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17 UNITED STATES DISTRICT COURT

18 NORTHERN DISTRICT OF CALIFORNIA

19 CRISTA RAMOS, individually and on behalf
of others similarly situated; CRISTINA
20 MORALES; BENJAMIN ZEPEDA,
21 individually and on behalf of others similarly
situated; ORLANDO ZEPEDA; JUAN
22 EDUARDO AYALA FLORES, individually
and on behalf of others similarly situated;
23 MARIA JOSE AYALA FLORES; ELSY
YOLANDA FLORES DE AYALA; HNAIDA
24 CENEMAT, individually and on behalf of
others similarly situated; WILNA DESTIN;
25 RILYA SALARY, individually and on behalf
of others similarly situated; SHERIKA
26 BLANC; IMARA AMPIE; MAZIN AHMED;
and HIWAIDA ELARABI,

27 *Plaintiffs,*
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Case No. 3:18-cv-1554

CLASS ACTION COMPLAINT

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v.

KIRSTJEN NIELSEN, in her official capacity as Secretary of Homeland Security; ELAINE C. DUKE, in her official capacity as Deputy Secretary of Homeland Security; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; and UNITED STATES OF AMERICA,

Defendants.

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13 Attorneys for Plaintiffs

14 * *pro hac vice* application forthcoming

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1 new, novel interpretation of the TPS statute that eschews consideration of any intervening country
2 conditions.

3 5. The Administration’s new legal rule has dramatically altered the lives of many
4 Americans. More than 270,000 U.S. citizen children have at least one parent with TPS. Many of
5 them are still in school. This country is their home in every legal and practical sense of that word.
6 Yet their parents will shortly lose the right to continue living and working lawfully in this country.

7 6. Currently, more than 400,000 individuals from ten different countries have TPS.
8 Whether or not they have children, many TPS holders came to this country at a young age and
9 have lived here for most of their lives. They have homes, spouses, jobs, and other profound social
10 ties to their communities that now entwine their lives with this country.

11 7. Since President Trump took office, DHS has applied its new rule for making TPS
12 determinations to terminate the TPS designations of El Salvador, Haiti, Nicaragua, and Sudan.
13 Through this lawsuit, Plaintiffs challenge the legality of that change on several bases.

14 8. First, Defendants’ new rule violates the constitutional rights of school-age United
15 States citizen children of TPS holders, by presenting them with an impossible choice: they must
16 either leave their country or live without their parents. It is well established that a U.S. citizen has
17 an absolute right to reside in this country. It is equally well established that families have a
18 fundamental right to live together without unwarranted government interference. The Secretary
19 has not even considered the impact on U.S. citizen children of TPS holders, let alone advanced a
20 valid reason for compelling them to make the impossible choice of forgoing one of these rights for
21 the other.

22 9. Second, Defendants’ new rule violates the Fifth Amendment’s Due Process Clause
23 in two related respects. The rule violates the Equal Protection guarantee of the Due Process
24 Clause because it was motivated by intentional race- and national-origin-based animus against
25 individuals from what President Trump has referred to as “shithole countries.” It arises from the
26 Trump Administration’s repeatedly-expressed racism toward non-white, non-European people
27 from other countries.

THE PARTIES

Plaintiffs

16. Plaintiff Crista Ramos, fourteen years old, is a U.S. citizen who was born in Northern California and raised in San Pablo, California, where she now lives. Her mother is a TPS holder from El Salvador, Plaintiff Cristina Morales. Crista has a younger U.S. citizen brother.

17. Plaintiff Cristina Morales, thirty-seven years old, was born in El Salvador, and has lived in the United States since 1993. She has held TPS status since 2001. Her two children were born and raised in the United States. She and her family live in San Pablo, California.

18. Plaintiff Benjamin Zepeda, fourteen years old, is a U.S. citizen who was born and raised in Los Angeles, California, where he now lives. His parents are TPS holders from El Salvador, including his father Plaintiff Orlando Zepeda, and he has a younger sister.

19. Plaintiff Orlando Zepeda, fifty-one years old, was born in El Salvador and has lived in the United States since 1984, thirty-four years ago. He has been a TPS holder since 2001. He is the father of two U.S. citizen children who are twelve and fourteen years old. They live in Los Angeles, California.

20. Plaintiff Juan Eduardo Ayala Flores, thirteen years old, is a U.S. citizen who was born and raised in Washington, D.C. His mother, Plaintiff Elsy Yolanda Flores de Ayala, is a TPS holder from El Salvador. He has two older sisters. One is a TPS holder, Plaintiff Maria Jose Ayala Flores, while the other sister, Joanna Gabriela, is also a U.S. citizen. He lives in Washington, D.C.

21. Plaintiff Maria Jose Ayala Flores, nineteen years old, was born in El Salvador and moved with her parents to Washington, D.C. as a baby. She has held TPS status since she was about two years old. She has two younger siblings who were born and raised in the United States. Maria lives in Washington, D.C. with her family and attends Montgomery College.

22. Plaintiff Elsy Yolanda Flores de Ayala, thirty-eight years old, was born in El Salvador and has lived in the United States since 2000. She and her husband have held TPS status

1 since 2001. They have three children, two of whom are U.S. citizens and one of whom is a TPS
2 holder, Plaintiff Maria Jose Ayala Flores. They live in Washington, D.C.

3 23. Plaintiff Hnaida Cenemat, fourteen years old, is a U.S. citizen who was born and
4 raised in Orlando, Florida, where she now lives. Her younger brother is a U.S. citizen, and her
5 mother, Plaintiff Wilna Destin, is a TPS holder from Haiti.

6 24. Plaintiff Wilna Destin, forty-three years old, was born in Haiti, has lived in the
7 United States since 2000, and has held TPS status since 2010. She is the mother of two U.S.
8 citizen children. Her husband also has TPS, and her father and brothers live in the United States
9 and are either U.S. citizens, lawful permanent residents, or TPS holders. Wilna lives with her
10 family in Orlando, Florida.

11 25. Plaintiff Rilya Salary, five years old, is a U.S. citizen who was born in Rockledge,
12 Florida. She now lives in Valrico, Florida. Her two younger sisters also are U.S. citizens, and her
13 mother, Plaintiff Sherika Blanc, is a TPS holder from Haiti who has lived in the United States
14 since arriving as a child.

15 26. Plaintiff Sherika Blanc, twenty-seven years old, immigrated to the United States
16 from Haiti with her parents and two brothers when she was eight years old. She currently holds
17 TPS and has held either TPS or Deferred Action for Childhood Arrivals (“DACA”) status for the
18 last eight years. She is the mother of three U.S. citizen daughters, all under the age of six. She
19 and her family live in Valrico, Florida.

20 27. Plaintiff Imara Ampie, forty-five years old, was born in Nicaragua and has lived in
21 the United States since 1998. She and her husband have held TPS status since 1999. Their two
22 sons, fourteen and eight years old, are U.S. citizens. She and her family live in Contra Costa
23 County, California.

24 28. Plaintiff Mazin Ahmed, nineteen years old, is Sudanese and has lived in the United
25 States since he was fourteen years old. He came into the country as a child with his mother and
26 two younger siblings. All have had TPS since 2013 and live in Westbrook, Maine. Mazin is a
27 student at the University of Southern Maine.

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1 29. Plaintiff Hiwaida Elarabi, fifty-five years old, is Sudanese and has lived in the
2 United States since 1997. She has had TPS for more than twenty years, since November 1997.
3 She lives in Newton, Massachusetts with her aunt and her aunt's family, all of whom are U.S.
4 citizens.

5 **Defendants**

6 30. Defendant Kirstjen Nielsen, sued in her official capacity, is currently the Secretary
7 of Homeland Security. Defendant Nielsen assumed office on or around December 6, 2017. As
8 the highest-ranking officer for DHS, Defendant Nielsen is responsible for, among other things,
9 "establishing national immigration enforcement policies and priorities." 6 U.S.C. § 202(5). On or
10 about January 18, 2018, Defendant Nielsen terminated the designation of TPS for El Salvador.

11 31. Defendant Elaine C. Duke, sued in her official capacity, is currently the Deputy
12 Secretary of Homeland Security, and served as Acting Secretary of Homeland Security from
13 around July 31, 2017 to December 6, 2017 or thereabout. As the chief operating officer for DHS,
14 Defendant Duke is responsible for the administration and enforcement of the immigration laws of
15 the United States. On or about January 18, 2018, Defendant Duke terminated the designation of
16 TPS for Haiti; on or about December 15, 2017, Defendant Duke terminated the designation of
17 TPS for Nicaragua; and, on or about October 11, 2017, Defendant Duke terminated the
18 designation of TPS for Sudan.

19 32. Defendant U.S. Department of Homeland Security is a cabinet-level department of
20 the Executive Branch of the federal government, and is an "agency" within the meaning of 5
21 U.S.C. § 551(1). DHS includes various component agencies, like the U.S. Citizenship and
22 Immigration Services ("USCIS"), U.S. Customs and Border Protection ("CBP"), and U.S.
23 Immigration and Customs Enforcement ("ICE"). DHS, together with all of its component
24 agencies, is responsible for administering and enforcing the nation's immigration laws and
25 policies, including the TPS program.

26 33. Defendant United States of America includes all government agencies and
27 departments responsible for the implementation, administration, and change in policy concerning
28 the TPS program.

STATUTORY FRAMEWORK

1
2 34. Congress established the Temporary Protected Status (“TPS”) program through the
3 Immigration Act of 1990.¹ TPS is a form of humanitarian relief, providing lawful immigration
4 status to eligible foreign nationals who cannot safely return home to war-torn or disaster-stricken
5 countries. By enacting the TPS statute, which is codified at 8 U.S.C. § 1254a, Congress
6 established formal criteria for relief and set forth predictable procedures.²

7 35. Under the TPS statute, the Secretary of Homeland Security³ makes a “designation”
8 determination for a given country. After consulting with “appropriate” government agencies, the
9 Secretary may designate a foreign state, or any part of that state, for TPS based on: (A) an
10 “ongoing armed conflict within the state” that would “pose a serious threat” to the “personal
11 safety” of the foreign nationals of that state; (B) an “earthquake, flood, drought, epidemic, or other
12 environmental disaster in the state resulting in a substantial, but temporary, disruption of living
13 conditions,” which makes the foreign state “unable, temporarily, to handle adequately the return to
14 the state” of its nationals, and where the foreign state has “officially” requested a designation; or
15 (C) the existence of “extraordinary and temporary conditions in the foreign state” that prevent
16 foreign nationals from safely returning, and where the temporary presence of those foreign
17 nationals in the United States is not “contrary to the national interest of the United States.”⁴

18 36. An initial designation period for a given country lasts between six and eighteen
19 months.⁵ Before the designation can become effective, the Secretary must publish a notice in the

20 _____
21 ¹ Pub. L. No. 101-649, § 302, 104 Stat. 4978, 5030–36.

