

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 1:22-cv-23741**

[REDACTED]

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

Plaintiffs,

v.

Ur M. Jaddou, in her official capacity as Director of  
United States Citizenship and Immigration Services;  
and Alejandro N. Mayorkas, in his official capacity  
as United States Secretary of Homeland Security,

Defendants.

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**INTRODUCTION**

1. Temporary Protected Status (“TPS”) is a form of humanitarian relief that provides lawful immigration status to foreign nationals from war-ravaged or disaster-stricken countries.

2. After the Department of Homeland Security (“DHS”) designates a country for TPS, most of that country’s foreign nationals who are present in the United States become eligible for TPS.

3. One of TPS’s main benefits is work authorization.

4. Congress recognized that without the ability to work lawfully, TPS applicants and recipients would be forced to choose between remaining in the United States without the ability to subsist and returning to unsafe conditions in their home countries.

5. Recognizing that forcing noncitizens to make that choice would defeat TPS's purpose, Congress mandated that the Government issue work authorization to eligible TPS applicants and TPS recipients alike.

6. But United States Citizenship and Immigration Services ("USCIS"), the agency responsible for administering the TPS program, is violating its statutory obligation to provide such work authorization.

7. As for TPS applicants, USCIS regularly shirks its obligation to issue interim work authorization, forcing such applicants to remain jobless during the months (and sometimes years) it takes for USCIS to decide their TPS applications.

8. Worse yet, even after TPS is finally granted, USCIS policy prevents TPS recipients from working upon receipt of formal TPS approval. Instead, USCIS requires TPS recipients to file a separate application for an Employment Authorization Document—an application which itself can take months, or even years, for USCIS to process.

9. The upshot of USCIS's policies and procedures is that many eligible TPS applicants and recipients are deprived of the work authorization to which they are entitled by law.

10. Plaintiffs are among these noncitizens.

11. Each plaintiff is a citizen of Venezuela—a country designated for TPS as a result of an ongoing political and economic crisis. Each Plaintiff timely applied for TPS and qualifies for work authorization based on an application that establishes their prima facie eligibility, or based on full TPS approval.

12. USCIS, however, in violation of the TPS statute and its implementing regulations, has provided Plaintiffs no documentation they can use to obtain lawful employment in the United States.

13. This lawsuit seeks to remedy USCIS's violation by compelling USCIS to immediately issue Plaintiffs evidence of their authorization to work lawfully in the United States.

## **STATEMENT OF FACTS**

### **A. Statutory and Regulatory Background**

14. Congress established the Temporary Protected Status ("TPS") program as part of the Immigration Act of 1990, Pub L. No. 101-649, § 302, 104 Stat. 4978, 5030–36, to provide temporary relief to noncitizens from countries facing wars, disasters, or emergencies that make safe return to their home countries impossible.

15. The Secretary of Homeland Security ("DHS Secretary") may designate a country for TPS if he or she makes one of the following three findings: (A) there is an ongoing armed conflict in the country and that due to such conflict, the return of noncitizens to that country would pose a serious threat to their personal safety; (B) there has been an environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions, where the state cannot handle return of the country's nationals, and where the foreign state official requests TPS designation; or (C) there exist extraordinary and temporary conditions in the foreign state that prevent noncitizens from returning in safety. *See* 8 U.S.C. § 1254a(b)(1).

16. Initial TPS designations last between six to eighteen months. 8 U.S.C. § 1254a(b)(2). Notice of a country's designation for TPS is published in the Federal Register. *Id.* § 1254a(b)(1).

17. The DHS Secretary may extend TPS designations beyond the initial designation period. At least 60 days before a particular designation expires, the DHS Secretary reviews conditions in the country and determines whether the country still meets the conditions for TPS. *Id.* § 1254a(b)(3). The DHS Secretary may also affirmatively extend a country’s TPS designation for a period of up to eighteen months through notice published in the Federal Register. If the DHS Secretary does not affirmatively terminate TPS, the designation is automatically extended for six months.

18. After a country is designated for TPS, most nationals of that country who are present in the United States become eligible for TPS.

19. To qualify for TPS, a national of a TPS-designated country must show that he or she: (1) was “continuously physically present in the United States since the effective date of the [country’s] most recent designation”; (2) “continuously resided in the United States” since the TPS designation date; and (3) “is admissible as an immigrant,” with certain exceptions and opportunities for waivers. 8 U.S.C. § 1254a(c)(1)(i)–(iii).

20. To obtain TPS benefits, a noncitizen must apply on Form I-821 during the “registration period” established by the DHS Secretary, which must last at least 180 days. *Id.*

21. Two mandatory benefits flow from a grant of TPS.

22. First, DHS “shall not remove the alien from the United States during the period in which [TPS] status is in effect.” 8 U.S.C. § 1254a(a)(1)(A).

