

Temporary Protected Status in the United States: An incomplete and imperfect complementary system of protection

Background paper to *World Development Report 2023: Migrants, Refugees, and Societies*

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Abstract

This paper explores the history of temporary protected status (TPS) within the United States, the scope of protection afforded, and the limitations of the relief provided to individuals whose countries of origin are designated for protection because of “extraordinary and temporary conditions” that make it unsafe for those who face return to their country of origin. It then examines temporary protected status alongside other forms of humanitarian-based immigration relief. The paper includes two case studies, providing an historical examination of temporary protected status designations for El Salvador and Liberia. The case studies serve to highlight the sociopolitical challenges associated with a country’s designation for temporary protected status, and the impact on individuals and families when they face termination of that status, after having built their lives in the United States during the extended period of protection from deportation and accompanying grant of work authorization.

Keywords: Temporary Protected Status, humanitarian relief, immigration, deportation relief

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Introduction

Since its enactment into law in 1990, Temporary Protected Status (TPS) has served as the most significant complementary system of humanitarian protection for persons without legal permanent residency or citizenship status in the United States, and it is a lifeline to security for those eligible for the relief provided. TPS affords individuals without lawful resident status permission to remain in the United States with work authorization on a temporary basis when it has been determined that it would be unsafe for them to return to their country of origin because of an armed conflict, environmental disaster, or other “extraordinary and temporary conditions.”

As of February 1, 2023, there were more than 400,000 non-nationals with TPS in the United States (National Immigration Forum 2023), a rise from February 2022, when there were approximately 354,625 TPS holders (CRS 2022). This increase is attributable to the designation and redesignation of Sudan and South Sudan for TPS (March 2, 2022),¹ followed by designations for Ukraine (March 3, 2022), Afghanistan (March 16, 2022), Cameroon (April 15, 2022), and Ethiopia (October 1, 2022), expanding the protection afforded to nationals from 16 countries (see table A.1 in appendix A for a list of countries designated for TPS and the dates of designation). Those numbers reflect the critical role TPS plays in providing protection to noncitizens residing in the United States without lawful status who fall outside the narrow confines of protection afforded through the US asylum and refugee protection system, but whose lives and personal security are nonetheless at risk in their country of origin.

Box 1. The narrow confines of protection afforded through the US asylum and refugee protection system

US law affords asylum and other forms of refugee protection to individuals who meet the criteria for establishing that they are a “refugee” as defined in section 101(a)(42) of the Immigration and Nationality Act. A “refugee” is a person who is:

“outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such special circumstances as the President after appropriate consultation (as defined in section 1157(e) of this title) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of *race, religion, nationality, membership in a particular social group, or political opinion.*” (Italics for protected categories added)

Persons fleeing generalized violence, or even targeted threats and persecution where the motivation for such persecution does not fall within one of the five protected categories, as well as those fleeing insecurity and risks to life and well-being resulting from environmental or other humanitarian disasters, are generally not protected under US asylum and refugee law.

¹ See [Secretary Mayorkas Designates Sudan and Extends and Redesignates South Sudan for Temporary Protected Status | USCIS, March 2, 2022.](#)

Nonetheless, as with all temporary protection regimes, TPS remains an imperfect and incomplete complement to the current asylum and refugee resettlement programs. The program has been the subject of numerous critiques and has recently been subjected to legal controversy, primarily around determinations that center on a country's designation as one from which its nationals can claim relief. This is particularly true when the underlying situation giving rise to a country's original designation is anything but temporary and lasts, as it has for several countries, for a decade or longer. Immigration advocates push for a more permanent form of relief, while those seeking to limit or impose greater restrictions on immigration push for termination of the program, arguing that it has far exceeded the original statutory intent that relief be provided on a "temporary" basis.

The second section of this paper sets forth the statutory and regulatory requirements for TPS, identifies those who are excluded from it, and sets forth the process by which TPS is granted, while providing the legal context in which TPS operates and other forms of complementary protection that have been and are afforded. The third section provides a case study of El Salvador and Liberia, two countries that are among those designated for TPS for the greatest number of years. These case studies are intended to illustrate the challenges, shortcomings, and opportunities provided by the existing TPS program. The fourth section concludes by placing TPS in the context of broader, global debates around temporary protection programs and recommendations set forth to ensure meaningful protection to the personal security and well-being of those who fall outside of the 1951 Refugee Convention protection scheme.

TPS in the United States: The what, the who, the how, and the what else/what next?

Historical context and legislative history

While the current statutory framework for TPS was introduced into law through the Immigration Act of 1990 (IMMACT 1990), its historical antecedents date back approximately half a century prior. In the aftermath of World War II, the United States passed the Refugee Relief Act of 1953 and made available 200,000 visas for admission for legal permanent residency in the United States for qualifying "refugees." The United States had not yet ratified the 1951 Convention on the Status of Refugees and—rather than relying on the narrow definition contained therein—instead defined as refugees eligible for protection persons who were:

... in a country or area which is neither Communist nor Communist-dominated, who because of persecution, fear of persecution, natural calamity or military operations is out of his usual place of abode and unable to return thereto, who has not been firmly resettled, and who is in urgent need of assistance for the essentials of life or for transportation.

In determining the distribution of refugee visas, the United States prioritized those who had skills deemed beneficial to the US labor market, and those with immediate family members already in the United States. Through passage of the 1958 Azorean Refugee Act, Congress first recognized a specific natural disaster as the basis for granting immigrant visas, providing 2,000 non-quota immigrant visas for victims of earthquakes and volcanic eruptions in the Island of Faial in the Azores from 1957 to 1958.

These two historical antecedents were more closely aligned to the system of refugee protection, as indicated in the names of the statutes themselves, than the current TPS system: they expanded upon and provided a more inclusive definition of who qualified for protection than that provided for under the 1951 UN Convention on the Status of Refugees, and the subsequent 1967 Protocol on the Status of Refugees (hereinafter, "Refugee Convention"), while also providing more extensive protection beyond the right of non-refoulement to establish grounds for adjustment of status to that of legal permanent residence, and

ultimately citizenship. The current system of TPS, as introduced by Congress in 1990, differs significantly in that: (1) it applies only to persons already in the United States, rather than extending opportunities for admission into the United States for impacted/eligible persons; and (2) it provides time-limited relief and restricted benefits that do not extend to admission for legal permanent residency status, and all that accompanies that rights and privileges. As with the 1953 Refugee Relief Act, the 1980 Refugee Act granted the executive branch of the US government the authority to make parole determinations as to whom to admit into the United States for humanitarian relief.² In 1968, the United States acceded to the Refugee Convention, and then codified its commitments under the Convention through the passage of the Refugee Act of 1980, more narrowly circumscribing the definition of a refugee consistent with that of the Refugee Convention.

For those who found themselves outside the refugee protection arena, the immediate antecedent to TPS was a program called Extended Voluntary Departure (EVD), which more closely aligned with the rights and benefits afforded under the current TPS program (CRS 2022, 4 and footnote 28). Through that program, the Attorney General³ exercised discretionary authority to withhold deportation against nationals of countries where it was deemed unsafe for return due to war or other violent conflict or calamity, based on recommendations from Secretary of State.⁴ The EVD program was criticized, however, for its lack of clear guidance and the scope of discretion afforded the Attorney General. In 1983, despite calls from human rights advocates, members of Congress, and others to grant EVD to Salvadorans because of violent conflict in the country, the Attorney General refused to grant Salvadorans EVD. His refusal resulted in litigation that was dismissed by the federal District Court based on the historic and significant discretion afforded the federal government in matters pertaining to immigration and foreign affairs.⁵

During the 1980s, several unsuccessful amendments were proposed to the Immigration and Nationality Act (INA) of 1965, which in the mid-1960s had moved the United States away from a national-origin, quota-based system for immigration to a system of immigration grounded in family-based and employment-based preference categories. Finally, Congress passed the Immigration Act of 1990 (IMMACT), amending the INA to add new employment-based visa categories for professionals and highly skilled workers, elaborating upon the process for family-based visa preference categories, and creating a “diversity lottery” for visas that would allow nationals from under-represented countries admission into the United States for legal permanent residency status. Through passage of the IMMACT, Congress also replaced the existing EVD program and all other programs that allowed for the granting of wholesale temporary immigration relief based on one’s national origin with the Temporary Protected Status (TPS) program.

Statutory requirements for TPS

Sec. 244 of the Immigration and Nationality Act, codified at 8 U.S.C. §1254a, provides that non-citizens residing in the United States who are nationals of a country designated for TPS, and who meet other eligibility requirements discussed in greater detail herein, are eligible to apply for TPS, affording them the right to stay in the United States, obtain authorization to work, and travel outside the United States. As

² Parole determinations can be made for persons who lack legal status in the United States or who do not have a visa otherwise authorizing entry into the United States. Parole does not necessarily confer legal status on someone but does provide “permission” to enter the United States. Persons paroled into the United States may be granted an authorized period of stay during which time they are deemed lawfully present in the United States. Those who are paroled in after having demonstrated a credible fear of persecution, torture, or related harm are permitted to remain in the United States while they seek relief from deportation in the form of asylum, withholding of removal, relief under the Convention Against Torture in removal proceedings.

³ The Attorney General has this authority because until 2003, all immigration benefits and enforcement operations operated under the Department of Justice, under the auspices of the Immigration and Naturalization Service.

⁴ See Oswald (1986, 152, footnote 3). Between 1960 and 1984, Extended Voluntary Departure was granted to nationals of 15 different countries (Oswald 1986, footnote 40).

⁵ See Oswald (1986, 153–54).

noted above and indicated in the name itself, TPS is intended to provide *temporary* immigration relief and—as with historic responses to refugee crises—was not designed to respond to protracted humanitarian crises.

1. Designation of a country for TPS

Unlike the preceding EVD program, which operated at the exclusive discretion of the Attorney General and without explicit authorization from Congress, the IMMACT set forth clear authority for the Attorney General—an authority transferred to the Secretary of the Department of Homeland Security (DHS) pursuant to the Homeland Security Act of 2002—to designate TPS, the process and bases upon which TPS should be granted, and grounds for individual eligibility. Sec. 244 of the INA provides that the Attorney General may designate a country for TPS, if in consultation with other relevant government agencies, it is determined that:

- (A) ... there is an *ongoing armed conflict* within the state and, due to such conflict, requiring the return of aliens who are nationals of that state to that state (or to the part of the state) would *pose a serious threat to their personal safety*;
- (B) ... (i) there has been an *earthquake, flood, drought, epidemic, or other environmental disaster* in the state resulting in a *substantial, but temporary, disruption of living conditions* in the area affected,
 - (ii) the foreign state is *unable, temporarily, to handle adequately the return to the state of aliens* who are nationals of the state, and
 - (iii) the *foreign state officially has requested designation* under this subparagraph; or
- (C) ... there exist *extraordinary and temporary conditions* in the foreign state that *prevent aliens who are nationals of the state from returning to the state in safety*, unless the Attorney General finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.⁶

Neither the statutory language nor the implementing regulatory language for TPS designations provide greater specificity as to what must be considered when making a determination as to whether “there exist extraordinary and temporary conditions” sufficient to warrant the designation of TPS. In [Ramos v. Wolf](#), 975 F.3d 872 (9th Cir. 2020), the Court held:

[T]he TPS statute does not dictate any substantive guidelines or restrictions on the manner in which the Secretary may reach her TPS determinations, other than setting forth the three possible findings that the Secretary must make before designating a country for TPS.⁷

Additionally, the statute does not define the conditions in the foreign state that the Secretary must consider in their periodic review, or how the conditions should be weighted.⁸ In fact, section 1254a (b)(5)(A) does “preclude courts from inquiring into the underlying considerations and reasoning employed by the Secretary in reaching her country-specific TPS determinations.”⁹

⁶ 8 USC 1254a(b)(1). Emphasis added.

