

NOTE

WORK AUTHORIZATION AS A DUE PROCESS INTEREST IN PROPERTY: HOW PROCEDURAL DUE PROCESS CAN BE USED TO PROTECT THE WORK AUTHORIZATION OF BENEFICIARIES OF THE TEMPORARY PROTECTED STATUS PROGRAM

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ABSTRACT

There is currently much uncertainty surrounding the future of the Temporary Protected Status Program (TPS). The Trump Administration has continually attacked the program's existence during the first months of President Trump's new term. This note acknowledges the precarious position both the TPS program and beneficiaries of TPS are in and considers an issue often overlooked in modern-day discussions about the program. As TPS designations are terminated, beneficiaries of TPS lose their work authorization and, therefore, their ability to legally work in the United States. At the same time, however, beneficiaries of TPS can fight for their work authorization in the courts. This note argues that the work authorization afforded to beneficiaries of TPS represents a due process interest in property because of the essential nature of work authorization, as well as the fact that beneficiaries of TPS have a legitimate claim of entitlement to their work authorization. Because work authorization represents a property interest, beneficiaries of TPS cannot be deprived of their work authorization without the procedural due process guaranteed by the Due Process Clause of the Fifth and Fourteenth Amendments. This procedural due process seems to require complete and timely hearings for each TPS beneficiary that decides to sue, but may also include alternate remedies, such as claims under 5 U.S.C. § 706.

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INTRODUCTION

The Temporary Protected Status Program (TPS) has been a central target of the Trump Administration during both of President Trump’s terms. The first Trump Administration attempted to terminate the TPS designations of “several countries, including El Salvador, Honduras, Nepal, Nicaragua, and Sudan.”¹ While some of those terminations did go into effect at the end of President Trump’s first term in late 2020, the original TPS designations were reinstated by the Biden Administration.²

The new Trump Administration took action against the TPS program quickly and early, starting just days after President Trump re-entered the White House. In February of 2025, Secretary of Homeland Security Kristi Noem terminated the Biden-era TPS designation for Venezuela.³ Beneficiaries of TPS from Venezuela were just as quick to act—they promptly sued, citing

1. *Temporary Protected Status (TPS): Fact Sheet*, NAT’L IMMIGR. F., <https://forumtogether.org/article/temporary-protected-status-fact-sheet/> [<https://perma.cc/4UNU-H47N>] [hereinafter *TPS Fact Sheet*] (last visited Oct. 23, 2025).

2. *Id.*

3. *Temporary Protected Status Designated Country: Venezuela*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-venezuela> [<https://perma.cc/5R9V-QXSC>] [hereinafter *TPS Venezuela*] (last visited Oct. 23, 2025).

violations of administrative procedures and the potential for racial bias.⁴ On March 31, 2025, Federal District Court Judge Edward Chen blocked the termination of Venezuela’s TPS designation and ordered that beneficiaries of TPS remain beneficiaries, at least until the case challenging the termination moves forward.⁵ On May 1, 2025, the Trump Administration took this issue to the Supreme Court and asked that the termination be allowed to go into effect.⁶ In under three months, the TPS program was thrust into the spotlight, and hundreds of thousands of people’s ability to remain and work in the U.S. has been put on the line.

While the media have focused on the potential deportations of TPS beneficiaries after termination, the rescission of work authorization for beneficiaries of TPS also looms in the background.⁷ This less publicized issue threatens the livelihood of TPS beneficiaries across the U.S. However, beneficiaries of TPS whose work authorization is rescinded may have a legal claim to such work authorization under the Due Process Clause of the Fifth and Fourteenth Amendments of the U.S. Constitution.⁸ Beneficiaries of TPS can argue that their work authorization represents a due process interest in property and, therefore, that they should be guaranteed some degree of process before their work authorization can be rescinded. This note explores how such a procedural due process claim would proceed. It will provide an overview of the TPS program before discussing what procedural due process is and what it requires. It will then analyze why work authorization represents a due process interest in property, necessitating procedural due process before any rescission thereof. Finally, this note will consider the degree and form of process due and discuss alternate remedies.

PART I – CONTEXTUALIZING THE TEMPORARY PROTECTED STATUS PROGRAM

The TPS program was established by the Immigration Act of 1990⁹ (“the Act”) as a way to provide temporary immigration status to nationals of certain countries that are experiencing “ongoing armed conflict, environmental disaster, or extraordinary and temporary conditions.”¹⁰ Under the Act, the Secretary of Homeland Security has the authority to designate a country for TPS based on that country’s circumstances and ability to adequately and

4. Adam Liptak, *Trump Asks Supreme Court to Lift Deportation Protections for Venezuelans*, N.Y. TIMES (May 1, 2025), <https://www.nytimes.com/2025/05/01/us/trump-supreme-court-tps.html> [<https://perma.cc/MM3H-9GLH>].

5. *Id.*; *TPS Venezuela*, *supra* note 3.

6. Liptak, *supra* note 4.

7. *See* Liptak, *supra* note 4.

8. *See* U.S. CONST. amends. V, XIV.

9. Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (1990).

10. *Temporary Protected Status: An Overview*, AM. IMMIGR. COUNCIL, <https://www.americanimmigrationcouncil.org/wp-content/uploads/2017/08/Temporary-Protected-Status-An-Overview-11-25-2025.pdf> [<https://perma.cc/RZZ6-HJMR>]; *Temporary Protected Status*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status> [<https://perma.cc/Y89J-7GVW>] [hereinafter *Temporary Protected Status*] (last visited Oct. 24, 2025).

safely handle the return of its nationals.¹¹ A TPS designation can last for six to eighteen months.¹² At least sixty days before a TPS designation is set to expire, the Secretary of Homeland Security “must decide whether to extend or terminate a designation based on the conditions” of the TPS-designated country.¹³ As of September of 2024, there are approximately 863,880 beneficiaries of the TPS program in the U.S.¹⁴

The Immigration Act of 1990 does not define what “temporary” means.¹⁵ While the Act specifies that beneficiaries of TPS “shall not be considered to be permanently residing in the United States under color of law,”¹⁶ it sets no time limits for how long a country can be TPS-designated or for how long beneficiaries of TPS are allowed to remain in the U.S.¹⁷

TPS designations also extend automatically.¹⁸ The Secretary of Homeland Security must take an affirmative action to terminate a TPS designation—if the Secretary of Homeland Security does not decide to terminate a TPS designation at least sixty days before the expiration of that designation, it is automatically extended for a six-month period.¹⁹ Therefore, some TPS designations have lasted for more than two decades and, in some cases, these designations have existed for almost as long as the program itself. For example, Somalia was initially designated under the TPS program in September of 1991.²⁰ In September of 2024, the country’s designation was extended through March of 2026, almost thirty-five years after its initial designation.²¹ Similarly, both Honduras and Nicaragua received TPS designations in January of 1999.²² These designations were set to last until July 5, 2025.²³ If the Secretary of Homeland Security does not decide to terminate these designations by May 6, 2025, they will be automatically extended.²⁴

While a country is designated for TPS, beneficiaries of TPS from that country cannot be removed from the U.S.²⁵ Unlike refugees and asylees,

11. *Temporary Protected Status*, *supra* note 10.

