

**CHAPTER 1**  
**OVERVIEW OF TEMPORARY PROTECTED STATUS**

---

***This chapter includes:***

§ 1.1	What is Temporary Protected Status? .....	1
§ 1.2	Sources of Law .....	1
§ 1.3	Current Landscape.....	2
§ 1.4	Orientation to this Manual.....	5

---

**§ 1.1 What is Temporary Protected Status?**

Temporary Protected Status (TPS) is an important form of humanitarian relief for people from certain designated countries that have experienced armed conflict, natural disaster, or other conditions that prevent nationals from returning safely. TPS provides critical protections, including the right to live and work lawfully in the United States for a specified period of time, but offers no pathway to permanent status and does not confer benefits on family members. A country’s designation can be reauthorized, allowing for the renewal of TPS protections. TPS can be pursued while holding certain forms of non-immigrant visas and while applying for other forms of protection and legal status. Despite its limitations, TPS can be a lifeline to stability and protection at a time when immigrant community members have limited legal options under existing law.

**§ 1.2 Sources of Law**

TPS has been part of U.S. immigration law for more than thirty years, enacted as part of the Immigration Act of 1990 (IMMACT 90).<sup>1</sup> INA § 244 and accompanying regulations remain the primary authority on TPS eligibility, the scope of its protections, and the application requirements and process.<sup>2</sup>

The statute authorizes the Secretary of the Department of Homeland Security (DHS)<sup>3</sup> to designate eligible individuals of certain countries for TPS if that country has: an ongoing armed conflict that would pose a serious threat to the personal safety of nationals returned there; experienced an environmental disaster such as an earthquake, flood, drought, or epidemic that substantially, but temporarily, disrupts living conditions; a government that is unable, temporarily, to handle the

---

<sup>1</sup> Pub. L. 101-649.

<sup>2</sup> INA § 244, 8 CFR § 244.1–244.9.

<sup>3</sup> At the time that the TPS statute was written, the Attorney General was granted authority over TPS designations, because in 1990 the functions of the U.S. Immigration and Naturalization Service (INS) were organized under the Department of Justice (DOJ). Since the reorganization of the Homeland Security Act of 2003, the Secretary of DHS has taken over the oversight of the former INS functions, which now reside with the U.S. Citizenship and Immigration Services (USCIS). See DHS, *Creation of the Department of Homeland Security* (last updated May 8, 2023), <https://www.dhs.gov/creation-department-homeland-security> (describing the impact of the Homeland Security Act of 2002).

return of its nationals; and the country affected has officially requested TPS designation. Alternatively, the DHS Secretary can find that temporary and extraordinary conditions exist that prevent the nationals of the affected country from returning in safety, as long as such designation would not be contrary to U.S. national interest.<sup>4</sup>

INA § 244 allows eligible nationals of the designated country, or stateless persons who last habitually resided in that country, to apply for a temporary legal status that protects them from removal and provides them authorization to work for a designated period. Initial TPS designations can range from six to eighteen months and may be extended by DHS.<sup>5</sup> Employment authorization should be effective throughout the period that the individual has TPS.<sup>6</sup> Eligible applicants have to register for TPS during the initial registration period announced in the Federal Register, unless the individual can qualify for one of the circumstances that allow for late initial registration.<sup>7</sup> Similarly, if a country's designation is re-authorized (also called an extension), applicants must apply for renewal during the renewal period, with certain exceptions for late re-registration.

### § 1.3 Current Landscape

TPS has been in the news over the last few years and of increasing concern to legal practitioners. In 2017 and 2018 the Trump administration attempted to terminate TPS for six designated countries—Sudan, Haiti, Nicaragua, El Salvador, Nepal and Honduras—that had been re-authorized for many years.<sup>8</sup> The terminations, which would have impacted hundreds of thousands of TPS holders, were challenged in federal court.<sup>9</sup> On October 3, 2018, the District Court for the Northern District of California issued a preliminary injunction that ordered that during the pendency of the case, current TPS holders would maintain their TPS status.<sup>10</sup> DHS published Federal Register Notices (FRN) that automatically extended TPS status for the plaintiffs.<sup>11</sup> At the

---

<sup>4</sup> INA § 244(b)(1)(B)–(C).

