

1 Ahilan T. Arulanantham (SBN 237841)
2 arulanantham@law.ucla.edu
3 CENTER FOR IMMIGRATION LAW AND
4 POLICY, UCLA SCHOOL OF LAW
5 385 Charles E. Young Dr. East
6 Los Angeles, CA 90095
7 Telephone: (310) 825-1029

8 Emilou H. MacLean (SBN 319071)
9 emaclean@aclunc.org
10 Michelle (Minju) Y. Cho (SBN 321939)
11 mcho@aclunc.org
12 Amanda Young (SBN 359753)
13 ayoung@aclunc.org
14 ACLU FOUNDATION
15 OF NORTHERN CALIFORNIA
16 39 Drumm Street
17 San Francisco, CA 94111-4805
18 Telephone: (415) 621-2493
19 Facsimile: (415) 863-7832

20 Attorneys for Plaintiffs
21 *[Additional Counsel Listed on Next Page]*

22
23
24
25
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27
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

16 NATIONAL TPS ALLIANCE, DENIS
17 MOLINA, JHONY SILVA, MARIA ELENA
18 HERNANDEZ, O.C., SANDHYA LAMA,
19 S.K., TEOFILO MARTINEZ,

20 *Plaintiffs,*

21 v.

22 KRISTI NOEM, in her official capacity as
23 Secretary of Homeland Security, UNITED
24 STATES DEPARTMENT OF HOMELAND
25 SECURITY, and UNITED STATES OF
26 AMERICA,

27 *Defendants.*

Case No. 3:25-cv-05687- TLT

PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PARTIAL SUMMARY
JUDGMENT; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF

Date: TBD
Time: TBD
Place: TBD

1 Additional Counsel for Plaintiffs
2 Jessica Karp Bansal (SBN 277347)
3 jessica@ndlön.org
4 Lauren Michel Wilfong (*Pro Hac Vice* pending)
lwilfong@ndlön.org
5 NATIONAL DAY LABORER ORGANIZING NETWORK
6 1030 S. Arroyo Parkway, Suite 106
Pasadena, CA 91105
Telephone: (626) 214-5689

7 Eva L. Bitran (SBN 302081)
8 ebitran@aclusocal.org
.ACLU FOUNDATION
9 OF SOUTHERN CALIFORNIA
10 1313 West 8th Street
Los Angeles, CA 90017
Telephone: (213) 977-5236

12 Erik Crew (*Pro Hac Vice*)
ecrew@haitianbridge.org
13 HAITIAN BRIDGE ALLIANCE
4560 Alvarado Canyon Road, Suite 1H
14 San Diego, CA 92120
Telephone: (949) 603-7411

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17
18
19
20
21
22
23
24
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NOTICE OF MOTION

PLEASE TAKE NOTICE THAT, on September 8, 2025 or as soon thereafter as this matter may be heard, before the Honorable Trina L. Thompson of the United States District Court for the Northern District of California, Plaintiffs move for partial summary judgment to set aside three challenged agency actions under 5 U.S.C. section 706. This Motion is based upon this Notice of Motion and Motion; the accompanying Memorandum of Points and Authorities; the supporting declarations and evidence filed concurrently herewith; pleadings and filings in this case; any additional matter of which the Court may take judicial notice; and such further evidence or argument as may be presented before, at, or after the hearing. Unless otherwise specified, all citations in the Memorandum of Points and Authorities to an “Exhibit,” “Exhibits,” “Ex.” or “Exs.” refer to exhibits attached to the Declaration of Jessica Bansal.