12. AM. IMMIGR. COUNCIL, *supra* note 10.

13. *Id.*

14. *TPS Fact Sheet*, *supra* note 1.

15. AM. IMMIGR. COUNCIL, *supra* note 10.

16. Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978, at 5035.

17. AM. IMMIGR. COUNCIL, *supra* note 10.

18. *Id.*

19. *Id.*

20. *Temporary Protected Status Designated Country: Somalia*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-somalia> [<https://perma.cc/FE6H-SM6N>] [hereinafter *TPS: Somalia*] (last visited Oct. 25, 2025).

21. *Id.*

22. *Temporary Protected Status Designated Country: Honduras*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-honduras> [<https://perma.cc/Z22Y-7HRT>] [hereinafter *TPS: Honduras*] (last visited Oct. 25, 2025); *Temporary Protected Status Designated Country: Nicaragua*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-nicaragua> [<https://perma.cc/HSL6-K9LL>] [hereinafter *TPS: Nicaragua*] (last visited Oct. 25, 2025).

23. *TPS: Honduras*, *supra* note 22; *TPS: Nicaragua*, *supra* note 22.

24. See AM. IMMIGR. COUNCIL, *supra* note 10.

25. *Temporary Protected Status*, *supra* note 10.

however, beneficiaries of TPS are not eligible to adjust their status to lawful permanent residents based on their TPS status.²⁶ If a beneficiary of TPS has a separate ground of eligibility for adjusting status, such as an immigrant petition, they can apply to adjust status using that ground of eligibility.²⁷

During their residency in the U.S., beneficiaries of TPS are also eligible to obtain work authorization.²⁸ This means that beneficiaries of TPS can legally work in the U.S. for however long their country's TPS designation lasts so long as they have a valid employment authorization document (EAD).²⁹ Form I-765, the form used to apply for work authorization, can be submitted at the same time as an application to the TPS program.³⁰ While beneficiaries of TPS must reapply for work authorization at various points during their residency in the U.S., U.S. Citizenship and Immigration Services ("USCIS") routinely grants automatic extensions of work authorization to both individual beneficiaries of TPS and all beneficiaries from a specific country.³¹ Beneficiaries of TPS are even allowed to use a facially *expired* EAD (alongside Form I-797C) as proof of work authorization due to USCIS's practice of granting automatic extensions.³²

The vast majority of TPS beneficiaries take advantage of the work authorization available to them.³³ As of 2017, more than ninety-four percent of TPS beneficiaries were in the labor force.³⁴ Also as of 2017, beneficiaries of TPS "from El Salvador, Honduras, and Haiti contribute a combined \$4.5 billion in pre-tax wages or salary income annually."³⁵ It is estimated that those same TPS beneficiaries contribute more than \$6.9 billion in Social Security and Medicare over a ten-year period.³⁶ Additionally, approximately 130,000 beneficiaries of TPS are "essential critical infrastructure workers."³⁷ Work authorization does more than give beneficiaries of TPS the ability to legally work in the U.S. It gives beneficiaries of TPS the ability to contribute to the U.S.'s economy and benefits such as Social Security and Medicare.³⁸

As of April of 2025, seventeen countries were designated for TPS.³⁹ However, President Trump has made it clear that he wishes to terminate a

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. See *Automatic Employment Authorization Document (EAD) Extension*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/archive/automatic-employment-authorization-document-ead-extension> [<https://perma.cc/7XBL-BWXX>] (last visited Oct. 27, 2025).

32. *Id.*

33. *TPS Fact Sheet*, *supra* note 1.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. See *id.*

39. *Temporary Protected Status*, *supra* note 10; AM. IMMIGR. COUNCIL, *supra* note 10.

number of TPS designations.⁴⁰ Secretary of Homeland Security Kristi Noem already attempted to terminate Venezuela's TPS designation in February of 2025.⁴¹ As TPS designations are terminated, beneficiaries of TPS from those countries will lose their work authorization.

PART II – ARGUMENT

The boundaries of the Due Process Clause of the Fifth and Fourteenth Amendments to the U.S. Constitution have evolved throughout the decades, expanding and contracting as the Supreme Court has decided cases.⁴² Procedural due process specifically encompasses the idea that an individual cannot be deprived of certain rights and interests, such as liberty and property, without “due process of law”—in other words, an individual cannot be deprived of their liberty or property without the opportunity to be heard and make a case.⁴³ Unlike substantive due process, which essentially provides protections for rights unenumerated in the Constitution, procedural due process protects those rights and interests that the Constitution guarantees, including liberty and property.⁴⁴

The Constitution prohibits the government from depriving an individual of “life, liberty or property without due process of law.”⁴⁵ It is when such a deprivation occurs that procedural due process is required. In their article on the revocation of professional licenses, Professor Mark Fondacaro and Dennis Stolle recognize that, in order for procedural due process to be implicated, three threshold requirements must be met.⁴⁶ First, there must be government action.⁴⁷ Second, through that action, “the government must threaten to deprive a person of a liberty or property interest.”⁴⁸ Finally, there must be a determination establishing what process such a deprivation of a liberty or property interest is due.⁴⁹ This note will analyze each of the three threshold requirements to show that the work authorization granted to beneficiaries of TPS represents a due process interest in property and, therefore, procedural due process is required before such work authorization can be rescinded.

40. See Jasmine Garsd, *Trump Ends Extension of Temporary Protected Status for Hundreds of Thousands of Venezuelan Migrants*, NPR (Jan. 29, 2025), <https://www.npr.org/2025/01/29/nx-s1-5279219/trump-ends-extension-of-temporary-protected-status-for-hundreds-of-thousands-of-venezuelan-migrants> [<https://perma.cc/C7JB-KYW5>].

41. *TPS: Venezuela*, *supra* note 3.

42. U.S. CONST. amends. V, XIV.

43. *Id.*

44. *Id.*

45. *Id.*

46. Mark R. Fondacaro & Dennis P. Stolle, *Revoking Motor Vehicle and Professional Licenses for Purposes of Child Support Enforcement: Constitutional Challenges and Policy Implications*, 5 CORNELL J. L. & PUB. POL'Y 355, 363–64 (1996).