23. Second, DHS “shall authorize the alien to engage in employment in the United States and provide the alien with an ‘employment authorized’ endorsement or other appropriate work permit.” *Id.* § 1254a(a)(1)(B).

24. Work authorization granted to a TPS recipient “shall be effective throughout the period the alien is in temporary protected status.” *Id.* § 1254a(a)(2).

25. Under the TPS statute, these two benefits are not limited to those *granted* TPS; they also extend to *applicants* for TPS whose applications establish prima facie eligibility for TPS. *See id.* § 1254a(a)(4).

26. Specifically, interim benefits are granted to cover the gap between a TPS applicant’s filing of a TPS application and USCIS’s final adjudication of that application. Such benefits “shall” be granted when an applicant “establishes a prima facie case of eligibility for benefits.” *Id.* § 1254a(a)(4)(B).

27. These interim benefits remain in force “until a final determination with respect to the alien’s eligibility for such benefits . . . has been made.” *Id.*

28. Taken together, these provisions guarantee TPS-eligible noncitizens the right to work lawfully in the United States from the time they apply for TPS through the time their country’s TPS designation ends.

29. USCIS’s regulations reflect this statutory scheme.

30. The regulations defining when USCIS will grant interim “temporary treatment” benefits make clear USCIS’s obligation to issue work authorization to TPS applicants upon receipt of an application that establishes prima facie eligibility.

31. Section 244.5 of Title 8 of the Code of Federal Regulations, titled “Temporary treatment benefits for eligible aliens,” provides:

***(a) Prior to the registration period.*** Prior to the registration period established by DHS, a national of a foreign state designated by DHS shall be afforded temporary treatment benefits upon the filing, after the effective date of such designation, of a completed application for Temporary Protected Status which establishes the alien's prima facie eligibility for benefits under section 244 of the Act. This application may be filed without fee. Temporary treatment benefits, if granted, shall terminate

unless the registration fee is paid or a waiver is sought within the first thirty days of the registration period designated by DHS. If the registration fee is paid or a waiver is sought within such thirty day period, temporary treatment benefits shall continue until terminated under § 244.13. The denial of temporary treatment benefits prior to the registration period designated by DHS shall be without prejudice to the filing of an application for Temporary Protected Status during such registration period.

**(b) During the registration period.** Upon the filing of an application for Temporary Protected Status, the alien shall be afforded temporary treatment benefits, if the application establishes the alien's prima facie eligibility for Temporary Protected Status. Such temporary treatment benefits shall continue until terminated under § 244.13.

**(c) Denied benefits.** There shall be no appeal from the denial of temporary treatment benefits.

32. Consistent with the statute, this regulation requires USCIS to grant interim work authorization to TPS applicants who are “prima facie” eligible for TPS. *Id.*

33. Under the regulation, TPS applicants are clearly and unambiguously entitled to interim “temporary treatment” benefits immediately after they file an application that establishes prima facie eligibility. In such cases, “[u]pon the filing of an application for [TPS], the alien *shall* be afforded temporary treatment benefits, if the application establishes the alien’s prima facie eligibility for [TPS].” 8 C.F.R. § 244.5(b) (emphasis added); *see also id.* § 244.10(a) (“USCIS will grant temporary treatment benefits to the applicant if the applicant establishes prima facie eligibility for Temporary Protected Status . . .”).

34. USCIS understands prima facie eligibility to mean “eligibility established with the filing of a completed application for Temporary Protected Status containing factual information that if unrebutted will establish a claim of eligibility.” *Id.* § 244.1. In other words, if a TPS application includes evidence of eligibility, and USCIS does not already have readily accessible information in its systems to rebut that evidence, submission of the application alone establishes prima facie eligibility for TPS, entitling the applicant to immediate issuance of work authorization.

35. The agency understood this obligation when it promulgated the TPS regulations. In official regulatory commentary, the agency agreed with commenters “that temporary treatment benefits should be issued immediately after the applicant establishes his or her prima facie eligibility,” and that such eligibility is established by the filing of an application that contains the requisite information. *See* Temporary Protected Status, 56 Fed. Reg. 23,491, 23,493 (May 22, 1991) (Final Rule).

36. Under the TPS regulations, interim “temporary treatment” benefits “shall be evidenced by the issuance of an employment authorization document.” 8 C.F.R. § 244.10(e)(1). Along with such a document, the noncitizen “shall be given, in English and in the language of the designated foreign state or a language that the alien understands, a notice . . . of the following benefits: (i) Temporary stay of deportation; and (ii) Temporary employment authorization.” *Id.*

37. “Temporary treatment” benefits, including interim work authorization, “shall remain in effect until a final decision has been made on the application for Temporary Protected Status.” *Id.* § 244.10(e)(2); *see also id.* § 244.13(a) (“Temporary treatment benefits terminate upon a final determination with respect to the alien’s eligibility for Temporary Protected Status.”).