Respectfully submitted,

NATIONAL DAY LABORER
ORGANIZING NETWORK
/s/ *Jessica Karp Bansal*
Jessica Karp Bansal
Lauren Michel Wilfong (*Pro Hac Vice*
pending)

Emilou MacLean
Michelle (Minju) Y. Cho
Amanda Young
ACLU FOUNDATION
OF NORTHERN CALIFORNIA

Ahilan T. Arulanantham
CENTER FOR IMMIGRATION LAW
AND POLICY, UCLA SCHOOL OF LAW

Eva L. Bitran
Diana Sanchez
ACLU FOUNDATION
OF SOUTHERN CALIFORNIA

Erik Crew (*Pro Hac Vice pending*)
HAITIAN BRIDGE ALLIANCE

Attorneys for Plaintiffs

INTRODUCTION

This motion seeks partial summary judgment to “set aside” the three challenged TPS terminations under 5 U.S.C. section 706 on a single ground: that Defendants failed to explain their decision to provide only 60 days—rather than at least six months—for an “orderly transition” prior to Plaintiffs losing their status.

The Ninth Circuit’s stay of this Court’s Postponement Order does not bar this Court from entering partial summary judgment on that claim before September 9—when an additional (more than) 50,000 people are scheduled to lose their right to live and work in this country under Defendants’ illegal TPS terminations. The Ninth Circuit’s stay order withdrew the *interim* protection granted by this Court, but it gave no reasons for doing so. Therefore, it does not bar this Court from reinstating those protections by granting partial summary judgment. Indeed, it is possible that the Ninth Circuit credited Defendants’ arguments regarding the balance of equities or the limitations on the proper scope of interim relief, both of which are relevant to postponement motions under Section 705, but not to this summary judgment motion, which seeks “set aside” relief under Section 706. Given that the stay provides no reasoning and has no precedential effect, it does not bar this Court from reaching a final outcome on this claim.

As this Court is well-aware, the TPS terminations challenged in this lawsuit purport to strip 60,000 long-time residents of lawful immigration status on 60 days' notice. This Court has already held that Plaintiffs are likely to succeed on the claim Plaintiffs press in this motion: their second APA claim, which challenges only the length of the transition period Defendants provided when they terminated TPS. As this Court already found, Defendants arbitrarily failed to acknowledge or explain their departure from two decades of unbroken agency practice when they declined to provide at least a six-month orderly transition period, and instead directed that Defendants be stripped of their immigration status in 60 days.

The impact of Defendants' unlawful action is to provide Plaintiffs and other TPS holders who have lived lawfully in the United States for at least 26 years (Honduras and Nicaragua) or 10 years (Nepal) only two months to pack up their lives—to sell homes, wrap up businesses, find new schools for children, scramble to avoid interruptions in essential health care, say impossible

1 goodbyes to U.S. citizen family—and somehow construct new futures in countries some have not
 2 lived in since they were toddlers.

3 Plaintiffs are well-aware that this Court has already made extraordinary adjustments to its
 4 schedule in order to carefully consider a large body of evidence and legal argument in this case on an
 5 expedited basis. Nonetheless, given the impact of Defendants' actions on Plaintiffs' lives and the
 6 lives of tens of thousands of other long-time lawful residents of this country, and the straight-
 7 forward nature of Plaintiffs' purely legal "change-in-position" claim, Plaintiffs respectfully request
 8 that this Court act expeditiously to grant the instant motion for partial summary judgment and set
 9 aside the challenged terminations as arbitrary and capricious under Section 706 of the APA before
 10 September 9.

11 **LEGAL STANDARD**

12 Summary judgment is appropriate when there is no genuine issue of material fact and the
 13 moving party is entitled to judgment as a matter of law. *Sierra Club v. Bosworth*, 510 F.3d 1016,
 14 1022 (9th Cir. 2007). Pursuant to Section 706 of the Administrative Procedure Act (APA), a court
 15 "shall" "hold unlawful and set aside agency action, findings, and conclusions" found to be, among
 16 other things, "(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with
 17 law;" "(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;" or
 18 "(D) without observance of procedure required by law." 5 U.S.C. § 706. In addition, the "law of the
 19 case" doctrine generally precludes a court from reconsidering an issue it has already decided,
 20 including decisions on pure issues of law made in the interim relief context. *Ingle v. Circuit City*,
 21 408 F.3d 592, 594 (9th Cir. 2005). *See Lone Star Sec. & Video, Inc. v. City of L.A.*, 989 F. Supp. 2d
 22 981, 989 (C.D. Cal. 2013), *aff'd*, 827 F.3d 1192 (9th Cir. 2016).