47. *Id.* at 363.

48. *Id.*

49. *Id.* at 363–64.

A. *Government Action*

Due process protections under the Fifth and Fourteenth Amendments apply only in cases of government action.⁵⁰ This requirement is easily met in the context of TPS and work authorization. The TPS program was created by Congress⁵¹ and is administered by the Executive Branch, with the Secretary of Homeland Security designating countries for TPS. USCIS, a government agency, actively implements the program, including granting and extending work authorization.⁵² The TPS program was born of government action.

It is also government action that threatens to limit the TPS program in the coming years. Just as the Secretary of Homeland Security has the authority to designate countries for TPS, the Secretary of Homeland Security also has the power to terminate TPS designations.⁵³ In terminating a country's TPS designation, the Secretary also effectively terminates the work authorizations of TPS beneficiaries from that country. In February of 2025, Secretary Kristi Noem, who was appointed by President Trump at the beginning of his second term in office, attempted to terminate Venezuela's TPS designation.⁵⁴ This termination has since been blocked by Judge Edward Chen, a federal district court judge for the Northern District of California.⁵⁵ In other words, the government has taken action to terminate a TPS designation and all the work authorizations stemming from it. Therefore, it is clear that government action is depriving TPS beneficiaries of their work authorization.

B. *Deprivation of a Property Interest*

For procedural due process to be implicated, the government, through its action, must threaten to deprive a person of a specific liberty or property interest.⁵⁶ In other words, there must be (A) a liberty or property interest that (B) the government is threatening to deprive a person of. This section argues that the work authorization afforded to beneficiaries of TPS represents a due process interest in property and, therefore, that the government's actions in terminating (and threatening to terminate) TPS represent a deprivation of that property interest. Such a deprivation requires procedural due process for any rescission of work authorization for beneficiaries of TPS.

1. *Defining Property Interests*

Work authorization represents a due process interest in property due to both the nature of the interest and the existence of a legitimate claim of entitlement. Furthermore, work authorization is a means of employment and

50. *Id.* at 363.

51. Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978, at 5030.

52. *Temporary Protected Status*, *supra* note 10.

53. *Id.*

54. *TPS: Venezuela*, *supra* note 3.

55. *Id.*

56. Fondacaro & Stolle, *supra* note 46, at 363–64.

functions as a license to work. Both employment and licenses of various kinds have been deemed property interests by the Supreme Court and, because work authorization is analogous to both, work authorization represents a due process interest in property.

a. Nature of the Interest

Central to determining whether a property interest exists is the nature of that interest. In deciding whether a due process interest in property exists, courts should “look not to the ‘weight’ but to the nature of the interest at stake . . . [Courts] must look to see if the interest is within the Fourteenth Amendment’s protection of liberty and property.”⁵⁷ In other words, it is the nature of the interest that matters and decides whether that interest is a property interest protected by the Due Process Clause of the Fifth and Fourteenth Amendments.⁵⁸

The potentially essential nature of work authorization is such that it represents a due process interest in property. Since the 1970s, the Supreme Court has consistently ruled that certain “benefits,” or interests, that may be “essential in the pursuit of a livelihood” cannot be terminated without procedural due process.⁵⁹ It is the potentially “essential” nature of these benefits that makes them due process interests in property.⁶⁰ These benefits include drivers’ licenses,⁶¹ professional licenses,⁶² and welfare benefits.⁶³

The Supreme Court first used this language—“essential in the pursuit of a livelihood”—in *Bell v. Burson*, in which it ruled that a state cannot deprive a person of a driver’s license without first providing that person with a complete hearing on all the pertinent issues.⁶⁴ Failing to do so would be a denial of due process and a violation of the Fourteenth Amendment.⁶⁵ Underlying this ruling is the Supreme Court’s reasoning that “[o]nce [drivers’] licenses are issued . . . their continued possession may become *essential in the pursuit of a livelihood*.”⁶⁶ In setting out this standard, the Supreme Court noted the petitioner’s assertion that he “would be *severely handicapped* in the performance of his ministerial duties by a suspension of his licenses.”⁶⁷ By taking this into account, the Supreme Court put forth two ideas—first, it equated a person’s ability to carry out their job’s “duties” with that person’s “pursuit of a livelihood.”⁶⁸ Second, it asserted that anything that allows a person to carry

57. *Bd. of Regents v. Roth*, 408 U.S. 564, 570–71 (1972).

58. *See id.*

59. *Bell v. Burson*, 402 U.S. 535, 539 (1971); *see Goldberg v. Kelly*, 397 U.S. 254, 264 (1970).

60. *See Bell*, 402 U.S. at 539.

61. *Id.*

62. *Barry v. Barchi*, 443 U.S. 55, 64 (1979).

63. *Goldberg*, 397 U.S. at 262–264.

64. *Bell*, 402 U.S. at 536–37, 539.

65. *Id.* at 536–37.

66. *Id.* at 539 (emphasis added).

67. *Id.* at 537 (emphasis added).

68. *Id.* at 536–39.

out their job's duties, or more generally maintain their employment, without severe handicap is essential to that person's "pursuit of a livelihood," and therefore represents a due process interest in property.⁶⁹ The potentially essential nature of drivers' licenses indicated to the Supreme Court that drivers' licenses represent a due process interest in property.⁷⁰

It is important to note that the Supreme Court did not rest its ruling in *Bell* on a finding that a driver's license *actually was* "essential in the pursuit of a livelihood" for the petitioner in that case.⁷¹ It merely ruled that that benefit "may become essential in the pursuit of a livelihood" and, therefore, procedural due process is required before a person can be deprived of that benefit.⁷² This "may become essential" standard is not a high bar. If a benefit "may become essential in the pursuit of a livelihood," that benefit represents a due process interest in property that a person cannot be deprived of without procedural due process.⁷³ It is a benefit's *potentially* essential nature that transforms that benefit into a due process interest in property.

