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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

Fayez MANSOR, et al.,

Plaintiffs,

v.

UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES, et al.,

Defendants.

Case No. 2:23-cv-347

**MOTION FOR PRELIMINARY
INJUNCTION**

Noting Date: March 31, 2023

ORAL ARGUMENT REQUESTED

I. INTRODUCTION

1
2 Plaintiffs Faye Mansor (Mr. Mansor), Ecclesiaste Coissy (Mr. Coissy), Cabdi Ibrahim
3 Xareed (Mr. Xareed), and Shukria Zafari (Ms. Zafari) (collectively, Plaintiffs) are noncitizens of
4 countries designated for Temporary Protected Status (TPS) because of an ongoing political or
5 environmental crisis. Each has applied for TPS with Defendant U.S. Citizenship and
6 Immigration Services (USCIS) and has received or will receive a notice of receipt from USCIS
7 that establishes their prima facie eligibility for TPS. As such, all Plaintiffs are statutorily entitled
8 to employment authorization documentation and face irreparable harm without it. Specifically,
9 employment authorization is critical to Mr. Mansor's ability to pay for basic life necessities like
10 food, rent, car insurance, and clothing. In Mr. Xareed's case, employment authorization is
11 imperative to his ability to obtain a job and earn the money he desperately needs to locate his
12 wife and young daughter who he believes are in hiding in Somalia and to provide for their safety
13 and security when he locates them. In Ms. Zafari's case, employment authorization is critical for
14 her to support her ten- and twelve-year-old daughters, who are with her in the United States, and
15 to bring her third minor daughter to the United States from Afghanistan. Finally, Mr. Coissy has
16 been dependent on others for basic living expenses for himself and his wife as he does not have
17 work authorization. The couple are expecting a baby in four months, and he needs a work permit
18 so that he can begin setting aside money to support his child.

19 However, Defendants USCIS, Department of Homeland Security (DHS) Secretary
20 Alejandro Mayorkas, and USCIS Director Ur M. Jaddou do not provide documentation of
21 employment authorization to TPS applicants despite an explicit statutory mandate to do so. In the
22 Immigration and Nationality Act (INA), Congress directed that any noncitizen "who establishes
23 a prima facie case of eligibility for [TPS] benefits . . . shall be provided" protection against
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1 removal and employment authorization “until a final determination with respect to [the
2 noncitizen’s] eligibility . . . has been made.” 8 U.S.C. § 1254a(a)(1), (4); *see also* 8 C.F.R. §
3 244.5(b). Because USCIS violates this explicit mandate by not providing employment
4 authorization documentation, Plaintiffs are likely to succeed on their claims that Defendants’
5 policy and practice violates the Administrative Procedure Act (APA), 5 U.S.C. §§ 706(1),
6 (2)(A), (C), (D), and the Fifth Amendment’s Due Process Clause.

7 Absent a preliminary injunction, Mr. Mansor, Mr. Coissy, Mr. Xareed, and Ms. Zafari
8 face irreparable harm. Accordingly, Plaintiffs seek preliminary injunctive relief. Only a
9 preliminary injunction ordering USCIS to issue employment authorization documentation while
10 their TPS applications are pending will ensure that Plaintiffs do not become destitute and are
11 able to financially support themselves and their families.

12 II. STATEMENT OF FACTS

13 A. Statutory Scheme Regarding Employment Authorization for TPS Eligible 14 Applicants

15 Congress established the TPS program as part of the Immigration Act of 1990, Pub L.
16 No. 101-649, § 302, 104 Stat. 4978, 5030-36, to provide temporary immigration benefits to
17 noncitizens present in the United States who are unable to return safely to their countries of
18 origin due to war, civil unrest, or environmental disaster. Under the INA, the DHS Secretary
19 must designate a country for TPS for its citizens in the United States to be eligible for TPS. *See* 8
20 U.S.C. § 1254a(b)(1). TPS designations typically last from six to eighteen months. *Id.* §
21 1254a(b)(2)(B). After that period expires, the DHS Secretary may extend the initial designation
22 if conditions in the designated country warrant extension. *Id.* § 1254a(b)(3). TPS holders must
23 re-register their status each time the DHS Secretary extends a country’s initial designation. 8
24 C.F.R. § 244.17. To qualify for TPS, a national of a TPS-designated country must show that the

1 applicant (1) was “continuously physically present in the United States since the effective date of
 2 the [country’s] most recent designation”; (2) “continuously resided in the United States” since
 3 the TPS designation date; and (3) “is admissible as an immigrant,” with certain exceptions and
 4 opportunities for waivers. 8 U.S.C. § 1254a(c)(1)(A)(i)–(iii).

