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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

NATIONAL TPS ALLIANCE, DENIS
MOLINA, JHONY SILVA, MARIA ELENA
HERNANDEZ, O.C., SANDHYA LAMA,
S.K., TEOFILO MARTINEZ,

Plaintiffs,

v.

KRISTI NOEM, in her official capacity as
Secretary of Homeland Security, UNITED
STATES DEPARTMENT OF HOMELAND
SECURITY, and UNITED STATES OF
AMERICA,

Defendants.

Case No. 3:25-cv-05687

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT**

Date: November 18, 2025
Time: 9:30 a.m.
Place: Courtroom 9

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INTRODUCTION

Plaintiffs have adduced substantial evidence establishing that Defendants’ decisions to terminate Temporary Protected Status (TPS) for Honduras, Nicaragua, and Nepal were not based on inter-agency consultation and an objective review of country conditions, as Congress required and as has long been standard agency practice. Defendants decided to terminate TPS *before* consulting with the State Department or conducting any country conditions review. They then cherry-picked facts to support their preordained conclusion. In addition, they resurrected an interpretation of the TPS statute found unlawful during the prior Trump Administration that deviated from longstanding agency practice by refusing to take into account any conditions that were not directly related to the crisis that triggered the country’s original TPS designation.

Under controlling authority and this Court’s prior decision in this case, the Court has authority to review these claims. Available evidence overwhelmingly supports Plaintiffs’ claims; at a bare minimum there are genuine issues of fact that preclude summary judgment for Defendants.

BACKGROUND

This Court has already explained the background relevant to Plaintiffs’ claims. Dkt. 73. Plaintiffs add the following additional points of particular relevance to the instant motion. *See also* Dkt. 144 at 2–14 (Plaintiffs’ Motion for Partial Summary Judgment).¹

A. Congress’s Statutory Scheme for TPS and Standard Agency Practice

“In enacting the TPS statute [in 1990], Congress designed a system of temporary status that was predictable, dependable, and insulated from electoral politics.” *Nat’l TPS All. v. Noem*, 150 F.4th 1000, 1008–1010 (9th Cir. 2025). Congress sought to fix “the Executive’s prior ad hoc framework for providing relief to nationals of certain designated countries,” which lacked transparency and clear criteria and was susceptible to “the vagaries of our domestic politics.” *Id.* (quoting 135 Congr. Rec. H7501 (daily ed. Oct. 25, 1989)). With TPS, Congress “provided a new statutory basis for the temporary protection of certain nationals of foreign countries, now with explicit guidelines, specific procedural steps, and time limitations.” *Id.* at 1010.

¹ In the last few days Defendants produced additional discovery that Plaintiffs expect to reference in their reply in support of their own summary judgment motion.

Consistent with Congress’s goal of replacing the old, ad hoc system for humanitarian immigration protection, a clear statutory framework governs TPS decisionmaking. Pursuant to the statute, the Secretary has substantial discretion as to initial TPS designations. However, the statute strictly limits the Secretary’s discretion after designation, with clear rules governing the process for conducting a periodic review and mandatory criteria for deciding whether to extend or terminate. 8 U.S.C. § 1254a(b)(3). “At least 60 days before [the] end” of any “period of designation,” the Secretary “shall” conduct a “[p]eriodic review” to determine whether designation remains warranted. *Id.* During the periodic review, the Secretary must “consult[] with appropriate agencies” and “review the conditions in the foreign state” to “determine whether the conditions for such designation . . . continue to be met.” *Id.* § 1254a(b)(3)(A). An extension is not subject to discretion if the conditions are met: Unless the Secretary determines that a country no longer meets the conditions for designation, its designation “is extended.” *Id.* § 1254a(b)(3)(C).

A typical periodic review of a TPS designation includes an evaluation of country conditions informed by the preparation of country conditions reports both by USCIS and the State Department. *See Ramos v. Nielsen*, 336 F. Supp. 3d 1075, 1082 (N.D. Cal. 2018) (describing process), *vacated and remanded sub. nom. by Ramos v. Wolf*, 975 F.3d 872 (9th Cir. 2020); *Saget v. Trump*, 375 F. Supp. 3d 280, 298–301 (E.D.N.Y. 2019) (same); *Nat’l TPS All. v. Noem*, No. 25-cv-01766, Dkt. 279 at 7–10 (N.D. Cal. Sep. 5, 2025) (same).² During the periodic review, DHS has historically considered the full range of conditions impacting a country, rather than limiting its review to conditions related to the crisis that triggered initial designation. *See Saget*, 375 F. Supp. 3d at 350 (“[T]he DHS Secretary, DHS, and USCIS had a longstanding practice of considering all country conditions when undertaking the mandatory periodic review under the statute, regardless of their relation to the originating condition.”); *Ramos*, 336 F. Supp. 3d at 1093 (“Intervening factors arising after a country’s original TPS designation . . . were considered relevant to determining whether a country continued to meet the conditions for continuing TPS designation.”). Relying on the USCIS

² *See also* GAO, *Temporary Protected Status: Steps Taken to Inform and Communicate Secretary of Homeland Security’s Decisions*, 16–18, 27 (Apr. 3, 2020) (“GAO Report”), <https://www.gao.gov/products/gao-20-134>.

1 and State Department's country conditions reports, the USCIS Office of Policy & Strategy (OP&S)
 2 then prepares a Decision Memo—a detailed and substantiated recommendation from USCIS to DHS
 3 as to whether the conditions in a country require extension or termination. This, along with the
 4 Secretary of State's recommendation is provided to the DHS Secretary, who then makes a final
 5 decision.

6 **B. The Termination of TPS Designations for Honduras, Nicaragua, and Nepal**

7 The termination of the TPS designations of Honduras, Nicaragua and Nepal did not follow
 8 the statutory mandate or the standard agency practice.

9 i. Historical Background of These TPS Designations

10 Honduras and Nicaragua were originally designated for TPS on January 5, 1999 by Attorney
 11 General Janet Reno after Hurricane Mitch killed thousands of people, crippled infrastructure, and
 12 caused massive economic damage. 64 Fed. Reg. 524 (Jan. 5, 1999) (Honduras); 64 Fed. Reg. 526
 13 (Jan. 5, 1999) (Nicaragua). Each country's designation was subsequently extended over a dozen
 14 times based on their slow recovery from the devastating hurricane as well as other social, economic
 15 environmental, and infrastructural challenges that were not related to the hurricane. Nepal was first
 16 designated for TPS by Secretary Jeh Johnson on June 24, 2015, after a 7.8 magnitude earthquake and
 17 a number of significant aftershocks struck the country, killing nearly 9,000 people, injuring more
 18 than 20,000 people, displacing millions, and destroying or significantly damaging over 750,000
 19 homes. 80 Fed. Reg. 36,346 (June 24, 2015). On October 26, 2016, DHS extended Nepal's
 20 designation for eighteen months. 81 Fed. Reg. 74,470 (Oct. 26, 2016). The extension took into
 21 account a variety of factors and conditions that arose subsequent to the original designation—many
 22 of which were unrelated to the earthquakes, including civil unrest, the obstruction of crossings at the
 23 Nepal-India border, and inadequate sanitation. *Id.*

24 Between 2017 and 2018, during the first Trump administration, DHS announced TPS
 25 terminations for six countries, including Honduras, Nicaragua, and Nepal. Litigation and
 26 congressional investigations subsequently revealed the termination decisions were not based on an
 27 objective review of country conditions—as required by statute and consistent with the past practice
 28 over numerous administrations, both Democratic and Republican—but rather were part of a

1 “predetermined presidential agenda to end TPS.” *Ramos*, 336 F. Supp. 3d at 1094–99.³ The two
 2 district courts to consider the legality of these decisions found they constituted an unexplained break
 3 with past practice and therefore violated the APA. *Id.* at 1092–97. The resulting court orders
 4 prevented the terminations from going into effect.

