

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CENTRO PRESENTE, a membership
organization; HAITIAN-AMERICANS UNITED,
INC., a membership organization; JUAN
CARLOS VIDAL; ANNE CHRISTINE
NICOLAS; CHRIS JEAN BAPTISTE;
MERCEDES MATA; CAROLINA MATA;
WILL ARIAS; JUAN AMAYA; MARIA
GUERRA; JOSUE DORFEUILLE; NATACHA
DORFEUILLE; YESY PATRICIA CARBAJAL;
JUAN GUERRERO; JAIME YANES; and JOSE
OMAR RODRIGUEZ VARELA,

Plaintiffs,

v.

DONALD J. TRUMP, President of the United
States in his official capacity; UNITED STATES
DEPARTMENT OF HOMELAND SECURITY;
KIRSTJEN NIELSEN, Secretary of the
Department of Homeland Security in her official
capacity; and ELAINE COSTANZO DUKE,
Deputy Secretary of the Department of Homeland
Security in her official capacity,

Defendants.

Civil Action No. 1:18-cv-10340-DJC

FIRST AMENDED COMPLAINT

LAWYERS' COMMITTEE FOR CIVIL RIGHTS
AND ECONOMIC JUSTICE
61 Battery March Street, 5th Floor
Boston, Massachusetts 02210
(617) 482-1145

CHOATE, HALL & STEWART LLP
Two International Place
Boston, Massachusetts 02210
(617) 248-5000

TABLE OF CONTENTS

INTRODUCTION	1
PARTIES	6
I. Plaintiffs.....	6
A. Organizational Plaintiffs	6
B. Individual Plaintiffs	9
II. Defendants	14
JURISDICTION AND VENUE	15
FACTS	15
I. For Nearly Thirty Years, the TPS Program Has Served to Prevent Migrants from Being Compelled to Return to Dangerous and Unstable Conditions	15
A. El Salvador Receives its TPS Designation, Which is Extended Through 2018 due to Continued Instability and Subsequent Natural Disasters.....	17
B. Haiti Receives its TPS Designation, Which is Extended Through 2017 due to Continued Instability and Subsequent Natural Disasters.....	23
C. Honduras Receives its TPS Designation, Which is Extended Through 2018 due to Continued Instability and Subsequent Natural Disasters.....	26
D. Prior Administrations Apply the TPS Program to El Salvador, Haiti, and Honduras, as well as Other Countries, by Evaluating the Current, Evolving Conditions on the Ground	33
II. President Trump Campaigns on Promises to Discriminate Against Racial Minorities and to Obstruct Lawful Immigration, and the Administration Then Executes These Unlawful Policies Through His Subordinate Officers and Agencies	34
III. The Administration Follows Through on its Promises and Terminates TPS at Almost Every Opportunity	42
A. The Trump Administration Terminates TPS for El Salvador.....	42
B. The Trump Administration Terminates TPS for Haiti	51
C. The Trump Administration Terminates TPS for Honduras.....	59
D. The Administration’s Terminations of TPS for El Salvador, Haiti, and Honduras Are Motivated by Unlawful Discriminatory Animus	65

E. The Terminations of TPS for El Salvador, Haiti, and Honduras Reflect the Administration’s Execution of a Substantive Rule Restricting the Scope of the TPS Statute in Contravention of the Statutory Text and Decades of Prior Practice..... 65

F. Defendants’ Discriminatorily Motivated and Unlawful Actions Have Harmed Plaintiffs..... 69

CLAIMS 71

PRAYER FOR RELIEF 75

INTRODUCTION

1. Plaintiffs, fourteen recipients of Temporary Protected Status (“TPS”) from El Salvador, Haiti, and Honduras and two non-profit organizations with TPS recipient members, bring this action seeking a declaratory judgment that the Trump Administration’s termination of TPS designation for those three countries should be set aside as unconstitutional and contrary to federal law and further enjoining the Administration from violating Plaintiffs’ Constitutional rights. The decisions by Defendants President Donald J. Trump; the U.S. Department of Homeland Security (“DHS”); Kirstjen M. Nielsen (“Nielsen”) in her official capacity as the current Secretary of DHS; and Elaine C. Duke (“Duke”) in her official capacity as former Acting Secretary of DHS, to terminate TPS designation for Salvadorans, Haitians, and Hondurans were impermissibly infected by invidious discrimination on the basis of race, ethnicity, and/or national origin and therefore cannot stand. Furthermore, they were based on a new legal rule that represents a misunderstanding and misapplication of the laws relevant to TPS, is arbitrary and capricious, and was put in place without notice and comment or other procedural protections.

2. TPS is intended to provide safe haven in the United States for foreign nationals whose nation is experiencing a humanitarian or environmental crisis. The conditions that initially led to the TPS designations of El Salvador, Haiti, and Honduras are nothing short of extreme and, in many ways have only worsened over time.

3. In 2001, El Salvador was struck by a devastating series of earthquakes. The earthquakes caused at least 1,100 deaths and displaced an estimated 1.3 million people. The earthquakes damaged or destroyed 220,000 homes, 1,696 schools, and 856 public buildings with losses across economic sectors estimated at \$2.8 billion. Since 2001, recovery has been stalled and plagued by subsequent humanitarian and environmental crises, including hurricanes,

mudslides, floods, and volcanic eruptions. These problems are compounded by the emergence of extreme gang violence. El Salvador remains economically stagnant and fragile.

4. Haiti's TPS designation started in 2010 after the country experienced a cataclysmic earthquake. Reports indicate that three million Haitians were affected by the earthquake. Homes, hospitals, schools, and vital government buildings collapsed, and the country's infrastructure, including electric and water services, was decimated. Since 2010, Haiti's recovery has been stalled by recent natural disasters such as Hurricane Matthew. Haiti has also experienced a devastating cholera epidemic, which has killed hundreds of thousands of people to date. Gender-based violence has also emerged as a major social problem. Haiti remains economically stagnant with ill-functioning infrastructure.

5. Honduras has been designated for TPS protection since 1999, after the country experienced severe flooding and mudslides due to Hurricane Mitch. The hurricane killed more than 5,000 people, damaged 440,000 homes, destroyed over 100 bridges, and washed away countless roads. The United Nations Development Programme has stated that Hurricane Mitch set Honduras back economically by 20 years. After Hurricane Mitch, Honduras experienced a series of natural disasters including droughts, flooding, earthquakes, tropical storms, as well as additional hurricanes. It remains economically and politically unstable and is regularly listed as one of the world's most dangerous nations.

6. Defendants' stated reasons for terminating TPS for Salvadorans, Haitians, and Hondurans ignore these conditions and are nothing but a thin and pretextual smokescreen for a racially discriminatory immigration agenda—one that the President has been astonishingly blunt about articulating. President Trump has long made clear his dislike and disregard for Latino and Black immigrants, including equating Latino immigrants with rapists, asserting that African

immigrants who have seen America would never “go back to their huts,” and declaring that a group of Haitian immigrants “all have AIDS.” Most recently, in discussing immigration policy with Congressional leaders in January 2018, he referred to Haiti and other TPS nations as “shithole countries,” further driving home the racial motive by saying that the United States should let in more immigrants from Norway instead. The animus directed towards Latino and Black immigrants is a clear and unfortunate thread running throughout President Trump’s statements—and is actualized by his Administration’s policies, such as the ones challenged by this lawsuit.

7. The Trump Administration’s decision to terminate TPS for El Salvador, Haiti, and Honduras, which is impermissibly tainted by racial animus, will be devastating for hundreds of thousands of people who currently call the United States home. In total, approximately 400,000 TPS holders currently reside in the United States, living in all fifty states as well as the District of Columbia and the U.S. territories.¹ There are over 262,500 Salvadoran TPS recipients.² These individuals have jobs, homes, and families, including an estimated 192,700 U.S citizen children.³ Approximately 58,550 Haitians are similarly currently under TPS protection in the United States.⁴ They too have established livelihoods and communities here, with an estimated

¹ See Jill H. Wilson, Cong. Research Serv., RS20844, *Temporary Protected Status: Overview and Current Issues* 4-5, 11 (Jan. 17, 2018).

² *Id.* at 5.

³ Robert Warren & Donald Kerwin, *A Statistical and Demographic Profile of the US Temporary Protected Status Population from El Salvador, Honduras, and Haiti*, 5 J. on Migration & Hum. Sec. 577, 578, 581 (2017).

⁴ Wilson, *supra* note 1, at 5.

27,000 U.S. citizen children.⁵ Finally, there are approximately 86,000 Honduran TPS holders, who have an estimated 53,500 children who are U.S. citizens.⁶ In Massachusetts alone there are an estimated 6,058 Salvadoran, 4,735 Haitian, and 834 Honduran TPS beneficiaries.⁷ The greater Boston area is home to the country's third-largest Haitian diaspora, and an estimated one in ten Haitians in Massachusetts are TPS beneficiaries.⁸

8. Termination of TPS for El Salvador, Haiti, and Honduras would wreak havoc on the lives of hundreds of thousands of people. As the individual Plaintiffs' experiences reflect, entrepreneurs will lose their businesses; property owners will lose their family homes; and families with U.S. citizen children will be torn apart. People who have lived in the United States for decades now risk being rounded up and removed from the neighborhoods where they have built their lives, raised children, and invested in their communities. Moreover, El Salvador, Haiti and Honduras do not have the capacity to receive a massive influx of returning immigrants.

9. TPS holders have become part of the economic and social fabric of American communities, and continue to give back to this country in a myriad of ways. They are active in civic life and volunteer at schools, neighborhood and work organizations, and religious institutions.⁹ They pay federal, state, and local taxes, and support government social welfare programs. Experts estimate that, without Salvadoran, Haitian and Honduran TPS holders alone,

⁵ Warren & Kerwin, *supra* note 3, at 581.

⁶ Wilson, *supra* note 1, at 5; Warren & Kerwin, *supra* note 3, at 581.

⁷ Shannon Dooling, *Data Show More Than 12,000 Immigrants In Mass. Have Temporary Status*, WBUR (Nov. 9, 2017), <http://www.wbur.org/news/2017/11/09/temporary-status-data-update>.

⁸ *Id.*

⁹ Celia Mejívar, Ctr. for Migration Research, *Temporary Protected Status in the United States: The Experiences of Honduran & Salvadoran Immigrants* 19 (2017).

the U.S. gross domestic product would be reduced by at least \$163.9 billion and Social Security and Medicare would lose over \$6.9 billion over the next ten years.¹⁰

10. The Trump Administration’s decision to terminate TPS for Salvadorans, Haitians, and Hondurans harkens back to some of the darkest and most discredited chapters in U.S. history.¹¹ The nation has striven to move beyond a time when invidious discrimination drove immigration policy and resulted in exclusion of disfavored racial groups from legal protections. But sometimes the pendulum swings back—and we are confronted again in Defendants’ decision to terminate TPS for Salvadorans, Haitians, and Hondurans with governmental action impermissibly infected by racial discrimination. By this complaint, Plaintiffs ask this Court to rule that such action violates the U.S. Constitution and federal law, and to enjoin it.

11. Moreover, these terminations reflect the *sub rosa* enactment of a new rule that intervening country conditions may not be considered when determining whether TPS designation is appropriate. This new rule, constraining the application of TPS, is contrary to the plain language of the TPS statute, 8 U.S.C. § 1254a; arbitrary and capricious; an abuse of discretion; and in violation of the Administrative Procedure Act (the “APA”), 5 U.S.C. § 551 *et seq.*

¹⁰ Ctr. for Am. Progress, *TPS Holders in the United States* 1–2 (2017); Amanda Baran et al., Immigrant Legal Resource Ctr., *Economic Contributions by Salvadoran, Honduran, and Haitian TPS Holders* 5–7 (2017).

¹¹ See Act of May 6, 1882 (Chinese Exclusion Act), ch. 126, 1, 22 Stat. 58, 58 (repealed 1943) (prohibiting immigration of Chinese laborers); see also Julia Preston, *Obama Lifts a Ban on Entry into U.S. By H.I.V.-Positive People*, N.Y. Times (Oct. 30, 2009), <http://www.nytimes.com/2009/10/31/us/politics/31travel.html> (announcing the end of a 22-year ban on travel to the United States by people living with HIV).

PARTIES

I. Plaintiffs

A. Organizational Plaintiffs

12. Established in 1981, Centro Presente is a state-wide Latin American immigrant membership organization dedicated to the self-determination and self-sufficiency of the Latin American immigrant community of Massachusetts. The non-profit organization was founded by Sister Rose Marie Cummings in direct response to the rapidly growing community of refugees fleeing violence during the civil war conflicts in Central America in the 1980s. Operated and led primarily by Central American immigrants, Centro Presente struggles for immigrant rights and for economic and social justice. Through the integration of community organizing, leadership development and basic services, Centro Presente strives to give members a voice and to build community power.

13. Centro Presente has a staff of seven and provides English as a Second Language (ESL) classes; legal services; immigration clinics; advocacy; and leadership development to over three thousand families, youth, and children each year. Through its programming, community outreach, and educational activities, Centro Presente serves hundreds of TPS beneficiaries – including their families and children.

14. Today, Centro Presente has over 1,500 members. Of those members, a number are TPS beneficiaries from El Salvador and Honduras. Centro Presente's membership also includes U.S. citizens and non-citizens.

15. The Trump Administration's announcement of TPS rescission has negatively affected Centro Presente by forcing the organization to divert limited staff and scarce resources from critical programs in order to educate and assist individuals affected by the rescission, including helping individuals and families navigate the specter of immigration enforcement.

16. The organization has experienced challenges encouraging current and prospective members to seek services in its various program areas because they fear imminent deportation in light of the announcement of TPS rescission. TPS rescission has deterred Centro Presente's members and prospective members by making them fearful to attend meetings and to participate in activities because of the specter of immigration enforcement, and the toxic anti-immigrant climate on the ground replete with discrimination and violence.

17. The Trump Administration's announcement of TPS rescission is interfering with the organization's essential mission and has forced Centro Presente to re-allocate its limited resources to ensure that its members feel safe and to address confusion and fear in response to discriminatory immigration policies.

18. Haitian-Americans United, Inc. (H.A.U.) is a non-profit organization founded in the Commonwealth of Massachusetts to improve the quality of life for Haitians and Haitian-Americans through education, community empowerment, and cultural development.

19. H.A.U. is the leading Haitian community-based advocacy organization dedicated to empowering immigrants and refugees in Greater Boston, home to the third-largest Haitian and Haitian-American community in the United States. As a focal point for the Haitian-American community, the organization hosts frequent events, programs, and activities that are widely attended.

20. H.A.U. has thousands of members in Massachusetts. Of those members, a number are TPS beneficiaries from Haiti. The organization's membership includes U.S. citizens and non-citizens. Dozens of community-based groups, including churches and organizations, are also affiliated with H.A.U. Many of these affiliated groups provide services to TPS

beneficiaries, and H.A.U. plays a key role facilitating and coordinating collaboration among organizations serving the Haitian and Haitian-American community in Massachusetts.

21. H.A.U. promotes civic education and community empowerment; advocates for consumer protection; bolsters Haitian cultural, academic, and artistic activities; raises awareness of Haitian history; and creates programming for youth in the Haitian-American community.

22. Through active advocacy, education, training, cultural programming, social support, and other services, the organization helps Haitian and Haitian-American individuals and families enhance their quality of life.

23. The Trump Administration's announcement of TPS rescission has adversely affected H.A.U. and its affiliated community-based groups by forcing the diversion of scarce resources from critical programs in order to educate and assist individuals affected by the rescission, including helping individuals and families navigate the specter of immigration enforcement.

24. The organization has experienced challenges encouraging current and prospective members to seek services in its various program areas because they fear imminent deportation in light of the announcement of TPS rescission. TPS rescission has deterred H.A.U.'s members and prospective members by making them fearful to attend meetings and to participate in activities because of the specter of immigration enforcement, and the toxic anti-immigrant climate on the ground replete with discrimination and violence.

25. The Trump Administration's announcement of TPS rescission is interfering with the organization's essential mission and has forced H.A.U. to re-allocate its limited resources to ensure that its members feel safe and to address confusion and fear in response to discriminatory immigration policies.

B. Individual Plaintiffs

26. Juan Carlos Vidal, a Salvadoran immigrant, is a successful entrepreneur and property owner residing in Revere, Massachusetts. He is currently a TPS beneficiary and has been since 2001.