5 The statute provides two important temporary benefits to TPS-eligible applicants while
 6 their applications are pending. First, DHS “shall not remove [TPS applicants] from the United
 7 States,” and second, DHS “shall authorize the [noncitizen] to engage in employment in the
 8 United States and provide the [noncitizen] with an ‘employment authorized’ endorsement or
 9 other appropriate work permit.” *Id.* §§ 1254a(a)(1)(A)–(B), (4)(B). Consistent with Congress’
 10 directive, Defendants must provide these temporary benefits from the time the applicant
 11 establishes prima facie eligibility until DHS makes a final determination on the TPS application.
 12 8 U.S.C. § 1154a(a)(4)(B);¹ *see also* 8 C.F.R. § 244.5(b) (mandating temporary benefits “[u]pon
 13 the filing of an application for [TPS], . . . if the application establishes the [noncitizen]’s prima
 14 facie eligibility for [TPS].”); *id.* § 244.10(a) (“USCIS will grant temporary treatment benefits to
 15 the applicant if the applicant establishes prima facie eligibility for [TPS]”); *id.* § 244.13(a)-
 16 (b) (stating that temporary treatment benefits will terminate upon the final determination of the
 17 TPS application or sixty days after the Secretary publishes a notice in the Federal Register
 18 terminating the TPS designation for the relevant country).

19 A TPS applicant establishes prima facie eligibility “with the filing of a completed
 20 application for Temporary Protected Status containing factual information that if unrebutted will
 21 establish a claim of eligibility.” 8 C.F.R. § 244.1. When USCIS issues a receipt notice for the
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 24 ¹ Indeed, the statute requires that these temporary benefits be provided in certain cases
 even before the application period begins. *See* 8 U.S.C. § 1254a(a)(4)(A).

1 application, that receipt notice serves as proof that the applicant is prima facie eligible for TPS
2 and entitled to immediate issuance of employment authorization documentation. *See* 8 C.F.R. §§
3 103.2(a)(7)(i) (stating that USCIS will record the receipt date as of the actual date of receipt at
4 the location designated for filing such benefit receipt); 103.2(a)(7)(ii) (stating that USCIS will
5 reject filings that, inter alia, are not filed in compliance with the regulations governing the filing
6 of the application and that rejected filings will not retain a filing date); 103.2(b)(1) (stating that a
7 properly completed application must be filed with all initial evidence required by the regulations
8 and USCIS instructions).

9 Notwithstanding the plain language of the INA and the regulations, USCIS does not
10 regularly provide documentation of employment authorization to noncitizens to whom USCIS
11 has sent receipt notices, including Plaintiffs here, for the period during which their TPS
12 applications are pending a final determination. The agency’s regulations contemplate both that
13 individuals with approved TPS applications *and* those with pending TPS applications may
14 receive work permits. *See* 8 C.F.R. § 274a.12(a)(12) (authorizing individuals with approved TPS
15 applications to receive EADs); *id.* § 274a.12(c)(19) (same, for pending TPS applicants who have
16 established prima facie eligibility). But USCIS does not endorse TPS receipt notices with work
17 authorization, nor does it provide eligible applicants with a work permit upon receipt of a facially
18 complete TPS application. To the contrary, USCIS guidance available on its website expressly
19 instructs applicants not to apply for work authorization based on a TPS pending application. *See*
20 Declaration of Sydney Maltese (Maltese Decl.), Ex. E, USCIS, Temporary Protected Status
21 (TPS)—Questions and Answers, at 4, Question 15 (“The correct code for an initial TPS EAD is
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1 A12.”)² Consistent with this, with respect to the TPS designation of Venezuela in 2021 and the
2 redesignation of TPS for Haiti that same year, “USCIS informed advocates to use the a-12
3 category,” which the Executive Director of Catholic Legal Services, Archdiocese of Miami, then
4 confirmed with USCIS. Declaration of Randolph P. McGrorty (McGrorty Decl.) ¶ 8.

5 In fact, for those who apply for TPS online, USCIS only allows such applicants to
6 indicate they seek employment authorization under 8 C.F.R. § 274a.12(a)(12)—*i.e.*, with their
7 approved application, and not while the application is pending. Maltese Decl. Ex. F, Mansor
8 Online Filing Screenshot (showing that *only* EAD category (a)(12) is available to select); *see*
9 *also* McGrorty Decl. ¶ 6; Declaration of Nancy Falgout (Falgout Decl.) ¶ 5; Declaration of Jason
10 Corral (Corral Decl.) ¶ 5; Declaration of Miriam Liberles (Liberles Decl.) ¶ 6; Declaration of
11 Mark Prokosch (Prokosch Decl.) ¶ 6; Declaration of Ingrid Cova (Cova Decl.) ¶ 6; Declaration
12 of William Sharma-Crawford (Sharma Crawford Decl.) ¶ 5; Declaration of Stephanie Marzouk
13 (Marzouk Decl.) ¶ 5.

14 Attorneys who regularly file TPS applications confirm that for many years USCIS has
15 not approved applications for employment authorization while their clients’ TPS applications are
16 pending. *See* Corral Decl. ¶ 6 (“I have not seen an[] Employment Authorization Document
17 issued under the ‘(c)(19)’ category in at least 10 years”); Prokosch Decl. ¶ 8 (“[I]t has been many
18 years since I have seen any TPS applicant receive a (c)(19) Employment Authorization
19 Document”); Sharma-Crawford Decl. ¶ 7 (stating he has not seen a TPS applicant receive
20 employment authorization while their application was pending since “before beginning our own
21 practice or shortly after it’s [sic] inception in 2003”); Falgout Decl. ¶ 8 (stating she has not had a
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24 ² The A12 code refers to the regulation at 8 C.F.R. § 274a.12(a)(12), which pertains to
noncitizens “granted Temporary Protected Status.”

