

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

Abdo DOE, Hadeel DOE, Faiz DOE, Ebe DOE, Sam
DOE, Ali DOE, and Fahad DOE, on their own behalf
and on behalf of others similarly situated,

Plaintiffs,

– *versus* –

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

Defendants.

Case No. 1:26-cv-02280-DEH

Oral Argument set for 4/16/26 at 10:00AM

**PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO POSTPONE EFFECTIVE DATE
OF AGENCY ACTION**

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INTRODUCTION

On May 4, 2026, absent judicial intervention, more than 3,000 Yemeni nationals will lose longstanding Temporary Protected Status (“TPS”) protections and face removal to a country in the throes of humanitarian crisis—one the Secretary of Homeland Security herself found too dangerous for their safe return. The statute requires extension when those conditions persist. The Secretary terminated anyway, invoking “national interest,” a justification the statute does not authorize and no prior Secretary has ever used. The recently produced Certified Administrative Record (“CAR”) confirms the unlawfulness of the Secretary's action: the country conditions reports she relied on acknowledged the “protracted violent conflict” in Yemen and recognized that the country represents one of the world’s largest humanitarian crises.

Defendants seek to insulate their unlawful agency action from any judicial review, by recycling categorical jurisdictional arguments that have been rejected by every court that has considered them. But elementary principles of statutory construction and strong presumptions favoring judicial review confirm that courts may review compliance with statutory and APA requirements. That review reveals that the Secretary terminated TPS in excess of her statutory authority, without the required consultation, and based on a preordained outcome. The Court is obligated to protect the congressional mandate reflected in the TPS statute and set aside/postpone this plainly unlawful agency action.

ARGUMENT

I. This Court Has Authority to Review Plaintiffs’ Claims and Grant Postponement

Contrary to the government’s broad claims, neither 8 U.S.C. § 1254a(b)(5)(A) nor 8 U.S.C. § 1252(f)(1) forecloses the Court’s review of the Secretary’s TPS termination. Every published

decision to consider the Defendants’ position to the contrary has rejected it.¹ And a motions panel of this Circuit agreed that district courts retain jurisdiction to review compliance with the procedural mandates of the TPS statute and the APA. *Doe v. Noem*, No. 25-2995, 2026 WL 544631, at *1 (2d Cir. Feb. 17, 2026); *see* Defs.’ Br. at 14 n.6, ECF No. 32 (conceding opinion is persuasive authority).

Those decisions are grounded in the strong presumption favoring judicial review of unlawful agency action, *see INS v. St. Cyr*, 533 U.S. 289, 298 (2001), as well as Supreme Court precedent. To begin, there is no “clear and convincing evidence,” *Reno v. Catholic Soc. Servs., Inc.*, 509 U.S. 43, 64 (1993), that Congress intended to overcome the presumption in favor of judicial review of Plaintiffs’ APA claims (or their freestanding constitutional claim). And, in *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 491 (1991), the Court interpreted a similar jurisdiction-stripping provision prohibiting judicial review of “a determination respecting an application for adjustment of status” as only barring review of *individual* substantive determinations denying applications. Specifically, the Court held that “a determination” referred to “a single act rather than a group of decisions or a practice or procedure employed in making

¹ *See, e.g., NTPSA v. Noem*, 166 F.4th 739, 757-58 (9th Cir. 2026) (finding jurisdiction over APA challenge to TPS decision); *NTPSA v. Noem*, 150 F.4th 1000, 1017-18 (9th Cir. 2025) (same); *Afr. Cmtys. Together v. Noem*, No. 25-CV-13939, 2026 WL 395732 at *5-7 (D. Mass. Feb. 12, 2026) (same); *Miot v. Trump*, No. 25-CV-02471, 2026 WL 266413, at *10 (D.D.C. Feb. 2, 2026) (same); *NTPSA v. Noem*, 798 F. Supp. 3d 1108, 1132-36 (N.D. Cal. 2025) (same); *CASA, Inc. v. Noem*, 792 F. Supp. 3d 576, 593 (D. Md. 2025) (same); *NTPSA v. Noem*, 798 F. Supp. 3d 1008, 1024 (N.D. Cal. 2025); *HECA v. Trump*, 789 F. Supp. 3d 255, 269 (E.D.N.Y. 2025) (same); *Centro Presente v. DHS*, 332 F. Supp. 3d 393, 406-09 (D. Mass. 2018) (same); *Saget v. Trump*, 345 F. Supp. 3d 287, 294-99 (E.D.N.Y. 2018) (same); *CASA de Maryland, Inc. v. Trump*, 355 F. Supp. 3d 307, 320-21 (D. Md. 2018) (same); *Ramos v. Nielsen*, 321 F. Supp. 3d 1083, 1104 (N.D. Cal. 2018) (same); *African Cmtys. Together v. Noem*, No. CV 26-10278, 2026 WL 948591 (D. Mass. Apr. 8, 2026) (same). Two unpublished district court decisions came to the same conclusion; no unpublished district court decisions hold otherwise. *See Aung Doe v. Noem*, No. 25 C 15483, 2026 WL 184544 (N.D. Ill. Jan. 23, 2026); *Dahlia Doe v. Noem*, No. 25 Civ. 8686 (KPF), 2025 WL 4477179, at *1 (S.D.N.Y. Nov. 19, 2025) (citing to oral order at status conference).

