

Kate Kalmykov: Hello everyone, and welcome to the Immigration Insights Podcast hosted by Greenberg Traurig. My name is Kate Kalmykov. I co-chair the Global Immigration and Compliance Group at Greenberg Traurig, and I am your host. And today we're going to be talking about [00:00:30] recent policy changes in temporary protected status and what this means for employers, for foreign nationals who have TPS status. I'm delighted to be joined by my colleague, Cole Heyer, who's a shareholder in our Atlanta office. Cole, can you introduce yourself and tell us a little bit about your practice?

Cole Heyer: Sure. My name's Cole Heyer. I am based in Atlanta and I focus [00:01:00] on representing companies of all different sizes, Fortune 50 to startups with their US immigration needs. I also help advise a number of companies with their TPS programs and other types of humanitarian parole programs and helping them make sure that their work population is properly work authorized.

Kate Kalmykov: Fantastic. And although our topic today is TPS, I think we should also touch [00:01:30] on some of the humanitarian parole programs that were introduced. Initially, it was the Ukraine Uniting for Ukraine program, which was followed by the CHNB parole program and how those are also impacted. So, the TPS landscape has been quite fluid. The administration, when they came into office, basically said that they wanted to terminate TPS and they said it during [00:02:00] the campaign. So, before the Biden administration left office, they actually extended a number of TPS programs.

And then when the current administration came in, they started issuing executive orders and policy memorandums canceling a number of the TPS programs and the parole programs saying basically that they're not meant to be something that [00:02:30] exists for a very long time, that temporary means temporary, and that if they think that country conditions have improved, they are going to terminate these programs. And they did. And what happened was a flurry of lawsuits were filed and those lawsuits were decided by district courts, appealed to appeals courts, and we even went up all the way to the Supreme Court.

So, it's been a very fluid time, a very, [00:03:00] I'd say, difficult time for many employers and HR keeping up with the many different requirements for validating employment authorization as part of the Form I-9 employment eligibility verification process. And that's what we're going to talk about today. So, I want to just go through the current status of some of the programs, and then we can sort of get into the overarching nitty-gritty. [00:03:30] So, Yemen was terminated by the administration and the termination is effective as of July 20th, '26. This is a program that was subject to litigation. So, there was a lot of back and forth on the Yemen TPS. Venezuela was also terminated.

And I believe there's ongoing litigation with Venezuela. [00:04:00] The interesting thing to keep in mind here is we have two groups of Venezuelans depending on their designation. So, it's important for employers to know who

was subject to the '23 TPS designation and the 2021 designation. Ukraine TPS is active as of right now. What's interesting is that it's coming up to its expiration date. And a number of individuals who filed [00:04:30] for TPS don't even have decisions yet on their current TPS applications that are pending. And we have no status update as to whether it will be extended. Syria TPS was terminated. Sudan TPS remains active. South Sudan TPS was terminated.

So, on August 7th, actually, the federal courts declined to [00:05:00] extend emergency relief. In a lot of these litigations while the litigation was pending, employment authorization document validity was continuously extended, which was very difficult to keep track of. Somalia TPS was terminated and then it was restored. So, there is ongoing litigation on that. Nicaragua was terminated and this is actually pending right [00:05:30] now at the Ninth Circuit Court of Appeals. Nepal was terminated and that case is also in the Ninth Circuit Court of Appeals. Lebanese TPS is extended. Honduras was terminated and is also pending in the Ninth Circuit Court of Appeals. So, that's subject to ongoing litigation.

Haiti went all the way up to the Supreme Court and ultimately was terminated [00:06:00] last month at the end of July. Ethiopia was terminated and it's subject to ongoing litigation. Recently, just three days ago on August 18th, the US District Court judge lifted the stay, which was the last judicial block on the efforts to terminate the TPS designation. So, we're monitoring that one actively. El Salvador remains active. [00:06:30] Cameroon was terminated. Myanmar was terminated, restored. And now basically the litigation in the last two weeks, the court declined to extend emergency relief, effectively ending the TPS designations for Burmese nationals. And Afghan TPS was terminated in March of last year.