27. Mr. Vidal has two U.S. citizen children—5 and 7 years-old—both born in Massachusetts.

28. Rising through the ranks from kitchen assistant to chef, Mr. Vidal worked for more than a decade at Blue Fin, a restaurant in Cambridge, Massachusetts. Through hard work and thrift, Mr. Vidal opened his first restaurant. A successful restaurateur, Mr. Vidal is now co-owner of four restaurants located in Massachusetts contributing substantially to the local economy.

29. Anne Christine Nicolas is a 25 year-old Haitian immigrant who lives in Boston, Massachusetts. She is currently a TPS beneficiary and has been since 2010.

30. Ms. Nicolas is a successful college graduate. With a deep commitment to teaching and learning, she currently works at the intersection of education and arts. She earned a Bachelor of Fine Arts from Lesley University in Cambridge, Massachusetts. Before it was announced that TPS designation for Haiti would be rescinded, she was preparing for the future and exploring master's degree programs in arts and education.

31. Chris Jean Baptiste is a 19 year-old Haitian immigrant who lives in Boston, Massachusetts. He is currently a TPS beneficiary and has been since 2010.

32. Mr. Jean Baptiste graduated from Milton High School in Milton, Massachusetts, and is currently enrolled in Bunker Hill Community College. He also works as the manager of a franchise of one of the largest American restaurant chains.

33. Mercedes Mata is a Salvadoran immigrant residing in Leominster, Massachusetts, where she purchased her home approximately six months ago. She is currently a TPS beneficiary and has been since 2001.

34. Ms. Mercedes Mata is a clerk in the Fitchburg Municipal Office. In Fitchburg, a community that is nearly 25 percent Latino,¹² she is one of a handful of bilingual employees in the municipal office with the linguistic competence to serve a burgeoning Spanish-speaking Latino population.

35. Ms. Mercedes Mata has two children, who were both born in Massachusetts. Her 21 year-old U.S. citizen daughter is enrolled in Mount Wachusett Community College in Gardner, Massachusetts. Her 7 year-old U.S. citizen son is in first grade in elementary school.

36. Ms. Mercedes Mata is active in her church and in community affairs.

37. Ms. Mercedes Mata is an active member of Centro Presente.

38. Carolina Mata is a Salvadoran immigrant residing in Leominster, Massachusetts. She is currently a TPS beneficiary and has been since 2001.

39. Ms. Carolina Mata has two children, both born in Massachusetts. Her 19 year-old U.S. citizen son is a first-year college student at Fitchburg State University in Fitchburg, Massachusetts. Her 11 year-old U.S. citizen daughter is in fifth grade in elementary school.

40. Ms. Carolina Mata is an active member of Centro Presente.

41. Will Arias is Salvadoran immigrant residing in Everett, Massachusetts. He is currently a TPS beneficiary and has been since 2001.

¹² Census Reporter, Fitchburg, Massachusetts,
<https://censusreporter.org/profiles/16000US2523875-fitchburg-ma/>.

42. Mr. Arias is a custodian at the John Adams Courthouse where the Massachusetts Supreme Judicial Court sits in Boston.

43. Mr. Arias and his wife, in 2016, purchased a home in Everett, Massachusetts, where they are raising two children born in Massachusetts: their 2 year-old U.S. citizen son; and a 16 year-old U.S. citizen son who is currently in 11th grade in Everett High School. As a junior in high school, their eldest son has college aspirations and is beginning to explore college options.

44. Juan Amaya, a Salvadoran immigrant, is a resident of Lynn, Massachusetts. He is currently a TPS beneficiary and has been since 2001.

45. Mr. Amaya is a high-rise window washer. Rappelling off skyscrapers, he cleans the glass façades of gleaming towers across Boston's skyline.

46. Mr. Amaya has four children. His eldest children both graduated from Lynn Vocational Technical Institute and are DACA recipients. His youngest children are both U.S. citizens born in Massachusetts. His U.S. citizen daughter is 10 years-old. His U.S. citizen son, an 11th grade student at Lynn Classical High School in Lynn, Massachusetts, would like to go to college and is starting to explore options for higher education.

47. Maria Guerra is a Salvadoran immigrant residing in Somerville, Massachusetts, where she purchased her home over a decade ago. She is currently a TPS beneficiary and has been since 2001.

48. Ms. Guerra is a domestic worker, and takes care of children as a nanny for a family in Arlington, Massachusetts.

49. Ms. Guerra has four children. Her two eldest children—25 and 22 years-old—are DACA recipients. Both her eldest sons work in information technology services at Harvard

University. Her 22 year-old son is also studying at Bunker Hill Community College. Her youngest children—17 and 19 years-old—are U.S. citizens both born in Massachusetts. They are attending high school, and looking forward to graduating and studying in college.

50. Ms. Guerra is an active community member in Somerville.

51. Josue Dorfeuille and Natacha Dorfeuille are Haitian immigrants residing in Norwood, Massachusetts, where they purchased their home approximately two years ago. They are both TPS beneficiaries and have been since 2010.

52. Mr. Dorfeuille is an energy specialist working for a major state-wide energy efficiency company. He inspects homes and helps build a clean energy future for families in Massachusetts. Mrs. Dorfeuille is an activity coordinator in an adult day-center providing critical services to older adults, one of the largest and fastest-growing segments of the Commonwealth's population.

53. Mr. and Mrs. Dorfeuille have three children. The eldest is a TPS recipient and a senior at Norwood High School. She has been admitted to several universities, including the Boston campus of the University of Massachusetts. The two youngest are twins, both born in the United States and have always called this country their home. The twins are enrolled in the Norwood Public School system. Before it was announced that TPS would be rescinded for Haiti, the Dorfeuille family was preparing for their future together as engaged community members in Massachusetts.

54. Yesy Patricia Carbajal is an Honduran immigrant residing in Revere, Massachusetts. She is a TPS beneficiary and has been since 1999. Many of Ms. Carbajal's nuclear and extended family are also TPS beneficiaries, including her mother, sister, uncle, nieces, and nephews.

55. Ms. Carbajal has worked in the construction industry for many years, helping through her labor to build the Commonwealth's infrastructure.

56. Ms. Carbajal has a bright and talented four-year old U.S. citizen daughter born in Massachusetts.

57. Ms. Carbajal is active in her community.

58. Ms. Carbajal is an active member of Centro Presente.

59. Juan Guerrero is an Honduran immigrant residing in Leominster, Massachusetts. He is a TPS beneficiary and has been since 1999.

60. Mr. Guerrero is a baker working for a small business in Massachusetts.

61. Mr. Guerrero has four children, including a three-year old U.S. citizen born in Massachusetts.

62. Jaime Yanes is an Honduran immigrant residing in Lynn, Massachusetts, where he lives with his Salvadoran wife, who is also a TPS beneficiary. Mr. Yanes has been a TPS beneficiary since 1999.

63. Mr. Yanes is a truck driver for a major commercial transport company serving prominent clients in secure locations, including government offices and military bases. Through his work, Mr. Yanes accelerates commerce. His wife manages the family's affairs as a homemaker.

64. Mr. Yanes and his wife have four U.S. citizen children. Their three youngest U.S. citizen children—ages 8, 13, and 14—attend Lynn Public Schools. The family is extremely tight-knit and has deep roots in their community.

65. Jose Omar Rodriguez Varela is an Honduran immigrant residing in Framingham, Massachusetts, where he is a homeowner. He has been a TPS beneficiary since 1999.

66. Mr. Rodriguez Varela is a partner in a small business that paints and repairs vehicles. As a successful entrepreneur, he contributes to the economic growth of our Commonwealth.

67. Mr. Rodriguez Varela is active in his community.

68. Mr. Rodriguez Varela is an active member of Centro Presente.

II. Defendants

69. Defendant Donald J. Trump is currently President of the United States, a position he has held since January 20, 2017. As chief executive, President Trump oversees all executive agencies and cabinet members including Defendants.

70. Defendant Department of Homeland Security is a department of the Executive Branch of the United States government. DHS and its component agencies, U.S. Customs and Border Protection (“CBP”), U.S. Immigration and Customs Enforcement (“ICE”), and U.S. Citizenship and Immigration Services (“USCIS”), have the authority to administer and enforce U.S. immigration laws and policies, including the TPS program at issue here.

71. Defendant Kirstjen Nielsen has been Secretary of Homeland Security since December 6, 2017, and is currently DHS’s senior official. She was appointed to the position by President Trump. Defendant Nielsen is responsible for DHS oversight and for implementing and enforcing immigration laws and policies. Defendant Nielsen authorized the rescission of El Salvador’s TPS designation on January 18, 2018. Defendant Nielsen announced the rescission of Honduras’ TPS designation on May 4, 2018. She is sued in her official capacity.

72. Defendant Elaine Costanzo Duke was appointed by President Trump as Acting Secretary of Homeland Security from July 31, 2017, to December 6, 2017. Defendant Duke served as Deputy Secretary of DHS until her retirement on April 15, 2018. As Acting Secretary, Defendant Duke was responsible for DHS oversight and for implementing and enforcing

immigration laws and policies. Defendant Duke authorized the rescission of Haiti's TPS designation on November 20, 2017. She is sued in her official capacity.

JURISDICTION AND VENUE

73. This Court has proper jurisdiction over this matter under 28 U.S.C § 1331.

74. Venue is proper in this Court under 28 U.S.C § 1391.

FACTS

I. For Nearly Thirty Years, the TPS Program Has Served to Prevent Migrants from Being Compelled to Return to Dangerous and Unstable Conditions

75. The purpose of the TPS program is to provide safe haven in the United States for foreign nationals whose nation is experiencing a humanitarian or environmental crisis. The TPS program is promulgated under Section 244(c)(2) of the Immigration and Nationality Act ("INA") and codified at 8 U.S.C. § 1254a. The program is designed to address serious concerns that arise when civil unrest, armed conflict, extreme violence, or natural disasters compromise the ability of foreign nationals in the United States to safely return to their native country.

76. When the Secretary of Homeland Security¹³ finds that conditions in a foreign country prevent its nationals from returning safely or where a foreign country is unable to adequately handle the return of its nationals, the Secretary, after consultation with the appropriate federal agencies including the U.S. Department of State, may grant TPS to foreign nationals of that country.

77. Foreign nationals from such countries may then apply for TPS and must meet rigorous individual qualifications, including having no serious criminal record.

¹³ Under 8 U.S.C. § 1254a, the Attorney General was originally authorized to administer the TPS program. With the formation of the Department of Homeland Security, the authority to designate countries and administer the TPS program was transferred from the Attorney General to the Secretary of Homeland Security in 2003. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002).

78. Foreign nationals under TPS protection cannot be removed from the United States. A foreign national who is granted TPS receives proof of registration and may apply for a work authorization document.

79. The Secretary of Homeland Security may grant TPS protection to foreign nationals if the Secretary determines that: (a) there is an ongoing armed conflict within the foreign state, such that return of aliens who are nationals of that state would pose a serious threat to their personal safety; (b) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the foreign state resulting in a substantial, but temporary, disruption of living conditions in the area affected; the foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state; and the foreign state officially has requested TPS designation; or (c) there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety.¹⁴

80. The Secretary of Homeland Security may issue TPS for periods of six to eighteen months. After the initial designation, the Secretary must review the conditions in the foreign state for which the designation is in effect at least 60 days prior to the termination of the TPS designation and must determine whether the conditions enumerated under the TPS statute continue to be met. TPS designations extend automatically until the Secretary affirmatively determines that the conditions for TPS designation under the statute are no longer met. If that determination is not made, the law requires TPS designations to be extended. There is no statutory limit for how many times TPS designation may be extended.

¹⁴ 8 U.S.C. § 1254a(b)(1).

81. Termination of TPS designation may only occur if the Secretary determines that the country in question “no longer continues to the conditions for designation” In making that determination, the Secretary is not limited to considering only the conditions that led to the original designation, but rather is required to determine based on current circumstances whether the conditions for designation are satisfied.

82. The Secretary’s decision to extend, re-designate, or terminate TPS protection must be published in the Federal Register. The timing of the Secretary’s publication has important implications for TPS recipients because of the notice it provides regarding their immigration status and because of the protections attached to TPS such as employment authorization.

A. El Salvador Receives its TPS Designation, Which is Extended Through 2018 due to Continued Instability and Subsequent Natural Disasters

83. On March 1, 2001,¹⁵ former Attorney General John Ashcroft designated El Salvador for TPS, making TPS protection available to Salvadoran nationals “continuously physically present” in the United States since March 9, 2001, and who have “continuously resided” in the United States since February 13, 2001.¹⁶ This initial designation was set to run through September 9, 2002.

84. Attorney General Ashcroft’s TPS designation was based on the urgent request of the Salvadoran government and the following findings indicating that El Salvador was “unable, temporarily, to handle adequately the return of its nationals”:

¹⁵ The notice announcing designation of El Salvador was dated March 1, 2001 and recorded in the Federal Register on March 9, 2001.

¹⁶ Designation of El Salvador Under Temporary Protected Status Program, 66 Fed. Reg. 14,214 (Mar. 9, 2001).

a. El Salvador suffered a “devastating earthquake on January 13, 2001, and experienced two more earthquakes on February 13 and 17, 2001”;

b. These earthquakes resulted in at least 1,100 deaths, and displaced an estimated 1.3 million people (17% of the country’s total population); and

c. The earthquakes damaged or destroyed “220,000 homes, 1,696 schools, and 856 public buildings” with losses to the housing, infrastructure, and agricultural sectors estimated at \$2.8 billion.¹⁷

85. On July 11, 2002, Attorney General Ashcroft extended El Salvador’s TPS designation from September 9, 2002, to September 9, 2003.¹⁸

86. Attorney General Ashcroft based this extension on a finding that El Salvador still met all of the requirements for TPS designation, particularly because the earthquake caused substantial damage to the country’s infrastructure, including housing, roads, hospitals, and schools. Attorney General Ashcroft further found that the situation in El Salvador had worsened in some respects from the time of its initial designation because subsequent droughts left “35,000 subsistence farming families destitute” and “200,000 people . . . threatened by ‘food insecurity.’”¹⁹

¹⁷ *Id.* at 14,214.

¹⁸ Extension of the Designation of El Salvador Under the Temporary Protected Status Program; Automatic Extension of Employment Authorization Documentation for Salvadorans, 67 Fed. Reg. 46,000 (July 11, 2002).

¹⁹ *Id.* at 46,001.

87. On July 16, 2003, former DHS Secretary Tom Ridge extended El Salvador's TPS designation from September 9, 2003, to March 9, 2005.²⁰

88. Secretary Ridge based this extension on a finding that El Salvador continued to meet all of the requirements for TPS designation, particularly that the "economy of El Salvador [was] not yet stable enough to absorb returnees from the United States."²¹

89. On January 7, 2005, former Secretary Ridge extended El Salvador's TPS designation from March 9, 2005, to September 9, 2006.²²

90. Secretary Ridge based this extension on a finding that El Salvador continued to meet all of the requirements for TPS designation. He cited severe damage and slow recovery in all sectors, including housing, schools, and hospitals.²³

91. On June 15, 2006, former DHS Secretary Michael Chertoff extended El Salvador's TPS designation from September 9, 2006, to September 9, 2007.²⁴

92. Secretary Chertoff based this extension on a finding that El Salvador continued to meet all of the requirements for TPS designation. He also found that new natural disasters—including the "eruption of the Santa Ana volcano that was immediately followed by mudslides

²⁰ Extension of the Designation of El Salvador Under Temporary Protected Status Program; Automatic Extension of Employment Authorization Documentation for El Salvador, 68 Fed. Reg. 42,071 (July 16, 2003).

²¹ *Id.* at 42,072.

²² Extension of the Designation of Temporary Protected Status for El Salvador; Automatic Extension of Employment Authorization Documentation for El Salvador TPS Beneficiaries, 70 Fed. Reg. 1450 (Jan. 7, 2005).

²³ *Id.* at 1450-51.

²⁴ Extension of the Designation of Temporary Protected Status for El Salvador; Automatic Extension of Employment Authorization Documentation for El Salvadoran TPS Beneficiaries, 71 Fed. Reg. 34,637 (June 15, 2006).

and flooding caused by Hurricane Stan”—had substantially slowed rebuilding efforts in El Salvador.²⁵

93. On August 21, 2007, Secretary Chertoff extended El Salvador’s TPS designation from September 10, 2007, to March 9, 2009.²⁶

94. Secretary Chertoff based this extension on a finding that El Salvador continued to meet all of the requirements for TPS designation. The extension was also supported by a request from the Salvadoran government, and by the fact that, despite some progress in rebuilding efforts, living conditions remained substantially disrupted in El Salvador.²⁷

95. On October 1, 2008, Secretary Chertoff extended El Salvador’s TPS designation from March 9, 2009, to September 9, 2010.²⁸

96. Secretary Chertoff based this extension on a finding that El Salvador continued to meet all of the requirements for TPS designation. He stated that: “El Salvador has still not completed reconstruction of the infrastructure damaged by several severe 2001 earthquakes. Transportation, housing, education and health sectors are still suffering from the 2001 earthquake, the lingering effects of which limit El Salvador’s ability to absorb a large number of potential returnees.”²⁹

²⁵ *Id.* at 34,638.