decisions,” leaving intact “general collateral challenges to unconstitutional practices and policies used by the agency in processing applications.” *Id.* at 492. The Court reiterated *McNary*’s holding in *Reno v. CSS*, 509 U.S. at 54-56, a case the government does not even mention.

Likewise here, as the rest of § 1254a(b) makes clear, “determination” in § 1254a(b)(5)(A) refers to the Secretary’s assessment of *whether a country satisfies the conditions requirements* for a TPS designation, extension, or termination.² Therefore, § 1254a(b)(5)(A) only constrains the Court’s authority to review the substantive validity or accuracy of the Secretary’s country conditions determinations; it does not shield from judicial review the agency’s disregard of procedural obligations under the TPS statute or APA. By barring the former inquiry, Congress recognized the arguably superior institutional competence of agency officials to consider on-the-ground conditions in a particular country. Congress did not cede to the agency, license to avoid the strict, *ex ante procedural* requirements for termination of TPS status codified in the TPS statute itself and the regimen of the APA.

Ignoring the particular legal significance of the term “determination,” Defendants instead focus on the statutory terms “any” and “with respect to.” Defs.’ Br. at 10. Relying on *Patel v. Garland*, 596 U.S. 328 (2022), Defendants cast aside the clear statement rule and presumption of judicial review, to declare that those terms should have “a broadening effect.” Defs.’ Br. at 10. But in *Patel* the terms modified~~ed~~ the word “judgment” within a provision insulating “any judgment regarding the granting of relief,” an inherently broader context. *See id.* Moreover, within the TPS

² Defendants suggest that (b)(3)(A) contains two independent inquiries—a narrow review of “conditions in the foreign state” and a broader determination of “whether the conditions for such designation continue to be met.” Defs.’ Br. at 21 n.7. But these are not separate steps. This single sentence describes a single process: the Secretary reviews conditions in the foreign state and determines whether those conditions she reviewed still meet the designation standard. The word “such” ties the determination to the review. And (b)(3)(B) confirms the connection: the termination determination is made “under subparagraph (A),” not independently of it.

statute’s context, the terms have clear meanings. “[A]ny” refers to the various determinations within its scope—including country conditions assessments required for the three possible bases for designation, extension,³ and “with respect to” distinguishes determinations under subsection (b) from determinations that concern eligibility for benefits and physical presence, which are addressed under different subsections—and therefore beyond the scope of § 1254a(b)(5)(A)’s bar. *See* 8 U.S.C. §§ 1254a(a)(4)(B), 1254a(c)(2)(A), 1254a(e) (all referring to other “determinations”).

Defendants’ reliance on the Supreme Court’s grant of two stays in the Venezuela TPS case to support their jurisdictional defenses, Defs.’ Br. at 12-14, is also undercut⁴ by the Supreme Court having “deferred decisions on the Government’s stay requests in the two TPS cases currently pending before it,” Order, ECF No. 26 at 3 n.1.

What remains is the argument that Congress must have intended complete “deference” to “‘nation-state level’ judgments” in the foreign policy arena, Defs.’ Br. at 11—essentially transforming an argument regarding deference on the merits into some threshold jurisdictional bar. But Plaintiffs are not questioning any substantive foreign policy judgment. Instead, they seek to enforce compliance with congressional requirements to cabin the Secretary’s discretion. Absent judicial review, DHS could continue to ignore statutory commands and even issue 30-year renewals or “sell TPS designations” without legal constraint.⁵ *NTPSA*, 166 F.4th at 757.