Whether a person will be "severely handicapped" in the performance of their job's duties by the termination of a specific benefit is not the only way the Supreme Court has defined whether a benefit may be "essential in the pursuit of a livelihood."⁷⁴ In *Barry v. Barchi*, the Supreme Court ruled that the Due Process Clause requires that a holder of a professional license receive a prompt hearing when their license is suspended.⁷⁵ The Supreme Court based its decision on the general assertion that professional licenses represent a due process interest in property.⁷⁶ While the Supreme Court did not explicitly discuss the essential nature of professional licenses, such an essential nature seems to have been implicitly recognized in the Supreme Court's acknowledgment that "the magnitude of a [licensee's] interest in avoiding suspension is substantial."⁷⁷ Similar to the explicit "may become essential" and "severely handicapped" standards established in *Bell*,⁷⁸ the Supreme Court's focus on the "substantial magnitude" of a licensee's interest in maintaining their professional license informs what it means for something to be a due process interest in property.⁷⁹ It is once again the potentially essential nature of an interest and, more specifically, the magnitude of that interest, that makes it a due process interest in property.⁸⁰

69. *Id.*

70. *Id.* at 535, 538-39.

71. *Id.* at 538-39.

72. *Id.* at 535 (emphasis added).

73. *Id.* (emphasis added).

74. *Id.* at 535-39.

75. *Barry v. Barchi*, 443 U.S. 55, 64-65, 67 (1979) ("In these circumstances, it seems to us that the State is entitled to impose an interim suspension, pending a prompt judicial or administrative hearing that would definitely determine the issues.")

76. *Id.*

77. *Id.*

78. *Bell*, 402 U.S. at 537, 539.

79. *See Barry*, 443 U.S. at 64.

80. *See id.*

Similarly, in *Goldberg v. Kelly*, the Supreme Court ruled that recipients of welfare benefits must be guaranteed pre-termination hearings before any potential termination of their welfare benefits.⁸¹ Pre-termination hearings are the only way to provide recipients of welfare benefits with procedural due process.⁸² Underlying the Supreme Court's decision was its consideration of welfare benefits and its implicit acknowledgement that such benefits represent a due process interest in property.⁸³ The Supreme Court stated that "[t]he extent to which procedural due process must be afforded the recipient [of welfare benefits] is influenced by the extent to which he may be 'condemned to suffer grievous loss'" if benefits end.⁸⁴ The Supreme Court implicitly recognized that such "grievous loss" is inevitable for recipients of welfare benefits whose benefits are suddenly terminated.⁸⁵

For qualified recipients, welfare provides the means to obtain essential food, clothing, housing, and medical care . . . [T]ermination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits. Since he lacks independent resources, his situation becomes immediately desperate.⁸⁶

Similarly, in *Kelly v. Wyman*, the District Court for the Southern District of New York asserted that a recipient of welfare benefits "is destitute, without funds or assets," when welfare benefits are terminated.⁸⁷ This prompted the District Court in *Kelly* to conclude that it is "unconscionable" to deprive welfare benefits recipients of those benefits without a pre-termination hearing.⁸⁸

Because welfare benefits provide their recipients with the means to obtain things essential to a person's livelihood, and because recipients of welfare benefits would suffer "grievous loss" without those benefits, welfare benefits represent a due process interest in property.⁸⁹ Therefore, a recipient of welfare benefits cannot be deprived of those benefits without procedural due process.⁹⁰ It is once again the potentially essential nature of welfare benefits that transforms those benefits into a due process interest in property.

Like drivers' licenses, professional licenses, and welfare benefits, the potentially essential nature of work authorization is the reason that work authorization represents a due process interest in property. In fact, work

81. *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970).

82. *Id.*

83. *Id.* at 262–64.

84. *Id.* at 262–63 (quoting *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 168 (1951)).

85. *See id.*

86. *Id.* at 264.

87. *Kelly v. Wyman*, 294 F. Supp. 893, 899 (S.D.N.Y. 1968).

88. *Id.* at 900.

89. *Goldberg*, 397 U.S. at 262–64.

90. *See id.* at 264.

authorization exceeds the potentially essential bar established in *Bell* because it is essential to the livelihoods of beneficiaries of TPS.⁹¹ Work authorization provides beneficiaries of TPS with a means of employment in the U.S. Similar to how the suspension of the petitioner's driver's license in *Bell* would severely handicap the petitioner and keep him from carrying out his job's duties, the termination of work authorization for beneficiaries of TPS would severely handicap those beneficiaries.⁹² Terminating work authorization for beneficiaries of TPS would keep those beneficiaries from carrying out their duties as employees altogether by taking away any and all ability to legally work in the U.S. Such a termination would constitute a "grievous loss" similar to a suspension of welfare benefits.⁹³ Without work authorization, beneficiaries of TPS would be without a legal source of income and, therefore, may be unable to obtain essentials, such as food and housing. This is analogous to recipients of welfare benefits who would lose access to "essential food, clothing, housing, and medical care" if those benefits were suspended or terminated.⁹⁴ Given the magnitude of the consequences of a termination of work authorization, beneficiaries of TPS have a substantial interest in maintaining their work authorization. That interest is analogous to professional licensees' interest in maintaining their licenses.⁹⁵ Because work authorization is clearly "essential in the pursuit of a livelihood"⁹⁶ for beneficiaries of TPS, and because a termination thereof would severely handicap⁹⁷ those beneficiaries and result in grievous loss,⁹⁸ the essential nature of work authorization transforms it into a due process interest in property.

b. Legitimate Claim of Entitlement

For a due process interest in property to exist, one must have a "legitimate claim of entitlement" to that interest.⁹⁹ Due process interests in property do not directly arise from the Constitution, but rather from "existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support *claims of entitlement* to those benefits."¹⁰⁰ Beneficiaries of TPS have a legitimate claim of entitlement to their work authorization because they have a reasonable reliance interest in their work authorization. In other words, because beneficiaries of TPS have *reasonably relied* on their work authorization, they have a legitimate claim of entitlement to it.

91. See *Bell v. Burson*, 402 U.S. 535, 539 (1971).

92. See *id.* at 537.

93. *Goldberg*, 397 U.S. at 262–63.

94. *Id.* at 264.

95. *Barry v. Barchi*, 443 U.S. 55, 64 (1979).

96. *Bell*, 402 U.S. at 539.

97. *Id.* at 537.

98. *Goldberg*, 397 U.S. at 262–63.

99. *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972).

100. *Id.* (emphasis added).