²⁶ Extension of the Designation of El Salvador for Temporary Protected Status; Automatic Extension of Employment Authorization Documentation for Salvadoran TPS Beneficiaries, 72 Fed. Reg. 46,649 (Aug. 21, 2007).

²⁷ *Id.* at 46,649-50.

²⁸ Extension of the Designation of El Salvador for Temporary Protected Status, 73 Fed. Reg. 57,128 (Oct. 1, 2008).

²⁹ *Id.* at 57,129.

97. On July 9, 2010, former DHS Secretary Janet Napolitano extended El Salvador's TPS designation from September 9, 2010, to March 9, 2012.³⁰

98. Secretary Napolitano based this extension on a finding that El Salvador continued to meet all of the requirements for TPS designation. She stated that: "El Salvador also continues to suffer a public security crisis that threatens to undermine sustained development and confidence in democratic governance."³¹ Secretary Napolitano also cited the rapidly "increasing levels of violent crime" as a basis for TPS extension.³²

99. On January 11, 2012, Secretary Napolitano extended El Salvador's TPS designation from March 9, 2012, to September 9, 2013.³³

100. Secretary Napolitano based this extension on a finding that El Salvador continued to meet all of the requirements for TPS designation. She cited continuing infrastructural deficiencies including "reports that only about 21 percent of rural households had continuous water services."³⁴ She also found that: "[r]ecovery has been slow and encumbered by Hurricanes Adrian and Stan in 2005, Hurricane Felix in 2007, Hurricane Ida in 2009, and most recently Tropical Storm Agatha in 2010."³⁵

³⁰ Extension of the Designation of El Salvador for Temporary Protected Status and Automatic Extension of Employment Authorization Documentation for Salvadoran TPS Beneficiaries, 75 Fed. Reg. 39,556 (July 9, 2010).

³¹ *Id.* at 39,558.

³² *Id.*

³³ Extension of the Designation of El Salvador for Temporary Protected Status, and Automatic Extension of Employment Authorization Documentation for Salvadoran TPS Beneficiaries, 77 Fed. Reg. 1710 (Jan. 11, 2012).

³⁴ *Id.* at 1712.

³⁵ *Id.*

101. On May 30, 2013, Secretary Napolitano extended El Salvador's TPS designation from September 10, 2013, to March 9, 2015.³⁶

102. Secretary Napolitano based this extension on a finding that El Salvador continued to meet all of the requirements for TPS designation. She found that: "recovery in the affected areas of El Salvador has been slow and disrupted by subsequent natural disasters."³⁷

103. On January 7, 2015, former DHS Secretary Jeh Charles Johnson extended El Salvador's designation from March 10, 2015, to September 9, 2016.³⁸

104. Secretary Johnson based this extension on a finding that El Salvador continued to meet all of the requirements for TPS designation. He stated that recent "environmental disasters" had substantially stalled recovery efforts. He also found that: "In June 2013, Tropical Storm Barry caused flooding in El Salvador, and in December 2013, the eruption of the Chaparrastique volcano . . . forced thousands of people . . . to evacuate their homes."³⁹ Against a backdrop of high unemployment rates and severe food insecurity, Secretary Johnson stated that: "a large influx of returning citizens at this time would overwhelm the labor market and the government's fiscal ability to extend basic services to its citizens."⁴⁰

³⁶ Extension of the Designation of El Salvador for Temporary Protected Status, 78 Fed. Reg. 32,418 (May 30, 2013).

³⁷ *Id.* at 32,419.

³⁸ Extension of the Designation of El Salvador for Temporary Protected Status, 80 Fed. Reg. 893 (Jan. 7, 2015).

³⁹ *Id.* at 894.

⁴⁰ *Id.*

105. On July 8, 2016, Secretary Johnson extended El Salvador's TPS designation from September 10, 2016, to March 9, 2018.⁴¹

106. Secretary Johnson based this extension on a finding that El Salvador continued to meet all of the requirements for TPS designation. He cited a substantial rise in violence, crime, gangs, and general insecurity. The United Nations Development Program reported finding that in 2014, "Salvadoran citizens paid \$756 million in extortion payments to gangs."⁴² Secretary Johnson also cited a weak judicial system, which created an "environment of impunity" for corruption, violent crimes, and gang activity.⁴³

B. Haiti Receives its TPS Designation, Which is Extended Through 2017 due to Continued Instability and Subsequent Natural Disasters

107. TPS protection for Haiti was published in the Federal Register on January 21, 2010, pursuant to former Secretary of DHS Janet Napolitano's designation. Haiti's initial TPS designation ran from January 21, 2010, to July 22, 2011.⁴⁴

108. Secretary Napolitano found that the requisite "extraordinary and temporary conditions" in Haiti warranted the TPS designation. This determination was based on the following findings:

- a. "On January 12, 2010 Haiti was struck by a 7.0-magnitude earthquake . . . its strongest earthquake in 200 years."⁴⁵

⁴¹ Extension of the Designation of El Salvador for Temporary Protected Status, 81 Fed. Reg. 44,645 (July 8, 2016).

⁴² *Id.* at 44,647.

⁴³ *Id.*

⁴⁴ Designation of Haiti for Temporary Protected Status, 75 Fed. Reg. 3476 (Jan. 21, 2010).

⁴⁵ *Id.* at 3477.

b. The earthquake destroyed most of the capital city, Port-au-Prince.⁴⁶

c. Reports indicated that “three million people—one-third of Haiti’s population—had been affected by the earthquake.”⁴⁷

d. Hospitals, schools, and vital government buildings collapsed, or were severely damaged, and the country’s infrastructure including electric, water, and telephone services were severely affected.⁴⁸

109. Haiti was re-designated for TPS and its TPS protection was extended in the Federal Register on May 19, 2011, by Secretary Napolitano. The extension and new designation began on July 23, 2011, and continued until January 22, 2013.⁴⁹

110. Secretary Napolitano based this re-designation and extension on a finding that Haiti still met all of the requirements for TPS designation, particularly because the earthquake exacerbated Haiti’s position as “one of the poorest [countries] in the world.”⁵⁰ The earthquake substantially damaged all levels of infrastructure in the country including housing, roads, hospitals, and schools. Secretary Napolitano recited that 80% of Haiti’s population was living below the poverty line, that an estimated 230,000 people died in the earthquake, and that one million people had been made homeless.⁵¹ In support of the extension and re-designation

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Extension and Redesignation of Haiti for Temporary Protected Status, 76 Fed. Reg. 29,000 (May 19, 2011).

⁵⁰ *Id.* at 29,001.

⁵¹ *Id.*

Secretary Napolitano cited the 800,000 internally displaced children, the rise of gender-based violence, and the outbreak of a cholera epidemic in the country with nearly 200,000 reported cases at the time.⁵²

111. On October 1, 2012, Secretary Napolitano extended Haiti's TPS designation from January 23, 2013, to July 22, 2014.⁵³

112. Secretary Napolitano based this extension on a finding that Haiti continued to meet all of the requirements for TPS designation, including crippling infrastructural problems, a high number of internally displaced persons, a rise in gender-based violence, and the deadly cholera outbreak.⁵⁴

113. On March 3, 2014, former Secretary Johnson extended Haiti's TPS designation from July 23, 2014, to January 22, 2016.⁵⁵

114. Secretary Johnson based this extension on a finding that Haiti continued to meet all of the requirements for TPS designation. He cited in particular the heightened risks to human rights and security in the country. He cited the slow pace of economic recovery, and new disasters such as Tropical Storm Isaac and Hurricane Sandy, which caused additional damage, displacement, and death.⁵⁶

⁵² *Id.*

⁵³ Extension of the Designation of Haiti for Temporary Protected Status, 77 Fed. Reg. 59,943 (Oct. 1, 2012).

⁵⁴ *See id.* at 59,944.

⁵⁵ Extension of the Designation of Haiti for Temporary Protected Status, 79 Fed. Reg. 11,808 (Mar. 3, 2014).

⁵⁶ *Id.* at 11,809-10.

115. On August 25, 2015, Secretary Johnson extended Haiti's TPS designation from January 23, 2016, to July 22, 2017.⁵⁷

116. Secretary Johnson based this extension on a finding that Haiti continued to meet all of the requirements for TPS designation, particularly because of the lingering infrastructural damage, and high rates of food insecurity. He stated that as of January 12, 2015, "Haiti was left without a functioning legislative branch or duly elected local authorities" and that the country continued to lack health, sanitation, and emergency services necessary to accept its nationals living in the United States with TPS.⁵⁸

C. Honduras Receives its TPS Designation, Which is Extended Through 2018 due to Continued Instability and Subsequent Natural Disasters

117. On January 5, 1999, former Attorney General Janet Reno designated Honduras for TPS, making TPS protection available to Honduran nationals "continuously physically present" in the United States since January 5, 1999, and who have "continuously resided" in the United States since December 30, 1998. This initial designation was set to run through July 5, 2000.⁵⁹

118. Attorney General Reno's TPS designation was based on the official request of the Honduran government and the following findings:

- a. "Hurricane Mitch swept through Central America causing severe flooding and associated damage in Honduras";

⁵⁷ Extension of the Designation of Haiti for Temporary Protected Status, 80 Fed. Reg. 51,582 (Aug. 25, 2015).

⁵⁸ *Id.* at 51,584.

⁵⁹ Designation of Honduras Under Temporary Protected Status, 66 Fed. Reg. 524 (Jan. 5, 1999).

b. The hurricane caused “environmental disaster and substantial disruption of living conditions”;

c. “due to this disaster . . . Honduras is unable, temporarily, to handle adequately the return of Honduran nationals.”⁶⁰

119. On May 11, 2000, Attorney General Reno extended Honduras’ TPS designation from July 5, 2000, to July 5, 2001.⁶¹

120. Attorney General Reno based this extension on a finding that Honduras still met all of the requirements for the TPS designation, particularly finding that “Honduras has made little progress in recovering from Hurricane Mitch” and that the “reconstruction that has taken place has not sufficiently countered the devastation to warrant the termination of TPS.” She also recited that an estimated 30,000 to 250,000 Hondurans remained in temporary shelters, relying on provisions from the World Food Program.⁶²

121. On May 8, 2001, former Attorney General John Ashcroft extended Honduras’ TPS designation from July 6, 2001, to July 5, 2002.⁶³

122. Attorney General Ashcroft based this extension on a finding that the conditions in Honduras still met the requirements for TPS designation, concluding that “[d]espite indications of progress in recover efforts . . . sufficient damage from Hurricane Mitch persists.” He stated

⁶⁰ *Id.* at 524-525.

⁶¹ Extension of Designation of Honduras Under Temporary Protected Status Program, 65 Fed. Reg. 30,438 (May 11, 2000).

⁶² *Id.*

⁶³ Extension of the Designation of Honduras Under the Temporary Protected Status Program, 66 Fed. Reg. 23,269 (May 8, 2001).

that 14,000 Hurricane Mitch survivors remain in shelters and that only 18,000 of the needed 60,000 housing units have been constructed.⁶⁴

123. On May 3, 2002, Attorney General Ashcroft again extended TPS protection for Honduran nationals from July 5, 2002, to July 5, 2003.⁶⁵

124. Attorney General Ashcroft based this extension on a finding that the conditions in Honduras still met the requirements for TPS designation. He found that “[a]lthough there are strong indications of progress in recovery efforts, recent droughts as well as flooding from Hurricane Michelle in 2001 have added to the humanitarian, economic, and social problems initially brought on my Hurricane Mitch in 1998.” He further found that as result of repeated environmental catastrophes and delays in disbursements of foreign aid, Honduras has been unable to recover from Hurricane Mitch and “continues to lack the infrastructure to support the return of its nationals.”⁶⁶

125. On May 5, 2003, former DHS Secretary Tom Ridge extended Honduras’ TPS designation from July 6, 2003, to January 5, 2005.⁶⁷

126. Secretary Ridge based this extension on a finding that Honduras continued to meet all of the requirements that prompted its initial designation, finding that the “prolonged drought as well as flooding after Hurricane Michelle have compromised food security and

⁶⁴ *Id.* at 23,270.

⁶⁵ Extension of the Designation of Honduras Under the Temporary Protected Status Program, 67 Fed. Reg. 22,451 (May 3, 2002).

⁶⁶ *Id.* at 22,452.

⁶⁷ Extension of the Designation of Honduras Under Temporary Protected Status Program; Automatic Extension of Employment Authorization Documentation for Hondurans, 68 Fed. Reg. 23,744 (May 5, 2003).

disrupted reconstruction efforts” and that reports indicated that 38% of Hondurans suffer from chronic malnutrition.⁶⁸

127. On November 3, 2004, Secretary Ridge extended Honduras’ TPS designation from January 5, 2005, to July 5, 2006.⁶⁹

128. Secretary Ridge based this extension on a finding that Honduras continued to meet all of the requirements for TPS designation, finding that reconstruction efforts were ongoing and that Honduras was still recovering from damage to its water and power supplies.⁷⁰

129. On March 31, 2006, former DHS Secretary Michael Chertoff extended Honduras’ TPS designation from July 5, 2006, to July 5, 2007.⁷¹

130. Secretary Chertoff based this extension on a finding that the conditions in Honduras still met the requirements for TPS designation, stating that “Honduras cannot provide adequate housing for its nationals currently residing in the U.S.” Secretary Chertoff also cited the damage done by Hurricane Beta and other serious storms in 2005 as evidence of “Honduras’ continuing vulnerability from Hurricane Mitch.”⁷²

⁶⁸ *Id.* at 23,745.

⁶⁹ Extension of the Designation of Honduras Under Temporary Protected Status Program; Automatic Extension of Employment Authorization Documentation for Hondurans, 69 Fed. Reg. 64,084 (Nov. 3, 2004).

⁷⁰ *Id.* at 64,085.

⁷¹ Extension of the Designation of Honduras Under Temporary Protected Status Program; Automatic Extension of Employment Authorization Documentation for Hondurans, 71 Fed. Reg. 16,328 (Mar. 31, 2006).

⁷² *Id.* at 16,329.

131. On May 29, 2007, Secretary Chertoff extended Honduras' TPS designation from July 5, 2007, to January 5, 2009.⁷³

132. Secretary Chertoff based this extension on a finding that the conditions in Honduras still met the requirements for TPS designation, stating that the government of Honduras had requested an extension due to the continued social and economic stress caused by Hurricane Mitch, with health, infrastructure, and employment problems remaining.⁷⁴

133. On October 1, 2008, Secretary Chertoff extended Honduras' TPS designation from January 5, 2009, to July 5, 2010.⁷⁵

134. Secretary Chertoff based this extension on a finding that the conditions in Honduras still met the requirements for TPS designation, reciting that much of the newly built housing still lacks water and electricity, that more than 600,000 Hondurans live in areas that are at a high risk for flooding, and that much of the drinking water remains contaminated.⁷⁶

135. On May 5, 2010, former DHS Secretary Janet Napolitano extended Honduras' TPS designation from July 5, 2010, to January 5, 2012.⁷⁷

⁷³ Extension of the Designation of Honduras Under Temporary Protected Status Program; Automatic Extension of Employment Authorization Documentation for Hondurans, 72 Fed. Reg. 29,529 (May 29, 2007).

⁷⁴ *Id.* at 29,530.

⁷⁵ Extension of the Designation of Honduras for Temporary Protected Status, 73 Fed. Reg. 57,133 (Oct. 1, 2008).

⁷⁶ *Id.* at 57,134.

⁷⁷ Extension of the Designation of Honduras for Temporary Protected Status and Automatic Extension of Employment Authorization Documentation for Honduran TPS Beneficiaries, 75 Fed. Reg. 24,734 (May 5, 2010).

