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# Temporary Protected Status: Comprehensive Backgrounder

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*To speak to CLINIC's issue experts on TPS or if you have questions about this backgrounder, please email Patricia Zapor at [pzapor@cliniclegal.org](mailto:pzapor@cliniclegal.org). For more information on TPS, please see [CLINIC's website](#).*

## I. Temporary Protected Status Background

**What is TPS?** Temporary Protected Status, or TPS, is a humanitarian form of immigration status for foreign nationals, including undocumented immigrants, who cannot safely return to their home country due to extraordinary circumstances. Examples of such circumstances include armed conflict or environmental disaster. TPS provides a period of six to 18 months (usually 18 months) of authorization to work lawfully in the United States and protection from deportation. If the administration extends a TPS designation, people with the status may renew it and legally remain in the United States. Immigrants without immigration status are subject to arrest, detention, and deportation. Thus, TPS provides immigration status to noncitizens who would otherwise be subject to immigration enforcement.

**What countries hold TPS and how many people benefit?** Ten countries have TPS designations and approximately 300,000 to 400,000 people hold TPS. Countries with TPS include El Salvador (195,000 TPS holders); Honduras (57,000); Haiti (46,000); Nepal (8,950); Syria (7,000); Nicaragua (2,550); Yemen (1,250); Sudan (1,040); Somalia (500); and South Sudan (70). Liberia (4,000) is designated for Deferred Enforcement Departure, a similar type of protection. For the latest information about countries with TPS and upcoming termination dates, please visit [CLINIC's website](#).

**How has TPS changed under the Trump administration?** Generally, TPS designations for countries were regularly extended on a bipartisan basis, especially for countries with long-term designations, such as El Salvador and Honduras. Previous administrations extended designations based on the lasting impacts of the original grounds

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Honduras, El Salvador, Haiti, Nepal, and Sudan, and DED for Liberia (cumulatively, approximately 315,000 people). The administration extended (but did not re-designate) TPS for South Sudan, Syria, and Yemen (cumulatively, approximately 8,000 people). On Oct. 3, 2018, the court in *Ramos et al v. Nielsen* granted a nationwide, preliminary injunction temporarily preventing the administration from ending TPS for El Salvador, Haiti, Nicaragua, and Sudan. That case, and collateral litigation against the administration, is [ongoing](#).

**Who are TPS holders?** Many TPS holders are long-time residents who developed deep social, cultural, and economic ties to their communities. For example, TPS holders from El Salvador, Honduras, and Nicaragua have held TPS for close to two decades; and TPS holders from Haiti have held TPS for close to a decade. TPS holders cumulatively have [275,000 U.S. citizen children](#) and the [human cost](#) of ending TPS is tremendous.

**How does TPS compare to other forms of immigration relief?** Whereas other humanitarian initiatives (such as Deferred Action for Childhood Arrivals) are legally grounded in the executive branch's inherent and [historic authority](#) to exercise prosecutorial discretion, the authority for TPS arises from a specific law [enacted by Congress](#) in 1990. TPS does not provide a path to lawful permanent resident status (commonly known as a "green card") or U.S. citizenship.

**How does the administration designate, extend, and re-designate a country for TPS?** The Secretary of the U.S. Department of Homeland Security, or DHS, at the direction of the president, makes the decision to begin, continue, or end TPS.

*Designation.* Generally, when a country experiences circumstances that potentially justify TPS, DHS will consult with agencies, such as U.S. Citizenship and Immigration Services and the U.S. Department of State, who provide recommendations to the secretary of DHS. Within all of these agencies, long-time career employees provide recommendations to political appointees, who, in turn, decide whether to ratify, reject, or modify those recommendations. The secretary then decides whether to designate a country for TPS, which requires publishing a notice in the [Federal Register](#) (the daily journal for agency actions, rules, regulations, and announcements) outlining the grounds for the designation. For example, there are currently [organizational](#) and [House](#) and [Senate](#) efforts to convince the administration to designate Guatemala for TPS because of a recent environmental disaster.

All noncitizens from the designated country who are in the United States on the date of designation may then apply for and receive TPS if they meet the statutory requirements (including a criminal background check). Noncitizens from a designated country who arrive *after* the designation date are not eligible for TPS.

**Extension, Termination, and Re-Designation.** The secretary must decide whether to extend or terminate TPS for a country 60 days or more before the expiration date for the designation. The secretary may also extend *and* terminate a designation simultaneously, e.g. issue an extension immediately followed by termination of TPS. The secretary may also re-designate a country for TPS, which means that any noncitizens who were not eligible for TPS after the last designation (e.g. because they entered the United States *after* the initial designation date) are now eligible for TPS. Like an initial designation, the secretary consults with U.S. Citizenship and Immigration Services and the State Department and receives recommendations whether to extend, terminate or redesignate the status.

