

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

CHRISTIAN CABEZA-RAMIREZ,
et al.,

Petitioners,

V.

WARDEN, STEWART DETENTION
CENTER,

Respondent.

• • • • •

Case No. 4:26 cv 571 CDL AGH
28 U.S.C. § 2241

RESPONDENT'S SUPPLEMENTAL RESPONSE

On April 8, 2026, Petitioner Christian Cabeza-Ramirez filed a petition for a writ of habeas corpus (“Petition”). ECF No. 1. After Respondent filed his Response, the Court consolidated other cases making similar claims into this case, *see* ECF No. 12, and thereafter ordered the parties to supplement their pleadings, if desired, by May 12, 2026, *see* ECF No. 13. For the reasons explained below, the Petitions should be denied.¹

non-criminal TPS recipients generally receive statutory protections against removal, but emphasizes that such protections do not divest the government of independent detention authority under 8 U.S.C. § 1226(a) for individuals facing pending criminal charges or posing public safety risks. Because the Secretary of Homeland Security vacated the January 17, 2025, extension of TPS for Venezuela in February 2025, Petitioners no longer hold valid TPS. Consequently, their ongoing detention during removal proceedings is statutorily authorized. Petitioners argue that the vacatur of the TPS designation for Venezuela was invalid. Alternatively, they argue that the Court must apply, as a matter of issue preclusion, the declaratory judgment issued by the District Court for the Northern District of California in *NTPSA*, which declared the vacatur to be in violation of the APA, or that the Court should find on the substance that the vacatur violated the APA.

B. History of Venezuelan TPS

On March 9, 2021, former Secretary of Homeland Security Alejandro Mayorkas designated Venezuela for TPS based on extraordinary and temporary conditions that prevented nationals of Venezuela from safely returning (the 2021 Venezuela Designation). *See Designation of Venezuela for [TPS] and Implementation of Employment Authorization for Venezuelans Covered by Deferred Enforced Departure*, 86 Fed. Reg. 13,574 (Mar. 9, 2021). The former Secretary extended Venezuela's TPS designation twice. *See Extension of the Designation of Venezuela for [TPS]*, 87 Fed. Reg. 55,024 (Sep. 8, 2022); *see also Extension and Redesignation of Venezuela for [TPS]*, 88 Fed. Reg. 68,130 (Oct. 3, 2023). On October 3, 2023, in addition to extending the 2021 Venezuela TPS status through September 2025, the former Secretary redesignated Venezuela for TPS, effective from October 3, 2023, through April 2, 2025 (the 2023 Venezuela Designation). *See 2023 Venezuela Designation*, 88 Fed. Reg. 68,130. This notice provided procedures for initial applicants registering for TPS under the 2023 Venezuela Designation, and it also allowed Venezuelan

nationals who had previously registered for TPS under the 2021 Designation to re-register for TPS and apply to renew their employment authorization document with U.S. Citizenship and Immigration Services (“USCIS”). *Id.* On January 10, 2025, former Secretary Mayorkas issued a notice extending the 2023 Venezuela Designation for 18 months, allowing a consolidation of filing processes such that all eligible Venezuela TPS beneficiaries (whether under the 2021 or 2023 designations) could obtain TPS through October 2, 2026 (the 2025 Venezuela Extension). *See Extension of the 2023 Designation of Venezuela for [TPS]*, 90 Fed. Reg. 5,961 (Jan. 17, 2025).

On January 28, 2025, former Secretary Noem vacated the 2025 Venezuela Extension, thereby restoring the status quo that preceded that decision (the 2025 Venezuela Vacatur). *See Vacatur of 2025 [TPS] Decision for Venezuela*, 90 Fed. Reg. 8,805 (Feb. 3, 2025). She found that the 2025 Venezuela Extension “did not acknowledge the novelty of its approach” or “explain how it is consistent with the TPS statute.” *Id.* at 8,807; *see* 8 U.S.C. § 1254a(b)(3). The former Secretary determined that the “lack of clarity” warranted a vacatur to “untangle the confusion and provide an opportunity for informed determinations regarding the TPS designations and clear guidance.” *Id.*