136. Secretary Napolitano based this extension on a finding that the conditions in Honduras still met the requirements for TPS designation, stating that “the government and people of Honduras continue to rely heavily on international assistance, and recovery from Hurricane Mitch is still incomplete.”⁷⁸ She also cited damage from other natural disasters that occurred after Hurricane Mitch, including heavy continuous rains and flooding in 2008 and an earthquake in 2009. She further found that Honduras would not be able to support the return of its nationals and that their return would “greatly aggravate Honduras’ deteriorating economy by increasing unemployment.”⁷⁹

137. On November 4, 2011, Secretary Napolitano extended Honduras’ TPS designation from January 5, 2012, to July 5, 2013.⁸⁰

138. Secretary Napolitano based this extension on a finding that the conditions in Honduras still met the requirements for TPS designation, stating that “there have been a series of natural disasters in Honduras, the most recent being flooding from Tropical Storm Agatha in May 2010.” She found that:

Although the economy has begun a moderate recovery, the pace of growth has not been rapid enough to absorb large numbers of young people entering the labor force. The addition of tens of thousands of unemployed persons returning from the United States could fuel social tensions and cause an escalation in violence. The country’s security situation is critical, and its infrastructure remains fragile, which negatively affects Honduras’ ability to re-assimilate Hondurans currently in the United States with TPS.⁸¹

⁷⁸ *Id.* at 24,735.

⁷⁹ *Id.*

⁸⁰ Extension of the Designation of Honduras Under Temporary Protected Status Program and Automatic Extension of Employment Authorization Documentation for Honduran TPS Beneficiaries, 76 Fed. Reg. 68,488 (Nov. 4, 2011).

⁸¹ *Id.* at 68,490.

139. On April 3, 2013, Secretary Napolitano extended Honduras' TPS designation from July 5, 2013, to January 5, 2015.⁸²

140. Secretary Napolitano based this extension on a finding that the conditions in Honduras still met the requirements for TPS designation, citing ongoing housing construction, electricity shortages, and problems with infrastructure, water, and sanitation. She further cited that Honduras has experienced several natural disasters since Hurricane Mitch, including a drought in 2012 and a tropical storm in 2011.⁸³

141. On October 16, 2014, former DHS Secretary Jeh Charles Johnson extended Honduras' TPS designation from January 5, 2015, to July 5, 2016.⁸⁴

142. Secretary Johnson based this extension on a finding that the conditions in Honduras still met the requirements for TPS designation, citing food insecurity caused by a drought in 2014, as well as ongoing problems stemming from Hurricane Mitch and the various environmental disasters that followed.⁸⁵

143. On May 16, 2016, Secretary Johnson extended Honduras' TPS designation from July 5, 2016, to January 5, 2018.⁸⁶

⁸² Extension of the Designation of Honduras for Temporary Protected Status, 78 Fed. Reg. 20,123 (Apr. 3, 2013).

⁸³ *Id.* at 20,124-25.

⁸⁴ Extension of the Designation of Honduras for Temporary Protected Status, 79 Fed. Reg. 62,170 (Oct. 16, 2014).

⁸⁵ *Id.* at 62,172.

⁸⁶ Extension of the Designation of Honduras for Temporary Protected Status, 81 Fed. Reg. 30,331 (Oct. 16, 2016).

144. Secretary Johnson based this extension on a finding that the conditions in Honduras still met the requirements for TPS designation, citing the “housing deficit of 1.1 million homes” and that “Honduras is one of the poorest countries in the Western Hemisphere, with over 65 percent of the population living in poverty.” He also cited the damage caused by Tropical Storm Hanna at the end of 2014, as well as the increase in mosquito-borne diseases in 2014 and 2015. Secretary Johnson also found that “climate fluctuations between heavy rainfall and prolonged drought continue to challenge recovery efforts.”⁸⁷

D. Prior Administrations Apply the TPS Program to El Salvador, Haiti, and Honduras, as well as Other Countries, by Evaluating the Current, Evolving Conditions on the Ground

145. Throughout its twenty-seven year history until the arrival of the current Administration, the Attorney General and the DHS have undertaken a comprehensive review of current conditions in TPS-designated countries when considering whether or not to extend the duration of TPS protections. Consistent with the statutory language, prior administrations have not limited consideration to the original bases for designation, but rather have reviewed all current conditions in the country when evaluating whether or not TPS should be extended or terminated.

146. Thus the reviews of the prior administrations incorporated evaluations of the disaster or conflict that precipitated the initial TPS designations for El Salvador, Haiti, and Honduras, but also considered all other facts relevant to TPS status. Subsequent natural disasters, civil unrest, political instability, and widespread and unsafe country conditions were considered each time that El Salvador, Haiti, and Honduras were considered for TPS extension or termination prior to 2017. The practice of analyzing all relevant current country conditions applied to other TPS-designated countries as well.

⁸⁷ *Id.* at 30,333.

147. Prior to January 20, 2017, the TPS statute was applied in a consistent fashion that adhered to the law's plain language, such that country conditions were not considered to revolve solely around a singular environmental catastrophe, but rather as an evolving set of circumstances that evaluated whether or not individuals could safely return to their country of origin. The TPS program served its stated purpose of humanitarian, safe-haven relief for hundreds of thousands of individuals for nearly thirty years.

II. President Trump Campaigns on Promises to Discriminate Against Racial Minorities and to Obstruct Lawful Immigration, and the Administration Then Executes These Unlawful Policies Through His Subordinate Officers and Agencies

148. Defendant Trump has made numerous statements reflecting bias and prejudice against immigrants of color, particularly Latino and Haitian immigrants. Evidence of this bias supports an inference that Defendants' actions in terminating TPS for El Salvador, Haiti and Honduras were motivated by racism and racial, ethnic, and/or national origin discrimination.

149. When then-candidate Trump announced his presidential campaign, he equated Latino immigrants from Mexico with rapists, stating: "When Mexico sends its people, they're not sending their best. They're not sending you. They're sending people that have lots of problems, and they're bringing those problems with us. They're bringing drugs. They're bringing crime. They're rapists. And some, I assume, are good people . . . It's coming from more than Mexico. It's coming from all over South and Latin America."⁸⁸

150. At the first Republican presidential debate, then-candidate Trump again reaffirmed his negative views of Latino immigrants: "[T]he Mexican government is much

⁸⁸ Washington Post Staff, *Full Text: Donald Trump announces a presidential bid* (June 16, 2015), https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/full-text-donald-trump-announces-a-presidential-bid/?utm_term=.80d503a2ff9a.

smarter, much sharper, much more cunning. . . . They send the bad ones over, because they don't want to pay for them, they don't want to take care of them.”⁸⁹

151. After an incident on August 21, 2015, when two men urinated on a sleeping Latino man and beat him with a metal pole, the perpetrators stated: “Donald Trump was right; all these illegals need to be deported.” When interviewed about the racially motivated crime, then-candidate Trump stated that they were “passionate.” Specifically, he stated: “[i]t would be a shame . . . I will say that people who are following me are very passionate. They love this country and they want this country to be great again. They are passionate.”⁹⁰

152. In October 2016, during a presidential debate, then-candidate Trump responded to a question about immigration policy by saying: “We have some bad hombres here and we’re going to get them out.”⁹¹

153. In December 2016, referring to an article about a crime wave on Long Island, President-Elect Trump said, “They come from Central America. They’re tougher than any people you’ve ever met. They’re killing and raping everybody out there. They’re illegal. And they are finished.”⁹²

⁸⁹ Andrew O’Reilly, *At GOP debate, Trump says ‘stupid’ U.S. leaders are being duped by Mexico*, Fox News (Aug. 6, 2015), <http://www.foxnews.com/politics/2015/08/06/at-republican-debate-trump-says-mexico-is-sending-criminals-because-us.html>.

⁹⁰ Adrian Walker, *‘Passionate’ Trump fans behind homeless man’s beating?*, Boston Globe (Aug. 21, 2015), <https://www.bostonglobe.com/metro/2015/08/20/after-two-brothers-allegedly-beat-homeless-man-one-them-admiringly-quote-donald-trump-deporting-illegals/I4NXR3Dr7litLi2NB4f9TN/story.html>.

⁹¹ Katie Zezima, *Trump on immigration: There are ‘bad hombres’ in the United States*, Wash. Post (Oct. 19, 2016), https://www.washingtonpost.com/news/post-politics/wp/2016/10/19/trump-on-immigration-there-are-bad-hombres-in-the-united-states/?utm_term=.1ee17064298f.

⁹² Michael Scherer, *2016 Person of the Year Donald Trump*, Time (2016), <http://time.com/time-person-of-the-year-2016-donald-trump>.

154. On August 25, 2017, President Trump pardoned former Maricopa County Sheriff Joe Arpaio,⁹³ who was to be sentenced for criminal contempt for failing to comply with a federal judge's order to stop racially profiling Latinos.⁹⁴

155. President Trump has made numerous similarly biased statements against Black immigrants. He articulated his antipathy towards Haitians in particular in June 2017. During a meeting in the Oval Office with then-Homeland Security Secretary Kelly and then-Secretary of State Tillerson, President Trump reportedly reacted to a document listing how many immigrants had received visas to enter the United States in 2017. Upon learning that 15,000 Haitian people had received such visas, President Trump is reported to have stated they "all have AIDS."⁹⁵

⁹³ Julie Hirschfeld Davis & Maggie Haberman, *Trump Pardons Joe Arpaio, Who Became Face of Crackdown on Illegal Immigration*, N.Y. Times (Aug. 25, 2017), <https://www.nytimes.com/2017/08/25/us/politics/joe-arpaio-trump-pardon-sheriff-arizona.html>.

⁹⁴ Arpaio had been detaining people ostensibly because they had violated the law. But in practice, his office detained huge numbers of individuals solely because they looked Latino, without any reasonable suspicion of illegal conduct. *See generally* Findings of Fact & Conclusions of Law, *Melendres v. Arpaio*, No. 07-CV-02513, (D. Ariz. May 24, 2013, ECF No. 579). After a federal court enjoined that practice in 2011, Arpaio continued his unlawful and discriminatory practices unabated, "announc[ing] to the world and to his subordinates that he was going to continue business as usual no matter who said otherwise." Findings of Fact & Conclusions of Law, *United States v. Arpaio*, No. 16-CR-01012, (D. Ariz. July 31, 2017), ECF No. 210 at 13. On July 31, 2017, a federal court held Arpaio in criminal contempt, holding that he had willfully acted in "flagrant disregard" of the injunction. *Id.* at 13-14.

⁹⁵ Michael D. Shear & Julie Hirschfeld Davis, *Stoking Fears, Trump Defied Bureaucracy to Advance Immigration Agenda*, N.Y. Times (Dec. 23, 2017), <https://www.nytimes.com/2017/12/23/us/politics/trump-immigration.html>. President Trump's inflammatory and atavistic remark improperly demonizes and stigmatizes Haitians. It perpetuates the discrimination experienced by the Haitian community at the height of the HIV/AIDS epidemic in the early 1980s. At that time, the Centers of Disease Control (CDC) announced that they were purportedly at major risk for HIV. Wayne Biddle & Margot Slade, *A Wider Risk of AIDS Feared*, N.Y. Times (May 22, 1983), <http://www.nytimes.com/1983/05/22/weekinreview/ideas-trends-a-wider-risk-of-aids-feared.html>. The Haitian community was the only group identified based on nationality rather than specific behavioral factors. The CDC removed Haitians from the list in 1985, but the stigma of the classification remains and clearly continues to improperly influence President

156. In January 2018, a bipartisan group of six U.S. senators met to negotiate an immigration plan to present to Congress and the President. On January 11, 2018, they reached an agreement in principle that addressed four immigration priorities of the White House: border security, the diversity visa lottery, so-called “chain migration,” and the Dream Act.⁹⁶

157. The diversity visa lottery program, established by the Immigration Act of 1990, makes available 50,000 immigrant visas per year to applicants from countries with low rates of immigration to the U.S. INA § 203(c). The visas are distributed among six regions: (i) Africa; (ii) Asia; (iii) Europe; (iv) North America (other than Mexico); (v) Oceania; and (vi) South America, Mexico, Central America, and the Caribbean. INA § 203(c)(1)(F). The majority of diversity visa lottery recipients have been nationals of African countries.⁹⁷

158. Under the proposed immigration plan, the senators sought to eliminate the diversity visa lottery and reallocate the 50,000 annual visas to individuals whose TPS would soon terminate.⁹⁸

Trump’s policymaking and legislative decisions. See Edwidge Danticat, *Trump Reopens an Old Wound for Haitians*, The New Yorker (Dec. 29, 2017), <https://www.newyorker.com/news/news-desk/trump-reopens-an-old-wound-for-haitians> (President Trump’s “remark about Haiti and AIDS cut deep, reopening a painful wound that goes back several decades” and “re-stigmatizes both Haitians and people living with H.I.V./AIDS by pegging them as undesirables.”).

⁹⁶ Press Release, Sen. Jeff Flake, *Bipartisan Senators Reach Agreement on Immigration*, (Jan. 11, 2018), <https://www.flake.senate.gov/public/index.cfm/2018/1/bipartisan-senators-reach-agreement-on-immigration>.

⁹⁷ See generally U.S. Dep’t of State, Diversity Visa Program Statistics, <https://travel.state.gov/content/travel/en/us-visas/immigrate/diversity-visa-program-entry/diversity-visa-program-statistics.html>.

⁹⁸ Ryan Teague Beckwith & Maya Rhodan, *Here’s the Plan Trump Was Attacking When He Said ‘Shithole Countries’*, Time (Jan. 12, 2018), <http://time.com/5101057/donald-trump-shithole-countries-tps-daca/>.

159. After the agreement in principle was reached, Senators Durbin and Graham had phone calls with President Trump on the morning of January 11 and were invited to an in-person meeting in the Oval Office at noon that day.⁹⁹ During the meeting, the senators presented the terms of the bipartisan agreement, including the plan to reallocate diversity visas to TPS recipients who would be affected by the upcoming termination—*i.e.* individuals from Haiti, El Salvador, Nicaragua and Sudan.

160. While being briefed on the proposal to reallocate visas to TPS recipients, President Trump is reported to have grown angry and incredulous at the terms of the proposed plan. He specifically derided individuals from terminated TPS nations, asking: “Why are we having all these people from shithole countries come here?”

161. Trump is reported to have expressed particular hostility towards Haitians, asking “Why do we need more Haitians?” and demanding that the senators “[t]ake them out” of the plan.¹⁰⁰ The President then drew a direct contrast between the terminated TPS countries and predominantly white countries, stating that policies should encourage immigration from countries like Norway.¹⁰¹

162. As Senators Durbin and Graham left the Oval Office meeting, they were shocked and speechless. Senator Durbin recalled that ““it was silence in the car”” after they ““witnessed

⁹⁹ Josh Dawsey et al., *Inside the Tense, Profane White House Meeting on Immigration*, Wash. Post (Jan. 15, 2018), https://www.washingtonpost.com/politics/inside-the-tense-profane-white-house-meeting-on-immigration/2018/01/15/13e79fa4-fa1e-11e7-8f66-2df0b94bb98a_story.html.

¹⁰⁰ Josh Dawsey, *Trump Derides Protections For Immigrants From ‘Shithole’ Countries*, Wash. Post (Jan. 12, 2018), https://www.washingtonpost.com/politics/trump-attacks-protections-for-immigrants-from-shithole-countries-in-oval-office-meeting/2018/01/11/bfc0725c-f711-11e7-91af-31ac729add94_story.html?utm_term=.1838b0734159.

¹⁰¹ *Id.*

something that neither one of us ever expected.”¹⁰² Later, Senator Durbin described how the President had “repeatedly” said “vile,” “vulgar” and “hate-filled things” about terminated TPS nations and African nations.¹⁰³ Senator Durbin praised his colleague Senator Graham for his courage in speaking up in response to the President’s derisive comments.¹⁰⁴

163. The morning after the meeting in the Oval Office, President Trump denied reports about the obscene language he used during the meeting. He tweeted that “language used by me at the DACA meeting was tough,” but that he “never said anything derogatory about Haitians other than Haiti is, obviously, a very poor and troubled country.”¹⁰⁵

164. Defendant Nielsen, who was also present at the January 11 meeting in the Oval Office, similarly acknowledged that the President had used “tough language” but maintained that although she did not know whether Norway was a “predominately white country,” she “imagined that is the case.”¹⁰⁶

¹⁰² Carl Hulse, *Inside the Oval Office Immigration Meeting That Left a Senator Stunned*, N.Y. Times (Jan. 19, 2018), <https://www.nytimes.com/2018/01/19/us/politics/trump-durbin-immigration-daca.html>.

¹⁰³ Jacob Pramuk, *Trump repeatedly used ‘S---hole’ to describe African countries, Sen. Dick Durbin Says*, CNBC (Jan. 12, 2018), <https://www.cnbc.com/2018/01/12/trump-used-s--hole-to-describe-african-countries-dick-durbin-says.html>.

¹⁰⁴ Jacob Pramuk, *Sen. Lindsey Graham: ‘I said my piece’ to Trump following his immigration comments*, CNBC (Jan. 12, 2018), <https://www.cnbc.com/2018/01/12/sen-lindsey-graham-i-said-my-piece-to-trump-during-immigration-meeting.html>.

