: How many private jets
 4 would you have the United States taxpayers have
 5 fly into foreign countries to pick up people to
 6 bring them here.
 7 GOVERNOR NOEM: Yeah. Senator, we will
 8 no longer be undertaking that mission at the
 9 Department of Homeland Security.
 10 SENATOR MORENO: So, not 700,000
 11 individuals on private jets over the last four
 12 years, you would not have any?
 13 GOVERNOR NOEM: No. I'll be working
 14 with President Trump to put in place his agenda
 15 and adherence to our federal laws.
 16 SENATOR MORENO: And how many illegals
 17 will you plan to house in luxury hotel rooms in
 18 Manhattan at a cost of \$6, 000 per month?
 19 GOVERNOR NOEM: Sir, clearly, Senator,
 20 during this election, the American people said
 21 they did not support that and that that would not
 22 be a part of this new administration.
 23 SENATOR MORENO: How about sex change
 24 operations for illegals, how many of those would
 25 you suspect you would fund?

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1 GOVERNOR NOEM: Oh, Senator, my hope is
 2 that that would be true. Yes.
 3 SENATOR MORENO: Let's switch to
 4 another part of the disgraceful immigration laws
 5 that Biden and Mayorkas, who objectively, by the
 6 way, objectively, has been the worst cabinet
 7 member ever in the history of the United States
 8 of America. Let's talk about temporary
 9 protective status. Temporary being the operative
 10 word. Mayorkas and Biden just extended temporary
 11 protective status again through 2027. Will you
 12 continue to corrupt TPS to allow some sort of
 13 open borders agenda and will you use hot weather
 14 of 80 degrees and sunny beaches in El Salvador as
 15 a reason why people have to stay in America and
 16 not safely return?
 17 GOVERNOR NOEM: Yeah, Senator, this
 18 program has been abused and manipulated by the
 19 Biden administration and that will no longer be
 20 allowed to allow that and these extensions going
 21 forward the way that they are, the program was
 22 intended to be temporary and this extension of
 23 over 600,000 Venezuelans as well is alarming when
 24 you look at what we've seen in different states,
 25 including Colorado with gangs doing damage and

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1 GOVERNOR NOEM: Senator, I believe that
 2 the Department of Homeland Security will be
 3 reevaluating its mission in this country to not
 4 allow that going forward under President Trump's
 5 goals.
 6 SENATOR MORENO: And if you had any
 7 legal migrant that was in this country and they
 8 committed a crime, would you offer them airfare
 9 from one state to another to evade law
 10 enforcement?
 11 GOVERNOR NOEM: Sir, I will be
 12 following this nation's laws and the Constitution
 13 and make sure that all laws are adhered to.
 14 SENATOR MORENO: And if you had been
 15 the head of the Department of Homeland Security a
 16 year or so ago, would you have closed a detention
 17 center in Georgia that would've allowed the
 18 release of somebody charged with a crime?
 19 GOVERNOR NOEM: Sir, I don't have the
 20 specifics to that situation, but certainly that
 21 would not be something that I would want to have
 22 under my watch.
 23 SENATOR MORENO: So, just to be clear,
 24 Laken Riley would be alive today if you had been
 25 the Secretary of Homeland Security?

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1 harming the individuals and the people that live
 2 there.
 3 SENATOR MORENO: And in terms of our
 4 border, like the physical border, I've been there
 5 many times. You've been there many times. Who
 6 should be in charge? Who should have operational
 7 control of our border? The United States
 8 government or the Mexican drug cartels?
 9 GOVERNOR NOEM: Oh, Senator, the United
 10 States needs to control our borders and secure
 11 them.
 12 SENATOR MORENO: So, if this were a job
 13 interview in the private sector and you had
 14 somebody like Alejandro Mayorkas in charge and we
 15 had the opportunity to upgrade to you, this would
 16 be the greatest upgrade in history of the United
 17 States of America. But I'm going to end my time
 18 with a startling statistic and actually a
 19 challenge to the Democrat party. When Mayorkas
 20 was confirmed, every single Democrat voted to
 21 confirm him, and six Republicans joined all 50
 22 Democrats in that confirmation. If we get to the
 23 vote, and hopefully Chairman, we could do that
 24 Monday, because we cannot wait one single day
 25 without you being in charge of that department.

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1 We should have 100 percent; 100 Senators vote for
 2 your confirmation.
 3 This will be the litmus test in my mind
 4 as to whether we have a Democrat party that's
 5 actually serious about doing bipartisan things
 6 like securing this country and protecting our
 7 citizens. Any Democrat that voted for Mayorkas
 8 that does not vote for you should be in front of
 9 their voters and removed from office. Thank you
 10 for serving, Brian. Thank you for being here,
 11 for putting up with the nonsense that you guys
 12 have had to put up with over the years. You are
 13 going to make an amazing Secretary of Homeland
 14 Security. Thank you for being here.
 15 GOVERNOR NOEM: Thank you, Senator.
 16 SENATOR PAUL: Senator Slotkin.
 17 SENATOR SLOTKIN: Thanks for being here
 18 and thanks for our time in my office, Governor.
 19 I'm a former CIA officer, joined right after 9/11
 20 and served three tours in Iraq alongside the
 21 military. I'm actually the first CIA officer in
 22 the Senate and to me the most important thing
 23 again as a Democrat from a state that Trump won,
 24 right, on the same ballot we both won. I
 25 understand we're going to have different policy

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1 very elite military unit. I mean, it's horrible.
 2 It's one of the hardest things to catch the sort
 3 of lone wolf, radicalized American citizen, but I
 4 want to protect ourselves. Our most recent
 5 examples of domestic terrorism we're not what
 6 we've spent the majority talking about today,
 7 crime from a migrant, and I don't dispute there
 8 is crime, but I just want to know and I want to
 9 hear from you as an intelligence officer that
 10 you're going to speak about real threats and not
 11 blow something up, politicize something, make
 12 something more exciting because that's maybe what
 13 the President wants to hear, but your mission to
 14 protect and defend the Constitution means calling
 15 honestly what the threats are to the country.
 16 Can you just give me a yes or no, please?
 17 GOVERNOR NOEM: Yes, Senator. I will
 18 be as transparent and factual every day with you
 19 and the American people as possible based on the
 20 information that I have. I don't know if the
 21 investigations are closed in New Orleans and in
 22 Nevada, but what we know so far and needs to be
 23 relayed to the American people, needs to be the
 24 truth and facts.
 25 SENATOR SLOTKIN: Yeah, I'd ask that.

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1 opinions. I certainly understand that the
 2 President or incoming President has the right to
 3 nominate whoever he wants. Those are not the
 4 issues for me that I'm going to spend my time on.
 5 The ones that I care about the most relate to the
 6 mission of the organization when it was founded,
 7 protecting the homeland, and I think to me, it's
 8 one thing when there's campaign rhetoric or
 9 political politicization of things, everyone does
 10 that on both sides of the aisle in this committee
 11 and in our line of work, but when it comes to
 12 actually protecting the country, you do have to
 13 be clear and honest about facts and not conflate
 14 things.
 15 So, it's just important to me that I
 16 know, particularly since you do have one of the
 17 intelligence agencies within the Department of
 18 Homeland Security, that you're going to call a
 19 spade a spade, right? The most recent acts of
 20 domestic terrorism in New Orleans, horrible
 21 incident in Nevada had nothing to do with
 22 migrants. Correct?
 23 GOVERNOR NOEM: Correct.
 24 SENATOR SLOTKIN: They were homegrown
 25 American citizens. One of them was actually in a

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1 We've talked a lot about border security. As a
 2 CIA officer, I think one of the only people on
 3 this committee who's actually worked on
 4 protecting the homeland. I'm a Middle East
 5 terrorism and militia expert by training, so I
 6 believe deeply in it and every country of the
 7 world gets to decide who comes inside its
 8 borders. That's not a radical concept, but I
 9 think I've been open with this committee that it
 10 is also on us to fix the deeply broken legal
 11 immigration system. I'm glad to hear that you're
 12 going to carry out the laws on the immigration
 13 system. Democrats and Republicans are to blame
 14 that we haven't fixed this system, but I also
 15 believe you can't fully control the border unless
 16 you give people that we need for our companies,
 17 for our economy a legal vetted way to come here.
 18 So, do you believe in legal vetted immigration
 19 and that we need more of it in the United States?
 20 GOVERNOR NOEM: I do believe we need to
 21 follow our legal immigration laws and that it
 22 needs to be vetted. We need more resources, I
 23 believe in some of the elements of this to ensure
 24 that we're --
 25 SENATOR SLOTKIN: Do you believe that

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1 our economy depends and needs some level, just
 2 like your family came from Norway and on economic
 3 drive and wanted a better life --
 4 GOVERNOR NOEM: Well, immigration's
 5 always been a part of our history and will be a
 6 part of our future. We just need to make sure
 7 that we're adhering to our nation's laws, which
 8 this body has the ability to --
 9 SENATOR SLOTKIN: I'm with you, I'm
 10 with you.
 11 GOVERNOR NOEM: ... continue to change
 12 and to put in place.
 13 SENATOR SLOTKIN: Again, going back to
 14 the fact that you will pledge an oath to the
 15 Constitution, not to President Trump. Just like
 16 every other nominee, President Trump said in
 17 November that he's willing to use law
 18 enforcement, National Guard, or even active-duty
 19 military to go after the threat from within the
 20 United States. I don't know exactly what he was
 21 talking about, but we have recent examples from
 22 your predecessors at DHS where federal law
 23 enforcement were sent into a state, in this case
 24 Oregon without coordination with the governor.
 25 Those federal law enforcement officers at the

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1 time were putting down threats to federal
 2 buildings and they were legitimate threats. I
 3 don't dispute, there was destruction of property
 4 going on during a bunch of protests and riots, so
 5 I don't dispute that. But they weren't wearing
 6 insignia. We talked about this. They weren't
 7 wearing any markings, so people were arrested by
 8 folks in fatigues with no names, no idea who they
 9 were, like right out of a bad Hollywood movie.
 10 Okay. If the President asks you to send in
 11 federal law enforcement to a state without
 12 coordination of that, Governor, would you support
 13 that action?
 14 GOVERNOR NOEM: Senator, my job, if
 15 nominated, and sworn in as Secretary of Homeland
 16 Security, is to uphold the Constitution and to
 17 uphold --
 18 SENATOR SLOTKIN: So, you will push
 19 back --
 20 GOVERNOR NOEM: ... the rules of this
 21 country. Yes, that will be the oath and the
 22 pledge that I will be making. And my goal also
 23 is to work with you to ensure that we have
 24 situations that are always appropriate, that we
 25 are well-defined on who we are --

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1 SENATOR SLOTKIN: I just to know you're
 2 a former governor, you can imagine that if Joe
 3 Biden sent in 700 federal law enforcement under
 4 Secretary Mayorkas without coordinating with you,
 5 I think we can agree you'd be a little upset.
 6 So, I just ask that you give the same respect for
 7 coordination and that we are very sensitive.
 8 People are worried about politicizing of law
 9 enforcement and the uniformed military. That's a
 10 bad thing. I hope we can agree. Lastly, I will
 11 just say, look forward to looking at the northern
 12 border, the Gordie Howe Bridge, your help
 13 staffing that. We know you are right now across
 14 many administrations, we haven't met our staffing
 15 goals at DHS and that's a problem, so we really
 16 want to make sure that opens on time.
 17 But I also want your assurances. You
 18 received FEMA assistance from Joe Biden's
 19 administration, right? You had historic floods.
 20 You asked and requested of the administration,
 21 and you were given millions of dollars to help
 22 with that. I understand you don't like Gavin
 23 Newsom, but can you say in front of the American
 24 people that you will open the books to this
 25 committee who does have oversight over FEMA, that

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1 you will open the books in a bipartisan way to
 2 ensure whether it's North Carolina or California
 3 or anywhere in between, that the American people
 4 can know that you are not playing politics with
 5 disaster assistance?
 6 GOVERNOR NOEM: Yes. Senator, I'll
 7 work with you in this committee to make sure I'm
 8 following the federal law and ensuring that you
 9 have information and transparency from us and
 10 from DHS and FEMA.
 11 SENATOR SLOTKIN: Thank you.
 12 Appreciate it. Yield back.
 13 SENATOR PAUL: Senator Lankford.
 14 SENATOR LANKFORD: Governor Noem, great
 15 to see you.
 16 GOVERNOR NOEM: Great to see you too.
 17 SENATOR LANKFORD: Thanks for being
 18 here. Thanks for accepting this nod that the
 19 President has given you. For, Brian, thanks.
 20 Both of you, you've walked through a lot. I have
 21 had the privilege of knowing you for a very long
 22 time since we served together in the House of
 23 Representatives, so I have the benefit of knowing
 24 your qualifications and how strong you are in all
 25 these background issues and how hard you work on

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1 these things because I've seen it firsthand. So,
 2 I appreciate you stepping into this because a lot
 3 of attention across the country will be focused
 4 on this. You know that full well and you've
 5 stepped into it. For Governor Landry, my state
 6 and many folks in my state are praying for you
 7 and for your state. You've done a great job in
 8 leadership at this moment in a very, very tough
 9 time for Louisiana, and we don't want to see acts
 10 of terrorism anywhere in our country and it's
 11 incredibly difficult days for a governor, so
 12 thanks for your leadership on that as well. I
 13 also have to tell you, Kristi, I've whined to my
 14 wife occasionally about the temperature that's
 15 coming on Monday. I'm very excited about Trump's
 16 inaugural, but we're all going to be sitting
 17 outside in about 12 degrees. And I thought just
 18 for fun, I would check South Dakota on Monday,
 19 it's one, for a high, for a high.
 20 GOVERNOR NOEM: Yeah, for a high.
 21 SENATOR LANKFORD: And so, I'm going to
 22 stop whining about the temperature Monday here in
 23 Washington, D.C. on it. Look, I'm going to run
 24 through a couple of things here because I know
 25 you, not everybody in Oklahoma knows you. The

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1 questions that I get from people though in
 2 Oklahoma, I want to be able to run past you
 3 because they want to be able to know the answer
 4 to these things, so I'm just going to blitz
 5 through a whole bunch of them. Will you use the
 6 legal authority that DHS already has to be able
 7 to close our border?
 8 GOVERNOR NOEM: Yes, Senator. I will
 9 work with President Trump to ensure that we're
 10 securing our border.
 11 SENATOR LANKFORD: Thank you. There's
 12 a lot of things that this Congress needs to do,
 13 has already been mentioned by Senator Slotkin as
 14 well, that we need you to be able to close
 15 loopholes to be able to give you additional
 16 authority, but there's a tremendous amount of
 17 authority currently not being used in Oklahoma,
 18 as you're saying, is that about to be used? And
 19 they'll be grateful to be able to hear that. No
 20 other President has ever created a phone app to
 21 be able to facilitate a faster processing of
 22 aliens in, called the CBP One app. It's been
 23 mentioned several times here. Will you use your
 24 authority to stop facilitating faster processing
 25 of illegal aliens into our country with the CBP

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1 One app?
 2 GOVERNOR NOEM: Yes, Senator. We will
 3 eliminate the CBP One app, maintain some of the
 4 data that's in it that's critical to knowing
 5 who's in our country, but that app will no longer
 6 be in use.
 7 SENATOR LANKFORD: Thank you. No other
 8 President has ever used the parole authority,
 9 just in general, humanitarian parole to
 10 facilitate faster processing of aliens into our
 11 country, which leads to the catch and release
 12 we've all heard about. So, the Oklahomans that I
 13 talked to say, "Are we about to end the abuse of
 14 parole and end catch and release? Is that about
 15 to stop?"
 16 GOVERNOR NOEM: Senator, President
 17 Trump's been very clear that he will end catch
 18 and release.
 19 SENATOR LANKFORD: Terrific. Folks
 20 want to know, will you use your authority with
 21 the funds that are given to you by Congress to
 22 actually build more wall rather than use the
 23 funding that's given to you as the Biden
 24 administration did to do environmental
 25 remediation around the border rather than actual

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1 border wall and border structure?
 2 GOVERNOR NOEM: Yeah. Senator,
 3 President Trump has been clear that he wants to
 4 build the wall.
 5 SENATOR LANKFORD: So, do we. So, will
 6 you use your authority to be able to scan more
 7 vehicles and obviously we've got to get you the
 8 funding to be able to do this, to be able to scan
 9 more vehicles and individuals that are carrying
 10 Fentanyl into our country through our ports of
 11 entry.
 12 GOVERNOR NOEM: Yes, Senator. We will
 13 continue to use technologies but hopefully be
 14 able to use more with the resources that were
 15 granted to scan those vehicles and know what's
 16 coming in and out of this country.
 17 SENATOR LANKFORD: Last year, FEMA
 18 employees during disaster relief were instructed
 19 by one of their supervisors that if they see a
 20 Trump sign or a Trump flag flying to skip that
 21 house, to not stop by there and tell them what
 22 their federal government can do for them. Will
 23 you allow FEMA employees or any within DHS to
 24 politicize their role and to pick and choose who
 25 gets help and who doesn't as an American?