Legitimate claims of entitlement have consistently been recognized in the employment context. An employee clearly has a legitimate claim of entitlement to continued employment when there is a contract recognizing as such, including contracts for tenure between professors and universities.¹⁰¹ The lack of any statutory or contractual assurance of continued employment does not, however, foreclose the possibility that a legitimate claim of entitlement to continued employment exists and, therefore, does not foreclose the possibility that there is a due process interest in property.¹⁰² An employee that does not have a statutory or contractual assurance of continued employment may still have a legitimate claim of entitlement to continued employment if they reasonably relied on a law, rule or circumstance that led them to believe that they were guaranteed continued employment.¹⁰³ Those employees with a legitimate claim of entitlement to continued employment are entitled to a pre-termination hearing during which they can challenge their potential termination before it officially goes into effect.¹⁰⁴

For example, in *Perry v. Sindermann*, the Supreme Court ruled that a professor that does not have tenure may still have a legitimate claim of entitlement to continued employment and, therefore, a due process interest in property. In that case, Odessa Junior College, a school within the Texas College and University System, attempted to terminate a professor at the college that did not have tenure.¹⁰⁵ However, the professor *reasonably relied* on a guideline promulgated by the college that led him to believe that he was guaranteed continued employment, much like a tenured faculty member.¹⁰⁶ The guideline explicitly provides that “[t]he Administration of the College wishes the faculty member to feel that he has permanent tenure” with few conditions.¹⁰⁷ The Supreme Court also noted that the professor had been employed with the Texas College and University System for over seven years.¹⁰⁸ The professor’s reasonable reliance on the college’s own rule, along with his “long period of service,” meant that the professor had a legitimate claim of entitlement to continued employment and, therefore, a due process interest in property.¹⁰⁹

Beneficiaries of TPS have a reasonable reliance interest in their work authorization and, therefore, a legitimate claim of entitlement to their work authorization for two reasons. First, similar to the professor’s reliance on the college’s guideline that a “faculty member [should] feel that he has permanent tenure” in *Perry*, it should be expected that beneficiaries of TPS would

101. *Perry v. Sindermann*, 408 U.S. 593, 601 (1972).

102. *Id.*

103. *See id.* at 600, 659.

104. *See id.* at 603.

105. *Id.* at 596.

106. *Id.* at 600.

107. *Id.*

108. *Id.*

109. *Id.* at 601, 603.

rely on the automatic extensions of work authorization regularly granted to them.¹¹⁰ It is important to note that there is no statutory or contractual assurance of continued extension of work authorization and, therefore, continued employment for beneficiaries of TPS. However, specifically for beneficiaries of TPS, USCIS has a seemingly liberal system of granting automatic extensions of work authorization.¹¹¹ The agency may grant automatic extensions of work authorization to both individuals and to all the beneficiaries of TPS from a specific country at any given time.¹¹² In fact, a “facially *expired* or expiring EAD and Form I-797C, Notice of Action, receipt notice, will serve as acceptable proof of identity and employment authorization during the automatic extension period” for a beneficiary of TPS.¹¹³ It should be expected that USCIS’s regime granting automatic extensions of work authorization to beneficiaries of TPS would produce some level of *reasonable reliance* amongst beneficiaries of TPS and lead them to believe that they have a legitimate claim of entitlement to such automatic extensions of work authorization.

Second, TPS designations often end up being more permanent than temporary. It may be argued that the *Temporary* Protected Status Program must necessarily be temporary—its supposedly temporary nature is reflected in its name. The language of the Immigration Act of 1990 provides further support for the supposedly temporary nature of the TPS program.¹¹⁴ The Act states that beneficiaries of TPS “shall not be considered to be permanently residing in the United States under color of law.”¹¹⁵ Additionally, beneficiaries of TPS are not able to use their status under the program to adjust their status to lawful permanent residents or eventually become citizens.¹¹⁶ USCIS clearly communicates in its online materials about the TPS program that “TPS is a *temporary* benefit that does not lead to lawful permanent resident status or give any other immigration status.”¹¹⁷

However, the program’s name, the Act’s language and USCIS’s online statements do not reflect how the TPS program has actually functioned throughout its thirty-five-year existence. Multiple TPS designations have lasted for at least two decades, and one designation has lasted for over three—Somalia’s TPS designation will have lasted for almost thirty-five years by the time its current extension ends.¹¹⁸ The TPS designations for Honduras and Nicaragua have lasted for more than twenty-five years,¹¹⁹ and El Salvador’s designation has

110. *Id.* at 600; see *Automatic Employment Authorization Document (EAD) Extension*, *supra* note 31.

111. See *Automatic Employment Authorization Document (EAD) Extension*, *supra* note 31.

112. *Id.*

113. *Id.* (emphasis added).

114. See Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978.

115. *Id.*

116. *Temporary Protected Status*, *supra* note 10.

117. *Id.* (emphasis added).

118. *TPS: Somalia*, *supra* note 20.

119. *TPS: Honduras*, *supra* note 22; *TPS: Nicaragua*, *supra* note 22.

lasted for just under that.¹²⁰ These TPS designations have existed for so long partly because of automatic extensions. TPS designations extend automatically.¹²¹ While the Secretary of Homeland Security has the power to terminate TPS designations, they must do so at least sixty days in advance of a TPS designation's set "expiration" date.¹²² If the Secretary of Homeland Security does not make a decision to terminate a TPS designation at least sixty days in advance, that TPS designation automatically extends.¹²³ In other words, without some affirmative action by the Secretary of Homeland Security, TPS designations will continue to extend automatically and exist into perpetuity.¹²⁴

While, as of September of 2024, there are only approximately 500 beneficiaries of TPS from Somalia, there are 54,290 from Honduras, 2,925 from Nicaragua, and 180,375 from El Salvador.¹²⁵ The over 57,000 beneficiaries of TPS from Nicaragua and Honduras must have been residing in the U.S. since December of 1998.¹²⁶ The over 180,000 beneficiaries of TPS from El Salvador must have been residing in the U.S. since February of 2001.¹²⁷ This means that over 225,000 people have been residing in the U.S. since at least 2001, entirely reliant on their "temporary" status that has been continuously renewed for approximately twenty-five years.¹²⁸

The TPS program seems to be temporary in name only—the way in which it functions and many of the designations that stem from it are more permanent in nature. It should be expected that the permanent nature of the TPS program would create a reasonable reliance amongst the program's beneficiaries. This reliance interest applies to both the TPS program itself and the work authorization derived from it. Therefore, beneficiaries of TPS have a legitimate claim of entitlement to their work authorization, and that work authorization represents a due process interest in property.

2. *Deprivation of a Property Interest Through the Rescission of Work Authorization*

Once it has been established that there is a due process interest in property, there must be a deprivation of that interest before procedural due process is required. In *Bell*, the Supreme Court made it clear that it is the act of taking

120. *Temporary Protected Status Designated Country: El Salvador*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-el-salvador> [<https://perma.cc/4AKW-D9B5>] (last visited Oct. 28, 2025).