¹⁰⁵ @realDonaldTrump, Twitter (Jan. 12, 2018, 5:48AM), <https://twitter.com/realdonaldtrump/status/951813216291708928?lang=e>.

¹⁰⁶ Walter Shapiro, *Opinion: White People in Norway? Who Knew?*, Roll Call (Jan. 17, 2018), <https://www.rollcall.com/news/opinion/kirstjen-nielsen-trump-norway>.

165. In fact, Norway is indeed a predominantly white country.¹⁰⁷ By contrast, Haiti is predominantly black.¹⁰⁸ El Salvador and Honduras are predominantly Latino.¹⁰⁹

166. Moreover, DHS's animus against TPS recipients is not only evidenced by the President's discriminatory comments, but also by the agency's actions and numerous press releases seeking to convince the American public and Congress that a permanent legislative solution to TPS is not necessary.

167. Defendants' animus against TPS recipients is evidenced by other actions as well. For example, in April 2017, DHS officials sought evidence regarding criminal records and welfare use of Haitians living in the United States. Upon information and belief, DHS officials attempted to manufacture such evidence to support a TPS-rescission decision. When DHS staff indicated they were unable to gather the requested information, policy chief Kathy Neubel Kovarik continued to press for the information. Kovarik wrote in an email that "I know some of it is not captured, but we'll have to figure out a way to squeeze more data out of our system."¹¹⁰

168. Shortly thereafter, Senators Menendez, Ron Wyden, Markey, Gillibrand, and Sherrod Brown wrote to then Secretary John F. Kelly "regarding the troubling news that your department has asked for information on the criminal history and public benefits use of Haitians

¹⁰⁷ See Central Intelligence Agency, The World Factbook: Norway, <https://www.cia.gov/library/publications/the-world-factbook/geos/no.html>.

¹⁰⁸ See Central Intelligence Agency, The World Factbook: Haiti, <https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html>.

¹⁰⁹ See Central Intelligence Agency, The World Factbook: El Salvador, <https://www.cia.gov/library/publications/the-world-factbook/geos/es.html>; Central Intelligence Agency, The World Factbook: Honduras, <https://www.cia.gov/library/publications/the-world-factbook/geos/ho.html>.

¹¹⁰ Alicia A. Caldwell, *AP Exclusive: US digs for evidence of Haiti immigrant crimes*, AP News (May 9, 2017), <https://apnews.com/740ed5b40ce84bb398c82c48884be616>.

protected under [TPS].”¹¹¹ The senators stated they were “concerned that you will use this information in your decision. Such analysis would be outside the statutory framework for deciding whether to extend TPS, and it would be a disturbing executive overreach.”¹¹² Further, they noted that “the timing of this information request suggests that this information is pretext to deny an extension of TPS,” and urged DHS to “keep [its] review within the bounds dictated by Congress.”¹¹³

169. Review of these factors does not fall within the statutory criteria Congress enacted to govern TPS extensions, but remains consistent with the Trump Administration’s bias against TPS recipients based on their race, ethnicity and/or national origin.

170. In response to Congress’s consideration of comprehensive immigration reform, DHS issued a series of press releases criticizing specific legislative proposals that read like partisan blog posts instead of official executive agency pronouncements. Senator Lindsey Graham characterized DHS’s actions as “poisoning the well,” further stating: “Statements like these undermine confidence in DHS and make one question whether they can rationally engage with the Congress on this issue.”¹¹⁴

171. On February 14, 2018, a DHS press release headline read: “The McCain-Coons Proposal Would Increase Illegal Immigration, Surge Chain Migration, Continue Catch and

¹¹¹ Letter from Sens. Robert Menendez, et al., to John F. Kelly, Sec’y of DHS (May 19, 2017), https://www.menendez.senate.gov/imo/media/doc/HAITI-TPS_5_19_17.pdf.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Press Release, Sen. Lindsey Graham, Statement from U.S. Senator Lindsey Graham (Feb. 15, 2018), <https://www.lgraham.senate.gov/public/index.cfm/2018/2/statement-from-u-s-senator-lindsey-graham>.

Release, and Give a Pathway to Citizenship to Convicted Alien Felons.”¹¹⁵ Although the agency’s animus is reflected in the title of the press release alone, the agency went further and characterized the legislative proposal as a “Mass Legalization Bill.”¹¹⁶

172. The next day, DHS repeated its advocacy against TPS extension, and again characterized a proposal for conditional permanent resident status for TPS recipients as part of “a Mass Amnesty Bill for Illegal Aliens of All Ages.”¹¹⁷

III. The Administration Follows Through on its Promises and Terminates TPS at Almost Every Opportunity

A. The Trump Administration Terminates TPS for El Salvador

173. Despite extensions of the TPS program for El Salvador over the course of multiple administrations under both political parties, and despite the lingering effects of compounded environmental and humanitarian crises, on January 18, 2018, the Trump Administration terminated El Salvador’s TPS designation effective September 9, 2019.¹¹⁸

¹¹⁵ Press Release, U.S. Dep’t of Homeland Security, The McCain-Coons Proposal Would Increase Illegal Immigration, Surge Chain Migration, Continue Catch and Release, and Give a Pathway to Citizenship to Convicted Alien Felons (Feb. 14, 2018), <https://www.dhs.gov/news/2018/02/14/mccain-coons-proposal-would-increase-illegal-immigration-surge-chain-migration>.

¹¹⁶ *Id.*

¹¹⁷ Press Release, U.S. Dep’t of Homeland Security, Schumer-Rounds-Collins Destroys Ability of DHS to Enforce Immigration Laws, Creating a Mass Amnesty For Over 10 Million Illegal Aliens, Including Criminals (Feb. 15, 2018), <https://www.dhs.gov/news/2018/02/15/schumer-rounds-collins-destroys-ability-dhs-enforce-immigration-laws-creating-mass>.

¹¹⁸ Termination of the Designation of El Salvador for Temporary Protected Status, 83 Fed. Reg. 2654 (Jan. 18, 2018); *see also* Press Release, U.S. Dep’t of Homeland Security, Secretary of Homeland Security Kirstjen M. Nielson Announcement on Temporary Protected Status for El Salvador (Jan. 8, 2018), <https://www.dhs.gov/news/2018/01/08/secretary-homeland-security-kirstjen-m-nielsen-announcement-temporary-protected>.

174. In doing so, Defendants made clear their new rule that they would not consider intervening country conditions, but rather would only consider whether “the conditions supporting El Salvador’s 2001 designation for TPS on the basis of environmental disaster due to damage cause by the 2001 earthquakes are no longer met.”¹¹⁹ If so, Defendants asserted that “the Secretary must terminate the designation”¹²⁰

175. Current conditions in El Salvador, however, render the country unable to handle a safe return for Salvadoran TPS holders. Conditions prompting both the initial designation and subsequent designations continue to exist and have worsened over time. As such, an estimated 242,900 Salvadoran TPS holders may face deportation to a country that is ill-prepared to receive them.

176. The country lacks viable infrastructure, is low on housing, and suffers from pervasive and widespread violence. High displacement of persons living in El Salvador, as well as the country’s high underemployment and poverty rates, and dim economic prospects will inhibit the integration of tens of thousands of returned workers into the country’s market. Moreover, these conditions, including several natural disasters, continue to impede recovery efforts from the 2001 earthquakes and subsequent disasters.

177. Several recent natural disasters displaced a significant number of Salvadorans and caused major infrastructure damage in the country,¹²¹ further reducing any gains made in recovering from the 2001 earthquakes. In November 2016, a 7.2-magnitude earthquake struck

¹¹⁹ Termination of the Designation of El Salvador for Temporary Protected Status, 83 Fed. Reg. 2654, 2655-56 (Jan. 18, 2018)

¹²⁰ *Id.* at 2655.

¹²¹ See IDMC, Global Report on Internal Displacement (May 2017), at 114, <http://www.internal-displacement.org/global-report/grid2017/pdfs/2017-GRID.pdf>.

El Salvador, leading to evacuations in coastal areas.¹²² In April 2017, a 5.1-magnitude earthquake—the strongest of more than 50 registered earthquakes that shook the country over a 24-hour period—caused landslides and damaged homes and roads throughout the country.¹²³ In 2017, torrential rains and storms further damaged El Salvador’s infrastructure. Flooding from intense rains in June 2017 forced the evacuation and displacement of hundreds of people, damaged streets, highways, and bridges, and led to multiple deaths and injuries.¹²⁴ Heavy rains throughout September 2017 further exacerbated the damage to roads and homes, and caused numerous deaths and injuries.¹²⁵

178. El Salvador suffers from critical housing shortages. In 2017, a United Nations organization reported a housing deficit of 360,000 homes.¹²⁶ Over 30 percent of the country’s households live in poverty or extreme poverty.¹²⁷

¹²² Guy Birchall, *Tsunami Danger El Salvador Hit by Massive 7 Magnitude Earthquake as a Tsunami Warning is Issued*, THE SUN, (Nov. 24, 2016), <https://www.thesun.co.uk/news/2258714/el-salvador-hit-by-massive-7-2-magnitude-earthquake-as-a-tsunami-warning-is-issued/>.

¹²³ Telesur, *At Least 1 Dead in El Salvador After 5.1 Magnitude Earthquake*, Telesurtv.net (Apr. 10, 2017), <https://www.telesurtv.net/english/news/At-Least-One-Dead-in-El-Salvador-After-5.1-Magnitude-Earthquake-20170410-0038.html>.

¹²⁴ Associated Press, *3 dead, Hundreds Displaced in El Salvador Flooding*, DAILY MAIL (June 16, 2017), <http://www.dailymail.co.uk/wires/ap/article-4611600/3-dead-hundreds-displaced-El-Salvador-flooding.html>; FloodList, *Central America – Deadly Floods and Landslides in Guatemala, El Salvador and Honduras* (June 22, 2017), <http://floodlist.com/america/floods-landslides-guatemala-el-salvador-honduras-june-2017>.

¹²⁵ AFP and The Tico Times, *Bad Rainy Season Leaves Dozens Dead in Central America*, Tico Times (Oct. 4, 2017), <http://www.ticotimes.net/2017/10/04/bad-rainy-season-leaves-dozens-dead-central-america>.

¹²⁶ Sustainable Development Goals Fund, *Case Study Sustainable Urban Development in El Salvador* § 2 (2017), <http://www.sdgfund.org/case-study/sustainable-urban-development-el-salvador>.

179. The country's economic growth is stagnant as El Salvador continues to experience persistently low levels of economic growth and the significant challenges to its economy recognized in the 2016 extension notice.¹²⁸ The economy grew by only 2.1 percent in 2017, and is predicted to grow by only 1.8 percent in 2018, making it the slowest growing economy in Central America.¹²⁹

180. Data on El Salvador's labor market conditions suggests there has been no improvement since the country's 2016 TPS renewal and approximately 40% of the country's labor force remains underemployed or unable to find full-time work.¹³⁰

181. Remittances—money sent from Salvadoran nationals living abroad—remain critical to El Salvador's economy. Indeed, remittances constitute the country's greatest single source of income, and surpassed \$4.5 billion in 2016 – approximately 17% of the country's gross domestic product.¹³¹ Over 97% of remittances sent to El Salvador come from relatives residing in the United States, including TPS beneficiaries.¹³²

¹²⁷ *Id.*

¹²⁸ USAID, *Economic Opportunities*, USAID (last updated: Jan. 2, 2018), <https://www.usaid.gov/el-salvador/economic-opportunities>; Extension of the Designation of El Salvador for Temporary Protected Status, 81 Fed. Reg. 44,645 (July 8, 2016).

¹²⁹ The World Bank, *The World Bank In El Salvador* (last updated: Apr. 16, 2018), <http://www.worldbank.org/en/country/elsalvador/overview>.

¹³⁰ Christopher Woody, *Trump's Latest Immigration Crackdown Threatens the Economy — Both in the US and in El Salvador*, Business Insider (Jan. 17, 2018), <http://www.businessinsider.com/trump-ending-tps-el-salvador-threatens-economy-2018-1>.

¹³¹ Joshua Partlow, *Salvadorans fear TPS Decision Will be a Huge Economic Blow but Pin Hopes on Congress*, Washington Post (Jan. 8, 2018), https://www.washingtonpost.com/world/the_americas/salvadorans-fear-tps-decision-will-be-a-huge-economic-blow-to-their-country/2018/01/08/ee9d9ab4-f486-11e7-9af7-a50bc3300042_story.html?utm_term=.478cbcf275ce; The World Bank, *Personal Remittances, Received (% of GDP)*,

182. Other conditions continuing to plague the country include the gang and criminal violence recognized in the 2016 extension notice. The country has one of the world's highest homicide rates: in 2001, the year of its initial TPS designation, six people in El Salvador were killed daily.¹³³ The rate nearly doubled by 2017.¹³⁴ A 2016 USAID report found the murder rate in El Salvador was 81 per 100,000 people.¹³⁵

183. Crime levels remain critically high, and the U.S. Department of State ("DOS") found that nearly one out of every five families in El Salvador have been victims of violent crime.¹³⁶ DOS has warned U.S. citizens that "crime and violence levels in El Salvador remain

<https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS?end=2016&locations=SV&start=1976>.

¹³² Christopher Woody, *Trump's Latest Immigration Crackdown Threatens the Economy — Both in the US and in El Salvador*, Business Insider (Jan. 17, 2018), <http://www.businessinsider.com/trump-ending-tps-el-salvador-threatens-economy-2018-1>.

¹³³ Raymond Bonner, *America's Role in El Salvador's Deterioration*, The Atlantic (Jan. 20, 2018), <https://www.theatlantic.com/international/archive/2018/01/trump-and-el-salvador/550955/>; Reuters Staff, *U.N. Finds Possible Extrajudicial Killings in El Salvador Gang Offensive*, Reuters (Feb. 5, 2018), <https://www.reuters.com/article/us-el-salvador-violence/u-n-finds-possible-extrajudicial-killings-in-el-salvador-gang-offensive-idUSKBN1FQ0E1>; Josh Boswell, *Donald Trump's Decision to Expel Salvadorans Could Empower Deadly MS-13 Gang, warns experts*, The Telegraph (Jan. 14, 2018), <http://www.telegraph.co.uk/news/2018/01/14/donald-trumps-decision-send-salvadorans-home-could-empower-deadly/>.

¹³⁴ Boswell, *supra* note 134.

¹³⁵ USAID, *USAID/El Salvador Country Fact Sheet* (Nov. 2017) at 1, https://www.usaid.gov/sites/default/files/documents/1862/El_Salvador_External_Fact_Sheet_-_November_2017.pdf.

¹³⁶ Dept. of State, *El Salvador 2016 Human Rights Report* (updated 4/12/2017) at 1, <https://www.state.gov/documents/organization/265798.pdf>.

critically high”¹³⁷ and issued a Level Three Travel Advisory for El Salvador on January 10, 2018.¹³⁸ The advisory recommends reconsidering travel to the country “due to crime” and states that “[v]iolent crime, such as murder, assault, rape, and armed robbery, is common,” and that “[g]ang activity, such as extortion, violent street crime, and narcotics and arms trafficking, is widespread.”¹³⁹ It further reports that “[l]ocal police may lack the resources to respond effectively to serious criminal incidents.”¹⁴⁰

184. The country’s violence has been identified by the U.N. World Food Programme as “a humanitarian emergency” that “has significantly impeded development.”¹⁴¹ Criminal and gang violence continues to displace El Salvador’s population. In 2017, the Internal Displacement Monitoring Centre (“IDMC”) estimated that nearly 220,000 people were forced to flee violence in El Salvador in 2016 alone, ranking El Salvador second in the world in the number of new displacements relative to population size.¹⁴²

¹³⁷ U.S. Embassy El Salvador, *Security Message for U.S. Citizens: Travel Warning – El Salvador*, Jan. 15, 2016, <https://sv.usembassy.gov/sm-01152016/>.

¹³⁸ U.S. Dept. of State, *El Salvador Travel Advisory* (Jan. 10, 2018), <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/el-salvador-travel-advisory.html>.

¹³⁹ *Id*

¹⁴⁰ *Id*.

¹⁴¹ U.N. World Food Programme, *Food Security and Emigration* (Aug. 2017) at 23, <https://reliefweb.int/sites/reliefweb.int/files/resources/WFP-0000022124.pdf>.

¹⁴² IDMC, *Global Report on Internal Displacement* (May 2017) at 22, 114, <http://www.internal-displacement.org/global-report/grid2017/pdfs/2017-GRID.pdf>.