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1 GOVERNOR NOEM: Senator, under
 2 President Trump's administration, disaster and
 3 emergency relief will not be handed out with
 4 political bias. Every American will be responded
 5 to and treated equally.
 6 SENATOR LANKFORD: That's what folks
 7 want to know. Will you review the Secret Service
 8 responsibilities to be able to go back through it
 9 and to say, are they focused on their primary
 10 mission or is there something you could distract?
 11 Secret Service still chases down financial
 12 crimes, they're still chasing down child
 13 exploitation. Those are serious things for
 14 Treasury or for FBI to do, but there's a question
 15 is if that's the first priority for Secret
 16 Service?
 17 GOVERNOR NOEM: Senator, the Secret
 18 Service is in need of dramatic reforms. They do
 19 have a protective detail element that is their
 20 priority and also an investigation side. My
 21 understanding is that that investigation side is
 22 often used to train the protective detailed
 23 officers, but clearly, they are not focusing on
 24 what their true duty is, and it needs to get back
 25 onto what they were created for and that was the

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1 that. Let me tell you another challenge we've
 2 had with Homeland Security in the past four
 3 years. When we ask for data and for information,
 4 we get, "I'll get back to you on that." When we
 5 ask again and again and again and again, we get
 6 the same statement, "I'll get back to you on
 7 that." Now, I can go down the street to the
 8 command center, where they actually get the data
 9 in live, and they have it up on big screens and
 10 they're tracking exactly what's happening on the
 11 southern border to the minute, but if I ask for
 12 what happened last month, they'll say, "We're
 13 still gathering that data." We're not asking for
 14 anything other than what Congress is supposed to
 15 get. That's the ability to be able to see data
 16 and to have real oversight over DHS and that has
 17 been a failure of this DHS along with multiple
 18 other issues on that. When we request the data
 19 for basic things like, how many special interest
 20 aliens were allowed across the border.
 21 If it was last year, we had to find out
 22 on our own. It was 70,000 people that were
 23 targeted by this administration as a potential
 24 national security risk that were not just found
 25 at the border that were released when they were

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1 protective detail, mission, and emergency
 2 situations that they need to help plan and
 3 prepare for and defend.
 4 SENATOR LANKFORD: Thank you. This
 5 committee made a request to the Secretary of
 6 Homeland Security last year, and by the way, also
 7 the head of the FBI to be able to come before
 8 this committee and to do what every Secretary of
 9 Homeland Security has done for the last 20 years,
 10 every single year, unbroken until last year. And
 11 then the secretary refused to come before this
 12 committee in an open session and talk about
 13 national threats. Now, the former Chairman
 14 protested strongly to the Biden administration
 15 and DHS, they weren't coming, but they still
 16 refused to be able to come. Will you come before
 17 this committee and talk about the threats openly
 18 so the American people can hear them in a public
 19 forum?
 20 GOVERNOR NOEM: Yes. Senator, Senator
 21 Peters, and I discussed this quite a bit in our
 22 meeting as well, and I have committed to come and
 23 give that briefing to this committee and to the
 24 American people.
 25 SENATOR LANKFORD: Thank you. We need

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1 found at the border. 70,000 people just from
 2 last year in the country right now that this
 3 administration declared at the border, they're a
 4 potential national security risk. Now, I know
 5 you're not going to do that, but when we ask for
 6 the data and for the information, when we say,
 7 "How's the National Vetting Center working?" Do
 8 you have the connection to be able to screen
 9 individuals there? We're just doing our
 10 oversight responsibility. You've served in
 11 Congress before and did a great job on that and
 12 did oversight. We want to still be able to do
 13 the same thing. Will you provide data to this
 14 committee so that we can cooperate with you to
 15 help?
 16 GOVERNOR NOEM: Senator, I will follow
 17 the law and be transparent with you and allow you
 18 to do the due diligence towards oversight that
 19 you're tasked with.
 20 SENATOR LANKFORD: I have absolutely no
 21 doubt about that, Governor. I have absolutely no
 22 doubt, looking forward to you serving in that
 23 role.
 24 GOVERNOR NOEM: Thank you.
 25 SENATOR LANKFORD: Thank you.

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1 GOVERNOR NOEM: Thank you.
 2 SENATOR PAUL: Well, congratulations,
 3 Governor Noem. You are almost done.
 4 GOVERNOR NOEM: Okay.
 5 SENATOR PAUL: We've been through a lot
 6 of questions. I think you've handled the
 7 questions very well and I'm ask a couple of
 8 questions, and I think the ranking member has a
 9 few and I think we'll be done very shortly. I
 10 think a lot of Americans, including some
 11 conservatives misunderstand the First Amendment.
 12 They think the First Amendment says that
 13 "Facebook has to publish my opinion," or, "The
 14 Wall Street Journal has to publish my opinion,"
 15 or "We need to force them to be fair." That's
 16 not what the First Amendment's about at all.
 17 The First Amendment really doesn't
 18 apply to telling private companies what we can or
 19 cannot say. YouTube censored me and I despise
 20 their policy. They actually took down speeches I
 21 made on the floor, but really, I don't have a
 22 legal recourse other than I can complain about
 23 YouTube being unfair and not hosting both sides
 24 of an issue. However, with the government
 25 though, there is a rule. The First Amendment

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1 who said that the pushiness, the coerciveness of
 2 government meeting with them was unprecedented
 3 and that they pushed back. But he also said
 4 worse than them just sort of telling him he
 5 should restrict speech; they also threatened him.
 6 They threatened to come after him through
 7 antitrust law, they threatened to remove parts of
 8 Section 230 of the liability protection.
 9 Just to imagine this bully nature of
 10 government, and I know you're opposed to that,
 11 but if you're confirmed and you're in a position
 12 of saying, "We're just no longer sending people
 13 to meet with media," and the way I describe it is
 14 to talk about constitutionally protected speech.
 15 Because some will say, "Oh, well, what about
 16 pornography or what about child trafficking?"
 17 Those are illegal. Those are not
 18 constitutionally protected speech. You have
 19 every ability to meet with that. But for
 20 constitutionally protected speech, will you tell
 21 us in America that you will no longer be sending
 22 government agents to meet with the media?
 23 GOVERNOR NOEM: Yes, Senator. I'll
 24 work with you to ensure that civil rights and
 25 liberties are protected and that we are not in

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1 specifically says, "Congress shall pass no law
 2 banning or abridging speech," and this is what
 3 really got us worried about what, not only the
 4 FBI was doing, but the Department of Homeland
 5 Security actually meeting with these companies.
 6 SENATOR PAUL: ... on a weekly basis.
 7 And imagine the chilling effect of this, imagine
 8 that there are cameras here, that they're going
 9 to end their filming of this interview and then
 10 decide, "Well, what she said or what he said
 11 really was misinformation, and we should edit
 12 that out." Can you imagine? It's just hard for
 13 me to imagine that the media has not, which once
 14 defended the First Amendment, hasn't been in more
 15 of an uproar over the government meeting with the
 16 media to decide things. Some of this we didn't
 17 know, and then Elon Musk bought Twitter. People
 18 asked him, they said, "Well, you've paid \$44
 19 billion for Twitter. Isn't that too much?" And
 20 he said, "I paid \$44 billion to defend free
 21 speech."
 22 And it's been an amazing service, not
 23 only to open up the forum to more viewpoints, but
 24 to point out what the government was doing. In
 25 this last week, we heard from Mark Zuckerberg,

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1 the misinformation and disinformation space like
 2 the current DHS is.
 3 SENATOR PAUL: The only other thing I
 4 would ask on this basis is we will send requests,
 5 we sent requests previously, sometimes, and often
 6 bipartisan requests, for information. The
 7 Twitter files, Michael Schellenberger, Matt
 8 Taibbi, Bari Weiss did a great job of showing
 9 what was happening in Twitter and how they were
 10 cooperating with government. I think the other
 11 investigation that needs to occur is who are the
 12 people in government they were talking to? Do
 13 they still work at DHS, and can we make sure that
 14 they're not in a position of authority?
 15 And this is not something I'm going to
 16 tell you to do. It's just a request that you
 17 have your own investigation, that you have people
 18 who work for DHS to say, "We are going to look
 19 for people who are bringing their political bias
 20 to work and trying to influence speech and
 21 restrict speech based on their bias and help us
 22 in rooting that out and making sure that these
 23 people never again have that responsibility."
 24 Because I don't think there's ever been anything
 25 like this as far as the restriction of speech,

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1 and I think the election is largely going to stop
 2 and tilt things the other way. But will you help
 3 us by looking internally for those who are trying
 4 to restrict speech?
 5 GOVERNOR NOEM: Senator, I look forward
 6 to working with you on that mission.
 7 SENATOR PAUL: I don't have any other
 8 questions now, but I think Senator Peters and
 9 Senator Blumenthal, and we'll see how it goes.
 10 We're going to start with Senator Peters with one
 11 more five-minute round.
 12 SENATOR PETERS: Yeah, I'll be fairly
 13 brief. We've had opportunity to talk at length
 14 about many issues, and again, I appreciate that,
 15 Governor. I just want to stress going forward,
 16 and we've heard a lot of comments here, I think
 17 there's been a fair amount of political theater.
 18 Not as much as I know exist in other committees,
 19 and I've always strived, and I know ranking
 20 member or now Chairman Paul share the notion that
 21 we want to be a fact-based committee and try to
 22 find tangible solutions to the tough problems
 23 that we face, and data is important. We've heard
 24 a lot of numbers being thrown around here, and I
 25 don't have time to go through and challenge those

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1 numbers. Some of them we don't even know where
 2 they came from. I don't think that's helpful to
 3 the very important mission of confirm that you're
 4 going to be dealing with. So, I hope in the
 5 future, that we're actually dealing with facts.
 6 You've mentioned many times that you do
 7 want to deal with facts and real data. And
 8 again, we heard a lot here that's not real data,
 9 and we should not operate that way. And if
 10 confirmed when we move forward, I'm going to look
 11 forward to working with you based on the facts
 12 and understand where the real threats are, how we
 13 need to appropriate resources to make sure we're
 14 meeting those threats.
 15 And let's take this hyper-partisanship
 16 out of such an important issue of homeland
 17 security. We have way too much partisanship in
 18 this country, and it's resulted in a polarization
 19 of people here. We've got to come together as
 20 this country, we've got to lock arms and
 21 understand that we're all proud Americans, we all
 22 want to do what's best for the American people
 23 and solve the issues that are before us.
 24 So, in that spirit, and certainly
 25 you've communicated that spirit to me, but in

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1 that spirit, I hope if confirmed that is exactly
 2 what you will be bringing to this office, and
 3 let's move away from this toxic political
 4 environment that we have in the country and
 5 celebrate what's great about our country in the
 6 spirit of bringing the American people together.
 7 So, I have one question before we turn
 8 it over to other members. As a member of this
 9 committee, as well as the Armed Services
 10 Committee, I've focused a great deal on the safe
 11 integration of drones in our airspace while
 12 addressing the growing threats that drones
 13 possess. We certainly see what drones are doing
 14 in changing the face of warfare, whether it's in
 15 Ukraine and other battlefields around the world.
 16 We are very concerned about the weaponization of
 17 those drones and what it could mean to the
 18 security here in the United States. I've
 19 proposed comprehensive legislation to extend
 20 authorities beyond just the FBI and DOJ and
 21 Homeland Security to local law enforcement.
 22 You mentioned in your comments about
 23 security for the Super Bowl, which is incredibly
 24 important, but we have to remember that that
 25 threat exists for all games. In fact, one of the

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1 biggest supporters of my legislation is the NFL.
 2 In fact, we just had a recent playoff game that
 3 was delayed because of drones that flew into that
 4 playoff game. We are very concerned that you
 5 could have a drone with a grenade or an explosive
 6 device, which would be absolutely catastrophic.
 7 It's absolutely essential that we address this
 8 threat. What we're seeing around the world and
 9 what we're seeing in daily activities should be a
 10 concern. I think this is just a matter of time.
 11 It's not if, it's when, and we need to be on the
 12 front end of that.
 13 And with that in mind, I want to remind
 14 folks that Congress just recently extended
 15 critical counter-UAS authority, counter-drone
 16 authority only for a short-time basis for the
 17 12th time. We only do these little, tiny short-
 18 term extensions, and we aren't dealing with the
 19 problem comprehensively as we should, and those
 20 are going to expire on March 14th, a very short
 21 time from now. And so, my question for you,
 22 Governor, is if confirmed as DHS Secretary, will
 23 you commit to working with me and my colleagues
 24 to pass durable, long-term authorities that will
 25 protect this country from what is a real threat,

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1 and it's just a matter of time? And I don't want
 2 to have a horrible incident occur, and people
 3 wonder why we didn't take action beforehand. So,
 4 please address that.

5 GOVERNOR NOEM: Senator, I look forward
 6 to working with you and this committee to address
 7 the threats we may face and the usage of drones
 8 in this country in relation to our national
 9 security interests and our homeland security
 10 interests. So, thank you for bringing up the
 11 conversation today, because it is one of the
 12 areas within DHS that we have a responsibility to
 13 address in cooperation with Congress.

14 SENATOR PETERS: And my first comments
 15 on bringing people together, please comment on
 16 that.

17 GOVERNOR NOEM: Oh, well, thank you,
 18 sir. Yes, no.

19 SENATOR PETERS: I didn't ask that
 20 question, but in my 24 seconds left.

21 GOVERNOR NOEM: I'm looking forward to
 22 working with everyone, Republicans and Democrats
 23 and everyone else in between, that in this
 24 country that is focused on keeping America safe
 25 and secure for our future. I would just point,

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1 Senator, to my background and my history. When I
 2 came to Congress, I worked with Republicans and
 3 Democrats on both sides of the aisle on many
 4 pieces of legislation and was very happy to do so
 5 and focus on priorities on where we could
 6 agreement, knowing we may disagree on some
 7 issues, but there was areas where we could keep
 8 the federal government accountable and do due
 9 diligence by the people that pay their taxes and
 10 get up and go to work every single day. As
 11 governor, as well. I was governor for every
 12 single person in the state of South Dakota, and
 13 they were my number one priority, and everyone
 14 knew there that it didn't matter if you were
 15 Republican or Democrat, that my focus was on them
 16 and keeping our state thriving and free.

17 So, I look forward to continuing the
 18 work that I always have to be coming up with
 19 solutions and in a bipartisan manner, and
 20 hopefully, my visits to your office and
 21 conversations reflected that and my intention on
 22 how I would conduct the role as the Department of
 23 Homeland Security Secretary.

24 SENATOR PETERS: Got a brief follow up
 25 to that.

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1 GOVERNOR NOEM: Sure.

2 SENATOR PETERS: So, it's data and
 3 facts that we can all agree on that drive our
 4 policy and not political theater. Would you
 5 agree?

6 GOVERNOR NOEM: Well, certainly, sir.
 7 We need to be addressing facts and information
 8 rather than political theater. We also need to
 9 speak truth to facts. So, I think it's important
 10 that we're willing to confront our challenges
 11 head on and have those conversations. And you'll
 12 see me back at your office door very soon to
 13 continue our work together.