After reviewing the Venezuelan country conditions and consulting with the appropriate U.S. Government agencies, on February 1, 2025, former Secretary Noem determined that Venezuela no longer met the conditions for the 2023 Venezuela Designation and that it was “contrary to the national interest to permit the covered Venezuelan nationals to remain temporarily in the United States.” *See Termination of the October 3, 2023 Designation of Venezuela for [TPS]*, 90 Fed. Reg. 9,040 (Feb. 5, 2025). Accordingly, former Secretary Noem terminated the 2023 Designation of Venezuela, effective April 7, 2025 (the 2025 Venezuela Termination). *Id.* at 9,040-41. In making this determination, the former Secretary highlighted the “notable improvements in

several areas, such as the economy, public health, and crime,” that allow for Venezuelan nationals to be “safely returned to their home country.” *Id.* at 9,042. Even assuming extraordinary and temporary conditions remained, however, the former Secretary explained that terminating the 2023 Venezuela TPS Designation is necessary because it is contrary to the national interest to permit the covered Venezuelan nationals to remain temporarily in the United States. *Id.* The national interest is “an expansive standard that may encompass an array of broad considerations” which “calls upon the Secretary’s expertise and discretionary judgment.” *Id.* Former Secretary Noem explained that the significant population of TPS holders has resulted in “associated difficulties in local communities where local resources have been inadequate to meet the demands cause by increased numbers,” and further underscored that, across the United States, “city shelters, police stations and aid services are at maximum capacity.” *Id.* In considering the national interest, she found that this population includes members of Tren de Aragua, a transnational criminal organization recently determined to “pos[e] threats to the United States.” *Id.* at 9,042-43. Former Secretary Noem also observed that “U.S. foreign policy interests, particularly in the Western Hemisphere, are best served and protected by curtailing policies that facilitate or encourage illegal and destabilizing migration.” *Id.*

LEGAL FRAMEWORK

Petitioners bring their claims via petitions for writ of habeas corpus, and not as a civil action under the APA. As such, the Court must review their claims through the habeas lens and should not consider this case as though an ordinary challenge under the APA. Based on Petitioners’ procedural choices, there are various jurisdictional impediments to the relief they seek, in addition to the substantive flaws in their position.

A claim may proceed in this Court only if federal subject matter jurisdiction exists. *Lifestar Ambulance Serv., Inc. v. United States*, 365 F.3d 1293, 1295 (11th Cir. 2004). This is because “[f]ederal courts are not courts of general jurisdiction; they have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto.” *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986) (citation omitted). “The limits upon federal jurisdiction, whether imposed by the Constitution or by Congress, must be neither disregarded nor evaded.” *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). Additionally, “[a] petitioner may not create the jurisdiction that Congress chose to remove simply by cloaking an . . . argument in constitutional garb.” *Arias v. U.S. Att’y Gen.*, 482 F.3d 1281, 1284 (11th Cir. 2007) (internal quotations and citations omitted).

Here, Petitioners attempt to bypass statutory barriers by dressing an administrative challenge to the nationwide TPS vacatur in the constitutional garb of a Fifth Amendment due process claim. Although Petitioners seek to use habeas corpus as a vehicle for administrative review, “the APA does not afford an implied grant of subject-matter jurisdiction permitting federal judicial review of agency action.” *Califano v. Sanders*, 430 U.S. 99, 107 (1977); *see also* 5 U.S.C. § 702 (“Nothing [in the APA] (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.”); *Choctaw Mfg. Co., Inc. v. United States*, 761 F.2d 609, 615 (11th Cir. 1985) (“Congress did not intend [the APA] to serve as an independent source of district court jurisdiction.”). Consequently, a petitioner cannot use a habeas petition to manufacture a right to judicial review over administrative actions that are otherwise insulated from scrutiny. The statute itself specifies that the APA does not apply in two circumstances: “(1) [where]

statutes preclude judicial review; or (2) [where] agency action is committed to agency discretion by law.” 5 U.S.C. § 701(a). Based on these limitations, in the APA context, the Eleventh Circuit has recognized that “[i]f a statute precludes judicial review, federal courts lack subject matter jurisdiction.” *Brasil v. Sec’y, Dep’t of Homeland Sec.*, 28 F.4th 1189, 1192 (11th Cir. 2022) (citation omitted).