185. El Salvador has been identified as one of the world’s deadliest countries for women and girls in particular.¹⁴³ On average, ten women a day experience violence or sexual assault in the country, and seven of every ten victims of sexual violence are under the age of twenty.¹⁴⁴

186. Further, a March 2017 DOS report described the widespread human rights abuses in El Salvador that “stem[] from . . . widespread extortion and other crime,” “widespread corruption,” “weak rule of law” and “widespread” violence against women and girls, and the commercial sexual exploitation of women and children.¹⁴⁵

187. As evidenced from the above, Defendant Nielsen’s assertion, in announcing the Trump Administration’s decision to terminate TPS for El Salvador, that country conditions have “stabilized” is pretext for invidious discrimination and belied by well-established facts.

188. Defendant Nielsen’s stated reasoning for the Trump Administration’s termination of El Salvador’s TPS designation represents a sharp departure from DHS’s ordinary decision-making process, furthering the inference of invidious discrimination.

189. Under 8 U.S.C. § 1254a, DHS is required to consider “the conditions in the foreign state . . . for which a designation is in effect under this subsection and . . . determine whether the conditions for such designation under this subsection continue to be met.”

¹⁴³ Catalina Lobo-Guerrero, Opinion, *In El Salvador, ‘Girls Are a Problem’*, N.Y. Times (Sept. 2, 2017), <https://www.nytimes.com/2017/09/02/opinion/sunday/el-salvador-girls-homicides.html>.

¹⁴⁴ *Id.*

¹⁴⁵ U.S. Dep’t of State, *El Salvador 2016 Human Rights Report* 1, 21 (updated Apr. 12, 2017), <https://www.state.gov/documents/organization/265798.pdf>.

190. Previously, consistent with that statutory mandate, the Attorney General and DHS Secretaries have conducted careful reviews to determine whether conditions in El Salvador continued to meet the statutory criteria of the TPS statute, considering all current country conditions that may justify TPS designation. In stark contrast to the extensions of El Salvador's TPS status in other administrations, Defendants failed to assess country conditions that were documented over the course of nearly two decades. In particular, Defendants failed to mention the numerous natural disasters that El Salvador recently experienced, the ongoing food scarcity, or the persistence of extreme gang violence, corruption and judicial inefficacy.

191. Defendant Nielsen's flawed analysis of conditions in El Salvador conflicts sharply with the federal government's own reports and analysis released by DOS, which consistently reflect the conditions described in the Federal Register for El Salvador's prior TPS extensions. For example, DOS has released numerous reports documenting that in El Salvador "violent crime, such as murder, assault, rape, and armed robbery is common. Gang activity such as extortion [and] violent street crime . . . is widespread. Local police may lack the resources to respond effectively" ¹⁴⁶

192. Consistent with the determinations made by prior administrations in extending TPS protections to El Salvador, DOS has frequently noted that El Salvador experiences "widespread corruption; weak rule of law, which contribute[s] to high levels of impunity and

¹⁴⁶ U.S. Dep't of State, *El Salvador Travel Advisory* (Jan. 10, 2018), <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/el-salvador-travel-advisory.html>.

government abuse, including unlawful killings by security forces, discrimination . . . [and] violence against women and girls.”¹⁴⁷

193. Defendant Nielsen’s reliance on El Salvador’s increased GDP as a reason for termination also raises the inference of pretext. As the World Bank recently noted, external factors were responsible for the increase including “remittances which increased by \$306 million since 2015.”¹⁴⁸

194. Defendant Nielsen’s stated reasoning also gives no consideration to the ability of El Salvador to receive the thousands of TPS recipients currently living in the United States. In fact, “if all the Salvadoreans in the TPS programme were to come back . . . the country’s population would swell by 3%. El Salvador is in no state to receive and reintegrate them.”¹⁴⁹

195. Defendant Nielsen’s purported analysis of country conditions in El Salvador also conflicts with DHS’s own reports, released as recently as January 2018, documenting that El Salvador is one of the “leading countries of nationality for persons granted either affirmative or defensive asylum” based on credible and well-founded fear of persecution or torture.¹⁵⁰ El Salvador’s prevalence in asylum proceedings makes sense in light of the country conditions amply discussed in the Federal Register over the course of El Salvador’s TPS designation.

¹⁴⁷ U.S. Dep’t of State, *El Salvador 2016 Human Rights Report* (updated Apr. 12, 2017), <https://www.state.gov/documents/organization/265798.pdf>.

¹⁴⁸ The World Bank, *World Bank in El Salvador Overview* (Oct. 10, 2017), <http://www.worldbank.org/en/country/elsalvador/overview>.

¹⁴⁹ *See How Will El Salvador Cope With Deportees From America?*, The Economist (Jan. 11, 2018), <https://www.economist.com/news/americas/21734477-united-states-wants-expel-up-200000-salvadoreans-both-they-and-their-home-country>.

¹⁵⁰ U.S. Dep’t of Homeland Sec., Office of Immigration Statistics, *Annual Flow Report: Refugees and Asylees: 2016* (published Jan. 2018), https://www.dhs.gov/sites/default/files/publications/Refugees_Asylees_2016_0.pdf.

B. The Trump Administration Terminates TPS for Haiti

196. On May 24, 2017, former DHS Secretary John Kelly extended Haiti's TPS designation for six months from July 23, 2017, to January 22, 2018.¹⁵¹

197. Secretary Kelly based this extension on a finding that Haiti continued to meet the requirements that prompted its initial designation, and particularly because of the high number of internally displaced persons, high levels of gender-based violence, and the debilitating cholera epidemic. He found that recovery efforts were compromised by new disasters—Hurricane Matthew, flooding, and landslides—that struck Haiti killing, displacing, and starving its populace.¹⁵²

198. Notwithstanding this litany of unsafe conditions and lack of comprehensive reconstruction, Secretary Kelly extended Haiti's TPS designation for only the minimum six-month period, and indicated that it was “in the best interest of [Haitian] TPS beneficiaries to prepare for their return to Haiti.”¹⁵³

199. Despite extensions of the TPS program for Haiti over the course of almost a decade and the lingering effects of multiple environmental and humanitarian crises, on November 20, 2017, Defendant Duke abruptly announced the termination of Haiti's TPS designation effective July 22, 2019.¹⁵⁴

¹⁵¹ Extension of the Designation of Haiti for Temporary Protected Status, 82 Fed. Reg. 23,830 (May 24, 2017).

¹⁵² *Id.* at 23,832.

¹⁵³ *Id.*

¹⁵⁴ Termination of the Designation of Haiti for Temporary Protected Status, 83 Fed. Reg. 2648 (Jan. 18, 2018).

200. The termination of Haiti's TPS designation was recorded in the Federal Register on January 18, 2018.¹⁵⁵ Defendants cited some improvements in the numbers of internally displaced persons as a purported justification for rescinding Haiti's TPS designation.¹⁵⁶ Similar to the notice terminating TPS designation for El Salvador, Defendants did not consider all country conditions that might justify TPS designation for Haiti, but rather focused only on the original basis for designation and whether those conditions continued to be met.

201. Current conditions in Haiti, however, render the country unable to handle a safe return for Haitian TPS holders. Conditions prompting both the initial designation and subsequent designations continue to exist and have worsened over time. As such, an estimated 93,500 Haitian TPS holders may face deportation to a country that is ill-prepared to receive them.

202. Haiti remains one of the poorest countries in the Western Hemisphere and ranks 163rd out of 188 countries on the U.N. Human Development Index.¹⁵⁷ Haiti's GDP growth has slowed significantly in recent years.¹⁵⁸

203. Haiti currently faces a significant housing crisis. More than 37,000 people in Haiti remain located in internal displacement camps since the 2010 designation, with tens of thousands more displaced but not recorded in official statistics due to lack of tracking or

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 2650.

¹⁵⁷ United Nations Development Programme, *Human Development Reports Haiti* (last visited May 8, 2018), <http://hdr.undp.org/en/countries/profiles/HTI>; The World Bank, *The World Bank in Haiti* (last updated Apr. 2, 2018), <http://www.worldbank.org/en/country/haiti/overview>.

¹⁵⁸ The World Bank, *The World Bank in Haiti* (last updated Apr. 2, 2018), <http://www.worldbank.org/en/country/haiti/overview>.

reclassification.¹⁵⁹ Of those who left the camps, many have settled in inadequate housing structures: for example, upwards of 200,000 Haitians live in Canaan, a makeshift, informal settlement created shortly after the earthquake whose inhabitants lack access to basic services, including water, health care, and waste management.¹⁶⁰

204. Haiti also suffers from a significant food shortage and severe malnutrition, and more than two million people face severe food insecurity.¹⁶¹ The food shortage was greatly exacerbated by the massive destruction of crops, livestock, and infrastructure in Haiti's southern peninsula by Hurricane Matthew in October 2016.¹⁶²

205. Haiti's political instability and weak economy continue to impede the country's recovery efforts.¹⁶³ Economic growth has slowed to one percent and the country's fiscal deficit has widened in the wake of Hurricane Matthew.¹⁶⁴

¹⁵⁹ U.N. OCHA, *Haiti: Humanitarian Snapshot* (Aug. 2017), https://www.humanitarianresponse.info/system/files/documents/files/hti_humanitarian_snapshot_august2017-en_0.pdf (hereinafter "OCHA"); Global Justice Clinic, *Extraordinary Conditions: A Statutory Analysis of Haiti's Qualification for TPS* at 9-11 (Oct. 2017), <http://www.ijdh.org/wp-content/uploads/2017/10/> (hereinafter "GJC").

¹⁶⁰ GJC, *supra* note 160, at 2, 12.

¹⁶¹ OCHA, *supra* note 160.

¹⁶² GJC, *supra* note 160, at 19-21.

¹⁶³ See generally Refugees International, *Field Report Two Steps Back: Haiti Still Reeling from Hurricane Matthew* (Apr. 2017), <https://static1.squarespace.com/static/506c8ea1e4b01d9450dd53f5/t/58e56896414fb5affd68e857/1491429534724/2017.4.6+Haiti.pdf>.

¹⁶⁴ The World Bank, *supra* note 159.

206. Remittances—money sent from Haitian nationals living abroad—remain critical to Haiti’s economy. It is estimated that remittances could reach an estimate \$2.7 billion or 29.2 percent of the country’s GDP in 2020.¹⁶⁵

207. In May 2017, the Haitian government informed DHS that the country could not support the return of Haitian nationals with TPS, and expressed concern that “[a] sudden repatriation of tens of thousands of Haitians will give rise to instability in Haiti.”¹⁶⁶ Such a sudden repatriation, the Haitian government noted, might cause further hardship to the country and “effectively derail [the Haitian government’s] rebuilding efforts.”¹⁶⁷

208. In October 2017, the Haitian government reiterated its concerns and requested DHS provide an 18-month extension to allow the country to “adequately move forward with its recovery and redevelopment plan.”¹⁶⁸ The government explained that Haiti had experienced catastrophic and unprecedented natural disasters since 2010, including a cholera epidemic that continued to pose a healthcare risk to its citizens. The Haitian government also explained that in October 2016, Hurricane Matthew destroyed over 200,000 homes and decimated entire towns and villages. The hurricane caused a severe food crisis of unparalleled magnitude and resulted in an estimated economic loss of \$2.8 billion. The Haitian government further explained that

¹⁶⁵ See Haiti Libre, *Haiti – Economy: Impacts of Remittances from diaspora on the national economy* (Apr. 4, 2017), <http://www.haitilibre.com/en/news-20563-haiti-economy-impacts-of-remittances-from-diaspora-on-the-national-economy.html>.

¹⁶⁶ Letter from Paul G. Altidor, Ambassador of Haiti to the U.S. to the Honorable John F. Kelly, Sec’y of Dep’t of Homeland Sec. 1 (May 8, 2017), <http://www.ijdh.org/wp-content/uploads/2016/10/The-Honorable-Secretary-John-F.-Kelly.pdf>.

¹⁶⁷ *Id.* at 2.

¹⁶⁸ Letter from Paul G. Altidor, Haitian Ambassador to the United States, to Elaine C. Duke, Acting Secretary of Dep’t of Homeland Sec. (Oct. 4, 2017), <http://www.miamiherald.com/latest-news/article178072401.ece/binary/Lettertothe%20HonorableElaineC.Duke.pdf>.

Hurricanes Irma and Maria also caused serious damage to the country in 2017, hampering Haiti's efforts to recover from the earthquake, the cholera epidemic, and Hurricane Matthew. The two hurricanes destroyed substantial amounts of agricultural crops and caused flooding in several communities, resulting in the further displacement of people. The Haitian government warned that terminating TPS would force the government to halt its "ongoing, short-term redevelopment efforts" and to "focus its limited resources on receiving the influx of citizens."¹⁶⁹

209. The Haitian Ambassador to the United States and the Haitian Foreign Minister met with Defendant Duke in November 2017 to reiterate the country's request for a TPS extension as "some of the key conditions that warranted TPS in the first place are still existing."¹⁷⁰

210. An October 2017 report issued by the Global Justice Clinic at the New York University School of Law also reported on the extraordinary conditions that would serve to prevent Haitian nationals from returning safely to Haiti.¹⁷¹ The report emphasized the country's housing crisis; cholera outbreak that has caused nearly 10,000 deaths and more than 815,000 illnesses; and extreme hunger and malnutrition caused by drought and storms.¹⁷² The report concluded that the cholera epidemic, food insecurity, housing crisis, and poor living conditions

¹⁶⁹ *Id.*

¹⁷⁰ Ted Hesson, *Haitian officials press Duke*, Politico (Nov. 17, 2017), <https://www.politico.com/newsletters/morning-shift/2017/11/17/haitian-officials-press-duke-026792>.

¹⁷¹ Global Justice Clinic, *Extraordinary Conditions: A Statutory Analysis of Haiti's Qualification for TPS* at 1 (Oct. 2017), <http://www.ijdh.org/wp-content/uploads/2017/10/>.

¹⁷² *Id.*

occasioned by the earthquake and exacerbated by multiple hurricanes rendered the country unsafe for the return of Haitians living in the United States.¹⁷³

211. A November 2017 report on the conditions in Haiti issued by a United States Conference of Catholic Bishops delegation also analyzed the country's ability to safely accept and reintegrate returned nationals.¹⁷⁴ After meeting with various Haitian and U.N. governmental officials, the delegation concluded that Haiti "is not yet at a point where it can safely accommodate the return" of TPS recipients as it is still "in the midst of recovery, as evidenced by the thousands that remain displaced in camps and the key infrastructure that has yet to be rebuilt."¹⁷⁵ The report also found the country had "no evidence of capacity to provide large-scale reintegration services for repatriated nationals with TPS."¹⁷⁶

212. Indeed, several U.S. officials have repeatedly warned against terminating TPS based on Haiti's current inability to handle the return of thousands of nationals. For example, the Massachusetts Congressional Delegation wrote a letter advising DHS that an 18-month extension is "needed and justified based on the devastation that Haiti has suffered from a series of natural disasters."¹⁷⁷ The Delegation explained that Haiti had suffered from extraordinary conditions

¹⁷³ *Id.* at 2-3.

¹⁷⁴ U.S. Conference of Catholic Bishops, *Haiti's Ongoing Road to Recovery: The Necessity of an Extension of Temporary Protected Status* (Nov. 2017), <http://www.usccb.org/about/migration-policy/fact-finding-mission-reports/upload/mrs-haiti-trip-report.pdf>.

¹⁷⁵ *Id.* at 2.

¹⁷⁶ *Id.* at 2-3.

¹⁷⁷ Letter from the Mass. Cong. Delegation to the Honorable Rex Tillerson, Secretary of State and the Honorable Elaine C. Duke, Acting Secretary, (Oct. 19, 2017), *available at* <https://www.wola.org/wp-content/uploads/2017/10/2017-10-19-Letter-to-Tillerson-and-Duke-on-Haiti-TPS.pdf>.

since the 2010 earthquake and as a result, could not safely repatriate TPS participants.¹⁷⁸ The current Massachusetts governor echoed this concern, requesting that TPS be extended for, *inter alia*, the 5,000 Haitians in Massachusetts as the country was in crisis mode and would be at risk of further destabilization with a sudden influx of TPS nationals.¹⁷⁹ The current Massachusetts Governor noted that “[i]ndependent evaluations offer strong support for the conclusions that Haiti, El Salvador, and Honduras are countries that remain in crisis and lack the resources, political stability, and infrastructure necessary to support the return of nationals now living in the United States under TPS.”¹⁸⁰

213. As evidenced by the above, Defendant Duke’s assertion, in announcing the Trump Administration’s decision to terminate TPS for Haiti, that country conditions have made “progress” is pretext for invidious discrimination and belied by well-established facts.