³ *See generally* 8 U.S.C. § 1254a(b)(1) (describing bases for designation); *id.* § 1254a(b)(3)(A), (B), (C) (setting forth detailed criteria and procedures for TPS status review for each discrete decision).

⁴ The Supreme Court has made clear that emergency stays are not dispositive on the merits. *See Merrill v. Milligan*, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J., concurring).

⁵ In support of a general principle that process can never be separated from outcome in a jurisdiction-stripping statute, Defendants cite two cases involving the entirely different context of estimates Medicare uses to compensate hospitals in bulk for treatment of the uninsured. *See* Defs.’ Br. at 15 (citing *Yale New Haven Hosp. v. Becerra*, 56 F.4th 9 (2d Cir. 2022); *DCH Reg’l Med. Ctr. v. Azar*, 925 F.3d 503 (D.C. Cir. 2019)). But in that context, such numerical “estimates”—

Defendants’ argument that § 1252(f)(1) strips this Court of jurisdiction fares no better. Defs.’ Br. at 17-19. Several courts have decided that Congress did not intend for § 1252(f)(1) to apply to the TPS statute. *See, e.g., CASA, Inc.*, 792 F.Supp.3d at 595 (collecting cases); *Miot*, 2026 WL 266413 at *10. This Court need not reach the issue, since § 1252(f)(1) prohibits injunctions and restraining orders⁶, not postponement of agency action under the APA. Indeed, a case cited by Defendants, Defs.’ Br. at 19, *Immigration Defenders*, “squarely resolved this issue,” holding that § 1252(f) does not apply to the APA. *NTPSA v. Noem*, 163 F.4th 1152, 1158-59 (9th Cir. 2025) (citing *Immigration Defs. Law Ctr. v. Noem*, 145 F.4th 972, 989 (9th Cir. 2025)); *see also NTPSA*, 150 F.4th at 1018–19 (same); *NTPSA*, 166 F.4th at 758-61 (same); *Doe v. Noem*, 2026 WL 544631 at *1 (rejecting § 1252(f)(1) argument).

II. Plaintiffs Are Likely to Prevail on the Merits

A. The Termination Was Contrary to Law and Exceeded Statutory Authority

i. The CAR confirms that the Secretary failed to consult appropriate agencies as required by statute

Defendants do not even try to demonstrate to the Court that then-Secretary Noem fulfilled her statutory duty to consult with “appropriate agencies” regarding “conditions in the foreign state,” before terminating TPS for Yemen. 8 U.S.C. § 1254a(b)(3)(A). Instead, they recast Plaintiffs’ claim that the Secretary failed to conduct the required consultation as an attempt to “impose additional judge-made procedural requirements.” Defs.’ Br. at 23. Not so. Section 1254a(b)(3)(A)

which are statutorily shielded from judicial review—obviously “cannot be separated from the methodology used to generate them.” *DCH Reg’l Med. Ctr.*, 925 F.3d at 506.

⁶ Defendants make a distinct argument that set aside relief under APA § 706 should be understood colloquially to “restrain” for purposes of § 1252(f)(1) even if it does not “enjoin.” Defs.’ Br. at 18. Several Courts of Appeal have rejected that precise argument. *See Alli v. Decker*, 650 F.3d 1007, 1013 (3d Cir. 2011); *Rodriguez v. Hayes*, 591 F.3d 1105, 1119 (9th Cir. 2009); *Arevalo v. Ashcroft*, 344 F.3d 1, 7 (1st Cir. 2003) (“restrain” refers to TROs).

plainly requires agency consultation as a part of the periodic review of the “conditions for [TPS] designation,” and the CAR lays bare that Secretary failed to meet that obligation.