14 SENATOR PETERS: Very good. Thank you.

15 SENATOR PAUL: And I want to second
 16 basically what Senator Peters has said. On
 17 records requests, I've told him, and I plan on
 18 it, it's going to be administration of my party,
 19 that if he wants records and there are legitimate
 20 records, we're going to sign requests together,
 21 and we'd like to get the records. It also helps,
 22 though, and I think Senator Lankford mentioned
 23 this, is you ask a question, not you, but to the
 24 administration or any administration, they're
 25 like, "Oh, yeah. We'll get back to you on it."

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1 Many times, I've even asked in advance, and I
 2 would suggest that we ask you in advance
 3 together, we ask in advance, "If you're coming in
 4 a month, we say we want this data. Be prepared
 5 to talk about it." And if you are, you'll have
 6 many more friends on both sides because what
 7 usually happens, and that's why I don't like
 8 springing the question. If it's a technical
 9 question that needs data, we're going to tell you
 10 in advance, at least I will, and we want you to
 11 come prepared with that.

12 And that goes a long way, because
 13 really what happens is we get stiff-armed. They
 14 say, "We'll get back to you," and we have no way
 15 to force you, really, other than we could cut the
 16 money off, and nobody ever does that. But you'll
 17 have 200,000 people working for you. By
 18 goodness, send your experts out, scour the
 19 records. And it is true, facts are difficult,
 20 and sometimes, there's different spins on the
 21 same set of facts, but I think that will help.

22 On the drones, I think we need more
 23 facts. So, I'm more than willing to work with
 24 the ranking member on doing something on drones,
 25 but I don't want every sheriff out there shooting

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1 up in the sky at stuff. We got to figure out and
 2 we got to get the truth about do we really have
 3 drones everywhere flying all the time? How many
 4 of them are planes? How many of them are drones?
 5 And let's go through this, and then let's figure
 6 out, and then let's talk about how we bring
 7 drones down. If we interrupt and collect a lot
 8 of cellular signal through that, are we doing it
 9 with a warrant? What are we going to do with all
 10 the Americans' data that we've collected to take
 11 down drones? If we have to take a whole cell
 12 towers worth of data, there's a lot of innocent
 13 people's data is going to be collected in that.
 14 Is that being gotten rid of? So, I think there
 15 are ways we can get to the right place.
 16 Everybody, obviously nobody wants drones coming
 17 down.
 18 The only other thing I'd add on drones
 19 before I turn it over to Senator Lankford is
 20 look, I'm all for the NFL being protected and the
 21 Super Bowl being protected. They need to pay.
 22 They are a very rich organization. They want
 23 drones flying over in New Orleans. I'm all for
 24 it. The NFL ought to pay the government if the
 25 government's doing it, or we ought to have

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1 private contractors doing it, but they shouldn't
 2 just get it for free. Senator Lankford.
 3 SENATOR LANKFORD: Thank you. Thanks,
 4 again. As Senator Paul will remember on this,
 5 there used to be a public facing website that all
 6 Americans could actually get the data, what's
 7 happening on the border, what's actually moving,
 8 and then when the numbers got bad, that seemed to
 9 disappear, and then we couldn't even get the data
 10 anymore. So, I look forward to actually finding
 11 ways to be able to have everybody has the ability
 12 to be able to see some of this data as well on
 13 it.
 14 There's a reason that the DHS Secretary
 15 is the very first week of nominations. This is a
 16 really important role, and it is a non-partisan
 17 role. It is a national security role, and we're
 18 grateful that you've stepped into this, but it is
 19 important that we actually get you on the task to
 20 be able to make sure that it's out there.
 21 You mentioned earlier in your testimony
 22 that we do have a morale problem at DHS right
 23 now, and I think a lot of that is because people
 24 that signed up to be federal law enforcement to
 25 be able to protect the United States of America

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1 have felt like they've been sidelined, and
 2 they've not been able to do their job that they
 3 really signed up for. And what I'm hearing from
 4 you is you're going to allow them to do their job
 5 again, what has been historically true for a long
 6 time, that federal law enforcement is there to
 7 actually help protect the country and the
 8 citizens and those communities, that you're going
 9 to allow them to do that, and that's helpful.
 10 So, I have two quick things that I want
 11 to be able to mention on this. One is right now,
 12 just in the structure of this, and we can talk
 13 about this a different time, but CBP facilities
 14 that are along the border are really run by a
 15 different entity called GSA, and they're not
 16 allowed to be able to do updates on their
 17 facilities or to design their facilities.
 18 Somebody who lives 3,000 miles away and who
 19 doesn't actually do border patrol work, they
 20 actually design and oversee their facilities.
 21 That's a problem that we've got to be able to
 22 fix.
 23 So, we've worked to be able to give
 24 more flexibility to CBP that when they have
 25 difficulty and challenges there, they have the

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1 ability to be able to make those changes. But
 2 I'm not going to ask you to make a commitment to
 3 this, because this is just one of those detail
 4 areas, but will you commit in the future to
 5 working with us, that this committee and you can
 6 work together to be able to figure out how the
 7 folks that are on the field can actually make
 8 decisions about the facilities they work in?
 9 GOVERNOR NOEM: Yeah. Senator, I
 10 commit to working with you on that issue.
 11 SENATOR LANKFORD: Terrific. And then
 12 I had a constituent in Oklahoma that is a hunter,
 13 like you are, like I am. He had a bag that he
 14 had some additional rounds that were in his bag
 15 that were left over from a hunting trip months
 16 before. He packed his bag, went on a vacation
 17 trip overseas, went through security with his
 18 bag. When he got overseas and then left and came
 19 back, they scanned his bag and said, "You have
 20 bullets, you have rounds in your bag," and he had
 21 I think five that were in his bag, that he didn't
 22 even remember were left over in an outside pocket
 23 from a hunting trip before.
 24 Well, they promptly put him in jail and
 25 held him there and detained him there. Now, we

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1 worked through all the process to be able to get
 2 him back. My question is that same bag went
 3 through TSA security in my state before it went
 4 through security overseas. And so, one of the
 5 questions that I've asked is why were those
 6 rounds picked up there and not here?
 7 Now, we don't have the full answer to
 8 that yet, but that's just one of those TSA
 9 questions that we need to have. Americans right
 10 now are on planes all over the country, and they
 11 count on a certain level of security when they go
 12 through that process. So, in the days ahead,
 13 will you work with me to be able to identify what
 14 are the challenges that we still face with the
 15 screening process and to be able to correct those
 16 for the security of all Americans?
 17 GOVERNOR NOEM: Yes, Senator, I will
 18 work with you on that.
 19 SENATOR LANKFORD: Thank you.
 20 GOVERNOR NOEM: I was surprised TSA
 21 didn't come up more today, but that is an area in
 22 need of reform as well, and I look forward to
 23 working with you there.
 24 SENATOR LANKFORD: Look forward to
 25 that. Thank you. I yield back.

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1 SENATOR PAUL: Government needs a
 2 healthy dose of common sense. Bullets in your
 3 bag. I had a guy with bullets in the back of his
 4 pickup truck coming back from Mexico. We
 5 arrested him and took his truck, and only because
 6 the Institute of Justice fought for him for three
 7 years that he get his truck back. That's crazy,
 8 the things we do. Let's have some common sense,
 9 and hopefully, someone overseeing it will allow
 10 that. Senator Blumenthal, you're going to finish
 11 us up.
 12 SENATOR BLUMENTHAL: Thank you,
 13 Chairman Paul. I'm the last of your questioners,
 14 so that means I get unlimited amounts of time.
 15 GOVERNOR NOEM: Okay.
 16 SENATOR BLUMENTHAL: Not really. Not
 17 even close. I want to sort of continue the
 18 emphasis on bipartisanship and most especially on
 19 immigration reform. What this nation needs is
 20 comprehensive immigration reform. We know about
 21 the need for more H-1B visas and other kinds of
 22 extensions of the visa program that enable the
 23 United States to have more workers that are
 24 desperately needed in certain areas of our
 25 country. We know that there has to be better

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1 border security, generally. We know we need to
 2 provide some kind of path to earn citizenship for
 3 a lot of the undocumented people in this country,
 4 and we know it's possible, because we did it in
 5 2013.
 6 The United States Senate, as you will
 7 recall, passed a comprehensive immigration reform
 8 measure. Overwhelmingly, it was bipartisan. I
 9 was proud to be a part of it, going through the
 10 Judiciary Committee, but obviously it will
 11 involve Homeland Security, and I hope that we can
 12 continue, as Senator Lankford was a part of the
 13 effort in the last session to expand on those
 14 efforts and move forward on a bipartisan basis
 15 toward bipartisan comprehensive immigration
 16 reform.
 17 I want to talk to you a little bit
 18 about domestic terrorism, which we discussed
 19 during my previous round, and I know you've
 20 discussed it afterward, including not just
 21 migrant crime and radicalization by ISIS, which
 22 are real and present problems, I also want to ask
 23 you about domestic terrorism events unrelated to
 24 groups outside our borders. We've seen a rise in
 25 antisemitism in this country. It has spiked

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1 beyond any prediction, and I want to know of your
 2 concern with antisemitist, racist events,
 3 Charlottesville, Buffalo, Pittsburgh, there's a
 4 shorthand for these violent terrorist acts
 5 against people in the United States.
 6 GOVERNOR NOEM: Yes, Senator, I'm very
 7 concerned about what we've seen in this country
 8 as far as antisemitic violence that has happened.
 9 In fact, last year during our legislative
 10 session, I brought legislation to more clearly
 11 define it so that we could fight it in our home
 12 state. And I'm hopeful I can work with you to
 13 continue to do what we can to make sure that we
 14 are addressing this rising threat and not
 15 facilitating it in this country.
 16 SENATOR BLUMENTHAL: And I just want to
 17 make sure that when you say we're protecting
 18 Americans against terrorism, that we're
 19 protecting all Americans, including people in
 20 mosques, in churches, in synagogues, people
 21 regardless of their worship, their race, their
 22 background. We need to protect all Americans
 23 from antisemitism, racism, Islamophobia. I hope
 24 you'll commit to that effort.
 25 GOVERNOR NOEM: Yes, correct. Thank

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1 you, Senator, and I look forward to working with
 2 you to do that.
 3 SENATOR BLUMENTHAL: In my closing
 4 minute-and-a-half, I just want to call your
 5 attention to an effort that I've led to help
 6 reunite children with their parents, children who
 7 were separated as a result of the so-called
 8 family separation policy. In the last
 9 administration, I have introduced a measure
 10 called Keep Families Together, not only to limit
 11 separation of families at or near ports of entry,
 12 but also the Families Belong Together Act for
 13 several Congresses to help bring the children,
 14 the kids who were victims of this policy and who
 15 still are not back with their parents. I hope
 16 that you will support that kind of effort.
 17 GOVERNOR NOEM: Senator, the Trump
 18 administration never had a family separation
 19 policy. They had a zero-tolerance policy, which
 20 said that our laws would be followed. What I'm
 21 alarmed by is the over 300,000 children that went
 22 missing during the Biden administration. And
 23 when we talk about children and what they're
 24 potentially facing as far as victimization in
 25 this country and the trafficking that's going on,

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1 this administration's lack of desire to find out
 2 where those children are or what they may be
 3 going through is alarming to me. So, I want to
 4 stop that.
 5 SENATOR BLUMENTHAL: Well, because my
 6 time is expiring, I'm just going to interrupt
 7 again with apologies to say let's put aside ...
 8 GOVERNOR NOEM: Well, I can't put aside
 9 340,000 children.
 10 SENATOR BLUMENTHAL: Let's put aside
 11 the labels, let's put aside what happened in the
 12 past. There are still a thousand children who
 13 are separated and waiting to be reunited. I'd
 14 like your commitment that you're going to
 15 continue the effort to reunite them with their
 16 parents.
 17 GOVERNOR NOEM: Senator, keeping
 18 families together is critically important to me
 19 and to this country. I'm concerned about Laken
 20 Riley's family, that they no longer have her.
 21 I'm concerned about the fact that we have people
 22 in this country that don't know where their
 23 children are or people in other countries who
 24 sent their children here and they've been lost by
 25 this administration. So, yes, my focus will be

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1 to keep families together. We will uphold our
 2 law, and we'll make sure that we're doing
 3 everything we can to keep our children safe from
 4 the trafficking and the drug epidemic that's hit
 5 this country.
 6 SENATOR BLUMENTHAL: I'm going to end
 7 on an optimistic note and say I take that as a
 8 yes.
 9 GOVERNOR NOEM: Yeah.
 10 SENATOR BLUMENTHAL: Thank you, Mr.
 11 Chairman.
 12 SENATOR PAUL: Thank you for your
 13 testimony. The nominee has filed responses to
 14 biographical and financial questionnaires,
 15 answered prehearing questions submitted by the
 16 committee, and had their financial statements
 17 reviewed by the Office of Government Ethics.
 18 Without objection, this information will be part
 19 of the hearing record with the exception of the
 20 financial data, which are on file and available
 21 for public inspection in the committee offices.
 22 The hearing will remain open until 5:00 p.m.
 23 today, Friday, January 17th for the submission of
 24 statements and questions.
 25 For the record, this hearing is

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1 adjourned.
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<p>1 CERTIFICATION</p> <p>2 I, Sonya Ledanski Hyde, certify that the</p> <p>3 foregoing transcript is a true and accurate</p> <p>4 record of the proceedings.</p> <p>5</p> <p>6 <u><i>Sonya M. Ledanski Hyde</i></u></p> <p>7</p> <p>8</p> <p>9</p> <p>10 Veritext Legal Solutions</p> <p>11 330 Old Country Road</p> <p>12 Suite 300</p> <p>13 Mineola, NY 11501</p> <p>14</p> <p>15 Date: February 17, 2025</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 146</p>	

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Exhibit 4

Vance Vows an End to Programs for Legal Immigrants

Hundreds of thousands of immigrants live and work in the United States through programs that give them temporary legal status. In the border state of Arizona, JD Vance vowed they would stop.



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By Chris Cameron

Reporting from Peoria, Ariz.

Oct. 22, 2024

Senator JD Vance of Ohio, former President Donald J. Trump's running mate, escalated Mr. Trump's attacks against legal immigration on Tuesday, vowing to end programs that authorize hundreds of thousands of immigrants to live and work in the United States.

“What Donald Trump has proposed doing is we're going to stop doing mass parole. We're going to stop doing mass grants of Temporary Protected Status,” Mr. Vance said at a campaign event in Peoria, Ariz. “Of course, you're going to have people fleeing from tyranny, but that happens on a case-by-case basis, not by waving the magic government wand.”

Later in Tucson, Mr. Vance deflected questions from local reporters about deporting DACA recipients and restarting family separations at the border. Without specifically addressing DACA, which stands for Deferred Action for Childhood Arrivals, Mr. Vance said “we also have to deport people, not just the bad people who came into our country, but people who violated the law coming into this country. We've got to be willing to deport them.”

About 864,000 immigrants have legal residency through a program known as Temporary Protected Status, which Congress created in 1990 for people fleeing war and other crises in their home countries. The program currently grants legal protection to immigrants from 16 countries, with most coming from Venezuela, El Salvador and Haiti.

This month, Mr. Trump had vowed to revoke that legal status for Haitian immigrants, who have been the target of accusations by the former president and Mr. Vance — most prominently in Springfield, Ohio. Mr. Vance's remarks on Tuesday appeared to widen that pledge, suggesting that all immigrants granted Temporary Protected Status would have to find other methods to stay in the country or face deportation. Immigrants from many of those countries would not have a clear alternative path to temporary protection.

A representative for Mr. Vance declined to comment when asked about specifics of the plan to end Temporary Protected Status.

Mr. Vance also appeared to propose the end of other parole programs that allow hundreds of thousands of immigrants to live in the United States for a short period without a visa or green card. This month, the Biden administration said it would allow one of those programs — for people from Cuba, Venezuela, Haiti and Nicaragua — to lapse, reflecting the political pressure President Biden and Vice President Kamala Harris face on immigration, and the desire to blunt attacks from Republicans on the issue in the final days before the election.

A reporter from Telemundo had asked Mr. Vance in Peoria about Mr. Trump's vow to deport Haitians living in the United States under Temporary Protected Status, and if that effort would extend to immigrants from other countries and in other migration programs. Mr. Vance again described immigrants in those programs as "illegal immigrants," even though they are in the country legally, and blamed them for rising costs and other issues.