214. Defendant Duke’s stated reasoning for the Trump Administration’s termination of Haiti’s TPS designation represents a sharp departure from DHS’s ordinary decision-making process, furthering the inference of invidious discrimination.

215. Under 8 U.S.C. § 1254a, DHS is required to consider “the conditions in the foreign state . . . for which a designation is in effect under this subsection and . . . determine whether the conditions for such designation under this subsection continue to be met.”

216. Previously, consistent with that statutory mandate, DHS conducted a careful review to determine whether conditions in Haiti continued to meet the statutory criteria of the

¹⁷⁸ *Id.*

¹⁷⁹ Letter from Charlie Baker, Gov. of Massachusetts, to the Honorable Elaine C. Duke, Acting Secretary (Nov. 14, 2017), *available at* <https://www.miracoalition.org/images/Documents/GovBaker-TPS-letter-Nov142017.pdf>.

¹⁸⁰ *Id.* at 2.

TPS statute, considering all current country conditions that may justify TPS designation. Unlike the extensions of Haiti's TPS protection in other administrations, Defendants failed to mention the numerous natural disasters Haiti recently experienced, the slow process of economic and infrastructural recovery described in recent extensions, the remaining food scarcity, or the persistent reports of gender-based violence.

217. Defendants' analysis of the situation in Haiti also conflicts sharply with the federal government's own reports and analysis released by DOS which consistently reflect the conditions described in the Federal Register for Haiti's TPS extensions. For example, DOS has noted that in Haiti "[v]iolent crime such as armed robbery, is common. Local police may lack resources to respond effectively to serious criminal incidents or emergencies."¹⁸¹

218. DOS has been clear that the situation in Haiti is destitute. DOS notes that gender-violence such as "rape . . . and societal discrimination against women" remains a serious problem. Haiti still contains a high number of internally displaced persons including "14,000 people displaced by Hurricane Matthew" and "several thousand street children" in Port-Au-Prince alone.¹⁸² Against this background, the country's reconstruction and development is far from complete and will take many years.

219. Defendants' reliance on the withdrawal of United Nations forces from Haiti is not supported factually and, therefore, contributes to an inference of discrimination. The presence of United Nations peace-keeping forces in Haiti has been the subject of significant controversy and

¹⁸¹ U.S. Dep't of State, Travel Advisory on Haiti (Jan. 10, 2018), *available at* <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/haiti-travel-advisory.html>.

¹⁸² U.S. Dep't of State, *Haiti 2016 Human Rights Report* 1, 24-25 (2016), <https://www.state.gov/documents/organization/265806.pdf>.

scandal, and their departure cannot be fairly attributed to alleged progress in country conditions.¹⁸³

220. Indeed, internal U.S. Citizenship and Immigration Services (“USCIS”) records show that Defendants had full knowledge of the extraordinary risks and instability in Haiti based on a report prepared in October of 2017.¹⁸⁴ Defendants selective use of this information as justification for TPS rescission demonstrates the decision was based on impermissible invidious discrimination.¹⁸⁵

C. The Trump Administration Terminates TPS for Honduras

221. On December 15, 2017, former Acting DHS Secretary Elaine C. Duke extended Honduras’ TPS designation from January 5, 2018 to July 5, 2018.¹⁸⁶

¹⁸³ See Jonathan M. Katz, *U.N. Admits Role in Cholera Epidemic in Haiti*, N.Y. Times (Aug. 17, 2016), <https://www.nytimes.com/2016/08/18/world/americas/united-nations-haiti-cholera.html>; see also *AP Report Documents Child Sexual Abuse by U.N. Peacekeepers in Haiti*, NPR (Apr. 13, 2017 4:33PM), <https://www.npr.org/2017/04/13/523804480/ap-report-documents-child-sexual-abuse-by-u-n-peacekeepers-in-haiti>.

¹⁸⁴ U.S. Citizenship and Immigration Services, *TPS Considerations: Haiti (October 2017) Natural Disaster* 1 (Nov. 3, 2017). The report noted that “[a]lthough some progress regarding reconstruction and recovery has been made in a variety of sectors, billions of dollars in pledged foreign assistance never materialized and the pace and scope of Haiti’s recovery has been uneven. Many of the conditions prompting the original January 2010 TPS designation persist, and the country remains vulnerable to external shocks and internal fragility. Haiti has also experienced various setbacks that have impeded its recovery . . . and ‘continues to be affected by a convergence of humanitarian needs,’ including food insecurity, internal displacement, an influx of returnees from the Dominican Republic, the persistence of cholera, and the lingering impact of various natural disasters.” *Id.* The report concluded, stating “[d]ue to the conditions outlined in this report, Haiti’s recovery from the 2010 earthquake could be characterized as falling into what one non-governmental organization recently described as ‘the country’s tragic pattern of one step forward, two steps back.’” *Id.* at 18.

¹⁸⁵ See L. Francis Cissna, *Memorandum for the Secretary: Haiti’s Designation for Temporary Protected Status* (Nov. 3, 2017).

¹⁸⁶ Extension of the Designation of Honduras for Temporary Protected Status, 82 Fed. Reg. 59,630 (Dec. 15, 2017).

222. The six-month extension was automatic, based on Acting Secretary Duke's failure to make a determination on Honduras' designation by the November 6, 2017 statutory deadline.¹⁸⁷

223. However, even this non-discretionary extension was nearly subverted by the Administration. On or about November 6, 2017, former DHS Secretary and now White House Chief of Staff John Kelly and White House Homeland Security Adviser Tom Bossert repeatedly called Acting Secretary Duke to pressure her to terminate Honduras' TPS designation, notwithstanding that she had made no investigation to satisfy the statutory requirements necessary before termination. A former official with knowledge of the exchange said "[t]hey put massive pressure on her."¹⁸⁸ Chief of Staff Kelly made the call from Japan, where he was traveling with President Trump. According to reports, Chief of Staff Kelly was irritated with Acting Secretary Duke's allowance of the mandatory six-month extension, warning Acting Secretary Duke that the TPS program "prevents [the Trump Administration's] wider strategic goal" on immigration.¹⁸⁹

224. Despite extensions of the TPS program for Honduras over the course of multiple administrations under both political parties, and despite the lingering effects of compounded environmental crises, on May 4, 2018, the Trump Administration announced the termination of

¹⁸⁷ *Id.* at 59,632.

¹⁸⁸ Nick Miroff, *White House Chief of Staff Tried to Pressure Acting DHS Secretary to Expel Thousands of Hondurans, Officials Say*, Wash. Post (Nov. 9, 2017), https://www.washingtonpost.com/world/national-security/white-house-chief-of-staff-tried-to-pressure-acting-dhs-secretary-to-expel-thousands-of-hondurans-officials-say/2017/11/09/914d3700-c54a-11e7-a441-3a768c8586f1_story.html?utm_term=.2d374b2092ef..

¹⁸⁹ *Id.*

Honduras' TPS designation effective January 5, 2020.¹⁹⁰ Similar to their terminations of TPS designation for El Salvador and Haiti, Defendants' termination of TPS for Honduras did not consider all country conditions that might justify TPS designation for Honduras, but rather focused only on the original basis for designation and whether those conditions continued to be met.¹⁹¹ Defendants stated that this restrictive review is "required by statute."¹⁹²

225. Current conditions in Honduras, however, render the country unable to handle a safe return for Honduran TPS holders. Conditions prompting both the initial designation and subsequent designations continue to exist and have worsened over time. As such, an estimated 57,000 Honduran TPS holders may face deportation to a country that is ill-prepared to receive them.

226. Several recent natural disasters, including Tropical Storm Hanna and catastrophic drought, inhibit the country's ability to adequately handle the safe return of Honduran TPS holders. Since Tropical Storm Hanna, Honduras has also experienced dengue and chikungunya

¹⁹⁰ Press Release, U.S. Dep't of Homeland Sec., *Secretary of Homeland Security Kirstjen M. Nielsen Announcement on Temporary Protected Status for Honduras* (May 4, 2018), <https://www.dhs.gov/news/2018/05/04/secretary-homeland-security-kirstjen-m-nielsen-announcement-temporary-protected>.

¹⁹¹ *See id.* ("The decision to terminate TPS for Honduras was made after a review of the environmental disaster-related conditions upon which the country's original 1999 TPS designation was based and an assessment of whether those originating conditions continue to exist . . .").

¹⁹² *Id.*

epidemics.¹⁹³ Periodic drought has led to massive crop losses, food insecurity, loss of employment and further depressed the country's economy.¹⁹⁴

227. Honduras experiences high levels of entrenched poverty, with more than 60 percent of the population living in poverty, and 38 percent of the population living in extreme poverty.¹⁹⁵ In rural areas, one of out every 5 Hondurans lives on less than \$1.90 per day.¹⁹⁶

228. Despite recent economic growth, Honduras maintains the highest level of economic inequality in Latin America.¹⁹⁷

229. Violent crime is rampant throughout the country and is a key component of forced migration from Honduras.¹⁹⁸ Despite a recent downward trend, the murder rate remains one of the highest in the world at a rate of approximately 43.6 murders per 100,000 inhabitants in

¹⁹³ Catholic Legal Immigration Network, Inc., *Temporary Protected Status for Honduras* 2-3 (last visited Apr. 19, 2018), https://cliniclegal.org/resources/temporary-protected-status-honduras#_ftnref32 (hereinafter "CLIN").

¹⁹⁴ *Id.*

¹⁹⁵ U.N. Human Rights Council, *Annual Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Honduras* 3 (Mar. 19, 2018), https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_37_3_Add.2.pdf.

¹⁹⁶ The World Bank, *The World Bank in Honduras* 1 (last updated: Apr. 16, 2018), <http://www.worldbank.org/en/country/honduras/overview> (hereinafter "World Bank").

¹⁹⁷ *Id.*

¹⁹⁸ Amnesty Int'l, *Amnesty International Report 2017/18- Honduras* 1 (Feb. 22, 2018), <http://www.refworld.org/docid/5a9938efa.html> (hereinafter "Amnesty Int'l").

2017.¹⁹⁹ To compound matters, impunity for crime and human rights abuses is the “norm” in Honduras as the country’s judiciary and police force are largely ineffective.²⁰⁰

230. Widespread gang violence has forced the migration of thousands from the country. It is estimated that at least 174,000 people have fled Honduras since 2010 due to gang violence.²⁰¹

231. Gender-based violence, especially against women and girls, remains at a high level and femicide rates have risen dramatically in recent years.²⁰²

232. Remittances—money sent from Honduran nationals living abroad—remain critical to Honduras’ economy. In 2016, remittances to Honduras exceeded \$3.8 billion and represented approximately 20 percent of the country’s gross domestic product.²⁰³ The amount of remittances sent to Honduras is estimated rise to reach approximately \$4.66 billion.²⁰⁴

¹⁹⁹ World Bank, *supra* note 196, at 1.

²⁰⁰ Human Rights Watch, *World Report 2018 – Honduras* 1 (Jan. 18, 2018), <http://www.refworld.org/docid/5a61ee6c4.html>.

²⁰¹ CLIN, *supra* note 193, at 3; Norwegian Refugee Council, *On the brink of deportation*, (Mar. 20, 2018), <https://reliefweb.int/report/honduras/brink-deportation>.

²⁰² Amnesty Int’l, *supra* note 198, at 2; Freedom House, *Freedom in the World 2017 – Honduras* 6 (July 12, 2017), <http://www.refworld.org/docid/59831e94a.html> (last visited Apr. 26, 2018). 2018].

²⁰³ CLIN, *supra* note 193, at 3; Norwegian Refugee Council, *supra* note 201.

²⁰⁴ CNBC, *Honduras sees economic growth of up to 4.2 pct in 2018* (Mar. 8, 2018), <https://www.cnbc.com/2018/03/08/reuters-america-honduras-sees-economic-growth-of-up-to-4-point-2-pct-in-2018.html>.

233. Currently, Honduras is experiencing significant political instability with widespread social and civil unrest.²⁰⁵ The government itself faces extreme challenges to its own legitimacy and cannot possibly safely integrate new arrivals.

234. Honduras' president, ambassador to the U.S., and consul general have repeatedly requested that the Administration maintain TPS for its citizens.²⁰⁶

235. As evidenced by the above, Defendant Nielsen's assertion, in announcing the Trump Administration's decision to terminate TPS for Honduras, that country conditions have made "progress" is pretext for invidious discrimination and belied by well-established facts.

236. Defendant Nielsen's stated reasoning for the Trump Administration's termination of Honduras' TPS designation represents a sharp departure from DHS's ordinary decision-making process, furthering the inference of invidious discrimination.

237. Under 8 U.S.C. § 1254a, DHS is required to consider "the conditions in the foreign state . . . for which a designation is in effect under this subsection and . . . determine whether the conditions for such designation under this subsection continue to be met."

238. Previously, consistent with that statutory mandate, DHS conducted a careful review to determine whether conditions in Honduras continued to meet the statutory criteria of the TPS statute, considering all current country conditions that may justify TPS designation. Unlike the extensions of Honduras' TPS protection in other administrations, Defendants' May 4,

²⁰⁵ See, e.g., Elisabeth Malkin, *Citing Hostility, Leader of Anti-Corruption Panel in Honduras Resigns*, N.Y. TIMES, Feb. 16, 2018, <https://nyti.ms/2C4LHWt>.

²⁰⁶ Alan Gomez, *Hondurans could soon lose Temporary Protected Status under Trump Administration* (Apr. 24, 2018) USA Today, <https://www.usatoday.com/story/news/nation/2018/04/24/hondurans-may-next-lose-temporary-protected-status-under-trump-administration/505341002/>; CLIN, *supra* note 193, at 3; Norwegian Refugee Council, *supra* note 201.

2018 press release failed to mention the numerous natural disasters Honduras experienced, the slow process of economic and infrastructural recovery described in recent extensions, the remaining food scarcity, the significant political instability, or the persistent reports of gender-based violence.

D. The Administration's Terminations of TPS for El Salvador, Haiti, and Honduras Are Motivated by Unlawful Discriminatory Animus

239. From the literal outset of his presidential campaign, Defendant Trump has communicated his discriminatory animus against persons of Latino and Haitian origin directly, publicly, and in frank and unsettling language.

240. As discussed *supra*, this practice has continued unabated since he has entered office.

241. The evidence of Defendant Trump's animus is not limited to generalized racial grievances. When offered a legislative proposal to address numerous immigration issues, including that of TPS beneficiaries, earlier this year, Defendant Trump made clear the rationale for Defendants' previous and subsequent decisions to terminate TPS: the United States should not keep migrants from "shithole countries," but instead should encourage immigration from predominantly white countries like Norway.

242. The Administration's terminations of TPS for El Salvador, Haiti, and Honduras are the product of unconstitutional racial discrimination and must be set aside.

E. The Terminations of TPS for El Salvador, Haiti, and Honduras Reflect the Administration's Execution of a Substantive Rule Restricting the Scope of the TPS Statute in Contravention of the Statutory Text and Decades of Prior Practice

243. The Administration's termination of TPS for El Salvador, Haiti, and Honduras are not only in and of themselves unlawful and contrary to the U.S. Constitution, they are based on a

novel substantive rule that is contrary to the TPS statute and contradicts decades of practice under prior administrations.

244. The current Administration has adopted a new interpretation of the TPS statute without a formal announcement to disclose its rationale for making a drastic change to decades of practice affecting hundreds of thousands of TPS beneficiaries. During his June 6, 2017 testimony before the Senate, then-Secretary Kelly succinctly stated the new rule as it applied to Haiti: “the program [TPS] is for a specific event. In – in Haiti, it was the earthquake. Yes, Haiti had horrible conditions before the earthquake, and those conditions aren’t much better after the earthquake. But the earthquake was why TPS was – was granted and – and that’s how I have to look at it.”²⁰⁷

245. Current Secretary Nielsen has confirmed that this remains the current view of the Administration: “The law does not allow me to look at the country conditions of a country writ large. It requires me to look very specifically as to whether the country conditions originating from the original designation continue to exist.”²⁰⁸

246. Under prior administrations, DHS or its predecessors considered intervening natural disasters, conflicts, and other serious social and economic problems that may or may not be related to the original natural disaster that prompted the initial TPS designation as relevant

²⁰⁷ *Hearing on the Department of Homeland Security F.Y. 2018 Budget Before the S. Comm. on Homeland Security and Governmental Affairs*, 115th Cong. (June 6, 2017) (statement of Secretary John F. Kelly), available at <https://www.c-span.org/video/?429383-1/secretary-kelly-travel-ban-injunctions-hobbling-homeland-security-screening-effort&start=5492>.

