

No. 26-1893

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

VENEZUELAN ASSOCIATION OF MASSACHUSETTS, et al.,
Plaintiffs-Appellants,

v.

U.S. CITIZENSHIP AND IMMIGRATION SERVICES, et al.,
Defendants-Appellees.

On Appeal from the United States District Court
for the District of Massachusetts
Case No. 26-cv-13038
The Honorable Nathaniel M. Gorton

**RENEWED EMERGENCY MOTION FOR 5 U.S.C. § 705 STAY PENDING
APPEAL AND IMMEDIATE ADMINISTRATIVE STAY**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Appellants hereby state that they have no relevant information to disclose.

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INTRODUCTION

Plaintiffs-Appellants are organizations representing asylum seekers and temporary protected status (TPS) holders across the country. They challenge actions by U.S. Citizenship and Immigration Services (USCIS) that prematurely terminate work authorization for hundreds of thousands of TPS holders while they remain in TPS status. Without immediate relief, these TPS holders will lose the ability to support themselves and their families.

Plaintiffs sued on July 1, 2026 and the next day sought a stay under 5 U.S.C. § 705. Because Plaintiffs' members would suffer irreparable harm beginning July 22, the district court administratively stayed the challenged policies on July 21. Many of Plaintiffs' members were able to keep their jobs as a result. On August 5, 2026, however, the district court denied Plaintiffs' motion to stay the relevant policies, which terminated the administrative stay.

Plaintiffs filed an emergency motion for a stay pending appeal and an immediate administrative stay with this Court on August 6, 2026. On August 7, 2026, this Court denied that motion without prejudice to reassertion in the district court in the first instance. Order, *Venezuelan Ass'n of Mass. v. USCIS*, No. 26-1893 (1st Cir. Aug. 7, 2026). The same day, Plaintiffs promptly moved the district court for a stay pending appeal, or, in the alternative, to extend the administrative stay. A112. The district court denied Plaintiffs' motion today, August 10, 2026. *Id.*

Plaintiffs now reassert their motion with this Court. Plaintiffs’ members face immediate loss of employment if this Court does not act.¹

This Court should grant an immediate administrative stay so that TPS holders will not lose their jobs while the Court deliberates. *See* A111. It should also grant a Section 705 stay pending appeal. Plaintiffs are likely to succeed on the merits, their members will likely suffer irreparable harm without preliminary relief, and the equities strongly favor a stay.

BACKGROUND

I. The TPS Program and Work Authorization

The TPS program allows eligible foreign nationals to live and work in the United States while it is unsafe to return to their countries of origin. *See Sanchez v. Mayorkas*, 593 U.S. 409, 412 (2021). DHS must authorize TPS holders “to engage in employment in the United States and provide [them] with an ‘employment authorized’ endorsement or other appropriate work permit.” 8 U.S.C.

§ 1254a(a)(1)(B). Such authorization “shall be effective throughout the period the [noncitizen] is in temporary protected status.” *Id.* § 1254a(a)(2).

TPS designations last 6 to 18 months but can be extended. *Id.* § 1254a(b)(2), (b)(3)(C). Hundreds of thousands of individuals have been living and working for

¹ The district court granted in part Plaintiffs’ Section 705 Stay Motion and stayed a policy implementing a fee for pending asylum applications. A100-02. Plaintiffs do not appeal that portion of the district court’s order.

decades under TPS designations that have been consistently extended because of continued instability in their countries of origin. *See, e.g., Extension of the Designation of El Salvador for Temporary Protected Status*, 90 FR 5953, 5954 (Jan. 17, 2025) (extending designation first issued in 2001). This case impacts TPS holders from El Salvador, Ukraine, and Sudan.