In terms [00:07:00] of the parole programs, the Afghan parole program is suspended. Uniting for Ukraine was paused. You can submit new applications, but there's no decisions being issued. It's sort of in a gray area right now, although we had an extension announced last week by the court of work authorization until October 19th of this year. [00:07:30] And the parole that was granted by the Biden administration called CHNB Parole, Cuban Haitians, Nicaraguans and Venezuelans was one of the first programs terminated when the administration took office. So, Cole, as you can see from the list I just recited, litigation has definitely ensued as a result of trying to end the TPS.

And it's definitely delayed [00:08:00] or in some cases even changed DHS implementation of the termination. Let's talk a little bit about the lawsuits and the basis for some of these lawsuits.

Cole Heyer:

So, it's exactly right. We've had a very active DHS under the Trump administration that is seeking to terminate or end a lot of these temporary protected status programs for countries, right? And I think the focus there is what you said is this is [00:08:30] temporary. And the role of litigation in this

process I think has been a huge piece of each kind of termination of a particular TPS program for a country where we can have an announcement issued by DHS.

And then shortly after, within a couple of weeks, we have a lawsuit filed in a federal court or several federal courts across the United States that essentially, [00:09:00] depending on the court involved, we'll put a stay or some type of hold on the formal ending of that TPS program. Haiti, I think is a great example of this that you mentioned goes all the way up to the Supreme Court recently. I think we had a couple actually of courts involved, of different federal district courts involved with that, which makes it even more confusing for employers to manage when they are trying to determine if their Haiti TPS population is [00:09:30] work authorized.

And I think we're going to continue to see that. Like you mentioned, we have a number of countries that are still valid for TPS, but have upcoming deadlines in October 2026. I know El Salvador, I believe, is coming up for extension in September, the closest one thus far. And so, it'll be interesting to see how litigation may play into those particular TPS decisions.

Kate Kalmykov: [00:10:00] I think the role of the courts...

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Kate Kalmykov: I think the role of the courts has really made the situation both confusing and incredibly dynamic. The example you gave of Haiti TPS is a great one. I mean, in July, we were sending weekly updates on basically, yes, you can employ this person. No, you have to take them off payroll. No, you can't employ them. The lower court says you have to until they can implement it. No, you have to ultimately take them off. [00:10:30] And this was a huge burden on employers because one, they have to continuously monitor the situation. Sometimes, they're working with a foreign national population that doesn't have any other form of work authorization. They're in the US pursuant to TPS. And the courts themselves, once it goes higher and it goes back to the district court, it takes time to implement some of the rulings. And taking an employee off payroll, putting [00:11:00] them back on can often be quite time-consuming and burdensome.

Cole Heyer: It, I think also plays a big, or companies are faced with a big issue. If they're in a particular industry that might rely heavily on these TPS workers, or TPS workers from a particular country, like I'm thinking Haiti, in Atlanta where I'm from, there's a number of organizations that employ [00:11:30] Haiti nationals in healthcare type roles or senior care type roles. And these companies have to make a decision of what are they doing with these workers who are patient on TPS? And as you said, every day, I'm essentially checking several different websites to understand is that particular individual or group of individuals work authorized today with Haiti, like going to the uses.gov [00:12:00] website, seeing if there is an update on uses.gov, seeing if there is a new federal

registered notice that's been issued, checking the various courts that were involved to see if they've extended the stay or if they've issued any kind of ruling.

I had LexisNexis searches on these cases where I was getting updates every single day from the courts involved to see if there was any kind of new deadline for when or how long these TPS [00:12:30] Haiti workers could continue working, and then giving those updates to my HR contacts, the clients that I work with. And you could tell they're getting frustrated with the process. They don't know what to do. It's not clear. You have to have maybe a magic eight-ball to help you figure out if they're work authorized or not.

And it becomes a burden because these companies have to determine what is next [00:13:00] step? Do we continue to wait to employ these workers because the courts are going to somehow magically resolve it in a positive favor for them to employ these individuals, or do they need to start ramping up hiring? If they're going to lose a lot of their workforce who is taking care of their business, do they need to go out and start ramping up with recruiting and hiring? And that takes a lot of money and a lot of manpower to do that. And it's not [00:13:30] a great situation for them on their side when they have this rocky ground with TPS.