5 On June 21, 2023, during the Biden administration, DHS rescinded the TPS terminations for
 6 Honduras, Nicaragua, and Nepal and extended each country’s designation. *See* 88 Fed. Reg. 40,304
 7 (June 21, 2023) (Honduras); 88 Fed. Reg. 40,294 (June 21, 2023) (Nicaragua); 88 Fed. Reg. 40,317
 8 (June 21, 2023) (Nepal).

9 ii. The New Administration’s Plan to End TPS for All Three Countries

10 After taking office, the second Trump administration quickly resumed its efforts to end TPS,
 11 notwithstanding the statute’s mandate that designations be extended unless the country no longer
 12 meets the conditions for designation. Defendants publicly announced their intent to end the TPS
 13 program wholesale. At Secretary Noem’s confirmation hearing—“before [she] reviewed any country
 14 conditions reports,” Dkt. 73 at 21—she testified that TPS extensions will not be allowed to “go[]
 15 forward the way that they are.” Dkt. 145-2 at 104:3–105:2. Her testimony was consistent with
 16 President Trump and Vice President Vance’s promise during their campaign to “revoke” TPS. Dkt.
 17 145-3 at 14:18–16:7.

18 Once in office, President Trump operationalized his TPS policy via Executive Order 14159,
 19 titled, “Protecting the American People Against Invasion.” 90 Fed. Reg. 8443 (Jan. 20, 2025)
 20 (“Invasion E.O.”). The Invasion E.O. states that “[m]any” non-citizens who are unlawfully present in
 21 this country pose “significant threats to national security and public safety” and are “committing vile
 22 and heinous acts against innocent Americans.” *Id.* § 1. To address this, the Invasion E.O. directs the
 23 Secretary of State, Attorney General, and DHS Secretary to “rescind the policy decisions of the
 24 previous administration that led to the increased or continued presence of illegal aliens in the United
 25

26 ³ Even the vacated *Ramos* panel majority opinion, which of course is no longer good law, did not
 27 suggest otherwise. It found only that the court lacked jurisdiction to review the challenge at issue in
 28 that case—a conclusion later vacated by the Ninth Circuit *en banc*. *Ramos v. Wolf*, 975 F.3d 872,
 895 (9th Cir. 2020) (declining to “consider [the claim’s] likelihood of success on the merits”), *reh’g*
en banc granted, opinion vacated, 59 F.4th 1010 (9th Cir. 2023).

1 States, and align any and all departmental activities with the policies set out by this order and the
 2 immigration laws.” *Id.* § 16. This includes “ensuring that designations of Temporary Protected
 3 Status are consistent with the provisions of section 244 of the INA (8 U.S.C. § 1254a), and that such
 4 designations are appropriately limited in scope and made for only so long as may be necessary to
 5 fulfill the textual requirements of that statute.” *Id.* § 16(b).

6 Secretary Noem interpreted the Invasion E.O. as a directive to “rescind” TPS designations
 7 generally. *See, e.g.*, Dkt. 145-5. Nine days after President Trump issued the Invasion E.O., she
 8 issued the first TPS termination of her tenure. In an unprecedented decision, she purported to
 9 “vacate” the prior Secretary’s extension of TPS for Venezuela—the first rescission of an extension
 10 in the program’s 35-year history—and then terminated Venezuela’s designation. *Nat’l TPS All.*, No.
 11 25-cv-01766, Dkt. 279 at 1–2, 12–15. She explained her decisions as follows: “When the president
 12 gives a directive, the Department of Homeland Security will follow it [W]e are getting direction
 13 on how this [TPS] works from the direction of the president of the United States. And he is pausing
 14 the program to re-evaluate.” Dkt. 145-6 at 5–6. Secretary Noem went on to terminate TPS for over
 15 1.5 million people from eight countries: Venezuela, Afghanistan, Cameroon, Nepal, Haiti, Honduras,
 16 Nicaragua, and Syria.⁴ Her termination decisions repeatedly concluded that TPS holders could safely
 17 return to live in countries the State Department deems too dangerous to even visit. Dkt. 145-7
 18 (warning against travel to Afghanistan); Dkt. 145-8 (warning against travel to Venezuela); Dkt. 145-
 19 9 (advising reconsideration of travel to Honduras); Dkt. 145-10 (advising reconsideration of travel to
 20 Nicaragua); Dkt. 145-11 (warning against travel to Syria).

21 Defendants have described these TPS terminations as “part of President Trump’s promise to
 22 rescind policies that were magnets for illegal immigration and inconsistent with the law.” Dkt. 145-

23
 24 ⁴ *See* 90 Fed. Reg. 9040 (Feb. 5, 2025) (Venezuela, 2023 Designation); 90 Fed. Reg. 20,309 (May
 25 13, 2025) (Afghanistan); 90 Fed. Reg. 23,697 (June 4, 2025) (Cameroon); 90 Fed. Reg. 24,151 (June
 26 6, 2025) (Nepal); 90 Fed. Reg. 28,760 (Jul. 1, 2025) (Haiti); 90 Fed. Reg. 30,086 (July 8, 2025)
 27 (Nicaragua); 90 Fed. Reg. 30,089 (July 8, 2025) (Honduras); 90 Fed. Reg. 43,225 (Sep. 8, 2025)
 28 (Venezuela, 2021 Designation); 90 Fed. Reg. 45,398 (Sep. 22, 2025) (Syria). The only TPS-
 designated country that has come up for review during Secretary Noem’s tenure that has not been
 terminated is South Sudan, for which there was an automatic extension due to the failure to make
 any decision regarding South Sudan’s designation within the statutory timeline. 90 Fed. Reg. 19,217
 (May 6, 2025). South Sudan has a very small population of TPS holders—approximately 200
 people. *Id.* at 19,218.

5. In their view, TPS designations compromise the “integrity” of “our immigration system” (even though Congress established it as *part of* that system). Dkt. 145-12 (DHS press release stating that terminating TPS for Afghanistan “is a key part of restoring integrity in our immigration system”); Dkt. 145-13 (DHS press release stating that terminating TPS for Nicaragua “restores integrity in our immigration system”). Secretary Noem has also equated TPS holders with “MS-13 gang members,” “known terrorists,” and “murderers.” Dkt. 145-14. *See also* Dkt. 145-15 (associating Honduran “migration management” with “sav[ing] American lives and get[ting] criminals off our streets!”).

iii. The Challenged Termination Decisions Ignore Country Conditions

To implement their plan to “rescind” TPS, Defendants’ TPS termination decisions consistently omit any mention of conditions that had formed the basis for prior TPS extensions for the country at issue. *Compare* 88 Fed. Reg. 40,304 (June 21, 2023) (considering widespread “political violence” and “staggering levels of crime” in Honduras) with 90 Fed. Reg. 30,089 (July 8, 2025) (making no mention of political violence or crime in Honduras); 88 Fed. Reg. 40,294 (June 21, 2023) (considering “political instability and a humanitarian crisis” in Nicaragua) *with* 90 Fed. Reg. 30,086 (July 8, 2025) (failing even to mention political stability or humanitarian situation in Nicaragua); 88 Fed. Reg. 40,317 (June 21, 2023) (considering food insecurity and lack of access to sanitation in Nepal) *with* 90 Fed. Reg. 24,153 (June 6, 2025) (not considering food security or access to sanitation in Nepal); 88 Fed. Reg. 69,945 (Oct. 10, 2023) (considering human rights abuses, food insecurity, a cholera epidemic, and ongoing mass displacement in Cameroon) *with* 90 Fed. Reg. 23,697 (June 4, 2025) (entirely ignoring human rights, food security, infectious diseases, or displacement in Cameroon); 88 Fed. Reg. 65,728 (Sep. 25, 2023) (considering “worsening” human rights “crisis,” “unprecedented deterioration of women’s rights,” and “sexual violence against women and girls [that] occurs regularly” in Afghanistan) *with* 90 Fed. Reg. 20,309 (May 13, 2025) (making no mention of human rights or rights of women and girls in Afghanistan). Even where the prior extension decision was made only a few weeks before Defendants’ termination—as was true in the case of Venezuela—the new decisions consistently ignored conditions that agency decisionmakers had previously deemed relevant. *Compare* Dkt. 145-16 (Jan. 9, 2025 Decision Memo for Venezuela) (concluding Venezuela continues to meet conditions for TPS designation, and

1 considering, inter alia, political repression, human rights, and food security) with Dkt. 145-17 (Jan.
2 31, 2025 Decision Memo for Venezuela) (concluding Venezuela no longer meets conditions for TPS
3 designation, without discussing political repression, human rights, or food security).