On January 17, 2025, USCIS extended existing TPS designations for El Salvador, Ukraine, and Sudan, each for a period of 18 months. 90 FR at 5953; *Extension of the Designation of Ukraine for Temporary Protected Status*, 90 FR 5936 (Jan. 17, 2025); *Extension of Sudan for Temporary Protected Status*, 90 FR 5944 (Jan. 17, 2025). People previously granted TPS under these designations were required to re-register for TPS during a 60-day period ending March 18, 2025. *See* 90 FR at 5953 (El Salvador); 90 FR at 5937 (Ukraine); 90 FR at 5945 (Sudan).

In each extension notice, USCIS said that it would issue new work permits (known as Employment Authorization Documents or EADs) to these TPS holders that were valid for the full length of the TPS extension. 90 FR at 5953-54; 90 FR at 5937; 90 FR at 5945. This was required by 8 C.F.R. § 244.12(a), which in early 2025 provided that: “[u]pon approval of an application for [TPS], USCIS shall grant an employment authorization document valid during the initial period of the foreign state’s designation (and any extensions of such period).” In addition, when

TPS holders from these countries applied to renew their EADs during the re-registration period, a USCIS regulation automatically extended their existing EAD for 540 days. *See Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants*, 89 FR 101208 (Dec. 13, 2024) (revising 8 C.F.R. § 274a.13(d)(1), (d)(3)); *see also* 90 FR at 5958 (El Salvador); 90 FR at 5950 (Sudan); 90 FR at 5941 (Ukraine).

Consistent with 8 C.F.R. § 274a.13(d)(1), TPS holders who applied to renew their TPS-based EADs during the re-registration period received individual “Notice[s] of Action” from USCIS explaining that they qualified for an automatic 540-day extension. Each Notice stated: “[Y]ou can show this notice with your expired EAD to your employer for employment eligibility verification (Form I-9) purposes. The automatic extension is for up to 540 days from the expiration date printed on the front of your EAD.” A038. Due to severe USCIS processing delays, tens of thousands of these TPS holders have not received a new EAD despite re-registering in early 2025.² These TPS holders have been relying on the automatic 540-day extension to continue working. A030 ¶¶ 27-31.

² *See* USCIS, Immigration and Citizenship Data, *Form I-765, Application for Employment Authorization, Eligibility Category and Filing Type (Fiscal Year 2026, Quarter 1)* (June 12, 2026), <https://perma.cc/FWN6-A4CF> (backlog of 216,220 TPS EAD renewal applications as of December 31, 2025, processed at a rate of 6,227 applications per quarter); *see also* A030 ¶ 31 (Plaintiff survey found

Legislation enacted in July 2025 limited the duration of each TPS EAD that USCIS grants to one year or the duration of the TPS designation, whichever is shorter. H.R. 1, 119th Cong. §§ 100003(c)(1), 100012(a) (2025) (codified at 8 U.S.C. §§ 1803(c)(1), 1811(a)). But H.R. 1 did not disturb the requirement that TPS holders receive employment authorization “effective throughout” their TPS status. Nor did it make the new one-year cap to the duration of each work permit retroactive.

In October 2025, USCIS amended 8 C.F.R. § 274a.13 to end automatic 540-day extensions but applied that rule only to future-filed EAD applications so it would not “retroactively affect those [noncitizens] who have already timely and properly filed a renewal EAD application before October 30, 2025.” *Removal of the Automatic Extension of Employment Authorization Documents*, 90 FR 48799, 48811-12 (Oct. 30, 2025).

II. Defendants’ Challenged Actions

This appeal concerns three of the unlawful actions taken by Defendants, purportedly to implement H.R. 1.