22 ² The Executive Branch previously used *ad hoc* enforcement mechanisms to allow individuals to
23 remain in the United States for humanitarian reasons. *See* Adam B. Cox & Cristina Rodríguez,
24 *The President and Immigration Law*, 119 Yale L.J. 458, 501–02 (2009) (discussing use of the
25 “parole power,” which is currently codified at 8 U.S.C. § 1182(d)(5)). Presidents have
occasionally exercised their discretion to designate countries for “Extended Voluntary Departure”
and “Deferred Enforced Departure.” Somewhat like TPS, both of those delayed-departure
practices allowed foreign nationals to lawfully remain and work in the United States while
conditions in their homeland were unsafe or return was impracticable.

26 ³ References to the Attorney General in provisions describing functions transferred from the
27 Department of Justice to the Department of Homeland Security “shall be deemed to refer to the
Secretary” of Homeland Security. *See* 6 U.S.C. § 557.

28 ⁴ 8 U.S.C. § 1254a(b)(1).

⁵ 8 U.S.C. § 1254a(b)(2), (b)(3)(C).

1 Federal Register that includes, among other things, a statement of findings, the effective date of
2 the designation, and a tally of eligible foreign nationals.

3 37. Once the Secretary has designated a particular country for TPS, individuals from
4 that country (or persons without nationality who last habitually resided in that country) may apply
5 for immigration status under the program. To be eligible for TPS, however, individuals from a
6 designated country must meet stringent requirements. These requirements include, among other
7 things, continued physical presence and continued residence in the United States from the most
8 recent date of designation; satisfaction of the criteria for admissibility as an immigrant; lack of
9 disqualifying criminal history; and submission of an application, extensive documentation, and
10 fees.⁶

11 38. Congress ensured that individuals who are ultimately granted protected status could
12 enjoy the freedom to live and work in the United States without fear of deportation. Under the
13 statute, as enacted by Congress, an individual who receives and maintains TPS shall be authorized
14 to engage in employment in the United States; shall not be detained by the Secretary of Homeland
15 Security on the basis of immigration status; and shall not be removed from the United States by
16 the Department of Homeland Security.⁷

17 39. Under the TPS statute, the Secretary must periodically re-evaluate country
18 designations. At least 60 days before a particular designation expires, the Secretary must “review
19 the conditions in the foreign state . . . for which a designation is in effect” and determine whether
20 the country still meets the conditions for TPS.⁸ If the Secretary does not terminate TPS for a
21 particular country, then—by default—the designation will be extended for a period of six months,
22 or by discretion of the Secretary, for a period of twelve or eighteen months.⁹ This periodic-review
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25 _____
26 ⁶ 8 U.S.C. § 1254a(c)(1); 8 C.F.R. §§ 244.2, 244.4, 244.9.

27 ⁷ 8 U.S.C. § 1254a(a)(1), (d)(4).

28 ⁸ 8 U.S.C. § 1254a(b)(3).

⁹ 8 U.S.C. § 1254a(b)(3)(C).

1 requirement also entails consultation with appropriate government agencies and, ultimately,
2 publication of notice in the Federal Register.

3 40. When a designation for a particular country is terminated, the individual TPS
4 holder's status will typically revert back to his or her original immigration status.¹⁰

5 **DEPORTATION OF TPS HOLDERS WILL IMPOSE**
6 **EXTRAORDINARY HARM ON THEIR MINOR U.S. CITIZEN**
7 **CHILDREN, AS WELL AS ON THE**
8 **TPS HOLDERS THEMSELVES AND THEIR COMMUNITIES.**

9 41. Under the Fourteenth Amendment, children born in the United States, including
10 those of TPS holders, are U.S. citizens with an absolute right to remain in the United States.

11 42. As with any child, their well-being and future development are tied to nurturing and
12 stable relationships with their parents.¹¹ Science confirms this common sense understanding. The
13 most important factor in the development of brain architecture—the trillions of connections
14 among and across neurons in a child's brain—is the interactive and responsive relationship
15 between child and parent.¹² The parent-child relationship promotes healthy brain development
16 and provides the buffering protection necessary to prevent children from experiencing toxic
17 responses to stress.¹³

18 43. Children of immigrants acutely suffer when their parents face even the possibility of
19 deportation. The fear of deportation is directly tied to the prevalence of stress-related illness in
20 children, including higher levels of anxiety and trauma, depression, and family instability. The
21 “fear of massive deportations”¹⁴ also diminishes the quality of day-to-day relationships between
22 parents and their children, including because the threat of deportation deters parents from taking

23 _____
24 ¹⁰ 8 C.F.R. § 244.19.

25 ¹¹ Center on the Developing Child at Harvard University, *Three Principles to Improve Outcomes for Children and Families* 3–4 (2017), <http://www.developingchild.harvard.edu>.

26 ¹² *Id.*

27 ¹³ *Id.*

28 ¹⁴ M. Leiner et al., *Fear of Massive Deportations in the United States: Social Implications on Deprived Pediatric Communities*, 5 *Front. Pediatr.* 177, 177–78 (2017).

1 children to school or social events, seeking urgent or preventative health care for themselves and
2 their children, pursuing opportunities for better housing, or reporting fraud, crimes, or abuse.

3 44. The scale of the harm wrought by Defendants' new TPS policies and practices is
4 massive. TPS holders are the parents of more than 270,000 U.S. citizen children,¹⁵ including
5 approximately 192,700 U.S. citizen children with parents who are Salvadoran TPS holders, and
6 27,000 U.S. citizen children with parents who are Haitian TPS holders.¹⁶

7 45. All told, approximately 400,000 TPS holders currently reside in the United States.¹⁷
8 They live in all fifty states, as well as the District of Columbia and the U.S. territories. At least ten
9 states are home to more than 10,000 TPS holders each.

10 46. Many TPS holders have resided in the United States for many years. Over half of
11 Salvadoran TPS holders, and about sixteen percent of Haitian TPS holders, have lived and worked
12 in the United States for more than two decades.¹⁸ Many TPS holders also arrived in the U.S. at a
13 young age.¹⁹ Roughly twenty percent of TPS holders from El Salvador, and thirty percent from
14 Haiti, arrived before they turned sixteen years old.

15 47. TPS holders are part of the economic and social fabric of American communities,
16 and give back to this country in many ways. They are active in civic life and volunteer at schools,
17 neighborhood and work organizations, and religious institutions.²⁰ They pay federal, state, and
18 local taxes, and support government social welfare programs. Experts estimate that, without
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22 ¹⁵ Robert Warren & Donald Kerwin, A Statistical and Demographic Profile of the US Temporary
23 Protected Status Population from El Salvador, Honduras, and Haiti, 5 J. on Migration & Hum.
24 Sec. 577, 578 (Aug. 2017)

25 ¹⁶ *Id.* at 581.

26 ¹⁷ *Id.* at 578; *see also* Jill H. Wilson, Cong. Research Serv., RS20844, Temporary Protected
27 Status: Overview and Current Issues 4–5 (2018).

28 ¹⁸ Warren & Kerwin, *supra* note 15, at 581.

¹⁹ Wilson, *supra* note 17, at 11.

²⁰ Celia Mejivar, Ctr. for Migration Research, Univ. of Kan., Temp. Protected Status in the U.S.:
The Experiences of Honduran & Salvadoran Immigrants 19 (2017).

1 Salvadoran and Haitian TPS holders alone, the U.S. Gross Domestic Product would shrink by at
 2 least \$132.6 billion²¹ and Social Security would lose over \$42.5 billion²² over the next ten years.

3 48. The net positive economic contributions of TPS holders is not surprising in light of
 4 their consistently high employment rate: Eighty-eight percent of Salvadoran TPS holders and
 5 eighty-one percent of Haitian TPS holders are employed. About eleven percent are entrepreneurs,
 6 creating jobs for themselves and their communities.²³ About thirty percent of households where
 7 TPS holders reside have mortgages, including 45,500 households with Salvadoran TPS holders
 8 and 6,200 households with Haitian TPS holders.²⁴ More than half of TPS recipients from El
 9 Salvador (fifty-six percent) and Haiti (fifty-seven percent) have health insurance.²⁵

10 49. In light of the overwhelming evidence of the contributions of TPS holders,
 11 bipartisan groups of mayors and legislators,²⁶ business leaders,²⁷ labor unions,²⁸ and faith leaders²⁹

12 ²¹ Ctr. for Am. Progress, *TPS Holders in the United States 1–2* (2017) (estimating that \$109.4
 13 billion would be lost from GDP over 10 years without Salvadoran TPS workers, and \$23.2 billion
 14 would be lost from Haitian TPS workers).

15 ²² Amanda Baran, et al., *Immigrant Legal Resource Ctr., Economic Contributions by Salvadoran,
 Honduras, and Haitian TPS Holders 5–7* (2017).

16 ²³ Warren & Kerwin, *supra* note 15, at 582–83.

17 ²⁴ *Id.* at 577; Ctr. for Am. Progress, *supra* note 21, at 1, 2.

18 ²⁵ Warren & Kerwin, *supra* note 15, at 583.

19 ²⁶ Letter from Ed Pawlowski, Mayor of Allentown, Penn., et al. to Kirstjen Nielsen, Sec’y of
 20 Homeland Sec. (Jan. 3 2018) (letter from 19 U.S. mayors and Cities for Action, a national
 21 coalition of more than 175 cities and counties); Letter from Ben Cardin, U.S. Senator, et al. to Rex
 Tillerson, Sec’y of State, & Elaine C. Duke, Acting Sec’y of Homeland Sec. (Oct. 19, 2017);
 22 Letter from James P. McGovern, Member of Congress, et al. to Elaine C. Duke, Acting Sec’y of
 23 Homeland Sec. (Sept. 11, 2017) (bipartisan letter from 116 Members of Congress); Letter from
 24 Kirsten Gillibrand, U.S. Senator, et al. to Rex Tillerson, Sec’y of State, & John F. Kelly, Sec’y of
 25 Homeland Sec. (July 18, 2017) (letter from 26 U.S. Senators).

