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(Original Signature of Member)

119TH CONGRESS
2D SESSION

H. R. _____

To authorize judicial review of temporary protected status terminations, and
for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Ms. WASSERMAN SCHULTZ introduced the following bill; which was referred
to the Committee on _____

A BILL

To authorize judicial review of temporary protected status
terminations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Temporary Protected
5 Status Review Act” or the “TPS Review Act”.

1 **SEC. 2. RESTORATION OF JUDICIAL REVIEW OF TEM-**
2 **PORARY PROTECTED STATUS DETERMINA-**
3 **TIONS.**

4 (a) TERMINATION DETERMINATIONS.—Section
5 244(b)(3)(B) of the Immigration and Nationality Act (8
6 U.S.C. 1254a(b)(3)(B)) is amended to read as follows:

7 “(B) TERMINATION.—

8 “(i) IN GENERAL.—If, after con-
9 ducting the review required under subpara-
10 graph (A), the Secretary determines that
11 the foreign state no longer continues to
12 meet the conditions for designation under
13 paragraph (1), the Secretary shall termi-
14 nate the designation in accordance with
15 this subparagraph.

16 “(ii) DETERMINATION.—A determina-
17 tion under clause (i) shall—

18 “(I) be based solely upon the ad-
19 ministrative record compiled and cer-
20 tified pursuant to paragraph (5)(D);

21 “(II) include written findings of
22 fact and conclusions of law identifying
23 the evidence supporting the deter-
24 mination;

25 “(III) address each statutory
26 basis for designation under paragraph

1 (1), including any basis upon which
2 the designation or any redesignation
3 was previously made;

4 “(IV) consider all relevant and
5 reasonably available information re-
6 garding current country conditions,
7 including information provided by the
8 Department of State, other appro-
9 priate Federal agencies, international
10 organizations, and credible nongovern-
11 mental organizations;

12 “(V) explain the Secretary’s eval-
13 uation of any material evidence that is
14 inconsistent with the determination;
15 and

16 “(VI) certify that the determina-
17 tion was made without regard to race,
18 religion, ethnicity, national origin, po-
19 litical viewpoint, or any other con-
20 stitutionally impermissible consider-
21 ation.

22 “(iii) FEDERAL REGISTER.—The writ-
23 ten determination required under clause
24 (ii) shall be published in the Federal Reg-
25 ister concurrently with any notice of termi-

1 nation of a designation under this sub-
2 section.

3 “(iv) EFFECTIVE DATE.—A termi-
4 nation under this subparagraph shall be ef-
5 fective in accordance with subsection
6 (d)(3), but shall not be effective earlier
7 than 60 days after the date on which the
8 notice required under clause (iii) is pub-
9 lished in the Federal Register or, if later,
10 the expiration of the most recent previous
11 extension under subparagraph (C).”.

12 (b) JUDICIAL REVIEW.—Section 244(b)(5) of the Im-
13 migration and Nationality Act (8 U.S.C. 1254a(b)(5)) is
14 amended to read as follows:

15 “(5) JUDICIAL REVIEW.—

16 “(A) REVIEWABILITY.—Notwithstanding
17 any other provision of this Act or any other
18 provision of law, any termination under this
19 subsection shall constitute a final agency action
20 subject to judicial review under chapter 7 of
21 title 5, United States Code.

22 “(B) PERSONS AUTHORIZED TO BRING AN
23 ACTION.—A civil action for judicial review may
24 be brought by—

1 “(i) any individual who is eligible for,
2 has applied for, or has been granted tem-
3 porary protected status under this section;

4 “(ii) any class of such individuals;

5 “(iii) any organization or consortium
6 of organizations representing or serving
7 beneficiaries or applicants for temporary
8 protected status; or

9 “(iv) any State or unit of local gov-
10 ernment alleging injury resulting from the
11 challenged termination.

12 “(C) VENUE.—An action under this para-
13 graph may be brought in the United States
14 District Court for the District of Columbia or
15 any appropriate district court.

