

***Temporary Protected Status (TPS)* für AusländerInnen, die wegen Naturkatastrophen, bewaffneter Konflikte u.ä. nicht in ihre Heimatländer zurückkehren können**

Schließlich gibt es noch ein weiteres *Supreme Court*-Verfahren, das in der in Teil I erwähnten [Lawfare-Tabelle](#) auf dem Stand von Freitag noch nicht erwähnt war¹, aber auch schon in der vergangenen Woche (sogar schon am 1. Mai) eingeleitet worden war: [No. 24A1059](#).

Es geht dort um den *Temporary Protected Status* (TPS) der AusländerInnen, die wegen Naturkatastrophen, bewaffneter Konflikte u.ä. nicht in ihre Heimatländer zurückkehren können, gewährt werden werden kann – und zwar konkret um rund 350.000 Menschen aus Venezuela. Den Schutzstatus für venezolanische StaatsbürgerInnen gibt es seit 2021, und er ist seitdem mehrfach verlängert worden – zuletzt noch von der Biden-Regierung bis 2. April 2025 und – kurz vor dem Amtswechsel bis Oktober 2026. Die neue Heimatschutzministerin hat beide Verlängerungen revidiert – genauer: sie hat entschieden, die Verlängerung bis 2026 aufzuheben ([90 Fed. Reg. 8805 - 8807](#) [8806: *vacate*]) und die andere Verlängerung zum 7. April zu beenden ([90 Fed. Reg. 9040 - 9044](#) [9041: *terminating*]).

Am 30. März hat der *District Court* Maryland die Entscheidungen der neuen Heimatschutzministerin bis zur einer Gerichtsentscheidung in der Hauptsache aufgeschoben.² (Außerdem gibt es noch eine weitere Gruppe von venezolanische StaatsbürgerInnen – eventuell 250.000³ –, deren Schutzstatus im Moment bis zum September befristet ist, die aber auch von der Verlängerung bis Oktober 2026 begünstigt wären⁴.)

1 Es fehlt dort immer noch, obwohl die Tabelle Dienstag, den 6. Mai ein weiteres Mal aktualisiert wurde.

2 „the Court grants Plaintiffs' motion to postpone the actions taken by Secretary Noem, specifically, her decisions to vacate the extension of the 2023 Designation and to terminate the 2023 Designation.“ (https://storage.courtlistener.com/recap/gov.uscourts.cand.444868/gov.uscourts.cand.444868.93.0_2.pdf, S.77 [Zeile 24 - 26]).

Die *plaintiffs* hatten u.a. folgende Formulierung beantragt: „It is hereby ORDERED THAT the effective date of implementation and/or enforcement of (1) the decision to ‚vacate‘ the January 17, 2025 extension of TPS for Venezuela and (2) the February 5, 2025 decision to terminate TPS for Venezuela pending resolution of this case on the merits are hereby immediately postponed and stayed until such time as the Court can resolve the Complaint on the merits.“ (<https://storage.courtlistener.com/recap/gov.uscourts.cand.444868/gov.uscourts.cand.444868.16.1.pdf>, S. 2 der Datei [Zeile 18 - 22])

3 „At issue is whether this Court should temporarily postpone actions by Kristi Noem, Secretary of the Department of Homeland Security, taken against over 600,000 Venezuelan nationals who have legal status to reside and work temporarily in the United States. The Secretary's actions will shortly strip nearly 350,000 of these residents of their protection under the Temporary Protected Status („TPS“) program, subjecting them to possible imminent deportation back to Venezuela“ (https://storage.courtlistener.com/recap/gov.uscourts.cand.444868/gov.uscourts.cand.444868.93.0_2.pdf, S. 1 [Zeile 15 - 20]).