"What Kamala Harris has done," Mr. Vance said at a factory for military equipment in Peoria, "is she has used programs that are meant to help people who are escaping tyranny, and she's used it to grant amnesty to millions upon millions of

people who have no legal right to be in the country, and that has to stop.”

Chris Cameron covers politics for The Times, focusing on breaking news and the 2024 campaign.

Exhibit 5

If he regains power, Donald Trump wants not only to revive some of the immigration policies criticized as draconian during his presidency, but expand and toughen them.



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By Charlie Savage, Maggie Haberman and Jonathan Swan

Nov. 11, 2023

Former President Donald J. Trump is planning an extreme expansion of his first-term crackdown on immigration if he returns to power in 2025 — including preparing to round up undocumented people already in the United States on a vast scale and detain them in sprawling camps while they wait to be expelled.

The plans would sharply restrict both legal and illegal immigration in a multitude of ways.

Mr. Trump wants to revive his first-term border policies, including banning entry by people from certain Muslim-majority nations and reimposing a Covid 19-era policy of refusing asylum claims — though this time he would base that refusal on assertions that migrants carry other infectious diseases like tuberculosis.

He plans to scour the country for unauthorized immigrants and deport people by the millions per year.

To help speed mass deportations, Mr. Trump is preparing an enormous expansion of a form of removal that does not require due process hearings. To help Immigration and Customs Enforcement carry out sweeping raids, he plans to reassign other federal agents and deputize local police officers and National Guard soldiers voluntarily contributed by Republican-run states.

To ease the strain on ICE detention facilities, Mr. Trump wants to build huge camps to detain people while their cases are processed and they await deportation flights. And to get around any refusal by Congress to appropriate the necessary funds, Mr.

Trump would redirect money in the military budget, as he did in his first term to spend more on a border wall than Congress had authorized.



“Trump will unleash the vast arsenal of federal powers to implement the most spectacular migration crackdown,” said Stephen Miller, Mr. Trump’s former White House aide who was the chief architect of his border control efforts. Cooper Neill for The New York Times

In a public reference to his plans, Mr. Trump told a crowd in Iowa in September: “Following the Eisenhower model, we will carry out the largest domestic deportation operation in American history.” The reference was to a 1954 campaign to round up and expel Mexican immigrants that was named for an ethnic slur — “Operation Wetback.”

The constellation of Mr. Trump’s 2025 plans amounts to an assault on immigration on a scale unseen in modern American history. Millions of undocumented immigrants would be barred from the country or uprooted from it years or even decades after settling here.

Such a scale of planned removals would raise logistical, financial and diplomatic challenges and would be vigorously challenged in court. But there is no mistaking the breadth and ambition of the shift Mr. Trump is eyeing.

In a second Trump presidency, the visas of foreign students who participated in anti-Israel or pro-Palestinian protests would be canceled. U.S. consular officials abroad will be directed to expand ideological screening of visa applicants to block people the Trump administration considers to have undesirable attitudes. People who were granted temporary protected status because they are from certain countries deemed unsafe, allowing them to lawfully live and work in the United States, would have that status revoked.

Similarly, numerous people who have been allowed to live in the country temporarily for humanitarian reasons would also lose that status and be kicked out, including tens of thousands of the Afghans who were evacuated amid the 2021 Taliban takeover and allowed to enter the United States. Afghans holding special visas granted to people who helped U.S. forces would be rechecked to see if they really did.

And Mr. Trump would try to end birthright citizenship for babies born in the United States to undocumented parents — by proclaiming that policy to be the new position of the government and by ordering agencies to cease issuing citizenship-affirming documents like Social Security cards and passports to them. That policy's legal legitimacy, like nearly all of Mr. Trump's plans, would be virtually certain to end up before the Supreme Court.

In interviews with The New York Times, several Trump advisers gave the most expansive and detailed description yet of Mr. Trump's immigration agenda in a potential second term. In particular, Mr. Trump's campaign referred questions for this article to Stephen Miller, an architect of Mr. Trump's first-term immigration policies who remains close to him and is expected to serve in a senior role in a second administration.

Sign up to get Maggie Haberman's articles emailed to you. Maggie Haberman is a White House correspondent reporting on President Trump. [Get it sent to your inbox.](#)

All of the steps Trump advisers are preparing, Mr. Miller contended in a wide-ranging interview, rely on existing statutes; while the Trump team would likely seek a revamp of immigration laws, the plan was crafted to need no new substantive legislation. And while acknowledging that lawsuits would arise to challenge nearly every one of them, he portrayed the Trump team's daunting array of tactics as a "blitz" designed to overwhelm immigrant-rights lawyers.

"Any activists who doubt President Trump's resolve in the slightest are making a drastic error: Trump will unleash the vast arsenal of federal powers to implement the most spectacular migration crackdown," Mr. Miller said, adding, "The immigration legal activists won't know what's happening."

Todd Schulte, the president of FWD.us, an immigration and criminal justice advocacy group that repeatedly fought the Trump administration, said the Trump team's plans relied on "xenophobic demagoguery" that appeals to his hardest-core political base.

"Americans should understand these policy proposals are an authoritarian, often illegal, agenda that would rip apart nearly every aspect of American life — tanking the economy, violating the basic civil rights of millions of immigrants and native-born Americans alike," Mr. Schulte said.

'Poisoning the Blood'



Migrants gather outside the Roosevelt Hotel in Midtown Manhattan in August, waiting to be processed. Jeenah Moon for The New York Times

Since Mr. Trump left office, the political environment on immigration has moved in his direction. He is also more capable now of exploiting that environment if he is re-elected than he was when he first won election as an outsider.

The ebbing of the Covid-19 pandemic and resumption of travel flows have helped stir a global migrant crisis, with millions of Venezuelans and Central Americans fleeing turmoil and Africans arriving in Latin American countries before continuing their journey north. Amid the record numbers of migrants at the southern border and beyond it in cities like New York and Chicago, voters are frustrated and even some Democrats are calling for tougher action against immigrants and pressuring the White House to better manage the crisis.

Mr. Trump and his advisers see the opening, and now know better how to seize it. The aides Mr. Trump relied upon in the chaotic early days of his first term were sometimes at odds and lacked experience in how to manipulate the levers of federal power. By the end of his first term, cabinet officials and lawyers who sought to restrain some of his actions — like his Homeland Security secretary and chief of staff, John F. Kelly — had been fired, and those who stuck with him had learned much.

In a second term, Mr. Trump plans to install a team that will not restrain him.

Since much of Mr. Trump's first-term immigration crackdown was tied up in the courts, the legal environment has tilted in his favor: His four years of judicial appointments left behind federal appellate courts and a Supreme Court that are far more conservative than the courts that heard challenges to his first-term policies.

The fight over Deferred Action for Childhood Arrivals provides an illustration.

DACA is an Obama-era program that shields from deportation and grants work permits to people who were brought unlawfully to the United States as children. Mr. Trump tried to end it, but the Supreme Court blocked him on procedural grounds in June 2020.

Mr. Miller said Mr. Trump would try again to end DACA. And the 5-4 majority of the Supreme Court that blocked the last attempt no longer exists: A few months after the DACA ruling, Justice Ruth Bader Ginsburg died and Mr. Trump replaced her with a sixth conservative, Justice Amy Coney Barrett.

Mr. Trump's rhetoric has more than kept up with his increasingly extreme agenda on immigration.

His stoking of fear and anger toward immigrants — pushing for a border wall and calling Mexicans rapists — fueled his 2016 takeover of the Republican Party. As president, he privately mused about developing a militarized border like Israel's, asked whether migrants crossing the border could be shot in the legs and wanted a proposed border wall topped with flesh-piercing spikes and painted black to burn migrants' skin.

As he has campaigned for the party's third straight presidential nomination, his anti-immigrant tone has only grown harsher. In a recent interview with a right-wing website, Mr. Trump claimed without evidence that foreign leaders were deliberately emptying their "insane asylums" to send the patients across America's southern border as migrants. He said migrants were "poisoning the blood of our country." And at a rally on Wednesday in Florida, he compared them to the fictional serial killer and cannibal Hannibal Lecter, saying, "That's what's coming into our country right now."

Mr. Trump had similarly vowed to carry out mass deportations when running for office in 2016, but the government only managed several hundred thousand removals per year under his presidency, on par with other recent administrations. If they get another opportunity, Mr. Trump and his team are determined to achieve annual numbers in the millions.

Keeping People Out



Migrants wait to be escorted by Border Patrol agents to a processing area in September. Mr. Trump's stoking of fear and anger toward immigrants fueled his 2016 takeover of the Republican Party. Mark Abramson for The New York Times

Mr. Trump's immigration plan is to pick up where he left off and then go much farther. He would not only revive some of the policies that were criticized as draconian during his presidency, many of which the Biden White House ended, but also expand and toughen them.

One example centers on expanding first-term policies aimed at keeping people out of the country. Mr. Trump plans to suspend the nation's refugee program and once again categorically bar visitors from troubled countries, reinstating a version of his ban on travel from several mostly Muslim-majority countries, which President Biden called discriminatory and ended on his first day in office.

Mr. Trump would also use coercive diplomacy to induce other nations to help, including by making cooperation a condition of any other bilateral engagement, Mr. Miller said. For example, a second Trump administration would seek to re-establish an agreement with Mexico that asylum seekers remain there while their claims are processed. (It is not clear that Mexico would agree; a Mexican court has said that deal violated human rights.)

Mr. Trump would also push to revive “safe third country” agreements with several nations in Central America, and try to expand them to Africa, Asia and South America. Under such deals, countries agree to take would-be asylum seekers from specific other nations and let them apply for asylum there instead.

While such arrangements have traditionally only covered migrants who had previously passed through a third country, federal law does not require that limit and a second Trump administration would seek to make those deals without it, in part as a deterrent to migrants making what the Trump team views as illegitimate asylum claims.

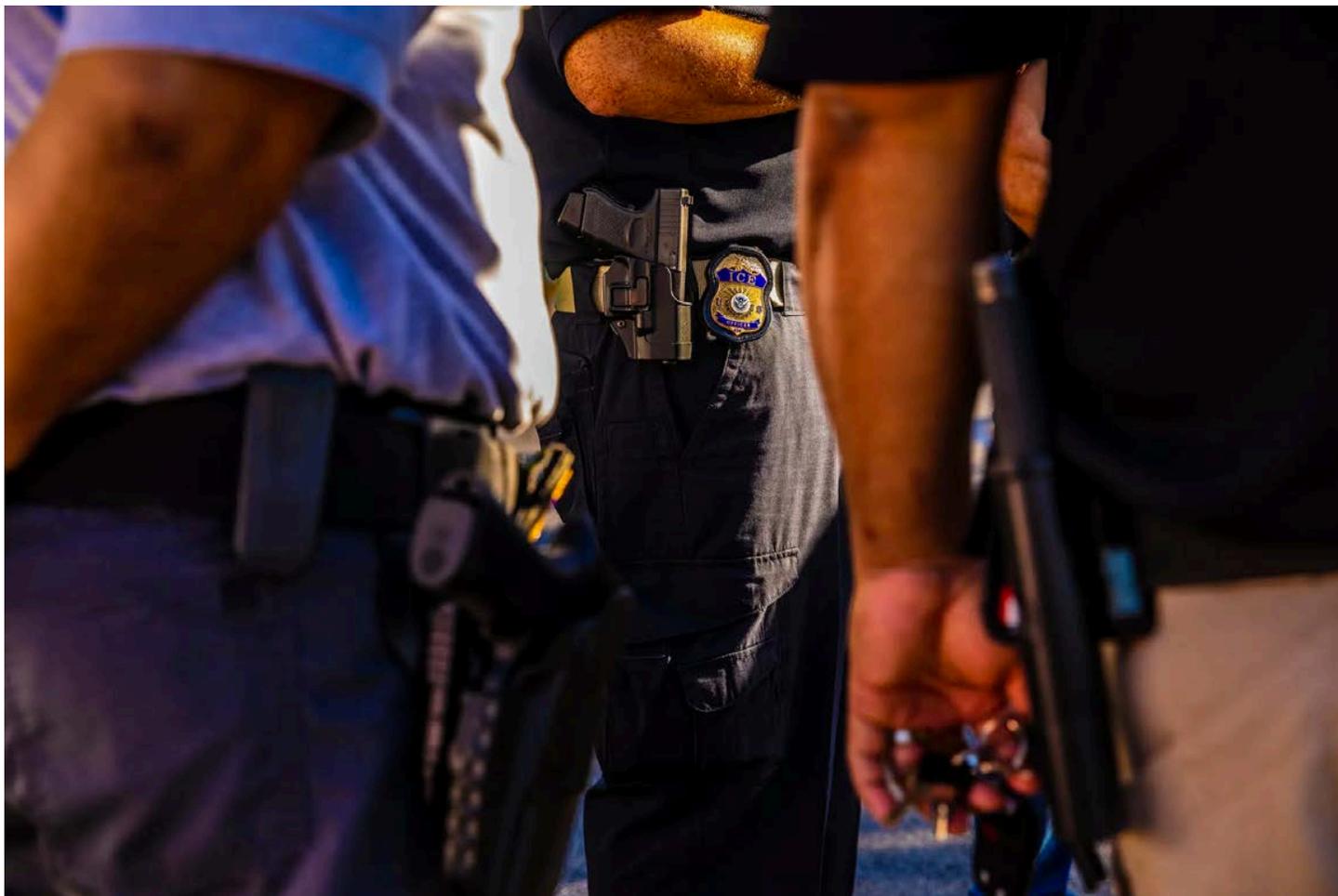
At the same time, Mr. Miller said, the Centers for Disease Control and Prevention would invoke the public health emergency powers law known as Title 42 to again refuse to hear any asylum claims by people arriving at the southern border. The Trump administration had internally discussed that idea early in Mr. Trump’s term, but some cabinet secretaries pushed back, arguing that there was no public health emergency that would legally justify it. The administration ultimately implemented it during the coronavirus pandemic.

Saying the idea has since gained acceptance in practice — Mr. Biden initially kept the policy — Mr. Miller said Mr. Trump would invoke Title 42, citing “severe strains of the flu, tuberculosis, scabies, other respiratory illnesses like R.S.V. and so on, or just a general issue of mass migration being a public health threat and conveying a variety of communicable diseases.”

Mr. Trump and his aides have not yet said whether they would re-enact one of the most contentious deterrents to unauthorized immigration that he pursued as president: separating children from their parents, which led to trauma among

migrants and difficulties in reuniting families. When pressed, Mr. Trump has repeatedly declined to rule out reviving the policy. After an outcry over the practice, Mr. Trump ended it in 2018 and a judge later blocked the government from putting it back into effect.

Mass Deportations



Federal immigration-enforcement officers gathered for an arrest operation in May in Pompano Beach, Fla. Saul Martinez for The New York Times

Soon after Mr. Trump announced his 2024 campaign for president last November, he met with Tom Homan, who ran ICE for the first year and a half of the Trump administration and was an early proponent of separating families to deter migrants.

In an interview, Mr. Homan recalled that in that meeting, he “agreed to come back” in a second term and would “help to organize and run the largest deportation operation this country’s ever seen.”

Trump advisers’ vision of abrupt mass deportations would be a recipe for social and economic turmoil, disrupting the housing market and major industries including agriculture and the service sector.