<sup>5</sup> INA § 244(b)(2).

<sup>6</sup> INA § 244(a)(2).

<sup>7</sup> 8 CFR § 244.2(f).

<sup>8</sup> In 2017, the termination of TPS for Sudan, Haiti, and Nicaragua were announced. In 2018, terminations of TPS for El Salvador, Nepal, and Honduras were announced. For an overview of the history of the designations and attempted terminations of TPS for these six countries, see Congressional Research Service, “Temporary Protected Status and Deferred Enforced Departure,” July 28, 2023, available at: <https://crsreports.congress.gov/product/pdf/RS/RS20844>.

<sup>9</sup> There were two cases brought after the Trump administration's terminations of TPS for specific countries. The first, *Ramos v. Nielsen*, was brought in the Northern District of California after the terminations for Haiti, Sudan, Nicaragua, and El Salvador. The second was *Bhattarai v. Nielsen*, also brought in the Northern District of California concerning the terminations of TPS for individuals from Nepal and Honduras. Following the October 2018 preliminary injunction in *Ramos*, the parties in *Bhattarai* agreed to stay proceedings pending the outcome of the *Ramos* case. As such, *Bhattarai* plaintiffs were included in the *Ramos* auto-extensions. For more information and updates, see the ACLU's *Bhattarai v. Nielsen* website at <https://www.aclusocal.org/en/case/s/bhattarai-v-nielsen>.

<sup>10</sup> *Ramos v. Nielsen*, 336 F. Supp. 3d 1075 (N.D. Cal. 2018).

<sup>11</sup> Continuation of Documentation for Beneficiaries of Temporary Protected Status Designations for Sudan, Nicaragua, Haiti, and El Salvador, 84 CFR § 7103 (2019).

same time, the government also appealed the preliminary injunction and on September 14, 2020, the Ninth Circuit Court of Appeals overturned the preliminary injunction and held that the terminations could go into effect.<sup>12</sup> Plaintiffs petitioned for a rehearing at the Ninth Circuit in November 2020.<sup>13</sup> Once President Biden took office in January 2021, the administration began negotiating with plaintiffs in the case and continued to auto-extend TPS for all affected individuals.<sup>14</sup>

Additional developments during the litigation have caused a fair amount of confusion for TPS holders. On May 22, 2021, the administration extended and redesignated TPS for Haiti due to the ongoing civil unrest and humanitarian conditions.<sup>15</sup> On March 2, 2022, the administration extended and redesignated TPS for Sudan due to the ongoing armed conflict.<sup>16</sup> TPS holders from Haiti and Sudan, who were also plaintiffs in the *Ramos* litigation were encouraged to register under the new designations, therefore removing them from the plaintiff pool. On June 13, 2023, as part of the litigation negotiations, the administration agreed to reverse the terminations for all the *Ramos* countries and to re-authorize TPS for the remaining countries—El Salvador, Honduras, Nepal and Nicaragua—as well. While advocates had hoped to see redesignations for these remaining countries, which would allow more individuals living without status to apply for TPS, the administration declined to do so and only those individuals from El Salvador, Honduras, Nepal and Nicaragua who already had TPS before the litigation are currently able to renew their TPS status.

The *Ramos* litigation remains pending after the Ninth Circuit agreed to rehear the case and vacated the previous decision restoring the terminations.<sup>17</sup> However, the Biden administration has moved to dismiss the appeal following the June 2023 rescission of the terminations and the extensions of TPS for El Salvador, Honduras, Nepal, and Nicaragua. Lawyers for the plaintiffs have filed an opposition to dismissal citing the possibility that similar actions could be taken against TPS holders in the future without resolution from the court.<sup>18</sup> For now, all plaintiffs

---

<sup>12</sup> *Ramos, et al., v. Wolf, et al.*, No. 18-16981 (9th Cir., Sept. 14, 2020).