ARGUMENT

Petitioners generally raise two alternative claims: (1) their detention violates 8 U.S.C. § 1254a(d)(4) because they retain TPS under the *NTPSA* declaratory order, or (2) the 2025 Venezuela Vacatur and the 2025 Venezuela Termination violated the APA. As stated above, Respondent thoroughly detailed in his Response why the first claim should be denied and the Court should not accept the *NTPSA* court’s determination as to these agency actions. Petitioners’ second claim should likewise be denied, for five reasons. **First**, the TPS statute itself bars Petitioners’ claims. **Second**, Petitioners’ APA claims are not cognizable in this habeas action and the APA bars Petitioners’ claims. **Third**, the Immigration and Nationality Act (“INA”) precludes the relief requested. **Fourth**, the Secretary’s determinations did not violate the APA. **Finally**, to the extent Petitioners’ claims are construed as constitutional challenges, they likewise fail.

I. The TPS statute itself bars Petitioners’ claims.

The TPS statute provides that “[t]here 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” for TPS. 8 U.S.C. § 1254a(b)(5)(A). This provision bars all of Petitioners’ claims in this Court, whether statutory or constitutional, each of which challenges former Secretary Noem’s vacatur and termination. *Id.*; *see also* H.R. Rep. No. 101-245, at 14 (1989) (“Moreover, none of the [Secretary’s] decisions with regard to granting, extending, or terminating TPS will be subject

to judicial review.”). The statute’s broad terms confirm its broad sweep. The word “any” carries an expansive meaning. *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 219 (2008) (“of whatever kind”). And the phrase “with respect to” similarly “has a broadening effect, ensuring that the scope of a provision covers not only its subject but also matters relating to that subject.” *Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 717 (2018); *see also Dan’s City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 260 (2013) (the similar phrase “related to” means “having a connection with or reference to . . . whether directly or indirectly”); Webster’s New Collegiate Dictionary 1004 (9th ed. 1990) (defining “respect” as “a relation to or concern with something usually specified”). Indeed, the Supreme Court held that materially similar jurisdiction stripping language in the INA precludes a whole category of judicial review. *Patel v. Garland*, 596 U.S. 328, 337-40 (2022) (statute barring review of “any judgment regarding the granting of relief” covers “any authoritative decision” on the matter).

Section 1254a plainly precludes judicial review of the former Secretary’s 2025 Venezuela Termination because it is a “determination with respect to the termination” of the 2023 TPS Designations for Venezuela. *See 2025 Venezuela Termination*, 90 Fed. Reg. 9,040. A decision to terminate a TPS designation is at the core of the jurisdictional statute’s broad sweep. Because the former Secretary’s determination to terminate the 2023 Venezuela Designation was clearly a determination “with respect to” the TPS extension or termination, this Court lacks jurisdiction to review it. *See Ramos*, 975 F.3d 872, 889 (9th Cir. 2020) (this bar “preclude[s] direct review of the Secretary’s country-specific TPS determinations”), *vacated*, 59 F.4th 1010, 1011 (9th Cir. 2023).

The former Secretary’s 2025 Venezuela Vacatur and 2025 Venezuela Termination likewise fall within § 1254a(b)(5)(A)’s bar. A determination to fully or partially vacate an extension of a designation is undoubtedly a determination “with respect to” the “extension of a designation.” 8

U.S.C. § 1254a(b)(5)(A); *see Merriam-Webster's Dictionary* (2025), Determination (“the act of deciding definitely and firmly”); *The American Heritage Dictionary* (2022), Determination (“The act of making or arriving at a decision[;] The decision reached[;] The settling of a question by an authoritative decision or pronouncement”); *Black's Law Dictionary* 450 (defining determination as “[t]o settle or decide by choice of alternatives or possibilities.”); *Webster's New Collegiate Dictionary* 346 (“the act of deciding definitively and firmly”); *Webster's Encyclopedic Unabridged Dictionary* 393 (“the act of coming to a decision or of fixing or settling a purpose”). Those determinations are therefore not subject to any judicial review—full stop. *See Patel*, 596 U.S. at 338 (acknowledging importance of broadening terms “any” and “regarding” in similar jurisdiction-stripping provision).