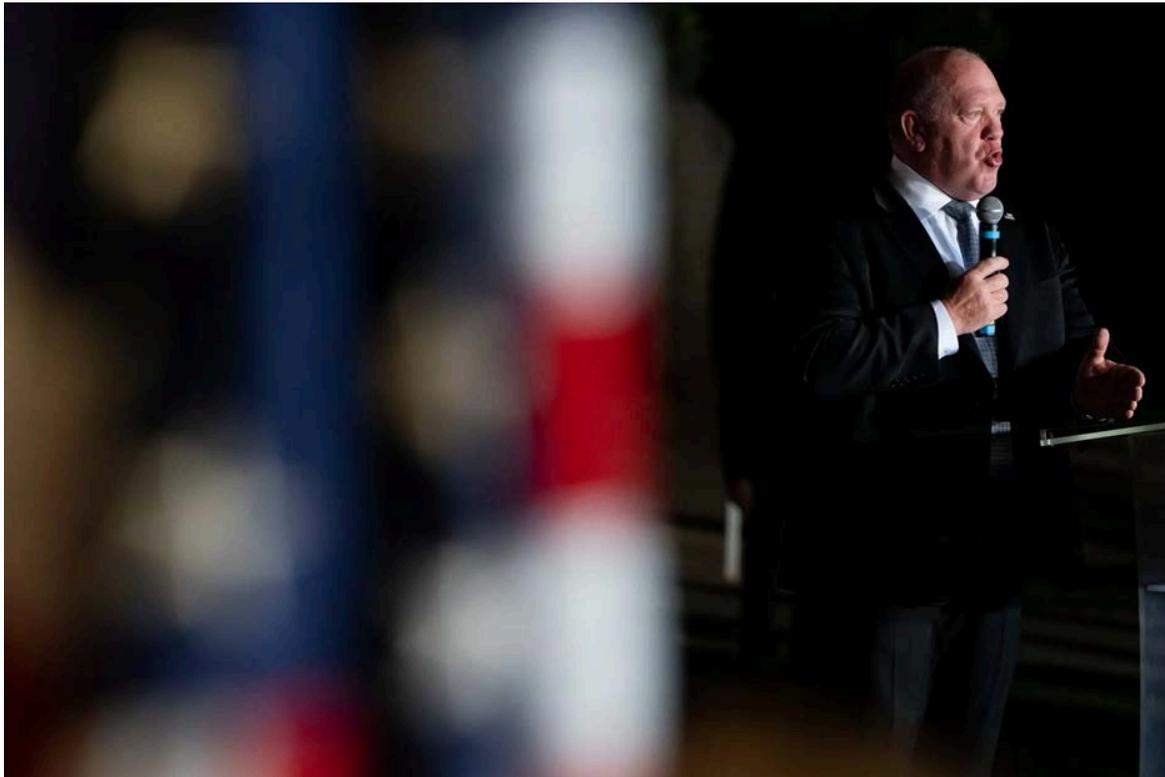
Mr. Miller cast such disruption in a favorable light.

“Mass deportation will be a labor-market disruption celebrated by American workers, who will now be offered higher wages with better benefits to fill these jobs,” he said. “Americans will also celebrate the fact that our nation’s laws are now being applied equally, and that one select group is no longer magically exempt.”

One planned step to overcome the legal and logistical hurdles would be to significantly expand a form of fast-track deportations known as “expedited removal.” It denies undocumented immigrants the usual hearings and opportunity to file appeals, which can take months or years — especially when people are not in custody — and has led to a large backlog. A 1996 law says people can be subject to expedited removal for up to two years after arriving, but to date the executive branch has used it more cautiously, swiftly expelling people picked up near the border soon after crossing.

The Trump administration tried to expand the use of expedited removal, but a court blocked it and then the Biden team canceled the expansion. It remains unclear whether the Supreme Court will rule that it is constitutional to use the law against people who have been living for a significant period in the United States and express fear of persecution if sent home.

Mr. Trump has also said he would invoke an archaic law, the Alien Enemies Act of 1798, to expel suspected members of drug cartels and criminal gangs without due process. That law allows for summary deportation of people from countries with which the United States is at war, that have invaded the United States or that have engaged in “predatory incursions.”



Tom Homan, who ran ICE for the first year and a half of the Trump administration, said he told Mr. Trump he would “help to organize and run the largest deportation operation this country’s ever seen.” Rebecca Noble for The New York Times

The Supreme Court has upheld past uses of that law in wartime. But its text seems to require a link to the actions of a foreign government, so it is not clear whether the justices will allow a president to stretch it to encompass drug cartel activity.

More broadly, Mr. Miller said a new Trump administration would shift from the ICE practice of arresting specific people to carrying out workplace raids and other sweeps in public places aimed at arresting scores of unauthorized immigrants at once.

To make the process of finding and deporting undocumented immigrants already living inside the country “radically more quick and efficient,” he said, the Trump team would bring in “the right kinds of attorneys and the right kinds of policy thinkers” willing to carry out such ideas.

And because of the magnitude of arrests and deportations being contemplated, they plan to build “vast holding facilities that would function as staging centers” for immigrants as their cases progress and they wait to be flown to other countries.

Mr. Miller said the new camps would likely be built “on open land in Texas near the border.”

He said the military would construct them under the authority and control of the Department of Homeland Security. While he cautioned that there were no specific blueprints yet, he said the camps would look professional and similar to other facilities for migrants that have been built near the border.

Such camps could also enable the government to speed up the pace and volume of deportations of undocumented people who have lived in the United States for years and so are not subject to fast-track removal. If pursuing a long-shot effort to win permission to remain in the country would mean staying locked up in the interim, some may give up and voluntarily accept removal without going through the full process.

The use of these camps, Mr. Miller said, would likely be focused more on single adults because the government cannot indefinitely hold children under a longstanding court order known as the Flores settlement. So any families brought to the facilities would have to be moved in and out more quickly, he said.

The Trump administration tried to overturn the Flores settlement, but the Supreme Court did not resolve the matter before Mr. Trump’s term ended. Mr. Miller said the Trump team would try again.

To increase the number of agents available for ICE sweeps, Mr. Miller said, officials from other federal law enforcement agencies would be temporarily reassigned, and state National Guard troops and local police officers, at least from willing Republican-led states, would be deputized for immigration control efforts.

While a law known as the Posse Comitatus Act generally forbids the use of the armed forces for law enforcement purposes, another law called the Insurrection Act creates an exception. Mr. Trump would invoke the Insurrection Act at the border, enabling the use of federal troops to apprehend migrants, Mr. Miller said.

“Bottom line,” he said, “President Trump will do whatever it takes.”

Zolan Kanno-Youngs and Eileen Sullivan contributed reporting. Kitty Bennett contributed research.

Charlie Savage writes about national security and legal policy.

Maggie Haberman is a senior political correspondent reporting on the 2024 presidential campaign, down ballot races across the country and the investigations into former President Donald J. Trump.

Jonathan Swan is a political reporter covering the 2024 presidential election and Donald Trump's campaign.

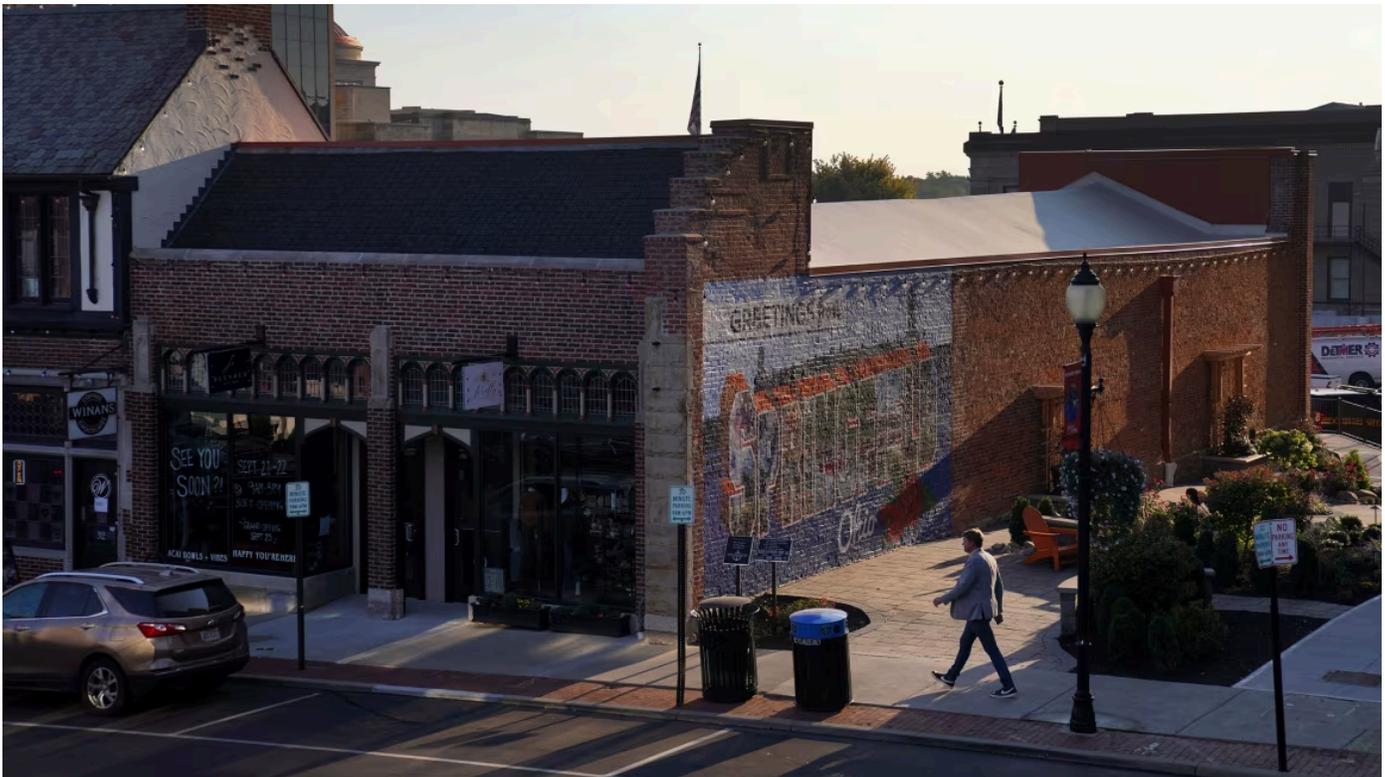
A version of this article appears in print on , Section A, Page 1 of the New York edition with the headline: Trump's '25 Immigration Plan: Giant Camps, Mass Deportation

Exhibit 6

Trump says he would revoke Temporary Protected Status for Haitian migrants in Springfield if elected

By Rashard Rose and [Kate Sullivan](#), CNN

🕒 3 min read · Published 1:06 AM EDT, Thu October 3, 2024



A man walks through downtown Springfield, Ohio, on September 16. Jessie Wardarski/AP

(CNN) — Former President [Donald Trump](#) on Wednesday said that he would revoke Temporary

Trump says he would revoke temporary protected status for Haitian migrants in Springfield, Ohio, and deport them if he is reelected in November.

“You have to remove the people, and you have to bring them back to their own country. They are, in my opinion, it’s not legal,” Trump said in an interview with NewsNation.

Trump, asked if he would revoke the migrants’ Temporary Protected Status, said, “Absolutely. I’d revoke it, and I’d bring them back to their country.”

The former president and his allies have continued to spread misinformation about Haitian migrants in the city of Springfield.

Many Haitians came into the country under a Biden-Harris administration parole program that gives permission to enter to vetted participants with US sponsors. And many have “Temporary Protected Status,” as CNN has previously reported, which shields them from deportation and allows them to live and work in the country for a limited period of time.

Some received that protection after the Biden-Harris administration expanded the number of Haitians eligible in June. Others have been living in the US with Temporary Protected Status since before the Biden-Harris administration.



RELATED ARTICLE

Haitians fled their country for peace. Now, many are having it disrupted in Springfield

Trump, pressed in the Wednesday interview on what would happen if Haiti refused to receive them, said: “They will,” without providing additional details.



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“Well, they’re going to receive them, they’ll receive them. If I bring them back, they’re going to

receive them,” Trump said.

During the Trump administration, the Department of Homeland Security was aggressive in ending a number of temporary protected status designations that had been on the books, in some cases, for decades.

Trump in recent weeks has spread debunked conspiracy theories about Haitian migrants eating pets in Springfield, including at last month’s presidential debate, as part of his efforts to stoke fears about immigrants and push his hardline immigration policy proposals, including mass deportations.

From the September 10 debate through September 20, Springfield received more than 35 threats of violence, including bomb threats, according to Springfield Mayor Rob Rue. The threats prompted evacuations of elementary schools and supermarkets, lockdowns of hospitals and a transition to remote learning at several local colleges.

Rue, Ohio Republican Gov. Mike DeWine and other local officials have decried the rumors as false and destructive to the community. A staffer for Sen. JD Vance, Trump’s running mate who helped to propel the misinformation, was told early last month by Springfield City Manager Bryan Heck that “there was no verifiable evidence or reports to show” that the rumors are true, CNN reported.

The city of Springfield notes on its website that approximately 12,000 to 15,000 immigrants live in Clark County — which has a population of roughly 136,000 — and that Haitian immigrants are there legally.

Haitian workers play a significant role in Springfield’s economy, filling much-needed jobs, the city has said. DeWine has acknowledged the city was having some issues adjusting to the influx of mostly Haitian immigrants, but he said in an interview last month they were working to deal with the issues and called the Haitian immigrants “positive influences” on the community.

CNN’s Jack Forrest, Daniel Dale, Danya Gainor, Catherine E. Shoichet, Elizabeth Wolfe, Melissa Alonso, Jeff Winter and Chelsea Bailey contributed to this report.

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Exhibit 19

••

Syria Travel Advisory

Travel Advisory Syria - Level 4: Do Not
Travel
July 23, 2025



Updated to reflect recent developments in Syria.

Do not travel to Syria due to the risk of **terrorism, civil unrest, kidnapping, hostage taking, and armed conflict.**

Country Summary: The U.S. government suspended operations of the U.S. Embassy in 2012. Czechia serves as the protecting power for the United States in Syria. The U.S. government is unable to provide any routine or emergency consular services to U.S. citizens in Syria. **Do not travel to Syria for any reason.**

Syria has experienced active armed conflict since 2011. **No part of Syria is safe from violence.** Hostage taking by armed groups, terrorism, remnants of war such as unexploded ordnance, and aerial bombardment pose significant risk of death or serious injury. The destruction of infrastructure, housing, medical facilities, schools, and power and water utilities has also increased hardships inside the country.

The U.S. government strongly warns private U.S. citizens against traveling to Syria to engage in armed conflict. The U.S. government does not support this activity. U.S. citizens who undertake such activity face extreme personal risks, including hostage taking by armed groups, injury, or death.

There is risk of terrorist violence, including terrorist attacks and other activity in Syria. Visit the U.S. Department of State's [country reports on terrorism](#) to learn more. Parts of Syria have experienced recent increases in incidents of bombings, improvised explosive devices (IEDs), and assassinations. Providing material support or resources to designated foreign terrorist organizations, including ISIS and al-Qa'ida (AQ) affiliates, is a **crime under U.S. law** that can result in penalties including prison time and large

There is an ongoing risk of hostage taking of U.S. citizens and other foreign nationals throughout the country. In the past, U.S. citizens have been targets of abduction and detention in Syria. Those in detention may not have access to fair judicial process or medical attention. Current detention center conditions are unclear but could be harsh and unsanitary. Failure to obtain a legitimate entry visa directly from the Syrian government could result in detention.

The Federal Aviation Administration (FAA) has issued a Notice to Airmen (NOTAM) and a Special Federal Aviation Regulation (SFAR) advising against travel to Syria due to risks to civil aviation operating within or in the vicinity of Syria. For more information, U.S. citizens should consult the [Federal Aviation Administration's Prohibitions, Restrictions and Notices](#)[↗]. Read the [country information page](#) for additional information on Syria, including alerts related to the closure of airspace.

If despite this warning, you decide to travel to Syria:

- Visit our website on [Travel to High Risk Areas](#).
- Draft a will and designate appropriate insurance beneficiaries or power of attorney.
- Familiarize yourself with and respect local laws and customs. Foreign travelers may face increased risk of detention and harassment.
- Establish a proof of life protocol with your loved ones. This is so that if you are taken hostage, your loved ones know specific questions (and answers) to ask the hostage-takers to be sure that you are alive (and to rule out a hoax).
- Leave DNA samples with your medical provider in case it is necessary for your loved ones to access them.
- Share important documents, login information, and points of contact with loved

ones. This is so they can manage your affairs if you are unable to return as planned to the United States. Review thoroughly this [list](#) of documents to prepare for your trip.