4 „Former Secretary Mayorkas extended the 2023 designation of Venezuela for TPS for 18 months, allowed a consolidation of filing processes such that all eligible Venezuela TPS beneficiaries (whether under the 2021 or 2023 designations) may obtain TPS through the same extension date of October 2,

Die Grundlage für diese Art der Entscheidung (Aufschiebung der Behördenentscheidung – statt der in den anderen genannten Verfahren üblichen Form einer *Temporary Restraining Order* oder *Preliminary Injunction*) ist 5 U.S.C. 705:

„When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, **the reviewing court**, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.“

(<https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title5-section705&num=0&edition=prelim>; Hv. hinzugefügt)

Überspringen wir das *Appeals Court*-Verfahren und sehen uns sogleich die Gliederung und die Einleitung des Regierungs-Schriftsatzes für das *Supreme Court*-Verfahren an:

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Schaubild 1:
https://www.supremecourt.gov/DocketPDF/24/24A1059/357946/20250501154638031_Kristi%20Noem%20application1.pdf, S. i der gedruckten bzw. 2 der digitalen Seitenzählung

2026, and extended certain Employment Authorization Documents (EADs). All of this also had the effect of extending the 2021 designation.“ (90 Fed. Reg. 8805 - 8807 [8806])

„After April 7, 2025, nationals of Venezuela (and aliens having no nationality who last habitually resided in Venezuela) who have been granted TPS under the 2023 Venezuela designation will no longer have TPS. This termination determination does not apply to the 2021 designation of Venezuela for TPS, which remains in effect until September 10, 2025, or to individuals who are registered for TPS under the 2021 designation.“ (90 Fed. Reg. 9040 - 9044 [9041])

In the Supreme Court of the United States

No. 24A

KRISTI NOEM, SECRETARY OF HOMELAND SECURITY, ET AL., APPLICANTS

v.

NATIONAL TPS ALLIANCE, ET AL.

APPLICATION TO STAY THE ORDER ISSUED
BY THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Solicitor General—on behalf of applicants Kristi Noem, et al.—respectfully files this application to stay the order granting a motion to postpone agency actions that was issued by the United States District Court for the Northern District of California (App., *infra*, 1a-77a), pending the consideration and disposition of the government’s appeal to the United States Court of Appeals for the Ninth Circuit and, if the court of appeals affirms the order, pending the timely filing and disposition of a petition for a writ of certiorari and any further proceedings in this Court.

The Temporary Protected Status (TPS) program implicates particularly discretionary, sensitive, and foreign-policy-laden judgments of the Executive Branch regarding immigration policy. Congress has expressly authorized the Secretary to provide temporary relief to aliens who cannot safely return to their home nation due to a natural disaster, armed conflict, or other “extraordinary and temporary conditions in the foreign state.” 8 U.S.C. 1254a(b)(1)(C). The statute commits to the Secretary’s sole discretion such judgments as whether the conditions in a particular country are “ex-

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gress enacted. Yet the district court issued sweeping preliminary relief that overrides the Secretary’s determinations and stays her vacatur and termination decisions indefinitely as to hundreds of thousands of program beneficiaries nationwide. The court reasoned that respondents, a nonprofit organization and seven TPS beneficiaries from Venezuela, mounted supposedly reviewable collateral challenges under the Administrative Procedure Act (APA)—reasoning that would eviscerate the statute’s bar on judicial review. See App., *infra*, 23a-27a, 55a-59a. The court also faulted the Secretary for vacating Secretary Mayorkas’s not-yet-effective TPS extension determination—even though agencies have inherent authority to reconsider prior actions before they take effect. See *id.* at 44a-55a. The court further held that the Secretary’s determinations to vacate the extension and terminate the 2023 TPS Designation likely rested on impermissible racial animus in violation of equal protection principles, citing a pastiche of out-of-context “evidence” that raises no plausible inference of racial animus. See *id.* at 59a-75a. That spurious theory, if upheld, could be applied to invalidate virtually any immigration-related initiative of the Trump administration, and it ignores the Secretary’s reasoned policy determination justifying the decisions at issue here.