⁷ *Ramos v. Wolf*, 975 F.3d at 891.

⁸ *Ramos v. Wolf*, 975 F.3d at 891.

⁹ *Ramos v. Wolf*, 975 F.3d at 891.

As discussed in greater detail later in the paper, although courts do not have jurisdiction to review challenges to the Secretary’s reasoning, they may still have jurisdiction over a broad challenge to the agency’s practices. For example, in [Ramos v. Nielsen, 336 F. Supp. 3d 1075 \(N.D. Cal. 2018\)](#), the court held that the TPS termination notices for El Salvador, Haiti, Nicaragua, and Sudan “failed to address numerous conditions that justified extension of TPS status in the most recent notices by prior administrations.” The court then concluded that “plaintiff’s allegations and a facial review of the termination notices support a plausible inference that defendants have adopted a new policy or practice without any explanation for the change.”¹⁰ Therefore, although the court could not decide whether the TPS determination was correct (because the Secretary still has discretion), it did allow the lawsuit to proceed.

The decision to designate a country for TPS is oftentimes initiated by advocacy undertaken by human rights and immigration/asylum advocacy organizations, sometimes with added voices of support and urgings from members of Congress. Once the now-Secretary of Homeland Security (DHS Sec.) decides—in consultation with officials within the U.S. Department of State and the National Security Council—to designate a country for TPS, that designation will take effect as of the date of its official publication.¹¹

While this author was not able to identify any data-driven reports outlining the impact of politics on TPS designations, numerous reports and pleadings in federal court litigation have set forth assertions supported by qualitative evidence demonstrating the role of politics in making determinations about whether to designate, extend, or terminate TPS.¹² In a published 2017 statement pertaining to the anticipated termination of TPS for Haitians, the Center for Migration Studies (CMS) noted: “according to media reports, Acting DHS Secretary Elaine Duke was [pressured](#) by the White House of Staff to expel Hondurans”(CMS 2017a). The CMS report further stated: “A termination of TPS for Haiti would not be met with skepticism that the decision was influenced by political considerations,” citing multiple derogatory statements made by then-President Trump about the countries for which he shortly thereafter announced termination of TPS.¹³ These comments were also cited as evidence in the [complaint filed in Ramos v. Nielsen](#), whereby the Petitioners argued that the decision to terminate TPS was improperly motivated by politics and race. Similarly, in [NAACP v. U.S. Department of Homeland Security](#), 364 F.Supp. 3d 568 (D.Md. 2019), the U.S. District Court found sufficient evidence supporting Petitioner’s allegations that the government’s decision to terminate TPS for Haitian nationals was motivated, “at least in part, by racial or national origin animus”¹⁴ to allow the complaint to move forward.

A TPS designation can be granted for not less than 6 months, and not more than 18 months.¹⁵ The statute requires a review by DHS of a country’s status at least 60 days before the end-date of the initial designation period or any extension period granted thereafter. The review is to similarly involve consultation with the appropriate government agencies. DHS is then to publish notice of its determination as to whether conditions exist for its ongoing designation, and whether it will be extending or terminating said designation.¹⁶ Extensions can be granted for a period of 6, 12, or 18 months. Decisions to terminate a country’s TPS designation must be issued with a minimum of 60 days’ notice. The sections that follow discuss alternatives to TPS when a country’s designation is terminated, including the granting of Deferred

¹⁰ *Ramos v. Nielsen*, 336 F.Supp. at 1116.

¹¹ 8 USC 1254a(b)(2).

¹² The Council on Foreign Relations, in a published timeline addressing immigration policy from 1952 to 2022, addresses the role of politics in US immigration policy more generally. See [Timeline: U.S. Postwar Immigration Policy \(cfr.org\)](#).

¹³ See, for example, Dawsey (2018).

¹⁴ *NAACP v. U.S. Department of Homeland Security*, 364 F.Supp. at 579. In reaching its conclusion, the Court stated: “The dispositive question here is whether the challenged decision was motivated by impermissible animus. Defendants appear to concede that the White House may have been involved in the termination decision (ECF No. 36, at 29) (“it should be considered unremarkable that a White House advisor would provide input to the Secretary of Homeland Security on a politically sensitive matter of this nature”), and thus do not reject the possibility of a “cats’ paw” theory of animus” (ECF No. 36, at 29).

¹⁵ 8 USC 1254a(b)(2).

¹⁶ 8 USC 1254a(b)(3).

Enforced Departure (DED), or more permanent relief afforded by an act of Congress, as was recently afforded to Liberians through the Liberian Refugee Immigration Fairness Act. As with all decisions related to immigration, determinations regarding what status and benefits to confer on nationals of what countries are subject to critiques from all sides of the political and ideological spectrum.

2. Determining eligibility for individuals from TPS-designated countries

Continuous physical presence requirement

While TPS affords individuals from designated countries relief, it is important to recognize those who are not included. Foremost among those excluded from protection are those who are not physically present in the United States at the time of designation, and who cannot show continuous physical presence in the United States from that time forward. In this way, as noted at the outset, TPS differs significantly from the expanded refugee admissions and resettlement relief afforded in the years following World War II and preceding the passage of the Immigration and Nationality Act of 1965. By allowing only those already physically present in the United States as of the date of designation, TPS fails to offer any relief to those individuals who may be most directly and immediately affected by the armed conflict, the environmental disaster, or other extraordinary and temporary conditions. Those individuals must instead seek entry into the United States through the more restricted and burdensome processes such as humanitarian parole or refugee resettlement, or—for those able to either enter the United States through other means or are able to present themselves at a US port of entry—through the US system of asylum or withholding of removal¹⁷ consistent with US obligations under the Refugee Convention and the Convention Against Torture (discussed in greater detail later in the paper).

Exclusion from eligibility—Criminal convictions and related grounds of inadmissibility

Perhaps the greatest impact for the individuals and their family members already in the United States are the statutory exclusions from protection related to criminal activity, and related grounds of “inadmissibility.” Specifically, the statute excludes from eligibility individuals who have been convicted of any felony or two or more misdemeanors. A “conviction” for the purposes of US immigration law includes any determination of guilt, even where that determination is made through a plea agreement for which the sentence charged may be “time served” or even probation, with no jail time served.¹⁸ Also excluded from TPS eligibility are individuals who are “inadmissible” based on grounds set forth in 8 USC 1182(a),¹⁹ although statutory waivers of inadmissibility are available for all but a few certain criminal grounds.²⁰

¹⁷ Withholding of removal is available to individuals who meet the definition of a refugee under US immigration law, but are subject to statutory bars to asylum, such as a one-year filing deadline or convictions for certain crimes, or for whom the Immigration Judge otherwise determines that a favorable exercise of discretion in favor of asylum is not warranted. A person granted withholding of removal is granted work authorization and the legal right to remain in the United States, but is not granted the other benefits of asylum, including the ability to petition for family members to join, or a pathway to legal permanent resident status and ultimately citizenship status.

¹⁸ INA § 101(a)(48)(A), 8 USC § 1101(a)(48)(A).

¹⁹ US immigration law is based on the legal fiction that persons physically within the United States who have not been granted legal “admission” through, for example, the admission of a visa, have not yet been “admitted” into the United States despite their physical presence in the United States. Therefore, when they apply for immigration benefits or a visa or any kind, even from within the United States and no matter the duration of their residency in the United States, they need to provide that they either are not subject to one of the enumerated grounds of “inadmissibility” or are eligible for a “waiver of inadmissibility.”

²⁰ Waivers of inadmissibility are not available for grounds set out in INA 212(a)(2)(A) and (B) (convictions of certain crimes or multiple criminal convictions); INA 212(a)(2)(C) (controlled substance traffickers, unless related to a single offense of simple possession of 30 grams or less of marijuana); and INA 212(a)(3)(A), (B), (C), and (E) (relating to national security, terrorist activities, foreign policy, or participation in Nazi persecutions, genocide, torture, or extrajudicial killings). See INA 244(c)(1)(A)(iii), (c)(2)(A).

Advocates in the United States have challenged these exclusions before the Inter-American Commission on Human Rights (IACHR) following the United States' resumption of deportations to Haiti of persons with criminal convictions (ineligible for TPS) in January 2011, one year following the devastating earthquake in January 2010 (after which the United States halted all deportations to Haiti). This move was taken despite the cholera epidemic that was raging across the country, and other serious public health and security concerns that threatened the life and well-being of those subject to deportation.²¹ The IACHR issued precautionary measures²² to the United States in February 2011 on behalf of five Haitian nationals subject to the initial request for precautionary measures “until such time as: (1) Haiti is able to guarantee that detention conditions and access to medical care for persons in custody comply with applicable minimum standards, and (2) the procedures in place to decide upon and review the deportation of the five beneficiaries adequately take into account their right to family life and their family ties in the United States.”²³ Immediately thereafter, the Commission issued a public statement urging the United States to not return to Haiti any individual with a serious medical condition or who had family members in the United States, in light of the risk to life such deportation could pose in consideration of the conditions those deported to Haiti would face (IACHR 2011). The underlying Petition challenges the resumed deportation of Haitian nationals based on their right to life and personal security and highlights the shortcomings of TPS as a complementary system of protection, particularly for those excluded due to criminal convictions. That Petition remains pending before the Commission as of the writing of this report, but it is worth noting here that both the UN Human Rights Committee and the Inter-American Commission on Human Rights have recognized that countries must assess whether deportation implicates an individual's right to life and, if it determines that an individual's right to life and personal security would be endangered by the deportation, the State must refrain from carrying out that deportation, even when that threat falls outside the scope of the 1951 Refugee Convention or protection under the UN Convention Against Torture (prohibiting refoulement to a country where an individual faces torture).²⁴

The application process

TPS beneficiaries are granted the right to remain in the United States, and the right to work authorization, although neither TPS nor work authorization are granted automatically. Individuals must affirmatively apply for TPS within the designated application time frame (limited exceptions may be provided to allow for applications filed late), and can make those application either directly to the US Citizenship and Immigration Services (USCIS) or before the Immigration Court, if in removal (deportation) proceedings.²⁵ If work authorization is sought in conjunction with the TPS, that requires the filing of a separate application and fee (although they can be filed concurrently with USCIS, unless the TPS application must first be

²¹ See Request for Precautionary Measures, <https://media.law.miami.edu/clinics/pdf/2011/interamerican-commission-petition-for-haitians-facing-deportation-2011.pdf>.

²² Precautionary measures are a protective mechanism made available through the Art. 25 of the Inter-American Commission on Human Rights Rules of Procedure, aimed at protecting individuals in a serious and urgent situation from suffering irreparable harm. In the context of removal proceeding, they operate as an order from the Inter-American Commission on Human Rights to stay the removal of persons subject to the measures, though the United States does not recognize the Precautionary Measures as binding.

²³ IACHR, PM—5/11, Gary Resil, Harry Mocombe, Roland Joseph, Evel Camelién, and Pierre Louis—United States (Feb. 1, 2011). The Commission then extended the Precautionary Measures to 33 individuals who life and safety “could be at grave risk if they were to be deported to Haiti, given their health conditions and the lack of relatives in Haiti to assist them in obtaining access to medical treatment, food and drinking water.” Over the course of the following year, the Commission extended those measures to 11 additional beneficiaries. See [OAS :: IACHR :: Precautionary Measures](#).

²⁴ See, for example, UNHCR (2020), (discussing a case regarding a Kiribati man subject to deportation from New Zealand, which addresses the responsibility of a migrant-receiving nation to consider whether climate change poses an imminent risk to the life of an individual if returned to his origin country); Inter-American Commission on Human Rights, Report No. 81/10, Case 12.562, Wayne Smith, Hugo Armendariz, et al., UNITED STATES (July 12, 2010), [Report No. 81/10](#).

