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# U.S. Supreme Court Permits DHS to Move Forward with Termination of 2023 Venezuela TPS Designation

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On May 19, 2025, the US Supreme Court issued a decision that allows the Department of Homeland Security (DHS) to move forward with the termination of the 2023 Venezuela Temporary Protected Status (TPS) designation. The termination, originally scheduled for April 7, 2025, had been temporarily postponed. The Court stayed implementation of a March 31, 2025 order issued by the United States District Court for the Northern District of California, pending the outcome of an appeal to the Ninth Circuit Court of Appeals on the legality of the TPS termination. U.S. Citizenship and Immigration Services (USCIS) is expected to issue guidance on how it will implement the reinstated termination.

## Background

TPS is a humanitarian program that allows certain foreign nationals to remain in the United States when it is unsafe or other circumstances prevent them from returning to their home country. TPS provides relief and work authorization to people already in the U.S. so long as the applications are filed within the open initial registration periods. In 2021, former President Biden sought to preserve existing TPS enrollment and expand the program, to include Afghanistan, Cameroon, Ethiopia, Lebanon, Myanmar, Ukraine, and Venezuela. In 2023, Venezuela was designated for Temporary Protected Status (TPS) providing relief to over 350,000 Venezuelans.

On January 17, 2025, then-DHS Secretary Mayorkas extended TPS for Venezuela for 18 months, from April 3, 2025 to October 2, 2026. Secretary Mayorkas's extension applied to both TPS designations for Venezuela (2021 and 2023). TPS Venezuelan beneficiaries were required to re-register with DHS between January 17 and September 10, 2025 in order to obtain extended benefits. They also benefited from an automatic extension of employment authorization through April 2, 2026.

On January 28, 2025, new DHS Secretary Noem announced that she was vacating Secretary Mayorkas's extension, which would revert to its prior expiration dates of April 2, 2025 (for the 2023 designation) and September 10, 2025 (for the 2021 designation). Shortly thereafter, Secretary Noem made the decision not to further extend the 2023 designation. The Secretary announced that she would decide by July 2025 whether to extend benefits for the 2021 designation or allow them to lapse. DHS also

suspended the adjudication of TPS re-registrations for Venezuela. Legal challenges to Secretary Noem's decision followed, including the case *National TPS Alliance v. Noem* (Case No. 3:25-cv-01766 (N.D. Ca., filed Feb. 19, 2025)), in which a federal judge in California temporarily blocked the termination of the 2023 designation.

The U.S. government appealed to the Ninth Circuit and sought emergency relief from the Supreme Court. In its brief (two paragraph) order, the Supreme Court granted the government's request, allowing the termination of the TPS program to proceed until the Ninth Circuit issues a decision on the merits.

### **2023 vs. 2021 TPS Venezuela Designation**

TPS beneficiaries of the 2023 designation, including those with an automatic extension of their employment authorization document, should seek counsel if they have not already done so. TPS remains valid for individuals under the 2021 Venezuela designation until September 10, 2025. DHS must decide by July 12, 2025, whether to extend or terminate that designation. If it opts for termination, the effective date must be at least 60 days after the announcement is published and cannot be earlier than September 10. If no decision is made by the deadline, an automatic six-month extension will be triggered. DHS has also stated that individuals who originally held TPS under the 2021 designation but re-registered under the now-vacated 2023 extension will be reinstated under the 2021 designation, subject to its timelines and restrictions.

### **Next Steps**

Similarly, with lawsuits filed regarding TPS designation terminating for other countries, including Afghanistan and Haiti, and CHNV (Cuba, Haiti, Nicaragua, Venezuela) Parole Program, another humanitarian program, individuals and employers should closely track updates and plan accordingly. Additionally, employers may be able to proactively review copies of Employment Authorization Documents (EADs) that were provided to assess the impact. Those with work authorization under TPS would have EADs with codes A12 or C19, and CHNV parole EADs reflect C11. Please note that many individuals with EADs in these categories may also have other pending cases that could offer protection from the effects of these humanitarian program terminations. Employers with affected employees are encouraged to consult with their legal counsel to plan and prepare for forthcoming guidance from USCIS.

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