The application of § 1254a(b)(5)(A)’s bar on judicial review is not complicated. Petitioners challenge the former Secretary’s 2025 Venezuela Termination and Vacatur determinations. But each was a determination with respect to “termination or extension of a [TPS] designation.” 8 U.S.C. § 1254a(b)(5)(A). This Court thus lacks jurisdiction to review them, and this case should end now.

Petitioners try to overcome this jurisdictional bar by challenging the factors and criteria that former Secretary Noem used in making the determinations. *See, e.g., Cabeza-Ramirez Pet.* ¶¶ 52-54. Specifically, they allege that Defendants had “no authority to vacate a TPS extension,” *Id.* But the TPS statute encompasses those decisions by barring review of “any determination” “with respect to” the “termination or extension of a designation” of Venezuela for TPS. 8 U.S.C. § 1254a(b)(5)(A); *see Patel*, 596 U.S. at 338-39 (similar jurisdictional bar did not “restrict itself to certain kinds of decisions,” but instead covered both subsidiary determinations and the ultimate, “last-in-time judgment” on the matter). Petitioners claim that “Congress neither explicitly nor

implicitly authorized” the vacatur of a designation. *Cabeza-Ramirez Pet.* ¶ 54. But multiple courts have found that the statutory authorization to make a decision “must be understood as carrying with it an implied incidental authority” to revoke that decision, *China Unicom (Ams) Ops Ltd v FCC*, 124 F.4th 1128, 1143 (9th Cir. 2024), especially because the TPS statute gives the Secretary discretion over both the length of a TPS designation and the timing of periodic review. 8 U.S.C. § 1254a(b)(3)(A) (C); *see Macktal v Chao*, 286 F.3d 822, 825-26 (5th Cir. 2002) (holding agency acted lawfully by exercising inherent authority to reconsider decisions) (collecting cases).

Accordingly, judicial review is foreclosed by § 1254a(b)(5)(A), and this Court should dismiss this case for lack of jurisdiction.

II. The APA precludes review of the Venezuela determinations.

The APA explicitly precludes review where the agency action is “committed to agency discretion by law.” 5 U.S.C. § 701(a)(2). While “rare,” this section of the APA is used “where the relevant statute is drawn so that a court would have no meaningful standard against which to judge the agency’s exercise of discretion.” *Lincoln v. Vigil*, 508 U.S. 182, 191 (1993). A determination as to what constitutes the national interest is one of these rare circumstances. *See Hawaii*, 585 U.S. at 684-86 (explaining that where the President has statutory discretion to determine if an alien’s entry “would be detrimental to the interests of the United States,” federal courts should not inquire “into the persuasiveness of the President’s justifications”). The determination of “national interest” is one that calls upon the Secretary’s “expertise and judgment” and is not a manageable legal standard. *See Zhu v. Gonzales*, 411 F.3d 292, 295 (D.C. Cir. 2005); *see also Webster v. Doe*, 486 U.S. 592, 600 (1988). Because there is no manageable standard by which this Court can judge the Secretary’s finding that permitting TPS holders from Venezuela is contrary to the national interest,

this Court also lacks jurisdiction to review any determination based upon that finding. *See* 2025 Venezuela Vacatur; 2025 Venezuela Termination.

Furthermore, Petitioners have filed habeas petitions—not a civil complaint—and their APA claims are not cognizable in habeas. This Court addressed this issue in *Villafuerte v. Warden, Stewart Det. Ctr.*, No. 4:18-cv-116-CDL-MSII, 2018 WL 6626640 (M.D. Ga. Nov. 27, 2018), *recommendation adopted*, 2018 WL 6620890 (M.D. Ga. Dec. 18, 2018). There, a non-citizen filed a habeas petition challenging his continued detention. *Villafuerte*, 2018 WL 6626640, at *1. However, the non-citizen also raised an APA claim concerning the denial of his application for immigration status. *Id.* at *1-2. The Court held that Petitioner’s APA claim was “not cognizable” for two reasons. First, the non-citizen sought a form of “collateral administrative relief” which is not properly within the purview of habeas corpus. *Id.* at *2 (quotations and citations omitted). Second, it was “inappropriate” to permit the non-citizen to raise a civil claim because the non-citizen filed a habeas petition with a far lower filing fee. *Id.* The Court should reach the same conclusion here and decline to allow Petitioners to bootstrap APA claims onto their Petitions.