²⁵ Applications are filed using Form I-821 and require a filing fee of \$50 for the adjudication of the TPS application and an additional fee for applicants 14 years or older of \$85 for the processing of biometrics. See [Application for Temporary Protected Status | USCIS](#).

adjudicated by the Immigration Court).²⁶ If a waiver of inadmissibility is required, that is yet a third application and filing fee (although it, too, would be filed concurrently with the application for TPS).²⁷ Fee waivers are available for the filing of the application for TPS and accompanying application for employment authorization for individuals who can demonstrate to the satisfaction of USCIS the applicant's inability to pay.²⁸ Once the applications are fully adjudicated and approved, individuals will receive an approval notice indicating their grant of TPS and their employment authorization document, evidencing their eligibility to work. This document will be granted for the duration of the initial period designated for TPS.²⁹

In 2021, USCIS collected data based on the 429,630 reported people with TPS classification.³⁰ The status of those applying for TPS is unknown or unreported in a significant number of cases, leading one to believe that many had no status at the time. Of those, a significant number may have entered without inspection, or are temporary visitor visa-holders who have either overstayed their visa or for whom the visa may be set to expire. Others have pending applications for asylum or other forms of immigration relief. Almost all of them are in various categories of undocumented, temporary, or pending statuses that do not confer work authorization (with the exception of those who may be on temporary labor migration visas, or have applications for asylum pending for more than 180 days).³¹

A review of applications filed, granted, denied, and pending from year to year over the past five years illustrates that the TPS designation is not an automatic guarantee of prompt relief for eligible persons, and significant numbers of individuals are found to be ineligible. DHS reports [data regarding USCIS applications](#), including applications for TPS, dating from 2017 to the present, detailing the total number of applications received, approved, denied, and pending by year (although the reported data are not disaggregated by country, gender, or other demographics). For 2022, the first two quarters have been reported. So far, 61,138 applications have been received, 53,287 have been approved, 572 were denied, and 295,511 are pending. The delays in the adjudication of TPS applications is apparent in reviewing data from prior years, as well. During the 2021 fiscal year, 307,340 applications were received, 22,131 were approved, 717 were denied, and 280,728 are still pending. In 2020, 13,094 applications were filed and 12,354 were approved, while 639 were denied, and 8,407 remained pending (based on data reported through the third quarter). In 2019, 3,631 applications were received, 32,295 were granted, 2,164 were denied, and 7,544 were pending (based on data reported through the third quarter). In 2018, 163,566 new applications were filed, 167,146 were granted, 2,577 were denied, and 43,870 remained pending (based on data reported through the third quarter). Going back to 2017, the first year for which DHS has recorded data on applications filed, approved, denied, and pending, USCIS records show that 61,248 applications were filed and 163,093 were granted, while a record number of 4,912 applications were denied, and 29,772 remained pending.

While the application process is relatively straightforward, individuals often require assistance completing the application forms. Anyone who has had any interactions with law enforcement or who might be subject to any exclusions or grounds of inadmissibility is well advised to consult first with an immigration attorney, and to obtain assistance from an immigration attorney in the filing of that application, and for any needed waivers of inadmissibility.

²⁶ Applications for work authorization are filed on the Form I-765 and carry with them an additional filing fee of \$410. See [Application for Employment Authorization | USCIS](#).

²⁷ Applications for a waiver of inadmissibility are filed using the form I-690 and require a fee of \$715. See [Application for Waiver of Grounds of Inadmissibility | USCIS](#).

²⁸ See [Request for Fee Waiver | USCIS](#).

²⁹ The full application process is set out at [Temporary Protected Status | USCIS](#).

³⁰ DHS-USCIS (2022). See also [TPS CY21 Congressional Report \(uscis.gov\)](#).

³¹ DHS-USCIS (2022, 5–9, Appendix A).

3. Scope of benefits conferred through TPS

Individuals granted TPS are afforded few additional benefits beyond the right to remain in the United States (without accruing “unlawful presence”³² for the duration of their TPS status), the right to work lawfully, and the right to travel outside the United States so long as they obtain advanced permission to reenter. TPS does not confer derivative status to any family members, meaning beneficiaries are not able to directly petition for family members residing outside the United States to join them in the United States, and each TPS-eligible family member in the United States must file his or her own application for status.³³ Furthermore, the conferral of TPS status does not confer eligibility for public benefits: TPS holders are subject to many of the same limitations that non-citizens without any lawful status confront: they are not eligible to receive non-emergency medical assistance, housing assistance, cash assistance, Social Security Disability Insurance, and so on. Students with TPS remain ineligible for federally funded financial aid for college and other institutes of higher education.³⁴ Furthermore, immigration status restrictions placed on legal aid services through organizations receiving federal funds through the Legal Services Corporation apply to TPS beneficiaries, excluding them from access to free federally funded legal aid. And, as discussed later, TPS does not provide a pathway toward any more permanent lawful immigration status.

TPS and its relationship to non-immigrant statuses and ability to adjust

From its inception, TPS was designed to provide temporary relief to individuals from countries where their life or security would be threatened due to the specific circumstances outlined earlier in the paper. Congress made clear in its passage of IMMACT that the provisions related to TPS were not intended then or ever to create a pathway to a more permanent lawful status, and specifically required that Congress must obtain approval from a three-fifths majority vote in the Senate to even “consider any bill, resolution, or amendment” that would create an opportunity to adjust status based on a prior TPS designation.³⁵

But while the statutory provisions for TPS do not themselves provide a pathway to legal permanent resident status and ultimately citizenship, they do not preclude an individual from maintaining a non-immigrant visa status (such as that of a foreign student on an F-1 visa, so long as one continues to meet the requirements for maintaining such status), nor do they preclude applications from obtaining an immigrant visa. If a TPS beneficiary becomes otherwise eligible to apply for an immigrant visa (such as an employment-based or family-based visa application) or an application for asylum, withholding of removal, or a non-immigrant visa from which one can subsequently file to adjust status to that of legal permanent resident (such as a T

³² Persons within the United States who accrue between 180 and 365 days of “unlawful presence” (either by virtue of having entered the United States without authorization, or because their visa has expired or they have otherwise fallen out of status) are subject to a three-year bar to reentry should they depart, whereas individuals who accrue more than 365 days of unlawful presence are subject to a ten-year bar to reentry. These bars are particularly punitive to individuals who—by virtue have not having ever been lawfully “admitted” to the United States—must depart the United States to apply for any visa for which they might be or become eligible, such as a marriage-based visa.

³³ The Central American Minors Program (CAM), first introduced in 2014 and restarted in March 2021, after having been terminated in late 2017, provides a pathway for qualifying children of TPS holders and other qualifying parents to apply for refugee status from within their country of origin, but does not afford derivative status to those children absent an individualized assessment as to whether that child meets the definition of a “refugee” under US immigration law. Qualifying parents in the United States—including those with Temporary Protected Status—whose children still reside in and are citizens of El Salvador, Guatemala, and Honduras may file an “Affidavit of Relationship” for their minor children, which then allows those children to apply for asylum within their origin country. The program was introduced in response to the large numbers of unaccompanied minors arriving at the US southern border and is intended to allow for qualifying children to obtain asylum in a safer and more orderly manner. See [Central American Minors \(CAM\) Refugee and Parole Program | USCIS](#). See also, [Fact Sheet: Central American Minors \(CAM\) Program - National Immigration Forum](#).

³⁴ While the United States Supreme Court ruled in *Plyler v. Doe*, 457 U.S. 202, 230 (1982) that undocumented children must be granted equal access to education as citizen children, that decision is limited to the K-12 context and has not been extended to access to higher education.

³⁵ 8 U.S.C. §1254a(h).

or U visa available to victims of trafficking or particularly serious crimes, respectively), nothing in the statutory or regulatory provisions specific to TPS would serve to block those applications. But that is not the end of the inquiry.

In determining eligibility to adjust status to that of legal permanent resident, one's manner of entry into the United States is of particular relevance. To be eligible to adjust status from within the United States, non-citizens must have been inspected and lawfully admitted into the United States. Non-citizens classified as having "entered without inspection" (EWI) (those whose entry is deemed unlawful, either through use of fraudulent documents or documents obtained through fraud, or by virtue of having bypassed immigration inspection altogether) are ineligible to adjust status from within the United States and must leave the country for consular processing—except for an exceptional set of circumstances that might give rise to a waiver of inadmissibility. TPS holders who had been in the United States without any lawful status before obtaining TPS would then be subject to the three-year or ten-year bar to reentry based on accrual of unlawful presence of 180–365 days, or 365 or more days, respectively.

The two lines of disputed inquiry about whether there is an avenue for TPS holders who have entered unlawfully have recently been resolved in such a way that a small window of opportunity remains available—but only for those who are able to travel and return to the United States on advanced parole. As a preliminary matter, there was an open question—on which the federal circuit courts were split—as to whether the conferral of TPS status constituted an admission. The Supreme Court recently answered that question in the negative.³⁶ The second line of inquiry was whether a TPS beneficiary's reentry into the United States with "advanced parole" constitutes a lawful admission for the purposes of adjustment of status. USCIS and the courts had gone back and forth on this question, but USCIS, with some guidance from the federal courts, recently reaffirmed that an individual on TPS who has obtained advanced parole and has reentered the United States on that parole has been lawfully admitted, overriding the EWI exclusions to adjustment of status.³⁷

The door to adjustment remains closed, however, for individuals with an unlawful entry who are not presented with the need or opportunity to travel abroad, or who are unable to obtain advanced parole, yet have remained in lawful Temporary Protected Status for years, and sometimes decades. The lack of any clear pathway to a more permanent status has left a large percentage of TPS holders in a state of prolonged legal limbo. The perennial question for TPS holders then becomes, what happens when TPS expires.

What happens when the original TPS designation expires?

The government has three options as the end-date for the original TPS designation approaches, as noted previously in the paper: it can extend, redesignate, or terminate TPS. A TPS extension simply extends the status for those who were originally granted TPS and can be granted for 6, 12, or 18 months. In the case of an extension, TPS holders may need to reregister and apply to renew their work authorization for the duration of the extended TPS period. Decisions to extend, redesignate, or terminate follow from

³⁶ See *Sanchez v. Mayorkas*, 141 S. Ct. 1809 (2021); see also CRS (2021b).

³⁷ USCIS had recognized that advanced parole and the subsequent inspection and admission of a TPS beneficiary returning from travel outside the United States met the requirements for adjustment of status specific to having been inspected and lawfully admitted, as set forth in its 2016 Policy Manual. But in 2020, through the adoption of *Matter of Z-R-Z-C*, USCIS reversed course and held that a TPS beneficiary returning to the United States on advanced parole was returning in the same status as held prior to departure and the admission did not cure the prior illegal entry. The U.S. Court of Appeals for the Fifth Circuit, however, recently ruled that persons with TPS who reentered the United States on a grant of advanced parole have been "inspected and admitted" under the plain language of the statute, and therefore are eligible to adjust status. USCIS has issued a Policy Memo Consistent with that decision. For a full discussion of this issue, see USCIS Policy Memo, PM-602-0188, "Rescission of Matter of Z-R-Z-C as an Adopted Decision; agency interpretation of authorized travel by TPS beneficiaries," July 1, 2022, [PM-602-0188-RescissionofMatterofZ-R-Z-C-pdf \(uscis.gov\)](https://uscis.gov/policy-memos/PM-602-0188-RescissionofMatterofZ-R-Z-C-pdf).

assessments conducted by the Department of Homeland Security, in consultation with relevant government officials, based on the criteria upon which the original designations are made. The government must assess whether the situation in the country of origin has improved such that the risks to the safety and security of that country’s nationals have been sufficiently mitigated to warrant their return. The United States will also assess whether the repatriation of a large number of former TPS holders—many of whom have been sending remittances back to their communities in their country of origin—could itself have a destabilizing effect.