- Check local media for breaking events. Be prepared to adjust your plans.
- Develop a communication plan with family or your employer or host organization (if you are traveling on business). This is so they can monitor your safety and location as you travel through high-risk areas. Specify how you will confirm you're safe (texts, calls, etc.), how often, and whom you will contact first to share the information.
- Avoid demonstrations and crowds.
- Keep travel documents up to date and easily accessible.
- Have evacuation plans that do not rely on U.S. government assistance.
- Make backup plans to leave the country.
- Enroll in [Smart Traveler Enrollment Program \(STEP\)](#) to receive messages and Alerts.
- Prepare a plan for emergency situations. Review the [Traveler's Checklist](#).
- Visit the CDC page for the [latest Travel Health Information](#) related to your travel and return to the United States.

We highly recommend that you buy insurance before you travel. Check with your [travel insurance provider](#) about evacuation assistance, medical insurance, and trip cancellation coverage.

Exhibit 30

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CNN News Central

**Interview with Kristi Noem, Homeland Security Secretary;
President Trump Signs Laken Riley Act Into Law; Trump
Administration Offers Buyouts to 2 Million Federal Workers;
Democratic Ex-Senator Bob Menendez Sentenced to 11 Years in
Prison. Aired 3:30-4p ET**

Aired January 29, 2025 - 15:30 ET

THIS IS A RUSH TRANSCRIPT. THIS COPY MAY NOT BE IN ITS FINAL FORM AND MAY BE UPDATED.

[15:30:00]

KRISTI NOEM, HOMELAND SECURITY SECRETARY: People's lives were lost because criminals, dangerous criminals, were allowed to be released back into the United States to perpetuate more crime. So it also allows states to go after civilly federal officials that let these criminals go, that turn them back on our streets to endanger more families. So I'm really thankful that that was added through the amendment process and that it is something that is a tool for states to hold some accountability to the federal officials that allow these things to happen.

BORIS SANCHEZ, CNN HOST: Well, I ask you about the protections because opponents have argued that they're not actually spelled out in this bill. So in theory, if someone was simply arrested for shoplifting, just arrested, not convicted, their case wasn't adjudicated, they could be detained without bond for the duration of their proceedings. Does that raise concerns to you about due process?

NOEM: Well, what we need to remember is all these individuals came into our country already and broke our federal law. They broke our federal law and then they perpetuated another crime. So they will be detained and they will get due process and they will go through our judicial system.

And we will make sure that when they commit these types of crimes, they'll be held accountable to that. So this bill is moving forward in a way that has Republican support, bipartisan support.

SANCHEZ: And Democrats, sure.

NOEM: It was great to see senators. It will be amazing to -- go ahead.

SANCHEZ: As far as what the bill spells out, though, these aren't individuals that have been determined, some of them to have committed crimes. You could simply be accused of shoplifting, accused, suspected of shoplifting and then get deported. So how does that fit into what you're describing? Because they could be detained almost indefinitely until their status is adjudicated.

NOEM: Well, I think if you look at the situations, they've already broken a law, then they've come in and perpetuated and been accused of another broken law. And they will be detained until that is moving forward. And we have a resolution to that process and that crime.

You know, this is a bill that people have agreed on that is necessary in this country because of what we saw happen under the Biden administration. So it has wide support. The president was proud to sign it today.

And these families that lost their children to tragedies, they were thrilled to see some results from those tragedies come for the better good of the United States of America.

SANCHEZ: I do ask, I want to ask you about how this sort of detainment is going to be funded. There are some estimates that have this new framework for detainment costing something like \$83 billion over the next three years. The bill doesn't outline how exactly that's going to be funded. So I wonder where is that money coming from.

NOEM: Well, to start standing up some of these detainment centers, we're using operations and budget that we already have in place, but we will need more help. We will need more dollars from Congress. And the reconciliation process is going to be utilized to have that debate on the Capitol Hill.

We've got senators and representatives that recognize that in order to do this and to fix the situation that the Biden administration perpetuated, we're going to need the resources not only to incarcerate and go out and get these dangerous individuals off our streets. We're going to have to detain them, put them through a process to

repatriate them back to their home countries. And for me, we really need to focus on fixing our legal immigration system as well.

I need more resources to have our judicial courts and immigration courts resourced up that we have more judges so that when people want to come to this country legally, they can do that in a timely process.

SANCHEZ: So how many of those that have been arrested since these crackdowns began have been felons? How many have had felonies versus misdemeanors? In other words, how many folks have actually been convicted of crimes versus how many of them have just been in the country without documentation?

NOEM: Many of these individuals that we have done targeted operations to go find and to bring into custody do have felonies against them. They're the murderers, the rapists, the worst of the worst. And I think you've probably heard many other people talk about the fact that these are going to be the worst first, will be the ones that will be held accountable and pulled off of our streets.

And it was amazing when I was in New York City yesterday, just the community members that were constantly walking by, a lot of these individuals and officers that were going after these bad criminals were saying, thank you. Thank you for making our streets safe again. Thank you for being here and making sure that we can walk our kids to school again safely, that we can go to work safely, and that our community will be better because of what we're doing here today.

SANCHEZ: But undoubtedly, you said many, but it doesn't sound like you have a specific number for how many have actually been felons and how many have had misdemeanors for not having documents, something that in the United States is prosecuted as a civil matter.

[15:35:00]

NOEM: Well, I'll tell you that what we are doing is targeting those felons, targeting those that have violent acts and have broken crimes. But also when we're going into these situations, perhaps into an apartment to get somebody that is on our list that needs to be removed from that community to make it safer. There are people that are in that apartment with them. We're talking to all of those as well and vetting to see who they are.

Sometimes we have found apartments and facilities that have children and families there that we're talking to them to see who they are and make sure that they aren't children who are being trafficked, that they're truly with family members, that they're in a situation where they're hanging around dangerous criminals.

We want to make sure that they're not people who are a part of that chain that is funneling drugs or weapons or perpetuating some of these crimes in our communities. So that evaluation and those numbers is changing every single day based on who's around these criminals and who's around those dangerous individuals.

SANCHEZ: But as you are conducting these sweeps, there undoubtedly have to be occasions where someone who has not committed a felony is getting swept up and perhaps that's a person who has been law abiding and who has been in this country perhaps for decades and who contributes through paying taxes. Do they also deserve to be deported if they've lived most of their lives in the United States?

NOEM: You know, every situation is different and I won't speak to every single situation and every single operation we've had where our officers have gone out into these targeted operations. But what I will say is, of course, we do the due diligence that law enforcement always has been. We ask questions. We see who they are. We ask for their paperwork. We ask for their I.D. We're just making sure that these individuals are people who love this country, who obey our laws and that the scales of justice are applied equally.

You know, we expect our American citizens to obey our laws. Even people who aren't our citizens should be obeying our laws and that's the process we're going through that law enforcement always has.

SANCHEZ: Some of those folks may have had status at one point but then lost it. And I do wonder, for example, the administration announced this morning that TPS protections for Venezuelans are being rolled back. By our count, there's something like a half a million, more than half a million that stand to be affected.

By Saturday's deadline, are they going to lose protected status? Does that make it more likely that they will get deported?

NOEM: Well, you know, one of the decisions that was made recently is that in the Department of Homeland Security, Secretary Mayorkas put in place an 18-month extension of the temporary protective status. I rolled that back. I rolled it back to the six months that it always has been. And he really put that in place to tie my hands. My ability to keep integrity into this program.

So this program has been in place for years. We're going to make sure that it's used properly and that's the president's heart and desire as well. So when the president gives a directive, the Department of Homeland Security will follow it and we're going to make sure that those who come in under a program, under a visa, and are here in this country, that they're following the rules of that program. That's been abused over the years and

it needs to be fixed.

So those folks who are in violation of these programs, they need to recognize that they're accountable to that. They agreed to follow the rules when they came and that they need to be held accountable when they don't follow them.

SANCHEZ: But if they are following the rules of a program that you have deemed to be illegitimate, does that still put them at risk of being deported even if they are following those rules?

NOEM: You know, we are getting direction on how this works from the direction of the president of the United States. And he is pausing this program to re-evaluate. We know that it has been abused in the past and that there's many people from other countries that are affected as well from this TPP program. And we're going to make sure that we fix it so that it's utilized in the right way.

SANCHEZ: Lastly, Secretary, I do wonder if there are protections in place for people who are here legally. I think of family members of my own that don't speak English very well, hardly at all. Are there protections in place to prevent against racial profiling?

NOEM: Oh, absolutely. Yes, absolutely. These folks can live in peace knowing that all of their willingness to come to this country legally and to be here, we welcome them with open arms.

That's America's story and something that we're proud of. So I understand that the American people clearly sent a message in November that they wanted this country to be a nation of laws. That's what the president's following through on. And transparency is going to be our hallmark. People need the answers to their questions. And that's what I'm here for, is to make sure that they understand that we love this country.

We want our citizens to feel comfortable and at peace and to have their safety and their streets back again.

SANCHEZ: Secretary Kristi Noem, we have to leave the conversation there. Appreciate you coming on and sharing your perspective. We hope to chat again soon.

NOEM: You bet. Thank you.

SANCHEZ: Stay with CNN NEW CENTRAL. We're back in just moments.

[15:40:00]

(COMMERCIAL BREAK)

SANCHEZ: In another shake-up by the Trump administration, federal employees working from home are now faced with the choice of returning to the office full-time or taking a buyout.

JESSICA DEAN, CNN HOST: The White House is offering voluntary resignations in a move President Trump says is designed to shrink and reform the government. Employees received an e-mail with the subject line, fork in the road, and were told if they wanted to leave, to simply respond with the word resign by next Thursday. Then they would receive severance payments through September 30th. President Trump addressed the buyouts this afternoon.

(BEGIN VIDEO CLIP)

[15:45:00]

DONALD TRUMP, PRESIDENT OF THE UNITED STATES: We have informed the federal workforce, which they've looked to do for many years, that if they're working for the federal government, they must show up to the office on time and on schedule.

It's unfair to the millions of people in the United States who are in fact working hard from job sites and not from their home. As federal employees, they must meet a high standard. They're representing our government. They're representing our country.

If they don't agree by February 6th to show up back to work in their office, they will be terminated and we will therefore be downscaling our government.

(END VIDEO CLIP)

DEAN: Joining us now is the president of the National Federation of Federal Employees, Randy Erwin. Randy, thanks so much for being here with us this afternoon. I first just want to get kind of the top lines, what you've heard from members about this surprise announcement.

RANDY ERWIN, PRESIDENT, NATIONAL FEDERATION OF FEDERAL EMPLOYEES: I think they're

surprised by it. I mean, I think we knew that Trump wanted to downsize the federal workforce. This so-called Doge thing was talking about that at length. So we knew some of this stuff was coming.

But, you know, they got this unique thing, this deferred resignation. You know, just very strange implementation of this. It doesn't make a lot of sense, but we are advising our members not to accept this. This is not a good deal for federal workers. It's not really even an offer to not have to work until September 30th.

You would resign, but you would still have to work. So I don't know what kind of a deal that is. But, you know, also in the verbiage of what they kind of, you know, put out to everybody, not even a name on who this e-mail is coming from.

So, you know, what a strange thing. Just hit, you know, reply, resign. I mean, who does things this way?

But, you know, bottom line is it's a bad deal. We're telling them not to do it. And it's really irresponsible to run federal government that delivers such critical services to the American people in this manner.

SANCHEZ: Randy, can you give us an estimate of how many of your 110,000 members might take the offer? And what agencies do you think might be the most affected?

ERWIN: I don't think we have any way of knowing right now. I wouldn't be surprised if 5 percent did or so like that. And what was your second question?

SANCHEZ: Just which agencies, which federal agencies do you think might be most impacted?

ERWIN: Yes. Well, you know, they did this throughout the federal government. So that's incredible.

You know, about one third of the federal government is the Department of Defense where we have about 50,000 members. You know, boy, what a hit to our, you know, readiness in the military if we see people taking resignations en masse. I mean, they talk about federal workers like they're not doing anything.

You know, 87 percent of federal workers are spread throughout the country. They're not here in Washington. They're doing critical services, keeping our military ready.

The next biggest agency is Department of Veterans Affairs, 370-some- thousand workers, nurses and doctors, people we represent that care for the American veteran. If these people leave en masse, we lose the ability to

make good on our promise to care for the American veteran. And they're just putting out e-mails asking people to resign en masse. It is clear that they don't care about how our government functions and delivers those services.

DEAN: Is there concern about the funding for these buyouts?

ERWIN: Absolutely. I mean, another reason that we are advising our members not to accept this deal is because there's a good chance they're going to get stiffed. You know, they would essentially be signing away their rights, signing away their job, and then when the administration has to deliver on their promises, they will renege on that because Congress never authorized it.

So you don't, you know, make offers like this. This is not the way you run the federal government, and it's just highly irresponsible. And in the end, it's the American people that are going to suffer because of it.

SANCHEZ: Randy, I'm curious to get your reaction to not only the characterization that President Trump had of folks who are working from home, essentially calling them unproductive, but also the demand in this letter that states that federal workers should be reliable, loyal, trustworthy, and striving for excellence in their daily work. What did you think of that?

ERWIN: You know, it's absolutely chilling. You know, we kind of had, you know, federal employees swear an oath to uphold the Constitution and in a non-bipartisan way carry out the critical duties, you know, in the federal service. It's tremendous work they do.

But, you know, in this kind of deferred resignation offer that they put out, they said there's going to be some changes coming.

[15:50:00]

There's a big fork in the road, and we are going to demand loyalty and trustworthiness, and if you're not delivering on that, you will be targeted for retribution and removal. And, you know, this is -- I've never seen anything like this.

And people really need to understand that independent civil service that carries out, you know, the laws of this country is absolutely a critical pillar to our democracy. And, you know, if Congress allows this to continue, if, you know, if they're, you know, if Congress allows this to continue, they are going to just, like, antagonize

workers and break the law and do the things that it's clear that they're doing. And some of the things we know they're going to do they haven't even done yet, but we saw it in Project 2025 and things like that, or they did it in the previous administration.

But, you know, we can't go down this road. It's a critical pillar of our democracy to have a civil service that works for the American people, and they are trying to tear that down. They're trying to do it right now, and people should be in the streets mad about it.

DEAN: All right, Randy Erwin, we'll leave it there. Thank you very much for your time. We appreciate it.

ERWIN: Thank you so much.

DEAN: We have some breaking news to share with you. Former New Jersey Democratic Senator Bob Menendez sentenced by a federal judge to 11 years in prison.

SANCHEZ: This comes after his conviction last year on bribery and corruption charges. CNN's Kara Scannell was in court for the sentencing. She's been tracking this story throughout.

Kara, take us through what you saw. What was the former senator's reaction?

KARA SCANNELL, CNN CORRESPONDENT: So the former senator did not betray any emotional reaction when the judge handed down that sentence of 11 years, but he did address the court before the judge did issue the sentence. And during that time, Menendez told the judge that he was standing before him as a chastened man. He said that every day I'm awake is a punishment. I lost everything I ever cared about. At various times, he became choked up, having to stop when he was

speaking, talking about the ways he had helped certain constituents over the years and the achievements that he had achieved for not only himself but the Hispanic community, he said, through his election.

But as the prosecutors had said to the judge, that at some point Menendez had turned that public service into service for himself.

And as the judge handed down this 11-year sentence, he said, you've done a great deal of good. Somewhere along the way, you lost your way. Your working for the public good became working for your good. The public cannot be led to believe that you can get away with bribery, fraud, and betraying his voters, his constituents.

So a big sentence here. Prosecutors have been asking for at least 15 years. Menendez initially came into court saying he was to do community service. But even they acknowledged after seeing the sentences of other co-defendants, they had asked the judge for less than eight years. Judge finding 11 years in prison for Senator Menendez -- Boris, Jess.

DEAN: All right, that breaking news for us. Kara Scannell, thank you very much for that. And stay with CNN. We'll be right back.

[15:55:00]

(COMMERCIAL BREAK)

SANCHEZ: NASA has remained insistent that these folks are not stuck, and yet their space mission was only supposed to last a week. Butch Wilmore and Suni Williams have been there since June.

DEAN: Longer than a week.

SANCHEZ: Longer than a week because of an issue with their spacecraft, and apparently President Trump says that he's had enough.