Specifically, the CAR confirms that the Secretary did not consult any “appropriate agencies” about country conditions in Yemen. The CAR contains a single email chain between DHS and the State Department from October and November 2025, which shows that a DHS Chief Regulatory Officer contacted the State Department “to obtain necessary input and feedback to satisfy the consultation requirement.” CAR at 266-67. The reply from a Senior Bureau Official at the State Department provides no information on or assessment of country conditions whatsoever, only confirmation that “State has no foreign policy objections to a change in TPS status for Yemen.” *Id.* at 266. This cursory exchange—which resembles communication between the State Department and DHS pertaining to other recent TPS terminations, *see Aung Doe*, 2026 WL 184544, at *28–32—did not constitute a consultation on country conditions, as required by the statute. It was a rubber stamp of the Secretary’s predetermined decision to terminate TPS for the thirteenth time in a row.

ii. The finding that extraordinary and temporary conditions make return to Yemen unsafe forecloses termination

The Secretary found that conditions “continue to challenge Yemeni nationals’ ability to safely return home.” Termination of the Designation of Yemen for Temporary Protected Status, 91 Fed. Reg. 10,402, 10,405 (Mar. 3, 2026) (“Notice”). That finding compelled extension under § 1254a(b)(3)(C). The Government’s reliance on the national interest exception in § 1254a(b)(1)(C) to instead terminate TPS misreads the statute and exceeds its authority. Under the statute, that exception operates only at the initial designation stage. Defendants’ attempt to import “national interest” into the termination inquiry by isolating the phrase “conditions for designation under paragraph (1)” in § 1254a(b)(3)(B), Defs.’ Br. at 25-26, cannot be reconciled with the statutory

text that governs termination. Termination must be determined “under subparagraph (A)” alone, which limits the inquiry to “the conditions *in the foreign state.*” 8 U.S.C. § 1254a(b)(3)(A) (emphasis added). National interest is not a condition in Yemen; it is a domestic policy judgment.

Under Defendants’ interpretation, the Secretary could unilaterally displace the statutory criteria for termination regardless of country conditions, simply by invoking a vague and untestable claim to “national interest.” Congress enacted TPS precisely to replace the prior ad hoc regime which had allowed unchecked executive discretion over humanitarian protection. *See NTPSA*, 150 F.4th at 1008; H.R. Rep. No. 100-627, pt. 1, at 4 (1988). The Government itself has conceded that “there is no precedent in prior administrations for terminating a designation based on an adverse national interest determination,” *Trump v. Miot*, No. 25-1084 (U.S.), Resp. Br. at 36, suggesting its novel rationale for termination is contrary to decades of prior agency interpretation of the statute.

iii. The Secretary failed to undertake a good-faith review of country conditions

Defendants mischaracterize Plaintiffs’ discussion of Yemen’s country conditions as a demand to reweigh the evidence. Defs.’ Br. at 20. But Plaintiffs identify omissions, contradictions, and irregularities in the Secretary’s analysis not to ask the Court to come to a different conclusion about the conditions in Yemen, but to demonstrate procedural inadequacy and pretext—and thus a violation of the TPS statute and the APA. The Court need not (and cannot) make any of its own judgments about the conditions in Yemen to conclude that the Secretary’s determinations fail to meet statutory prerequisites. Specifically, the Notice selectively emphasizes purported improvements while omitting central facts that formed the basis for Yemen’s prior TPS extension and redesignation, including the continuing civil war and widespread destruction of housing, medical facilities, schools, and utilities documented by the State Department and Congressional

Research Service. *Noor Doe* Pls.’ Br. 14-16, 1:26-cv-2103 (S.D.N.Y.), ECF No. 5. The Notice therefore fails to reflect the reasoned country-conditions review Defendants claim the Secretary conducted. Defs.’ Br. at 22. The CAR confirms Defendants’ purposeful omissions of key facts in order to support the preordained decision to terminate. Two U.S. Citizenship and Immigration Services (“USCIS”) memoranda, CAR at 22-48, reveal the extent of country conditions analysis for Yemen prior to the termination, while the final decisional memorandum is completely redacted. *Id.* at 1-19. The November 2025 report from the USCIS Refugee, Asylum and International Operations Directorate contains findings regarding ongoing “violent conflict,” displacement, and landmines casualties, and describes Yemen as “one of the world’s largest ‘humanitarian crisis’ [sic] and one of the ‘most severe hunger crisis’ [sic].” *Id.* at 23-24. The second report from November 2025, authored by USCIS Office of Policy and Strategy, largely ignores or minimizes evidence of ongoing harms, instead focusing on positive improvements and “national interest” factors that mirror the termination notice. *Id.* at 34-48.