If a determination is ultimately made that the underlying conditions do not meet the criteria for TPS, but there are other reasons why repatriation would still be problematic, Congress has provided statutory recognition of the President’s discretionary authority in the exercise of foreign relations to issue relief from deportation to eligible individuals based on their country of origin through a directive for Deferred Enforced Departure (DED). DED is nearly identical to TPS in the benefits that it confers (and those that it does not), in that it protects those covered from being removed from the United States, while also making them eligible for work authorization. Individuals covered by DED may also travel so long they have first obtained advanced parole to allow them to return to the United States.³⁸ DED is distinct from TPS in that it falls under the President’s authority to conduct foreign relations, rather than a statutory authority conferred by Congress. DED Directives have been issued for Liberia (October 1, 2007 through June 30, 2024), Hong Kong (August 5, 2021 through February 5, 2023), and Venezuela (January 20, 2021 through July 20, 2022).³⁹

As illustrated in appendix A, TPS designations are routinely extended (or, as is the case of Liberia, converted to DED protection) given the protracted nature of the underlying humanitarian crisis giving rise to the initial designation.⁴⁰ Somalia has the longest standing designation, running consistently from September 1991 and currently extended to March 2023. This has resulted—as noted in the introduction—to critiques both about whether TPS is an appropriate vehicle for providing complementary protection, and about how the program is carried out. Those critiques will be addressed in greater detail in the following section, which looks at TPS specific to two other countries that have been designated and redesignated for many years, El Salvador and Liberia. These case studies provide an opportunity to explore in context the challenges that arise in using what is intended as a temporary form of relief to respond to a protracted and evolving humanitarian crisis.

Those who are not eligible for other forms of immigration relief (such as marriage-based or employment-based adjustment of status), or who are not eligible for another form of humanitarian relief (such as asylum or withholding of removal) (discussed in greater detail later in the paper), or for whom DED or other more permanent relief is not granted are left in an undocumented status without work authorization and are subject to removal from the United States.⁴¹ There is very little information as to how many of these individuals are subjected to removal proceedings, how many self-deport and return to their country of origin of their own volition, and how many continue to live as undocumented immigrants within the United States. But several studies have looked at the impact that termination of immigration relief and work authorization has on the United States and the countries of origin (Warren and Kerwin 2017). For example, a 2017 report from the Center for Migration Research and CARACEN documenting Honduran and Salvadoran

³⁸ For more information on DED, the countries from which individuals may obtain DED, and DED’s interplay with TPS, see <https://cliniclegal.org/issues/temporary-protected-status-tps-and-deferred-enforced-departure-ded>. For a more comprehensive overview of TPS and DED in the United States, see CRS (2022).

³⁹ See USCIS, “Deferred Enforced Departure,” at <https://www.uscis.gov/humanitarian/deferred-enforced-departure>. Country names are as they appear in the Federal Register notices and the USCIS website.

⁴⁰ See Roy and Klobucista (2023), Council on Foreign Relations, “Backgrounder: What is Temporary Protected Status?,” which contains a graph illustrating the duration for country-specific TPS designations, <https://www.cfr.org/backgrounder/what-temporary-protected-status>.

⁴¹ See, for example, Muriel (2017) (discussing the future for West African immigrants for whom TPS was set to expire and ultimately terminated).

immigrants on TPS in the United States found that TPS holders had high rates of employment within the United States and were able to improve their economic output with the benefit of work authorization (which also provides the opportunity to obtain a driver’s license), were homeowners, and contributed significantly in terms of paying taxes and paying into social security, while approximate 77 percent of TPS holders were sending remittances to their origin countries (Menjivar 2017). A study by the Center for American Progress in 2019 provided comparable data, while also looking at the impact on family members who were US citizens (reporting that 448,000 US citizens have family members living in their household who are TPS recipients, and 279,000 of those are children under the age of 18 who are US citizens) (Svailenka 2019).

TPS as a complementary system of protection: An examination of the alternative avenues for protection and forms of relief

As noted in the introduction, TPS is often touted as a complementary system of protection, particularly for those who may not meet the definition of a refugee, and who are not deemed eligible for asylum. It has the additional benefit of being a program whereby relief is afforded based on country of origin, and the only individualized assessment required is regarding date (and manner) of entry, physical presence in the United States, and any possible criminal record. But TPS is not without its shortcomings and limitations, and it is important to understand TPS in the context of the full system of protection the United States affords to persons often considered or referred to as “forced migrants.”

1. For persons in the United States

DED, discussed in the preceding section, is the program for relief in the United States that is most alike to TPS in terms of the relief afforded and to whom it is provided. Both TPS and DED are forms of relief granted based on one’s country of origin and do not require an individualized assessment of the risk to a person in one’s country of origin. But neither provide for a pathway to a more permanent status; instead, they are designed to provide short-term relief with expiration dates that are at most 18 months out. While TPS and DED designations, particularly for certain countries, have been routinely extended such that the relief afforded has become a semi-permanent form of relief, the reality remains that the protection afforded can always be taken away through what has long been recognized as an inherently political decision-making process that rests in the hands of relatively few.

Nonetheless, both TPS and DED provide a critical backstop for many who fall outside of the individualized protection scheme afforded by US asylum law. In order to be granted asylum in the United States, individuals must first prove to the satisfaction of the adjudicator that they meet the definition of a refugee, as defined in the Refugee Convention: a person with a well-founded fear of persecution on account of race, religion, political opinion, membership in a particular social group, or national origin.⁴² The scope of protection under the Refugee Convention, as well as under the Convention Against Torture (CAT), is inherently narrowly conscribed. Over the years, the US administrative agencies and courts have extended more or less inclusive interpretations of the refugee definition, and requirements for obtaining CAT relief, with the years during the Trump Administration seeing a documented assault on the overall system of asylum and refugee protection in the United States.⁴³

⁴² For a brief primer on US asylum law and practice, see American Immigration Council (2020). For an historical overview of US immigration and asylum law and policy, see Anker (1990).

⁴³ See, for example, Human Rights First (2022); Meissner, Hipsman, and Alenikoff (2018); and Shoenholtz, Ramji-Nogales, and Schrag (2021). A review of the data provided by the Department of Homeland Security shows the sharp decline in maximum number of refugees allowed to be admitted into the United States (the ceiling on refugee admissions), and the similarly dramatic decline in the number of refugees actually resettled into the United States during the Trump Administration. See [Refugees and Asylees | Homeland Security \(dhs.gov\)](#).

A review of the success rates for asylum and related claims in immigration court reveals that nationals from countries designated for TPS do not necessarily fare well in their asylum claims, and TPS therefore becomes an important safety net for ensuring protection. While individuals from Nepal (designated for TPS following the earthquake in 2015) and Cameroon (the country most recently designated for TPS in June 2022) had among the highest grant rates in the years between 2001 and 2021, Salvadorans, Hondurans, and Haitians had among the lowest grant rates (under 20 percent). Nicaraguans fared slightly better, with grant rates of just 29 percent, while Venezuelans have fared better, with an average grant rate over that same ten-year period of 49 percent. Somalis have fared even better, with grant rates of 54 percent.⁴⁴ This may be at least partly attributable to the challenges associated with asylum claims from countries with high rates of generalized violence, where the law requires a demonstration of targeted persecution and a nexus between that persecution and the identified protected category or categories.

2. For persons outside the United States

Still left outside of the TPS and asylum protection regime are those who are physically outside of the United States. As noted earlier, TPS does not allow individuals to bring family members to the United States, nor does it provide protection to those left directly in harms' way. For individuals outside the United States who can demonstrate that their admission is warranted for "urgent humanitarian reasons," or significant public benefit, humanitarian parole may be an option, although it is important to note that the government has full discretion in deciding whether to grant parole or not.⁴⁵ In addition to humanitarian parole, which can be granted based on an individualized set of circumstances, the Secretary of DHS can also create country-specific programs for humanitarian parole, as has recently been done for Afghanistan following the United States' withdrawal of all military forces from the country, as part of Operation Allies Welcome,⁴⁶ and for individuals from Ukraine, as part of Uniting for Ukraine, following Russia's invasion of the country.⁴⁷

Unfortunately, as with TPS, parole itself does not confer a lawful immigrant status on an individual, but instead provides for a lawful admission and time-limited designation of lawful presence with authorization to work. And because of the date constraints for TPS, a person admitted on humanitarian parole after the date of designation for TPS will not be eligible to apply for TPS. Instead, those persons are only admitted and allowed to remain in the United States for the duration of parole granted, unless they are able to identify other possible avenues for obtaining longer-term immigration relief once in the United States, such as asylum.

While refugee resettlement may be an avenue for entry into the United States, it is limited to only those who meet the definition of and have been recognized and registered as refugees under the Refugee Convention. Refugees who come to the United States through the resettlement program have the benefit of lawful immigrant status from which they can apply for legal permanent residency. In addition, refugees are allowed to petition for immediate family members to join, just as asylees are.⁴⁸ But the overall numbers of refugees resettled into the United States remains small, when compared to the overall number of those individuals and families internally displaced and subjected to forced migration.⁴⁹ In 2021, President Biden announced his intent to increase the ceiling on the number of refugees who could be resettled into the United

⁴⁴ See TRAC (2021).

⁴⁵ See Howland Zelaya (2022).

⁴⁶ See USCIS, *Information for Afghan Nationals on Applications to USCIS for Humanitarian Parole*, <https://www.uscis.gov/humanitarian/humanitarian-parole/information-for-afghan-nationals-on-requests-to-uscis-for-humanitarian-parole>; US DHS, *Operation Allies Welcome*, <https://www.dhs.gov/allieswelcome>.

⁴⁷ See US DHS, *Uniting for Ukraine*, <https://www.dhs.gov/ukraine>.

⁴⁸ See U.S. Department of State, *U.S. Refugee Admissions Program*, <https://www.state.gov/refugee-admissions/>; UNHCR USA, *Resettlement in the United States*, <https://www.unhcr.org/en-us/resettlement-in-the-united-states.html>.

⁴⁹ UNCHR USA, *Resettlement in the United States*.

States to 125,000 for 2022 and 2023,⁵⁰ after the resettlement program had been effectively zeroed out by the Trump Administration.⁵¹ But that still remains a small percentage of those designated as refugees, and an even smaller percentage of those identified by the United Nations High Commissioner for Refugees (UNHCR) as forcibly displaced.⁵² Notably, the countries that comprise the highest percentage of refugees⁵³ are all countries designated for TPS in the United States, including Syria, Venezuela (which includes refugees and Venezuelans displaced abroad), Afghanistan, South Sudan, and Burma (Myanmar)—although Afghanistan, Venezuela, and Burma (Myanmar) are all new designations (March 8, 2022 and later).⁵⁴

Analysis of TPS through a review of two case studies in context

This section provides two case studies aimed at illustrating how TPS has operated in practice, with a more focused examination of how TPS has operated as a system of complementary protection for nationals of El Salvador and Liberia. There is much that is similar in the two case studies—not the least of which is the fact that the underlying circumstances giving rise to the original TPS designation was anything but “temporary,” and instead reflect the protracted and evolving crises that are all too common in the context of internal displacement and forced migration. Furthermore, while both countries have experienced periods of relative stability, that stability has been fragile and disrupted. As country conditions have evolved, TPS has been terminated, reapplied, extended, and terminated again, although in the case of El Salvador the termination of TPS has been halted—at least temporarily—by litigation.