First, in an update to its website on March 13, 2026 (the “**March Update**”) USCIS announced that TPS holders who had applied to renew their EADs during

that only 10% of Salvadoran TPS holders who applied to renew their EADs during the re-registration period had received new EADs by May 2026, more than fifteen months later).

the early 2025 re-registration periods for El Salvador, Sudan, and Ukraine—and who have *still* not received new work permits—could no longer rely on the automatic 540-day work authorization extension they had been issued under 8 C.F.R. § 274a.13(d)(1). USCIS said this was the case even for TPS holders who had received individual notices confirming that extension. USCIS, *Update to TPS Page on EAD Automatic Extensions* (Mar. 13, 2026), <https://perma.cc/6PA2-XT85> (A001). Instead, USCIS said, their automatic EAD extensions “cannot last longer than [July 22, 2026]”—*less* than 540 days. *Id.* The March Update directly conflicts with USCIS’s October 30, 2025 amendment of 8 C.F.R. 274a.13(d), which preserved the validity of 540-day extensions issued before that date to avoid a “retroactive[]” application. 90 FR at 48811-12.

Second, for those TPS holders from El Salvador, Ukraine, and Sudan who have received their EADs, Defendants have pursued a “**Cap Policy**” of applying H.R. 1’s one-year time limit on TPS EADs retroactively, even though these TPS holders applied to renew their EADs before H.R. 1 was enacted. Defendants issued a Federal Register notice on July 22, 2025, stating that TPS EADs “shall be approved for a period of no more than 1 year, or for the duration of the designation of TPS, whichever is shorter.” *USCIS Immigration Fees Required by HR-1 Reconciliation Bill*, 90 FR 34511, 34514. What Defendants did not disclose until this Spring is that USCIS has been applying the one-year cap to EAD applications

filed before H.R. 1 was enacted, something the agency revealed for the first time in a footnote in an interim final rule issued in April (the “**April IFR**”). *USCIS Immigration Fees and Related Procedures Required by H.R.1 Reconciliation Bill*, 91 FR 22952, 22960 n.75 (Apr. 29, 2026) (A002-023).

The April IFR said that, in July 2025, when some countries—specifically, El Salvador, Ukraine, and Sudan—still had more than 12 months remaining in their TPS designations, USCIS “calculated the H.R. 1 caps [for TPS EADs] from the date of adjudication” of their TPS application. *Id.* at 22960 n.75. USCIS thus applied H.R. 1 one-year “caps” to TPS holders from these countries who filed their EAD applications before H.R. 1 was enacted. Although the regulations in effect when they applied entitled these TPS holders to renewed EADs valid until the end of their TPS designation period, 8 C.F.R. § 244.12(a) (2025), USCIS instead issued them shorter, one-year EADs. For example, one of Plaintiffs’ members is a Sudanese TPS holder who re-registered for TPS and applied to renew her EAD in early 2025. A034 ¶ 40. USCIS approved her EAD renewal on July 22, 2025 and issued her a new EAD with a July 22, 2026 expiration date, instead of an EAD that lasts the full length of her TPS designation period. *Id.*

Third, after months of applying the one-year cap to pending applications in violation of 8 C.F.R. § 244.12 (2025), the **April IFR** revised that regulation to limit the duration of each TPS EAD and renewal to one year. 91 FR at 22960 n.75,

22972. It also provided that, when an EAD expires, the TPS holder “must obtain a renewal to continue employment authorization.” *Id.* at 22972. USCIS admitted that TPS holders “could face gaps in employment authorization” and lose their jobs while waiting for USCIS to renew their EADs. *Id.* at 22961. Yet USCIS did not provide any way to ensure that TPS holders could maintain EADs “effective throughout the period [they are] in temporary protected status” as the statute requires. 8 U.S.C. § 1254a(a)(2).

III. Harms to Plaintiffs’ Members

Plaintiffs’ membership—which includes many TPS holders—faces severe and irreparable harm because of Defendants’ actions. Absent action from this Court, many of Plaintiffs’ members will immediately lose their ability to work while they remain in TPS status. Because of the March Update, many of Plaintiffs’ members relying on an automatic extension were told by their employers that their work authorization would end on July 22, 2026. A031-34 ¶¶ 29-38; A068 ¶ 23; A077 ¶ 15; A044-45 ¶ 23. As a result of the July Cap Policy, other TPS holders received new EADs, but they expire as soon as July 22, 2026, one year from the date their application was adjudicated, instead of the date their TPS status expires.