On top of all that, the district court entered nationwide relief supplanting Secretary Noem’s assessment of the national interest—an area into which a district court is uniquely unqualified to intrude. See App., *infra*, 75a-77a. The court thus wrested control of the nation’s immigration policy away from the Executive Branch and imposed the court’s own perception as to whether the government’s actions might “contradict U.S. foreign policies,” “have adverse national security ramifications,” or “weaken the standing of the United States in the international community.” *Id.* at 41a-44a. The court’s order contravenes fundamental Executive Branch prerogatives

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traordinary,” and whether allowing foreign nationals to temporarily remain in the United States would be “contrary to the national interest.” 8 U.S.C. 1254a(b)(1)(C). When the Secretary determines that a country no longer meets the conditions for designation, the statute requires her to terminate the TPS designation, 8 U.S.C. 1254a(b)(3)(B)—as Secretaries have periodically done across administrations. To protect the Secretary’s wide discretion in this fast-moving area of foreign affairs, Congress shielded those determinations from judicial review: “There is no judicial review of any determination of the [Secretary] with respect to the designation, or termination or extension of a designation, of a foreign state.” 8 U.S.C. 1254a(b)(5)(A).

On February 1, 2025, Secretary Noem terminated one portion of the TPS designations relating to Venezuelan nationals. The prior administration had twice designated Venezuela for TPS—once in 2021 and again in 2023. The first designation extended to September 10, 2025; the latter, to April 2, 2025. In the final days of the last administration, however, Secretary Alejandro N. Mayorkas effectively extended both TPS designations until October 2026. But Secretary Mayorkas’s notice was to become legally effective only on April 3, 2025. Shortly after Secretary Noem’s confirmation on January 28, 2025, she vacated the noticed extension. Thereafter, and in consultation with appropriate U.S. government agencies, she reviewed relevant country conditions, evaluated public safety and other legitimate policy concerns, and terminated Venezuela’s 2023 TPS designation as contrary to the “national interest.” 8 U.S.C. 1254a(b)(1)(C). That termination was set to take effect on April 7, 2025. The 2021 designation remains in effect until September 10, 2025.

The Secretary’s determination to vacate an extension that had not yet taken legal effect, and then to terminate one of the two TPS designations for Venezuela, are quintessentially unreviewable decisions under the statutory framework that Con-

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and indefinitely delays sensitive policy decisions in an area of immigration policy that Congress recognized must be flexible, fast-paced, and discretionary.

A panel of the Ninth Circuit issued a one-page order summarily denying the government’s request for a stay pending appeal. Indeed, the panel issued two other unreasoned denials of stays that same afternoon.¹ The panel’s only explanation was that the government purportedly had “not demonstrated that they will suffer irreparable harm.” App., *infra*, 85a. That explanation cannot withstand scrutiny. So long as the order is in effect, the Secretary must permit hundreds of thousands of Venezuelan nationals to remain in the country, notwithstanding her reasoned determination that doing so is “contrary to the national interest.” 8 U.S.C. 1254a(b)(1). That finding alone suffices to establish the threat of irreparable harm. Moreover, the district court’s decision undermines the Executive Branch’s inherent powers as to immigration and foreign affairs. It also frustrates the statutory scheme, which specifies that TPS designations must be “temporary,” 8 U.S.C. 1254a(a), and, when circumstances change, requires the Secretary to terminate TPS designations so that the ordinary Title 8 processes can resume, see 8 U.S.C. 1254a(b)(1)(B). The decision to delay the Secretary’s actions effectively nullifies them, tying them up in the very judicial second-guessing that Congress prohibited. The district court’s ill-considered preliminary injunction should be stayed.