23 The Ninth Circuit stayed this Court's order postponing the effective date of the challenged
 24 terminations, but that order does not set the legal standard for purposes of this motion. The stay
 25 order provided no reasoning, and thus created no law. Even if it had, "a predictive analysis" in
 26 connection with granting a stay "should not, and does not, forever decide the merits of the parties'
 27 claims." *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 661 (9th Cir. 2021). Otherwise, a
 28 hurried "pre-adjudication adjudication would defeat the purpose of a stay, which is to give the

1 reviewing court the time to ‘act responsibly,’ rather than doling out ‘justice on the fly.’” *Leiva-Perez*
 2 *v. Holder*, 640 F.3d 962, 967 (9th Cir. 2011) (quoting *Nken v. Holder*, 556 U.S. 418, 427 (2009));
 3 *see also, e.g., Singh v. Berger*, 56 F.4th 88, 109 (D.C. Cir. 2022) (explaining that even an express
 4 finding as to likelihood of success when granting a stay “in no way prejudges” a party’s “ability
 5 going forward to” advocate “on the merits before the district court”). Moreover, as noted above, two
 6 of the legal issues on which Plaintiffs had to prevail in their Section 705 motion—concerning the
 7 balance of equities and the scope of relief—are not at issue in this distinct Section 706 motion for
 8 partial summary judgment.

9 ARGUMENT

10 I. This Court Has Jurisdiction Over Plaintiffs’ Change-in-Position Claim

11 This Court has already correctly explained why the TPS statute’s jurisdiction stripping
 12 provision, 8 U.S.C. section 1254a(b)(5), does not deprive it of jurisdiction over Plaintiffs’ APA
 13 claims. Order 16-20. This Court’s jurisdiction over Plaintiffs’ change-in-position claim is
 14 particularly clear. Section 1254a(b)(5) limits jurisdiction to review “any determination of the
 15 Attorney General with respect to the designation, or termination or extension of a designation, of a
 16 foreign state *under this subsection*”—that is, under subsection (b). (emphasis added) Plaintiffs’
 17 change-in-position claim addresses the length of the orderly transition period, which is addressed in
 18 subsection (d) of the TPS statute. Thus, it obviously does not come within the scope of the
 19 jurisdiction-stripping provision.

20 Perhaps sensing this fatal defect, Defendants’ stay briefing before this Court and the Ninth
 21 Circuit gestured at other jurisdictional provisions. Dkt. 75 at 9–10 (citing 5 U.S.C. § 701(a)(2) and 8
 22 U.S.C. § 1252(a)(2)(B)(ii)). But the TPS statute is governed by its own jurisdiction-limiting
 23 provisions. Neither of these two more general provisions deprives this Court of jurisdiction.

24 First, Plaintiffs’ change-in-position claim is not barred by the APA’s general prohibition on
 25 review of decisions committed to agency discretion. 5 U.S.C. § 701(a)(2). Section 701(a)(2) does not
 26 prevent review where, as here, “regulations or agency practice provide a meaningful standard by
 27 which this court may review its exercise of discretion.” *Spencer Enters., Inc. v. United States*, 345
 28 F.3d 683, 688 (9th Cir. 2003) (emphasis added) (internal quotation marks and citation removed). *See*

1 *Alcaraz v. INS*, 384 F.3d 1150, 1161 (9th Cir. 2004) (holding that 701(a)(2) did not deprive court of
 2 jurisdiction because agency policy provided “law to apply”); *Mendez-Gutierrez v. Ashcroft*, 340 F.3d
 3 865, 868 (9th Cir. 2003) (same); *Sheikh v. DHS*, 685 F. Supp. 2d 1076, 1091 (C.D. Cal. 2009)
 4 (holding that agency’s practice of relying on “the same set of factors … to adjudicate [petitions] for
 5 many years” created law to apply and precluded application of 701(a)(2)). Indeed, as this Court has
 6 recognized, an agency’s “settled course” of decision-making can itself create “a general policy by
 7 which its exercise of discretion will be governed.” Order 23 (quoting *INS v. Yueh-Shaio Yang*, 519
 8 U.S. 26, 32 (1996). Here, Defendants’ two-decades-long practice provides “a meaningful standard
 9 by which this court may review its exercise of discretion.” *Spencer Enters., Inc.*, 345 F.3d at 688.