A034 ¶¶ 39–42. These expiration dates were administratively stayed by the district court, but that administrative stay has now been dissolved.

The loss of employment authorization constitutes irreparable harm because it deprives noncitizens of the legal ability to work and pursue their occupations.

Bowser v. Noem, No. 26-cv-10382, 2026 WL 555624, at *9 (D. Mass. Feb. 27, 2026); *Varniab v. Edlow*, No. 25-cv-10602, 2026 WL 485490, at *22-23 (N.D. Cal. Feb. 20, 2026); *Doe v. Noem*, 778 F. Supp. 3d 1151, 1164 (W.D. Wash. 2025) (collecting cases). Even if Plaintiffs were able to secure relief at some point in the future, there is substantial risk their jobs would no longer be available.

Plaintiffs’ members will suffer additional irreparable harm as a direct result of being unable to work, such as loss of health care coverage, housing instability, and inability to support their U.S. citizen children. A030-35 ¶¶ 33-42 (describing harms including loss of critical medical care for members and members’ children and risk of default on mortgage for family home); A066-71 ¶¶ 15-35; A078 ¶¶ 17-18; A044-45 ¶¶ 21, 23-25. These injuries cannot be remedied through a later damages award. *See, e.g., AFGE v. Trump*, 139 F.4th 1020, 1040 (9th Cir. 2025) (employees who would experience loss of healthcare and need to relocate from their homes after job loss would suffer irreparable harm), *stayed on other grounds*,

145 S. Ct. 2635 (2025); *E. Bay Sanctuary Covenant v. Garland*, 994 F.3d 962, 984 (9th Cir. 2020) (unrecoverable economic losses are irreparable).

IV. This Litigation

Plaintiffs sued on July 1, 2026, challenging the Cap Policy, the March Update, and the April IFR. They moved for a stay under 5 U.S.C. § 705 on July 2, requesting a ruling before July 22. Plaintiffs later moved for an administrative stay, which the Court granted in relevant part. A111. On August 5, 2026, the Court stayed the April 2026 IFR’s implementation of a policy concerning fees for asylum applications, but it denied Plaintiffs’ motion to stay the TPS-related policies. A106.

ARGUMENT

I. The Court should grant an immediate administrative stay

Under the APA, courts may “issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.” 5 U.S.C. § 705.

A court may “issue[] a temporary administrative stay” to “buy[] the court time to deliberate.” *United States v. Texas*, 144 S. Ct. 797, 798 (2024) (Barrett, J., concurring); *accord Nat’l Park Conservation Ass’n v. Dep’t of the Interior*, 178 F.4th 805, 806 (1st Cir. 2026). “Administrative stays do not typically reflect the court’s consideration of the merits” but rather are meant “to minimize harm while an appellate court deliberates.” *Texas*, 144 S. Ct. at 798 (Barrett, J., concurring).

Given the severe harm caused by Defendants’ March Update and Cap Policy, which threaten thousands of TPS holders with loss of employment starting *today*, and the need to fully consider the issues raised, the district court administratively stayed those policies until August 5. A089. For the same reasons, this Court should grant an immediate administrative stay.

II. The Court should grant a stay pending appeal

The Court also should stay the March Update, Cap Policy, and April IFR pending appeal. Courts evaluate requests for relief under Section 705 using the familiar preliminary injunction factors, *see, e.g., New England Synod v. DHS*, 824 F. Supp. 3d 118, 139 (D. Mass. 2026): if the movant is “likely to succeed on the merits,” “likely to suffer irreparable harm in the absence of preliminary relief,” “the balance of equities tips in [its] favor,” and “an injunction is in the public interest,” *Together Emps. v. Mass Gen. Brigham Inc.*, 32 F.4th 82, 85 (1st Cir. 2022).