The two reports demonstrate a cherry-picking of the record. *Compare* CAR at 26 (“During the reporting period, approximately half of Yemen’s healthcare facilities have not been functional,”) *with id.* at 47 (pointing to international donation of “disinfectants, soap, thermometers, and stationery,” healthcare kits, and vaccine doses as evidence that Yemen’s healthcare system is improving”). *Compare* CAR at 28 (“Yemen is the third-most food-insecure country in the world and...the situation is getting worse, with nearly half the country suffering from severe food deprivation, an increase of 36 percent from last year”) *with* CAR at 46–47 (citing construction of irrigation canals and “crop diversity” as evidence of improvement). And even where the two reports are in accord, there are contradictions with the Notice. *Compare* Notice (“Tactics by the Houthi forces, the international coalition, and domestic and international terrorist organizations

operating inside of Yemen *previously* put civilians at risk of harm”) (emphasis added), *with* CAR at 26 (“Explosive remnants of war...remain a significant threat to civilians in Yemen,”) *and id.* at 30 (“The violent conflict continues to damage civilian infrastructure,”) *and id.* at 36 (“The war in Yemen, ongoing for over a decade, remains unresolved. These contradictions highlight the unlawfulness of Defendants’ decision to terminate TPS for Yemen.

B. The Termination Was Arbitrary and Capricious⁷

i. The termination was politically motivated and pretextual

Defendants’ contention that Secretary Noem could lawfully implement a preferred policy outcome, Defs.’ Br. at 24, misses the relevant legal arbitrary-and-capricious inquiry.⁸ Agencies must base their decisions on factors “relevant under the controlling statute,” *Saget*, 375 F. Supp. 3d at 359 (quoting *Town of Orangetown v. Ruckelshaus*, 740 F.2d 185, 188 (2d Cir. 1984)), and must disclose the true basis for their decisions, *Dep’t of Commerce v. New York*, 588 U.S. 752, 785 (2019).

Here, political influence drove the Secretary’s reliance on statutorily irrelevant considerations, including the President’s personal view that the TPS program is “not legal,” *Noor Doe*, 1:26-cv-2103 (S.D.N.Y.), ECF No. 5-10; the President’s directive to terminate TPS

⁷ Also rendering the termination arbitrary and capricious, Defendants do not contest that the 60-day period departs from two decades of consistent agency practice, that agencies must “display awareness” of and “offer good reasons” for departing from longstanding policy, *FDA v. Wages & White Lion Invs., L.L.C.*, 604 U.S. 542, 570 (2025), and that Secretary Noem provided no such explanation. Defendants’ assertion that TPS beneficiaries lack reliance interests is incorrect and inconsistent with the agency’s own recognition of “putative reliance interests” in the Notice. 91 Fed. Reg. at 10,408; *see also DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 31 (2020) (temporary status does not eliminate reliance interests).

⁸ Defendants’ reliance on *Bouarfa v. Mayorkas*, 604 U.S. 6, 17 (2024), is misplaced. The pattern of procedurally deficient TPS terminations under Secretary Noem is not a consistent exercise of permissible discretion, but further confirmation that the asserted justifications for Yemen’s termination mask a preordained policy outcome. *See Dep’t of Commerce v. New York*, 588 U.S. at 785 (APA prohibits pretextual explanations masking actual basis of decision).

irrespective of statutory criteria, *Noor Doe*, 1:26-cv-2103 (S.D.N.Y.), ECF No. 5-34 at 4; and the administration’s broader objective of rolling back protections for nonwhite immigrants, *see* Pls.’ Br. at 13, ECF No. 24.

ii. The Secretary’s national-interest analysis fails even on its own terms

Here, political influence drove the Secretary’s reliance on national interest, a statutorily irrelevant consideration. Even if national interest were a permissible consideration at the termination, the Secretary’s analysis is nonetheless arbitrary and cannot sustain the decision. Defendants invoke *Lincoln v. Vigil*, 508 U.S. 182, 192 (1993), *Webster v. Doe*, 486 U.S. 592, 600 (1988), and *Trump v. Hawaii*, 585 U.S. 667, 684 (2018), for the proposition that national interest presents no judicially manageable standard. This proves the point as each of those cases involved statutory schemes that *expressly* committed such discretion to the Executive. Here, the statute does the opposite: it imposes mandatory language (“shall terminate”), ties the inquiry to objective foreign conditions, and requires automatic extension when those conditions persist.