38. If USCIS ultimately grants an applicant TPS, USCIS must issue work authorization to the TPS recipient at the time of USCIS’s decision. Specifically, “[u]pon approval of an application for Temporary Protected Status, USCIS *shall* grant an employment authorization document valid during the initial period of the foreign state’s designation (and any extensions of such period).” *Id.* § 244.12(a) (emphasis added).

39. Consistent with the TPS statute, this regulatory scheme—if properly executed by the agency—ensures that eligible TPS applicants are issued effective evidence of work

authorization from the time they apply for TPS through the end of their country's designation for TPS.

**B. USCIS Routinely Violates this Statutory and Regulatory Scheme**

40. As a matter of policy and practice, USCIS routinely violates this statutory and regulatory framework by depriving both TPS applicants and TPS recipients of the work authorization to which they are entitled by law.

41. Although USCIS is required to issue interim "temporary treatment" benefits, including work authorization, upon receipt of an application that establishes prima facie eligibility for TPS, USCIS routinely fails to do so.

42. Instead, upon information and belief, in the vast majority of cases, USCIS never reviews TPS applications for prima facie eligibility and interim "temporary treatment" benefits, skipping that statutorily mandated step entirely.

43. As a result, upon information and belief, most TPS applicants are deprived of interim "temporary treatment" work authorization during the entire period their TPS applications remain pending with USCIS

44. TPS applications typically take many months to adjudicate. Indeed, according to USCIS's own statistics, over 20% of TPS adjudications take more than one year to fully process.

45. Because USCIS routinely fails to issue temporary treatment benefits, TPS applicants generally must wait months or years for their TPS applications to be fully adjudicated before they have any chance of obtaining work authorization.

46. But even a full grant of TPS does not guarantee that the recipient will receive timely evidence of work authorization.

47. Despite the clear statutory command that upon approval of TPS, DHS “shall authorize the alien to engage in employment . . . *and* provide the alien with an ‘employment authorized’ endorsement or other appropriate work permit,” 8 U.S.C. § 1254a(a)(1)(B), and that such authorization be “effective throughout the period” the noncitizen is in TPS status, *id.* § 1254a(a)(2), USCIS routinely fails to issue TPS recipients with documentation they can use to work.

48. Instead, to obtain evidence of work authorization, USCIS requires TPS applicants to file a separate application for an Employment Authorization Document on Form I-765, and to pay a separate filing fee.

49. These separate Form I-765 applications for Employment Authorization Documents often remain adjudicated for months—even after USCIS fully approves the underlying TPS application.

50. Without an Employment Authorization Document issued following the approval of a Form I-765, neither a TPS applicant nor a TPS recipient can obtain lawful employment in the United States.

51. This is confirmed by USCIS’s “Handbook for Employers M-274,” which lists the documents an employer can accept as evidence of work authorization. The Handbook makes clear that USCIS views only an Employment Authorization Document issued following USCIS’s approval of Form I-765 as evidence of employment authorization pursuant to a TPS application or grant of TPS.

52. Unlike other immigration statuses where noncitizens may show their work authorization through presentation of alternative documents, like Forms I-94, USCIS guidance

prohibits the presentation of a TPS application receipt notice or notice granting TPS as evidence of the noncitizen's authorization to work.

53. These USCIS policies and practices—combined with a severe backlog in USCIS's adjudication of Forms I-765—result in substantial delays between a noncitizen's statutory entitlement to evidence of work authorization pursuant to an application or grant of TPS, and USCIS's issuance of such evidence.

54. As a result, one of TPS's central benefits—the ability to work in the United States—has become an empty promise for tens of thousands of TPS-eligible noncitizens.

### **C. Designation and Redesignation of Venezuela for TPS**

55. The DHS Secretary designated Venezuela for TPS on March 9, 2021. *See* Designation of Venezuela for Temporary Protected Status and Implementation of Employment Authorization for Venezuelans Covered by Deferred Enforced Departure, 86 Fed. Reg. 13,574 (Mar. 9, 2021). He did so based on confluence of crises affecting the country, including: (1) an ongoing “severe economic crisis”; (2) a “prolonged political crisis” marked by the installation of an illegitimate government; (3) rampant human rights violations and “crimes against humanity”; (4) the near-total collapse of the country's healthcare system; (5) food insecurity; (6) a collapse of basic services, including transportation, electricity, gas, and water and sanitation; and (7) skyrocketing violent crime. *See* 86 Fed. Reg. at 13,576–77.

56. Venezuela's initial TPS designation took effect on the date of the notice (March 9, 2021) and lasted 18 months, through September 9, 2022. *Id.* at 13,575.