Case study: El Salvador

El Salvador is the first country to be designated for TPS and the only country to have received that designation from Congress, when TPS was enacted through the IMMACT of 1990. At the time, there were an estimated 500,000 Salvadorans who had fled the civil war and death squads in their origin country. The Attorney General had refused to grant Extended Voluntary Departure to Salvadorans in the United States, despite urging from human rights organizations, religious institutions, members of Congress, and other stakeholders. And the INS and immigration courts were routinely denying applications for asylum filed by Salvadorans.⁵⁵ Despite the brutal violence that plagued El Salvador in the first half of the 1980s, asylum grant rates for Salvadorans stood at under 3 percent in 1984, in stark contrast to asylum seekers from countries with communist-led governments.⁵⁶ Many have argued that the United States’ foreign policy

⁵⁰ See U.S. Department of State, Refugee Admissions, [Refugee Admissions - United States Department of State](#) (last visited Feb. 24, 2023). See also UNCHR USA (2021). But reports indicate that in 2022, only 25,465 refugees were resettled into the United States. See [U.S. immigration - refugee admissions FY 1990-2022 | Statista](#).

⁵¹ In 2020, the Trump Administration set the refugee ceiling at 18,000, but admitting only 11,840. See [Refugees and Asylees: 2020. Annual Flow Report. \(dhs.gov\)](#). See also Kanno-Youngs and Shear (2020).

⁵² UNHCR estimates that there were 89.3 million people worldwide who were forcibly displaced “as a result of persecution, conflict, violence, human rights violations or events seriously disturbing public order,” as of the end of 2021. Some 21.3 million of them are classified as “refugees” falling under UNHCR’s mandate. See UNHCR, *Figures at a Glance*, June 12, 2022, <https://www.unhcr.org/en-us/figures-at-a-glance.html>.

⁵³ UNHCR, *Figures at a Glance*, June 12, 2022.

⁵⁴ See CRS (2022, table 1, note 29). TPS for Syrians was set to expire on September 30, 2022, but DHS Secretary Mayorkas announced the extension and redesignation of Syria for TPS on July 29, 2022, through March 31, 2024. See [TPS Syria Extended and Redesignated for 18 Months; EADs Automatically Extended Through Sept. 30, 2023 | USCIS](#). Country names are as they appear in the Federal Register notice.

⁵⁵ Before the creation of DHS in 2003, all asylum applications and all other applications for immigration relief were adjudicated by the Immigration and Naturalization Service (INS), which was also charged with enforcing the immigration laws. The INS was housed, together with the Executive Office of Immigration Review (the immigration courts and the Board of Immigration Appeals), within the Department of Justice.

⁵⁶ See, for example, Gzesch (2006). Some have attributed the low grant rates to the Reagan Administration’s characterization of asylum seekers from El Salvador as economic migrants and not refugees (Gzesch 2006). The narrow definition of asylum—requiring a showing of persecution on account of one of five protected categories, discussed in the introduction—may also have contributed to the lower grant rates.

agenda—and its support for the governments in repressing the opposition—unduly influenced decisions about Salvadoran’s asylum claims and the decision to deny EVD.⁵⁷

The IMMACT designated El Salvador for TPS for a period of 18 months, running from January 1991 through June 30, 1992. As the end-date for TPS approached, the INS Commissioner announced that Salvadorans who had registered for TPS would not be subject to deportation before June 30, 1993, effectively extending DED to Salvadorans for a 12-month period. DED was extended again until December 31, 1994, because of the “serious negative effects that a large repatriation would have had on the then evolving situation” in El Salvador.⁵⁸ On December 6, 1994, however, the U.S. Department of Justice published in the Federal Register notice of the expiration of DED for national of El Salvador,⁵⁹ stating that “after consultation with appropriate agencies of the Government and consideration of the totality of the impact of the expiration of DED for Salvadorans, it has been concluded that the political and human rights situation inside El Salvador has improved significantly and can no longer serve as a basis for the continuation of DED.”⁶⁰

The impact of the termination of DED at the end of 1994 was somewhat mitigated by a settlement in class action litigation brought challenging the seemingly blanket denials of asylum claims for Salvadorans (and Guatemalans) in *American Baptist Churches, et al. vs Thornburgh (ABC)*.⁶¹ In the settlement, entered into in 1991, the government agreed to allow new filings and supplemental filings for asylum for all class members (which included those on TPS), and recognized:

[F]oreign policy and border enforcement considerations are not relevant to the determination of whether an applicant for asylum has a well-founded fear of persecution . . . the fact that an individual is from a country whose government the United States supports or with which it has favorable relations is not relevant to the determination of whether an applicant for asylum has a well-founded fear of persecution.⁶²

Notably, at the time, all asylum applicants were eligible to apply for and obtain work authorization upon the filing of their asylum application, whereas now, asylum applicants must wait 180 days from the receipt date of their asylum application to be eligible for work authorization.

The impact was further mitigated in 1997 with Congress’ passage of the Nicaraguan Adjustment and Central American Relief Act (NACARA), which allowed for all *ABC* class members, and all Salvadorans who had filed applications for asylum on or before January 31, 1996 (among others covered by the *ABC* settlement or otherwise specified in the legislation) to apply for suspension of deportation under the historic and more forgiving and inclusive standard than the present-day cancellation of removal that had been

⁵⁷ Gzesch (2006).

⁵⁸ See Federal Register, “Expiration of Deferred Enforced Departure for Nationals of El Salvador” (Dec. 6, 1994), FR Doc No. 94-30088, <https://www.govinfo.gov/content/pkg/FR-1994-12-06/html/94-30088.htm>.

⁵⁹ See Federal Register, “Expiration of Deferred Enforced Departure for Nationals of El Salvador” (Dec. 6, 1994).

⁶⁰ See Federal Register, “Expiration of Deferred Enforced Departure for Nationals of El Salvador” (Dec. 6, 1994).

⁶¹ The government makes this argument in the Federal Register notice itself.

⁶² See *American Baptist Churches (ABC) Settlement Agreement* <https://immigrationhistory.org/item/abc-settlement-agreement/> for brief overview of the litigation and settlement. For a more detailed discussion, a copy of the settlement agreement, and INS policy guidance issued subsequent to the settlement, see Realmuto (2011).

introduced with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act in 1996.⁶³ Nearly 200,000 Salvadorans were able to obtain legal permanent residency under NACARA.⁶⁴

In October 1998, Hurricane Mitch ravaged Central America, and President Clinton suspended deportations to El Salvador, Guatemala, Honduras, and Nicaragua for one year.⁶⁵ Just a few short years later, El Salvador was wracked by three earthquakes all within one month of one another. At the request of the government of El Salvador, made in the immediate aftermath of the first earthquake in January of 2001, the Attorney General undertook a review process, which included consultation with the U.S. Department of State, and on March 9, 2001, issued notice that El Salvador was being designated for TPS, having concluded:

significant damage from the earthquakes has resulted in a “substantial, but temporary, disruption of living conditions” in El Salvador, such that El Salvador “is unable, temporarily, to handle adequately the return” of its nationals. [8 U.S.C. 1254a\(b\)\(1\)\(B\)\(i\)](#) and [\(ii\)](#).⁶⁶

At the time of designation, it was estimated that there were “no more than” 150,000 Salvadoran nationals in the United States eligible to apply for TPS.⁶⁷

TPS was due to expire on September 9, 2002, but successive administrations extended TPS a total of 12 times. The last extension of TPS was announced July 2016 (for 18 months), based on the Secretary of Homeland Security’s determination that “[t]here continues to be a substantial, but temporary, disruption of living conditions in El Salvador resulting from a series of earthquakes in 2001, and El Salvador remains unable, temporarily, to handle adequately the return of its nationals.”

Less than two years later, the Trump administration announced its intent to terminate TPS for Salvadorans, asserting:

the conditions supporting El Salvador’s 2001 designation for TPS on the basis of environmental disaster due to the damage caused by the 2001 earthquakes have largely been completed. The social and economic conditions affected by the earthquakes have stabilized, and people are able to conduct their daily activities without impediments directly related to damage from the earthquakes.⁶⁸

The Federal Register notice also noted that the United States had, in the past two years, already carried out nearly 40,000 deportations to El Salvador. According to DHS, there were at the time approximately 262,500 Salvadoran nationals who were TPS beneficiaries. The impact of the termination on TPS beneficiaries was

⁶³ The 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) dramatically altered the immigration enforcement landscape, and replaced suspension of deportation with cancellation of removal, which is only available to non-citizens who meet a heightened standard regarding continuous physical presence in the United States for a period of 7 years for legal permanent residence or 10 years for everyone else, and requires a showing of “exceptional and extremely unusual hardship to US citizen or lawful permanent resident family members.” Suspension of deportation was relief afforded to those who could show “extreme hardship” to self, or to “spouse, parent or child who [was] a citizen *or* lawfully admitted for permanent residence.” 8 CFR §1240.65.

⁶⁴ See Menjivar and Gómez Cervantes (2018).

⁶⁵ See, for example, *Migration News* (1998).

⁶⁶ See Federal Register “Designation of El Salvador Under Temporary Protected Status Program” (March 9, 2001), 66 FR 14214, <https://www.federalregister.gov/documents/2001/03/09/01-5818/designation-of-el-salvador-under-temporary-protected-status-program>.

⁶⁷ See Federal Register “Designation of El Salvador Under Temporary Protected Status Program” (March 9, 2001)

⁶⁸ See Federal Register “Notice of Termination of the Designation of El Salvador for Temporary Protected Status” (January 18, 2018), 83 FR 2654, <https://www.federalregister.gov/documents/2018/01/18/2018-00885/termination-of-the-designation-of-el-salvador-for-temporary-protected-status>.

devastating, and reached beyond just the individuals who held TPS, but also to their family members—including their US-born children who were US citizens—and their communities: according to media reports, approximately 192,700 US citizens had at least one family member who was in the United States on TPS.⁶⁹ Vox.com reported, at the time:

The nation's capital is home to the second-largest Salvadoran community in the United States. About **165,000 people**. Salvadoran TPS workers living in the Washington, DC, area told Vox they have no idea what they will do when their legal status expires in 18 months. They've been cleaning federal buildings here for more than 15 years, and have bought homes, started families, and opened 401(k) retirement accounts. What will happen to their American children is one of the hardest questions to consider.

But these immigrants did seem certain about one thing: They will not go back to El Salvador. No one they know will either. The Central American nation is the deadliest in the world, with an average of **15 homicides a day** in September 2017. "I'm not going back there; gangs are killing everyone," said Avalos. She said two of her brothers were murdered there—one as recently as 2015.

Refusing to return to El Salvador leaves these TPS workers with few options. They can move into the shadows, becoming undocumented in the United States; apply for asylum in Canada or in another country; or see if they are eligible for another US immigration program. They have just 18 months to figure it out.

TPS holders and advocates brought a legal challenge to the Trump administration's announced decision to terminate the TPS designation for El Salvador, together with similar announcements made specific to termination of the TPS designations for Haiti, Nicaragua, and Sudan (see appendix A, showing the announced termination date). While the courts do not have jurisdiction to review any administration's decision to designate, extend, or terminate a designation, the courts can review constitutional challenges and challenges specific to the Administrative Procedure Act (APA) which governs the rule-making processes of the federal agencies. In this case, the complainants argued that the TPS designation terminations violated: (1) the constitutional rights of US citizen children who have an absolute right to live in the United States and a fundamental right to live together as a family without undue government influence—two rights that the government had put in direct conflict without any consideration; (2) violation of the constitutional right to equal protection found in the Fifth Amendment Due Process Clause, as the decision was “motivated by intentional race- and national-origin-based animus against individuals from what President Trump has referred to as ‘shithole countries,’ [and] arises from the Trump Administration’s repeatedly-expressed racisms toward non-white, non-European people from other countries”; (3) violation of the right to be free from “arbitrary government invasion of personal liberty,” also contained in the Fifth Amendment Due Process Clause; and (4) violation of the Administrative Procedures Act (APA), as a sudden and unexplained departure from decades of practice.⁷⁰

In challenging the decision to terminate TPS as a violation of the APA and the Due Process Clause, the Petitioners noted the break from past practice that looked at the totality of the present-day circumstances in the country in question, and whether, in light of those circumstances, there remained an ongoing threat to

⁶⁹ See Campbell (2018). See also Jordan (2018), further elaborating on impact to the Salvadoran community in the United States, and the threats they face if returned to El Salvador..