1 case in which employment authorization was issued prior to approval of the TPS application
2 since about 2011); Liberles Decl. ¶ 8 (stating she has not seen this in her 15 years of practice);
3 Marzouk Decl. ¶ 7 (stating that in three years of practice she has never had a client receive
4 employment authorization while their TPS application is pending despite “always . . . using the
5 ‘(c)(19)’ code for initial applications”); Cova Decl. ¶ 8 (stating she has not seen or heard of this
6 in her two years of practice).

7 As a result, TPS applicants are left without the ability to work for a year or longer. *See*
8 Complaint ¶ 53. Moreover, every year the processing times get longer. Between Fiscal Year
9 (FY) 2018 and the first quarter of FY 2023, USCIS’ average processing times for a TPS
10 application (Form I-821) increased fivefold—from 2.9 months to 14.3 months. *See* USCIS,
11 Historical National Median Processing Time (in Months) for All USCIS Offices for Select
12 Forms by Fiscal Year, <https://egov.uscis.gov/processing-times/historic-pt> (last visited March 8,
13 2023). The average processing time for initial TPS applications for Somalians currently is even
14 longer, 16.5 months; while average processing times for initial applications from Haitians is over
15 a year, at 13.5 months.³ *See* USCIS, Check Case Processing Times,
16 <https://egov.uscis.gov/processing-times/> (last visited March 8, 2023); *but see* Falgout Decl. ¶ 9
17 (stating that the TPS applications of several Haitian clients have been pending for over 16
18 months).

19 **B. Plaintiff Fayez Mansor**

20 Plaintiff Faye Mansor is a noncitizen from Afghanistan. Declaration of Faye Mansor
21 (Mansor Decl.) ¶ 2. He entered the United States with parole on September 9, 2021, after being
22 evacuated from Afghanistan. *Id.* ¶ 3. DHS Secretary Mayorkas designated Afghanistan for TPS
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24 ³ USCIS currently does not provide processing times for TPS applications from Afghans.

1 on May 20, 2022; such designation required continuous residence in the United States since
2 March 15, 2022 and continuous physical presence since May 20, 2022. *See* Designation of
3 Afghanistan for Temporary Protected Status, 87 Fed. Reg. 30976 (May 20, 2022). Mr. Mansor
4 applied for TPS and work authorization on February 21, 2023. Mansor Decl. ¶ 3. Mr. Mansor
5 satisfies all the eligibility requirements for TPS for Afghan nationals, as he began residing in the
6 United States on September 9, 2021. *Id.* ¶ 3. He included proof of his Afghan nationality and his
7 continuous residence and presence in the United States with his application for TPS. USCIS
8 issued receipt notices for Mr. Mansor's TPS application the same day that he applied for TPS,
9 Maltese Decl. Ex. A, Mansor Receipt Notices, and indicated he would receive a receipt for his
10 employment authorization application in the following weeks. His applications remain pending
11 before the agency.

12 While Mr. Mansor currently has a work permit, that authorization will expire in October
13 2023. *See* Mansor Decl. ¶ 3. His employment authorization is tied to his parole status, which
14 expires two years after his entry. Yet, because USCIS generally takes more than a year to
15 adjudicate TPS applications, *see* Complaint ¶ 53, he will lose his authorization in October unless
16 USCIS grants him work authorization pursuant to his pending TPS application, the relief he
17 requests here. The lack of work authorization will cause Mr. Mansor significant harm. Without
18 work authorization, he will lose his job and will be unable to pay for basic expenses, like
19 housing, car insurance, groceries, and clothes. Mansor Decl. ¶ 4. The prospect of losing his
20 employment authorization causes him significant stress, and he worries about how he will
21 continue to live in the United States without such authorization. *Id.* ¶ 5.

22 C. Plaintiff Eclisiaste Coissy

23 Plaintiff Eclisiaste Coissy is a noncitizen from Haiti who resides in Miami, Florida.
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1 Declaration of Ecclesiaste Coissy (Coissy Decl.) ¶ 2. After arriving in the United States in July
2 2021, he applied for TPS and work authorization and received notice that USCIS received his
3 application on September 28, 2021. *Id.* ¶¶ 3, 4. He is prima facie eligible for TPS for Haitian
4 nationals, having both resided and been physically present continuously since July 2021. *Id.* ¶ 4.
5 Mr. Coissy's wife resides with him; they are expecting a child in July 2023. *Id.* ¶ 2. He also has
6 a 14-year-old daughter from a previous relationship who resides with his mother in Haiti. *Id.*

7 Mr. Coissy has not had work authorization since coming to the United States. *Id.* ¶ 4. He
8 and his wife have been dependent on others to meet their basic needs. *Id.* ¶ 5. He would like to
9 work to be able to support them both and their baby when the child is born; he also would like
10 to send to his family in Haiti to help support his teenage daughter and other family members. *Id.*
11 He is depressed and stressed over his financial situation and very worried about how he will
12 support his baby. *Id.* ¶ 6. The lack of a work authorization since his TPS application was filed in
13 September 2021 is causing Mr. Coissy great harm.