A. Plaintiffs are likely to succeed on the merits

Plaintiffs are likely to succeed on their claims that the March Update and the Cap Policy are contrary to law, procedurally invalid, and arbitrary and capricious, and that the April IFR is contrary to law and arbitrary and capricious.

1. The March Update is impermissibly retroactive

The March Update purports to take away EAD extensions that took effect a year before the Update was published. It does so even though USCIS affirmed in

October 2025—months *after* passage of H.R. 1—that those extensions remained valid. 8 C.F.R. § 274a.13(d); *see supra* at 5.

Because it applies H.R. 1’s TPS one-year work-authorization cap retroactively without statutory authorization, the March Update is contrary to law. To apply retroactively, a statute must include an “‘unambiguous directive’ or ‘express command’ that the statute is to be applied retroactively,” *Martin v. Hadix*, 527 U.S. 343, 354 (1999)—language “so clear that [the statute] could sustain only one interpretation.” *INS v. St. Cyr*, 533 U.S. 289, 316-17 (2001). As the district court agreed, H.R. 1’s TPS provisions contain no such clear statement. A098. Rather, H.R. 1 does not specify whether the one-year cap applies to TPS holders who applied for renewed work permits before H.R. 1 was enacted. 8 U.S.C. §§ 1803(c)(1), 1811(a).

USCIS therefore may not apply H.R. 1 retroactively to “impair rights a party possessed when he acted” or attach “new legal consequence to a past event” such as the “filing of an application” for relief. *Arevalo v. Ashcroft*, 344 F.3d 1, 10-11, 14 (1st Cir. 2003) (quotation marks omitted).

The March Update does just that. When TPS holders from El Salvador, Ukraine, and Sudan applied to renew their EADs in early 2025—before H.R. 1’s enactment—they automatically received a 540-day extension. 8 C.F.R. § 274a.13(d); A038. Although that 540-day authorization vested before H.R. 1’s

enactment—and was confirmed via individual notices mailed to each TPS holder—the March Update shortened it. Under the Update, those authorizations now expire on July 22, 2026, instead of August 31 (El Salvador) and October 11 (Sudan and Ukraine). The March Update is thus impermissibly retroactive. *See Arevalo*, 344 F.3d at 14 (USCIS’s predecessor could not apply new statute to deny relief because noncitizen applied for it before the statute’s effective date); *Uranga v. USCIS*, 490 F. Supp. 3d 86, 107-08 (D.D.C. 2020) (USCIS could not apply new rule to refuse to grant interim work authorization to person who applied for work permit before regulation’s effective date).

Although the district court agreed that USCIS cannot apply H.R. 1 retroactively, it concluded that shortening TPS holders’ work authorizations does not constitute a retroactive application. A098-99. It drew a distinction between the rule in *Arevalo*, in which USCIS’s predecessor impermissibly applied a new statute to deny a right “outright,” and the actions here, which only “limit the maximum *duration* for which an individual may enjoy that right.” *Id.* (emphasis added).

That distinction finds no support in the law or logic. A law that shortens a right’s duration still “impair[s]” that right and changes its “legal consequences,” even if it does not revoke the whole thing. *Arevalo*, 344 F.3d at 10-11, 14; *cf.* *Landgraf v. USI Film Prods.*, 511 U.S. 244, 283 (1994) (law that merely changes “[t]he *extent* of a party’s liability” has a retroactive effect). “[C]onsiderations of

fair notice, reasonable reliance, and settled expectations” confirm as much here.

Arevalo, 344 F.3d at 11. Immigrants promised the right to work for 18 months take jobs, rent apartments, and make financial plans they would have changed if they knew their time was shorter. *See* A033-34 ¶ 38; A045 ¶ 25; A065, 070 ¶¶ 11, 33; A078 ¶ 18. By cutting off these people’s right to work months early, USCIS disrupts the “settled expectations” of TPS holders and their employers. *Arevalo*, 344 F.3d at 11.