⁷⁰ See Complaint, *Ramos, et al v. Nielsen*, No. 18-cv-01544 (N.D. Cal. Sept. 14, 2020), paras. 8–11, https://www.aclusocal.org/sites/default/files/aclu_socal_tps_20180312_complaint.pdf. Subsequent litigation was brought challenging termination of TPS for Honduras and Nepal in *Bhattarai v. Nielsen*, No. 19-cv-00731 (N.D. Cal. Mar. 12, 2019), and separate litigation was filed in the federal court in New York specific to the termination of TPS for Haitians in *Saget, et al. v. Trump, et al.*, No. 18-cv-1599 (E.D.N.Y. Apr. 11, 2019).

the safety of those who would face deportation. In the case of El Salvador, as noted by the District Court, prior TPS extensions for El Salvador had given consideration to a drought in 2002, and further consideration in 2010 of the negative “effects of Tropical Storm Stan, the eruption of the Santa Ana volcano, subsequent earthquakes, and Hurricane Ida.”⁷¹ Instead, the Trump administration justified its termination decisions based on its asserted finding, following the inter-agency review process, that the grounds that gave rise to the original decision to designate a country for TPS were no longer present, or sufficient for extending TPS. In the case of El Salvador, the administration focused on the post-earthquake recovery efforts and the rebuilding of and repairs to schools and hospitals and infrastructural damage caused by the hurricanes, with particular note of US ongoing contributions to those recovery efforts, and it gave no meaningful consideration to the present- day threats to the safety and well-being of those who faced deportation, or the impact those deportations would have on their family members. Evidence presented in litigation challenging the termination of TPS, as well as media accounts of internal State Department communications, indicated that the termination decisions were preordained as part of the administration’s overall agenda with regard to immigration, and those challenging the termination argued that agenda was tainted by racial- and national-origin animus, in light of the explicit commentary by President Trump specific to the countries and citizens of those countries subject to termination.⁷²

Ultimately, the federal District Court issued an injunction staying the termination of TPS for El Salvador. While the U.S. Court of Appeals for the 9th Circuit overruled the injunction, it never issued its mandate in that decision, and the injunction remains in place. The Biden administration subsequently indicated its intent to comply with the still-in-force injunctions and extended El Salvador’s TPS designation, as well as designations for Honduras, Nicaragua, Nepal, and Sudan, and published notice regarding that extension in the Federal Register on September 10, 2021.⁷³ While members of Congress have pushed for El Salvador (as well as Guatemala, Honduras, and Nicaragua) to be newly designated for TPS, and others have sought to introduce legislation that would provide more permanent relief to Salvadorans (as well as other long-term TPS holders), nothing has moved forward to date. Instead, on November 10, 2022, the Biden administration published notice in the Federal Register of its intent to continue TPS for El Salvador and other countries subject to the pending litigation for the duration of the Stay and Injunction Orders in the pending federal court litigation.⁷⁴

According to a 2018 report, 94 percent of male Salvadoran TPS holders and 82 percent of female Salvadoran TPS holders were in the labor force, with most engaged in full time employment predominantly in sectors such as construction, transportation, office-cleaning and residential- cleaning, and child care.⁷⁵ Seventy-eight percent of the TPS holders reported being able to obtain better employment after having received TPS and the accompanying work authorization.⁷⁶ The World Bank reported personal remittances to El Salvador amounted to \$5.39 billion in 2018, which rose to \$5.93 billion in 2020.⁷⁷ This represented a significant share of El Salvador’s GDP, which totaled \$26.02 billion in 2018 and \$26.64 billion in 2020,⁷⁸ demonstrating the significance of remittances on the overall economic health of the nation.

⁷¹ See Order on Motion to Dismiss, *Ramos, et al v. Nielsen*, No. 18-cv-01544 (N.D. Cal. Sept. 14, 2020), <https://nationaltpsalliance.org/wp-content/uploads/2018/08/2018.08.06-Order-on-Motion-to-Dismiss.pdf>.

⁷² See Order on Motion to Dismiss, *Ramos, et al v. Nielsen*, No. 18-cv-01544 (N.D. Cal. Sept. 14, 2020). See also Narea (2019a); Order Granting Preliminary Injunction, *Ramos, et al v. Nielsen*, No. 18-cv-01544 (N.D. Cal. Sept. 14, 2020), https://www.aclusocal.org/sites/default/files/aclu_ramos_20181003_order_granting_prelim_injunction.pdf.

⁷³ See Federal Register “Notice of Continuation of Temporary Protected Status and related documentation for Certain TPS beneficiaries,” 86 FR 50725, (September 10, 2021), <https://www.federalregister.gov/documents/2021/09/10/2021-19617/continuation-of-documentation-for-beneficiaries-of-temporary-protected-status-designations-for-el>. Haiti had been issued a new TPS designation on August 3, 2021. See appendix A.

⁷⁴ See [Temporary Protected Status Designated Country: El Salvador | USCIS](#)

⁷⁵ See Menjivar and Gómez Cervantes (2018, note 54).

⁷⁶ See Menjivar and Gómez Cervantes (2018, note 54).

⁷⁷ See <https://data.worldbank.org/indicator/BX.TRF.PWKR.CD.DT?locations=SV>.

⁷⁸ See <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=SV>.

Case study: Liberia

Liberia has held some form of either Temporary Protected Status or Deferred Enforced Departure continuously since 1991. But that status has been granted primarily on a year-to-year basis, and on several occasions, Liberians have had to confront the imminent loss of status and possible deportation.⁷⁹ Unlike with El Salvador, however, Congress ultimately did act to afford Liberians a path to more permanent immigration status.

Liberia was first designated for TPS by the U.S. Attorney General just one year after the passage of IMMACT and Congress' designation of El Salvador for TPS, on March 27, 1991, for a period of one year.⁸⁰ The notice of designation published in the Federal Register was perfunctory, simply stating:

- (a) there is an ongoing armed conflict within Liberia and, due to such conflict, requiring the return of aliens who are nationals of Liberia to that state would pose a serious threat to their personal safety and (b) there exist extraordinary and temporary conditions in Liberia that prevent aliens who are nations of Liberia from returning to Liberia in safety and permitting nations of Liberia to remain temporarily in the United States is not contrary to the national interest of the United States.⁸¹

It was estimated that there were no more than 14,000 Liberian nationals in an unlawful or non-immigrant status who would be eligible to apply for TPS.

The Attorney General extended Liberia's TPS designation, effective March 28, 1992, for 12 month intervals through March 28, 1995, citing to the ongoing armed conflict. At the time, the Attorney General also temporarily reopened the registration period to allow for registration of persons having no known nationality "who last habitually resided in Liberia," who had been in the United States and resided continuously since March 27, 1991, the original designation date.⁸² The Attorney General estimated approximately 5,000 additional persons would be eligible to apply.⁸³ TPS was again extended each consecutive year for a 12-month period, until 1998, when the Attorney General terminated Liberia's TPS designation, effective September 28, 1998.⁸⁴ Unlike with the extensions of El Salvador's TPS designation, the Attorney General issued a concurrent extension and redesignation for Liberia, thereby opening up eligibility for TPS to all Liberians who have continuously resided in the United States since June 1, 1996 (rather than the date of original designation on 1991).⁸⁵ The Attorney General provided the following explanation for the decision to terminate:

⁷⁹ While beyond the scope of this report, Liberia's history and relationship with the United States is important to the consideration of migration between the two countries. Liberia's founding came about as a result of a colonization effort aimed at "resettling" free Blacks in Africa. See U.S. Department of State, Office of the Historian, *Founding of Liberia, 1847*, t <https://history.state.gov/milestones/1830-1860/liberia>. See also Little (2019). This history has resulted in longstanding ties between Liberians and the United States, and for many Liberians, a sense of belonging to the United States, albeit one that has not been reciprocated by the United States.

⁸⁰ See Federal Register "Designation of Liberia Under Temporary Protected Status Program" (March 27, 1991), 56 FR 12746, https://www.justice.gov/sites/default/files/eoir/legacy/2014/12/01/fr27mar91_post.pdf. Kuwait and Lebanon were also designated for TPS on the same day, with identical dates of designation.

⁸¹ See Federal Register "Designation of Liberia Under Temporary Protected Status Program" (March 27, 1991), 56 FR 12746.

⁸² See Federal Register, "Extension of Designation of Liberia Under Temporary Protected Status Program" (January 24, 1992), 59 FR 9997, https://www.justice.gov/sites/default/files/eoir/legacy/2014/12/01/fr24jan92_post.pdf.

⁸³ See Federal Register, "Extension of Designation of Liberia Under Temporary Protected Status Program" (January 24, 1992), 59 FR 9997.

⁸⁴ See Federal Register, "Termination of Designation of Liberia Under Temporary Protected Status Program After Final 6-Month Extension" (March 31, 1998), 63 FR 15437, <https://www.justice.gov/sites/default/files/eoir/legacy/2002/09/09/fr31mr98N.pdf>.

⁸⁵ See Federal Register, "Termination of Designation of Liberia Under Temporary Protected Status Program After Final 6-Month Extension" (March 31, 1998), 63 FR 15437.

According to information supplied to me by the Department of State, I understand that overall security conditions in Liberia have improved during the past year. Elections were held and the new Liberian Government's policy is to welcome back Liberian refugees. Improved stability and security throughout most of Liberia has led the U.S. Government to support the repatriation of Liberian refugees in neighboring countries. In view of the Department of State's recommendation for termination, I have determined that TPS is no longer appropriate for Liberia in general.⁸⁶

But Liberians received a brief additional reprieve when the Attorney General redesignated Liberia for TPS for one more year, from September 29, 1998 through September 29, 1999, which also allowed more recent arrivals—those Liberians present in the United States as of September 29, 1998—to apply for TPS. The Attorney General based her decision on the recommendation of the Department of State arising from the resumption of armed conflict in Liberia.⁸⁷

That reprieve was short-lived, however. On July 30, 1999, the Attorney General announced that Liberia's TPS designation would not be extended, and instead would be terminated effective the end of the existing designation period, September 29, 1999.⁸⁸ In doing so, the Attorney General noted her consultations with the Department of State, and indicated that the September 1998 redesignation was issued based on an "outburst of violence" in Monrovia, but that otherwise, according to a State Department Memorandum "no further general conflict" had arisen. The Attorney General further cited to the State Department Memorandum, which noted: "Although conditions in Liberia remain difficult, the overall situation is not sufficiently adverse to prevent most Liberian nationals in the U.S. from returning to Liberia in safety."⁸⁹

Liberians were granted a reprieve, however, when President Clinton issued a directive granting Liberians Deferred Enforced Departure, from September 29, 1999 through September 29, 2000. For one more year, Liberians waited to learn their fate. On September 28, 2000, President Clinton extended his DED directive for one more year. In a statement accompanying the directive, President Clinton provided the following:

This action is aimed at promoting stability in Liberia and West Africa. In particular, I am concerned that a decision by our Government to deport Liberians who have enjoyed the protection of our country for many years could cause the involuntary repatriation of many thousands of Liberian refugees from other nations in West Africa. This would severely burden Liberia and cause instability in Liberia and in the region. I understand that Congress is actively considering a legislative fix for this problem, and I would welcome any solution that would provide relief for Liberians with longstanding ties to the United States.⁹⁰

While the one-year reprieve was welcomed by members of the Liberian community, it also brought with it ongoing stress and uncertainty about what would happen next (Hull 2000).