4 iv. The Challenged Termination Decisions Lacked Mandated Consultation or Review

5 Defendants did not engage in the statutorily-required inter-agency consultation or country
6 conditions review before deciding to terminate TPS for Honduras, Nicaragua, and Nepal. Instead,
7 TPS subject matter experts drafted TPS Decision Memos recommending termination before
8 reviewing USCIS country conditions reports. USCIS wrote Decision Memos “for termination” first,
9 and sought country conditions reports after. *Compare* Dkt. 145-31 (April 7 email confirming
10 Decision Memos drafted) *with* Dkt. 145-20 (April 8 email from OP&S identifying that OP&S is
11 lacking country conditions/country of origin information (“COI”) for Honduras and Nicaragua, even
12 though OP&S “drafted decision memos for both countries”); Dkts. 145-43, 145-44, 145-45. DHS
13 also decided to terminate TPS for Honduras, Nicaragua, and Nepal without receiving
14 contemporaneous State Department country conditions memoranda or—in the case of Nicaragua and
15 Nepal—even contemporaneous State Department recommendations regarding each country. Dkt. 63
16 (Nicaragua CAR index with no record of any letter from Secretary Rubio related to Nicaragua); Dkt.
17 64 (same for Nepal). DHS senior personnel as well as USCIS’ TPS subject matter experts
18 recognized that the usual State Department recommendation and country conditions report that
19 forms part of the periodic review was lacking. They actively, and repeatedly, sought an analysis and
20 recommendation from the State Department, without success. Dkts. 145-31, 145-32, 145-42, 145-54,
21 145-55, 145-38, 145-37, 145-34.

22 For Nicaragua and Nepal, no State Department input was ever forthcoming—the only State
23 Department input in the record consists of dated assessments from the prior administration.
24 Honduras was the sole country for which the State Department provided an updated
25 recommendation letter, but that letter was itself a very sharp break with past practice as it was not
26 based on country conditions. Dkt. 145-36. Secretary of State Rubio recommended termination of
27 TPS for Honduras on the ground that the country’s designation is ““contrary to national interest of
28 the United States’...because it facilitates and encourages mass migration” and “does not champion

core American interests or put America and American citizens first.” *Id.* The only reference in Secretary Rubio’s letter to country conditions in Honduras was a single sentence: “Honduras has recovered sufficiently from the temporary disruption in living conditions that resulted from the environmental disaster caused by Hurricane Mitch in 1999 such that Honduras can adequately handle the return of its nationals.” *Id.*

v. The Challenged Decisions Rest on an Unlawful and Unexplained Interpretation of the TPS Statute

Defendants also adopted a new, unlawful interpretation of the TPS statute to accomplish their goal of ending the TPS designations. The final Decision Memos for Honduras, Nicaragua, and Nepal addressed only country conditions related to the *original* reason for the country’s TPS designation. Dkt. 145-56 at 4 (Honduras); Dkt. 145-46 at 4 (Nicaragua); Dkt. 145-19 at 4–5 (Nepal). The agency then recommended termination for each country on the ground that the original natural disaster was no longer causing a substantial disruption of living conditions which prevents the country from being able to “handle adequately the return of its nationals.” Dkt. 145-56 at 4–5 (“the conditions resulting from Hurricane Mitch no longer cause a substantial, but temporary, disruption of living conditions in the area affected, and Honduras is no longer temporarily unable to handle adequately the return of its nationals. Honduras has made significant progress recovering from the hurricane’s destruction and is now a popular tourism and real estate investment destination.”); Dkt. 145-46 at 4 (“the conditions resulting from Hurricane Mitch no longer cause a substantial, but temporary, disruption of living conditions, and Nicaragua is able to handle adequately the return of its nationals”); Dkt. 145-19 at 5 (“the impacts of the 2015 earthquake that were the basis for the initial 2015 TPS designation no longer prevent Nepal’s nationals from returning in safety”).

Even where prior TPS extensions—and Defendants’ own country conditions analysis and other direct evidence—identified other country conditions relevant to whether TPS holders could safely return, the agency ignored these conditions unless they were tied to the original reason for the country’s designation. For instance, the career officials who prepared the USCIS country conditions memo for Honduras discussed widespread violence in the country, including political violence, as well as issues related to rampant corruption, a dengue outbreak, and severe poverty and inequality.

Dkts. 145-29; 145-30 at 2. However, the officials who drafted the Decision Memo recommended termination solely because Hurricane Mitch no longer caused a disruption in living conditions. Dkt. 145-56 at 4–5. Likewise, the career officials who prepared the USCIS country conditions memo for Nicaragua discussed at length the country’s descent into authoritarianism, rampant human rights violations, extreme persecution, and widespread poverty. Dkt. 145-43 at 2–3; Dkt. 145-49 at 1. But the Decision Memo quickly concluded that the conditions resulting from Hurricane Mitch no longer disrupted the ability of nationals to safely return, and TPS should be terminated. Dkt. 145-46. As to Nepal, in a familiar pattern, the USCIS Decision Memo ignored the findings of country conditions experts who identified barriers to safety for TPS holders who were forced to return, Dkt. 145-22, and instead focused exclusively on the “impacts of the 2015 earthquake” that had been the original basis for Nepal’s designation. Dkt. 145-19 at 5.

* * *

Secretary Noem signed the Decision Document terminating TPS for Nepal on April 23, 2025. Dkt. 145-19 at 9. The agency announced the decision 43 days later, on June 5, and published the Federal Register notice on June 6, granting only 60 days for Nepali TPS holders to transition out of TPS status after a decade with TPS. 90 Fed. Reg. at 24,154 (June 6, 2025) (Nepal designation set to expire on August 5, 2025).