26 ²⁷ Letter from Neil L. Bradley, Senior Vice President & Chief Policy Officer, U.S. Chamber of
 27 Commerce, to Elaine C. Duke, Acting Sec’y of Homeland Sec. (Oct. 26, 2017); Letter from
 28 Embassy Suites Miami Airport, et al. to Marco Rubio, U.S. Senator (Nov. 3, 2017); Letter from
 Tex. Agric. Irrigation Ass’n, et al. to John Cornyn, U.S. Senator (Nov. 3, 2017).

²⁸ *See, e.g.*, Press Release, UNITE HERE!, Labor Unions Launch Nearly One Million Dollar
 Campaign to Save TPS (Nov. 16, 2017); Terry O’Sullivan and Stephen Sandherr, *Trump
 Immigration Acts Will Hurt Families, Slow Hurricane Recovery*, Houston Chronicle Feb. 23, 2018
 (General President of Laborers’ International Union of North America, which represents half a
 million workers, calls for extension of TPS).

²⁹ Letter from The Evangelical Immigration Roundtable to Elaine C Duke, Acting Sec’y of
 Homeland Sec. (Nov. 1, 2017); Letter from Faith Leaders & Faith-Based Organizations to Elaine

1 recognize the need to maintain the TPS program. To not extend the TPS program “would harm
2 [U.S.] national security interests by undermining the fragile security in these countries,” as well as
3 “negatively impact hundreds of thousands of American children.”³⁰

4 **U.S. CITIZEN CHILDREN OF TPS HOLDERS**

5 **FACE AN IMPOSSIBLE CHOICE BETWEEN THE CARE**

6 **AND SUPPORT OF THEIR PARENTS,**

7 **AND THE RIGHTS AND BENEFITS OF U.S. CITIZENSHIP.**

8 50. The U.S. citizen children of TPS holders, including the plaintiff children in this case,
9 confront an impossible choice. On one hand, they can continue to live with their parents, but only
10 by relocating to a foreign country, leaving behind their schools, their communities, and the
11 benefits of living in the U.S.—the only country they have ever known. On the other hand, they
12 can choose to remain in the U.S., but then must give up living with one or both parents, which in
13 many cases would involve their becoming a ward of the state subject to foster care, or otherwise
14 subject to the supervision of persons who are not their parents.

15 51. Plaintiff Crista Ramos, fourteen years old, is the eldest child of TPS holder Plaintiff
16 Cristina Morales. Crista was born in Marin, California, and is now an eighth grade student at
17 Saint Raphael School. She is currently applying to high school and dreams of being an
18 immigration lawyer. She lives with her mother, father, and her eleven-year-old brother Diego in
19 San Pablo, California. Crista worries about what will happen if her mother loses her TPS status
20 and is deported because she depends on her. She has never lived in or traveled to El Salvador.

21 52. Plaintiff Benjamin Zepeda, fourteen years old, is the eldest child of TPS holder
22 Plaintiff Orlando Zepeda and TPS holder Lorena Arana. Benjamin was born and raised in Los
23 Angeles, California, and currently is a ninth grade student at St. John Bosco High School. He has
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25 C. Duke, Acting Sec’y of Homeland Sec. (Sept. 17, 2017) (560 faith leaders and 129 national, state,
26 and local faith-based organizations); Letter from the U.S. Conference of Catholic Bishops Migration
and Refugee Services et al. to Elaine C. Duke, Acting Sec’y of Homeland Sec. (Oct. 26, 2017).

27 ³⁰ Letter from Dick Durbin, U.S. Senator, et. al. to Elaine C. Duke, Acting Sec’y of Homeland
28 Sec. (Nov. 9, 2017), *available at* <https://www.durbin.senate.gov/newsroom/press-releases/lawmakers-call-for-reversal-of-administration-decision-to-expose-thousands-to-dangerous-deportations>.

1 a younger sister, twelve-year-old Lizbeth. He and his sister depend on their parents for emotional,
2 psychological, educational, spiritual, and material support. He has never visited El Salvador and
3 cannot imagine moving there. He also struggles to consider how much his life would be upended
4 if his parents lost their TPS status and did not have documentation in the United States, moved to
5 El Salvador, or were deported there.

6 53. Plaintiff Juan Eduardo Ayala Flores, thirteen years old, is the youngest son of TPS
7 holder Plaintiff Elsy Yolanda Flores de Ayala and TPS holder Juan Amilcar Ayala Rovira. He has
8 two older sisters, TPS holder Plaintiff Maria Jose Ayala Flores, nineteen years old, who is a
9 college student, and Joanna Gabriela Ayala Flores, seventeen years old, who was born in
10 Washington, D.C. Juan is a seventh grade student at Washington Latin Public Charter School.
11 Juan's parents are from El Salvador, but he has only been to El Salvador once, in 2009, for about
12 one month to visit his grandmother. He was born in Washington, D.C., and has lived there his
13 entire life.

14 54. Plaintiff Hnaida Cenemat, fourteen years old, is the eldest child of TPS holder
15 Plaintiff Wilna Destin, who was raised in Haiti and has lived in the United States for eighteen
16 years. Hnaida's younger brother, John, is ten years old. Hnaida was born in Orlando, Florida, and
17 has lived there her entire life. She visited Haiti only once for a brief period when she was one
18 year old. Hnaida is a motivated high school freshman at Dr. Phillips High School. She is
19 consistently on the honor roll and very active in her school and church. Her favorite subjects in
20 school are math and science, and she aspires to become an obstetrician/gynecologist because she
21 wants to help people. She plans to join the Student Council next year, and wants to be on the
22 cheerleading and flag football teams. Outside of school, she is in her church choir. Prior to
23 Defendants' decision to end TPS, Hnaida did not understand that it was a legal status that could be
24 terminated. She is afraid of moving to Haiti with her mother and living in a country that she does
25 not know, but she is also afraid of remaining in the United States with a foster family. She, her
26 brother, and their parents have spent a lot of time speaking about TPS.

27 55. Plaintiff Rilya Salary, five years old, was born in Rockledge, Florida and is the
28 eldest child of TPS holder Plaintiff Sherika Blanc and Jermaine Salary, who is a U.S. citizen. She

1 has two younger sisters: Alaya, who is three years old, and Amara, who is less than one year old.
2 Rilya is in kindergarten at Kingswood Elementary School. Rilya has never been to Haiti.

3 **TPS HOLDERS FACE IRREPARABLE HARM FROM BEING**
4 **FORCED TO RETURN TO COUNTRIES THEY FLED DECADES AGO.**

5 56. TPS holders have built lives in the U.S. over the course of decades, building families
6 and contributing to their communities. The circumstances of the plaintiffs here who hold TPS
7 illustrate the irreparable harm that inevitably will occur if they (and other TPS holders) are
8 deported.

9 57. Plaintiff Cristina Morales, thirty-seven years old, was born in San Miguel, El
10 Salvador. She came to the United States from El Salvador at the age of twelve as an
11 unaccompanied minor. Her mother had escaped domestic violence and fled to the United States
12 before her, and Cristina followed. Cristina currently does not have family in El Salvador with
13 whom she is in contact. Cristina's mother advised her to apply for TPS soon after she graduated
14 from high school, immediately after El Salvador was designated for TPS. Cristina has now lived
15 in the United States for twenty-six years and had TPS for seventeen years. Cristina and her
16 husband met when she was in high school, and they have been married since 2008. They have
17 two children, fourteen-year-old Crista, and eleven-year-old Diego. Cristina and her family live in
18 San Pablo, California in a home they have owned since 2008. She is currently the director of the
19 extended care program at the Saint Raphael School, a private Catholic school in Marin County.
20 Cristina struggled to complete the applications for her daughter's high school because of the stress
21 she feels due to the looming expiration of TPS for El Salvador. She is afraid that her family will
22 be divided again, and that she will be forced to return to El Salvador where she has no family and
23 which she fled as a child.

24 58. Plaintiff Orlando Zepeda, fifty-one years old, came to the United States from his
25 birth country of El Salvador in 1984, at the age of eighteen years old. He has lived in two homes
26 in Los Angeles, California during the thirty-four years he has lived in the United States. About
27 fifteen years ago, he and his wife, TPS holder Lorena Arana, bought the home in which they now
28 live with their two U.S. citizen children who are twelve and fourteen years old. Orlando was

1 granted TPS in 2001, when El Salvador was designated. Orlando has worked for the past eight
2 years providing building maintenance, including with the same company for the last four years.
3 He has also volunteered as a chaplain in prisons and hospitals for nearly twenty years. His family
4 and life are in the United States, and his children and brother are U.S. citizens. He has lived in the
5 United States for nearly twice as long as he lived in El Salvador. He left El Salvador in the middle
6 of the country's violent armed conflict and fears he would not even recognize the country now.

7 59. Plaintiff Maria Jose Ayala Flores, nineteen years old, is the oldest daughter of TPS
8 holder Plaintiff Elsy Yolanda Flores de Ayala and TPS holder Juan Amilcar Ayala Rovira. She
9 arrived in the United States when she was one year old, and has had TPS since she was about two
10 years old. She discovered she had TPS only when it came time to apply for college, when she
11 realized that her immigration status made her ineligible for many available college scholarships.
12 Since she arrived in the United States, she has only been to El Salvador once, in 2009 for
13 approximately one month to visit her grandmother. She graduated from high school in 2016 and
14 is currently a sophomore at Montgomery College in Maryland studying mathematics. She plans to
15 teach math to elementary school students. She has two younger siblings, Joanna Gabriela and
16 Plaintiff Juan Eduardo.