14 **D. Plaintiff Cabdi Ibrahim Xareed**

15 Plaintiff Cabdi Ibrahim Xareed is a noncitizen from Somalia. Declaration of Cabdi
16 Ibrahim Xareed (Xareed Decl.) ¶ 2. He entered the United States without authorization around
17 September 23, 2022, to seek asylum. *Id.* ¶ 4. He was apprehended by immigration authorities
18 shortly after his arrival and has been in immigration detention since then. *Id.* ¶ 2. He is in
19 removal proceedings. *Id.* ¶ 3. On January 12, 2023, DHS Secretary Mayorkas announced the
20 redesignation of Somalia for TPS Somalians who have resided in the United States since January
21 11, 2023. *See* Maltese Decl. Exh. C, at 35. Mr. Xareed applied for TPS and employment
22 authorization on February 23, 2023. Xareed Decl. ¶ 5. He is prima facie eligible for TPS for
23 Somali nationals. *Id.* ¶ 5. He has resided in the United States since his entry and satisfies the
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1 continuous presence and residence requirements. He included proof of his Somali identity and
2 his continuous presence and residence in the United States with his application for TPS. *Id.*

3 While Mr. Xareed is currently in immigration detention for removal proceedings, his
4 release is now imminent. *Id.* ¶ 6. He already has been approved for release during removal
5 proceedings upon posting a bond and has found a sponsor who is willing to post the bond. *Id.* ¶
6 6. Moreover, now that he is prima facie eligible for TPS, he is no longer subject to removal. *See*
7 8 U.S.C. § 1254a(a)(1), (4). Employment authorization will be critical for him upon release, as
8 he does not have family or financial resources here in the United States. He plans to live with a
9 sponsor but will need to provide financially for himself to cover all his expenses. Xareed Decl. ¶
10 8. Additionally, in fleeing Somalia, Mr. Xareed lost contact with his wife and two-year-old
11 daughter, whom he believes are still in hiding in the country due to threats on their lives and
12 safety. *Id.* ¶ 4. He will need financial resources to locate them and to provide for them until he is
13 able to bring them here lawfully. *Id.* ¶ 7. The lack of employment authorization while his TPS
14 application is pending will thus cause Mr. Xareed significant harm.

15 **E. Plaintiff Shukria Zafari**

16 Plaintiff Shukria Zafari is a noncitizen from Afghanistan. Declaration of Shukria Zafari
17 (Zafari Decl.) ¶ 2. Ms. Zafari entered the United States on September 8, 2021, as an Operation
18 Allies Welcome parolee. *Id.* ¶ 3. As a parolee, she currently has work authorization, but that
19 authorization will expire with her parole in September 2023. *Id.* Ms. Zafari applied for TPS and
20 work authorization and received a notice from USCIS indicating its receipt of her application on
21 January 3, 2023. *Id.* ¶ 4. She is prima facie eligible to TPS and submitted proof of this eligibility
22 with her TPS application. To date, she has not received work authorization pursuant to her
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1 pending application for TPS.

2 Ms. Zafari is dependent on work authorization to support her two daughters—ages 10 and
 3 12—who live with her in the United States. *Id.* at ¶ 2. She is a single parent and provides the sole
 4 support for her daughters. *Id.* ¶ 5. She also has a daughter, also aged 10, living with a friend of
 5 Ms. Zafari’s in Afghanistan. *Id.* ¶ 2. She must work to support her daughters and to bring her
 6 third daughter to the United States. *Id.* ¶ 5. The lack of work authorization will deprive Ms.
 7 Zafari of the ability to provide for her daughters, whom she hopes will have promising futures in
 8 the United States. *Id.*

9 III. ARGUMENT

10 To obtain a preliminary injunction, Plaintiffs Mansor, Coissy, Xareed, and Zafari must
 11 demonstrate that (1) they are likely to succeed on the merits, (2) they are likely to suffer
 12 irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in their
 13 favor, and (4) an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*,
 14 555 U.S. 7, 20 (2008). Even if Plaintiffs raise only “serious questions going to the merits,” the
 15 Court can nevertheless grant relief if the balance of hardships tips “sharply” in Plaintiffs’ favor,
 16 and the remaining equitable factors are satisfied. *All. For the Wild Rockies v. Cottrell*, 632 F.3d
 17 1127, 1135 (9th Cir. 2011).

18 A. Plaintiffs Mansor, Coissy, Xareed, and Zafari Are Likely to Succeed on the Merits.

19 1. Defendants’ Failure to Issue Employment Documentation to Plaintiffs 20 Violates 5 U.S.C. § 706(2)(A) and (C), Because It Is Arbitrary and 21 Capricious, Not in Accordance with Law, and Short of Statutory Right.