Although Petitioners have filed habeas petitions, they also invoke the APA in claiming that the 2025 Venezuela Vacatur and Termination violated that statute. Even assuming Petitioners may raise an APA challenge through a habeas petition, the Court similarly lacks jurisdiction under the APA to review the Venezuela determinations.

Based on these limitations, in the APA context, the Eleventh Circuit has recognized that “[i]f a statute precludes judicial review, federal courts lack subject matter jurisdiction.” *Brasil v. Sec’y, Dep’t of Homeland Sec.*, 28 F.4th 1189, 1192 (11th Cir. 2022) (citation omitted). As discussed above, 8 U.S.C. § 1254a(b)(5)(A) precludes judicial review of these actions, and the Court therefore lacks jurisdiction over Petitioners’ APA claims.

III. The INA precludes the requested relief.

Title 8 United States Code Section 1252(f)(1) bars district courts and courts of appeals from entering an order that “enjoin[s] or restrain[s]” the operation of the statutory provisions § 1252(f)(1) covers. Section 1254a is one of those covered provisions. Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), div. C, Pub. L. No. 104-208, §§ 306, 308, 110 Stat. 3009-546. Although Section 1254a appears in Part V of the U.S. Code, the U.S. Code is inconsistent with the INA, wherein the TPS provisions in Section 244 appear in Chapter 4. *Id.* When there is a conflict, the INA prevails. *See Galvez v. Jaddou*, 52 F.4th 821, 830-31 (9th Cir. 2022); *see also U.S. Nat’l Bank of Oregon v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 448 (1993) (“Though the United States Code is ‘prima facie’ evidence that a provision has the force of law, 1 U.S.C. § 204(a), it is the Statutes at Large that provides the ‘legal evidence of laws,’ [1 U.S.C.] § 112....”); *United States v. Carroll*, 105 F.3d 740, 744 (1st Cir. 1997). INA § 244 lies within chapter 4 of title II of the INA, as amended.

Regardless of how Petitioners frame the relief sought, an order that would have the effect of enjoining or restraining DHS’s implementation of the TPS provisions in § 1254a is jurisdictionally barred under § 1252(f)(1). *See Biden v. Texas*, 597 U.S. 785, 797 (2022) (§ 1252(f)(1) “generally prohibits lower courts from entering injunctions that order federal officials to take or *to refrain from taking* actions to enforce, implement, or otherwise carry out the specified statutory provisions.”) (quoting *Garland v. Aleman Gonzalez*, 596 U.S. 543, 544 (2022)) (emphasis added); *see Black’s Law Dictionary* (12th ed. 2024) (An injunction is “[a] court order commanding or preventing an action”). To “restrain” means to “check, hold back, or prevent (a person or thing) from some course of action,” to “inhibit particular actions,” or to “stop (or perhaps compel)” action. *Aleman Gonzalez*, 596 U.S. at 549 (quoting 5 Oxford English Dictionary 756 (2d

cd. 1989)). An order setting aside the former Secretary's vacatur and termination decisions would be an order "restraining" federal officials. *Id.* at 550.