17 60. Plaintiff Elsy Yolanda Flores de Ayala, thirty-eight years old, was born in San
18 Miguel, El Salvador on May 15, 1979. Her mother, father, and siblings fled El Salvador during
19 the country's brutal civil war in the 1980s, and are now all either U.S. citizens or lawful
20 permanent residents in the United States. As she was the youngest and unable to travel safely, she
21 remained in El Salvador during the war. Elsy married Juan Amilcar Ayala Rovira in 2000 in El
22 Salvador. They traveled to the United States in March 2000 with their daughter, Plaintiff Maria
23 Jose Ayala Flores, who was one year old at the time. One year later, following the earthquakes in
24 El Salvador and El Salvador's TPS designation, Elsy, her husband, and their daughter obtained
25 TPS. She now has three children. In addition to Maria Jose, Elsy and Juan are parents to Joanna
26 Gabriela Ayala Flores, seventeen years old, and Plaintiff Juan Eduardo Ayala Flores, thirteen
27 years old. Joanna and Juan were both born and raised in the United States. Elsy has worked as a
28 domestic worker and child-care provider since 2004. She currently provides child care for two

1 families. Since 2000, Elsy and her family have lived in Washington D.C. She has only been to El
2 Salvador once since she arrived, in 2009 to visit her mother-in-law. Elsy cannot imagine being
3 forced to return to El Salvador, where she has no family, and being separated from her family in
4 the United States, including possibly her two youngest children.

5 61. Plaintiff Wilna Destin, forty-three years old, was raised in Thomassique, a small
6 township in central Haiti. She fled Haiti in 2000 to seek a better life in the United States after
7 experiencing threats of violence in her hometown. She received TPS in 2010, following the
8 earthquake in Haiti, and has had TPS since then. Her father is a U.S. lawful permanent resident.
9 She also has two brothers in the United States. One is a U.S. citizen and the other has TPS. She is
10 married to a TPS holder and is the mother of two children, Plaintiff Hnaida, fourteen years old;
11 and John Walker, ten years old. Since 2014, she has been a labor organizer with the union
12 UNITE-HERE. She previously worked at Disney World. Wilna has lived in Florida for eighteen
13 years. For the last nine years she has owned a home in Orlando, which she shares with her family.
14 She is an active member of her community and church, and volunteered to travel to New Orleans
15 after Hurricane Katrina to support the humanitarian relief efforts and help with the cleanup.

16 62. Plaintiff Sherika Blanc, twenty-seven years old, was born in Port de Paix, Haiti, and
17 immigrated to the United States with her parents and two brothers when she was eight years old.
18 Sherika discovered that she was (then) undocumented only when she graduated from high school
19 in 2009 and realized that she could not apply for financial aid to go to college because of her
20 immigration status. In 2010, soon after she graduated from high school, Haiti was designated for
21 TPS. Sherika applied shortly thereafter, and has had either TPS or DACA since 2010. Her TPS
22 status has changed her life by giving her the opportunity to work, buy a car, rent a house, and raise
23 a family. Her parents and her two brothers have all had TPS since 2010. Because she could not
24 go to university when she graduated from high school, Sherika trained successfully to become a
25 certified nursing assistant (“CAN”) and a healthy unity coordinator (“HUC”), and received her
26 license in 2011. Since 2015, she has worked as a nursing assistant and HUC at the South Florida
27 Baptist Hospital, in Plant City, Florida. Sherika is married to a U.S. citizen and together they have
28

1 three young daughters: Plaintiff Rilya Salary, five years old; Alaya Salary, three years old; and
2 Almara Salary, eight months old.

3 63. Plaintiff Imara Ampie, forty-five years old, was born and raised in Managua,
4 Nicaragua. In August 1998, at the age of twenty-six years old, Imara traveled to the United States
5 to procure material for her mother's tailoring business. While she was in the United States,
6 Nicaragua was devastated by Hurricane Mitch and the U.S. government designated Nicaragua for
7 TPS. She married a Nicaraguan TPS holder, and they are raising two young sons. Imara is a
8 homemaker and cares for their children. Imara has lived in the Bay Area for twenty years. She
9 and her family have owned a home in Contra Costa County in northern California since 2008. She
10 is concerned that if TPS for Nicaragua is terminated, she and her husband may be forced to return
11 to Nicaragua even though their lives and family are here, and there will be inadequate options to
12 satisfy the health care and educational needs for her family. Her children would suffer if forced to
13 relocate to Nicaragua, but would also face tremendous obstacles if forced to remain in the United
14 States without their parents.

15 64. Plaintiff Mazin Ahmed, nineteen years old, came to the United States with his
16 mother and two younger siblings in 2012, and all have had TPS since 2013. Mazin is Sudanese
17 and was born in Sudan, but lived in Qatar with his parents and siblings from 1997 until 2012. He
18 was a baby when he and his family moved from Sudan to Qatar, and left Qatar for the United
19 States with his mother and siblings when he was fourteen years old. Mazin arrived in the United
20 States in time to start high school, and graduated with honors from Westbrook High School, in
21 Westbrook, Maine where he has lived since he arrived. He is currently a sophomore majoring in
22 Human Biology at the University of Southern Maine, where he has been the recipient of a merit-
23 based President's Scholar Award. He plans to study to be a pediatrician. He does not believe that
24 he could safely return to Sudan, has no right to return to Qatar, and has built a community and
25 excelled in his studies in the United States.

26 65. Plaintiff Hiwaida Elarabi, fifty-five years old, is from Sudan but has lived in the
27 United States since 1997 when she arrived with a visitor's visa to visit her aunt and her family—
28 all of whom are now U.S. citizens. During the time that Hiwaida was in the United States, the

1 security situation deteriorated in Sudan, which was in the midst of a decades-long conflict. Before
2 the expiration of her visitor's visa, the U.S. government designated Sudan for TPS and Hiwaida
3 remained because she could not safely return. She has now lived in the United States for twenty
4 years, with her aunt's family. She has a Bachelor's degree in biochemistry from before she
5 arrived in the United States, and a Master's degree in Bioinformatics from Brandeis University.
6 She lives in Newton, Massachusetts and has worked for the last four years at Western Governors
7 University as an E-Care Coordinator, providing technical support to students. Prior to that, she
8 worked for sixteen years as a Health Educator at the Massachusetts Department of Public Health.
9 Hiwaida is also an entrepreneur who opened up a restaurant in 2015. She took on extensive debt
10 to do so, and suffered from the termination of TPS. While the restaurant was doing well in its
11 early years, she made the difficult decision to sell it, at great cost, after Defendants terminated
12 TPS. She felt that her future was uncertain and she did not know whether she would be able to
13 sustain the restaurant.

14 **MOTIVATED BY RACIAL ANIMUS, THE TRUMP**

15 **ADMINISTRATION CHANGED THE RULES GOVERNING TPS.**

16 66. The Secretary's adoption of a new rule for making TPS determinations was
17 motivated in significant part by racial and national-origin animus. This animus is evidenced by
18 numerous statements made by President Donald J. Trump and other officials in his administration.
19 A limited number of those statements are described herein, and they leave no doubt as to the
20 speaker's racially discriminatory motives against non-white and non-European immigrants. In
21 particular, President Trump referred to countries designated for TPS as "shithole" countries a mere
22 seven days before Defendants terminated Haiti's TPS status.

23 67. President Donald J. Trump, along with other officials in his administration, have
24 repeatedly expressed racially-discriminatory and anti-immigrant sentiments. On the first day of
25 his presidential campaign, Mr. Trump categorically labeled Mexican immigrants as criminals and
26 rapists: "When Mexico sends its people, they're not sending their best. . . . They're sending people
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28

1 that have lots of problems, and they're bringing those problems with [them]. They're bringing
2 drugs. They're bringing crime. They're rapists. And some, I assume, are good people."³¹

3 68. Both during his campaign and after taking office, President Trump has repeatedly
4 compared immigrants to snakes who will bite and kill anyone foolish enough to take them in.³²

5 69. President Trump has made numerous comparable racist, anti-immigrant
6 pronouncements about Haitians, Africans, and Muslims. For example, in or around June 2017, in
7 a meeting with Secretary of State Rex W. Tillerson and then-Secretary of Homeland Security John
8 F. Kelly, President Trump reportedly said of the 15,000 Haitians admitted to the United States,
9 they "all have AIDS."³³ At this same meeting, the President, after learning that 40,000 people had
10 entered the United States from Nigeria, reportedly stated that they would never "go back to their
11 huts" in Africa.³⁴ In November 2015, then-candidate Trump disseminated a debunked story about
12 celebrations of the September 11, 2001, attacks, involving "thousands and thousands of people" in
13 New Jersey where "you have large Arab populations."³⁵ President Trump's many racist
14 statements have been documented and catalogued.³⁶

15 70. President Trump has directed his racist remarks at the TPS program. For example,
16 on or about January 11, 2018, several lawmakers gathered with the President in the Oval Office of
17 the White House to discuss a bipartisan immigration proposal. President Trump grew frustrated
18

19 ³¹ *Donald Trump Announces a Presidential Bid*, Wash. Post (June 16, 2015),
20 https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/full-text-donald-trump-announces-a-presidential-bid/?utm_term=.0b727c71c4c8.

21 ³² "The Snake": *Donald Trump brings back his favorite anti-immigrant fable at CPAC* (Feb 23,
22 2018), <https://www.vox.com/policy-and-politics/2018/2/23/17044744/trump-snake-speech-cpac>.

23 ³³ Michael D. Shear & Julie Hirschfeld Davis, *Stoking Fears, Trump Defied Bureaucracy to Advance Immigration Agenda*, N.Y. Times (Dec. 23, 2017), <https://nyti.ms/2DEQLyv>.

24 ³⁴ *Id.*

25 ³⁵ Glenn Kessler, *Trump's outrageous claim that 'thousands' of New Jersey Muslims celebrated the 9/11 attacks*, Wash. Post (Nov. 22, 2015), https://www.washingtonpost.com/news/fact-checker/wp/2015/11/22/donald-trumps-outrageous-claim-that-thousands-of-new-jersey-muslims-celebrated-the-911-attacks/?utm_term=.88120e0b9d60 (video embedded).

27 ³⁶ David Leonhardt & Ian Prasad Philbrick, *Donald Trump's Racism: The Definitive List*, N.Y. Times (Jan. 15, 2018), <https://www.nytimes.com/interactive/2018/01/15/opinion/leonhardt-trump-racist.html>.