10 Second, 8 U.S.C. section 1252(a)(2)(B)(ii) does not bar Plaintiffs’ claim here. That
 11 provision does not appear in the TPS statute at all. As its title shows, Section 1252(a)(2)(B) concerns
 12 “Denials of Discretionary Relief.” The Supreme Court, the Ninth Circuit, and the D.C. Circuit have
 13 all read Section 1252(a)(2)(B)(ii) as a “catchall” within the broader context of Section
 14 1252(a)(2)(B), which is designed to bar review over denials of discretionary relief from removal.
 15 Subsection (ii) functions to “catch” forms of discretionary relief similar to those explicitly
 16 enumerated in subsection (i) of Section 1252(a)(2)(B). *See Kucana v. Holder*, 558 U.S. 233, 246-49
 17 (2010); *Nakka v. USCIS*, 111 F.4th 995, 1015 (9th Cir. 2024); *Make the Road New York (MTRNY) v.*
 18 *Wolf*, 962 F.3d 612, 628-31 (D.C. Cir. 2020). Under the rationale of those cases, Section
 19 1252(a)(2)(B)(ii) does not bar Plaintiffs’ challenge here, as the length of the “orderly transition”
 20 period which DHS makes available to all TPS holders when a termination occurs is not a form of
 21 discretionary relief from removal at all.

22 Section 1252(a)(2)(B) as a whole is directed at limiting judicial review over the Secretary’s
 23 discretionary denials of applications for relief from removal. That is clear not just from the title, but
 24 also from neighboring subsection Section 1252(a)(2)(B)(i), which bars review over “any judgment
 25 regarding the granting of relief under” five enumerated forms of discretionary relief from removal.
 26 As the Supreme Court explained in *Kucana*, “[t]he proximity of clauses (i) and (ii), and the words
 27 linking them—‘any other decision’—suggests that Congress had in mind decisions of the same
 28 genre.” *Kucana*, 558 U.S. at 246-47. *See also id.* at 247 (“The clause (i) enumeration, we find, is

1 instructive in determining the meaning of the clause (ii) catchall.”). *Kucana* therefore held that
 2 Section 1252(a)(2)(B)(ii) did not bar a claim over the discretionary decision not to reopen removal
 3 proceedings, because that decision was not “made discretionary by legislation.” *Id.* Similarly here,
 4 Section 1252(a)(2)(B)(ii) does not apply to a claim that does not involve discretionary relief at all.

5 The Ninth Circuit relied on *Kucana*’s reasoning in *Nakka*, which interpreted Section
 6 1252(a)(2)(B)(i) to bar only “a decision in an individual case” rather than collateral policy or
 7 practice challenges. In doing so, *Nakka* reiterated that Section 1252(a)(2)(B)(ii) is a “catchall”
 8 provision, *Nakka*, 111 F.4th at 1006, and that all of Section 1252(a)(2)(B) had to be read in reference
 9 to its title, “which refers to ‘[d]enials of discretionary relief.’” *Nakka*, 111 F.4th at 1004 (quoting 8
 10 U.S.C. § 1252(a)(2)(B)). As *Nakka* explained, “Subsection B’s jurisdictional bar covers . . . orders
 11 denying discretionary relief in individual cases,” but not “the type of challenges to the Secretary’s
 12 regulations, orders, policies, and directives” at issue.” *Id.* at 1015. Similarly, the Ninth Circuit
 13 recently read Section 1252(a)(2)(B)(i) to bar claims challenging denials of discretionary relief, but
 14 preserved the non-citizens’ ability to argue that the claim could be heard through review of her
 15 removal order. *Garcia v. USCIS*, No. 23-35267, 2025 WL 2046176, *7 (9th Cir. July 22, 2025)