Secretary Noem signed the Decision Documents terminating TPS for Honduras and Nicaragua on May 5, 2025. Dkt. 145-56 at 9 (Honduras); Dkt. 145-46 at 8 (Nicaragua). The agency announced the decisions 63 days later, on July 7, 2025—two days after the end date of the prior designation. 90 Fed. Reg. 30,092 (July 8, 2025) (Honduras designation set to expire on July 5, 2025); 90 Fed. Reg. 30,089 (July 8, 2025) (same for Nicaragua). The agency published the Federal Register notices terminating TPS for Honduras and Nicaragua on July 8, granting only 60 days for Honduran and Nicaraguan TPS holders to transition out of TPS status after 26 years with TPS. *Id.*

LEGAL STANDARD

Defendants are wrong to suggest that, as to their motion for summary judgment against Plaintiffs, Plaintiffs must show “as a matter of law” that Defendants violated the APA, rather than that there are no material disputes of fact. *See* Mot. at 6. The cases they cite nowhere state that Rule

56 is inapplicable. As in other civil litigation contexts, here too a material factual dispute on the issues Defendants submit for judgment would preclude summary judgment for Defendants. *See Latecoere Int’l, Inc. v. U.S. Dep’t of Navy*, 19 F.3d 1342, 1344 (11th Cir. 1994), *as amended* (May 27, 1994) (applying dispute-of-material-fact standard in APA case involving evidence outside “formal record”); *Oberdorfer v. Jewkes*, 583 F. App’x 770, 773–74 (9th Cir. 2014) (applying traditional summary judgment standard in reviewing a challenge to agency decision); *Sierra Club v. Bosworth*, 510 F.3d 1016, 1022 (9th Cir. 2007) (same). There is also no question that factual disputes would preclude summary judgment against Plaintiffs’ constitutional claim. *See Washington v. DHS*, No. 4:19-CV-5210-RMP, 2020 WL 4667543, at *6 (E.D. Wash. Apr. 17, 2020) (“[r]ecent Ninth Circuit caselaw supports” freestanding non-APA constitutional claims); *see also Dubbs v. CIA*, 866 F.2d 1114, 1118 (9th Cir. 1989) (fact disputes precluded summary judgment on claim that CIA unconstitutionally denied “security clearances to all homosexuals”).

To the extent Defendants argue that, at summary judgment in APA cases, the Court cannot entertain facts outside the record, they are also incorrect. Mot. at 6. Where, as here, a court appropriately orders that the initial record be supplemented or extra-record discovery be taken—such as where plaintiffs allege bad faith, abuse of authority, or a failure to consider relevant factors—the Court may look at undisputed facts beyond the initial administrative record to grant summary judgment on plaintiffs’ claims. *See Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 415–17, 420 (1977) (summary judgment appeal), *abrogated in part on other grounds by Califano v. Sanders*, 430 U.S. 980, 984 (1977); *accord Lands Council v. Powell*, 395 F.3d 1019, 1030 (9th Cir. 2005). Defendants’ cases are not to the contrary. *See Occidental Eng’g Co. v. INS*, 753 F.2d 766, 769 (9th Cir. 1985) (“De novo factfinding” by district court allowed in “limited” situations).

ARGUMENT

I. THE COURT HAS JURISDICTION OVER ALL OF PLAINTIFFS’ CLAIMS

A. The TPS Statute Does Not Bar Plaintiffs’ Claims

For the reasons described in this Court’s prior orders, Dkts. 73 at 15–20, 87 at 2–6, 134 at 10–11, and in Plaintiffs’ opposition to Defendants’ motion to dismiss, Dkt. 121 at 3–9, the TPS statute’s jurisdiction stripping provision does not bar Plaintiffs’ claims. Defendants’ recycled

arguments have no more merit now than they did when this Court rejected them on three prior occasions.⁵

Contrary to Defendants’ assertion, neither the Ninth Circuit’s stay of this Court’s postponement order nor the Supreme Court’s stays in a different TPS case alter this analysis. Mot. at 7. None of the stay orders interpret the TPS statute’s jurisdiction-stripping provision or otherwise provide any reasoned explanation. Even if they did, “a predictive analysis” in connection with a stay “should not, and does not, forever decide the merits of the parties’ claims.” *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 661 (9th Cir. 2021). *See also Nken v. Holder*, 556 U.S. 418, 432 (2009) (“The whole idea [of a stay] is to hold the matter under review in abeyance because the appellate court lacks sufficient time to decide the merits.”); *Singh v. Berger*, 56 F.4th 88, 109 (D.C. Cir. 2022) (likelihood of success finding when granting a stay “in no way prejudices” a party’s “ability going forward to” advocate “on the merits before the district court”).

Nor does the Ninth Circuit’s decision in *National TPS Alliance v. Noem*, 150 F.4th 1000, 1017 (9th Cir. 2025) (“*NTPSA I*”), support Defendants’ claim that the jurisdiction-stripping provision bars Plaintiffs’ claims. To the contrary, *NTPSA I* reaffirmed that the jurisdiction-stripping provision does *not* foreclose all judicial review of TPS-related decisions. *Id.* at 1017–1018 (considering “the plain text of the statute, its legislative history, and the strong presumption that the scope of agency authority is reviewable” to find judicial review preserved).

Notwithstanding Defendants’ misrepresentations, Mot. at 9, Plaintiffs *do* claim that the Secretary lacks the authority to execute the terminations in the manner in which she did: as explained below, she must conduct a periodic review in a manner consistent with her statutory obligations, which include consultation with the State Department and actual consideration of country conditions. Plaintiffs allege, with significant substantiating evidence, that she did not. Compl. ¶¶ 152–57; Section II.A, *infra*. That is a challenge to the collateral process by which she reached her TPS determinations, not a challenge to the underlying country conditions analysis which

⁵ Defendants persist in relying on the vacated Ninth Circuit opinion in *Ramos* as if it were good law. Mot. at 9 (*citing Ramos v. Wolf*, 975 F.3d 872, 895 (9th Cir. 2020)). It is not, so Defendants’ assertion that the Ninth Circuit has “concluded” certain types of TPS challenges are unreviewable is inaccurate. *Id.*

form the determinations themselves. So too are Plaintiffs' other claims that the Secretary engaged in illegal and unconstitutional practices in terminating TPS. Dkt. 73 at 15–20.⁶

Judicial review is not foreclosed by § 1254a(b)(5)(A).

B. No Other Statute Bars Plaintiffs' Claims

Defendants assert that APA Section 701(a)(2) and 8 U.S.C. § 1252(a)(2)(B)(ii) deprive this Court of jurisdiction to review Plaintiffs' challenge to Defendants' decision to provide only 60 days notice before stripping long-time residents of their lawful status and work authorization. Mot. at 10–11. As explained in Plaintiffs' opposition to Defendants' motion to dismiss, these arguments are meritless. Dkt. 121 at 6–8. Section 701(a)(2) does not bar review because Defendants' past “practice provides a meaningful standard by which this court may review its exercise of discretion.” *Spencer Enters., Inc. v. United States*, 345 F.3d 683, 688 (9th Cir. 2003) (internal quotation marks and citation omitted). There is a uniform agency practice lasting at least two decades of at least six months for orderly transition in the event of a termination of TPS. *See also* Dkt. 73 at 23 (describing past practice). Defendants fail to refute the undeniable evidence of this practice. Mot. at 11 n.5. Their examples from the past twenty years are all consistent with Plaintiffs' allegations.

Likewise, Section 1252(a)(2)(B) covers only “orders denying discretionary relief in individual cases.” *Nakka v. USCIS*, 111 F.4th 995, 1015 (9th Cir. 2024) (quotation omitted). It does not apply to “the type of challenges to the Secretary's regulations, orders, policies, and directives” at issue here. *Id.*

Defendants also rehash their argument that 8 U.S.C. § 1252(f)(1) bars relief under Section 706 of the APA. Mot. at 12. This Court already held otherwise, and in any event is now bound by the Ninth Circuit's decision on the issue, as Defendants acknowledge. *Id. See Immigrant Defenders L. Ctr. v. Noem*, 145 F.4th 972, 989–90 (9th Cir. 2025).

⁶ Defendants' citation to *Reno v. Am.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 586 (1999) adds nothing to their meritless jurisdictional position. That case concerned 8 U.S.C. § 1252(g), a provision of the IIRIRA of 1996. Section 1254a, in contrast, was enacted six years before IIRIRA's passage, and its language is far narrower than that used in some of the later statute's jurisdictional provisions.