One year later, President George W. Bush reiterated the reasons set forth by President Clinton and extended Deferred Enforced Departure for an additional year. In 2002, the Attorney General newly designated

⁸⁶ See Federal Register, "Termination of Designation of Liberia Under Temporary Protected Status Program After Final 6-Month Extension" (March 31, 1998), 63 FR 15437.

⁸⁷ See Federal Register, "Termination of Designation of Liberia Under Temporary Protected Status Program After Final 6-Month Extension" (March 31, 1998), 63 FR 15437.

⁸⁸ See Federal Register, "Termination of Designation of Liberia Under the Temporary Protected Status Program" (July 30, 1999), FR Doc. 99-19700, <https://www.justice.gov/sites/default/files/eoir/legacy/2002/09/09/fr30jy99N.pdf>.

⁸⁹ See Federal Register, "Termination of Designation of Liberia Under the Temporary Protected Status Program" (July 30, 1999), FR Doc. 99-19700 .

⁹⁰ Pres. William J. Clinton, "Statement on Deferring Deportation of Liberian Refugees" (September 28, 2000), <https://www.justice.gov/sites/default/files/eoir/legacy/2004/04/22/pd02oc00.pdf>.

Liberia for TPS based on the resumption of violent armed conflict across the country.⁹¹ That status was extended in 2003—again for another one-year period— by the Secretary of the newly created Department of Homeland Security.⁹² And then in 2004, the Secretary of Homeland Security terminated and redesignated TPS for Liberians. The Secretary determined that termination was warranted given the cessation of the armed conflict, but redesignated Liberia for TPS citing as justification the ongoing efforts at disarmament, demobilization, and reintegration, government corruption and the government’s failure to effectively control large portions of the country’s interior, as well as the decimation of Liberia’s infrastructure over the course of its protracted civil war.⁹³

TPS was then extended on an annual basis, until its termination effective October 1, 2007.⁹⁴ In his notice of termination, the Secretary noted: “With the assistance of a large and robust peacekeeping mission, Liberia is now entering a long-term phase of reconstruction and rehabilitation and there exists a democratically-elected government with the capacity to accept the return of its nationals.”⁹⁵

Liberians again received relief from deportation as successive administrations stepped in and granted Liberians DED, through March 31, 2016.⁹⁶ But with each approaching end-date of TPS and DED, Liberians confronted the uncertainty that came from a temporary “status” that was frequently set to expire, and then extended again through a Presidential directive issued often on the eve of termination of their most recent designation period. As with Salvadoran TPS beneficiaries, and other longer-term TPS beneficiaries, Liberians had begun to rebuild their lives, while many still lived with the trauma carried with them from the horrors that first caused them to flee (Marrapodi and Welch 2009).

Corvah Akoiwala, a Liberian national who was fresh out of college when civil war broke out, remembers how it used to be there. *"They dragged us from our homes, they were shooting all around us. They said they were going to have us killed,"* he said.

"On Tupero Road they had a killing field. Like every day they took someone to this field and they would just shoot them in front of everybody. It was just terrible," he said. He came to the United States in 1992 and settled in Rhode Island. A civil engineer by education, Akoiwala married and had three children, all of whom are American citizens.

For the past 17 years he's worked, paid his taxes and contributed to his community. He and his wife were granted temporary protection status but now both face deportation. On March 31 they will go from being legal residents to illegal aliens.

⁹¹ See Federal Register Notice, “Designation of Liberia Under the Temporary Protected Status Program” (October 1, 2002), 67 FR 61665, <https://www.justice.gov/sites/default/files/eoir/legacy/2003/07/09/fr01oct02.pdf>.

⁹² See Federal Register Notice, “Extension of the Designation of Liberia Under the Temporary Protected Status Program” (August 6, 2003), 68 FR 46648, <https://www.justice.gov/sites/default/files/eoir/legacy/2004/04/22/fr06aug03.pdf>.

⁹³ See Federal Register Notice, “Termination and Re-Designation of Liberia for Temporary Protected Status” (August 25, 2004), 69 FR 52297, <https://www.justice.gov/sites/default/files/eoir/legacy/2008/10/22/fr25au04.pdf>.

⁹⁴ See Federal Register Notice, “Termination of the Designation of Liberia for Temporary Protected Status; Automatic Extension of Employment Authorization Documentation for Liberian TPS Beneficiaries” (September 20, 2006), 71 FR 55000, https://www.justice.gov/sites/default/files/eoir/legacy/2006/09/20/fr20sep06_tps.pdf.

⁹⁵ See Federal Register Notice, “Termination of the Designation of Liberia for Temporary Protected Status; Automatic Extension of Employment Authorization Documentation for Liberian TPS Beneficiaries” (September 20, 2006), 71 FR 55000.

⁹⁶ See USCIS, *DED Granted Country – Liberia* (last updated August 16, 2011), https://www.justice.gov/sites/default/files/eoir/legacy/2012/01/24/Liberia_082011.pdf. See also Federal Register Notice “Filing Procedures for Employment Authorization and Automatic Extension of Existing Employment Authorization Documents for Liberians Eligible for Deferred Enforced Departure” (October 1, 2014), 79 FR 59286, <https://www.justice.gov/sites/default/files/eoir/legacy/2014/10/03/fr01oct14.pdf>.

"My fear is, who am I going to leave my kids with?" he said. "Who am I going to leave them with? I want to stay here and see them grow up to be responsible citizens and then I can go back" (Marrapodi and Welch 2009).

As with El Salvador, the armed conflict that gave rise to the initial TPS designation gave way to new grounds for TPS when the Ebola pandemic struck Liberia in 2014, resulting in the Secretary of Homeland Security newly designating (again) Liberia for TPS for an 18-month period.⁹⁷ That designation was then extended through November 21, 2016,⁹⁸ after which DED was extended through March 31, 2019.⁹⁹ Again, on the eve of termination of status, President Trump moved to extend DED for another 12 months in consideration of foreign policy interests and pending legislation to confer lawful immigrant status to Liberian TPS and DED beneficiaries.¹⁰⁰

For Liberians, relief finally came in the form of Congressional action, when Congress passed the Liberian Refugee Immigration Fairness Act (LRIF) as part of the National Defense Authorization Act for Fiscal Year 2020, granting access to legal permanent resident status for Liberians who had resided in the United States since November 20, 2014, the most recent TPS designation date for Liberians.¹⁰¹ Senator Jack Reed, who sponsored the legislation, stated: "Separating and uprooting hundreds of Liberian-American families from their jobs and homes and forcing them to return to a country that is unrecognizable for many of them would not have been in America's best interests" (Narea 2019b). It is estimated that as many as 10,000 Liberians are eligible for relief under the Act.¹⁰² In the interim, President Biden has again extended DED for Liberians to allow time for applications to be filed and adjudicated under LRIF.¹⁰³

Throughout the decades of temporary status, advocates and stakeholders—and even the Liberian government—have argued for extending some form of status and protection for deportation to Liberians residing in the United States, not only based on the risks to their own personal safety, but also due to the destabilizing effect their return could have on Liberia. While Liberia's economy is trending upward, the country has suffered significantly as a result first of the protracted armed conflict, followed by Ebola, and then the COVID-19 pandemic. Liberia continues to struggle economically, with more than 2.2 million Liberians unable to meet their basic food needs as of 2016.¹⁰⁴ Personal remittances to Liberia peaked in 2011 to nearly 22 percent of the country's GDP and continue at greater than 10 percent currently.¹⁰⁵

⁹⁷ See Federal Register Notice "Designation of Liberia for TPS" (November 21, 2014), 79 FR 69502, https://www.justice.gov/sites/default/files/eoir/legacy/2014/11/21/fr20nov14_Liberia.pdf.

⁹⁸ See Federal Register Notice "Six-Month Extension of Temporary Protected Status Benefits for Orderly Transition Before Termination of Liberia's Designation for Temporary Protected Status" (September 26, 2016), 81 FR 66059, <https://www.justice.gov/sites/default/files/pages/attachments/2016/09/26/fr26sept16.pdf>.

⁹⁹ See Federal Register Notice "Filing Procedures for Employment Authorization and Automatic Extension of Existing Employment Authorization Documents for Eligible Liberians Before Period of Deferred Enforced Departure Ends" (March 30, 2018), <https://www.justice.gov/eoir/page/file/1047581/download>. See also Gomez (2018).

¹⁰⁰ See Donovan-Smith (2019).

¹⁰¹ See USCIS, *Green Card Eligibility: Liberian Refugee Immigrant Fairness*, <https://www.uscis.gov/green-card/green-card-eligibility/liberian-refugee-immigration-fairness#:~:text=20%2C%202019%2C%20the%20National%20Defense,years%20old%20or%20older%20living>.

¹⁰² See TPS Advocacy Working Group and African Communities Together (2020).

¹⁰³ See President Joseph R. Biden, Jr., "Memorandum on Extending and Expanding Eligibility for Deferred Enforced Departure for Liberians," June 27, 2022, <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/06/27/memorandum-on-extending-and-expanding-eligibility-for-deferred-enforced-departure-for-liberians/>. See also CRS (2021a).

¹⁰⁴ See World Bank, <https://www.worldbank.org/en/country/liberia/overview>.

¹⁰⁵ World Bank, personal remittances, received (percent of GDP)—Liberia, <https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS?locations=LR>.

Lessons drawn from the case studies

While no set of migration stories or immigrant experiences is identical, just as the story of every individual who migrates is unique to that individual, a review of the shared—and different—experiences of Salvadorans and Liberians in the United States, when considered in the context of the commonalities and differences of their origin country’s longstanding relationships with the United States,¹⁰⁶ provides a rich set of examples for identifying the opportunities, challenges, and costs that arise from the Temporary Protected Status program (together with Deferred Enforced Departure).

Both El Salvador and Liberia were initially designated for TPS because of ongoing civil wars causing forced displacement and significant threats to the safety and security to their nationals living in the United States if forced to return. In both countries, the violence giving rise to the initial TPS designation waned, but resurfaced later, with the subsequent violence being fueled, at least in part, from the earlier conflict. And in both countries, it was a natural/public health disaster—in the form of earthquakes for El Salvador, and the Ebola virus for Liberia—that gave rise to new TPS designations. For both El Salvador and Liberia—as with all other countries designated for TPS (and DED)—there were identifiable and discrete events that the United States could pinpoint as giving rise to what could be characterized as a temporary set of circumstances that posed a risk to the safety and well-being of its nationals if returned from the United States. But as both case studies demonstrate, circumstances giving rise to significant migration and internal displacement are rarely temporary and are often brought about by the interplay of a complex set of civil, political, and socioeconomic factors that do not lend themselves readily to resolution. In this way, both case studies demonstrate the need for a complementary system of protection that responds to the short-term needs and realities of the country in question and that country’s nationals, while also anticipating and being attentive to—in a meaningful and studied manner—the medium- and long-term realities.

TPS and DED have served as life-saving safety-nets for both Salvadorans and Liberians, as they have for nationals of other countries designated for across-the-board relief. This is particularly true considering the generalized nature of the violence and humanitarian crises that create a real risk to the safety and well-being of individuals who are not able to meet their burden in providing eligibility for asylum or related forms of immigration relief. The programs have also served as a means for guarding against further destabilization of the countries of origin: officials of both Liberia and El Salvador have expressed concerns over the years about the impact of repatriating significant numbers of individuals—many of whom had been living in the United States for many years—into a still fragile socioeconomic and political environment. At the same time, TPS and DED have also worked to guard against destabilization across communities within the United States where TPS and DED beneficiaries have become homeowners, valued employees and employers (in some cases, “essential workers”—particularly throughout the COVID pandemic), and parents to US citizen children. TPS beneficiaries have repeatedly shown themselves to be contributing members of their local communities.