121. AM. IMMIGR. COUNCIL, *supra* note 10.

122. *Id.*

123. *Id.*

124. *See id.*

125. *TPS Fact Sheet*, *supra* note 1; *see also* Mohamad Moslimani, *How Temporary Protected Status Has Expanded Under the Biden Administration*, PEW RSCH. CTR., <https://www.pewresearch.org/short-reads/2024/03/29/how-temporary-protected-status-has-expanded-under-the-biden-administration/> [<https://perma.cc/4TVK-SCM3>] (last visited Oct. 21, 2025).

126. Moslimani, *supra* note 125.

127. *Id.*

128. *See id.*

away a benefit that constitutes a deprivation of a property interest.¹²⁹ That case dealt with a state statute mandating the revocation of a person's driver's license if that person was in an accident and failed to post security within a certain period of time post-accident. The Supreme Court stated that "[i]f the statute barred the issuance of licenses to all motorists who did not carry liability insurance or who did not post security, the statute would not, under our cases, violate the Fourteenth Amendment."¹³⁰ In other words, if a benefit is denied *upfront* to everyone within a certain group, those people have not been deprived of an interest.¹³¹ However, if a benefit is *taken away* from a person while that person is in possession of that benefit, that person has been deprived of a property interest.¹³² The Supreme Court explicitly explained that "[o]nce licenses are issued," procedural due process is implicated.¹³³

Similar to the petitioner in *Bell* who had their license taken away, beneficiaries of TPS may have their work authorization taken away.¹³⁴ Beneficiaries of TPS are eligible for work authorization as part of their TPS status.¹³⁵ TPS beneficiaries that choose to obtain their work authorization are in possession of, and reliant upon, that work authorization. By terminating TPS designations for Venezuela and other countries, the Secretary of Homeland Security is taking affirmative action.¹³⁶ The Secretary of Homeland Security must decide to terminate a TPS designation at least sixty days in advance of its set "expiration" date, otherwise that designation will extend automatically.¹³⁷ Instead of allowing certain countries' TPS designations to extend automatically, the Secretary of Homeland Security is actively terminating those designations, as well as the status and work authorization of TPS beneficiaries from those countries.¹³⁸ In other words, the federal government, through the actions of the Secretary of Homeland Security, is actively *taking away* a benefit—work authorization—afforded to beneficiaries of TPS. Therefore, beneficiaries of TPS whose work authorization is rescinded are being *deprived* of a due process interest in property.

C. *The Process Due*

Because work authorization represents a due process interest in property, terminating TPS designations and, therefore, the work authorization that is granted through the program without procedural due process is a violation of the rights of TPS beneficiaries. To avoid such a violation, some degree of

129. *Bell v. Burson*, 402 U.S. 535, 539 (1971).

130. *Id.*

131. *See id.*

132. *See id.*

133. *Id.* ("Once licenses are issued, as in the petitioner's case, their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases, the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment.")

134. *See id.*

135. *Temporary Protected Status*, *supra* note 10.

136. *See* AM. IMMIGR. COUNCIL, *supra* note 10.

137. *Id.*

138. *See id.*

proper process must be guaranteed. The final procedural due process requirement is a determination of what process is due.¹³⁹ The central demand of procedural due process is the opportunity to be heard, an opportunity which “must be granted at a meaningful time and in a meaningful manner.”¹⁴⁰ This opportunity to be heard has been guaranteed in many contexts analogous to that of work authorization and much focus has been given to the timing of and manner in which this opportunity is guaranteed. In the licensing and employment contexts, as well as in the welfare benefits context, complete and timely hearings have been required.¹⁴¹ The same should be required for any potential rescission of work authorization for beneficiaries of TPS—*complete* and *timely* hearings should be required to decide whether work authorization should be rescinded. However, given the impractical nature of individualized hearings in the already strained U.S. immigration courts, alternate remedies should be considered, including courts’ potential ability to set aside terminations of TPS designations, and the work authorization stemming from those designations, under 5 U.S.C. § 706.

1. *Complete Hearing on All the Pertinent Issues*

Hearings to decide any potential rescission of work authorization for beneficiaries of TPS should be complete. In other words, these hearings should include all the pertinent issues that could affect decisions to rescind, or grant, work authorization. In *Bell*, the Supreme Court made it clear that any issue that is an “important factor” as to whether or not a person is deprived of a due process interest in property must be adjudicated to at least some degree.¹⁴² Without adjudication of all pertinent issues, there may be a violation of the Due Process Clause.¹⁴³

The petitioner in *Bell* was being deprived of a driver’s license, which represents a due process interest in property.¹⁴⁴ Central to the state’s decision to deprive the petitioner of a driver’s license was the petitioner’s potential liability in an accident.¹⁴⁵ Even though liability was not explicitly included in the statutory scheme that the state was using to deprive the petitioner of a driver’s license, the Supreme Court recognized that liability still “play[ed] a crucial role.”¹⁴⁶ The Supreme Court explained that, “[s]ince the statutory scheme makes liability an important factor in the State’s determination to deprive an

139. Fondacaro & Stolle, *supra* note 46, at 363–64.

140. *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

141. *Barry v. Barchi*, 443 U.S. 55, 63 (1979) (ruling that post-suspension hearings must be prompt and “proceed and be concluded without appreciable delay”); *Bell v. Burson*, 402 U.S. 535, 541–42 (1971) (ruling that eliminating consideration of “an important factor” during a hearing is a violation of due process).

142. *Bell*, 402 U.S. at 540.

143. *Id.* at 541.

144. *Id.* at 537–38.

145. *Id.* at 537–38, 541.

146. *Id.* at 541.

individual of his licenses, the State may not, consistently with due process, eliminate consideration of that factor in its prior hearing.”¹⁴⁷

The Supreme Court acknowledged that “the inquiry into fault or liability requisite to afford the licensee due process need not take the form of a full adjudication of the question of liability.”¹⁴⁸ Only a limited inquiry would be required on the issue of liability.¹⁴⁹ However, the Supreme Court also made it clear that a limited inquiry is still a complete inquiry, stating that additional expenses incurred by the “expanded hearing” do not outweigh the constitutional requirements of procedural due process.¹⁵⁰ It is clear that procedural due process requires a complete hearing on all the pertinent issues regardless of any extra costs.

In the context of work authorization afforded to beneficiaries of TPS, what constitutes a complete hearing to decide any potential rescission thereof will likely be context specific. Any issue that serves as an “important factor” in deciding whether work authorization is rescinded will have to be adjudicated to at least some minimal degree, just as the Supreme Court required liability to be adjudicated in *Bell*.¹⁵¹ What issues constitute important factors will depend on the specific work authorization being considered and the specific beneficiary of TPS being heard.