1 when the conversation turned to TPS protections for foreign nationals from certain Latin
2 American and African countries. “Why,” the President asked, “are we having all these people
3 from shithole countries come here?”³⁷ He expressed a preference, instead, for immigrants from
4 countries like Norway, which is overwhelmingly white.³⁸ President Trump asked “Why do we
5 need more Haitians?” He insisted that lawmakers “[t]ake them out” of any potential immigration
6 deal.³⁹

7 71. Senator Dick Durbin, who was present at the January 11, 2018, meeting in the Oval
8 Office, characterized the President’s comments as “clearly racial,” “hate-filled,” and “vile.”⁴⁰
9 Senator Durbin reportedly warned the President that exclusion of immigrants based on those
10 grounds would be “an obvious racial decision.”⁴¹

11 72. Secretary Nielsen, who also was present at the January 11, 2018, meeting in the
12 Oval Office,⁴² has acknowledged that the President used “tough language.”⁴³ Although she
13 asserted that she did not know whether Norway was a “predominately white country,” she
14 admitted that she “imagine[d] that is the case.”⁴⁴

15 73. On or about November 6, 2017, White House Chief of Staff John F. Kelly and
16 White House Homeland Security Adviser Tom Bossert repeatedly called Acting Secretary Duke
17 and pressured her to terminate the TPS designation for Honduras. A former official with
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19 _____
20 ³⁷ Josh Dawsey, *Trump Derides Protections for Immigrants from “Shithole” Countries*, Wash.
21 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=.06cbc70bfaec.

22 ³⁸ *Id.*

23 ³⁹ *Id.*

24 ⁴⁰ Carl Hulse, *Inside the Oval Office Immigration Meeting that Left a Senator Stunned*, N.Y. Times (Jan. 19, 2018), <https://nyti.ms/2DiqhlM>.

25 ⁴¹ *Id.*

26 ⁴² Walter Shapiro, *Opinion: White People in Norway? Who Knew?*, Roll Call (Jan. 17, 2018), <https://www.rollcall.com/news/opinion/kirstjen-nielsen-trump-norway>.

27 ⁴³ *Id.*

28 ⁴⁴ *Id.*

1 knowledge of the exchange said, “[t]hey put massive pressure on her.”⁴⁵ Chief of Staff Kelly
 2 made the call from Japan, where he was travelling with President Trump. According to reports,
 3 Chief of Staff Kelly was irritated and persistent, warning Acting Secretary Duke that the TPS
 4 program “prevents [the Trump Administration’s] wider strategic goal” on immigration.⁴⁶ In
 5 response to this pressure, Acting Secretary Duke reportedly told Chief of Staff Kelly that she
 6 would resign her position.⁴⁷

DHS’S TPS TERMINATIONS WERE BASED ON AN ARBITRARY
INTERPRETATION OF THE TPS STATUTE, BREAKING WITH DECADES OF
PRIOR PRACTICE WITHOUT EXPLANATION.

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 10 74. Over the past fourteen months, DHS Secretary Kirstjen Nielsen and Acting
 11 Secretary Elaine Duke announced the termination of TPS for El Salvador, Haiti, Nicaragua, and
 12 Sudan.

13 75. To justify those decisions, DHS has adopted a novel interpretation of the TPS
 14 statute. Under prior administrations, DHS or its predecessors considered intervening natural
 15 disasters, conflicts, and other serious social and economic problems as relevant factors when
 16 deciding whether to continue or instead terminate a TPS designation. Although no relevant statute
 17 or regulation has changed in the intervening decades, the Trump administration’s DHS has now
 18 taken the position that such factors cannot be considered.

19 76. The Administration adopted the new interpretation without a formal announcement
 20 to disclose its rationale for making a dramatic change to a decades-old policy. Instead, the change
 21 became public during testimony by then-Secretary Kelly at a Senate hearing on June 6, 2017.
 22 Secretary Kelly stated “the program [TPS] is for a specific event. In – in Haiti, it was the

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 24 ⁴⁵ Nick Miroff, *White House Chief of Staff Tried to Pressure Acting DHS Secretary to Expel*
 25 *Thousands of Hondurans, Officials Say*, Wash. Post (Nov. 9, 2017),
 26 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=.a3d52a717ec9.

27 ⁴⁶ *Id.*

28 ⁴⁷ *Id.*

1 earthquake. Yes, Haiti had horrible conditions before the earthquake, and those conditions aren't
2 much better after the earthquake. But the earthquake was why TPS was – was granted and – and
3 that's how I have to look at it.”⁴⁸

4 77. Current Secretary Nielsen has since reiterated the view that “[t]he law does not
5 allow me to look at the country conditions of a country writ large. It requires me to look very
6 specifically as to whether the country conditions originating from the original designation
7 continue to exist.”⁴⁹

8 78. The Administration has applied its new policy to its TPS decisions. In at least three
9 announcements terminating a TPS designation, the DHS Secretary explicitly stated that she
10 compared “the conditions upon which the country’s original designation was based” with “an
11 assessment of whether those originating conditions continue to exist.”⁵⁰ Even where she did not
12 refer to the new policy explicitly, the Secretary’s new interpretation of the TPS statute is evident
13 in its TPS termination decisions for El Salvador, Haiti, Nicaragua, and Sudan.

14 79. El Salvador was the first country designated for TPS, as part of the Immigration Act
15 of 1990.⁵¹ Advocacy for Salvadorans denied fair asylum processes—while the United States was
16 supporting one of the warring parties in the civil war in El Salvador—was one of the primary
17 motivations for that decision.⁵²

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20 ⁴⁸ *Hearing on the Department of Homeland Security F.Y. 2018 Budget Before the S. Comm. on*
21 *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>.

22 ⁴⁹ *Oversight of the United States Department of Homeland Security Before the S. Comm. on the*
23 *Judiciary*, 115th Cong. (Jan. 16, 2018) (statement of Kirstjen M. Nielsen, Secretary, U.S.
Department of Homeland Security).

24 ⁵⁰ Press Release, Dep’t of Homeland Sec., Sec’y of Homeland Sec. Kirstjen M. Nielsen
25 Announcement on Temp. Protected Status for El Sal. (Jan. 8, 2018); Press Release, Dep’t of
26 Homeland Sec., Acting Sec’y Elaine Duke Announcement on Temp. Protected Status for Haiti
(Nov. 20, 2017); Press Release, Dep’t of Homeland Sec., Acting Sec’y Elaine Duke
27 Announcement on Temp. Protected Status for Nicaragua & Honduras (Nov. 6, 2017).

28 ⁵¹ Immigration Act of 1990, Pub. L. 101-649, § 303, 104 Stat. 4978,

⁵² *See, e.g.*, Katherine Bishop, U.S. Adopts New Policy for Hearings on Political Asylum for
Some Aliens, N.Y. Times (Dec. 20, 1990), <https://nyti.ms/2tEcmpB>.

1 80. El Salvador was most recently designated for TPS on March 9, 2001 after three
2 devastating earthquakes.⁵³ All told, various administrations continued TPS for El Salvador eleven
3 times based on a variety of factors and conditions that did not exist at the time of the original
4 designation, and that were unrelated to the earthquakes.⁵⁴ Among other considerations, they cited
5 droughts and a leaf rust epidemic that caused destabilizing food insecurity and malnutrition,⁵⁵
6 health emergencies,⁵⁶ subsequent environmental disasters, including another earthquake in 2012,
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10 ⁵³ A devastating, 7.6 magnitude earthquake hit El Salvador on January 13, 2001, followed by over
11 3,000 aftershocks. The earthquakes killed over 1,100 people, damaged or destroyed approximately
12 220,000 homes, 1,696 schools, and 856 public buildings, and affected approximately 1.5 million
13 people. Designation of El Salvador Under Temporary Protected Status, 66 Fed. Reg. 14,214 (Mar.
14 9, 2001).

15 ⁵⁴ See Extension of the Designation of El Salvador for Temporary Protected Status, 81 Fed. Reg.
16 44,645, 44,647 (July 8, 2016); Extension of the Designation of El Salvador for Temporary
17 Protected Status, 80 Fed. Reg. 893, 894 (Jan. 7, 2015); Extension of the Designation of El
18 Salvador for Temporary Protected Status, 78 Fed. Reg. 32,418, 32,419 (May 30, 2013); Extension
19 of the Designation of El Salvador for Temporary Protected Status and Automatic Extension of
20 Employment Authorization Documentation for Salvadoran TPS Beneficiaries, 77 Fed. Reg. 1710,
21 1711–12 (Jan. 11, 2012); Extension of the Designation of El Salvador for Temporary Protected
22 Status and Automatic Extension of Employment Authorization Documentation for Salvadoran
23 TPS Beneficiaries, 75 Fed. Reg. 39,556, 39,557–58 (July 9, 2010); Extension of the Designation
24 of El Salvador for Temporary Protected Status, 73 Fed. Reg. 57,128, 57,129 (Oct. 1, 2008);
25 Extension of the Designation of El Salvador for Temporary Protected Status, Automatic Extension
26 of Employment Authorization Documentation for Salvadoran TPS Beneficiaries, 72 Fed. Reg.
27 46,649, 46,649–50 (Aug. 21, 2007); Extension of the Designation of Temporary Protected Status
28 for El Salvador, Automatic Extension of Employment Authorization Documentation for El
Salvadorian TPS Beneficiaries, 71 Fed. Reg. 34,637, 34,638 (June 15, 2006); 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, 1451 (Jan. 7,
2005); 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, 42,072 (July 16, 2003); 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, 46,000–01 (July 11, 2002).

⁵⁵ Extension of the Designation of El Salvador for Temporary Protected Status, 80 Fed. Reg. 893,
895 (Jan. 7, 2015); 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, 46,000–01 (July 11, 2002).

⁵⁶ Extension of the Designation of El Salvador for Temporary Protected Status, 81 Fed. Reg.
44,645, 44,647 (July 8, 2016) (identifying that the environmental and social conditions plaguing
the country spurred an outbreak of mosquito borne illnesses, including chikungunya and dengue).

1 volcanic eruptions, hurricanes, mudslides and flooding,⁵⁷ economic instability, and crime⁵⁸ as
2 grounds for continuing TPS.

3 81. But when terminating TPS for Salvadorans in January 2018, Secretary Nielsen
4 ignored the contemporary realities of life in El Salvador by asking only whether disruptions
5 traceable to the 2001 earthquakes had abated. The Secretary relied on generic platitudes,⁵⁹
6 ignoring natural and environmental disasters, pervasive gang violence, mass food insecurity, and
7 other humanitarian crises since the 2001 earthquake.