Kate Kalmykov: Absolutely. And you mentioned certain industries rely on these workers. And in certain industries, for example, in agriculture, a lot of Haitian TPS workers also were employed. It's very hard to find people in those positions and there's no ready and available work visa for them to apply for. So even if employers wanted to sponsor them, there's no [00:14:00] real immigration options for some of these essential, what we call unskilled positions.

Cole Heyer: Yeah. And they're definitely not unskilled. You should see them work with my grandma. It takes a lot of skill, a lot of patience. And it's hard to replace them quickly. But these companies need individuals who are willing to do that work.

Kate Kalmykov: Absolutely. And I want to delve a little bit more into the compliance challenges because I think [00:14:30] for employers, it wasn't just knowing, is it reauthorized? Is it reauthorized? It's how do I fill out the Form I-9? Do I do Supplement B? Am I re-verifying them? If I'm taking them off payroll and then putting them back on and I'm an E-Verify employer, am I running them back through E-verify? So let's talk a little bit about the I-9 re-verification, the automatic EADs, and how those are supposed to be treated.

Cole Heyer: [00:15:00] Well, that is probably the most confusing aspect of this process for employers, I think, is how to complete Form I-9 with these individuals. And part of that can really depend on the TPS country involved. You mentioned Venezuela, which has two TPS designations. And so an employer has to determine which TPS designation applies for that individual [00:15:30] first, which is not an easy task. And then that employer has to follow the rules or the

guidance that USCIS has issued for that particular TPS designation. So Venezuela has two. They have a 2023 and I think 2021. And one of them is still valid right now, I think it's coming up for expiration very soon. And an employer has to determine, is this under the terminated [00:16:00] TPS designation, or is this under the one that is still currently valid? And waiting for DHS to issue some type of final determination for that particular designation.

So it can be a labyrinth to get involved. And then from there, employers have to look at a number of websites to figure out when is this individual work authorized [00:16:30] through. It's not always immediately evident. In some cases, you can look at the document that's in front of you that has an expiration date and you say, "Okay, this is the expiration date that I list for Form I-9. So I know when to re-verify this individual." But in many cases, individuals might be presenting expired EAD cards. And so what is an employer supposed to do in that context? It can be confusing and ripe for error [00:17:00] with completing Form I-9.

Kate Kalmykov: You're right. And I think for employers, training is key because knowing where to look, knowing where to confirm if something has been reauthorized, even though they aren't being issued a new physical document that they can present, is very important because we dealt with one company where someone was terminated, and the employee contacted DOJ saying that they were being discriminated [00:17:30] against because they were not aware where you can actually check the updates. And there is a TPS resource page available to employers, both on the uscis.gov website, but also if you're an E-Verify employer, there are consistently updates being issued both through the E-Verify portal, which you should be able to see, and through SAVE.

Cole Heyer: Yeah, so that's certainly an element or layer of this analysis [00:18:00] that has to be done by the company. And that's just kind of in a normal immigration climate where you have the DHS issuing these extensions, usually publishing these federal register notices that employers can refer to to extend that particular TPS work authorization. The issue of litigation has added another wrinkle to that where you might have [00:18:30] an expired EAD card, you might have a federal register notice that was published by DHS. Under Biden, the last month or two of his term in December 24 and January 2025, the DHS under his watch actually extended a number of TPS designations that then acting secretary Kristi Noem terminated [00:19:00] fairly quickly under the Trump administration.

And so you had federal registers notices that were published, and then those programs are terminated. And so companies had to try to quickly go through their records and figure out who is under this particular TPS designation, or wait for E-Verify to notify them that these individuals are no longer work authorized, which is just a very complicated, [00:19:30] nerve-wracking process for a company because you don't want to be employing individuals who do not have work authorization. That's a major compliance [inaudible 00:19:40]. And then

you had lawsuits filed, which put stays on those actions. So you had to look at the federal register, and then you may had to go look at the court order to see what do I do in this case, just to ensure that someone is work authorized. So it's very complicated, [inaudible 00:19:58].

Kate Kalmykov: And I think because [00:20:00] it's very complicated, there's a lot of room for error. So one error-

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Kate Kalmykov: So it's very complicated. There's a lot of room for errors. So one error is not knowing that a court, for example, extended work authorization while they were reviewing or stayed the termination, and that stuff had to be looked up. And then employers were asking, "Well, how do we document that for I-9 purposes? Do we print out the notice? Do we include it? Can you send us a link? We don't know where to look."