57. The DHS Secretary established a 180-day registration period for eligible Venezuelans to apply. *Id.*

58. On August 4, 2021, the DHS Secretary extended the initial registration period through September 9, 2022—that is, for the entire 18-month period of the country’s initial TPS designation. *See* Extension of Initial Registration Periods for Temporary Protected Status Applicants Under the Designations for Venezuela, Syria, and Burma, 86 Fed. Reg. 41,986 (Aug. 4, 2021).

59. On September 8, 2022, the DHS Secretary extended Venezuela’s designation for TPS for an additional 18 months, through March 10, 2024. *See* Extension of the Designation of Venezuela for Temporary Protected Status, 87 Fed. Reg. 55,024 (Sept. 8, 2022).

60. The DHS Secretary extended Venezuela’s TPS designation because “Venezuela remains in a humanitarian emergency due to economic and political crises,” preventing “Venezuelan nationals from returning in safety.” *Id.* at 55,026.

61. Venezuelans granted TPS during the initial registration period are required to re-register. *Id.* at 55,028.

62. However, Venezuelan TPS applicants whose applications were still pending as of September 8, 2022 are not required to reapply. *Id.* Instead, “[i]f USCIS approves [their] pending TPS application[s], USCIS will grant [them] TPS through March 10, 2024.” *Id.*

**D. Plaintiffs’ TPS Applications and USCIS’s Failure to Issue Evidence of Work Authorization**

63. Plaintiffs are Venezuelan nationals who are among the tens of thousands of TPS-eligible noncitizens harmed by USCIS’s failure to issue evidence of employment authorization as the law requires.

64. Plaintiffs [REDACTED]  
[REDACTED]  
[REDACTED]



71. Plaintiffs [REDACTED], and his spouse [REDACTED], applied for TPS on April 23, 2021. USCIS granted their TPS applications on August 26, 2022 and July 21, 2022, respectively.

72. These plaintiffs all timely re-registered for TPS.

73. These plaintiffs also filed Form I-765 with USCIS based on USCIS’s approval of their TPS applications. Those Form I-765 applications remain pending.

74. These plaintiffs’ TPS application receipt numbers and Form I-765 receipt numbers are as follows:

<b>LAST NAME, First Name</b>	<b>Initial I-821 Receipt Number</b>	<b>Initial I-821 Filing Date</b>	<b>Re-registration Receipt Number</b>	<b>I-765 Receipt Number</b>
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

75. USCIS’s failure to issue Plaintiffs evidence of work authorization has substantially harmed them, preventing them from working lawfully.

76. Moreover, working before USCIS approves their separate Form I-765 applications for Employment Authorization Documents would expose Plaintiffs to adverse immigration consequences, including a potential bar on future adjustment to lawful permanent resident status. *See, e.g.*, 8 U.S.C. §§ 1255(c)(2), 1255(c)(8).

**PARTIES**

77. Plaintiff [REDACTED] submitted his application for Venezuelan TPS on September 7, 2022. His application was assigned receipt number IOE0917514140.

Although not required to do so to obtain employment authorization incident to his status as an applicant, he also filed an associated Form I-765, which was assigned receipt number IOE0917514141. His application for TPS remains pending and establishes his prima facie eligibility for TPS, yet USCIS has issued him no interim “temporary treatment” work authorization.

78. Plaintiff [REDACTED] submitted his application for Venezuelan TPS on September 7, 2022. His application was assigned receipt number IOE0917508364. Although not required to do so to obtain employment authorization incident to his status as an applicant, he also filed an associated Form I-765, which was assigned receipt number IOE0917508366. His application for TPS remains pending and establishes his prima facie eligibility for TPS, yet USCIS has issued him no interim “temporary treatment” work authorization.

79. Plaintiff [REDACTED] submitted his application for Venezuelan TPS on January 3, 2022. His application was assigned receipt number IOE9716311218. Although not required to do so to obtain employment authorization incident to his status as an applicant, he also filed an associated Form I-765, which was assigned receipt number IOE9722843088. His application for TPS remains pending and establishes his prima facie eligibility for TPS, yet USCIS has issued him no interim “temporary treatment” work authorization.

80. Plaintiff [REDACTED] [REDACTED] [REDACTED] submitted her application for Venezuelan TPS on March 31, 2021. Her application was assigned receipt number IOE0911458061. Although not required to do so to obtain employment authorization incident to her status as an applicant, she also filed an associated Form I-765, which was assigned receipt

number IOE0911458062. Her application for TPS remains pending and establishes her prima facie eligibility for TPS, yet USCIS has issued her no interim “temporary treatment” work authorization.

81. Plaintiff [REDACTED] submitted his application for Venezuelan TPS on September 2, 2022. His application was assigned receipt number IOE0917457679. Although not required to do so to obtain employment authorization incident to his status as an applicant, he also filed an associated Form I-765, which was assigned receipt number IOE0917457680. His application for TPS remains pending and establishes his prima facie eligibility for TPS, yet USCIS has issued him no interim “temporary treatment” work authorization.