22 Plaintiffs are likely to succeed on their claim that Defendants’ failure to issue them
 23 employment authorization documentation violates the APA. As explained above, *see* Section
 24 I.A., the INA and implementing regulations expressly provide that DHS “shall authorize the

1 [noncitizen] to engage in employment . . . and provide the [noncitizen] with an ‘employment
 2 authorized’ endorsement or other appropriate work permit” and that this benefit “shall” be
 3 afforded to a noncitizen “who establishes a prima facie case of eligibility [for TPS] . . . until a
 4 final determination with respect to the [noncitizen’s] eligibility for such benefits . . . has been
 5 made.” 8 U.S.C. § 1254a(a)(1)(A)–(B) and (a)(4)(B); *see also* 8 C.F.R. §§ 244.5(b),
 6 244.10(e)(1)(ii).⁴ Significantly, Congress’ use of “shall” imposes a “discretionless obligation[,]”
 7 *Lopez v. Davis*, 531 U.S. 230, 241 (2001), on Defendants. As the Supreme Court has explained,
 8 such language “generally indicates a command that admits of no discretion on the part of the
 9 person instructed to carry out the directive,” *Nat’l Ass’n of Home Builders v. Defenders of*
 10 *Wildlife*, 551 U.S. 644, 661 (2007) (quoting *Ass’n of Civilian Technicians v. Fed. Labor*
 11 *Relations Auth.*, 22 F.3d 1150, 1153 (D.C. Cir. 1994)); *see also* Black’s Law Dictionary (11th
 12 ed. 2019) (“Shall” means “[h]as a duty to; more broadly, is required to This is the
 13 mandatory sense that drafters typically intend and that courts typically uphold.”); *United States*
 14 *v. Monsanto*, 491 U.S. 600, 607 (1989) (finding that “shall” language in a statute was
 15 unambiguously mandatory).

16 As a result, Defendants’ failure to issue employment authorization documentation to
 17 Plaintiffs upon receipt of the TPS applications violates Congress’ directive and DHS’ own
 18 regulations. Agencies “must give effect to the unambiguously expressed intent of Congress.”
 19 *Chevron U.S.A, Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984). Similarly,
 20 Defendants are required to abide by the plain language of their own regulations. *See, e.g., Vista*
 21 *Hill Found., Inc. v. Heckler*, 767 F.2d 556, 566 (9th Cir. 1985) (“[T]he Secretary has no choice
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23 ⁴ As noted above, prima facie eligibility is “established with the filing of a completed
 24 application for Temporary Protected Status containing factual information that if un rebutted will
 establish a claim of eligibility. . . .” 8 C.F.R. § 244.1.

1 but to follow the rules she has adopted.”); *Gonzalez Rosario v. USCIS*, 365 F. Supp. 3d 1156,
2 1161 (W.D. Wash. 2018) (requiring USCIS to honor “the plain language and clear objectives
3 behind the regulation at issue” and adjudicate EAD applications within 30 days).

4 For these reasons, Defendants’ policy and practice is arbitrary and capricious, not in
5 accordance with law, and short of a statutory right and should be set aside. Defendants are
6 obligated to comply with the plain language of the statute.

7 **2. DHS Is Unlawfully Withholding Employment Authorization Documentation**
8 **in Violation of 5 U.S.C. § 706(1).**

9 Plaintiffs are also likely to succeed on their claim that DHS’ failure to provide
10 documentation of employment authorization violates § 706(1) of the APA. When an agency
11 fails to comply with a clear, mandatory directive to act at a time certain, it has unlawfully
12 withheld agency action. *See, e.g., Biodiversity Legal Found. v. Badgley*, 309 F.3d 1166, 1176
13 (9th Cir. 2002); *Forest Guardians v. Babbitt*, 174 F.3d 1178, 1190 (10th Cir. 1999). When
14 necessary “to effectuate the congressional purpose behind the statute,” injunctive relief is
15 appropriate. *See Badgley*, 309 F.3d at 1177. Thus, “[u]pon proper application, [courts] must
16 compel the agency to act” where, as here, the text and purpose of the governing law create a
17 mandatory duty to act. *Forest Guardians*, 174 F.3d at 1190; *see also Badgley*, 309 F.3d at 1177-
18 78.

19 In *Badgley*, the Ninth Circuit upheld the lower court’s injunction to remedy the
20 Department of Interior’s and the United States Fish and Wildlife Service’s failure to comply with
21 a twelve-month statutory deadline to respond to a citizen petition. 309 F.3d at 1170, 1177–78.
22 Relying on the Supreme Court’s decision in *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 194 (1978),
23 the Ninth Circuit reasoned that it need not exercise its traditional equitable discretion to balance
24 the equities before awarding injunctive relief because both the language and the purpose of the

1 relevant statutory provision were clear. *Badgley*, 309 F.3d at 1177–78.

