## No. 25-2120

# IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

NATIONAL TPS ALLIANCE, et al.,

Appellees,

v.

KRISTI NOEM, et al.,

Appellants.

On Appeal from the United States District Court for the Northern District of California District Court Case No. 3:25-cv-1766

## APPELLANTS' CIRCUIT RULE 27-3 CERTIFICATE

(Relief requested by April 15, 2025)

#### **CIRCUIT RULE 27-3 CERTIFICATE**

## (1) Telephone numbers and addresses of attorneys for the parties

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## (2) Facts showing the existence and nature of emergency

As set forth more fully in the motion, the district court entered a nationwide order on March 31, 2025, effectively enjoining implementation of Department of Homeland Security (DHS) Secretary Noem's 2025 decisions to vacate the 2025 Temporary Protected Status (TPS) Extension for Venezuela and to terminate the 2023 TPS Designation for Venezuela.

As explained below, 8 U.S.C § 1254a(b)(5)(A) plainly precludes judicial review of both determinations. Even if it did not, the court's determination that the Secretary lacked inherent authority to reconsider a TPS determination was erroneous. The jurisdiction stripping statute also bars Plaintiffs' constitutional claims. But even if it did not, the district court was wrong to look behind the Secretary's facially legitimate actions and hunt for illicit purposes. In analyzing the equal protection claim, the district court should have applied the deferential standard of *Trump v. Hawaii*, 585 U.S. 667 (2018), because the Secretary's decisions were based on a national interest finding. Regardless

of the standard of review, nothing in the record supports a finding of animus. Adding to the list of defects, the court also lacked jurisdiction to issue its injunction under 8 U.S.C. § 1252(f)(1), which the Supreme Court has unequivocally held prohibits courts from enjoining or restraining actions to enforce, implement, or otherwise carry out the specified statutory provisions, including TPS.

The balance of equities also favors a stay because the district court is inflicting irreparable harm by preventing DHS from exercising its authority regarding TPS in furtherance of the national interest. The district court's order frustrates Secretary Noem's substantive judgment as to how to implement the TPS statute in line with the government's interests. These harms will be compounded the longer that the injunction remains in place. Finally, the district court exceeded its authority in ordering broad-reaching relief that extended beyond the parties before it.

## (3) When and how counsel was notified

Appellants' counsel notified counsel for Appellees by phone and email on April 4, 2025, of Appellants' intention to file this motion. On April 4, 2025, counsel for Appellees' responded that they opposed the motion. Service will be effected through the ACMS system.

#### (4) Submissions to the district court

The district court issued its written order granting Appellees' motion to postpone on March 31, 2025. Appellants moved for a stay pending appeal the next day, on April 1, 2025. The district court denied Appellee's motion to stay on April 4, 2024. Dkt. 102.

# (5) Decision requested by

A decision on the motion for a stay pending appeal is requested as soon as possible, but no later than April 15, 2025.

Undersigned counsel certifies that the foregoing information complies with Circuit Rule 27-3.

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