DEAN: Take a look at this exchange between Trump and Elon Musk. Trump tells Musk to, quote, go get them. Musk replies to Trump telling him he'll bring them home.

But in the most recent delay, it was his own company, SpaceX, that delayed the astronauts' plan return back in December with Musk's company saying it needed more time.

And joining us now is former NASA astronaut Leroy Chiao. Leroy, great to have you here with us. Thanks so much. The plan by NASA has clearly been delayed several times. The vehicle to bring them home is docked at the space station. Walk us through the complications here.

LEROY CHIAO, NASA ASTRONAUT (RET.): Well, sure. I mean, the next crew to launch, Crew 10, is going to be launching on a brand new Dragon spacecraft built by SpaceX. And so it's taking a few more extra weeks to go through testing, final testing, and mission assurance. And that's being done jointly by NASA and SpaceX. Crew 9, which Suni and Butch became a part of after their ride home

wasn't going to make it, they are waiting to come down. Of course, normally we would launch Crew 10, and they would spend about a week together before Crew 9 came back.

But they could come back earlier. Their spacecraft is ready to go. It serves as a lifeboat during their mission. And so if something happens, or if they're told to, they can easily get into that vehicle and come down very quickly.

SANCHEZ: Leroy, I wonder whether the Biden administration could have done more to get them down, because that's who Donald Trump and Elon Musk are blaming for them being up there.

CHIAO: Well, the situation is that, you know, it kind of made sense. Once things evolved and it was clear the Starliner should not be used to carry them back, it was decided that they would join the next crew, right, that was about to launch. And so that's why two members of that crew were removed.

They were already up there. And then it was decided that they would stay for the entire mission duration. However, they could have come down earlier. And really what happens is if they come down early is they would disrupt the workflow aboard the station, because now you would leave one American on board and you would have three Americans come back with a Russian, four people coming down on that spacecraft.

And if that's the decision that will be made, then, you know, some research will be deferred or delayed. And, you know, we're at this point, we're near the end of the mission, so coming back a couple months early shouldn't be a huge, huge impact if that's what happens.

DEAN: And just quickly before you go, look, they've been up there since June. I know we've talked before. You said they can handle this. But at a certain point, it probably feels like it's time to come home.

CHIAO: Well, you know, there's no question, certainly personal and perhaps future professional plans are disrupted by this unexpected delay. You know, seven to 10 days turned into seven or eight months, right?

[16:00:00]

And so I'm sure a part of them is looking forward to maybe coming home a little early, but at the same time, they're consummate professionals and they're ready to stay up there and finish all the work.

DEAN: We look forward to welcoming them back.

SANCHEZ: Yes, I hope they didn't have to keep flipping their underwear inside and out. Laundry in space, I hope. Leroy Chiao, thank you so much.

DEAN: Yes, I don't know how that would take a tour while you do that.

SANCHEZ: Let's save that conversation for "THE LEAD" with Jake Tapper, which starts right now.

Exhibit 40

DECLARATION OF SARA DOE

I, Sara Doe, upon my personal knowledge, hereby declare as follows:

1. I was born in Aleppo, Syria. I am a national of Syria.
2. I currently live in New York state, where I recently moved for a new job.
3. I have lived in the United States since 2014, and I have moved all over the United States because of my work. I work as a specialized pediatric doctor.
4. I arrived in Ohio. Later, I lived in Florida and California, where I completed specialized medical fellowships.
5. I completed medical school in Syria, but after the war started, I was not safe there. I lost close family during the war. Two of my brothers were arrested, tortured, and killed in 2013 by the Syrian regime. This made me realize I was not safe in Syria and had to leave. The city I am from, Aleppo, was a site of constant violence and the city has been destroyed, including my family's home, which was hit by a rocket a few months after I left Syria.
6. In Syria, people working in medical fields were targeted for violence because the regime knew that it is our duty to help people and treat them, regardless of patients' political affiliation. I had friends from medical school who were arrested. I was threatened while I was out doing volunteer medical work and also via messages telling me not to do medical work for anyone who wasn't part of the government.
7. I needed a safe place to live and where I could continue my professional development. In the United States, I have been able to build a specialization and do several clinical rotations as part of my medical training. This kind of highly-specialized training was not available in Syria.
8. I am very passionate about what I do. I was recently hired for my dream job as a leadership position at a hospital, where I provide advanced medical care for children all across Upstate New York. People travel from far away, sometimes up to five hours away, to get the specialized care I provide at the hospital alongside my medical team. This work means a lot to me. My specialized medical interventions give my young patients and their families hope. It is extremely rewarding to see the impact my work has on families and I want to continue to use my specialized training and skills to help the community.
9. I have no close relatives in Syria because all of them were killed or fled during the war. My parents are refugees in the United Kingdom. I have extended family in the United States, who have supported me in rebuilding my life in the United States after I left Syria. My family here are all U.S. citizens.

10. In 2015, I first registered for Temporary Protected Status (TPS) as a Syrian national. My TPS status will expire on November 21, 2025, as a result of the termination of Syria's TPS designation.
11. TPS is currently my only form of protection from deportation. It is also the only source of work authorization that I currently have. If I am not able to secure another status before November 21, 2025, I will lose my job at the hospital.
12. My employers are trying to help me apply for another type of status so that I can continue working for them and stay in the United States. However, these applications take a long time to be approved, and the government shutdown has caused additional delays.
13. I first heard the announcement about the termination of TPS for Syria on September 21st. I was working at the hospital when I first heard the news and it shocked me. It was incredibly stressful and sad that I would lose the job I just started and feel so passionate about. I kept working and doing medical procedures, but it was very challenging to stay focused knowing that I might be deported in 60 days.
14. I have been terrified about my future since learning that the government plans to imminently terminate TPS for Syria. I am having difficulty eating and sleeping. I worry because my job requires me to be focused and productive to care for my patients, and with all this stress, it is very difficult to do that. I feel incredibly stressed about making plans for the future, because I don't know if I will be able to stay here. At my job, I have paused any research projects and avoided taking on new responsibilities because of this uncertainty.
15. If TPS is terminated, I will lose my life-long dream that I have worked so hard for. I will not be able to help so many children who require the specialized medical care that only very few, like me, can provide.
16. I cannot return to Syria because I no longer have anything or anyone there. Aleppo, where I am originally from, has been absolutely destroyed by the war. If I were to return, I would not even be able to meet my most basic necessities, let alone be able to continue my specialized medical career and provide medical treatment for those who need it. If I were to return, I would be extremely worried for my safety due to the ongoing armed conflict.
17. The uncertainty of TPS termination would have a devastating effect on my life. I would lose my job and I don't know where I would go after having lost so much, including my brothers and my home in Syria.
18. I do not have enough time to prepare for the termination of TPS and make alternative plans because the government only announced the termination with two months' notice. My employer is racing to help me find an alternative path to work authorization, but we do not have enough time.

19. I am willing to serve as a class representative on behalf of those who are similarly situated to me who are Syrian TPS recipients.
20. I know that if the class is certified, I will be representing more than just myself in this case. I will be representing the interests of other Syrian TPS recipients. I understand what being a class representative means.
21. I want to help everyone in my situation because I know a lot of people who have been here for ten or fifteen years, building a life in the United States, having children, working hard, and they now stand to lose it all because of this sudden termination. I think it is a moral duty to help not just myself but others in this situation. I am willing to be actively involved in this lawsuit as a class representative and to work with my attorneys to help all of the class members.
22. I am providing this declaration anonymously because I fear for my safety.
23. I know that I may soon lose my immigration status if TPS is terminated. I am afraid that if my name is publicized as part of this lawsuit, I may be targeted and prioritized for immigration enforcement. If I am able to apply for alternative forms of status, I am worried that the government might retaliate against me by denying the applications.
24. I also have heard in the news about conservative organizations in the U.S. publishing on the internet names and personal information of people who criticize the current presidential administration. I am afraid this could happen to me and this could put my safety and life in danger—and possibly even the safety of my coworkers and patients who come to me for treatment.
25. I also fear that if my real name becomes public in this lawsuit, I would be in danger if I was forced to return to Syria. I would be targeted for harm in Syria because I am expressing that the situation in Syria is not safe and some people might not like that.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed in New York on October 17, 2025

/s/ Sara Doe

Sara Doe

Exhibit 42

DECLARATION OF LAILA DOE

I, Laila Doe, upon my personal knowledge, hereby declare as follows:

1. I was born in Damascus, Syria in 1976. I am a national of Syria and a Muslim woman.
2. I currently live in DuPage County in Illinois. I have been living in the U.S. since 2013.
3. I live with my 17-year-old daughter, who is also a TPS holder and a senior in high school, and my mother, who is a U.S. citizen and about 80 years old. I am my mother's primary caregiver and the only person who can take care of her.
4. I work with adults and young people with special needs, including individuals with autism and Down syndrome. I currently work in an after-school program for adults between the ages of 21 and 31. I previously worked in public schools and kindergartens. I started working with people with special needs in 2019 and have completed Registered Behavior Technician training and other courses to support my work.
5. In addition to my work, I am an active member of my community. I volunteer at my daughter's high school during parent-teacher conferences. I also volunteer at a daycare, using my training as a behavioral technician to work with children.
6. I am divorced and I am the provider and caretaker for both my daughter and my elderly U.S. citizen mother. My mother, who is about 80, has high blood pressure, high cholesterol, low blood sugar, and sometimes suffers from physical pain. She uses a cane and often forgets to take her medications. I give her showers, help her change her clothes, take her to doctors' appointments, and manage her medical care. My two sisters, who are also U.S. citizens, have families of their own and cannot take care of our mother. Without me, my mother would have no one to rely on.
7. I came to the United States in 2013 with my daughter. I obtained Temporary Protected Status (TPS) as a Syrian national in 2013. My TPS status will expire on November 21, 2025, as a result of the termination of Syria's TPS designation.
8. In 2013, Syria was in the middle of war. My daughter and I were living in Damascus where bombings were constant. My daughter was three years old, and her daycare was across from a government building. One day, the daycare was bombed, and I rushed to get her. Every day, a different area in Damascus was being bombed. There was once a bombing that happened in the

area where I worked and the next two buildings were impacted. I have been waiting for more than a decade for Syria to become safe, but it never has and still is not safe. I am grateful to have been able to find safety in the United States.

9. TPS is currently my only form of protection from deportation. It is also the only form of work authorization that I have. I have a pending family-based immigration application and I do not know when it will be approved.
10. I first learned about the termination of TPS for Syria through social media. At first, I thought it was fake news, but when I checked the USCIS website, I saw the announcement and immediately printed it. I have not received any notice from USCIS about the termination.
11. Since learning about the government's plan to end TPS, I have been terrified for my future and that of my family. I can barely sleep, and I often cry and pray for the situation to change. Everything in Syria is destroyed, and I have no home there. The stress has affected my health. I've recently been experiencing issues with my eye vision and it started shortly after hearing the news of the termination of TPS.
12. My daughter and I will suffer severe hardship if TPS is terminated. My daughter is a senior in high school and will graduate in May 2026. She has lived in the United States since she was three years old and does not speak or understand Arabic. All her education, friends, and future are here. She wants to go to college and study nursing or another medical field. If we are forced to leave, her education and dreams of becoming a nurse will be destroyed. I'm unable to afford private school for my daughter in Syria in which classes are taught in English. As a result, my daughter would be forced to complete her studies in Arabic and be left behind when she is so close to finishing high school and starting college.
13. I am the only person who works in our household. If I lose my work authorization, I will not be able to pay our rent, electricity bills, gas, and buy groceries for me, my daughter, or my mother. I will not be able to pay for my mother's medication or support any expenses related to my daughter's education.
14. I cannot return to Syria because it is still unsafe and unstable. My sister still lives in Damascus. Two months ago, her neighborhood was hit by airstrikes. The explosion broke their windows and cracked their doors. They had to hide in the basement with blankets and were terrified. Several people in their neighborhood were killed, and cars were destroyed because of the airstrikes.

15. As a divorced woman living alone, I would face serious risks if I returned to Syria. In my former neighborhood in Damascus, I heard of two single women who lived alone and were recently murdered and robbed in their homes. One of them lived in a building only five minutes from my family's home. Both women were in their forties, around my age. Even though their buildings had security cameras, the attackers still entered and killed them.
16. Women in Syria face constant harassment and fear for their safety. Taxi and rideshare drivers often follow women home and harass them, especially if they think they live in wealthier areas. This happened before I left Syria, and my sister and friends there tell me it has only gotten worse since the regime fell.
17. For the past three years, I have been working towards enrolling in a nursing program so that I can have a more stable career. To be able to apply to nursing school, I have been taking English for Speakers of Other Languages (ESOL) classes. I am just two courses away from qualifying to apply for a nursing program. If I lose TPS, I will lose my chance to finish my education and pursue a career as a nurse.
18. The government announced the termination of TPS with only two months' notice. That is not enough time to make any alternative plans, especially because I am caring for my elderly mother and my daughter, who is still in high school and in the middle of the school year.
19. I am willing to serve as a class representative on behalf of those who are similarly situated to me who are Syrian TPS recipients.
20. I know that if the class is certified, I will be representing more than just myself. I will be representing the interests of other Syrian TPS recipients. I understand what being a class representative means.
21. I want to help others in my situation because I know how painful and frightening it is to face the loss of safety and stability. I want to help protect families like mine from being separated or sent back to danger.
22. I am providing this declaration anonymously because I fear for my safety and for that of my family.
23. I know that I may soon lose my immigration status if TPS is terminated. I am afraid that if my name is publicized as part of this lawsuit, I may be targeted and prioritized for immigration

enforcement. I have heard of ICE raids and increased immigration enforcement happening in Chicago area and am worried I too will be at risk if I lose TPS. For example, I've heard of Syrian green-card holders with no criminal history in the Chicago area who have been targeted by immigration officials.

24. I also fear that if my real name becomes public in this lawsuit, I would be in danger if I were forced to return to Syria. Speaking publicly about the dangers in Syria could be seen as criticism of the authorities or armed groups, and I could face retaliation.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed in DuPage County, Illinois on October 19, 2025.

/s/ Laila Doe

Laila Doe



International Refugee
Assistance Project

October 30, 2025

Via ECF

The Honorable Katherine Polk Failla
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

**Re: *Dahlia Doe, et al. v. Kristi Noem, et al.*
Case No. 1:25-cv-08686-KPF**

Dear Judge Failla:

Plaintiffs respectfully move the Court to order expedited production of the Certified Administrative Record (“CAR”) by November 5, 2025. The CAR contains important evidence relevant to Plaintiffs’ Motion to Postpone the Effective Date of Agency Action (here, the termination of Syria’s Temporary Protective Status designation) pursuant to 5 U.S.C. § 705. Dkts. 19–21. Plaintiffs have conferred with Defendants in an effort to obtain the CAR without judicial intervention but have been unable to come to a resolution.

A. Background

As the Court is aware, time is running out for more than 6,100 long-time TPS holders from Syria and hundreds of Syrians with pending applications for TPS, who absent prompt judicial relief, stand to lose lawful status, work authorization, driver’s licenses, health insurance, and the ability to remain with their U.S. citizen children and families as early as November 21, 2025. Plaintiffs ultimately seek an order setting aside the terminations pursuant to 5 U.S.C. § 706. Dkt. 1 ¶ 176.

On October 28, 2025, Plaintiffs requested that Defendants begin assembling the CAR, seeking production by November 3, 2025. *See* Ex. 1. Defendants stated they were conferring and would respond to the request by October 30. *See id.* On October 30, Defendants denied Plaintiffs’ request. Notably, Defendants did not assert any burden or resource constraint in producing the CAR. Instead, they stated their belief that “it would be premature to produce an administrative record before the Court adjudicates the motion for preliminary [relief] or before [Defendants] have had a chance to move to dismiss.” *See id.* The parties are therefore at an impasse that necessitates this motion.