8 82. Haiti was first designated for TPS by Secretary Napolitano on January 21, 2010 after
9 a 7.0 magnitude earthquake struck the country,⁶⁰ killing as many as 300,000 people.⁶¹ Since then,
10 DHS has provided protection for Haiti under the TPS program from 2011 to 2017.⁶² In continuing
11

12 ⁵⁷ Extension of the Designation of El Salvador for Temporary Protected Status, 80 Fed. Reg. 893,
13 894 (Jan. 7, 2015) (noting that Tropical Storm Barry hit El Salvador in June 2013, causing
14 flooding, and in December 2013, the Chaparrastique volcano erupted in December 2013, forcing
15 thousands of people to evacuate their homes); Extension of the Designation of El Salvador for
16 Temporary Protected Status, 78 Fed. Reg. 32,418, 32,419 (May 30, 2013); Extension of the
17 Designation of El Salvador for Temporary Protected Status and Automatic Extension of
18 Employment Authorization Documentation for Salvadoran TPS Beneficiaries, 77 Fed. Reg. 1710,
19 1712 (Jan. 11, 2012); Extension of the Designation of El Salvador for Temporary Protected Status
20 and Automatic Extension of Employment Authorization Documentation for Salvadoran TPS
21 Beneficiaries, 75 Fed. Reg. 39,556, 39,558 (July 9, 2010); Extension of the Designation of
22 Temporary Protected Status for El Salvador, Automatic Extension of Employment Authorization
23 Documentation for El Salvadorian TPS Beneficiaries, 71 Fed. Reg. 34,637, 34,638 (June 15,
24 2006).

25 ⁵⁸ Extension of the Designation of El Salvador for Temporary Protected Status, 80 Fed. Reg. 893,
26 895 (Jan. 7, 2015) (considering that almost half of all Salvadorans lived in poverty, a third were
27 underemployed, and El Salvador's annual GDP growth fell way behind its neighboring countries);
28 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, 42,072 (July 16, 2003) (considering that a large number of returnees would "creat[e]
social unrest and exacerbat[e] a critical crime situation").

⁵⁹ Termination of the Designation of El Salvador for Temporary Protected Status, 83 Fed. Reg.
2654, 2656 (Jan. 18, 2018).

⁶⁰ Designation of Haiti for Temporary Protected Status, 75 Fed. Reg. 3476, 3477 (Jan. 21, 2010).

⁶¹ See Extension of the Designation of Haiti for Temporary Protected Status, 77 Fed. Reg. 59,943,
59,944 (Oct. 1, 2012).

⁶² Extension of the Designation of Haiti for Temporary Protected Status, 82 Fed. Reg. 23,830
(May 24, 2017); Extension of the Designation of Haiti for Temporary Protected Status, 80 Fed.
Reg. 51,582 (Aug. 25, 2015); Extension of the Designation of Haiti for Temporary Protected
Status, 79 Fed. Reg. 11,808 (Mar. 3, 2014); Extension of the Designation of Haiti for Temporary

1 Haiti's status under the TPS program, Secretaries Napolitano and Johnson considered a variety of
2 factors and conditions that arose subsequent to the earthquake, many of which were wholly or
3 partially unrelated to it, including crime, poverty, unemployment, lack of adequate social
4 services,⁶³ and successive health and environmental disasters, including destruction caused by
5 Hurricane Matthew.⁶⁴

6 83. Contrary to his predecessors, when Secretary Kelly continued Haiti's TPS
7 designation in May 2017, he did so for the minimum six months allowed by statute. He
8 simultaneously cautioned Haitian TPS recipients living in the United States to "make other
9 necessary arrangements for their ultimate departure from the United States" despite concluding,
10 after consultation with the Department of State, that "conditions in Haiti supporting its designation
11 for TPS persist."⁶⁵

12 84. On January 18, 2018, one week after President Trump's "shithole countries"
13 comments, Deputy Secretary Duke's decision terminating Haiti's TPS designation was published
14 in the Federal Register.⁶⁶ The justifications made no mention of intervening and ongoing
15 environmental, food, and medical disasters relied upon by prior DHS Secretaries.

16 85. Nicaragua was designated for TPS by Attorney General Janet Reno on January 5,
17 1999 after Hurricane Mitch caused severe damage to the country.⁶⁷ Multiple Attorneys General

18 Protected Status, 77 Fed. Reg. 59,943 (Oct. 1, 2012); Extension and Redesignation of Haiti for
19 Temporary Protected Status, 76 Fed. Reg. 29,000 (May 19, 2011).

20 ⁶³ Extension of the Designation of Haiti for Temporary Protected Status, 79 Fed. Reg. 11,808,
21 11,810 (Mar. 3, 2014); Extension and Redesignation of Haiti for Temporary Protected Status, 76
22 Fed. Reg. 29,000, 29,001 (May 19, 2011).

23 ⁶⁴ Extension of the Designation of Haiti for Temporary Protected Status, 82 Fed. Reg. 23,830,
24 23,832 (May 24, 2017); Extension of the Designation of Haiti for Temporary Protected Status, 79
25 Fed. Reg. 11,808, 11,810 (Mar. 3, 2014); Extension of the Designation of Haiti for Temporary
26 Protected Status, 77 Fed. Reg. 59,943, 59,944 (Oct. 1, 2012); Extension and Redesignation of
27 Haiti for Temporary Protected Status, 76 Fed. Reg. 29,000, 29,001 (May 19, 2011).

28 ⁶⁵ Press Release, Dep't of Homeland Sec., Sec'y Kelly's Statement on the Limited Extension of
Haiti's Designation for Temp. Protected Status (May 22, 2017).

⁶⁶ Termination of the Designation of Haiti for Temporary Protected Status, 83 Fed. Reg. 2648
(Jan. 18, 2018).

⁶⁷ Hurricane Mitch killed more than 3,000 people, and destroyed an estimated 145,000 homes,
ninety health clinics, nearly 350 schools, and seventy percent of Nicaragua's roads. The severe
flooding and landslides resulting from Hurricane Mitch buried entire villages and caused more

1 and DHS Secretaries subsequently agreed that conditions in Nicaragua warranted maintenance of
2 its TPS designation, which occurred thirteen times in all.⁶⁸ Those decisions took into
3 consideration social, economic, and infrastructural challenges that were not directly attributable to
4 the hurricane.⁶⁹ They cited to environmental disasters that occurred *after* Hurricane Mitch,⁷⁰ a
5 _____
6 than \$1.3 billion of damage. Designation of Nicaragua for Temporary Protected Status, 64 Fed.
7 Reg. 526 (Jan. 5, 1999); Extension of the Designation of Nicaragua for Temporary Protected
8 Status, 81 Fed. Reg. 30,325, 30,326 (May 16, 2016).

7 ⁶⁸ The Attorneys General and DHS Secretaries responsible for extending Nicaragua’s TPS
8 designation are Attorney General Janet Reno, Attorney General John Ashcroft, DHS Secretary
9 Tom Ridge, DHS Secretary Michael Chertoff, DHS Secretary Janet Napolitano, and DHS
10 Secretary Jeh Johnson. Extension of the Designation of Nicaragua for Temporary Protected Status,
11 81 Fed. Reg. 30,325 (May 16, 2016); Extension of the Designation of Nicaragua for Temporary
12 Protected Status, 79 Fed. Reg. 62,176 (Oct. 16, 2014); Extension of the Designation of Nicaragua
13 for Temporary Protected Status, 78 Fed. Reg. 20,128 (Apr. 3, 2013); Extension of the Designation
14 of Nicaragua for Temporary Protected Status and Automatic Extension of Employment
15 Authorization Documentation for Nicaraguan TPS Beneficiaries, 76 Fed. Reg. 68,493 (Nov. 4,
16 2011); Extension of the Designation of Nicaragua for Temporary Protected Status and Automatic
17 Extension of Employment Authorization Documentation for Nicaraguan TPS Beneficiaries, 75
18 Fed. Reg. 24,737 (May 5, 2010); Extension of the Designation of Nicaragua for Temporary
19 Protected Status, 73 Fed. Reg. 57,138 (Oct. 1, 2008); Extension of the Designation of Nicaragua
20 for Temporary Protected Status, Automatic Extension of Employment Authorization
21 Documentation for Nicaragua TPS Beneficiaries, 72 Fed. Reg. 29,534 (May 29, 2007); Extension
22 of the Designation of Temporary Protected Status for Nicaragua, Automatic Extension of
23 Employment Authorization Documentation for Nicaragua TPS Beneficiaries, 71 Fed. Reg. 16,333
24 (Mar. 31, 2006); Extension of the Designation of Temporary Protected Status for Nicaragua,
25 Automatic Extension of Employment Authorization Documentation for Nicaragua TPS
26 Beneficiaries, 69 Fed. Reg. 64,088 (Nov. 3, 2004); Extension of the Designation of Nicaragua
27 Under the Temporary Protected Status Program, Automatic Extension of Employment
28 Authorization Documentation for Nicaraguans, 68 Fed. Reg. 23,748 (May 5, 2003); Extension of
the Designation of Nicaragua Under the Temporary Protected Status Program, 67 Fed. Reg.
22,454 (May 3, 2002); Extension of the Designation of Nicaragua Under the Temporary Protected
Status Program, 66 Fed. Reg. 23,271 (May 8, 2001); Extension of Designation of Nicaragua
Under Temporary Protected Status Program, 65 Fed. Reg. 30,440 (May 11, 2000).

⁶⁹ Extension of the Designation of Nicaragua for Temporary Protected Status, Automatic
Extension of Employment Authorization Documentation for Nicaragua TPS Beneficiaries, 72 Fed.
Reg. 29,534 (May 29, 2007).