The district court also suggested that the March Update was not impermissibly retroactive because “the policy concerns a future expiration date.” A099. By that logic, though, the law in *Arevalo* was not retroactive because it concerned a future grant of discretionary relief. That is not the law. When an agency wants to “impair” pre-existing rights, it must identify clear support in a statute, regardless of when it plans to impair them. *Arevalo*, 344 F.3d at 10-11. USCIS identified no such support in H.R. 1.

2. The Cap Policy is impermissibly retroactive

Like the March Update, the Cap Policy also attaches new legal consequences to EAD applications filed before H.R. 1 was enacted. When USCIS extended TPS for El Salvador, Sudan, and Ukraine, in January 2025, 8 C.F.R. § 244.12(a) entitled TPS holders to an EAD that was valid throughout the extension period. *See also, e.g.*, 90 FR at 5953-54. After July 2025, however, USCIS quietly

reversed course and capped new EADs at one year from the date of adjudication, even if the TPS holder applied for an EAD long before H.R. 1 took effect. 91 FR at 22960 n.75; *see also* A034-35 ¶¶ 39-42. As a result, TPS holders who applied for EADs before that date face premature loss of employment authorization months before then-existing regulations guaranteed. The Cap Policy is thus impermissibly retroactive as well. *See Arevalo*, 344 F.3d at 14.

3. The Cap Policy, March Update, and April IFR violate the TPS statute

All three policies are contrary to the TPS statute because they inevitably cause gaps in TPS holders' work authorization, violating the statute's employment-authorization mandate. *See* 8 U.S.C. § 1254a(a)(1)-(2). H.R. 1 did not repeal that mandate. Rather, as USCIS concedes, it limits only "how long employment authorization may remain valid in any single grant or renewal." 91 FR at 22961. That limit on each discrete authorization or renewal is fully compatible with USCIS's preexisting statutory duty to ensure that TPS holders retain work authorization *throughout* the TPS period. If a TPS designation lasts longer than one year, USCIS must either process EAD renewal applications quickly enough that TPS holders receive new EADs before their old EADs expire or provide automatic extensions like it has done in the past to ensure work authorization "effective throughout" the TPS period. 8 U.S.C. § 1254a(a)(2); *see* 8 C.F.R. § 274a.13(e)

(noting USCIS can automatically extend TPS EADs via “Federal Register notice regarding procedures for renewing TPS-related employment documentation”).

The Cap Policy, March Update, and April IFR violate that statutory directive because they ensure that TPS holders will lose work authorization during their TPS period. Under the Cap Policy, USCIS issued one-year EADs to Salvadoran, Ukrainian, and Sudanese TPS holders who had more than one year remaining on their TPS. Given existing backlogs in processing EAD renewal applications, those TPS holders cannot obtain new EADs before their old ones expire. *See supra* n.2.

The March Update similarly left TPS holders with no way to maintain employment authorization because it shortens the automatic 540-day extension TPS holders received when they timely applied to renew their EADs in early 2025. TPS holders who were relying on those extensions to show work authorization are by definition TPS holders who have not yet received new EADs, despite applying over 15 months ago. *See* A030-33 ¶¶ 31-38. By purporting to terminate those extensions on July 22, 2026, without providing *any* alternative means to establish work authorization while they remain in TPS status, the March Update violates 8 U.S.C. § 1254a(a)(2).

Finally, the April 2026 IFR amends 8 C.F.R. § 244.12 to require TPS holders to “obtain a renewal to continue employment authorization” upon expiration of their “1 year” EAD. *See* 91 FR at 22972. USCIS suggested that TPS holders could avoid

losing authorization if they simply “file timely renewals.” *Id.* at 22961. But—per USCIS’s own reporting and Plaintiffs’ experience—many EAD renewals take more than 12 months to process. *See supra* n.2. Yet, the IFR does not adopt any of the methods USCIS previously used, such as granting country-wide automatic extensions via Federal Register notice or providing individual TPS holders with automatic extensions of 12 months or less upon the filing of an application for renewal.