Some employers were terminating [00:20:30] because they didn't know. And so then they had to rehire when the foreign nationals brought them proof that actually their EAD right to work was extended despite not having the physical card extended. There were also mistakes where, for example, someone had an EAD extension and they were, for example, Haitian TPS, but the country of birth [00:21:00] on their EAD card was not Haiti. It was perhaps The Bahamas. It doesn't mean that they weren't eligible for Haitian TPS because it goes off citizenship, but they just may have been born elsewhere and the employer was not allowing them to continue working because the EAD date was ending. And they actually also could escalate that to the DOJ and claim [00:21:30] discrimination.

And so these seem to me oftentimes, when we run into these sort of errors, is really a training issue and keeping abreast of what's happening both in the litigation and politically. And the lawsuits, as you mentioned, basically challenged the right of the subsequent administration to cancel something once it had already been reauthorized.

And so a lot of them were examining, [00:22:00] and continue to examine that issue, whether the administration has the authority to cancel something. And I think for some of these, they're just going to approach the expiration date and they're just not going to be reauthorized even before maybe they're decided. But that leaves us sort of with the question of what do HR teams do in these situations? What best practices in addition to training [00:22:30] can they employ to monitor the frequent TPS changes?

Cole Heyer: Can the answer be hire a good lawyer? Is that it? Are we done?

Kate Kalmykov: Of course. But I think also training with either outside counsel, which we do a lot of, or in-house, to know what resources are available to perhaps set up alerts.

We're living in a time where we can set up [00:23:00] agents through AI to alert us on anything that's happening to stay informed. There was one night with Haiti TPS where I was online till 9:00 PM monitoring, is there going to be a final extension or not? And sometimes it is putting in that extra effort to monitor the litigation.

Cole Heyer:

Yeah. I think certainly subscribing to our blog, Inside Business Immigration, shameless plug. [00:23:30] But from an HR's perspective who's handling this I-9 function, I think getting familiar with the types of documents. If you employ a heavy number of TPS beneficiaries in your workforce, then I think it's totally worth the effort to become familiar with the types of documents that you normally see. And USCIS.gov has a great resource of the I-9 form and the types of documents that can be presented.

[00:24:00] And then just reviewing and looking at the TPS pages that USCIS.gov sets up and clicking through the various links that are on those pages, you'll start to see that a number of these TPS designations have federal registered notifications. And these websites also have a pretty clean table, for the most part, pretty clean table of when an EAD expires or if that EAD that [00:24:30] is facially invalid has been automatically extended for a period of time.

And just familiarizing yourself with that, asking questions. And I think making sure that your I-9 system has those automatic alerts or ticklers that go out that update you, "Hey, this document is facially invalid. You need to consider re-verifying within a 90 day or 60-day or 30-day period." And then when you get those alerts, [00:25:00] looking at it, saying, oh, this is TPS El Salvador, for example. And then going to that webpage for USCIS and looking at it and making sure you have line of sight of what's coming down the pike for that particular designation.

Kate Kalmykov:

I think it's also interesting to note that a lot of these employees have been with the employer for a long time. And so a lot of the employers also, I think immediately when they started seeing that TPS [00:25:30] may end, had conversations with their employees that are valuable to their workforce about seeking alternative work authorization.

And I think we can divide that into two sort of buckets as well. One bucket is employer sponsored and one is where you have to consult your own counsel because you may be able to file an application on your own. So Cole, what options did we explore and continue to [00:26:00] explore with employers with respect to keeping employees here? Certainly, I think we can start with the H-1B where many employers understand that it's a lottery, but wanted to roll the dice to keep key people employed.

Cole Heyer:

Yeah. So we certainly specialize and help companies with the employment sponsored work visa options. [00:26:30] H-1B is one of those. And from a qualification standpoint, it's one of the easiest work visas to get. Typically, the

individual has to have a US bachelor's degree or equivalent. And equivalency can be based on education and experience. And the role that's being offered to the individual needs to require at least a bachelor's degree in a particular field that the candidate matches. It's like a puzzle [00:27:00] piece. And that's something that we can explore for individuals.