⁷⁰ Extension of the Designation of Nicaragua Under the Temporary Protected Status Program, 67
Fed. Reg. 22,454, 22,454 (May 3, 2002) (“recent droughts as well as flooding from Hurricane
Michelle in 2001 compounded the humanitarian, economic, and social problems initially brought
on by Hurricane Mitch in 1998”); Extension of the Designation of Nicaragua Under the
Temporary Protected Status Program, Automatic Extension of Employment Authorization
Documentation for Nicaraguans, 68 Fed. Reg. 23,748, 23,748 (May 5, 2003) (“a prolonged
drought as well as flooding from Hurricane Michelle have compromised food security and
disrupted reconstruction efforts”); Extension of the Designation of Nicaragua for Temporary
Protected Status, Automatic Extension of Employment Authorization Documentation for
Nicaragua TPS Beneficiaries, 72 Fed. Reg. 29,534, 29,535 (May 29, 2007) (Hurricane Beta and
Tropical Storm Stan which jointly “severely affected thousands of people, destroying houses,
medical centers, and schools in October 2005”); Extension of the Designation of Nicaragua for

1 fractured economic foundation and “chronic poverty,” and problems of governance and political
2 tension.⁷¹

3 86. In December 2017, Acting Secretary Duke reversed course. With a three-paragraph
4 explanation that failed to address any of the intervening conditions considered by previous
5 administrations, the Acting Secretary abruptly terminated Nicaragua’s TPS designation.⁷²

6 87. Sudan was first designated for TPS on November 4, 1997, in the midst of a long-
7 running civil war.⁷³ Since that time, successive administrations reviewed Sudan’s TPS status and
8 saw fit to maintain TPS protection for the country eighteen times.⁷⁴ Nine of these reviews occurred

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10 Temporary Protected Status and Automatic Extension of Employment Authorization
11 Documentation for Nicaraguan TPS Beneficiaries, 75 Fed. Reg. 24,737, 24,738 (May 5, 2010);
12 Extension of the Designation of Nicaragua for Temporary Protected Status and Automatic
13 Extension of Employment Authorization Documentation for Nicaraguan TPS Beneficiaries, 76
14 Fed. Reg. 68,493, 68,494 (Nov. 4, 2011) (Tropical Storm Alma in May 2008, Tropical Depression
15 16 in 2008, Hurricane Ida in 2009, and Hurricane Felix and Tropical Storm Matthew in
16 2010); Extension of the Designation of Nicaragua for Temporary Protected Status, 78 Fed. Reg.
17 20,128, 20,130 (Apr. 3, 2013) (Tropical Depression 12E in 2011, which caused an extensive \$445
18 million (USD) in damages); Extension of the Designation of Nicaragua for Temporary Protected
19 Status, 79 Fed. Reg. 62,176, 62,178 (Oct. 16, 2014) (in 2013, Hurricane Barbara, several tropical
20 storms, and heavy seasonal rains caused 15 deaths and affected 12,000 people); Extension of the
21 Designation of Nicaragua for Temporary Protected Status, 79 Fed. Reg. 62,176, 62,178 (Oct. 16,
22 2014) (a drought in 2014); Extension of the Designation of Nicaragua for Temporary Protected
23 Status, 81 Fed. Reg. 30,325, 30,325 (May 16, 2016) (Nicaragua suffered “a prolonged regional
24 drought” as recent as 2016).

25 ⁷¹ Extension of the Designation of Nicaragua for Temporary Protected Status and Automatic
26 Extension of Employment Authorization Documentation for Nicaraguan TPS Beneficiaries, 75
27 Fed. Reg. 24,737, 24,738 (May 5, 2010); Extension of the Designation of Nicaragua for
28 Temporary Protected Status and Automatic Extension of Employment Authorization
Documentation for Nicaraguan TPS Beneficiaries, 76 Fed. Reg. 68,493, 68,495 (Nov. 4, 2011)
(noting a rise in “political tension,” “including violent demonstrations and seizures of government
offices” which “could hinder the efforts of already-weak local institutions to provide services and
help reintegrate returned Nicaraguans.”).

⁷² Termination of the Designation of Nicaragua for Temporary Protected Status, 82 Fed. Reg. at
59,636–37 (Dec. 15, 2017.). Acting Secretary Duke delayed the effective expiration date until
January 5, 2019 to “provide for an orderly transition.” *Id.*

⁷³ Designation of Sudan for Temporary Protected Status, 62 Fed. Reg. 59737 (Nov. 4, 1997).

⁷⁴ Extension of Designation of Sudan Under Temporary Protected Status Program, 63 Fed. Reg.
59,337 (Nov. 3, 1998); Extension and Redesignation of Sudan Under the Temporary Protected
Status Program, 64 Fed. Reg. at 61,128; Extension of Designation of Sudan Under the Temporary
Protected Status Program, 65 Fed. Reg. 67,407 (Nov. 9, 2000); Extension of the Designation of
Sudan Under the Temporary Protected Status Program, 66 Fed. Reg. 46,031 (Aug. 31, 2001);
Extension of the Designation of Sudan Under the Temporary Protected Status Program, 67 Fed.
Reg. 55,877 (Aug. 30, 2002); Extension of the Designation of Sudan Under the Temporary
Protected Status Program, 68 Fed. Reg. 52,410 (Sept. 3, 2003); Extension and Redesignation of

1 after Sudan's civil war officially concluded in January 2005 with the signing of the
 2 Comprehensive Peace Agreement. Attorneys General and Secretaries of Homeland Security
 3 consistently considered intervening factors wholly or partially unrelated to the civil war, including
 4 natural disasters, "perennial environmental shocks, such as flooding and droughts," new armed
 5 conflicts, growing poverty,⁷⁵ criminal activity, and "deteriorating economic conditions" leading to
 6 "increased food and fuel prices."⁷⁶

7 88. Nevertheless, in September 2017, Acting Secretary Duke terminated Sudan's TPS
 8 designation on the ground that "the ongoing armed conflict and extraordinary and temporary
 9 conditions that served as the basis for Sudan's most recent designation have sufficiently improved
 10 such that they no longer prevent nationals of Sudan from returning in safety to all regions of
 11 Sudan."⁷⁷ The Acting Secretary did not even consider, let alone make a finding as to numerous
 12 intervening factors considered by prior administrations in extending Sudan's TPS designation.

CLASS ALLEGATIONS

13
 14 89. Representative Individual Minor Plaintiffs Crista Ramos, Benjamin Zepeda, Juan
 15 Eduardo Ayala Flores, Hnaida Cenemat, and Rilya Salary bring this action under Federal Rule of

16 Temporary Protected Status for Sudan, 69 Fed. Reg. 60,168 (Oct. 7, 2004); Extension of the
 17 Designation of Sudan for Temporary Protected Status, Extension of Employment Authorization
 18 Documentation for Eligible TPS Beneficiaries, 70 Fed. Reg. 52,429 (Sept. 2, 2005); Extension of
 19 the Designation of Sudan for Temporary Protected Status, Automatic Extension of Employment
 20 Authorization Documentation for Sudanese TPS Beneficiaries, 72 Fed. Reg. 10,541 (March 8,
 21 2007); Extension of the Designation of Sudan for Temporary Protected Status, Automatic
 22 Extension of Employment Authorization Documentation for Sudanese TPS Beneficiaries, 73 Fed.
 23 Reg. 47,606 (Aug. 14, 2008); Extension of the Designation of Sudan for Temporary Protected
 24 Status, 74 Fed. Reg. 69,355 (Dec. 31, 2009) (extending TPS for 18 months); Extension of the
 25 Designation of Sudan for Temporary Protected Status and Automatic Extension of Employment
 26 Authorization Documentation for Sudanese TPS Beneficiaries, 76 Fed. Reg. 63,635 (Oct. 13,
 27 2011); Extension and Redesignation of Sudan for Temporary Protected Status, 78 Fed. Reg. 1872
 (Jan. 9, 2013); Extension of the Designation of Sudan for Temporary Protected Status, 79 Fed.
 Reg. 52,027 (Sept. 2, 2014); Extension of the Designation of Sudan for Temporary Protected
 Status, 81 Fed. Reg. 4045 (Jan. 25, 2016).

⁷⁵ Extension of the Designation of Sudan Under the Temporary Protected Status Program, 68 Fed.
 Reg. 52,410 (Sept. 3, 2003); *see also, e.g.*, Extension of the Designation of Sudan for Temporary
 Protected Status, Automatic Extension of Employment Authorization Documentation for
 Sudanese TPS Beneficiaries, 72 Fed. Reg. 10,541 (March 8, 2007).

⁷⁶ Extension of the Designation of Sudan for Temporary Protected Status, 79 Fed. Reg. 52,027
 (Sept. 2, 2014).

⁷⁷ Termination of the Designation of Sudan for Temporary Protected Status, 82 Fed. Reg. at
 47,228.

1 Civil Procedure 23(b)(1)(A) and (b)(2), on behalf of themselves and a nationwide class of all
2 similarly situated persons.

3 90. Minor Plaintiffs seek to represent the following nationwide class: The U.S. citizen
4 children, from ages five to eighteen, of all TPS holders from El Salvador, Haiti, Nicaragua, and
5 Sudan.

6 91. The proposed class satisfies the requirements of Federal Rule of Civil Procedure
7 23(a)(1) because it is so numerous that joinder of all members is impracticable.

8 92. On information and belief, there are tens of thousands of U.S. citizen children of
9 TPS holders from El Salvador, Haiti, Nicaragua, and Sudan. Given the dates of TPS designations
10 for those countries, thousands of those children are minors confronted with the possibility of
11 losing either the ability to live in their country or the care and support of a TPS-holder parent.

12 93. Due to the actions of Defendants, the U.S. citizen children of TPS holders will be
13 forced to choose between their absolute and fundamental due process right to reside in this
14 country, and their due process right to the care and support of their parents.

15 94. The class meets the commonality requirements of Federal Rule of Civil Procedure
16 23(a)(2). Members of the class are subject to a common practice or policy: Defendants' adoption
17 of a new rule that has caused the termination of the TPS designations for their parents' respective
18 countries without any consideration of the impact on the class members—*i.e.*, these American
19 children—or any valid reason justifying the harm that decision imposes on them. If the TPS
20 termination decisions take effect, these children will be forced by law to choose between their
21 right to reside in this country as citizens, and their right to reside with their parents. Whether the
22 Due Process Clause permits the government to force these children into that choice presents a
23 common legal question, resolution of which will greatly aid the efficient resolution of this case.

24 95. The proposed class meets the typicality requirements of Federal Rule of Civil
25 Procedure 23(a)(3) because the claims of the representative Individual Minor Plaintiffs are typical
26 of the claims of their class. Minor Plaintiffs and the proposed Citizen-Children Class members are
27 the school-aged children, from ages five to eighteen, who are U.S. citizens. Their parents will be
28 subject to removal once the TPS termination decisions take effect. Individual Minor Plaintiffs and

1 their proposed class also share the same legal claims, which challenge the legality of these
2 termination policies and practices under the Fifth Amendment.