It does not matter for purposes of Section 1252(f)(1) whether Petitioners request an order postponing, staying, enjoining, vacating, or setting aside the former Secretary's determinations. *See Cabeza-Ramirez Pet. Prayer for Relief* ¶¶ 3-7 (seeking a declaration that Petitioner's detention violates 8 U.S.C. § 1254a, Petitioner's immediate release, and an injunction from his re-detention for the duration of his alleged TPS period). Such an injunction "restrict[s] or stop[s] official action," *Direct Mktg. Ass'n v. Borhl*, 575 U.S. 1, 13 (2015), by compelling DHS to stop enforcing the termination and vacatur decisions, determinations pursuant to 8 U.S.C. § 1254a. *See United States v. Texas*, 599 U.S. 670, 691 (2023) (Gorsuch, J., concurring) (questioning the validity of the district court's finding that § 1252(f)(1) does not bar vacatur orders and that § 706(2) authorizes courts to issue them). Enjoining Petitioners from being re-detained is another way of asking to reinstate their TPS status, which necessarily acts to enjoin the 2025 Venezuela Vacatur and Termination and would necessarily constitute an order "restraining" federal officials. Such an act is therefore prohibited by 8 U.S.C. § 1252(f)(1).

IV. The Venezuela determinations did not violate the APA.

Even if the Court concludes it has jurisdiction, the Court should dismiss Petitioners' APA claims because the Secretary's determinations were lawful and consistent with 8 U.S.C. § 1254a.

A. The former Secretary's 2025 Venezuela Vacatur was not arbitrary and capricious or contrary to law

The Secretary has inherent authority under 8 U.S.C. §§ 1103(a) and 1254a to reconsider past actions. Petitioners, however, contend that former Secretary Noem "did not have the authority to" issue the 2025 Venezuela Vacatur, *Cabeza-Ramirez Pet.* ¶ 54, that doing so "was arbitrary and capricious," *id.* ¶ 55, that the proffered reason was "merely pretext," *id.* ¶ 65, and that the

procedures used did not comply with those required by law, *id.* ¶ 67. Petitioners’ arguments are not persuasive.

Courts have long recognized that an administrative agency has inherent or statutorily implicit authority to reconsider and change a decision within a reasonable period if Congress has not foreclosed this authority by requiring other procedures. *See Albertson v. FCC*, 182 F.2d 397, 399 (D.C. Cir. 1950) (“The power to reconsider is inherent in the power to decide.”); *Chao v. Russell P. Le Frois Builder, Inc.*, 291 F.3d 219, 229 n. 9 (2d Cir. 2002) (agency’s power to reconsider “applies regardless of whether the applicable statute and agency regulations expressly provide for such review, but not where there is contrary legislative intent or other affirmative evidence”) (emphasis in original) (quotations omitted); *see also Ivy Sports Medicine, LLC v. Burwell*, 767 F.3d 81, 86 (D.C. Cir. 2014) (collecting cases and explaining that “administrative agencies are assumed to possess at least some inherent authority to revisit their prior decisions”); *The Last Best Beef, LLC v. Dudas*, 506 F.3d 333, 340 (4th Cir. 2007) (federal agencies have broad authority to reconsider their prior decisions, particularly when the prior decision contained an error); *Macktal v. Chao*, 286 F.3d 822, 825-26 (5th Cir. 2002) (holding agency acted lawfully by exercising inherent authority to reconsider decisions) (collecting cases); *Gun South, Inc. v. Brady*, 877 F.2d 858, 862 (11th Cir. 1989) (“[T]he Supreme Court and other courts have recognized an implied authority in other agencies to reconsider and rectify errors even though the applicable statute and regulations do not expressly provide for such reconsideration.”). And the Secretary has asserted and exercised this authority previously. *See Reconsideration and Rescission of Termination of the Designation of El Salvador for [TPS]; Extension of the [TPS] Designation for El Salvador*, 88 Fed. Reg. 40,282, 40,285 & n.16 (June 21, 2023) (former Secretary Mayorkas exercising “inherent authority to reconsider any TPS-related determination, and upon

reconsideration, to change the determination” to vacate his predecessor’s termination of El Salvador’s TPS designation).