The hard part of the H-1B, even though it has generally low qualifications to get the visa, is that if your organization is a for-profit, you have to go through this H-1B lottery process that opens every year. The next lottery will open in April of 2027. And [00:27:30] we have to enter the individual into that lottery and hope and pray that that individual is selected. And then if selected, then we can file that H-1B benefit for the individual that ultimately takes effect or kicks in October of that same year. So October 2027.

But it's not a guarantee that the individual will be selected in that lottery process. I think from this most recent lottery round that we just [00:28:00] finished in April of 2026, overall selection rates were right around 35 to 40%. So odds are not in your favor of selection, but it's still a worthy option if you have an individual that you want to invest in and keep at your company.

Kate Kalmykov: And I think it's important to note that the process for TPS versus some of the parole programs is a little bit different because the parole [00:28:30] was not considered an admission. Oftentimes, if someone is selected in the cap or for a different type of work visa, they have to travel overseas and reenter with the new visa. And earlier this last year, September 2025, the administration passed a \$100,000 fee on the H-1B if you process for a new visa abroad. So that was also hindering some [00:29:00] employers from taking up the H-1B. But right now, a federal court struck down that \$100,000 fee, saying that it's a tax and only Congress has the power to impose a tax, not the executive branch. And that is being appealed by the administration. But for right now, there is no \$100,000 fee. It remains to be seen what happens for next year's cap.

Cole Heyer: Yeah, that fee is also [00:29:30] is issued by proclamation. And that's also set to expire, I believe in September, like September 20th or so of this year. So it'll be interesting to see if that is renewed by the administration.

Kate Kalmykov: As an aside, it's interesting to see and to consider why the administration is appealing if it is set to expire anyway. I guess maybe it's indicative of the fact that they wanted to extend it. And so they want to make sure it's valid. But in addition to the H-1B, I think [00:30:00] for some employers, they were exploring-

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Kate Kalmykov: ... I think for some employers, they were exploring maybe some of their workforce going on F1 student visas, if that was feasible and getting work authorization through the student status, maybe through CPT or OPT, there's

very specific work authorization for students. It is quite restrictive. And obviously, there's a whole host of other business visas. And for many of the TPS individuals, green card sponsorship [00:30:30] through employment is also a possibility. It takes years in most cases, but it's out there as a long-term strategy for key employees. There's a Department of Labor process where you can test the labor market. And if you can show that there are no US workers who are qualified or available for the position, you can also sponsor someone for a green card.

Now, sometimes employers understood that there was no visa category [00:31:00] readily available for some of their workers and they did advise employees to speak to an immigration lawyer. Because from some countries, individuals may have the ability to file for asylum. And we don't typically do with GT, but we certainly advise employers who are employing asylees who are entitled to work authorization. And they could explore, perhaps, family [00:31:30] sponsorship applications if they were eligible, particularly if they had a US citizen spouse that could sponsor them for a green card, through which they can also get work authorization.

There are different avenues that exist. I think for employers, knowing sort of where the boundary is between work visas and when to tell employees, "We can't give you legal advice, but you should speak to a lawyer because you may be eligible for other [00:32:00] options to keep you employed." It's also just important to know a sort of a baseline level of knowledge because a lot of times they're coming to HR, they've worked for many years with the company. There's a relationship there and an attachment of sorts. And many employers are willing to sponsor and to keep people here.

Cole Heyer:

And that's what we noticed with a number of companies who worked with Venezuela [00:32:30] TPS, for example, or had employees under Venezuela TPS. When that particular designation was terminated, those individuals did provide an alternate form of work authorization, which was an asylum claim that they filed typically for political asylum claims arising out of Venezuela. So it's always good to... And this is a difficult area to navigate as an employer, but [00:33:00] don't assume that they don't have another form of work authorization.

It's always good to go back to the I-9 guidance or the table of acceptable documents that an individual can present and say, "We don't have TPS because that's been terminated. There's other ways you can re-verify or show that you have work authorization. And do you have any of these other documents?" And they might have an asylum work permit or EAD, for example.

Kate Kalmykov:

[00:33:30] Yeah. And I also think it's important to just caution employees about travel because the TPS situation is so fluid. They may have applied for advanced parole through the TPS, but it may not be advisable necessarily to travel on that parole if a court rules that they're terminating it, because they may not be able to reenter.