2. *Timely Hearing – Post-Suspension, but Pre-Decision*

Hearings to decide any potential rescission of work authorization should also be timely. The Supreme Court has recognized that due process requires hearings to be prompt and “proceed and be concluded without appreciable delay.”¹⁵² The timeliness of a hearing also depends on the hearing’s timing, or how long it takes before a hearing is scheduled and held. While the Supreme Court has not identified a specific timeline or an amount of time during which a hearing must take place to avoid violating the Due Process Clause, it has identified some core considerations. In the context of professional licenses, the Supreme Court reiterated the finding of a lower court that the consequences “of even a temporary suspension can be severe.”¹⁵³ It also stated that “[o]nce suspension has been imposed, the [licensee’s] interest in a speedy resolution of the controversy becomes paramount.”¹⁵⁴

For any potential rescission of work authorization for beneficiaries of TPS, there are a number of options in terms of the timing of hearings. A hearing could be required before any decision is made with regard to a potential rescission of work authorization. Conversely, a hearing could be required after work authorization has been rescinded. The outcome of that hearing would

147. *Id.*

148. *Id.* at 540.

149. *Id.*

150. *Id.*

151. *Id.* at 540–41.

152. *Barry v. Barchi*, 443 U.S. 55, 66 (1979).

153. *Id.*

154. *Id.*

ultimately dictate whether such rescission should be affirmed and, therefore, whether work authorization should be reinstated. A middle ground process would be to require a hearing before an ultimate decision has been made as to whether to rescind work authorization, but while work authorization is suspended. While a pre-suspension hearing would ultimately be preferred, it is that middle ground (i.e., a post-suspension, but pre-decision hearing) that is most likely to be selected and implemented by courts.

The Supreme Court has required pre-suspension hearings in the welfare benefits context,¹⁵⁵ but not in the driver's license¹⁵⁶ and professional license contexts.¹⁵⁷ The Supreme Court's decision to require pre-suspension hearings in the welfare context stems from the nature of welfare benefits.¹⁵⁸ Welfare benefits provide their recipients with a direct "means to obtain essential food, clothing, housing, and medical care."¹⁵⁹ Recipients of welfare benefits would immediately become "desperate" if those benefits were to be taken away, as they lack access to independent resources and would be without their direct means of obtaining the most basic of needs, like food.¹⁶⁰ In fact, a Federal District Court asserted that it would be "unconscionable" not to grant pre-suspension hearings in the welfare context, given the nature of those benefits.¹⁶¹

While it could be argued that the nature of work authorization is analogous to that of welfare benefits and, therefore, pre-suspension hearings should be granted in the work authorization context, it seems unlikely that the Supreme Court will accept this argument—only post-suspension (but pre-decision) hearings are required in other contexts, to which work authorization is also analogous, like the professional license context.¹⁶² Because of this, while pre-suspension hearings are preferred, beneficiaries of TPS and their legal representation should plan for post-suspension, but pre-decision hearings instead. Those are the most likely to be granted.

Instead of immediately being rescinded, work authorization should be suspended. In other words, instead of work authorization being taken away with minimal possibilities for TPS beneficiaries to recover it, work authorization should be put on hold until it can be adjudicated. The ultimate rescission, or re-grant, of work authorization should be decided during a judicial or administrative hearing during that suspension. That post-suspension hearing must be timely, or prompt and "without appreciable delay."¹⁶³ It is when a post-suspension hearing is not conducted in a timely manner that the Due Process Clause has been violated.¹⁶⁴

155. *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970).

156. *Bell v. Burson*, 402 U.S. 535, 536–37 (1971).

157. *Barchi*, 443 U.S. at 64.

158. *See Goldberg*, 397 U.S. at 264.

159. *Id.*

160. *Id.*

161. *Kelly v. Wyman*, 294 F. Supp. 893, 900 (S.D.N.Y. 1968).

162. *See Barchi*, 443 U.S. at 66.

163. *Id.*

164. *Id.*

Before any potential rescission of work authorization for beneficiaries of TPS, their work authorization should be suspended, and they should be guaranteed a prompt hearing during which they will have the opportunity to make their case. Only after this hearing should a decision to rescind, or re-grant, work authorization be made. This suspension-hearing system provides the procedural due process that a property interest like work authorization requires.

However, implementing this suspension-hearing system will not be without challenges. USCIS handles work authorization.¹⁶⁵ The agency grants work authorization for immigrants, including beneficiaries of TPS.¹⁶⁶ It also extends work authorization through a variety of processes, such as periodic completion of an I-765¹⁶⁷ form or automatic extensions depending on certain circumstances.¹⁶⁸ USCIS usually requires multi-month processing times.¹⁶⁹ Even the initial grant of work authorization through the submission and approval of an I-765 can take multiple months depending on USCIS's processing speed at any given time.¹⁷⁰ As a result, adjudicatory hearings for any potential rescission of work authorization conducted by USCIS may not be timely enough to meet the guarantees of procedural due process.

Judicial hearings would likely be even less timely than adjudicatory hearings conducted by USCIS. Judicial hearings for any potential rescission of work authorization would likely take place in immigration courts, which have become perpetually backlogged over the past decade.¹⁷¹ As of February of 2025, there were 3,687,750 cases in the immigration court backlog.¹⁷² For any given time period, approximately as many new cases are filed as the number of cases that are completed.¹⁷³ For example, 325,149 new cases were filed in the first few months of 2025, but only 374,506 cases were completed.¹⁷⁴ This means that it is unlikely that the backlog will see any substantial decrease in the near future. Because of the extreme backlog faced by immigration courts, it can take years for a hearing to take place.¹⁷⁵ It is unlikely that judicial hearings for

165. See *I-765, Application for Employment Authorization*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/i-765> [<https://perma.cc/5JVX-XAHR>] (last visited Oct. 24, 2025).

166. See *Temporary Protected Status*, *supra* note 10.

167. *I-765, Application for Employment Authorization*, *supra* note 165.

168. See *Automatic Employment Authorization Document (EAD) Extension*, *supra* note 31.

169. See *Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms By Fiscal Year*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://egov.uscis.gov/processing-times/historic-pt> [<https://perma.cc/3XVX-RXLU>] (last visited Oct. 21, 2025).

170. *Id.*

171. *Immigration Court Quick Facts*, TRANSACTIONAL RECS. ACCESS CLEARINGHOUSE, <https://tracreports.org/immigration/quickfacts/eoir.html> [<https://perma.cc/UH2P-ZECF>] (last visited Oct. 21, 2025).