Here, Congress gave the Secretary “undoubtedly broad” authority to “make TPS determinations” and ensure the continued designation of a country complies with the law. *Ramos*, 975 F.3d at 890 (finding statutory constraints “on the Secretary’s discretion, [are] in favor of limiting unwarranted designations or extensions . . .”) (cleaned up). Section 1254a requires the Secretary to review conditions within foreign states designated for TPS periodically, but any subsequent action turns on the Secretary’s findings about whether the conditions for such designation continue to exist. 8 U.S.C. § 1254a(b)(3)(A)-(C). The statute also requires the Secretary to determine whether “permitting aliens to remain temporarily in the United States is contrary to the national interest of the United States.” 8 U.S.C. § 1254a(b)(1)(C); *cf. Poursina v. USCIS*, 936 F.3d 868, 874 (9th Cir. 2019) (observing, in an analogous INA context, “that the ‘national interest’ standard invokes broader economic and national-security considerations, and such determinations are firmly committed to the discretion of the Executive Branch—not to federal courts” (citing *Hawaii*, 585 U.S. at 684-86)). Former Secretary Noem took the steps provided for by the TPS statute and, while Petitioners may disagree with her decision, they cannot adequately allege that the vacatur was “pretext” or contrary to the statutory process.

Flexibility to reconsider decisions makes especially good sense in the TPS context. The Secretary’s TPS authority inevitably requires her to make sensitive assessments affecting United States foreign policy. *See Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952) (“[A]ny policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations [and] the war power.”). When the Executive Branch acts in the field of foreign policy “. . . pursuant to an express or implied authorization of Congress, [its] authority

is at its maximum, for it includes all that [it] possesses in [its] own right plus all that Congress can delegate.” *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring) (cleaned up).

Employing Petitioners’ analysis that Section 1254a bars such reconsideration would mean that no Secretary of Homeland Security could ever vacate a designation or extension of a designation, no matter the type of national security threat posed or the seriousness of the error or legal defect in a prior determination. Section 1254a does not mandate such an unworkable and potentially detrimental limitation of the Secretary’s ability to fulfill her border security, national security, and foreign policy responsibilities by exercising her broad authority to administer and enforce the immigration laws, *see, e.g.*, 6 U.S.C. § 202(1) (5), 8 U.S.C. § 1103(a)(1), (a)(3), and to do so consistent with the President’s Executive Orders. For these articulated reasons, former Secretary Noem exercised her inherent authority under Section 1254a in revisiting and reconsidering prior TPS determinations. In fact, former Secretary Noem acted promptly to reconsider former Secretary Mayorkas’s last-minute TPS extension for Venezuela—less than two weeks later—and did so months before the extension’s effective date of April 3, 2025. If agencies hold *any* inherent power to reconsider past actions, as the law says they do, this was, as former Secretary Mayorkas previously recognized, a quintessential exercise of that power. *See 2023 El Salvador Reconsideration*, 88 Fed. Reg. 40,282, 40,285 & n.16 (June 21, 2023).

The other bases that Petitioners invoke do not establish that the Vacatur was arbitrary and capricious. *Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 378 (1989) (holding that under the arbitrary and capricious standard, a reviewing court must determine whether an agency’s decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment). Petitioners allege that the former Secretary did not consider that 2021

Venezuelan TPS holders were eligible for TPS under the 2023 Designation. Cabeza-Ramirez Pet. ¶ 63. However, simple eligibility should not overcome the former Secretary's reasoned concerns that the 2025 Venezuela Extension consolidated the two overlapping populations and prevented her from making "informed determinations regarding the TPS designation and clear guidance." 2025 Venezuela Vacatur, 90 Fed. Reg. 8,807. For this same reason, it was not arbitrary or capricious for the former Secretary to determine that de-consolidating the registration processes would resolve her concern that the 2025 Venezuela Extension implicitly extended the 2021 Designation. Petitioners also contend that the asserted reasons for the Vacatur were merely pretext for a desire to implement a new policy with the new administration. But "[i]t is hardly improper for an agency head to come into office with policy preferences and ideas, discuss them with affected parties, sound out other agencies for support, and work with staff attorneys to substantiate the legal basis for a preferred policy." *Dep't of Commerce v. New York*, 588 U.S. 752, 78 (2019). As the Supreme Court has explained, "a court may not set aside an agency's policymaking decision solely because it may have been influenced by political considerations or prompted by Administrative priorities Such decisions are routinely informed by unstated considerations of politics, the legislative process, public relations, interest groups, foreign relations, and national security concerns (among others). *Id.* at 782.