16 “(D) ADMINISTRATIVE RECORD.—

17 “(i) PRESERVATION OF RECORDS.—
18 Prior to issuing any designation, redesignig-
19 nation, extension, or termination under
20 this subsection, the Secretary of Homeland
21 Security shall compile, certify, and pre-
22 serve an administrative record consisting
23 of all materials compiled, considered, relied
24 upon, generated, or before the Secretary of

1 Homeland Security, directly or indirectly,
2 in connection with the determination.

3 “(ii) DISSENTING ANALYSIS.—The ad-
4 ministrative record shall include any dis-
5 senting recommendation, contrary analysis,
6 or material evidence inconsistent with the
7 determination that was compiled, consid-
8 ered, relied upon, generated, or before the
9 decisionmaker.

10 “(iii) SCOPE OF REVIEW.—Judicial re-
11 view shall ordinarily be limited to the ad-
12 ministrative record, except that the review-
13 ing court may consider evidence outside
14 the record upon a showing of bad faith,
15 improper conduct, material omission, or
16 other extraordinary circumstances.

17 “(E) CONSIDERATIONS OF COURT.—In re-
18 viewing a final agency action, a court shall con-
19 sider whether the agency failed to adequately
20 consider relevant country conditions, including
21 armed conflict, environmental disaster, public
22 health emergencies, or other extraordinary and
23 temporary conditions, including information ob-
24 tained through consultation with the Depart-
25 ment of State or any other Federal agency.

1 “(F) BURDEN OF PROOF.—

2 “(i) CLEAR AND CONVINCING EVI-
3 DENCE.—In any action challenging a ter-
4 mination of a designation, the Secretary of
5 Homeland Security shall bear the burden
6 of establishing by clear and convincing evi-
7 dence, based on the administrative record,
8 except to the extent the court considers
9 evidence outside the record pursuant to
10 subparagraph (D)(iii), that—

11 “(I) the requirements of para-
12 graph (3)(B) have been satisfied and
13 the foreign state no longer continues
14 to meet the conditions for designation
15 under paragraph (1);

16 “(II) the termination is sup-
17 ported by substantial evidence con-
18 tained in the administrative record;

19 “(III) all relevant and reasonably
20 available evidence regarding current
21 country conditions was considered;

22 “(IV) the termination was not
23 arbitrary, capricious, contrary to law,
24 or motivated by unconstitutional or
25 otherwise unlawful considerations; and

1 “(V) all procedural requirements
2 of this section were satisfied.

3 “(ii) VACATE TERMINATION.—In the
4 case that the Secretary of Homeland Secu-
5 rity fails to satisfy the burden under this
6 subparagraph, the challenged termination
7 shall be vacated.

8 “(G) RELIEF AVAILABLE AND SCOPE OF
9 RELIEF.—

10 “(i) IN GENERAL.—With respect to a
11 challenged termination of a designation
12 under this section, a reviewing court
13 may—

14 “(I) declare unlawful and set
15 aside the challenged termination;

16 “(II) issue temporary, prelimi-
17 nary, or permanent injunctive relief;

18 “(III) postpone, suspend, or stay
19 implementation of the challenged ter-
20 mination;

21 “(IV) order reinstatement or con-
22 tinuation of a designation;

23 “(V) require the Secretary of
24 Homeland Security to reconsider the

1 termination consistent with the
2 court's decision; and

3 “(VI) grant any other legal or
4 equitable relief the court determines
5 appropriate.

6 “(ii) APPLICATION OF RELIEF.—Re-
7 lief under this paragraph may extend be-
8 yond the named plaintiffs where necessary
9 to provide complete relief, prevent incon-
10 sistent administration of this section, or
11 ensure uniform application of this section.

12 “(iii) RULE OF CONSTRUCTION.—
13 Nothing in this paragraph shall be con-
14 strued to limit the authority of a court to
15 certify a class under the Federal Rules of
16 Civil Procedure or to issue declaratory or
17 injunctive relief applicable to all persons
18 affected by the challenged termination.

19 “(H) PRESERVATION OF STATUS PENDING
20 JUDICIAL REVIEW.—

21 “(i) STAY OF TERMINATION.—Upon
22 the filing of an action under this para-
23 graph, the challenged termination shall be
24 stayed pending final judgment.