172. *Id.*

173. See *id.*

174. *Id.*

175. Ted Oberg et al., *Immigration Courts Clogged for Years as Trump Vows to Deport Millions More*, NBC WASHINGTON (Mar. 4, 2025), <https://www.nbcwashington.com/investigations/immigration-courts-clogged-for-years-as-trump-vows-to-deport-millions-more/3858328/> [<https://perma.cc/M998-JJDK>].

any potential rescission of work authorization conducted by immigration courts will be timely enough to meet the guarantees of procedural due process.

The implementation challenges discussed above do not change the fact that procedural due process ultimately requires a timely hearing—a prompt hearing that “would proceed and be concluded without appreciable delay.”¹⁷⁶ Work authorization afforded to beneficiaries of TPS should not be rescinded without a timely hearing. How that timely hearing will be guaranteed has yet to be decided.

3. *Alternate Remedies*

While procedural due process seems to demand individualized hearings for beneficiaries of TPS challenging any rescission of their work authorization, individualized hearings may not be the most practicable. As previously mentioned, immigration courts are perpetually backlogged¹⁷⁷ and USCIS can take months to process anything related to work authorization.¹⁷⁸ Because of this, it would be more effective for beneficiaries of TPS bringing work authorization-based procedural due process claims to pursue alternate remedies that could potentially provide relief to many beneficiaries at once. One such alternate remedy is contained in 5 U.S.C. § 706, which states that “[t]he reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . contrary to constitutional right, power, privilege, or immunity.”¹⁷⁹

On its face, this statute gives courts the power to “set aside” *any* agency’s action that is “found to be . . . contrary to constitutional right.”¹⁸⁰ The Department of Homeland Security is an “integrated Cabinet agency,”¹⁸¹ and the Secretary of Homeland Security has the power to terminate TPS designations and, as a result, the status and work authorization stemming from those designations.¹⁸² Procedural due process is a constitutional right guaranteed by the Due Process Clause of both the Fifth and Fourteenth Amendments.¹⁸³ Because the work authorization of TPS beneficiaries represents a due process interest in property, depriving those beneficiaries of that property interest seems “contrary to [their] constitutional right.”¹⁸⁴ Based on the plain language of the statute, courts should have the power to “set aside” the Secretary of Homeland Security’s terminations of TPS designations because such terminations deprive TPS beneficiaries of their work authorization and violate their due process rights. By setting aside entire terminations of TPS designations, courts should be able to grant relief to

176. *Barry v. Barchi*, 443 U.S. 55, 66 (1979).

177. *Immigration Court Quick Facts*, *supra* note 171.

178. *See Historical National Median*, *supra* note 169.

179. 5 U.S.C. § 706(2)(B).

180. *Id.*

181. *History*, U.S. DEP’T OF HOMELAND SEC., <https://www.dhs.gov/history> [<https://perma.cc/2N5B-3YUH>] (last visited Oct. 27, 2025).

182. AM. IMMIGR. COUNCIL, *supra* note 10.

183. U.S. CONST. amends. V, XIV.

184. *See* 5 U.S.C. § 706(2)(B).

many people at once—all the beneficiaries of TPS that were affected by a specific termination should have their work authorization and legal status restored.

It is important to note, however, that the plain language of 5 U.S.C. § 706 may not reflect how the statute operates in practice. Some legal scholars, including Professor John Harrison, have asserted that § 706 does not confer upon courts the power of vacatur, or the power to actually strike down an agency's action or decision.¹⁸⁵ Instead, he believes that courts should “set aside” agency action that is contrary to constitutional right by simply “disregard[ing] it in deciding [a] case.”¹⁸⁶ Similarly, in his concurring opinion in *United States v. Texas*, Justice Gorsuch spent paragraphs arguing that the “set aside” language of § 706 should be interpreted to mean “disregard” instead of “vacate.”¹⁸⁷ He emphasized the importance of case-by-case judgments and pointed to the contradictory nature of then interpreting § 706 as allowing an overarching vacatur of an agency action affecting, or generating, multiple cases.¹⁸⁸

Justice Gorsuch's opinion did not control the outcome of *United States v. Texas*, and the plurality never reached the § 706 questions Justice Gorsuch considered.¹⁸⁹ Because of this, there is still a possibility that § 706 could be used to set aside terminations of TPS designations altogether and grant relief to hundreds or thousands of TPS beneficiaries at one time. When a TPS designation is terminated, the beneficiaries from that country should bring a § 706 claim to try to obtain such overarching relief in a much more streamlined manner than individualized hearings allow.

CONCLUSION

The TPS program has come under attack since the start of President Trump's new term in January of 2025, as seen in Secretary of Homeland Security Kristi Noem's prompt termination of Venezuela's TPS designation just days after President Trump took office.¹⁹⁰ Secretary Noem has made it clear that, “moving forward, the status of all migrants with TPS in the U.S. will be reconsidered.”¹⁹¹ As beneficiaries of TPS have their status “reconsidered” and potentially revoked, their ability to legally work in the U.S. will also be at risk. As argued in this note, however, TPS beneficiaries' work authorization represents a due process interest in property, and beneficiaries should not be deprived of their work authorization without the procedural due process guaranteed by the Due Process Clause of the Fifth and Fourteenth Amendments.¹⁹² As TPS designations are affirmatively

185. John Harrison, *The Meaning of “Set Aside” in 5 U.S.C. § 706(2)*, YALE J. REG. NOTICE & COMMENT (Sept. 22, 2022), <https://www.yalejreg.com/nc/the-meaning-of-set-aside-in-5-u-s-c-%C2%A7-7062-by-john-harrison/> [https://perma.cc/2NMM-JTQE].

186. *Id.*

187. *United States v. Texas*, 599 U.S. 670, 696–700 (2023) (Gorsuch, J., concurring).

188. *See id.* at 695–696 (Gorsuch, J., concurring).

189. *See id.* at 673 (ruling that Texas and Louisiana lacked standing).

190. *TPS: Venezuela*, *supra* note 3.

191. *See* Garsd, *supra* note 40.

192. *See* U.S. CONST. amends. V, XIV.

terminated by the Trump Administration, beneficiaries of TPS should continue to sue the government, arguing that their work authorization represents a property interest that cannot be taken away without procedural due process. Beneficiaries of TPS should also try to bring claims under 5 U.S.C. § 706, as such claims may enable courts to “set aside” entire terminations of TPS designations and effectively restore the status and work authorization of all TPS beneficiaries from a specific country at once.¹⁹³ Regardless of the Trump Administration’s anti-TPS actions, beneficiaries of TPS should continue to use the law to fight for their ability to remain and work in the U.S.¹⁹⁴

193. See 5 U.S.C. § 706.

194. See U.S. CONST. amends. V, XIV.