

# National Foundation for American Policy

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## **New Research: Trump Administration’s Decision to Terminate TPS for Venezuela Likely Unlawful**

### **DHS Did Not Conduct An Analysis of Conditions in Venezuela**

**Arlington, Va.** – The Trump administration ended Temporary Protected Status (TPS) for Venezuelans without conducting an analysis of the economic, public health and human rights conditions in the country, calling into question the legality of its decision to remove deportation protections for approximately 350,000 Venezuelans in the United States, according to a [new report](#) from the National Foundation for American Policy (NFAP), a nonpartisan research organization based in Arlington, VA. In the Federal Register notice terminating TPS for Venezuela, Homeland Security Secretary Kristi Noem did not cite a single source for the conclusion that there are “notable improvements in several areas” in Venezuela. That contradicted the assessment DHS delivered two weeks earlier under Secretary Alejandro Mayorkas, which cited 52 sources to support its conclusion that conditions in Venezuela warranted a continuation of TPS.

It is arbitrary and capricious under the Administrative Procedure Act to ignore key facets of the TPS statute to achieve a political result. In the 2019 case *Saget v. Trump*, a district court found that the Trump administration’s termination of TPS for Haiti was likely unlawful and granted a nationwide injunction. “The sequence of events leading up to the decision to terminate Haiti’s TPS was a stark departure from ordinary procedure, suggestive of a pre-determined outcome not anchored in an objective assessment, but instead a politically motivated agenda,” according to the court.

The study “An Analysis of the DHS Decision to Terminate TPS for Venezuela,” can be found at <https://nfap.com/>.

Jacob Hamburger, a visiting assistant law professor at Cornell Law School, believes a court could make a similar determination if the Venezuela termination is challenged. He noted the conclusions in the NFAP analysis and agreed that the Trump administration’s February 5, 2025, Federal Register notice did not indicate that DHS considered evidence on conditions in Venezuela. He also agreed that the quick decision after Noem was sworn in suggests that it is unlikely a substantive review took place.

Secretary of Homeland Security Kristi Noem vacated former Secretary Mayorkas’s (January 10, 2025) decision on TPS for Venezuela on January 28, 2025, only three days after being sworn in, not a sufficient time for a serious analysis of country conditions. In the notice terminating the [Biden administration’s] October 3, 2023, designation of Venezuela for Temporary Protected Status, Noem and DHS implied the Trump administration undertook an extensive review, even though they did not cite any sources on conditions in Venezuela in the Federal Register notice.

It would be unlawful for Noem to revoke Mayorkas’s decision on TPS for Venezuela without good cause. Attorney Ira Kurzban, author of *Kurzban’s Immigration Law Sourcebook*, considers the Federal Register notice vacating Mayorkas’s decision “frivolous.” He said Mayorkas had a right under the law to extend TPS for Venezuelans approved at different times (i.e., in 2021 and 2023).

Noem claimed maintaining TPS for Venezuelans was not in the national interest because members of the Venezuelan gang Tren de Aragua entered the country unlawfully and committed crimes. The Federal Register notice (February 5, 2025) fails to state that DHS denies applications to renew TPS for individuals who have committed criminal offenses, including a felony or two misdemeanors. Kurzban believes the Federal Register notice's claim that ending TPS was in the "national interest" was incorrect and rested on blaming all Venezuelan TPS beneficiaries for members of the Venezuelan gang Tren de Aragua. He criticized the DHS assertion that all Venezuelans with TPS must depart the United States because of the existence of gang members of the same nationality and without evidence that the TPS beneficiaries are gang members.

Another legal avenue for Venezuela TPS supporters could be DHS failing to meet the deadline of February 1, 2025, to determine TPS for Venezuela. Under the statute, failure to meet the 60-day deadline, which was February 1, 2025, should result in an extension of at least 6 months. Attorneys believe this will be another issue in any litigation.