²⁰⁸ *Oversight of the United States Department of Homeland Security Before the S. Comm. on the Judiciary*, 115th Cong. (Jan. 16, 2018) (statement of Kirstjen M. Nielsen, Secretary, U.S. Department of Homeland Security), available at <https://www.judiciary.senate.gov/meetings/oversight-of-the-united-states-department-of-homeland-security>.

factors when deciding whether to continue or terminate a TPS designation. Neither the TPS statute nor the regulations have been amended in any relevant respect, such that the Administration's current position is unprecedented.

247. This newly created substantive rule is reflected in each of the Administration's terminations to date of TPS arising from natural disasters:

a. "[T]he Secretary has determined that the conditions for Nicaragua's 1999 designation for TPS on the basis of environmental disaster due to the damage caused by Hurricane Mitch are no longer met. . . . Recovery efforts relating to Hurricane Mitch have largely been completed."²⁰⁹

b. "[T]he Secretary of Homeland Security has determined that the conditions supporting El Salvador's 2001 designation for TPS on the basis of environmental disaster due to the damage caused by the 2001 earthquakes are no longer met."²¹⁰

c. "[T]he Acting Secretary of Homeland Security determined on November 20, 2017 that the conditions for Haiti's designation for TPS—on the basis of 'extraordinary and temporary conditions' relating to the 2010 earthquake that prevented Haitian nationals from returning in safety—are no longer met. Haiti has made progress recovering from the 2010 earthquake and subsequent effects that formed the basis for its designation."²¹¹

²⁰⁹ Termination of the Designation of Nicaragua for Temporary Protected Status, 82 Fed. Reg. 59,636, 59,637 (Dec. 15, 2017).

²¹⁰ Termination of the Designation of El Salvador for Temporary Protected Status, 83 Fed. Reg. 2654, 2655-56 (Jan. 18, 2018).

²¹¹ Termination of the Designation of Haiti for Temporary Protected Status, 83 Fed. Reg. 2648, 2650 (Jan. 18, 2018).

d. “[T]he Secretary determined that the disruption of living conditions in Nepal from the April 2015 earthquake and subsequent aftershocks that served as the basis for its TPS designation have decreased to a degree that they should no longer be regarded as substantial”²¹²

e. “[T]he Secretary determined that the disruption of living conditions in Honduras from Hurricane Mitch that served as the basis for its TPS designation has decreased to a degree that it should no longer be regarded as substantial”²¹³

248. The DHS Secretary’s press release accompanying the TPS termination of El Salvador state the Administration’s rule succinctly: “The decision to terminate TPS for El Salvador was made after a review of the disaster-related conditions upon which the country’s original designation was based and an assessment of whether those originating conditions continue to exist as required by statute.”²¹⁴ The press releases accompanying the terminations of Haiti, Nicaragua, Nepal, and Honduras include nearly identical language.²¹⁵

²¹² Press Release, U.S. Dep’t of Homeland Sec., *Secretary Kirstjen M. Nielsen Announcement on Temporary Protected Status for Nepal* (Apr. 26, 2018), <https://www.dhs.gov/news/2018/04/26/secretary-kirstjen-m-nielsen-announcement-temporary-protected-status-nepal>.

²¹³ Press Release, U.S. Dep’t of Homeland Sec., *Secretary of Homeland Security Kirstjen M. Nielsen Announcement on Temporary Protected Status for Honduras* (May 4, 2018), <https://www.dhs.gov/news/2018/05/04/secretary-homeland-security-kirstjen-m-nielsen-announcement-temporary-protected>.

²¹⁴ Press Release, U.S. Dep’t of Homeland Sec., *Secretary of Homeland Security Kirstjen M. Nielsen Announcement on Temporary Protected Status for El Salvador* (Jan. 8, 2018), <https://www.dhs.gov/news/2018/01/08/secretary-homeland-security-kirstjen-m-nielsen-announcement-temporary-protected>.

²¹⁵ Press Release, U.S. Dep’t of Homeland Sec., *Acting Secretary Elaine Duke Announcement on Temporary Protected Status for Haiti* (Nov. 20, 2017), <https://www.dhs.gov/news/2017/11/20/acting-secretary-elaine-duke-announcement-temporary-protected-status-haiti>; Press Release, U.S. Dep’t of Homeland Sec., *Acting Secretary Elaine*

249. As reflected in the history of TPS designations for El Salvador, Haiti, and Honduras dating back to 1999, discussed *supra* ¶¶ I.83 - I.144, as well as Nicaragua and Nepal, *supra* ¶¶ **Error! Reference source not found. - Error! Reference source not found.**, the Administration's current rule is a substantial departure from decades of practice by DHS and its predecessor agencies.

250. The Administration has offered no justification or explanation, legal or otherwise, for this revision to longstanding agency practice.

F. Defendants' Discriminatorily Motivated and Unlawful Actions Have Harmed Plaintiffs

251. If TPS rescission goes into effect, Plaintiffs and other TPS beneficiaries will suffer immediate and irreparable injuries to their rights under the U.S. Constitution and federal law; to their proprietary interests; and to their dignity.

252. If TPS rescission goes into effect, Plaintiffs and other TPS beneficiaries will be denied work, including workplace benefits and protections. Without TPS, most beneficiaries will not have access to employment authorization which gives these immigrants (and their employers) an assurance that they may put their talents to use – something that benefits Massachusetts and the country as a whole. Without employment, many TPS beneficiaries will also lose health benefits.

Duke Announcement on Temporary Protected Status for Nicaragua and Honduras (Nov. 6, 2017), <https://www.dhs.gov/news/2017/11/06/acting-secretary-elaine-duke-announcement-temporary-protected-status-nicaragua-and>; Press Release, U.S. Dep't of Homeland Sec., *Secretary Kirstjen M. Nielsen Announcement on Temporary Protected Status for Nepal* (Apr. 26, 2018), <https://www.dhs.gov/news/2018/04/26/secretary-kirstjen-m-nielsen-announcement-temporary-protected-status-nepal>; Press Release, U.S. Dept' of Homeland Sec., *Secretary of Homeland Security Kirstjen M. Nielsen Announcement on Temporary Protected Status for Honduras* (May 4, 2018), <https://www.dhs.gov/news/2018/05/04/secretary-homeland-security-kirstjen-m-nielsen-announcement-temporary-protected>.

253. TPS beneficiaries have relied upon a consistent practice over nearly thirty years, where prior DHS Secretaries have evaluated all current conditions in TPS-designated countries in addition to the circumstances that gave rise to the initial TPS designations. TPS beneficiaries have relied upon DHS to fully and fairly evaluate country conditions so that they will not be returned to unsafe and unstable conditions.

254. If TPS rescission goes into effect, Plaintiffs and other TPS beneficiaries will have to prepare for imminent removal. Plaintiffs will incur costs to ensure that their property rights, family relationships, and tax obligations are protected. These financial burdens will decrease the overall resources available to TPS beneficiaries and their families.

255. Because the Trump Administration's decisions to terminate TPS for El Salvador, Haiti, and Honduras were infected by invidious discrimination, its rescission stigmatizes immigrants of color, as well as their children and families, and imposes a dignitary harm by denying them the dignity and respect they deserve under the U.S. Constitution and federal law. TPS rescission triggers and fuels social stigma, harassment, discrimination, and even violence against immigrants of color.

256. By labeling TPS beneficiaries from El Salvador, Haiti, and Honduras as undesirable and by contrasting them with immigrants from predominantly white countries such as Norway, the federal government ratifies and legitimizes the notion that immigrants of color—particularly those deemed by President Trump to come from “shithole countries”—are worthy of lesser social stature. This compromises their well-being and encourages discrimination against immigrants of color. In this manner, the Trump Administration's decision to terminate TPS for these countries has caused, is causing, and will continue to cause dignitary harms and psychological injuries to families and children.

CLAIMS

COUNT 1

Violation of Equal Protection – Fifth Amendment

257. Plaintiffs incorporate by reference all allegations as stated above.

258. The Due Process Clause of the Fifth Amendment incorporates the equal protection principles of the Fourteenth Amendment. *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1686 n.1 (2017) (involving gender discrimination in immigration context); *see also United States v. Windsor*, 133 S. Ct. 2675, 2693 (2013) (citing *Bolling v. Sharpe*, 347 U.S. 497 (1954)).

259. Defendants' decision to rescind TPS protections for Salvadoran, Haitian, and Honduran immigrants living in the United States violates the Fifth Amendment because it constitutes intentional discrimination against all three groups on the basis of race, ethnicity, and/or national origin.

260. The inference of race, ethnicity, and/or national origin discrimination is supported by the Trump Administration's departure from the normal decision-making process; the fact that the decisions bear more heavily on disparaged minority races than others; the sequence of events leading to the decisions; the contemporaneous statements of decision-makers; and the historical background of the decisions. The Supreme Court has recognized these factors as probative of intentional discrimination. *See Village of Arlington Heights v. Metro. Hous. Development Corp.*, 429 U.S. 252, 266-68 (1977).

261. The inference of race, ethnicity, and/or national origin discrimination is supported by the departure of Defendants' analyses from previous TPS determinations. The consistent practice of previous officials demonstrates the normal decision-making process for TPS decisions. Defendants sharply deviated from that normal decision-making process in deciding to terminate TPS for El Salvador, Haiti, and Honduras.

262. The inference of race, ethnicity, and/or national origin discrimination is also supported by Defendants' deviation froms INA § 244(b)(3)'s and 8 U.S.C. § 1254a's requirement that DHS undertake a genuine, good faith review of the conditions in a foreign country designated for TPS to determine whether the conditions for designation continue to be met.

263. The inference of race, ethnicity, and/or national origin discrimination is also supported by President Trump and DHS's comments as listed in paragraphs II.148 through II.172 and which informed practice in executive agencies.

264. As a direct and proximate result of the rescissions of TPS by Defendants and/or their agents, Plaintiffs have been deprived of their rights under the Fifth Amendment to the U.S. Constitution.

COUNT 2

Violation of Due Process – Fifth Amendment

265. Plaintiffs incorporate by reference all allegations as stated above.

266. The Due Process Clause of the Fifth Amendment also prohibits irrational government action. *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 532-33 (1973).

267. Defendants have failed to carry out their duties consistent with the Due Process requirements of the Fifth Amendment to the U.S. Constitution.

268. The Defendants' discriminatory decision to rescind TPS for Salvadorans, Haitians, and Hondurans deprives Plaintiffs of the appropriate and non-discriminatory process due to them under the law.

COUNT 3

**Violation of Administrative Procedure Act – Arbitrary and Capricious Actions
Narrowing the TPS Review to Original Conditions**

269. Plaintiffs incorporate by reference all allegations as stated above.

270. The Administrative Procedure Act, 5 U.S.C. § 551, et seq., ensures that federal agencies are accountable to the public by providing a “right of review” to any “person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action.” 5 U.S.C. § 702. Judicial review extends to “final agency action for which there is no other adequate remedy in a court.” 5 U.S.C. § 704.

271. Among other things, the APA empowers the federal courts to “hold unlawful and set aside agency actions, finding, and conclusions” that are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

272. The Administration’s actions constitute arbitrary and capricious acts contrary to the U.S. Constitution and federal law through its adoption of a novel interpretation of the TPS statute that is contrary to the law and to decades of established practice. Specifically, the Administration has refused to extend TPS regardless of current country conditions, instead opting for a narrow rule requiring termination of TPS if original conditions giving rise to the TPS designation have reflected certain improvements or remediation, regardless of whether it would be safe for individuals to return to the country.

273. Defendants’ adoption of a new, drastically narrower interpretation of the TPS statute was arbitrary, capricious, and contrary to law in violation of the APA because it is contrary to the TPS statute and represents a sudden and unexplained departure from decades of decision-making practices and ordinary procedures. By shifting the decision-governing standard for country designations without explanation, Defendants have ignored a clear statutory

command and engaged in procedurally flawed decision-making. Further, Defendants changed their policy without taking into account the serious reliance interests that their prior policy had engendered.

274. Plaintiffs will suffer irreparable injury resulting from the arbitrary termination of the TPS designations.

COUNT 4

Violation of Administrative Procedure Act – Failure to Provide Notice and Comment

275. Plaintiffs incorporate by reference all allegations as stated above.

276. The APA directs federal courts to hold unlawful and set aside federal agency action that is “without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

277. Defendants employed an invalid and unauthorized process to terminate TPS for El Salvador, Haiti, and Honduras irrespective of the statutory criteria for review enacted by Congress to ensure the protection of noncitizens vulnerable to extraordinary environmental, geopolitical, health and/or other human tragedies.

278. Defendants abandoned without explanation or justification their well-established standard for reviewing such designations and have enacted a rule eliminating TPS designations founded on environmental conditions in direct contradiction to the statutory text.

279. Defendants’ terminations of TPS pursuant to its newly adopted rules should be held invalid and set aside under the APA.

COUNT 5

Mandamus 28 U.S.C. § 1361

280. Plaintiffs incorporate by reference all allegations as stated above.

281. Defendants have failed to carry out their mandatory and non-discretionary duties owed to Plaintiffs, including the duties established in 8 U.S.C. § 1254a(b)(3). 28 U.S.C. § 1361.

282. Defendants' failure to carry out their mandatory and non-discretionary duties owed to Plaintiffs irrevocably harm Plaintiffs.

COUNT 6

Declaratory Judgment 28 U.S.C. § 2201

283. Plaintiffs incorporate by reference all allegations as stated above.

284. For the reasons stated above, Defendants have violated the U.S. Constitution and other laws.

285. Plaintiffs seek a declaration to that effect.

286. Defendants' illegal actions have injured and will continue to injure all Plaintiffs and those similarly situated in numerous ways including the dignitary harms that attach to the invidious discrimination visited upon them by Defendants.

PRAYER FOR RELIEF

Wherefore the Plaintiffs respectfully request that the Court grant the following relief:

1. Declaratory Relief.

a. Declare that Defendants' actions to terminate TPS designation for El Salvador violate the Fifth Amendment of the U.S. Constitution and the Administrative Procedures Act and are, therefore, void and without legal force or effect;

b. Declare that Defendants' actions to terminate TPS designation for Haiti violate the Fifth Amendment of the U.S. Constitution and the Administrative Procedures Act and are, therefore, void and without legal force or effect; and

c. Declare that Defendants' actions to terminate TPS designation for Honduras violate the Fifth Amendment of the U.S. Constitution and the Administrative Procedures Act and are, therefore, void and without legal force or effect.

2. Injunctive Relief.

a. Enjoin and restrain Defendants, their agents, servants, employees, attorneys and all persons in active concert with them from implementing or enforcing the termination of El Salvador's TPS status and from taking any further action to terminate El Salvador's TPS status in violation of the U.S. Constitution or other applicable laws;

b. Enjoin and restrain Defendants, their agents, servants, employees, attorneys and all persons in active concert with them from implementing or enforcing the termination of Haiti's TPS status and from taking any further action to terminate Haiti's TPS status in violation of the U.S. Constitution or other applicable laws; and

c. Enjoin and restrain Defendants, their agents, servants, employees, attorneys and all persons in active concert with them from implementing or enforcing the termination of Honduras' TPS status and from taking any further action to terminate Honduras' TPS status in violation of the U.S. Constitution or other applicable laws.

3. Mandamus. Plaintiffs ask this Court to issue a *writ of mandamus* compelling Defendants to carry out all nondiscretionary duties required by the U.S. Constitution, and applicable federal law with respect to the TPS program, its administration, and execution.

4. Award Plaintiffs reasonable attorneys' fees and the cost of maintaining this action such as court costs, expert fees and other expenses.

5. All other necessary and appropriate relief that justice may require.

Dated: May 9, 2018

Respectfully submitted,

/s/ Oren Sellstrom

Oren Sellstrom (BBO# 569045)

Oren Nimni (BBO #691821)

Iván Espinoza-Madrigal (Admitted *Pro Hac Vice*)

LAWYERS' COMMITTEE FOR CIVIL RIGHTS AND
ECONOMIC JUSTICE

61 Batterymarch Street, 5th Floor

Boston, Massachusetts 02110

(617) 988-0624

Eric J. Marandett (BBO# 561730)

Carlos J. Perez-Albuerne (BBO# 640446)

Kevin P. O'Keefe (BBO# 697101)

Xing-Yin Ni (BBO# 693876)

CHOATE, HALL & STEWART LLP

Two International Place

Boston, Massachusetts 02110

(617) 248-5000

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

/s/ Oren Sellstrom