3 96. The proposed class meets the adequacy requirements of Federal Rule of Civil
4 Procedure 23(a)(4). Individual Minor Plaintiffs seek the same relief as the other members of the
5 class. In defending their own rights, Individual Plaintiffs will defend the rights of all proposed
6 class members fairly and adequately.

7 97. Additionally, the proposed class is represented by *pro bono* counsel from the
8 National Day Laborer Organizing Network (“NDLON”), the American Civil Liberties Union of
9 Southern California, and Sidley Austin LLP. Plaintiffs’ counsel have extensive experience
10 litigating class action lawsuits and other complex cases in federal court, including civil rights
11 lawsuits on behalf of non-citizens.

12 98. The members of the class are readily ascertainable through Defendants’ records.

13 99. Finally, the proposed class satisfies Federal Rule of Civil Procedure 23(b)(1)(A) and
14 (b)(2). Competing rulings as to whether Defendants must permit the TPS-holding parents of
15 minor U.S. citizen children to reside in the United States could create inconsistent adjudications
16 and establish incompatible standards of conduct governing Defendants’ behavior. In addition,
17 Defendants have acted on grounds that are generally applicable to the class by terminating the
18 TPS designations for El Salvador, Haiti, Nicaragua, and Sudan without considering the massive
19 harm that decision causes to U.S. citizen children or providing reasons to justify that harm. Thus,
20 final injunctive and declaratory relief is appropriate for the class as a whole.

21 **CLAIMS FOR RELIEF**

22 **FIRST CLAIM**

23 **Violation of the Due Process Clause of the Fifth Amendment**

24 **(Against All Defendants by All U.S. Citizen Children Plaintiffs)**

25 100. Plaintiffs reallege and incorporate by reference each and every allegation contained
26 in the preceding paragraphs.

27 101. The Due Process Clause of the Fifth Amendment to the U.S. Constitution provides
28 that “[n]o person shall be . . . deprived of life, liberty, or property, without due process of law.”

1 U.S. Const. amend. V. The guarantee against the deprivation of liberty without due process bars
2 the government from infringing on certain “fundamental” liberty interests, regardless of the
3 procedures involved, unless the action is “narrowly tailored to serve a compelling state interest.”
4 *Reno v. Flores*, 507 U.S. 292, 301–02 (1993).

5 102. Three such fundamental rights are implicated here. First, the plaintiffs here who are
6 school-aged U.S. citizens have an absolute right to live in the United States. To compel them to
7 live abroad at any time, let alone in their formative years, would deny them a core aspect of their
8 liberty protected by the Fifth Amendment. *See, e.g., Nguyen v. I.N.S.*, 533 U.S. 53, 67 (2001); *Ng*
9 *Fung Ho v. White*, 259 U.S. 276, 284 (1922).

10 103. Second, for at least so long as these U.S. citizen plaintiffs remain minors, they have
11 a fundamental right protected by both the First and Fifth Amendments to live with and be raised
12 by their parents. *E.g., Moore v. City of East Cleveland*, 431 U.S. 494, 499 (1977); *Board of Dirs.*
13 *v. Rotary Club*, 481 U.S. 537, 545 (1987).

14 104. Third, the government’s decision to end the lawful immigration status of their
15 parents impinges upon the U.S. citizen plaintiffs’ constitutionally-protected liberty interests.
16 These American children have a powerful interest in not being compelled to choose between two
17 alternatives when each alternative will deprive them of a substantial, constitutionally-protected
18 aspect of liberty. *See United States v. Jackson*, 390 U.S. 570 (1968); *cf. New York v. United*
19 *States*, 505 U.S. 144, 176 (1992).

20 105. In invading these fundamental constitutional rights, Defendants have articulated no
21 substantial governmental interest and have failed adequately to tailor their action to promote any
22 legitimate interest they may have. Nowhere in the notices terminating the TPS designations for El
23 Salvador, Haiti, Nicaragua, and Sudan, for example, have Defendants identified any risk to the
24 interests of the United States that would follow from allowing the school-aged U.S. citizen
25 children to remain in the United States with their TPS holder parents until the children reach the
26 age of majority.

27 106. Similarly, nowhere in the notices terminating the TPS designations for El Salvador,
28 Haiti, Nicaragua, and Sudan has the Secretary adequately explained the Secretary’s new

1 interpretation of the governing statute, reconciled it with the Secretary’s longstanding prior
2 interpretation, or justified its extraordinary invasion of the U.S. citizen children’s constitutional
3 rights.

4 107. Plaintiffs and Minor Plaintiffs’ class will suffer irreparable injury resulting from the
5 termination of the TPS designations.

6 **SECOND CLAIM**

7 **Violation of the Equal Protection Guarantee of the**

8 **Due Process Clause of the Fifth Amendment**

9 **(Against All Defendants by All TPS-Holder Plaintiffs)**

10 108. Plaintiffs reallege and incorporate by reference each and every allegation contained
11 in the preceding paragraphs.

12 109. The Fifth Amendment contains an implicit guarantee of equal protection that
13 invalidates any official action that in part reflects a racially discriminatory intent or purpose.
14 Classifications based on race or national origin receive exacting scrutiny, and even facially neutral
15 policies and practices will be held unconstitutional when they reflect a pattern unexplainable on
16 grounds other than race. *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954); *Vill. of Arlington Heights v.*
17 *Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–66 (1977).

18 110. Defendants’ decisions to terminate the TPS designations for El Salvador, Haiti,
19 Nicaragua, and Sudan are unconstitutional because they were motivated, at least in part, by
20 intentional discrimination based on race, ethnicity, or national origin.

21 111. Plaintiffs will suffer irreparable injury resulting from the arbitrary termination of the
22 TPS designations.

23 **THIRD CLAIM**

24 **Violation of the Due Process Clause of the Fifth Amendment**

25 **(Against All Defendants by All TPS-Holder Plaintiffs)**

26 112. Plaintiffs reallege and incorporate by reference each and every allegation contained
27 in the preceding paragraphs.

28

1 113. Due process protections extend to “all ‘persons’ within the United States, including
2 [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.”
3 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). TPS holders are lawfully present in this country.
4 They have significant liberty interests, protected by the Due Process Clause, in a non-arbitrary
5 decision as to the continuation of their TPS status.

6 114. The “very essence” of due process is the “protection of the individual against
7 arbitrary action.” *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 584 (1972). Any
8 deprivation of liberty or property interests must, at the very least, pass a test of rationality. The
9 burden on the government is greater when, as here, the liberty interests at stake derive from well-
10 established and significant reliance interests.

11 115. The government also has not articulated, and cannot establish, any rational basis for
12 reversing course on decades of established TPS policy and ignoring the current capability of TPS
13 countries to safely receive longtime TPS holders, their families, and their U.S. citizen children.

14 116. Plaintiffs will suffer irreparable injury resulting from the arbitrary termination of the
15 TPS designations.

16 **FOURTH CLAIM**

17 **Violation of the Administrative Procedure Act**

18 **(Against All Defendants by All TPS-Holder Plaintiffs)**

19 117. Plaintiffs reallege and incorporate by reference each and every allegation contained
20 in the preceding paragraphs.

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

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

1 under the APA includes a right to judicial review of “executive agency action for procedural
2 correctness.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 513 (2009).

3 120. To engage in procedurally appropriate decision-making, an agency must ordinarily
4 “display awareness that it is changing position,” and may not “depart from a prior policy sub
5 silentio.” *Id.* at 515. The APA requires an agency to provide “more substantial justification”
6 when “its new policy rests upon factual findings that contradict those which underlay its prior
7 policy,” or “its prior policy has engendered serious reliance interests.” *Id.*

8 121. Defendants’ termination of the TPS designations for El Salvador, Haiti, Nicaragua,
9 and Sudan constitutes “final agency action for which there is no other adequate remedy in a court”
10 pursuant to 5 U.S.C. § 704, because the Defendants’ termination results in the TPS Holders’ loss
11 of TPS “automatically and without further notice or right of appeal,” 8 C.F.R. § 244.19.

12 122. Defendants’ adoption of a new, drastically narrower interpretation of the TPS statute
13 was arbitrary, capricious, and contrary to law in violation of the APA because it represented a
14 sudden and unexplained departure from decades of decision-making practices and ordinary
15 procedures. By shifting the decision-governing standard for country designations without
16 explanation, Defendants have ignored a clear statutory command and engaged in procedurally
17 flawed decision-making. Further, Defendants changed their policy without taking into account the
18 serious reliance interests that their prior policy had engendered.

19 123. Plaintiffs will suffer irreparable injury resulting from the arbitrary termination of the
20 TPS designations.

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PRAYER FOR RELIEF

Individual Plaintiffs, on behalf of themselves and others similar situated, ask this Court to grant the following relief:

1. Declare that Defendants’ termination of the TPS designations for El Salvador, Nicaragua, Haiti, and Sudan, was unconstitutional under the Due Process Clause of the Fifth Amendment and unlawful under the Administrative Procedure Act;
2. Vacate Defendants’ unlawful termination of the TPS designations for El Salvador, Nicaragua, Haiti, and Sudan;
3. Enjoin and restrain all Defendants, and their officers, agents, servants, employees, attorneys, and all other persons who are in active concern or participation with any of them, from implementing or enforcing the decisions to terminate the TPS designations for El Salvador, Nicaragua, Haiti, and Sudan;
4. Alternatively, certify this case as a class action lawsuit as proposed herein, appoint Individual Minor Plaintiffs Crista Ramos Benjamin Zepeda, Juan Eduardo Ayala Flores, Hnaida Cenemat, and Rilya Salary as class representatives of their class and the undersigned counsel as class counsel;
5. And enjoin and restrain all Defendants, and their officers, agents, servants, employees, attorneys, and all other persons who are in active concern or participation with any of them, from rescinding the immigration status of those TPS holders who have school-aged U.S. citizen children for so long as the children remain age five to eighteen;

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6. Grant an award of attorneys' fees and costs; and
7. Grant any other and further relief that this Court may deem fit and proper.

Date: March 12, 2018

Respectfully submitted,

SIDLEY AUSTIN LLP

/s/ Sean A. Commons*

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Nicole M. Ryan

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Emilou MacLean

Jessica Karp Bansal

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* Filer attests that all signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.