2 Here, the language and purpose of the statute and regulations are similarly clear. First, as
3 discussed above in Section III.A.1., the statute unambiguously provides that DHS “shall
4 authorize the [noncitizen] to engage in employment . . . and provide the [noncitizen] with an
5 ‘employment authorized’ endorsement or other appropriate work permit” and that this benefit
6 “shall” be afforded to a noncitizen “who establishes a prima facie case of eligibility [for TPS] . . .
7 until a final determination with respect to the [noncitizen’s] eligibility for such benefits . . . has
8 been made.” 8 U.S.C. § 1254a(a)(1)(A)–(B), (a)(4)(B); *see also* 8 C.F.R. §§ 244.5(b),
9 244.10(e)(1)(ii). Congress’s use of “shall” demonstrates the agency has a mandatory obligation
10 to provide documentation enabling the noncitizen to accept employment.

11 Second, the purpose of the statute likewise is clear. It provides “humanitarian relief” in
12 the form of protection from removal and work authorization. *Sanchez v. Mayorkas*, 141 S. Ct.
13 1809, 1811-12 (2021). As the Ninth Circuit has explained, “[t]he TPS regime provides a limited,
14 temporary form of relief for the period that conditions render [a noncitizen’s] return unsafe by
15 creating a safe harbor and authorizing recipients to work in the United States to support
16 themselves for the duration of their stay.” *Ramirez v. Brown*, 852 F.3d 954, 963 (9th Cir. 2017),
17 abrogated on other grounds by *Sanchez*, 141 S. Ct. 1809.⁵

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20 ⁵ Notably, USCIS previously recognized its duty to act “immediately” to issue work
21 authorization to TPS applicants who establish prima facie eligibility. When creating the
22 regulations to implement TPS, the agency “agree[d]” with commenters “that temporary treatment
23 benefits should be issued immediately after the applicant establishes his or her prima facie
24 eligibility” and that such eligibility is established by the filing of a “complete[d]” application that
contains the requisite information. *See* Temporary Protected Status, 56 Fed. Reg. 23,491-92,
23,493 (May 22, 1991); *see also* Falgout Decl. ¶ 7 (stating that USCIS routinely granted TPS
applicants employment authorization up until about 2010). Moreover, the statute makes clear that
persons who are prima facie eligible are entitled to these benefits even during the brief period
before the window for applicants to register for TPS opens. 8 U.S.C. § 1254a(a)(4)(A).

1 **3. Defendants’ Failure to Implement a Process or Procedure to Afford Plaintiffs**
2 **Evidence of Employment Authorization Violates the Fifth Amendment Due**
3 **Process Clause and 5 U.S.C. § 706(2)(D).**

4 Finally, Plaintiffs also have a likelihood of success on the merits because Defendants’
5 failure implement a process or procedure to afford Plaintiffs evidence of employment
6 authorization violates their substantive and procedural due process rights and § 706(2)(D) of the
7 APA.

8 First, Plaintiffs have a due process right to a process or procedure to afford them evidence
9 of the employment authorization the law guarantees them. As the Supreme Court has noted, “the
10 impact of a denial on the opportunity to obtain gainful employment is plainly sufficient to
11 mandate constitutionally fair procedures” *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S.
12 479, 491 (1991). And it has long been held that it “is a denial of due process for any government
13 agency to fail to follow its own regulations” *Gov’t of Canal Zone v. Brooks*, 427 F.2d 346,
14 347 (5th Cir. 1970); *see United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

15 In addition, the APA also compels a reviewing court to “hold unlawful and set aside
16 agency action, findings, and conclusions found to be . . . without observation of procedure
17 required by law.” 5 U.S.C. § 706(2)(D). Here, as described above, the statute and binding
18 regulations require USCIS to issue employment authorization documentation to TPS applicants
19 like Plaintiffs. Moreover, Defendant Mayorkas is tasked with implementing these laws, has
20 “control, direction, and supervision” of all USCIS employees, and must take action “necessary
21 for carrying out his authority under the provisions of [the INA].” 8 U.S.C. § 1103(a)(1)–(3).
22 Although claims under § 706(2)(D) generally involve procedural irregularity with regulatory
23 rulemaking procedures, *see California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018), the Ninth
24 Circuit has not limited them to agency rulemaking. Accordingly, where, as here, the agency

1 refuses to abide by the statute and properly promulgated regulations, the agency is not
2 “observ[ing] [the] procedure required by law,” 5 U.S.C. § 706(2)(D), and Plaintiffs are likely to
3 prevail on this claim.

4 Defendants have not implemented any procedure or process to afford Plaintiffs’
5 employment authorization documentation. Indeed, USCIS does not regularly provide
6 documentation of employment authorization to pending TPS applicants. *See* Corral Decl. ¶ 6;
7 Prokosch Decl. ¶¶ 7-8; Falgout Decl. ¶¶ 6, 8-9; Liberles Decl. ¶¶ 7-8; Sharma-Crawford Decl. ¶¶
8 6-7; Marzouk Decl. ¶¶ 6-7. This is true notwithstanding the fact that a process is readily
9 accessible to the agency. All that would be required would be to include an endorsement of
10 employment authorization on the receipt notice that USCIS already issues to TPS applicants.
11 This receipt notice itself establishes prima facie eligibility for temporary TPS benefits. 8 C.F.R. §
12 244.1. Defendants’ access to a mechanism that is so readily available makes the failure to utilize
13 it even more egregious.