STATEMENT

A. Legal Background

In 1990, Congress established a discretionary program for providing temporary shelter in the United States for aliens from countries experiencing armed conflict,

¹ See *Shilling v. Trump*, 24A1030, (filed Apr. 19, 2025); Order, *Shilling v. Trump*, No. 25-2039 (Apr. 18, 2025); Order, *Community Legal Services of East Palo Alto v. Department of Health and Human Services*, No. 25-2038 (Apr. 18, 2025).

Die Regierung bringt dort vor allem drei Argumente vor:

1. Der *District Court* sei gar nicht befugt gewesen, die Entscheidungen der Heimatschutzministerin zu überprüfen:

„To protect the Secretary’s wide discretion in this fast-moving area of foreign affairs, Congress shielded those determinations from judicial review: ‘There is no judicial review of any determination of the [Secretary] with respect to the designation, or

termination or extension of a designation, of a foreign state.’ 8 U.S.C. 1254a(b)(5) (A).“

(https://www.supremecourt.gov/DocketPDF/24/24A1059/357946/20250501154638031_Kristi%20Noem%20application1.pdf, S. 2 der gedruckten bzw. 5 der digitalen Seitenzählung)

2. Die Heimatschutzministerin sei – anders als der *District Court* meint – sehr wohl befugt gewesen, die fragliche Verlängerung bis 2026 aufzuheben:

„agencies have inherent authority to reconsider prior actions before they take effect“
([ebd.](#), S. 3 bzw. 6)

3. Anders als der *Appeals Court* meint, drohe der Regierung sehr wohl ein irreparabler Schaden:

„So long as the order is in effect, the Secretary must permit hundreds of thousands of Venezuelan nationals to remain in the country, notwithstanding her reasoned determination that doing so is ‚contrary to the national interest.‘ 8 U.S.C. 1254a(b) (1). That finding alone suffices to establish the threat of irreparable harm.“
([ebd.](#), S. 4 bzw. 7)

Alle drei Argumente sind nicht neu; vielmehr hatte sich der *District Court* schon mit ihnen auseinandergesetzt:

1. Mit 8 U.S.C. 1254a(b)(5) hatte sich der *District Court* auf S. 23 (Zeile 1) - 28 (Zeile 2) [seiner Entscheidung](#) auseinandergesetzt. Dessen Hauptargument war: Wenn, dann greife die genannte Norm allein in Bezug auf die Beendigung der fraglichen Verlängerung zum April 2025, aber nicht in Bezug auf die Aufhebung der Verlängerung bis 2026. Denn die genannte Norm spricht bloß von „*designation, or termination or extension of a designation*“, aber nicht von „*vacatur of an extension of a designation*“.

2. Mit der „*inherent*“-These der Regierung hatte sich der *District Court* auf S. 38 (Zeile 8) - 55 (Zeile 15) [seiner Entscheidung](#) auseinandergesetzt.

3. Mit der Frage eines irreparabler Schadens für die Regierung durch die *District Court*-Entscheidung beschäftigte sich der *District Court* zusammenfassend auf S. 38 (Zeile 3 - 8) und 55 (Zeile 8 - 14) [seiner Entscheidung](#):

„To the extent the government argues the Secretary has an interest in having her actions enforced, that would only be if her actions were lawful. As discussed below, the Plaintiffs have made a showing that the Secretary has acted unlawfully. [...]. Contrary to what the government argues, the public interest weighs in favor of, not against, postponement of the agency actions. [...]. As discussed above, Plaintiffs have provided significant evidence that TPS holders and their families would suffer irreparable harm if they are not afforded temporary relief, and the public interest also weighs in favor of Plaintiffs because of the substantial economic, public safety, and humanitarian ramifications. In contrast, the government’s contention that the public interest weighs in its favor is not convincing because the government lacks any evidence of national security harms. Accordingly, the balance of hardships (including consideration of the public interest) tips sharply in Plaintiffs’ favor.“

Die erstinstanzlichen KlägerInnen und AntragstellerInnen haben bis zum 8. Mai Zeit, auf den Regierungsantrag an den *Supreme Court* zu erwidern.