In the IFR, USCIS said that it did not need to ensure that TPS holders remain work-authorized throughout their TPS designation because the statute no longer required it to do so. *See* 91 FR at 22961. USCIS asserted that 8 U.S.C. § 1254a(a)(2) governs only who is eligible for work authorization—not how long that authorization must remain valid. *Id.* This ignores the language of § 1254a(a)(2), which requires TPS holders to have work authorization “throughout the period” of TPS, and the subsection’s title, “Duration of work authorization.”

The district court was “unconvinced by the government’s interpretation of the TPS statute.” A100. Nevertheless, it held that the “possibility that implementation of H.R. 1 will create a gap in employment authorization is insufficient to find” that the Cap Policy is unlawful because the government could decide to, for example, issue a future automatic extension of expiring EADs. *Id.* But some TPS holders’ EADs have already expired because of the Cap Policy and March Update and USCIS has taken no action to extend them. As revealed in the

IFR, USCIS’s decision to cut off work authorizations without taking any action to prevent gaps rests in part on its legal conclusion that USCIS has no obligation to do so. That legal error—which underpins all three policies—justifies a stay. *See Calcutt v. FDIC*, 598 U.S. 623, 629 (2023) (“[T]he function of the reviewing court ends when an [agency’s] error of law is laid bare.”).

4. The March Update and April IFR are arbitrary and capricious

The district court failed to address Plaintiffs’ claims that the March Update and April IFR are arbitrary and capricious. The March Update failed to provide a “reasoned explanation” for departing from 8 C.F.R. § 274a.13(d)(1) and the notices USCIS had already issued to TPS holders providing the automatic 540-day extension. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (“An agency may not ... simply disregard rules that are still on the books” and, when it changes course, “must show that there are good reasons for the new policy.”).

Defendants also failed to consider obvious alternatives to the March Update, such as allowing people who applied for renewals before H.R. 1 to benefit from the full automatic extension or prospectively issuing additional automatic extensions. *See DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 28-29 (2020) (DHS acted arbitrarily and capriciously where it failed to consider less sweeping policy change); *Spirit Airlines, Inc. v. Dep’t of Transp.*, 997 F.3d 1247, 1255 (D.C. Cir.

2021) (an agency must “consider responsible alternatives to its chosen policy and . . . give a reasoned explanation for its rejection of such alternatives”).

In addition, in the March Update, Defendants disregarded the reliance interests of TPS holders and employers who depended on the 540-day automatic extension. *See Regents*, 591 U.S. at 30-33 (agencies must “assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns”); *Am. Hosp. Ass’n v. Kennedy*, 164 F.4th 28, 33 (1st Cir. 2026) (treatment of reliance interests is “a critical factor in the analysis of an arbitrary-and-capricious claim”).

The April IFR also is arbitrary and capricious. USCIS failed to consider an “important aspect of the problem”: the obvious interaction between its implementation of H.R. 1’s one-year TPS EAD duration limit and USCIS’s own processing times. *Ohio v. EPA*, 603 U.S. 279, 293 (2024). USCIS knew in promulgating the April 2026 IFR that it has a voluminous EAD renewal backlog. *See supra* n.2. But it failed to account for the effect of these delays on the operation of the rule.

The IFR also rests on the false premise that “current TPS designation timeframes do not place TPS beneficiaries and applicants at risk of experiencing gaps in employment authorization.” 91 FR at 22961. This is plainly incorrect because the March Update and Cap Policy have already caused TPS holders to lose

work authorization. At best, therefore, USCIS failed to engage with the predictable effects of its rule, in violation of the APA. *See Ohio*, 603 U.S. at 293. Further, USCIS failed to consider “responsible alternatives,” such as issuing automatic extensions of less than one year to ensure work authorization for the full TPS designation period as required by the TPS statute. *Spirit Airlines*, 997 F.3d at 1255.