16 In reaching its conclusion, *Nakka* in turn followed the D.C. Circuit’s earlier decision in *Make*
 17 *the Road New York (MTRNY)*, which had rejected yet another broad attempt by the Secretary to bar
 18 review of her decision-making under a statute not involving discretionary relief from removal.
 19 *MTRNY* rejected the argument that Section 1252(a)(2)(B)(ii) bars review of the decision to expand
 20 the scope of the expedited removal statute. Like the TPS statute, the expedited removal provisions
 21 do not concern discretionary relief, and are governed by their own jurisdiction-related provisions.
 22 *MTRNY* found that Section 1252(a)(2)(B) as a whole “focuses Clause (ii)’s bar on individualized
 23 forms of discretionary relief from removal or exclusion.” 962 F.3d at 630¹.

24
 25 ¹ *MTRNY* did find the expedited removal claim at issue there unreviewable under 5 U.S.C. section
 26 701(a)(2), but only because the statute there commits the decision at issue to the “sole and
 27 unreviewable discretion” of the Secretary, and because the agency practice created no discernible
 28 standards to apply for evaluating the Secretary’s decision. The Ninth Circuit found similar language
 barred review in *Gebhardt v. Nielsen*, 879 F.3d 980 (9th Cir. 2018). Importantly, however, the TPS
 statute does *not* contain the “sole and unreviewable discretion” language found dispositive in these

1 As these cases all show, Section 1252(a)(2)(B)(ii) has no bearing on this case. The orderly
 2 transition period under the TPS statute is not a form of relief at all. It is not something that
 3 individuals “who need relief from removal would apply for,” *Nakka*, 111 F.4th at 1004, whether or
 4 not they are otherwise lawfully present. Nor does it provide any form of relief from a removal order.
 5 The government can seek and obtain removal orders against people with TPS, and TPS protections
 6 remain available even to those with removal orders. Because an orderly transition period is not a
 7 form of discretionary relief from removal, Section 1252(a)(2)(B)(ii) does not bar Plaintiffs’ claim.

8 **II. The Terminations Were Arbitrary and Capricious Because They Broke With Past
 9 Practice Without Acknowledgment or Explanation**

10 This Court’s well-reasoned postponement order correctly holds that Defendants’ decision to
 11 provide only 6 months’ notice prior to terminating TPS for Honduras, Nepal, and Nicaragua was
 12 arbitrary and capricious. Order 23-25. For over two decades, Defendants have provided at least a six-
 13 month orderly transition period when terminating a TPS designation. Order 23 (citing Dkt. 28); Ex.
 14 A. The current administration abruptly broke with this practice, giving TPS holders from Honduras,
 15 Nepal, and Nicaragua only 60 days to pack up their lives and leave.

16 Of course, agencies are free to change existing policies. But agencies must be “cognizant that
 17 longstanding policies may have ‘engendered serious reliance interests that must be taken into
 18 account.’” *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 212 (2016) (quoting *FCC v. Fox
 19 Television Stations, Inc.*, 556 U.S. 502,515 (2009)). Thus, when—as here—an agency breaks with a
 20 long-standing past practice, it must “display[] awareness that it is changing position” and provide
 21 “good reasons” for the new policy. *Organized Vill. of Kake v. USDA*, 795 F.3d 956, 966 (9th Cir.
 22 2015) (quoting *FCC*, 556 US 502 at 515-16). *See also FDA v. Wages and White Lion Inv., LLC*, 145
 23 S. Ct. 898, 918 (2025) (describing “change-in-position doctrine”). *Ctr. for Biological Diversity v.
 24 BLM*, 141 F.4th 976, 999 (9th Cir. 2025) (holding agency violated APA by failing to explain its
 25 “change[]d course”); *Sw. Airlines Co. v. FERC*, 926 F.3d 851, 858 (D.C. Cir. 2019) (agency’s

26 cases. Moreover, as this Court already found, past agency practice *has* created a discernible practice
 27 regarding orderly transitions: for the last twenty years the agency has always given TPS holders at
 28 least six months to close up their lives in this country and depart.