Even where discretion exists to consider national security (which it does not here), the agency bears the obligation to “examine the relevant data and articulate a satisfactory explanation for its action.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). The Secretary’s failure to apply her own national interest framework in a coherent or even-handed manner to Yemeni TPS-holders renders the determination arbitrary and capricious. Pls.’ Br. at 8-10. And Defendants’ callous retort that the State Department’s Level 4 travel advisory cautioning against widespread violence and landmines is directed to U.S. citizens, not Yemeni nationals, underscores just how disconnected the national interest determination is from contemporaneous government assessments of country conditions in a manner tethered to the statute’s express criteria.

C. The Termination Violates Equal Protection

i. Arlington Heights heightened scrutiny—not rational basis—governs

Defendants invoke rational-basis review under *Trump v. Hawaii*, 585 U.S. at 684, but deference afforded the Executive in *Hawaii* rested on § 1182(f)—a statute that “exudes deference to the President in every clause.” Section 1254a is a fundamentally different statute: Where § 1182(f) grants open-ended authority over the exclusion of noncitizens, § 1254a limits the discretion of the Executive branch to facially neutral, non-discriminatory criteria. The Second Circuit has squarely held that “there is no general rule that federal immigration laws challenged for violating the Constitution should receive rational basis review.” *United States v. Suquilanda*, 116 F.4th 129, 140 (2d Cir. 2024). *Rajah v. Mukasey*, 544 F.3d 427 (2d Cir. 2008), does not help Defendants. *Rajah* involved selective enforcement under a statute that “explicitly allowed discrimination between classes of foreign nationals,” *Trump v. Miot*, No. 25-1084 (U.S.), Resp. Br. 44–45—nothing like § 1254a(b)(3)(A). And the *Rajah* petitioners’ only evidence of anti-Muslim animus was the selection of countries for a post-9/11 registration program; the court found that insufficient. 544 F.3d at 439. Here, the record contains what *Rajah* lacked—the decisionmaker’s own words. The Secretary publicly called immigrants “killers, leeches, and entitlement junkies,” *see* ECF No. 23-5, while advocating expansion of the very Travel Ban she then cited to justify termination—the decisionmaker’s own words linking animus to action.

ii. The evidence of discriminatory purpose is overwhelming

Discriminatory purpose need only be “a motivating factor.” *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977). The record here is stark: Thirteen TPS designations were reviewed, and thirteen were terminated. Each one involved a non-white, non-European country. Defendants respond that most TPS-designated countries fall into that category. Defs.’ Br. at 32 (citing *Ramos v. Wolf*, 975 F.3d 872, 898 (9th Cir. 2020)). But prior administrations reviewed the same general pool and repeatedly extended designations based on country conditions. This administration terminated every one in rapid succession, departing from decades of

established practice and compressing transition periods from six months to sixty days. Defendants' argument might have had some nominal force had the Secretary actually followed statutory criteria and grounded decisions on the consultation and deliberation requirements. The gross procedural irregularities, combined with the ample evidence of animus, renders this categorical termination of TPS protections highly suspect.

The decisionmakers' own statements reinforce the conclusion. The President signed Executive Order 14159 characterizing immigration as an "invasion" and issued a Travel Ban expressly identifying Yemen. Three months before the termination of Yemen's TPS designation, the Secretary described immigrants from Travel-Ban countries—including Yemen—as "killers," "leeches," and "foreign invaders," stating "WE DON'T WANT THEM. NOT ONE," while advocating for "a full travel ban on every damn country that's been flooding our nation." ECF No. 23-5. These are not stray or isolated remarks; they are official statements and actions by the decisionmakers themselves, made in their official capacities, directed at the populations affected, and contemporaneous with the challenged terminations.