5. The Cap Policy and March Update are procedurally invalid

Finally, the March Update and Cap Policy are procedurally invalid because they are legislative rules that were issued without notice and comment. Notice and comment was required because each action “creates rights, assigns duties, or imposes obligations, the basic tenor of which is not already outlined in the law itself.” *N.H. Hosp. Ass’n v. Azar*, 887 F.3d 62, 70 (1st Cir. 2018). As the district court recognized, H.R. 1 “does not clearly mandate retroactive application” of its TPS employment-authorization provisions. A098. Yet the March Update and Cap Policy altered the rights of TPS holders by retroactively stripping TPS holders of weeks of work authorization to which previous regulations entitled them—a matter H.R. 1 left “unaddressed.” *N.H. Hosp.*, 887 F.3d at 71-72. In doing so, the March Update and Cap Policy go well beyond merely restating the “only plausible interpretation” of a clear statutory command. *Id.* at 71.

The district court did not disagree that the Cap Policy and March Update are legislative rules; instead, it found that there was “good cause” to forgo notice and

comment for the Cap Policy. A097-98. But Defendants’ brief below did not argue that the March Update and Cap Policy were exempt from notice and comment, let alone claim that the “good cause” exception applied to those policies. That was for good reason. “[T]he APA specifically requires that when an agency relies on the good cause exception it must ‘incorporate[] the finding and a brief statement of reasons therefor in the rules issued.’” *Levesque v. Block*, 723 F.2d 175, 179 (1st Cir. 1983) (quoting 5 U.S.C. § 553(b)(4)(B)). Yet, in publishing the March Update and disclosing the Cap Policy, USCIS never even mentioned the good cause exception.

Relying on out-of-circuit precedent, the district court nonetheless held the “good cause” standard was satisfied because the Cap Policy and March Update “merely restate[] the statute.” A097-98. But the district court itself recognized that the statute “does not clearly mandate retroactive application.” *Id.* at 098. Because the Cap Policy and March Update *do* mandate retroactive application, they plainly do more than “restate the statute.” *See N.H. Hosp.*, 887 F.3d at 71-72.

B. The other factors support a stay

Plaintiffs’ members are likely to suffer irreparable harm without preliminary relief, *see supra* at 8-10, so this factor favors a Section 705 stay.

The balance of equities and public interest merge here. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). They too favor a stay.

First, “TPS holders are integrated into the U.S. communities in which they live” and “make significant economic contributions to their communities.” *Nat’l TPS All. v. Noem*, 773 F. Supp. 3d 807, 840-42 (N.D. Cal.), *aff’d*, 150 F.4th 1000 (9th Cir. 2025), *stay granted on unspecified grounds*, 145 S. Ct. 2728 (2025). Loss of work authorization would disrupt communities that depend on and benefit from the skilled labor of TPS holders. And the accompanying loss of health care “increases health risks to the broader community” by causing “immigrants to forego medical care, such as diagnostic testing and vaccinations.” *Id.* at 842.

Second, there is a strong “public interest” in requiring agencies to “compl[y] with the APA,” including by considering public input on their actions through notice-and-comment, which Defendants failed to do. *California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018).

For their part, Defendants can demonstrate no harm from simply abiding by their preexisting policies and the requirements of the APA. The challenged actions are unlawful, and “there is generally no public interest in the perpetuation of unlawful agency action.” *New York v. Kennedy*, 155 F.4th 67, 77 (1st Cir. 2025).

CONCLUSION

The Court should issue an administrative stay and stay the March Update, Cap Policy, and April IFR pending appeal.

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Respectfully submitted,

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