The former Secretary's Venezuela Vacatur was consistent with the previous Secretary's decisions revisiting and rescinding prior TPS determinations. *See* 2023 El Salvador Reconsideration, 88 Fed. Reg. at 40,285. Accordingly, the former Secretary's 2025 Venezuela Vacatur did not violate the APA and Petitioners' claims should be dismissed.

B. The former Secretary's 2025 Venezuela Termination was not contrary to law.

Petitioners also assert that the 2025 Venezuela Termination was contrary to law because it went into effect “earlier than when the most recent extension expires.” Cabeza-Ramirez Pet. ¶ 78. This argument ignores the statutory language providing that if the Secretary determines during her periodic review that the country no longer continues to meet the conditions for designation, termination is warranted. 8 U.S.C. § 1254a(b)(3)(B). One of the conditions for designation under § 1254a(b)(1)(C) is a finding by the Secretary that “permitting the aliens to remain temporarily in the United States is [not] contrary to the national interest.” If the Secretary determines otherwise with respect to the national interest, as she did with respect to the 2023 Venezuela Designation, then the designation must be terminated.

V. Petitioners' constitutional claims fail because the 2025 Venezuela Vacatur and Termination are valid.

Even if the Court finds that it has jurisdiction to consider Petitioners' constitutional claims, former Secretary Noem's decisions to vacate the 2025 Venezuela Extension and terminate the 2023 Venezuela Designation are valid, as discussed above, and therefore the Petitioners' current detention does not violate their rights as TPS recipients because they are no longer TPS recipients. None of the Petitioners argue that they are not properly detained under the INA except to the extent they believe their alleged TPS status means they cannot be detained at all.^{2 3} Their due process

² Petitioner Diaz Gonzalez is detained pending his departure from the United States pursuant to his agreement to withdraw his application for admission (though his departure is currently prevented by the Court's TRO in this case). *See* Declaration of Deportation Officer Donovan Salfarlie. Petitioner Cabeza-Ramirez is detained pre-final order of removal pursuant to 8 U.S.C. § 1226(a). *See* Declaration of Deportation Officer Jason Godwin and attached exhibits. Upon information and belief, Petitioner and Liendo Ruiz is detained pre-final order of removal pursuant to 8 U.S.C. § 1226(a). Petitioner Aponte Reyes is detained post-final order of removal pursuant to 8 U.S.C. § 1231(a) and is within the 90 day removal period (though his removal is currently prevented by the Court's TRO in this case). *See* Declaration of Deportation Officer Marilyn Guerra.

³ Four additional Petitioners filed petitions on May 11, 2026, and filed notices to consolidate their similar TPS-related challenges with this case. *See* 4:26-cv-802-CDL-AGH; 4:26-cv-803-CDL-ALS; 4:26-cv-800-

claims regarding the legality of their detention depend on the validity of the argument against the 2025 Venezuela Vacatur and Termination. Because the 2025 Venezuela Vacatur and Termination are valid, as discussed above, Petitioners' arguments regarding the legality of their detention fail.

CONCLUSION

The Petitions should be denied in their entirety. The *NTPSA* Order does not have preclusive effect in this consolidated case, as explained in Respondent's Response to the Petition in *Cabeza-Ramirez*. Furthermore, the 2025 Venezuela Vacatur and Termination are valid and Petitioners' claims fail for the reasons stated above.

Respectfully submitted, this 12th day of May, 2026.

WILLIAM R. KEYES
UNITED STATES ATTORNEY

BY: /s/ Michael P. Morrill
MICHAEL P. MORRILL
Assistant United States Attorney
Georgia Bar No. 545410
United States Attorney's Office
Middle District of Georgia
P. O. Box 2568
Columbus, Georgia 31902
Phone: (706) 649-7728
michael.morrill@usdoj.gov

CDL-ALS; 4:26-cv-801-CDL-AGH. On information and belief, Petitioners Velazco Abadia, Marrero Gonzalez, and Sanz Rivero are detained pre-final order of removal pursuant to 8 U.S.C. § 1226(a). On information and belief, Petitioner Carmona Acuna is detained post-final order of removal pursuant to 8 U.S.C. § 1231, unless an appeal has been filed with the BIA. As of the time of filing, no appeal appears on the docket.