82. Plaintiff [REDACTED] submitted her application for Venezuelan TPS on May 9, 2022. Her application was assigned receipt number IOE0916205527. Although not required to do so to obtain employment authorization incident to her status as an applicant, she also filed an associated Form I-765, which was assigned receipt number IOE0916205529. Her application for TPS remains pending and establishes her prima facie eligibility for TPS, yet USCIS has issued her no interim “temporary treatment” work authorization.

83. Plaintiff [REDACTED] submitted her application for Venezuelan TPS on September 13, 2021. Her application was assigned receipt number IOE0913461888. Although not required to do so to obtain employment authorization incident to his status as an applicant, she also filed an associated Form I-765, which was assigned receipt number IOE0913461889. Her application for TPS remains pending and establishes her prima facie eligibility for TPS, yet USCIS has issued her no interim “temporary treatment” work authorization.

84. Plaintiff [REDACTED] submitted his application for Venezuelan TPS on May 9, 2022. His application was assigned receipt number IOE0916225728.

Although not required to do so to obtain employment authorization incident to his status as an applicant, he also filed an associated Form I-765, which was assigned receipt number IOE0916225730. His application for TPS remains pending and establishes his prima facie eligibility for TPS, yet USCIS has issued her no interim “temporary treatment” work authorization.

85. Plaintiff [REDACTED] is the spouse of [REDACTED]. She submitted her application for Venezuelan TPS on May 9, 2022. Her application was assigned receipt number IOE0916225734. Although not required to do so to obtain employment authorization incident to his status as an applicant, she also filed an associated Form I-765, which was assigned receipt number IOE0916225736. Her application for TPS remains pending and establishes her prima facie eligibility for TPS, yet USCIS has issued her no interim “temporary treatment” work authorization.

86. Plaintiff [REDACTED] is the daughter of [REDACTED] and [REDACTED]. She submitted her application for Venezuelan TPS on May 9, 2022. Her application was assigned receipt number IOE0916225737. Although not required to do so to obtain employment authorization incident to his status as an applicant, she also filed an associated Form I-765, which was assigned receipt number IOE0916225738. Her application for TPS remains pending and establishes her prima facie eligibility for TPS, yet USCIS has issued her no interim “temporary treatment” work authorization.

87. Plaintiff [REDACTED] is the son of [REDACTED] and [REDACTED]. He submitted his application for Venezuelan TPS on May 9, 2022. His application was assigned receipt number IOE0916225731. Although not required to do so to obtain employment authorization incident to his status as an applicant, he also filed an associated Form I-765, which was assigned receipt number IOE0916225733. His application for

TPS remains pending and establishes his prima facie eligibility for TPS, yet USCIS has issued her no interim “temporary treatment” work authorization.

88. Plaintiff [REDACTED] submitted his application for Venezuelan TPS on July 6, 2021. His application was assigned receipt number IOE0912501565. USCIS *granted* his application on September 2, 2022. On September 13, 2022, Mr. Gonzalez Villegas re-registered for TPS, and his application was assigned receipt number IOE9551127022. He also filed Form I-765 on October 7, 2022, and was assigned receipt number IOE0917886910. To date, USCIS has issued Mr. Gonzales Villegas no evidence of work authorization.

89. Plaintiff [REDACTED] is the spouse of [REDACTED]. She submitted her application for Venezuelan TPS on July 6, 2021. Her application was assigned receipt number IOE0912501566. USCIS *granted* her application on September 2, 2022. On September 13, 2022, Ms. [REDACTED] re-registered for TPS, and her application was assigned receipt number IOE9696190563. She also filed Form I-765 on October 7, 2022, and was assigned receipt number IOE0917886908. To date, USCIS has issued Ms. [REDACTED] no evidence of work authorization.

90. Plaintiff [REDACTED] submitted his application for Venezuelan TPS on April 23, 2021. His application was assigned receipt number IOE0911726710. USCIS *granted* his application on August 26, 2022. On October 10, 2022, Mr. [REDACTED] re-registered for TPS, and his application was assigned receipt number IOE0917900085. He also filed Form I-765 on October 10, 2022, and was assigned receipt number IOE0917900087. To date, USCIS has issued Mr. [REDACTED] no evidence of work authorization.

91. Plaintiff [REDACTED] is the spouse of [REDACTED]. She submitted her application for Venezuelan TPS on April 23, 2021. Her application was assigned receipt number IOE0911726712. USCIS *granted* her application on July 21, 2022. On October 10, 2022, Ms. [REDACTED] re-registered for TPS, and her application was assigned receipt number IOE0917900082. She also filed Form I-765 on October 10, 2022, and was assigned receipt number IOE0917900084. To date, USCIS has issued Ms. [REDACTED] no evidence of work authorization.