<sup>13</sup> *Ramos, et al., v. Wolf, et al.*, No. 18-16981 (9th Cir. App. Pet. For Panel Rehearing, Nov. 30, 2020).

<sup>14</sup> The last auto-extension was announced on November 10, 2022, and noted that TPS holders subject to the litigation would maintain that status and benefits until June 30, 2024. As of this writing, that auto-extension is still in effect, however, TPS holders from El Salvador, Honduras, Nepal and Nicaragua who are subject to the litigation are encouraged to re-register under the new extensions announced on June 21, 2023. See USCIS, *Update on Ramos v. Nielsen*, (Last Updated June 21, 2023), <https://www.uscis.gov/humanitarian/update-on-ramos-v-nielsen>.

<sup>15</sup> Department of Homeland Security, *Secretary Mayorkas Designates Haiti for Temporary Protected Status for 18 Months*, (May 22, 2021), <https://www.dhs.gov/news/2021/05/22/secretary-mayorkas-designates-haiti-temporary-protected-status-18-months>.

<sup>16</sup> Department of Homeland Security, *Secretary Mayorkas Designates Sudan and Extends and Redesignates South Sudan for Temporary Protected Status for 18 Months*, (March 2, 2022), <https://www.dhs.gov/news/2022/03/02/secretary-mayorkas-designates-sudan-and-extends-and-redesignates-south-sudan>.

<sup>17</sup> *Ramos, et al., v. Wolf, et al.*, No. 18-16981 (9th Cir. Feb. 10, 2023).

<sup>18</sup> *Ramos, et al., v. Wolf, et al.*, No. 18-16981 (9th Cir. Pl.-App. Opp. To Def. Motion to Dismiss, June 15, 2023).

subject to the litigation who are able to re-register under new extensions should do so in order to maintain TPS past the last auto-extension deadline of June 30, 2024.

Aside from the litigation, the Biden administration has recently designated new countries for TPS including Afghanistan, Ukraine, Cameroon, and Ethiopia. The administration has also continued to re-authorize and re-designate other existing TPS countries. Re-designation increases the pool of eligible applicants by updating the eligibility dates which allows for more recently arrived individuals to apply for protection. These designations have caused a huge increase in the demand for legal assistance in TPS cases, particularly in the wake of the *Ramos* litigation, where the auto-extension policy has caused confusion. Further, the increased number of applications has resulted in severe processing delays at USCIS as the agency attempts to balance existing resources amongst competing priorities. Practitioners report that current processing times can take almost as long as the 18-month designation periods, leaving applicants in limbo, even if further extensions are granted. While the increase in TPS designations and extensions are welcome developments, the administrative and legal questions raised can be complex, given the migration histories of the impacted communities.

In addition, there have been significant changes in the adjustment options available to TPS holders who did not initially enter the United States with inspection. In 2020, the Administrative Appeals Office issued a decision—*Matter of Z-R-Z-C*—that USCIS then adopted, stating that TPS-authorized travel on advance parole completed after August 20, 2020 would not be not considered an admission for purposes of adjustment.<sup>19</sup> In 2021, the U.S. Supreme Court addressed a circuit split on this matter and ruled that a grant of TPS is not itself an “admission” that allows an applicant for permanent residence to meet the threshold “inspected and admitted or paroled” requirement to adjust status within the United States.<sup>20</sup> While neither of these decisions alone precluded adjustment by a TPS holder, they did limit the pathways to adjustment eligibility for TPS holders who initially entered without inspection.

However, USCIS changed course in 2022 and issued a new policy to rescind *Matter of Z-R-Z-C* and alter the way the agency treated TPS holders who traveled with authorization as it pertains to their adjustment of status applications. Specifically, USCIS stated that a TPS holder re-entering the United States after authorized travel will satisfy the inspection and admission requirements to adjust status under INA § 245(a). To accomplish this, USCIS established a new policy for TPS travel authorization outside of - but very similar to—the advance parole mechanism used by TPS holders to travel in the past. For a more detailed discussion of the new travel policy, see **Chapter 7** of this manual.