Cole Heyer: And I think you're certainly referring to [00:34:00] international travel right now, but even with domestic travel, there is reports that individuals are being picked up by ICE, even if they're flying in country domestically. And so just any kind of travel consideration may be something that employers want to look at very carefully before they send someone to the airport.

Kate Kalmykov: I think that's a great point. That is something we haven't seen in the past. I've been doing this for over 20 years. And certainly we've never seen people [00:34:30] stopped at the airports for travel, particularly where they're not out of status, they're not in unlawful presence. They may have TPS and they're in this sort of flux period. Or they may even have, for example, if you're a Ukrainian, you filed for an extension and you don't have a decision yet, you're in a pending state. And the fact that those people were being picked up is disturbing.

And yes, reexamining travel, I think, is very important for employers [00:35:00] to evaluate if there's someone else, so travel is work related that they can send is also key, because people are scared and it is a very uncertain time. Now, that being said, what does your crystal ball, say, that employers should sort of look for in the next six to 12 months? Certainly we have some designations coming up for renewal like Ukraine. We have some that we should get decisions from [00:35:30] the courts on. So what do you think, Cole?

Cole Heyer: If I could accurately predict what's going to happen, I think I would be a millionaire. I'd go to the poly markets immediately and start betting on this stuff. But I really have no idea. El Salvador is one that's coming up for expiration on September 9th. And I think this administration has [00:36:00] a cozy relationship with leadership in El Salvador, certainly with the prison system and how we've been sending a lot of our detainees to El Salvador. I don't know if we would extend it in that particular scenario, so I would imagine that this is going to be terminated.

And we don't have a decision yet. It's coming up in about three weeks or so and we have nothing. And typically, decisions are made 60 days in advance so I would imagine that this is going to be terminated. [00:36:30] And El Salvador has been a very longstanding TPS program, so that wouldn't surprise me. Ukraine, I have no idea. I'd have to defer to you on that one. There's a lot of geopolitical things that get involved here with that analysis. I just really don't know.

Kate Kalmykov: Yeah. I think I don't have an answer to that either, but it would be unprecedented to terminate the TPS designation while war is ongoing. And it is a daily occurrence in the news [00:37:00] that there's drone attacks, bombings, this sort of thing to tell people that they have to go back. I think from a human point of view, it would be heartbreaking.

- Cole Heyer: And there's certain territories of Ukraine that are still under Russian control and occupation, and a number of individuals are from those areas, so where would they go? Just a different region of Ukraine, which is, yeah, it's not really great to think about from that perspective. I would expect Ukraine [00:37:30] to be extended and that's coming up for expiration in October. But that's anyone's guess right now. It's very unpredictable.
- Kate Kalmykov: Correct. And I think it's important also for applicants to know that there are certain opportunities where they can self-sponsor for green cards, too. And for example, a national interest wave or extraordinary ability. They're very well known in their field, they're doing [00:38:00] important work that can be of benefit to the US. Speak to an immigration attorney, schedule a consultation, because you may qualify for relief that your employer can't give you and you may just not have explored yet.
- Cole Heyer: We talked about the Haiti example where a number of them may work in the nursing field. And that might not be a type of occupation that rises to a level of extraordinary ability or national interest in the eyes of government, but certainly with other TPS [00:38:30] countries, we had Afghanistan, we have Ukraine. A number of those individuals are here studying at university for PhD programs. And so they have a publication record, right? They have authored papers and they have been cited to by others. And certainly self-sponsorship in that particular scenario may be a viable option for getting some type of more permanent status in the United States.
- Kate Kalmykov: And you may [00:39:00] not be doing something that rises to the level of cancer research, but if you're working in a shortage occupation like medicine or nursing, that is also something that is in the national interest of the US, so definitely worth exploring. I think the takeaway for employers is to keep monitoring everything. Reach out to your lawyers. It's okay, we want you to ask us what's going on and we want you to be compliant. And [00:39:30] there is a lot going on right now and a lot to keep track of. And for individuals as well, I think it's important to explore their options and to keep abreast of the developments.
- Cole Heyer: Absolutely.
- Kate Kalmykov: All right. Well, thank you so much for joining me, Cole, for this timely topic. I really appreciate it.
- Cole Heyer: It's much easier than I expected. Thank you for inviting me, Kate.

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