92. Defendant Ur M. Jaddou is the Director of USCIS. She is sued in her official capacity. In that capacity, she is responsible for ensuring the proper adjudication of applications for TPS, including the issuance evidence of work authorization to prima facie eligible TPS applicants as well as TPS recipients.

93. Defendant Alejandro M. Mayorkas is the United States Secretary of Homeland Security. He is sued in his official capacity. In that capacity, he is responsible for ensuring the proper administration of the TPS program, including the issuance of evidence of work authorization to TPS applicants and recipients in accordance with the TPS statute and regulations.

### **JURISDICTION**

94. The Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1331 (federal question jurisdiction), because this matter arises under the laws of the United States, particularly the Immigration and Nationality Act, related agency regulations, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.* This action is also brought under 28 U.S.C. § 2201 (Declaratory Judgment Act).

**VENUE**

95. Venue lies in the Southern District of Florida pursuant to 28 U.S.C. § 1391(e)(1)(C), as Plaintiffs reside in this District.

**CAUSES OF ACTION**

**COUNT I:  
AGENCY ACTION UNLAWFULLY WITHHELD IN VIOLATION OF THE APA  
(Failure to Grant Interim Work Authorization to TPS Applicants)**

96. Plaintiffs incorporate paragraphs 1 to 95 as if fully stated herein.

97. USCIS has “unlawfully withheld” agency action in violation of 5 U.S.C. § 706(1) by failing to grant interim “temporary treatment” work authorization to Plaintiffs [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED], and [REDACTED] (the “Pending Application Plaintiffs”).

98. Both the TPS statute and its implementing regulations mandate that USCIS grant interim “temporary treatment” work authorization upon USCIS’s receipt of an application that establishes the applicant’s prima facie eligibility for TPS.

99. The TPS statute provides that such benefits “shall” be granted “[i]n the case of an alien who establishes a prima facie case of eligibility for benefits.” 8 U.S.C. § 1254a(4)(B).

100. The statute’s implementing regulations likewise provide that such benefits “shall” be granted “[u]pon the filing of an application for Temporary Protected Status . . . if the application establishes the alien’s prima facie eligibility for Temporary Protected Status.” 8 C.F.R. § 244.5(b).

101. This obligation’s mandatory nature is made plain by the statute and regulation’s statement that the benefit “shall” be granted. Use of the word “shall”—particularly when

contrasted with the word “may” used elsewhere in the TPS statute and regulations—makes plain that the conferral of interim work authorization is mandatory under the law.

102. This obligation’s mandatory nature is also reinforced by the regulatory requirement that USCIS “shall” give an applicant eligible for temporary treatment benefits a notice reflecting the applicant’s “temporary employment authorization.” 8 C.F.R. § 244.10(e)(1).

103. The agency itself understood its obligation clearly when it promulgated the final rule to implement the TPS program. As part of that final rule, the agency noted as follows:

Commenters stated that temporary treatment benefits should be issued immediately upon the completion of an application which, on its face, establishes the alien’s eligibility. The Service agrees that temporary treatment benefits should be issued immediately after the applicant establishes his or her prima facie eligibility. As noted above, the Service must be able to make use of evidence that effectively rebuts the alien's claim to eligibility. Therefore, this portion of the rule has not been changed.

56 Fed. Reg. at 23,493. This regulatory commentary makes clear that the agency understood itself obligated to grant interim employment authorization “immediately” upon receipt of a TPS application that establishes the applicant’s prima facie eligibility. *Id.*

104. The history of the TPS program reinforces the agency’s obligation to issue interim benefits immediately upon the filing of a TPS application that establishes prima facie eligibility.

105. Congress enacted TPS to replace earlier ad hoc relief programs, like Extended Voluntary Departure, which were administered by the Executive Branch without a statutory foundation. One key element missing from these earlier relief programs was the lack of guaranteed work authorization. TPS was designed in part to remedy that failure. By providing for interim “temporary treatment” benefits, Congress sought to ensure that bona fide TPS applicants would receive work authorization at the earliest possible time.

106. Because USCIS had a mandatory duty to grant the Pending Application Plaintiffs interim “temporary treatment” work authorization upon receipt of their applications for TPS, and because it failed to fulfill that duty, USCIS “unlawfully withheld” agency action in violation of 5 U.S.C. § 706(1), making a judicial order compelling such action appropriate.

**COUNT II:  
AGENCY ACTION UNLAWFULLY WITHHELD IN VIOLATION OF THE APA  
(Failure to Grant Evidence of Work Authorization to Persons *Granted* TPS )**

107. Plaintiffs incorporate paragraphs 1 to 95 as if fully stated herein.

108. USCIS has “unlawfully withheld” agency action in violation of 5 U.S.C. § 706(1) by failing to issue evidence of work authorization to Plaintiffs [REDACTED], [REDACTED], and [REDACTED] (the “TPS Recipient Plaintiffs”) at the time they were *granted* TPS.