14 **B. Plaintiffs Suffer Irreparable Harm Absent an Injunction.**

15 Parties seeking preliminary injunctive relief must also show they are “likely to suffer
16 irreparable harm in the absence of preliminary relief.” *Winter*, 555 U.S. at 20. Irreparable harm is
17 harm for which there is “no adequate legal remedy, such as an award of damages.” *Ariz. Dream*
18 *Act. Coal. v. Brewer (Ariz. I)*, 757 F.3d 1053, 1068 (9th Cir. 2014).

19 Plaintiffs currently are suffering or will suffer irreparable harm resulting from the severe
20 financial consequences caused by the lack of employment authorization. As detailed in Section
21 II.A., the INA and implementing regulations afford TPS applicants the right to employment
22 authorization documentation upon establishing TPS eligibility. Defendants’ failure to issue that
23 documentation to Plaintiffs who have established prima facie eligibility causes Plaintiffs
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1 significant harm. For example, Plaintiff Coissy currently is unable to support himself and his
2 wife, or send money to his daughter in Haiti, and will face greater financial difficulties when his
3 baby is born in a few months. Coissy Decl. ¶¶ 5, 6. Additionally, Plaintiffs Mansor, Xareed, and
4 Zafari will be unable to pay for fundamental needs such as rent, food, clothing, and car
5 insurance, Mansor Decl. ¶ 4, Xareed Decl. ¶ 8; to support their minor children, Zafari Decl. ¶ 5;
6 and in Mr. Xareed’s case, to locate his wife and young daughter, believed to be in hiding in
7 Somalia, and provide for their security. Xareed Decl. ¶ 7. “It cannot validly be disputed that an
8 unreasonable denial of work authorization, or . . . delay . . . in work authorization, results in a
9 substantial threat of harm to plaintiffs, by preventing them from working to support themselves .
10 . . .” *Casa de Maryland, Inc. v. Wolf*, 486 F. Supp. 3d 928, 968 (D. Md. 2020) (quoting *Ramos v.*
11 *Thornburgh*, 732 F. Supp. 696, 699 (E.D. Tex. 1989)); *see also Gonzalez Rosario*, 365 F. Supp.
12 3d at 1162 (recognizing a “negative impact on human welfare” when asylum seekers “are unable
13 to financially support themselves or their loved ones”); *see also Batalla Vidal v. Nielsen*, 279 F.
14 Supp. 3d 401, 434 (E.D.N.Y. 2018), *vacated and remanded on other grounds sub nom. Dep’t of*
15 *Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891 (2020) (noting that
16 Defendants’ policy, which stripped plaintiffs of work authorization, would cause irreparable
17 harm such as “imminent loss of . . . employment” and cause plaintiffs to “lose their homes or
18 need to drop out of school”).

19 Plaintiff Coissy, who has no work authorization despite applying for TPS approximately
20 18 months ago, is dependent on the mercy of others to meet his family’s basic needs, he does not
21 know how he will support the baby he and his wife are expecting, and he wishes he could send
22 money to his family in Haiti, including his daughter, parents, and siblings. Coissy Decl. ¶¶ 5, 6.

23 Without employment authorization, Plaintiff Mansor will be stripped of the ability to
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1 support himself as he continues to build his life in the United States. Mr. Mansor fled
2 Afghanistan and entered the United States on September 9, 2021. Since then, he has been
3 depending on the employment authorization he received pursuant to his parole status to pay for
4 rent, food, car insurance, and all other basic necessities. Mansor Decl. ¶ 4. His parole status will
5 expire in October 2023, and when that happens, he will lose his employment authorization. *Id.* ¶
6 3. Without employment authorization he will no longer be able to pay for necessary living
7 expenses. *Id.* ¶ 4.

8 Without work authorization, Plaintiff Xareed similarly will be unable to support himself.
9 Xareed Decl. ¶ 8. Income is essential not just to support himself but also to facilitate his search
10 for his wife and child, who he believes are in danger and hiding in Somalia. *Id.* ¶ 7. He is
11 desperate to know that they are alive and safe and will need an income to fund both his search
12 efforts and, once he locates them, to provide ongoing support for them to ensure their continued
13 safety. *Id.*

14 Without work authorization, Plaintiff Zafari will be unable to support her minor children
15 who live with her and to bring her third daughter to safety in the United States. Zafari Decl. ¶ 5.

16 Absent employment authorization, Mr. Mansor and Ms. Zafari will not be able to
17 continue their employment and Mr. Xareed will be unable to seek employment as a mechanic,
18 and Mr. Coissy will remain unable to obtain employment. The “loss of opportunity to pursue
19 one’s chosen profession constitutes irreparable harm.” *Ariz. Dream Act Coal. V. Brewer (Ariz.*
20 *II)*, 855 F.3d 957, 978 (9th Cir. 2017); *see also Medina v. DHS*, 313 F. Supp. 3d 1237, 1251
21 (W.D. Wash. 2018) (finding DACA recipient’s potential loss of opportunity to pursue his
22 profession constituted irreparable harm). The inability to obtain EADs results in such harm here.