Finally, TPS holders and other immigrant community members continue to lead campaigns calling for additional TPS designations and redesignations to extend protections to more individuals whose home countries are struggling with civil strife and natural disasters. There are also a number of federal legislative proposals that have been introduced which would provide a pathway to citizenship for TPS holders. However, those efforts remain stalled in Congress.

---

<sup>19</sup> See *Matter of Z-R-Z-C* (AAO Aug. 20, 2020); USCIS, *Policy Memorandum: Matter of Z-R-Z-C, Adopted Decision 2020-02 (AAO Aug. 20, 2020) (Aug. 20, 2020)*, <https://www.uscis.gov/sites/default/files/document/aao-decisions/Matter-of-Z-R-Z-C-Adopted-AAO-Decision.pdf>.

<sup>20</sup> *Sanchez v. Mayorkas*, 141 S. Ct. 1809 (2021).

## § 1.4 Orientation to this Manual

This manual is designed to meet the needs of legal advocates with different levels of experience. It provides an orientation to those who are new to immigration practice, have not had prior experience with TPS cases, or need a refresher on TPS practice. At the same time, it also explores some of the more complex and technical aspects of TPS practice. We have included sample cover letters, exhibit lists, declarations, and other documents in appendices throughout the manual as a reference. This manual does not review the details of the current countries designated for TPS as the designation dates, validity periods, and registration deadlines are subject to change. The USCIS TPS webpage is the best source for updated and accurate information about current designations.<sup>21</sup>

In addition to this introductory chapter, this manual covers the following topics:

**CHAPTER 2** provides an **overview of the requirements** for TPS. While each country designated for TPS has specific dates for showing continuous residence and physical presence, as well as registration and re-registration periods, the core requirements are the same. As each requirement is explored, we outline tips for conducting background checks and verifying eligibility.

**CHAPTERS 3, 4, AND 5** collectively cover the array of issues that can make someone ineligible for TPS. While some of these may be familiar, others are unique to TPS. **It is important to consider the factors laid out in all three chapters when assessing TPS eligibility.**

**Chapter 3** explores the **criminal bars** to TPS, for which no waivers are available.

**Chapter 4** explains how the **bars in asylum law** are applied to the TPS context, with a special focus on firm resettlement.

**Chapter 5** covers the **grounds of inadmissibility**, which are applied in a unique way to TPS cases. This chapter clearly explains which grounds do not apply to TPS cases and which are waived automatically. Next, it describes the grounds that apply but for which no waiver exists. Finally, it explains how the remaining inadmissibility grounds apply to TPS but can be waived by a special type of waiver available in TPS cases.

**CHAPTER 6** dives into the nuts and bolts of TPS practice by providing an overview of the **initial registration process**, including applications, supporting documentation, and fee waivers. This includes options for how people in removal proceedings can present TPS applications. It also outlines how some eligible individuals can apply for **late initial registration** even when the initial TPS registration period has passed.

**CHAPTER 7** outlines the **benefits of TPS**, including work authorization, lawful status, travel abroad on a TPS travel document, and the effects of authorized travel on TPS holders who are eligible to adjust status. It also describes how to maintain TPS protections through **re-registration**, including opportunities for late filing. When a country's designation is reauthorized over and over, the relief and benefits afforded to TPS holders can be extended. But this opportunity also means TPS holders are required to maintain eligibility and apply for renewal.

---

<sup>21</sup> USCIS TPS webpage, available at: <https://www.uscis.gov/humanitarian/temporary-protected-status>.

**CHAPTER 8** covers **special and strategic considerations** for TPS cases. Given the temporary nature of the program and the potential changes in the designation status of a given country, it is critical to consider legal options beyond TPS. Furthermore, TPS can be requested while an applicant holds a non-immigrant visa status or pursues another form of immigration relief. Therefore, it is important to understand how TPS interacts with these other legal avenues, such as asylum or family-based immigration, and **how to develop a legal strategy that provides the most robust and stable protections.**

The ILRC hopes this manual will be a valuable resource in your legal advocacy and contributes to ensuring that TPS is accessible and secured by as many eligible individuals as possible.