109. The TPS statute unambiguously provides that DHS “shall authorize” TPS recipients “to engage in employment in the United States,” and “shall” provide such noncitizens “with an ‘employment authorized’ endorsement or other appropriate work permit.” 8 U.S.C. § 1254a(a)(1)(B).

110. Such work authorization “*shall* be effective *throughout* the period the alien is in temporary protected status under this section.” *Id.* § 1254a(a)(2) (emphasis added); *see also id.* § 1254a(d)(1) (“*Upon* the granting of temporary protected status to an alien under this section, the [DHS Secretary] *shall* provide for the issuance of such temporary documentation and authorization as may be necessary to carry out the purposes of this section.”) (emphasis added).

111. The plain and unambiguous language of the TPS statute requires that USCIS authorize a TPS recipient to work—and to provide evidence of such work authorization—“upon”

a grant of TPS status. In other words, the work authorization (and evidence allowing a TPS recipient to work) must be issued at the same time as a TPS grant itself.

112. USCIS's implementing regulations also make this obligation clear and unambiguous: "*Upon approval* of an application for Temporary Protected Status, USCIS *shall* grant an employment authorization document valid during the initial period of the foreign state's designation (and any extensions of such period)." 8 C.F.R. § 244.12(a) (emphasis added).

113. This obligation's mandatory nature is made plain by the statute and regulation's statement that the benefit "shall" be granted. Repeated use of the word "shall"—particularly when contrasted with the word "may" used elsewhere in the TPS statute and regulations—makes clear that USCIS has a mandatory duty to authorize a TPS recipient to work, and to provide effective and contemporaneous evidence of that authorization, at the time TPS is granted.

114. USCIS violated this mandatory duty in the TPS Recipient Plaintiffs' cases, and in so doing "unlawfully withheld" agency action in violation of 5 U.S.C. § 706(1).

**COUNT III:  
AGENCY ACTION CONTRARY TO LAW IN VIOLATION OF THE APA  
(Violation of INA)**

115. Plaintiffs incorporate paragraphs 1 to 95 as if fully stated herein.

116. USCIS's policy of refusing to issue evidence of interim "temporary treatment" work authorization upon receipt of a TPS application, and its policy of refusing to issue evidence of work authorization upon full approval of TPS, should be set aside pursuant to 5 U.S.C. § 706(2)(A) arbitrary and capricious and "not in accordance with law."

117. The INA and its implementing regulations unambiguously require USCIS to issue interim "temporary treatment" benefits upon receipt of an application that establishes prima facie eligibility for TPS.

118. Despite this clear statutory and regulatory obligation, upon information and belief, USCIS maintains a policy or practice of refusing to evaluate TPS applications for prima facie eligibility and therefore of failing to issue the interim “temporary treatment” work authorization.

119. In addition to granting work authorization to eligible TPS *applicants*, the INA and its implementing regulations require USCIS to provide TPS *recipients* with work authorization incident to status, along with evidence of such work authorization at the time TPS is granted.

120. Yet, upon information and belief, USCIS maintains a policy and practice of issuing TPS applicants and recipients evidence of work authorization only pursuant to a separately filed Form I-765 application for an Employment Authorization Document—an application that is adjudicated separately from the Form I-821 application for TPS itself, thereby delaying or even preventing issuance of effective work authorization altogether.

121. These policies and procedures of USCIS violate the INA and its implementing regulations, and therefore are not in accordance with law, in violation of 5 U.S.C. § 706(2)(A).

**COUNT IV:  
ARBITRARY AND CAPRICIOUS AGENCY ACTION IN VIOLATION OF THE APA  
(Arbitrary and Capricious Agency Policy)**

122. Plaintiffs incorporate paragraphs 1 to 95 as if fully stated herein.

123. USCIS’s policy of refusing to issue evidence of interim “temporary treatment” work authorization upon receipt of a TPS application, and its policy of refusing to issue evidence of work authorization upon full approval of TPS, should be set aside pursuant to 5 U.S.C. § 706(2)(A) as arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

124. Upon information and belief, USCIS maintains a policy of refusing to evaluate TPS applications for prima facie eligibility and therefore of failing to issue the interim “temporary treatment” work authorization TPS applicants are entitled to by statute and regulation.

125. USCIS also maintains a policy of issuing TPS recipients evidence of work authorization only pursuant to a separately filed Form I-765 application for an Employment Authorization Document—an application that is adjudicated separately from the Form I-821 application for TPS itself.

126. As a result of this decoupling, USCIS fails as a matter of course to issue TPS recipients evidence of work authorization at time their TPS applications are approved, in violation of the TPS statute and regulations.