**What happens when the administration terminates a TPS designation?** Termination of TPS means that, as of the termination date, TPS holders will no longer be protected from deportation, or be able to lawfully work in the United States; they will be subject to arrest, detention, and deportation. While some TPS holders may have options for other types of legal status (e.g. sponsorship by a U.S. citizen spouse) the vast majority of TPS holders have no recourse for permanent legal status.. For more on the consequences of ending TPS, see [CLINIC's backgrounder](#).

**What are the economic consequences of ending TPS?** The end of TPS could well bring harsh outcomes for local, state, and federal tax coffers, for businesses that employ TPS holders, and the nation's economy. For a state-by-state analysis of the GDP losses associated with ending TPS, please visit the [Center for American Progress](#). For an analysis

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## II . Temporary Protected Status: Emerging and Ongoing Issues

**Inappropriate Decision Criteria.** The Trump administration has been investigated for its criteria and the process used to terminate some TPS designations and extend others without re-designations. In the case of Haiti, the administration [improperly sought](#) information about interactions between Haitians in the United States and the criminal justice system as well as into their use of social safety net benefits. For El Salvador, Honduras, Haiti, and Nicaragua, the administration [disregarded warnings](#) from senior U.S. diplomats and analysts that ending TPS would destabilize those countries and lead to more unauthorized immigration. The White House [improperly pressured](#) then-Acting Secretary Elaine Duke's decision on continuing TPS for Honduras. For more information, see [CLINIC's backgrounder](#). Moreover, the administration failed to extend TPS for several countries, even though it is still unsafe for their citizens to return, e.g. [Nepal](#), [Haiti](#), [El Salvador](#), and [Honduras](#). Consequently, the administration is now [embroiled in litigation](#) over the decisions to terminate various TPS designations.

**Publication Delays and Errors.** Under the law, the administration must publish a decision to extend, re-designate, or terminate a TPS designation at least 60 days before expiration. In the case of Honduras TPS, the secretary of DHS failed to issue a decision on time, leading to an automatic six-month extension. The delays to publish caused some TPS holders to lose their jobs, because their work permits appeared to be invalid. They also had to deal with stress and uncertainty. The delays have led to calls for investigations by the [Senate Foreign Relations Committee](#) and the Government Accountability Office. USCIS also published [erroneous information](#) that caused further confusion and delays.

**Failure to Re-Designate.** In the few cases where the administration did extend TPS for countries ([Syria](#), [Somalia](#), and [Yemen](#)) it failed to re-designate those countries. Failure to re-designate means that noncitizens from these countries who arrived after the initial designation date are unable to apply for TPS, cumulatively affecting thousands of people.

**Family Separation.** In early 2018, the administration, in a misguided effort to dissuade families from coming to the United States to seek asylum, implemented a policy to separate children from their parents upon apprehension. The government lost track of [1,500 children](#), the policy led to national furor and litigation. The impending end of TPS designations for various countries could lead to the next child separation crisis. TPS holders are parents to [275,000 U.S. citizen minor children](#). The end of TPS may force parents to leave those children in the United States, rather than risk taking them back to countries where the children's lives would be at risk.

**Delays in Adjudication.** This administration terminated TPS designations and provided one final 12 or 18-month period of TPS or DED, for Liberia. To obtain this final period of TPS, people must submit a renewal application. USCIS, the agency that adjudicates these applications, was slow to approve renewals. The delays affected: (a) upwards of 20,000 Salvadorans; (b) 4,500 Haitians; and (c) 335 Syrians. The delays caused confusion for employees and employers alike; and USCIS was forced to automatically extend work authorization using a new, untested practice that, to date, continues to cause issues.

**Relation to Muslim Ban.** The administration through various executive orders and cuts in refugee admissions, implemented a [Muslim Ban](#), which prohibits immigrants and refugees from various primarily Muslim countries from coming to the United States. The failure to re-designate Syria, Yemen, and Somalia and termination of TPS for Sudan (all Muslim-majority countries) represent lesser-known attempts to keep Muslims out of the United States.

### Glossary

**Designation:** The original decision to provide TPS for a country's nationals.

**Extension:** The decision to renew (e.g. extend) a country's designation for TPS.

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**Termination:** The decision to end a TPS designation at a future date, rendering TPS holders subject to arrest, detention, and deportation.

**Deportation:** The formal administrative process that the executive branch undertakes to return or repatriate noncitizens to their home country. Also known as “removal.”

**Employment authorization:** A formal document that allows a noncitizen to be lawfully employed. Also known as a “work permit.”

**Noncitizens:** Includes undocumented immigrants and other immigrants who are authorized to remain in the United States (e.g. visitor visa entrants). Also known as foreign nationals.

#### CLINIC Resources date:

Monday, January 7, 2019 - 12:30pm

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