

U.S. Department of Justice



United States Attorney
Southern District of New York

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April 6, 2026

VIA ECF

The Honorable Dale E. Ho
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

Re: *Doe et al. v. Mullin et al.*,¹ No. 26 Civ. 2280 (DEH)

Dear Judge Ho:

This Office represents Defendants (the “government”) in the above-referenced putative class action brought under the Administrative Procedure Act (“APA”) challenging the decision of the Secretary of Homeland Security (“Secretary”) to terminate Yemen’s Temporary Protected Status (“TPS”) designation. The government writes to oppose Plaintiffs’ request for the expedited production of the certified administrative record. *See* Dkt. No. 30. To be clear, the government does not oppose producing the administrative record at some future date should its production prove necessary. But the administrative record is not necessary to adjudicate Plaintiffs’ motion to postpone the effective date of the termination of Yemen’s TPS designation (Dkt. No. 24), and it may never be necessary, depending on the outcome of pending Supreme Court proceedings, in which the government’s primary argument is that APA review of TPS terminations is statutorily barred. Accordingly, requiring expedited production at this stage would impose a significant and potentially unnecessary burden on the government, and the Court should deny Plaintiffs’ request.

Though Plaintiffs suggest that the government should produce the certified administrative record before the April 16 hearing on Plaintiffs’ motion for preliminary relief, Plaintiffs ignore that rulings on such motions “are [virtually always] based on incomplete records.” *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[s] 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.”).

As Plaintiffs concede, Judge Failla adjudicated a similar motion to postpone the termination of Syria’s TPS designation without first ordering the production of the certified administrative record. *See Doe v. Noem*, Case No. 25 Civ. 8686 (KPF), Dkt. No. 38 (deferring ruling on plaintiffs’ motion to compel production of the administrative record until oral argument on plaintiffs’ motion to postpone), Dkt. No. 54 (granting motion to postpone and denying plaintiffs’ motion to compel the production of the administrative record without prejudice given

the anticipated appeal).¹ Indeed, in *National TPS Alliance (“NTPSA”) v. Noem*, which the Court cited in its April 2, 2026 order (Dkt. No. 31), the district court ordered the production of the administrative record only after adjudicating the plaintiffs’ motion to postpone. *See NTPSA*, Case No. 25 Civ. 1766 (N.D. Cal.), Dkt. Nos. 91, 93, 103–04, 110 (granting motion to postpone on 3/31/2025 after oral argument on 3/24/2025; administrative record not produced until 4/7/2025 and 4/15/2025).

The Supreme Court has already signaled that the government is likely to succeed on its argument that judicial review of the Secretary’s TPS termination determinations is barred by 8 U.S.C. § 1254a(b)(5)(A), which provides that “[t]here is no judicial review of any determination of the [Secretary] with respect to the . . . termination” of a country’s TPS designation. 8 U.S.C. § 1254a(b)(5)(A). Specifically, the Supreme Court twice stayed district court orders that enjoined the Secretary’s TPS termination of Venezuela’s TPS status. *See Noem v. NTPSA*, 146 S. Ct. 23, 24 (2025) (stays based on “the parties’ legal arguments”); *Noem v. NTPSA*, 145 S. Ct. 2728 (2025); *see also Nken v. Holder*, 556 U.S. 418, 434 (2009) (applicant must make “‘strong showing that [it] is likely to succeed on the merits’” to receive stay). And the government’s sole argument that it would succeed as to the APA claims was that § 1254a(b)(5)(A) barred judicial review.²

At a minimum, there is a substantial likelihood that the Supreme Court’s forthcoming decision, expected by late June, will foreclose Plaintiffs’ claims entirely or, at least, provide a basis for a motion to dismiss on statutory grounds, not based on the administrative record. And where the administrative record is “not necessary” to resolve a dispositive motion, courts have repeatedly denied requests to compel its production. *Tahavori v. Blinken*, No. 23 Civ. 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’”).

If the Supreme Court’s ruling identifies any remaining issues that require production of the administrative record, the government will confer with Plaintiffs about a schedule for its production. Compiling the administrative record in cases like this one is a resource-intensive process: agency staff must sift through large volumes of documents to identify and assemble the relevant materials, and the record must then undergo multiple layers of review before it can be certified and produced. The government respectfully requests that it not be required to undertake this burden given the substantial likelihood that the Supreme Court’s ruling will obviate the need to do so.

¹ Judge Failla did not order production of the administrative record until more than four months after granting plaintiffs’ motion to postpone—and only after the plaintiffs argued that production was warranted because the Supreme Court had granted certiorari in their case. *Id.* Dkt. Nos. 68, 71.

² *NTPSA*, No. 24A1059 (U.S.), Gov. Stay Appl. 15–20 (filed May 1, 2025), <https://www.supremecourt.gov/docket/docketfiles/html/public/24a1059.html>; *NTPSA*, No. 25A326 (U.S.), Gov. Stay Appl. 16–19 (filed Sept. 19, 2025), <https://www.supremecourt.gov/docket/docketfiles/html/public/25a326.html>.

I thank the Court for its consideration of these matters.

Respectfully,

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