The Center for Migration Studies conducted an in-depth survey of TPS holders from El Salvador, as well as Honduras and Haiti, resulting in the following findings (as of July 28, 2017):

- Salvadoran TPS holders had lived in the United States an average of 21 years.
- Of the approximately 195,000 Salvadorans with TPS, 88 percent were in the labor force, and 83 percent lived above the poverty line, and approximate 45,500 Salvadoran TPS holders had mortgages.
- Salvadoran TPS holders were parents to approximately 192,700 US-born (citizen) children.¹⁰⁷

¹⁰⁶ See, for example, CRS (2020a, 2020b) and Haggarty (1988).

¹⁰⁷ See CMS (2017b).

Unfortunately, a similar study is not available for Liberians residing in the United States.

But both case studies also highlight the challenges associated with a temporary form of relief that does not allow for conversion to something more permanent when the underlying humanitarian crisis giving rise to the designation proves to be anything but temporary. TPS critics rightfully argue that the use of repeated TPS extensions and redesignations and DED directives defy the stated intent of the statute to provide “temporary” relief, and they argue that TPS and DED are instead being used as a backdoor program toward long-term immigration status not intended by Congress at the time of its introduction.¹⁰⁸

From the perspective of those with TPS and DED, the short-term nature of the relief, even if extended over more than a decade, is problematic for other reasons. As advocates and TPS holders note, the costs and logistical hurdles associated with re-registration for TPS and renewal of work authorization are not insignificant. And those costs pale in comparison to the psychological toll that the lack of meaningful security in status takes, as highlighted in the individual stories above. Individuals are routinely and repeatedly confronted with possible deportation—in some cases to a country largely unknown—and face the threat of ensuing family separation.

It is also important to again recognize that family separation is not just something that TPS beneficiaries confront when they are faced with deportation—it is something many of them confront daily because their reprieve from deportation does not allow them to bring their family members with them, or petition for their family members to join. Just as those who risk losing TPS must confront decisions about what they will do with regard to care of their US citizen children if they are subject to deportation, those who have been granted TPS must also confront the separation from family members outside the United States, for whom there exist extremely limited—and primarily temporary—opportunities for reunification. The grant of a pathway toward legal permanent resident status—such as that provided to Liberians through the passage of the Liberian Refugee Immigrant Fairness Act—would ultimately allow for some measure of family reunification, even if it could take decades to realize. It remains elusive for family members who fall outside of the limited family preference categories that include spouses, children, parents, and siblings.

Conclusion

This paper, and the case studies addressed in the preceding section, are intended to highlight both the challenges and opportunities that TPS provides. There are currently 320,000 TPS holders in the United States, from 10 different countries, and another estimated 588,335 additional individuals who are eligible for TPS under recent TPS designations and redesignations (not including the most recent designations of Cameroon).¹⁰⁹ For the beneficiaries, TPS provides a critical opportunity for temporary relief, and stability at a time of great insecurity.

While the “temporary” in the TPS designation has arguably made it more politically viable to provide across-the-board relief to nationals of particular countries, it has proven itself to be grounded in a myth that belies the reality of protracted and evolving humanitarian crises that call for a more permanent complementary system of protection. The Trump administration’s actions to terminate TPS protection even for countries where the situation continued to present a grave threat to the safety and well-being to those subject to deportation, and even where the return of a significant number of nationals (and the ensuing loss of remittances) would arguably further destabilize those countries with fragile political systems, economies, and public health and education systems, demonstrate just how tenuous the protection afforded by TPS and DED can be. A single directive issued overnight could bring an end to two decades of lawful presence and work authorization in the United States and upend two decades of building a family and life in the United

¹⁰⁸ See Arthur (2017).

¹⁰⁹ See Roy and Klobucista (2023).

States. The Liberian Immigrant Refugee Fairness (LIRF) Act is one example of an alternative response that recognizes the ties that are built over time between a TPS holder and the communities they call home, providing the transition from what was a temporary form of relief to a more permanent and secure legal status.

While not discussed in this paper, the role of the TPS beneficiaries themselves, of human rights organizations, and of other stakeholders in ensuring even minimal protection is not to be overlooked. Without sustained and at times aggressive advocacy, the majority of TPS holders may never have received the benefit of protection at the outset, and likely would not have had that protection extended. TPS holders' ties to their communities and their sustained and persistent advocacy—and support from a range of stakeholders and allies—have been essential to ensuring that the safety net provided from TPS is not pulled out from under them. And that sustained advocacy—grounded in personal stories, foreign policy objectives and ensuing commitments, economics, adherence to the legislative intent of TPS, public opinion, and to a more limited degree, human rights obligations¹¹⁰—has driven the momentum giving rise to the more permanent relief offered by the LIRF Act.

As host countries, such as the United States, look to provide complementary systems of protection for non-citizens—within their overall system of immigration enforcement and regulation—it is important to give greater recognition to governing international human rights law, and to assess those systems of protection and regulation against all applicable human rights norms. While host countries have a recognized right, grounded in their status as a sovereign nation, to determine who gets to enter the country and who can obtain the right to citizenship, they also have obligations to respect, protect, and fulfill the human rights of those within its jurisdiction. Those rights include not only the right to life and security in person, and the right to non-refoulement, but also due process rights, the right to equality and non-discrimination, and the right to preservation of the family unit. Furthermore, while the United States remains the only country to not have ratified the Convention on the Rights of the Child (CRC), the obligation of a state to ensure the best interests of the child codified in the CRC is arguably a norm of customary international law to which the United States is obligated, a norm that requires a state to assess—even in the context of immigration regulation—whether the best interests of the child are met.¹¹¹ While TPS often meets those obligations in the immediate aftermath of a humanitarian crisis, that moment of initial designation is just the beginning. More needs to be done to ensure that the protection offered, and the manner through which it is offered, meets the full complement of human rights commitments—in the immediate future, the medium term, and over the long term.

¹¹⁰ See, for example, Roy and Klobucista (2023).

¹¹¹ See, for example, Paoletti (2020).

Appendix A. Countries designated and formerly designated for Temporary Protected Status (TPS)

Table A.1 lists countries currently designated for Temporary Protected Status (TPS), including those with litigation pending. The “designation through” dates listed in this table reflect the updated dates following all extensions of TPS designations granted subsequent to the designation date listed, as of February 23, 2023. Table A.2 lists countries that were formerly designated for TPS.

A full compilation of Federal Register Notices for all current and historic TPS designations, extensions, redesignations, and terminations is available at [Temporary Protected Status \(justice.gov\)](https://www.justice.gov/immigration-and-naturalization/temporary-protected-status).

Table A.1 Countries currently designated for TPS

Country	Required arrival date /Designation date	Designated through
Afghanistan	March 15, 2022/May 20, 2022	November 20, 2023
Burma (Myanmar)	March 11, 2021/May 25, 2021 September 25, 2022/November 26, 2022	November 25, 2022 May 25, 2024
Cameroon	April 14, 2022/June 7, 2022	December 7, 2023
El Salvador (IMMACT 1990)		December 31, 1994
El Salvador	February 13, 2001/March 9, 2001	September 19, 2019 ^a
Ethiopia	December 12, 2022/December 12, 2022	June 12, 2024
Haiti (2010)	January 12, 2010/January 15, 2010	
Haiti (redesignation and extension)	January 12, 2011/May 19, 2011	July 22, 2019 ^a
Haiti (2021)	July 29, 2021/August 3, 2021	February 3, 2023
Haiti (redesignation and extension)	November 6, 2022/February 4, 2023	August 3, 2024
Honduras	December 30, 1998/January 5, 1999	January 5, 2020 ^a
Nepal	June 24, 2015/June 24, 2015	June 24, 2019 ^a
Nicaragua	December 30, 1998/January 5, 1999	January 5, 2019 ^a
Somalia	September 16, 1991/September 16, 1991	
Somalia (extension and redesignation)	July 19, 2021/July 22, 2021 January 11, 2023/March 18, 2023	March 17, 2023 September 17, 2024
South Sudan (2011) ^b	October 7, 2004/November 3, 2011	
South Sudan (extension and redesignation)	March 1, 2022/March 3, 2022	November 3, 2023
Sudan (1997)	November 4, 1997/November 4, 1997	November 2, 2018 ^a
Sudan (extension and redesignation)	January 9, 2013/May 3, 2013	

Sudan (2022)	March 1, 2022/April 19, 2022	October 19, 2023
Syria (2012)	March 29, 2012/March 29, 2012	
Syria (extension and redesignation)	June 17, 2013/October 1, 2013 March 19, 2021/March 31, 2021 July 28, 2022/July 29, 2022	September 30, 2022 March 21, 2024
Ukraine	April 11, 2022/April 19, 2022	October 19, 2023
Venezuela	March 8, 2021/March 9, 2021	March 10, 2024
Yemen (2015)	September 3, 2015/September 3, 2015	
Yemen (extension and redesignation)	January 4, 2017/March 4, 2017 July 5, 2021/September 4, 2021 December 29, 2022/March 4, 2023	March 3, 2023 September 3, 2024

Source: [Temporary Protected Status \(justice.gov\)](https://www.justice.gov/eoir/temporary-protected-status).

Note: Country names use the official US language. IMMACT = Immigration Act of 1990.

- a. In 2017 and 2018, Secretaries of the Department of Homeland Security under the Trump administration terminated TPS designations for Sudan, Nicaragua, Haiti, and El Salvador. TPS beneficiaries from each of those countries and their children brought litigation challenging those terminations as violations under the Administrative Procedures Act and the Equal Protection Clause of the Fifth Amendment. The U.S. District Court for Northern District of California entered a preliminary injunction, *Ramos, et al v. Nielsen*, No. 18-cv-01544 (N.D. Cal. Sept. 14, 2020). While the U.S. Court of Appeals for the Ninth Circuit issued a decision vacating that injunction, as of this writing, it has not issued its mandate in that order and the preliminary injunction remains in effect. USCIS issued notice that the TPS designations will remain in effect while the litigation is pending and the injunction remains in place. Subsequent litigation was filed specific to the announced termination of TPS designations for Nepal and Honduras, issued in the same time frame, and the court in *Bhattarai v. Nielsen*, No. 10-cv-731 (N.D. Cal) issued an order adopting a stipulation by the parties to stay proceedings while the preliminary injunction in the *Ramos* litigation remains in effect. On November 10, 2022, DHS posted notice in the Federal Register that TPS designations for countries covered under the preliminary injunction in *Ramos, et al. v. Nielsen* and under the stay in *Bhattarai v. Nielsen* would remain in effect through the pendency of the court orders, and automatically extended employment authorization and TPS-related documentation for beneficiaries of those orders through June 30, 2024.
- b. The designation of South Sudan in 2011 was issued following South Sudan’s recognition as a new sovereign nation independent from the Republic of Sudan.

Table A.2 Countries formerly designated for TPS whose designations have been terminated

Country	Dates
Angola	March 29, 2000–March 29, 2003
Bosnia and Herzegovina	August 10, 1992–February 10, 2001
Burundi	November 4, 1997–May 3, 2004
Guinea	November 21, 2014–April 25, 2017
Kosovo	June 9, 1998–December 8, 2000
Kuwait	March 26, 1991–March 27, 1992
Lebanon	March 27, 1991–April 9, 1993
Liberia (1991)	March 27, 1991–September 28, 1999
Liberia DED (1999)	September 27, 1999–September 29, 2002
Liberia (2002)	October 1, 2002–October 1, 2007
Liberia DED (2011)	October 1, 2007–June 30, 2024
Liberia (2014)	November 21, 2014–May 20, 2017
Montserrat	August 28, 1997– February 27, 2005
Rwanda	June 7, 1994–December 6, 1997
Sierra Leone (1997)	November 4, 1997–May 3, 2004
Sierra Leone (2014)	November 21, 2014–April 25, 2017

Source: [Temporary Protected Status \(justice.gov\)](https://www.justice.gov/tps).

Note: DED = Deferred Enforced Departure.

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