Defendants' effort to dismiss these statements as "remote in time and made in unrelated contexts" fails. Defs.' Br. at 30 (quoting *Regents*, 591 U.S. at 35). In *Regents*, the Court was able to distinguish between presidential statements and an independent administrative record developed by agency officials exercising separate judgment. Here, the Secretary is carrying out discriminatory Presidential commands. The President set the policy direction. The Secretary implemented it. And she acknowledged acting pursuant to those directives. There is nothing in the record that breaks the causal chain.⁹

⁹ *Ramos v. Wolf*, 975 F.3d 872 (9th Cir. 2020) upon which Defendants rely, is a vacated Ninth Circuit decision, *see* 59 F.4th 1010 (9th Cir. 2023), that carries zero precedential weight. And

Even under rational basis review, the termination cannot stand. A "bare . . . desire to harm a politically unpopular group cannot constitute a legitimate governmental interest." *Romer v. Evans*, 517 U.S. 620, 634 (1996) (quoting *USDA v. Moreno*, 413 U.S. 528, 534 (1973)). Nor is the government's preference to end TPS a legitimate basis—the statute defines when TPS ends, and when conditions persist, extension is mandatory. The Secretary's preference to override that mandate is a refusal to follow the law, not a policy choice. The evidence of animus—the decisionmakers' statements, the 13-for-13 pattern, and the simultaneous creation of a resettlement program for Afrikaners—is sufficient under any standard.

III. The Equities Strongly Favor Postponement

Plaintiffs face detention, deportation, and permanent separation from their families and communities. *See* ECF No. 23-7 ¶¶ 12, 29; ECF Nos. 23-12-18. These harms are not abstract or speculative. *See, e.g.*, ECF No. 23-12 ¶ 7 (Fahad Doe terminated from commercial pilot job immediately upon announcement of the termination); ECF No. 23-18 ¶¶ 8–11 (Hadeel Doe's child, expected in mid-May has a serious cardiac condition requiring urgent care not available in Yemen). Nor are they "inherent to the TPS statutory scheme." Defs.' Br. at 34. The statutory structure creates the opposite presumption: where country conditions continue to satisfy TPS criteria, the designation is extended. *See* 8 U.S.C. § 1254a(b)(3)(C). Defendants further suggest that Yemeni nationals may pursue alternative forms of relief from removal. Defs.' Br. at 34. That is untrue. *See, e.g.*, ECF No. 23-10 (freezing asylum adjudications for Yemeni nationals); ECF No. 23-11 (suspending immigrant visa processing for Yemenis).

Ramos is distinguishable for the same reasons as *Regents* insofar as the Court found a break in the causal chain between Presidential statements and agency action. Here, they are part and parcel of the same contiguous government targeting of all non-white, non-European TPS holders.

By contrast, Defendants identify no harm that would result from postponement of the termination. Instead, they invoke the general principle that the government is harmed when it is enjoined from implementing statutes. Defs.' Br. at 33. That overbroad principle especially has no force where, as here, the government's action exceeds statutory authority. And *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), does not foreclose the relief requested; it left undisturbed courts' ability to set aside agency action under the APA. *See id.* at 873; *see also Make the Road New York v. Noem*, No. 25-5320, slip. op. at 74, 77 (D.C. Cir. Nov 22, 2025).

CONCLUSION

For the foregoing reasons, this Court should postpone the effective date of the termination of Yemen's TPS pursuant to 5 U.S.C. § 705.

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Respectfully submitted,

/s/ Razeen Zaman

Razeen Zaman

Helen Anne Schutz Lo*

Dinesh McCoy**

Phi Nguyen**

Niji Jain

ASIAN AMERICAN LEGAL DEFENSE
AND EDUCATION FUND

99 Hudson Street, 12th Floor

New York, NY 10013

Tel: (212) 966-5932

rzaman@aaldef.org

alo@aaldef.org

dmccoy@aaldef.org

pnguyen@aaldef.org

njain@aaldef.org

Shayana Kadidal [SK-1278]

Angelo Guisado

Baher Azmy [BA-8406]

CENTER FOR CONSTITUTIONAL
RIGHTS

666 Broadway, 7th Floor
New York, New York 10012
Tel: (212) 614-6438
Fax: (212) 614-6451
kadidal@ccrjustice.org
aguisado@ccrjustice.org
bazmy@ccrjustice.org

Counsel for Plaintiffs

**Application for admission pending*

***Application for admission Pro Hac Vice
forthcoming*

CERTIFICATION OF WORD COUNT

I hereby certify that the word count of this 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 Dale E. Ho, Individual Rules and Practices in Civil Cases § 4(c), as extended by Order, ECF 39. 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 § 7.1(c) and U.S. Dist. J. Dale E. Ho, Individual Rules and Practices in Civil Cases § 4(c) is 4,436 words and 14 pages.

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New York City, New York

/s/Razeen Zaman

Razeen Zaman