II. THE TERMINATIONS VIOLATED THE APA

Defendants' summary judgment motion as to Plaintiffs' APA claims fails on the merits. The evidence overwhelmingly supports Plaintiffs' claims that (1) the terminations were preordained without observance of legally required procedure, specifically inter-agency consultation and an objective review of country conditions; (2) the Secretary failed to consider the full range of country conditions during the periodic review process, instead limiting consideration to only the original reason for the country's TPS designation, in an unexplained break with past practice; and (3) the Secretary's 60-day orderly transition period was also an unexplained departure from past practice, which consistently over two decades provided at least six months for orderly transition in the event of terminations. At minimum, Defendants' summary judgment motion must be denied.

A. The Terminations Were Predetermined and Without Observance of Procedure Required by Law

Although not dispositive, it bears mention that this Court already found Defendants likely did not comply with the TPS statute when terminating TPS for Honduras, Nicaragua and Nepal: "[T]he Secretary's TPS Nepal, Honduras, and Nicaragua terminations were based on a preordained determination to end the TPS program, rather than an objective review of the country conditions." Dkt. 73 at 21. In order to justify the preordained decision to terminate TPS, Defendants' termination notices have consistently ignored entire categories of conditions relevant to whether TPS remains warranted. *See* Dkt. 73 at 22; Background, *supra*. Defendants' have "sidestepped the review process required by the TPS statute." *Saget*, 375 F. Supp. 3d at 349–53 (finding omission of certain country conditions information was evidence DHS Secretary failed to follow statutory process when terminating TPS for Haiti during the first Trump Administration).

Discovery has confirmed that Defendants failed to comply with the TPS statute's procedural requirements: they did not consult with "appropriate agencies" or review country conditions before deciding to terminate TPS for Honduras, Nicaragua, and Nepal. *See* Background, *supra*. For all three countries, Defendants drafted recommendations for termination and then cherry-picked select "improvements" from the country conditions analyses provided by agency experts to support the preordained decisions. This is apparent from a comparison between the comprehensive country

1 conditions analyses prepared by career experts and the pared-down Decision Memo ultimately
2 signed by the Secretary. *See* Background, *supra*. For example, the Honduras country conditions
3 memo includes sections on “political considerations,” “violence,” “attacks on human rights
4 defenders,” and “health concerns.” Dkt. 145-29. In contrast, the Honduras Decision memo has only
5 one heading for country conditions, labeled “improvements,” which addresses none of those
6 categories. Dkt. 145-56 at 5. Defendants’ decision to use the country conditions analyses as a source
7 from which to cherry-pick evidence to support the preordained termination decisions they already
8 made, rather than as a basis for their decisions, violated the TPS statute.

9 Defendants make no attempt to explain the evidence on which this Court previously relied,
10 including various statements showing the terminations were illegally preordained; nor do they seek
11 to explain the glaring omissions in country conditions analysis or lack of consultation that discovery
12 revealed. Instead, they argue the Secretary *must* have complied with the TPS statute’s consultation
13 and review requirements, because the administrative record for each termination decision includes
14 information about country conditions and communications with the State Department. Mot. at 12-18.
15 *See* 8 U.S.C. § 1254a(b)(3)(A) (TPS statute requires that TPS decisions be made after and based on
16 “consultation with appropriate agencies” and a “review [of] the conditions in the foreign state”). But
17 “the fact that [the Secretary] received information regarding [country] conditions, does not prove she
18 ultimately considered and relied on those conditions in deciding to terminate TPS status.” *Ramos*,
19 336 F. Supp. 3d at 1097. Indeed, voluminous, un rebutted evidence shows she did not: Defendants
20 decided to terminate *in advance*, regardless of what interagency consultations and an objective
21 country conditions review would have found. *See* Background, *supra*.

22 In addition, the TPS statute requires *contemporaneous* consultation *about country conditions*.
23 *See* GAO Report at 8, 16, 18–19; Dkt. 145-44 at 4 (stating that State Department typically sends
24 country conditions recommendations to OP&S, which shares it with RAIO). *See also Cal.*
25 *Wilderness Coal. v. U.S. Dep’t of Energy*, 631 F.3d 1072, 1088 (9th Cir. 2011) (collecting cases
26 defining agency consultation requirements and noting the consultation is an “affirmative duty,” that
27 must be “meaningful” and occur before making a decision); *Campanale & Sons, Inc. v. Evans*, 311
28 F.3d 109, 117 (1st Cir. 2002) (holding letters were insufficient to establish that agency complied

with statutory consultation requirement); *see generally Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997) (plain meaning of statutory language determined by reference to the specific context in which the language is used and the broader context of the statute as a whole). Under such cases, the communications in the administrative record, all of which are either dated, irrelevant, or conclusory, plainly do not suffice. Mot. at 14–15. Defendants do not even contend the State Department provided, or the Secretary considered, an assessment of country conditions or a recommendation with regard to Nicaragua. With regard to Nepal, they cite only the recommendation from the prior administration, and with regard to Honduras, they cite only a single conclusory sentence from the Secretary of State. Mot. at 14. *See* Dkts. 62–64 (CAR indices for Nepal and Nicaragua, lacking any contemporaneous State Department country conditions analysis or recommendation letter; CAR index for Honduras, with no updated State Department country conditions memo); Dkt, 145-36 (Secretary of State letter regarding Honduras); Background, *supra* (USCIS and DHS personnel unsuccessfully seeking contemporaneous State Department country conditions analyses and recommendations for Nicaragua and Nepal).

Thus, the record evidence establishes both that the Secretary reached a predetermined conclusion without regard to country conditions, and that she failed to comply with the statute’s mandatory consultation requirements. At a minimum, the record precludes summary judgment for Defendants on those claims.

B. The Terminations Were Contrary to Law and Arbitrary and Capricious Because They Did Not Take Into Account Intervening Conditions

Defendants concede the challenged termination decisions were based solely on an analysis of whether the country had recovered from the crisis that triggered its initial designation. Mot. 12–13 (during periodic review, “the Secretary is to evaluate whether the ‘temporary’ conditions *caused by the event that gave rise to the TPS designation* continue to exist”) (emphasis added). This narrowly circumscribed understanding of the country conditions review requirement violates the APA for two

1 reasons: (1) it was based on an incorrect interpretation of the TPS statute⁷ and (2) it broke with past
2 practice without acknowledgment or explanation.

3 Under the TPS statute, Secretary Noem was required to extend TPS for Honduras, Nicaragua,
4 and Nepal unless she found the country “no longer continues to meet the conditions for designation,”
5 8 U.S.C. § 1254a(b)(3)(A), i.e., that:

- 6 (i) there has been an earthquake, flood, drought, epidemic, or other
7 environmental disaster in the state resulting in a substantial, but
temporary, disruption of living conditions in the area affected,
- 8 (ii) the foreign state is unable, temporarily, to handle adequately the return to
9 the state of aliens who are nationals of the state, and
- 10 (iii) the foreign state officially has requested designation

11 8 U.S.C. § 1254a(b)(1)(B).

12 Nothing in the statutory text ties the criteria regarding the country’s ability to safely handle
13 the return of its nationals to the disaster that triggered its initial designation. And doing so makes no
14 sense. Under Defendants’ interpretation, when an agency considers whether to extend a TPS
15 extension, it can consider the disaster that triggered TPS originally—for example, a hurricane—but
16 cannot consider any subsequent crises—like a more recent hurricane. There is no reason to believe
17 Congress intended such a bizarre result.

18 Even if the TPS statute were ambiguous as to whether the Secretary’s decision should be
19 based solely on conditions related to the initial disaster or should instead take into account a fuller
20 range of conditions, the agency’s longstanding past practice has utilized the latter approach. *See*
21 *Background, supra. See also Ramos*, 336 F. Supp. 3d at 1093 (“Intervening factors arising after a
22 country’s original TPS designation ... were considered relevant to determining whether a country
23 continued to meet the conditions for continuing TPS designation.”); *Saget*, 375 F. Supp. 3d at 350
24 (“[T]he DHS Secretary, DHS, and USCIS had a longstanding practice of considering all country
25 conditions when undertaking the mandatory periodic review under the statute, regardless of their
26

27 ⁷ Even the vacated Ninth Circuit opinion in *Ramos*, on which Defendants rely, Mot. at 9, holds that
28 “a claim that an agency has adopted an erroneous interpretation of a governing statute would be
reviewable.” *Ramos*, 975 F.3d at 895.

relation to the originating condition.”). This is evident in prior decisions as to all three countries here. *See, e.g.*, 81 Fed. Reg. 30,325 (May 16, 2016) (extending TPS for Nicaragua based in part on “subsequent disasters” that have “significantly compromised Nicaragua’s ability to adequately handle the return of its nationals”); 75 Fed. Reg. 24,734 (May 5, 2010) (extending TPS for Honduras in part because “political crisis exacerbated the effects of the global economic downturn” leaving the country “ill-equipped to handle adequately the return of Hondurans in the United States who are TPS beneficiaries”); 88 Fed. Reg. 40,317 (June 21, 2023) (extending TPS for Nepal in part because “more recent environmental disasters” and “associated macroeconomic shocks” “render Nepal temporarily unable to handle the return of those granted TPS”).

The only exception to the agency’s long history of fulsome country conditions review occurred during the first Trump administration, when “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,” apparently “in order to implement and justify a pre-ordained result.” *Ramos*, 336 F. Supp. 3d at 1097–98. But a judge of this Court found this practice unlawful. *See id.* *See also* *Saget*, 375 F. Supp. 3d at 351–61 (same, in case from Eastern District of New York). The termination decisions never took effect as a result, and DHS subsequently returned to its prior practice. *Ramos v. Nielsen*, 709 F. Supp. 3d 871, 884 (N.D. Cal. 2023) (finding that, during the Biden administration, DHS “considered intervening conditions ... in making its TPS determinations (contrary to the Trump administration considering only originating conditions)”). Indeed, DHS itself has explicitly acknowledged that TPS decisions made in 2023 were based on factors other than the crisis that precipitated a country’s initial designation. *See* Dkt. 145-30 (explaining that “reasons for” Honduras’s 2023 extension included “violence and social and political concerns”); Dkt. 145-49 (2023 extension based on: “[o]ngoing significant natural disasters and a resulting humanitarian crisis, Environmental challenges, Political instability”).

Any departure from DHS’s longstanding past practice of considering the full range of country conditions must comply with the APA’s change-in-position doctrine. That doctrine requires an agency to “display[] awareness that it is changing position” and provide “good reasons” for a break with past practice. *Organized Vill. of Kake v. USDA*, 795 F.3d 956, 966 (9th Cir. 2015)

(quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009)). *See also FDA v. Wages and White Lion Inv., LLC*, 604 U.S. 542, 569 (2025) (describing “change-in-position doctrine”); *Ctr. for Biological Diversity v. BLM*, 141 F.4th 976, 999 (9th Cir. 2025) (agency violated APA by failing to explain “change[d] course”); *Sw. Airlines Co. v. FERC*, 926 F.3d 851, 858 (D.C. Cir. 2019) (agency’s “consistent practice, whether adopted expressly in a holding or established impliedly through repetition, sets the baseline from which future departures must be explained”).

In sum, both the explicit language of the TPS statute and longstanding agency practice make clear that *all* country conditions should have been considered in assessing whether Honduras, Nepal, and Nicaragua are “unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state.” 8 U.S.C. § 1254a(b)(1)(B)(ii). But they were not.

As of May 1, 2025, USCIS country conditions research showed neither Honduras nor Nicaragua were capable of handling the return of TPS holders. In Nicaragua, “political instability and a humanitarian crisis ... continue to render [Nicaragua] temporarily inadequate to handle the return of its nationals.” Dkt. 145-49 at 2 (“political instability and a humanitarian crisis [] continue to render the country temporarily unable to handle the return of its nationals”). As to Honduras, the country “is not considered safe for returning nationals, especially those vulnerable to gang violence, political persecution, or economic hardship” due largely to “violence and social and political concerns.” Dkt. 145-30 at 3 (“Honduras is not considered safe for returning nationals, especially those vulnerable to gang violence, political persecution, or economic hardship.”). Defendants’ ultimate decision to terminate TPS for Honduras and Nicaragua was made possible only by their decision to ignore the myriad crises plaguing each country *now*, on the ground they were insufficiently related to Hurricane Mitch. *See* Dkt. 145-56 (Honduras Decision Memo) *and* Dkt. 145-46 (Nicaragua Decision Memo) (considering only whether country had recovered from Hurricane Mitch, without addressing other crises); Dkt. 145-36 (State Department recommending termination because “Honduras has recovered sufficiently from the temporary disruption in living conditions that resulted from the environmental disaster caused by Hurricane Mitch in 1999”). *See also* 90 Fed. Reg. 30,089, 30,091 (July 8, 2025) (Honduras termination decision finding “Honduras is no longer ‘unable, temporarily, to handle adequately the return of its nationals’” because it “has made

significant progress recovering from the hurricane’s destruction”) (quoting 8 U.S.C. § 1254a(b)(3)(A)); 90 Fed. Reg. 30,086, 30,088 (July 8, 2025) (Nicaragua termination decision finding “notable improvements ... allow Nicaragua to adequately handle the return of its nationals” because of progress recovering from the hurricane).

With respect to Nepal, Defendants took an equally narrow approach, terminating because “the impacts of the 2015 earthquake that were the basis for the initial 2015 TPS designation no longer prevent Nepal’s nationals from returning in safety.” Dkt. 145-19 at 5. Defendants declined to consider conditions that were not directly related to the 2015 earthquake, including subsequent earthquakes and flash floods that “le[ft] many without reliable access to clean water” and “impacted Nepal’s food security.” Dkt. 145-22 at 6-8.

Thus, Defendants’ decision to base terminations solely on recovery from the crisis that triggered initial designation violated the TPS statute. It was also arbitrary and capricious under the APA’s change-in-position doctrine, because Defendants neither acknowledged nor explained the change. 90 Fed. Reg. 24,151 (June 6, 2025) (terminating TPS for Nepal based on recovery from initial disaster, without acknowledging or explaining changed approach); 90 Fed. Reg. 30,086 (July 8, 2025) (same for Nicaragua); 90 Fed. Reg. 30,089 (July 8, 2025) (same for Honduras).

C. The Terminations Were Contrary to Law and Arbitrary and Capricious Because They Departed from Prior Practice in Limiting the Transition Period

Defendants also cannot show as a matter of law that Defendants did not violate the APA when the Secretary provided only 60-days’ notice before stripping TPS from long-time lawful residents. *See* Mot. at 17–18. Again, this Court already determined that “Plaintiffs have provided sufficient evidence demonstrating that, for the past twenty-two years, since January 27, 2003, the prevailing practice of prior administrations was to provide at least 6 months after the TPS termination date for holders to transition.” Dkt. 73 at 23 (*citing* Dkt. 28). Defendants’ conclusory response that the Secretary acted in her “unfettered discretion,” Mot. at 18, is plainly insufficient.

III. GENUINE ISSUES OF MATERIAL FACT PRECLUDE SUMMARY JUDGMENT FOR DEFENDANTS ON THE DISCRIMINATION CLAIM

Despite having lost at the preliminary relief stage on the discrimination claim, Dkt. 73 at 29

(finding Plaintiffs “produced sufficient evidence demonstrating racial and discriminatory animus” and “provided sufficient evidence to establish that Plaintiffs will likely succeed on the merits of their Fifth Amendment claim”), Defendants now claim they should win it on summary judgment. That claim is meritless, particularly because a discrimination plaintiff “need produce very little evidence” to overcome a motion for summary judgment, for “the ultimate question is one that can only be resolved through a searching inquiry—one that is most appropriately conducted by a factfinder, upon a full record.” *Chuang v. Univ. of Cal. Davis, Bd. of Trs.*, 225 F.3d 1115, 1124 (9th Cir. 2000) (citation omitted).

The Court should deny summary judgment on this claim. To put it mildly, the parties vigorously dispute whether the evidence shows the challenged TPS decisions were motivated by animus. Defendants still argue Secretary Noem’s statements and actions were non-discriminatory and that her termination decisions were based only on the statutorily required review of country conditions, Mot. at 20, while Plaintiffs contend—supported by extensive expert testimony and a growing record—that her statements and actions reveal impermissible animus. *See* Background, *supra*; Dkt. 17-20. *See also* Dkt. 73 at 27–30; Dkt. 17-20 (Declaration of Dr. Elliott Young at 3-15 (connecting history of discrimination against immigrants to current administration’s statements denigrating TPS holders)). That dispute plainly forecloses summary judgment. *See generally Vill. Of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265-68 (1977).

A. *Trump v. Hawaii* Does Not Govern Plaintiffs’ Discrimination Claim

Defendants reassert that *Trump v. Hawaii*, 585 U.S. 667 (2018), supplies the correct standard of review, but this Court rejected that argument. Mot. at 18–19. *See* Dkt. 73 at 25–27 (holding that *Arlington Heights*, 429 U.S. 252, applies to Plaintiffs’ claims because “*Arlington Heights* governs claims of racial animus and Plaintiffs specifically allege that the Secretary’s Nepal, Honduras, and Nicaragua TPS terminations were motivated by racial animus.”). Defendants again err in reading *Hawaii* to require deferential review for all executive branch decisions “based on immigration policy.” Mot. at 18. This ignores that a plurality of the Supreme Court subsequently applied the *Arlington Heights* standard to a race discrimination claim brought by undocumented immigrants challenging the rescission of an immigration policy. *See DHS v. Regents of the Univ. of Cal.*, 591

U.S. 1, 34 (2020) (plurality). Lower courts have done the same. “Contrary to the government’s assertion, 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, 139–40 (2nd Cir. 2024) (collecting cases and reviewing challenge to 8 U.S.C. § 1326 under *Arlington Heights*); *Washington v. DHS*, 598 F. Supp. 3d 1051, 1070 (E.D. Wash. 2020) (collecting cases). Indeed, every judge to consider discrimination challenges in TPS cases—including every judge in the vacated Ninth Circuit *Ramos* decision—held that *Arlington Heights* governs. *See, e.g., Ramos*, 975 F.3d at 896 (vacated panel majority) (noting “the similarities between the [equal protection] challenge in this case and *Regents*,” where the Supreme Court applied *Arlington Heights*), *id.* at 925 (Christen, J., dissenting) (applying *Arlington Heights*). As this Court previously found, the factors in *Hawaii* counseling in favor of rational basis review are inapplicable here. Dkt. 73 at 25–27 (citing *Hawaii*, 585 U.S. at 706).

This Court also previously rejected Defendants’ reliance on *Mathews v. Diaz*, 426 U.S. 67 (1976). It is “inapposite” because “there was no allegation of racial animus” as the Supreme Court considered the case. Dkt. 73 at 26. Defendants’ other cases do not concern discriminatory animus claims, but rather congressional line-drawing concerning the substantive rules governing admission and deportation. Mot. at 19–20 (citing *Fiallo v. Bell*, 430 U.S. 787, 791–92 (1977) (gender discrimination claim challenging Congress’s “exceptionally broad” power to legislate “the admission of [noncitizens]”); *Kleindienst v. Mandel*, 408 US 753, 769–70 (1972) (no discrimination claim; non-citizen was abroad)). *Harisiades v. Shaughnessy* provides no support for the additional reason that it relies on the Japanese internment cases. 342 U.S. 580, 589–91 & nn. 16, 17 (1952).⁸

B. Even if *Hawaii* Governs, Defendants Are Not Entitled to Summary Judgment

As this Court’s prior ruling on the motion to dismiss suggests, even if *Hawaii* governs, Plaintiffs’ evidence suffices to defeat summary judgment even under the deferential *Hawaii* standard. *Cf.* Dkt. 73 at 29–30 (“Given the strength of the evidence, Plaintiffs’ Fifth Amendment

⁸ *Galvan v. Press*, 347 U.S. 522, 529 (1954) relied primarily on *Harisiades* for the deferential review it afforded as well.

claim would also likely succeed on the merits even if the Court applied the rational basis test.”).⁹ Plaintiffs have presented substantial evidence that the Secretary’s termination decisions, which rested on false and negative stereotypes entirely “divorced from any factual context,” *Hawaii*, 585 U.S. at 705–06 (citation omitted), manifested discriminatory intent. The “face of” the challenged decisions, along with “extrinsic evidence” considered only “to the extent of applying rational basis review,” show the Secretary’s actions were not rationally related to her stated goals.¹⁰ *Id.* at 704–05.

Considering the evidence in the light most favorable to Plaintiffs, a reasonable factfinder could conclude the Secretary’s decisions were motivated at least in part by impermissible animus against Honduran, Nepali, and Nicaraguan TPS holders, foreclosing summary judgment even if rational basis review were the appropriate standard. To justify each termination decision, Secretary Noem invoked President Trump’s Invasion E.O. *See* 90 Fed. Reg. 24,151, 24,152 n.10 (June 6, 2025) (Nepal termination notice, citing E.O. 14159, § 16(b)); 90 Fed. Reg. 30,086, 30,088 n.4 (July 8, 2025) (Nicaragua termination notice, citing same); 90 Fed. Reg. 30,089, 30,091 n.10 (July 8, 2025) (Honduras termination notice, citing same). She described President Trump’s Invasion E.O. as “directing” her to limit TPS designations, *id.*, because, in President Trump’s view, TPS holders (among others) were part of a “flood of illegal immigration” that “engaged in hostile activities” and had “abused the generosity of the American people,” “committing vile and heinous acts against innocent Americans.” 90 Fed. Reg. at 8443 § 1. President Trump’s Invasion E.O. in turn invokes the racist “great replacement” myth, manifesting a discriminatory intent as it urges termination of TPS without any rational relation to the facts or the Secretary’s stated goals. As this Court previously held, TPS holders are lawfully present, have high rates of earned income, contribute billions to the

⁹ A sister court held the same with regard to Secretary Noem’s recent Venezuela and Haiti TPS decisions. *Nat’l TPS All. v. Noem*, No. 25-cv-01766, Dkt. 93 at 64–75 (N.D. Cal. Mar. 31, 2025); *id.* at Dkt. 102 at 4 (N.D. Cal. Apr. 4, 2025).

¹⁰ Defendants argue that the Federal Register notices provide sufficient justification for the challenged TPS terminations. Mot. at 20. This Court need not find Defendants explicitly announced their racist intent to deny this motion, as facially neutral policies may violate the Equal Protection Clause. *See, e.g., Arlington Heights*, 429 U.S. at 266 (looking to extraneous evidence because “[s]ometimes a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation appears neutral on its face”). Race-neutral justifications may be pretextual cover for racial animus. *Arce v. Douglas*, 793 F.3d 968, 978 (9th Cir. 2015) (noting that it is appropriate to examine “whether [officials] have ‘camouflaged’ their intent” given the unlikelihood of acknowledging discriminatory intent).

economy, and by law cannot have significant criminal histories. Dkt. 73 at 8–9, 28; Dkts. 17-14, 17-15, 17-16.

Given those undisputed facts, the Secretary’s invocation of racist tropes—in particular, characterizing immigrants as an “[i]nvasion” against which Americans need protecting—is evidence of animus. Dkt. 73 at 28 (“By stereotyping the TPS program and immigrants as invaders that are criminal, and by highlighting the need for migration management, Secretary Noem’s statements perpetuate the discriminatory belief that certain immigrant populations will replace the white population.”). “Acting on the basis of a negative group stereotype and generalizing such stereotype to the entire group is the classic example of racism.” *Nat’l TPS All. v. Noem*, 773 F. Supp. 3d 807, 860 (N.D. Cal. 2025). That the reasons were in an official agency notice cannot absolve them of the obligation to have some basis in reality, which they do not. *See Doe #1 v. Trump*, 957 F.3d 1050, 1059–60 (9th Cir. 2020) (declining to credit “conclusory factual assertions ... unsupported in the record” in a Presidential Proclamation). Because the terminations were not based on a rational or plausible justification, Plaintiffs’ allegations suffice under even rational basis review.

C. Plaintiffs Easily Satisfy the *Arlington Heights* Standard

In any case, the correct standard is set forth in *Arlington Heights*, and Plaintiffs easily allege facts “rais[ing] a plausible inference that an ‘invidious discriminatory purpose was a motivating factor’” for the Secretary’s decisions. *Regents*, 591 U.S. at 34 (quoting *Arlington Heights*, 429 U.S. at 266). As this Court previously held, Secretary Noem has made statements manifesting animus against immigrants generally and TPS holders specifically. Dkt. 73 at 28 (summarizing that “[t]hese statements reflect the Secretary’s animus against immigrants and the TPS program even though individuals with TPS hold lawful status”); *Arlington Heights*, 429 U.S. at 266–69 (considering statements by decisionmakers and other circumstantial evidence of discriminatory intent). Defendants assert that Secretary Noem’s discriminatory statements are generalized, taken out of context, or remote in time, Mot. at 21, but that is belied by the record evidence, which includes statements directly related to her TPS decisions. Dkt. 73 at 29; Compl. ¶¶ 72–94.¹¹

¹¹ Other courts have found racial animus based on statements significantly less overtly racist than the statements here. *See, e.g., Ave. 6E Invs., LLC v. City of Yuma*, 818 F.3d 493, 505 (9th Cir. 2016)

Following this Court’s order granting Plaintiffs’ postponement motion, further evidence of discriminatory animus has come to light. Defendants have described TPS as a program which “allow[s] unvetted aliens to remain in [the] U.S.” and which has “been exploited to allow criminal aliens to come to our country and terrorize American citizens.” Dkt. 82-1 at Ex. 1. These are lies. As this Court has already recognized, TPS’s careful statutory scheme requires regular, repeated vetting of TPS beneficiaries and provides relief only to individuals already present in the United States who have no disqualifying criminal history. *Contra* Dkt. 82-1 at Ex. 1 (DHS press release describing TPS holders as “unvetted aliens”). Courts have recognized that these and other statements stereotyping TPS holders as dangerous, threatening, and undesirable despite overwhelming evidence to the contrary, *e.g.*, Dkts. 17-15, 17-18, 17-20, echo shameful traditions of racism against immigrants and, thus, constitute concrete proof of animus. *See Ave. 6E Invs.*, 818 F.3d at 505.

Defendants seek to discount President Trump’s statements of animus as irrelevant. Mot. at 22. But these statements cannot be disregarded because Defendants concede the Secretary’s termination decisions were motivated by President Trump: Secretary Noem acted on the President’s “desire” to see TPS “used properly,” stating “when the President gives a directive, the Department of Homeland Security will follow it.” Compl. ¶ 117. Accordingly, Secretary Noem’s explicit reliance on President Trump’s animus against non-white non-European immigrants to justify her termination decisions further reflects her animus. *See id.* ¶¶ 85 & 95–118.¹²

(“the use of ‘code words’ may demonstrate discriminatory intent”); *Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Par.*, 641 F. Supp. 2d 563, 571 (E.D. La. 2009) (finding that “references to ‘ghetto,’ ‘crime,’ ‘blight,’ and ‘shared values’” are “nothing more than ‘camouflaged racial expressions’”); *Doe v. Vill. of Mamaroneck*, 462 F. Supp. 2d 520, 549 (S.D.N.Y. 2006) (concluding that “the claims and comments made by public officials in Mamaroneck about the day laborers who plied the streets of Mamaroneck looking for work were negative and stigmatizing” and “[t]hat is some evidence of racism”).

¹² Plaintiffs need not rely on the “cat’s paw” doctrine for their Equal Protection claim in light of evidence linking the President’s animus to the TPS terminations. *See* Mot. at 22. Nonetheless, courts have recognized “liability for discrimination will lie when a biased individual manipulates a non-biased decision-maker into taking discriminatory action.” *See Batalla Vidal v. Nielsen*, 291 F. Supp. 3d 260, 277–79 (E.D.N.Y. 2018), *rev’d in part by Regents*, 291 F. Supp. 3d 260; *Ave. 6E Invs.*, 818 F.3d at 504 (“The presence of community animus can support a finding of discriminatory motives by government officials, even if the officials do not personally hold such views.”). Here, the cat’s paw doctrine is clearly relevant where President Trump has the authority to hire and fire the Secretary; his animus is well-recognized; and Secretary Noem has conceded that it motivated her termination decisions.

Summary judgment is also foreclosed by unrefuted facts relevant to the remaining *Arlington Heights* factors, including the historical background of the decision, *id.* ¶¶ 38–44 & 124–28 (terminations during first Trump administration), 45–71 (second Trump administration); procedural and substantive departures from the normal sequence, *id.*; and the disparate impact of the official action on a disfavored minority, *see id.* ¶¶ 129–51. Defendants’ Motion entirely ignores these factors, despite subsequent discovery further substantiating them. *See Background, supra.*

Finally, that the first Trump administration extended TPS for a small population from select countries does not undermine Plaintiffs’ discrimination claim. *See Mot.* at 21 (arguing that a single 6 month TPS extension for Honduras by a career official at the start of the first Trump Administration and an extension of TPS for a tiny number of people from South Sudan under the first Trump administration undermine Plaintiffs’ allegations of unconstitutional animus). First, Secretary Noem—the ultimate decisionmaker here—has not extended TPS for a single country since she came to office. On the contrary, she has consistently made baseless claims—like that Afghanistan is safe because tourism has improved there, and that Cameroonian TPS holders can safely return despite “two major armed conflicts” there. *Compl.* ¶¶ 60 & 62. To the extent the extensions during the first Trump administration are nonetheless relevant, they were made at a different time and by a different Secretary, and also were clear outliers: even during his first administration, President Trump sought to terminate TPS for over 98 percent of the population with TPS. *Id.* ¶ 38. That Defendants extended TPS for 70 South Sudanese nationals in 2017 cannot justify summary judgment in the face of the mountain of evidence establishing that Defendants are now acting out of racial animus. 82 Fed. Reg. 44,205, 44,205 (Sep. 21, 2017) (extending TPS for “[a]pproximately 70 South Sudan TPS beneficiaries”). And as a legal matter, Plaintiffs need not demonstrate animus towards every group of similarly-situated people for this Court to find racial animus. *Arlington Heights*, 429 U.S. at 266 n.14 (“A single invidiously discriminatory governmental act . . . would not necessarily be immunized by the absence of such discrimination in the making of other comparable decisions.”).

CONCLUSION

For the foregoing reasons, Defendants’ Motion for Summary Judgment should be denied.

1 Date: October 28, 2025

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2025, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record.

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