127. USCIS has in other contexts recognized its obligation to issue immediate evidence of work authorization to noncitizens who are guaranteed the right to work by statute—that is, authorized to work “incident to status.”

128. For example, using statutory language nearly identical to that used to authorize TPS recipients to work, the INA grants the spouses of E- and L-visa holders work authorization incident to status. *See* 8 U.S.C. § 1184(c)(2)(E) (providing that the DHS Secretary “shall authorize” spouses of L-visa holders “to engage in employment in the United States and provide the spouse with an ‘employment authorized’ endorsement or other appropriate work permit”); *see also id.* § 1184(e)(2) (same for derivative spouses of E-visa holders).

129. Because these noncitizens are authorized to work incident to status, USCIS permits them to work immediately upon receipt of derivative L and E (L-2S and E-2S) status.

130. USCIS also requires employers to accept as evidence of these noncitizens’ work authorization a Form I-94 indicating their admission in such status, without any need for the

presentation of an Employment Authorization Document issued pursuant to a Form I-765 application.

131. In adopting this policy, USCIS recognized that it could fulfill the statute's mandate to "provide the spouse with an 'employment authorized' endorsement or other appropriate work permit" by designating preexisting documentation of the noncitizen's status, "combined with a valid identity document," as evidence of work authorization. *See USCIS, Policy Alert: Employment Authorization for Certain H-4, E, and L Nonimmigrant Dependent Spouses*, PA-2021-25 (Nov. 12, 2021), at 7.

132. USCIS further recognized that maintaining a policy of requiring each eligible noncitizen to file a Form I-765 to request an Employment Authorization Document would create a "high risk of gaps in employment authorization" and "result in USCIS's failure to meet the directive under the statute to grant employment authorization to this population." *Id.*

133. USCIS maintains similar policies with respect to other noncitizens authorized to work incident to status, such as refugees and asylees.

134. Although TPS recipients are similarly situated, USCIS has not designated TPS approval notices as evidence of work authorization, nor does USCIS issue other contemporaneous evidence of work authorization to TPS recipients. Instead, USCIS treats an Employment Authorization Document issued pursuant to a separately filed Form I-765 as the only valid evidence of employment authorization for a TPS recipient.

135. USCIS has not considered, explained, or justified its disparate treatment of TPS applicants, despite its clear statutory and regulatory obligations.

136. This policy is arbitrary and capricious, in violation of the APA.

**COUNT V:  
VIOLATION OF DUE PROCESS**

137. Plaintiffs incorporate paragraphs 1 to 95 as if fully stated herein.

138. The INA and its implementing regulations guarantee Plaintiffs work authorization pursuant to their pending applications for TPS or full grant of TPS.

139. Plaintiffs have a due process right to the work authorization guaranteed them by statute and regulation. *See, e.g., McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 491 (1991) (“[T]he impact of a denial on the opportunity to obtain gainful employment is plainly sufficient to mandate constitutionally fair procedures in the application process.”).

140. By refusing to accord Plaintiffs evidence of work authorization in violation of the agency’s clear statutory and regulatory mandate, USCIS has violated Plaintiffs’ right to due process.

**ATTORNEY’S FEES**

141. Plaintiffs incorporate paragraphs 1 to 140 as if fully stated herein.

142. As a result of USCIS’s unlawful actions and failure to act, Plaintiffs were required to retain legal counsel and to pay counsel reasonable attorneys’ fees for this case.

143. Plaintiffs are entitled to recover their costs, expenses, and fees because USCIS’s actions are not and have not been substantially justified.

**RELIEF REQUESTED**

**WHEREFORE**, Plaintiffs respectfully request that this Court enter judgment in their favor and:

- a. Find USCIS’s policy of withholding evidence of work authorization to Plaintiffs arbitrary and capricious in violation of the Administrative Procedure Act;

- b. Find USCIS's policy of withholding evidence of work authorization to Plaintiffs contrary to the INA and its implementing regulations, in violation of the Administrative Procedure Act;
- c. Declare that USCIS has unlawfully withheld issuance of interim "temporary treatment" work authorization to the TPS Applicant Plaintiffs;
- d. Declare that USCIS has unlawfully withheld issuance of documentation evidencing work authorization to the TPS Recipient Plaintiffs;
- e. Declare that USCIS has violated Plaintiffs' Due Process rights by unlawfully withholding from them evidence of work authorization;
- f. Order USCIS to immediately issue the TPS Applicant Plaintiffs evidence of interim "temporary treatment" work authorization pending a final decision on their applications for TPS;
- g. Order USCIS to immediately issue the TPS Recipient Plaintiffs evidence of work authorization;
- h. Award Plaintiffs their reasonable costs and attorney's fees;
- i. Grant such other relief as this Court may deem just and proper.

Dated: November 15, 2022

Respectfully submitted,

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