Recognizing identical urgency in similar litigation over the vacatur and termination of TPS for Venezuela and Haiti, *Nat’l TPS Alliance v. Noem*, No. 3:25-cv-01766-EMC (N.D. Cal. 2025) (“*NTPSA I*”), and the termination of TPS for Honduras, Nepal, and Nicaragua, *Nat’l TPS Alliance v. Noem*, No. 3:25-cv-05687-TLT (N.D. Cal. 2025) (“*NTPSA II*”), district courts have ordered Defendants to produce the CARs within seven days. *See NTPSA I*, ECF No. 106 (ordering

production of CAR within seven days); *NTPSA II*, ECF No. 47 (same). Each CAR in those cases consisted of between 36 to 103 documents. *See NTPSA I*, ECF Nos. 103, 104, 110; *NTPSA II*, ECF Nos. 62, 63, 64.

B. The Court has authority to order expedited production of the CAR.

Section 706 of the APA requires courts to “review the whole record” underlying an agency’s decision. 5 U.S.C. § 706. Accordingly, the Court will need to consider the CAR before making a final decision on the merits of the Plaintiffs’ claims.

The right to production of the CAR in the APA context arises from Supreme Court precedent, not from the discovery provisions of the Federal Rules of Civil Procedure such as FRCP 26 or FRCP 37. *See, e.g., Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971) (requiring judicial review of agency action to be based on the full administrative record before the agency at the time of its decision). To ensure agencies facing challenges under the APA produce complete administrative records in a timely fashion, district courts possess authority to compel production of administrative records, augment existing administrative records, and set appropriate timelines for production. *See New York v. U.S. Dep’t of Commerce*, 351 F. Supp. 3d 502, 548 (S.D.N.Y. 2019), *aff’d in part, rev’d in part and remanded sub nom. Dep’t of Commerce v. New York*, 139 S. Ct. 2551 (2019) (court ordered defendants to complete administrative record and authorized extra-record discovery). That includes the power to expedite production of the administrative record. *See Saleh v. Pompeo*, 393 F. Supp. 3d 172, 178 & n.4 (E.D.N.Y. 2019) (adopting magistrate judge’s favorable ruling on a “motion to compel expedited production of the administrative record” requiring production within two weeks); *Manker v. Spencer*, No. 3:18-CV-372 (CSH), 2019 WL 1506654, at *6 (D. Conn. Apr. 5, 2019) (“The purpose of this Order is to expedite the production of the relevant administrative records.”); *Center for Popular Democracy Action v. Bureau of the Census*, No. 19 Civ. 10917 (AKH) (S.D.N.Y. Jan. 9, 2020), Dkt. 34 (ordering expedited production regarding five challenged agency actions within two weeks). It is indisputably within this Court’s discretion to direct expedited production in this case.

A request for expedited production of the administrative record in this case is consistent with this Court’s holdings that requests for expedited discovery be reviewed “under the flexible standard of reasonableness and good cause.” *See Ayyash v. Bank Al-Madina*, 233 F.R.D. 325, 327 (S.D.N.Y. 2005). Plaintiffs’ claims of urgency are eminently reasonable given the imminent termination date of TPS for Syrians on November 21. Because of these unique circumstances and the risk that Plaintiffs will be irreparably harmed, Plaintiffs have made a request that is reasonable and supported by good cause. *See Ayyash*, 233 F.R.D. at 327.

C. Plaintiffs’ request is reasonable and achievable given Defendants’ demonstrated ability to produce similar CARs rapidly.

Defendants’ only argument against producing the CAR in accordance with Plaintiffs’ proposed schedule is that it “would be premature to produce an administrative record before the Court adjudicates the motion for a preliminary [relief] or before [Defendants] have had a chance to move to dismiss.” *See Ex. 2*. Contrary to this contention, the CAR may be useful to the Court in ruling on Plaintiffs’ pending Motion to Postpone and—in the event of a ruling in Plaintiffs’

favor on that Motion and a subsequent appeal by Defendants—could be relevant to appellate proceedings in addition to being essential for further proceedings towards a final decision in this Court.

Moreover, courts have ordered expedited production in cases in similar procedural postures. In *NTPSA I*, the Court ordered—and Defendants produced—two CARs within seven days—more than a month prior to the filing of a motion to dismiss. Transcript of Proceedings at 114:1–116:7, *NTPSA I* (Mar. 24, 2025), ECF No. 91; ECF No. 106 (Apr. 8, 2025). In *NTPSA II*, the Court ordered production of three CARs within seven days and prior to the scheduled hearing on the motion for preliminary relief in that case. *NTPSA II*, ECF No. 47.

Notably, Defendants do not claim that producing the administrative record in this case would be burdensome. Indeed, the number of documents at issue here is likely to be small. In *NTPSA I*, the Venezuela and Haiti CARs contained fifty or fewer documents each. *NTPSA I*, Dkt. Nos. 103, 104, 110. In *NTPSA II*, the Honduras, Nepal, and Nicaragua CARs contained between 97-103 documents each. *NTPSA II*, Dkt. Nos. 62, 63, 64. In *Ramos v. Nielson*, a similar challenge to TPS terminations from the first Trump Administration, the CARs were even smaller. *See Ramos v. Nielson*, Case No. 3:18-cv-01554-EMC (N.D. Cal. June 25, 2018) Dkt. 111 (Sudan CAR, 13 documents); Dkt. 112 (Nicaragua CAR, 34 documents); Dkt. 113 (Haiti CAR, 47 documents); Dkt. 114 (El Salvador CAR, 33 documents). There is no reason to expect the CAR related to the termination for Syria will be materially larger. And the vast majority of relevant materials—the USCIS decision memoranda, clearance records, State Department cables, and country-conditions compilations—are already centralized in DHS files. Defendants have been on notice since at least February 2025 that TPS terminations would be litigated and have been actively defending TPS terminations for seven countries before the instant litigation was filed. Any marginal administrative burden they subsequently may claim pales in comparison to the irreparable harms Plaintiffs face.

For the foregoing reasons, Plaintiffs respectfully request that the Court order Defendants to produce the CAR promptly, and in no event by later than November 5, 2025, which is over seven days from the date Plaintiffs made their request to Defendants and nine days before the scheduled November 14th hearing on the Motion to Postpone the Effective Date of Agency Action.

Sincerely,

/s/Guadalupe V. Aguirre

Guadalupe V. Aguirre

Senior Litigation Attorney

International Refugee Assistance Project

U.S. Department of Justice



United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

November 3, 2025

VIA ECF

The Honorable Katherine Polk Failla
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

Re: *Doe et al. v. Noem et al.*, No. 25-cv-8686 (KPF)

Dear Judge Failla:

This Office represents defendants (the “government”) in the above-captioned lawsuit brought by Plaintiffs under the Administrative Procedure Act (“APA”) challenging the decision of defendant U.S. Secretary of Homeland Security Kristi Noem (the “Secretary”) to terminate Syria’s Temporary Protected Status (“TPS”) designation. The government writes to oppose Plaintiffs’ request for the expedited production of a certified administrative record. *See* Dkt. No. 35. As explained below, and as further explained in the government’s recently filed brief (Dkt. No. 36), the TPS statute makes clear that Plaintiffs’ claims are not judicially reviewable, and the Court should therefore not require the government to compile the administrative record before the government has had the chance to set forth (and the Court has adjudicated) its threshold defenses in a motion to dismiss.

Where “the administrative record is not necessary” for a court to decide a defendant’s dispositive motion, courts have repeatedly denied requests “to compel production of the administrative record.” *Tahavori v. Blinken*, No. CV 23-1460 (JDB), 2024 WL 1328546, at *3 (D.D.C. Mar. 28, 2024) (quotation marks omitted); *see also, e.g., Jiampietro v. Bd. of Governors of Fed. Rsrv. Sys.*, No. 18-2806, 2018 WL 6920340, at *1 (2d Cir. Oct. 31, 2018) (granting motion “to defer the filing of the administrative record until after the Court’s disposition of Respondent’s motion to dismiss”); *Arab v. Blinken*, 600 F. Supp. 3d 59, 66 n.2 (D.D.C. 2022) (waiving production of administrative record “because ‘the administrative record is not necessary for [the court’s] decision’”); *Connecticut v. U.S. Dep’t of the Interior*, 344 F. Supp. 3d 279, 294 (D.D.C. 2018) (waiving requirement to produce administrative record and noting the “practice” of courts to do the same “when ‘the administrative record is not necessary’” to decide “a motion to dismiss” (quoting *Mdewakanton Sioux Indians of Minn. v. Zinke*, 264 F. Supp. 3d 116, 123 n.12 (D.D.C. 2017))).

Here, the government intends to move to dismiss the Complaint, and the administrative record will not be necessary to decide the government’s motion. Plaintiffs challenge the Secretary’s determination to terminate Syria’s TPS designation under 8 U.S.C. § 1254a, but that same statute expressly says that there is “no judicial review” of TPS determinations. 8 U.S.C. § 1254a(b)(5)(A). It is true that multiple district courts—including in the two cases cited by Plaintiffs, namely, *Nat’l TPS Alliance v. Noem*, No. 3:25-cv-01766-EMC (N.D. Cal. 2025) (“*NTPSA P*”) and *Nat’l TPS Alliance v. Noem*, No. 3:25-cv-05687-TLT (N.D. Cal. 2025)

(“*NTPSA II*”)—have proceeded to adjudicate similar challenges and have enjoined the Secretary’s TPS termination determinations. *See* Dkt. No. 35 at 1–2. But the Supreme Court *twice* stayed orders issued by the district court in *NTPSA I* after the government pressed the same judicial-review argument that it advances here. Specifically, the Supreme Court (1) stayed the district court’s order preliminarily postponing the termination of Venezuela’s TPS designation, and (2) subsequently stayed the district court’s order entering judgment for Plaintiffs. *Noem v. Nat’l TPS All.*, No. 25A326, 2025 WL 2812732, at *1 (U.S. Oct. 3, 2025) (staying district court’s judgment and noting that while “the posture of the case has changed” since the stay of district court’s preliminary order, “the parties’ legal arguments and relative harms generally have not” and concluding that “same result” is “appropriate”). In doing so, the Supreme Court signaled that the government was likely to prevail on the merits. *See Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (discussing factors that Supreme Court considers when issuing a stay, including likelihood of success on the merits).

In a footnote in their complaint, Plaintiffs downplay these Supreme Court orders as “non-precedential decision[s] with no analysis.” Compl. at 28 n.55. But the Supreme Court has advised that interim orders should inform “how a court should exercise its equitable discretion in like cases.” *Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025). As one Supreme Court Justice recently explained, the Supreme Court’s interim decisions “constitute[] a form of precedent (*de jure* or *de facto*) that provides guidance throughout the United States during the years-long interim period until a final decision on the merits.”¹ *Trump v. CASA, Inc.*, 606 U.S. 831, 873 (2025) (Kavanaugh, J., concurring).

Even without the benefit of these Supreme Court interim orders, it is evident that Plaintiffs’ claims are unreviewable under the plain language of section 1254a(b)(5)(A), which 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” for TPS. 8 U.S.C. § 1254a(b)(5)(A) (emphasis added). The word “any,” modifying “determination” in the statute, indicates a broad sweep. *See, e.g., Patel v. Garland*, 596 U.S. 328 (2022) (Supreme Court “has repeatedly explained” that “the word ‘any’ has an expansive meaning” (quotation marks omitted)); *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 219 (2008) (describing “‘any’” as an “expansive word”). And the term “respecting” likewise “has a broadening effect, ensuring that the scope of a provision covers not only its subject but also matters relating to that subject.” *Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 717 (2018).

Plaintiffs’ challenges to the Secretary’s TPS terminations relating to Syria plainly fit into this broad bar on judicial reviewability, and their claims are not cognizable, even to the extent that they purport to challenge procedural defects under the APA. *See* 5 U.S.C. § 701(a)(1) (APA review does not extend to statutes that “preclude judicial review”); *Yale New Haven Hosp. v. Becerra*, 56 F.4th 9, 20 (2d Cir. 2022) (“[I]f a no-review provision shields particular types of administrative action, a court may not inquire whether a challenged agency decision is arbitrary, capricious, or procedurally defective; rather, a court must simply determine whether the

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challenged agency action is of the sort shielded from review.” (quoting *Amgen, Inc. v. Smith*, 357 F. 3d 103, 113 (D.C. Cir. 2004); emphasis in original and quotation marks omitted)).

As previewed in the government’s opposition to Plaintiffs’ motion for a preliminary injunction (Dkt. No. 36), the Complaint has several other defects as well. For example, the Court lacks jurisdiction because an additional statute, 8 U.S.C. § 1252(f)(1), bars the relief that Plaintiffs seek, providing in relevant part that “no court (other than the Supreme Court) shall have jurisdiction or authority to *enjoin or restrain* the operation of the provisions of part IV of this subchapter. . . .” 8 U.S.C. § 1252(f)(1) (emphasis added); Dkt. No. 36 at 11–13. Section 1254a is one such covered provision, and an order postponing the Secretary’s TPS termination is the sort of order “enjoin[ing] or restrain[ing]” the Secretary that section 1252(f)(1) prohibits. Dkt. No. 36 at 11–13. And even if the Court could reach the merits of Plaintiffs’ APA and equal protection claims, those claims lack merit. *Id.* at 13–23.

Because the government has grounds to seek dismissal of the complaint that are not dependent on a certified administrative record, the Court should not order the government to prematurely produce one. Indeed, the Supreme Court in *In re United States*, 583 U.S. 29, 32–13 (2017), ruled that the district court should have “first resolved the Government’s threshold arguments” (including that the action being challenged was “unreviewable”) before requiring that the government produce a complete administrative record. As noted above, many lower courts have done the same. *See, e.g., Jiampietro*, 2018 WL 6920340, at *1; *Tahavori*, 2024 WL 1328546, at *3; *Arab*, 600 F. Supp. 3d at 66 n.2; *Connecticut*, 344 F. Supp. 3d at 294 (citing *Mdewakanton Sioux Indians of Minn.*, 264 F. Supp. 3d at 123 n.12).

Though Plaintiffs suggest that the government should produce a certified record before the November 14 hearing on Plaintiffs’ motion for a preliminary injunction, this ignores that “preliminary injunction rulings are [virtually always] based on incomplete records,” and it would be highly unusual to move to compel an administrative record at this stage. *See F.T.C. v. Verity Int’l, Ltd.*, 124 F. Supp. 2d 193, 204 (S.D.N.Y. 2000); *see also G.Y.J.P. v. Wolf*, No. 1:20-cv-01511 (TNM), 2020 WL 4192490, at *2 (D.D.C. July 21, 2020) (“This Court’s general practice is to adhere to the traditional civil litigation sequence: the plaintiff files a complaint; then the defendant answers or seeks dismissal of the complaint; then—in APA cases—the Government produce an administrative record; and only then does the Court consider motions for summary judgment. If [plaintiff] does truly face imminent harm, the appropriate procedure would be for [plaintiff] to move for a preliminary injunction, not for the Court to expedite summary judgment briefing with no good cause shown.”).

Further, Plaintiffs’ request that the Government be ordered to produce the certified record by November 5, 2025, four days after they submitted their request to the Court, is unreasonable. The compilation of an administrative record in cases like this one requires agency staff to sift through large volumes of documents to compile the relevant records. The record then must undergo multiple layers of review before it can be certified and produced. The timeline that Plaintiffs have proposed is unreasonable.

We thank the Court for its consideration of these matters.

Respectfully,

JAY CLAYTON
United States Attorney for the
Southern District of New York

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U.S. Department of Justice



United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

November 3, 2025

VIA ECF

The Honorable Katherine Polk Failla
Thurgood Marshall
United States Courthouse
40 Foley Square
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MEMO ENDORSED

Re: *Doe et al. v. Noem et al.*, No. 25-cv-8686 (KPF)

Dear Judge Failla:

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Respectfully,

JAY CLAYTON
United States Attorney for the
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By: /s/ Mark Osmond
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The Court has reviewed Plaintiffs' letter motion to compel production of the Certified Administrative Record (Dkt. #35), as well as Defendants' above response (Dkt. #37).

Given that Defendants did not file a declaration in their opposition brief (Dkt. #36; see also Dkt. #35-2 (emails indicating that the immediacy of Plaintiffs' request in part stemmed from Defendants' plan to rely on declarations)), the Court will defer consideration of Plaintiffs' motion to compel until the upcoming November 14, 2025 conference.

Dated: November 4, 2025
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE