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January 22, 2025

Kristi Noem
Department of Homeland Security
245 Murray Lane, SW
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Re: Review of Temporary Protected Status designations.

Dear Secretary-Designee Noem:

The 18 undersigned state Attorneys General write to urge you, upon confirmation, to exercise your statutory authority as Secretary of the Department of Homeland Security to carefully review the country conditions of nations designated for Temporary Protected Status.¹ On January 10, 2025, less than two weeks before President-elect Trump's inauguration, the Biden Administration once again extended Temporary Protected Status ("TPS") for roughly one million immigrants from El Salvador, Sudan, Ukraine, and Venezuela.² The extensions are effective until March and October 2026 and cover approximately 85% of the TPS immigrants in the U.S.³

As the name implies, Congress intended Temporary Protected Status to be temporary. Congress gave the DHS Secretary⁴ discretion to grant a country TPS in limited circumstances when it is temporarily unable to accept return of its citizens—such as

¹ Exercise of this authority also comports with the recent presidential directive to the Secretary to "ensur[e] that designations of Temporary Protected Status are consistent with the provisions of section 244 of the INA." Exec. Order, *Protecting the American People Against Invasion*, Sec. 16(b) (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-american-people-against-invasion/>.

² Camilo Montoya-Galvez, *Biden extends legal status of nearly 1 million immigrants covered by program in Trump's crosshairs*, CBS News (Jan. 10, 2025), <https://www.cbsnews.com/news/biden-temporary-protected-status-tps-extended/>.

³ Nick Miroff, et al., *Biden extends protected status for nearly 1 million immigrants*, Washington Post (Jan. 10, 2025), <https://www.washingtonpost.com/immigration/2025/01/10/el-salvador-temporary-protected-status/>.

⁴ Congress created the Department of Homeland Security in 2002 and transferred most of the Attorney General's immigration functions to DHS. Pub. L. 107-296, 116 Stat. 2135. As to statutory functions transferred to DHS, references to the Attorney General are "deemed to refer to the Secretary" of Homeland Security. See 6 U.S.C. §557.

during ongoing armed conflict or natural disasters—for a 6- to 18-month period.⁵ TPS does not provide a pathway to citizenship for immigrants who otherwise do not qualify for legal status.⁶ Yet DHS practice has strayed far from congressional mandate.

DHS currently designates 17 countries for TPS,⁷ several of which have had TPS for over two or three decades—nearly since the inception of the program in 1990.⁸ Honduras, for instance, first received TPS after a hurricane hit in 1998,⁹ and DHS bases its current TPS designation on “persist[ing]” conditions from that same event.¹⁰ TPS extensions spanning decades have become routine. As a result, thousands of immigrants have been eligible to reside in and receive benefits from the U.S. for over twenty years, without any requirement to otherwise obtain legal status. And under the Biden Administration, DHS drastically expanded TPS eligibility through the practice of “re-designating” countries to reopen the eligibility window for new immigrants.¹¹

Congress requires that the DHS Secretary “shall terminate” a TPS designation whenever she determines that the foreign state “no longer continues to meet the conditions for designation.”¹² The Secretary has broad discretion in reviewing country conditions and making TPS determinations, constrained only by statutory considerations. “There is no judicial review” of “*any* determination” of a country’s TPS “designation, or termination or extension.”¹³

⁵ 8 U.S.C. §§1254a(b)(1)(B), (b)(2)(B).

⁶ See 8 C.F.R. §244.19.

⁷ USCIS, *Temporary Protected Status*, <https://www.uscis.gov/humanitarian/temporary-protected-status>.

⁸ USCIS, *Temporary Protected Status Designated Country: El Salvador*, <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-el-salvador>; USCIS, *Temporary Protected Status Designated Country: Honduras*, <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-honduras>; USCIS, *Temporary Protected Status Designated Country: Nicaragua*, <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-nicaragua>; USCIS, *Temporary Protected Status Designated Country: Somalia*, <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-somalia>.

⁹ Designation of Honduras Under Temporary Protected Status, 64 Fed. Reg. 524 (Jan. 4, 1999), <https://www.federalregister.gov/d/98-34849>.

¹⁰ Reconsideration and Rescission of Termination of the Designation of Honduras for Temporary Protected Status; Extension of the Temporary Protected Status Designation for Honduras, 88 Fed. Reg. 40304 (June 21, 2023), <https://www.federalregister.gov/documents/2023/06/21/2023-13017/reconsideration-and-rescission-of-termination-of-the-designation-of-honduras-for-temporary-protected>.

¹¹ Extension and Redesignation of Somalia for Temporary Protected Status, 88 Fed. Reg. 15434 (Mar. 13, 2024), <https://www.govinfo.gov/content/pkg/FR-2023-03-13/pdf/2023-04735.pdf>; DHS, *Acting DHS Secretary Pecoske Extends Temporary Protected Status for Syria*, <https://www.dhs.gov/news/2021/01/29/acting-dhs-secretary-pekoske-extends-temporary-protected-status-syria>; USCIS, *Temporary Protected Status Designated Country: Venezuela*, <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-venezuela>.

¹² 8 U.S.C. §1254a(b)(3)(B).

¹³ *Id.* at §1254a(b)(5)(A) (emphasis added).

The States urge that you expedite review of existing TPS designations upon taking office. TPS beneficiaries represent over 1 million immigrants residing in the States who are otherwise without legal status. Converting TPS into a license for long-term residency frustrates congressional aims and only increases the financial and governmental strain on States. And given the likelihood of legal challenges by activist lawyers and organizations, delaying review of TPS designations only risks tying up executive action in the future.¹⁴

Yours,



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¹⁴ Despite the statutory bar on judicial review, plaintiffs have challenged TPS determinations in litigation that stretched on for half a decade. *See, e.g., Ramos v. Nielsen*, 321 F. Supp. 3d 1083 (N.D. Cal. 2018) (issuing preliminary injunction against enforcement of TPS terminations); *Ramos v. Mayorkas*, 2023 WL 4363667 (9th Cir. 2023) (dismissing case prior to en banc reconsideration of *Ramos* preliminary injunction due to change in administration).



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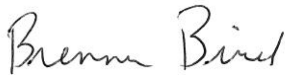
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