1 “(ii) PENDING REVIEW.—During the
2 pendency of judicial review—

3 “(I) each grant of temporary pro-
4 tected status affected by the chal-
5 lenged termination shall remain in ef-
6 fect;

7 “(II) each affected beneficiary
8 shall remain authorized to remain in
9 the United States;

10 “(III) any employment authoriza-
11 tion issued pursuant to this section
12 shall remain valid and shall be auto-
13 matically extended by the Secretary of
14 Homeland Security as necessary; and

15 “(IV) no beneficiary shall be re-
16 moved, detained solely because of the
17 challenged termination, or denied an
18 immigration benefit, license, or em-
19 ployment authorization solely because
20 of the challenged termination.

21 “(I) APPLICATION TO INDIVIDUALS.—The
22 Secretary of Homeland Security shall establish
23 an administrative procedure for the review of
24 the denial of benefits to aliens under this sec-
25 tion. Such procedure shall not prevent an alien

1 from asserting protection under this section in
2 removal proceedings if the alien demonstrates
3 that the alien is a national of a foreign state
4 designated under paragraph (1).

5 “(J) RULE OF CONSTRUCTION.—Nothing
6 in this paragraph shall be construed—

7 “(i) to limit any constitutional cause
8 of action;

9 “(ii) to diminish any protection other-
10 wise afforded under this Act or any other
11 provision of Federal law; or

12 “(iii) to restrict the equitable author-
13 ity of a court of the United States.”.

14 (c) CONFORMING AMENDMENT RELATING TO JUDI-
15 CIAL REVIEW.—Section 242 of the Immigration and Na-
16 tionality Act (8 U.S.C. 1252) is amended by adding at
17 the end the following:

18 “(h) TEMPORARY PROTECTED STATUS.—Notwith-
19 standing any other provision of this section an action au-
20 thorized under section 244(b)(5) may be brought and ad-
21 judicated in accordance with section 244(b)(5).”.

22 **SEC. 3. CONGRESSIONAL REVIEW OF TPS DETERMINA-**
23 **TIONS.**

24 (a) CRA.—Section 804 of title 5, United States
25 Code, is amended by adding at the end the following:

1 “(4) TEMPORARY PROTECTED STATUS.—

2 “(A) MAJOR RULE.—For purposes of this
3 chapter, any determination by the Secretary of
4 Homeland Security to terminate, partially ter-
5minate, or materially reduce a designation of
6 temporary protected status, or any action that
7 has the practical effect of terminating or mate-
8rially reducing such a designation under section
9 244(b) of the Immigration and Nationality Act,
10 shall constitute a major rule.

11 “(B) JUDICIAL REVIEW AVAILABLE.—Not-
12withstanding section 805, compliance with this
13 chapter with respect to a determination de-
14scribed in this paragraph, including compliance
15 with section 801(a)(1)(A), shall be subject to
16 judicial review under section 244(b)(5) of the
17 Immigration and Nationality Act.”.

18 (b) NO FORCE OR EFFECT.—Notwithstanding sec-
19tion 801(c) of title 5, United States Code, no determina-
20tion described in paragraph (4) of section 804 of title 5,
21 United States Code, shall have force or effect until—

22 (1) the submission requirements of section
23 801(a)(1)(A) of such title have been satisfied; and

24 (2) the latest date on which a major rule may
25 take effect under section 801(a)(3) of such title has

1 occurred, including any period of additional review
2 provided under section 801(d) of such title.

3 **SEC. 4. EFFECTIVE DATE.**

4 The amendments made by this Act shall apply to—

5 (1) any determination with respect to a des-
6 ignation, redesignation, extension, or termination
7 under section 244 of the Immigration and Nation-
8 ality Act made on or after the date of enactment;
9 and

10 (2) any civil action challenging such a deter-
11 mination that is pending on, or filed after, the date
12 of enactment.

13 **SEC. 5. SEVERABILITY.**

14 If any provision of this Act, an amendment made by
15 this Act, or the application of such provision or amend-
16 ment to any person or circumstance is held to be unconsti-
17 tutional or otherwise invalid, the remainder of this Act,
18 the amendments made by this Act, and the application of
19 such provisions and amendments to any other person or
20 circumstance shall not be affected thereby.