Among the findings in the NFAP analysis:

- The U.S. State Department's human rights report, published in April 2024, stated, "There were no significant changes in the human rights situation in Venezuela during the year," highlighting dozens of examples of horrific conditions in Venezuela that included extrajudicial killings and enforced disappearances. The political and human rights situation in Venezuela deteriorated further in the months after the State Department published its critical report on the country due to Maduro's election, widely viewed as fraudulent, and the government's repression of protesters. The Venezuelan government holds more than 1,100 political prisoners as of February 5, 2025, according to Foro Penal.
- If conditions in Venezuela have improved, as asserted in the Noem decision to end TPS, there would be a significant return migration flow to Venezuela. Instead, according to R4V, the Inter-Agency Coordination Platform for Refugees and Migrants from Venezuela, between May and September 2024, the population of Venezuelan migrants and refugees increased by 7.1% in Brazil and by 1.7% in Argentina and 2.7% in Uruguay between April and September 2024.
- The DHS claim that crime has shown a notable improvement in Venezuela relies on accepting assertions from the administration of Nicolás Maduro. The *Washington Post's* Fact Checker addressed this issue in July 2024, noting, "There is no reliable data on crime in Venezuela." Other sources say that to the extent crime has dropped, it is "because of the destruction of the country's economy . . . because of the loss of opportunities for crime." That contradicts the Trump administration's assertions about improvements in Venezuela's economy.
- There is scant evidence of "notable" improvement in the Venezuelan economy. "Extreme poverty remains shockingly high and has contributed to more than 7.7 million people leaving Venezuela to seek better lives abroad," reported the BBC in August 2024. The Congressional Research Service, in a report updated on January 13, 2025, wrote, "Between 2014 and 2021, Venezuela's economy contracted by 80%," citing International Monetary Fund estimates. "Maduro's government has mismanaged the economy and engaged in massive corruption," reported CRS. The International Monetary Fund projects inflation and average consumer prices in Venezuela to rise to 71.7% in 2025, higher than the already problematic rate of 59.6% in 2024.
- In its report published two weeks before the Trump administration's TPS decision on Venezuela, the Congressional Research Service did not note any improvement in public health in Venezuela, one of the areas DHS cited as a "notable" improvement. "In 2024, an

estimated 7.6 million Venezuelans (28% of the population) required humanitarian assistance, according to the United Nations,” reported CRS. “Many households lack reliable access to potable water, and interruptions in electrical service and gas supplies persist. With a collapsed health system, overall health indicators, particularly infant and maternal mortality rates, remain poor. Previously eradicated diseases such as measles are a major concern.”

- Credible reports indicate public health has deteriorated in Venezuela. “Health risks are increasing in Venezuela amid a humanitarian emergency that has worsened following a disputed election,” according to an August 2024 article published in *The Lancet*. “Many hospitals and clinics lack essential personnel, medications, and supplies.”

People with [Temporary Protected Status](#) are not removable from the United States and can gain employment authorization. The evidence indicates that the Trump administration decided to end TPS for Venezuela to help fulfill Donald Trump’s mass deportation goals. Removing deportation protections from approximately 350,000 Venezuelans will expand the pool of individuals who can be deported. Trump administration officials likely expect these individuals to be easy to find and add to the deportation numbers. Other policy goals have become subordinate to generating deportation numbers, as evidenced by Trump administration special envoy Ric Grenell’s meeting with the previously isolated Venezuelan President Nicolás Maduro after the government agreed to accept potentially hundreds of thousands of Venezuelan deportees.

The claims of national interest in Kristi Noem’s Federal Register notice are rhetorical rather than factual, and DHS performed no analysis of country conditions in Venezuela, leading to the conclusion that the Trump administration’s decision to end TPS for Venezuelans was unlawful.

#### **About the National Foundation for American Policy**

Established in 2003, the National Foundation for American Policy (NFAP) is a 501(c)(3) nonprofit, nonpartisan public policy research organization based in Arlington, Virginia focusing on trade, immigration and related issues. The Advisory Board members include Columbia University economist Jagdish Bhagwati, Ohio University economist Richard Vedder, Cornell Law School professor Stephen W. Yale-Loehr and former INS Commissioner James W. Ziglar. Over the past 24 months, NFAP’s research has been written about in the *Wall Street Journal*, the *New York Times*, the *Washington Post* and other major media outlets. The organization’s reports can be found at [www.nfap.com](http://www.nfap.com). X.com: [@NFAPResearch](#)

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