1 “consistent practice, whether adopted expressly in a holding or established impliedly through
 2 repetition, sets the baseline from which future departures must be explained”).

3 Defendants have done neither. Order 23-25. Indeed, rather than “display[ing] awareness” of
 4 DHS’s longstanding past practice of providing at least a six-month orderly transition period when
 5 ending a TPS designation, the Secretary denied that there was any such practice.

6 With respect to Honduras and Nicaragua, the Secretary wrongly claimed that “[a] sixty-day
 7 orderly transition period is consistent with the precedent of previous TPS country terminations,”
 8 apparently referencing only her own termination decisions over the past several months. 90 Fed.
 9 Reg. 30,089, 30,091 (Jul. 8, 2025) (Honduras); 90 Fed. Reg. 30,086, 30,088 (Jul. 8, 2025)
 10 (Nicaragua). As to Nepal, while “recogniz[ing]” in a footnote “that certain previous TPS
 11 terminations allowed for an extended transition,” she went on to note that “certain other TPS
 12 designations were terminated without allowing for an extended transition period,” indicating her
 13 view that the agency had no particular practice. *See* 90 Fed. Reg. 24,151, 24,154 n. 24 (June 6, 2025)
 14 (Nepal).

15 The Secretary also failed to provide a “good reason” for providing only 60 days for TPS
 16 holders to leave, particularly given the massive break with past practice inherent in that decision.
 17 *Organized Vill. of Kake*, 795 F.3d at 966. *See* Order 24-25. As to Honduras and Nicaragua, the only
 18 reason she provided for selecting a 60-day period was that it would be “consistent with the precedent
 19 of previous TPS country terminations and makes clear that the United States is committed to clarity
 20 and consistency.” 90 Fed. Reg. at 30,088, 30,091. But, as described above, over the past two decades
 21 prior to the current administration the “precedent of previous TPS country terminations,” *id.*, was to
 22 provide at least a six-month orderly transition period for any TPS termination. So this represents the
 23 opposite of clarity and consistency. Because the Secretary’s explanation was objectively wrong as a
 24 factual description of the agency’s past practice, it cannot constitute a “good reason” for her break
 25 with past practice.

26 As to Nepal, Secretary Noem asserted that the 60-day period was appropriate given her
 27 finding that Nepal no longer meets the conditions for extension. But that reason would apply to any
 28 termination. Accordingly, it fails to explain why a longer period has consistently been provided in

1 the past, but only 60 days was provided this time. The Secretary also stated in passing that a 60-day
 2 notice period is “in accord” with the President’s Executive Order “Protecting the American People
 3 Against Invasion.” *See* 90 Fed. Reg. at 24,153 (citing Executive Order 14,159). She did not suggest
 4 that the Invasion E.O. provided a separate reason for her decision, and Defendants have not defended
 5 the 60-day period that way.

6 **CONCLUSION**

7 Because there is no genuine issue of material fact regarding Plaintiffs’ change-in-position
 8 claim, this Court should grant Plaintiffs’ motion to set aside the agency action terminating TPS for
 9 Honduras, Nepal, and Nicaragua with only a 60-day orderly transition period.

10 Date: August 25, 2025

11 Respectfully submitted,

12 NATIONAL DAY LABORER ORGANIZING
 13 NETWORK

14 /s/Jessica Karp Bansal

Jessica Karp Bansal

15 Lauren Michel Wilfong (*Pro Hac Vice* pending)

16 Emilou MacLean

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25 Diana Sanchez

26 ACLU FOUNDATION

27 OF SOUTHERN CALIFORNIA

28 Erik Crew (*Pro Hac Vice* pending)

HAITIAN BRIDGE ALLIANCE

29 Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on August 25, 2025, I caused the foregoing to be electronically filed with
3 the Clerk of Court using the CM/ECF system, which will then send a notification of such filing
4 (NEF) to all counsel of record.

5
6 NATIONAL DAY LABORER ORGANIZING
7 NETWORK
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9
10 */s/ Jessica Karp Bansal*
11 Jessica Karp Bansal
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