23 Moreover, it is axiomatic that the inability to work will inflict substantial emotional and
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1 mental stress on Plaintiffs. *See* Coissy Decl. ¶ 6 (describing being “depressed,” “stressed,” and
2 “humiliate[ed];” anticipation of the birth of his child has created “extreme stress” for him);
3 Mansor Decl. ¶ 5 (describing how “it is very difficult not to know whether I will have work
4 authorization or to think about losing it. It is so important to me to be able to work, and to be
5 able pay for my expenses and support people in my life.”). Such “emotional stress, depression
6 and reduced sense of well-being” further support a finding of irreparable harm. *Chalk v. U.S.*
7 *Dist. Ct.*, 840 F.2d 701, 709 (9th Cir. 1988); *see also Moreno Galvez v. Cuccinelli*, 492 F. Supp.
8 3d 1169, 1181–82 (W.D. Wash. 2020) (*Moreno II*).

9 **C. The Balance of Hardships and Public Interest Weigh Heavily in Plaintiffs’ Favor.**

10 The final two factors for a preliminary injunction also demonstrate that such relief is
11 appropriate in this case. “These factors merge when the Government is the opposing party.”
12 *Nken v. Holder*, 556 U.S. 418, 435 (2009). The balance of hardships and public interest favor
13 ensuring that Plaintiffs are not impeded from obtaining lawful employment and the
14 accompanying benefits that having that documentation would provide, including the ability to
15 independently provide for themselves and their family members. Employment authorization
16 documentation is necessary for Plaintiffs to “work in this country legally, pay[] taxes and
17 operat[e] in the above-ground economy.” *Regents of the Univ. of California v. U.S. Dep’t of*
18 *Homeland Sec.*, 908 F.3d 476, 486 (9th Cir. 2018), *rev’d in part, vacated in part on other*
19 *grounds sub nom. Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891
20 (2020).

21 Indeed, this Court previously granted a permanent injunction in a closely related context.
22 In *Gonzalez Rosario*, this Court issued permanent injunctive relief compelling USCIS to adhere
23 to the 30-day regulatory deadline for adjudicating work authorization applications filed by
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1 asylum applicants. 365 F. Supp. 3d at 1162. This Court found that the factors from
2 *Telecommunications Research & Action Center v. F.C.C. (TRAC)*, 750 F.2d 70, 80 (D.C. Cir.
3 1984), “which assess the impact of the agency’s delay on the public welfare,” “strongly” favored
4 an injunction. *Id.* Specifically, the Court reasoned that “human health and welfare are at stake”
5 where “[a]sylum seekers are unable to obtain work when their EAD applications are delayed and
6 consequently, are unable to financially support themselves or their loved ones.” *Id.* The same
7 reasoning applies with equal force to the present case.

8 Finally, because “the government’s . . . policy is inconsistent with federal law, . . . the
9 balance of hardships and public interest factors weigh in favor of a preliminary injunction.”
10 *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (*Moreno I*); *see*
11 *also Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022) (affirming in part permanent
12 injunction issued in *Moreno II*). This is because “it would not be equitable or in the public’s
13 interest to allow the [government] . . . to violate the requirements of federal law, especially when
14 there are no adequate remedies available.” *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029
15 (9th Cir. 2013). Indeed, Defendants “cannot suffer harm from an injunction that merely ends an
16 unlawful practice.” *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). Accordingly, the
17 balance of hardships and the public interest overwhelmingly favor injunctive relief to ensure that
18 Defendants comply with the law requiring issuance of employment authorization documentation
19 to Plaintiffs.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs Mansor, Coissy, Xareed, and Zafari respectfully request the Court to grant their motion for a preliminary injunction.

Respectfully submitted this 9th of March, 2023,

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WORD COUNT CERTIFICATION

I certify that this memorandum contains 6099 words, in compliance with the Local Civil Rules.

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

Fayez MANSOR, et al.,

Plaintiffs,

v.

U.S. CITIZENSHIP AND IMMIGRATION
SERVICES, et al.,

Defendants.

Case No. 2:23-cv-347

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION**

This matter having come before the Court on Plaintiffs' Motion for Preliminary Injunction and having considered the pleadings submitted in support and opposition to the motion, as well as oral argument of the Parties, this Court finds that Plaintiffs have satisfied the requirements for preliminary injunctive relief. Therefore, Plaintiffs' motion is GRANTED.

Accordingly, the Court HEREBY ORDERS Defendants to provide Plaintiffs Fayez Mansor, Eclesiaste Coissy, Cabdi Ibrahim Xareed, and Shukria Zafari with employment authorization documentation forthwith.

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It is so ORDERED.

DATED this _____ day of _____, 2023.

UNITED STATES DISTRICT JUDGE

1 Presented this 9th day of March, 2023, by:

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