

The Impacts of Temporary Protected Status

Hearing Before the Subcommittee on Immigration Integrity, Security, and Enforcement House Judiciary Committee

**Testimony of George Fishman
Senior Legal Fellow, Center for Immigration Studies**

December 17, 2025

Chairman McClintock and Ranking Member Jayapal, I am honored to have the opportunity to testify before you and the other Members of the Subcommittee today. This is a homecoming for me. I began working on the Subcommittee in 1995, became Chief Republican Counsel in 1998, and served in that capacity until 2018, when I left to serve as a deputy general counsel at the Department of Homeland Security. While on the Committee, I worked for extraordinary public servants. I have wonderful memories of Subcommittee Chairmen/Ranking Members Lamar Smith, George Gekas, John Hostettler, Steve King, Elton Gallegly, Trey Gowdy and Raúl Labrador, and Committee Chairmen/Ranking Members Henry J. Hyde, F. James Sensenbrenner, Jr., Lamar Smith and Bob Goodlatte. And I have wonderful memories of working together with my extraordinary colleague Andrea Loving for many years.

From Extended Voluntary Departure to Temporary Protected Status

As the Ninth Circuit put it, “[b]eginning in 1980, Congress introduced a series of bills to address its concerns with [Extended Voluntary Departure] EVD and to provide a ‘more formal and orderly mechanism’ for group-based grants of humanitarian protection. . . . eventually culminat[ing] in the 1990 enactment of the TPS statute”.¹

¹ *Ramos v. Wolf*, 975 F.3d 872, 879 (9th Cir. 2000) (quoting H.R. Rep. No. 100-627, at 4 (1988)), available at <https://cdn.ca9.uscourts.gov/datastore/opinions/2020/09/14/18-16981.pdf>.

What was EVD? In 1989, the House Judiciary Committee's explained that:

[The Immigration and Naturalization Service] INS has provided, under certain conditions, discretionary relief from deportation so that aliens who have not been legally admitted to the U.S. may remain in this country. . . . Currently, three such discretionary procedures are used by INS to provide relief from deportation. One of the procedures . . . extended voluntary departure (EVD)—has not been formally defined and appears to be evolving. EVD is the only form of relief characterized by INS as specifically and solely for blanket relief for all members of a national group. The discretionary procedures are generally developed and used to provide relief the Administration feels is appropriate but which would not be explicitly available under the statute. Blanket relief from deportation for a national group is not provided under statute.²

The Committee noted that:

The U.S. Government's position is that all EVD decisions require a balance of judgment regarding foreign policy, humanitarian, and immigration concerns (statement of Hon. Elliott Abrams, before Judiciary Subcommittee on Immigration, Refugees and International Law, Apr. 12, 1984). During William French Smith's tenure as Attorney General, he stated, "It is inaccurate . . . to assure that there exists any specific criterion or criteria, such as the occurrence of violence or political instability, by which grants of extended voluntary departure are determined" (letter from Hon. William French Smith to U.S. House of Representatives, July 19, 1983). The Bush Administration's position is that the granting of EVD is a suspension of enforcement of the immigration laws against a particular group of individuals and, thus, is an exercise of the discretion of the Attorney General.³

A year earlier, the Committee explained:

According to INS Commissioner Alan C. Nelson, the authority to grant EVD is based on section 242(b) of the Immigration and Nationality Act. (8 U.S.C. 1252(b)). This section of the law authorizes the Attorney General, in his discretion, to forego the institution of deportation proceedings "in the case of any alien who admits to belonging to a class of aliens who are deportable . . . if such alien voluntarily departs from the United States at his own expense This provision, which constitutes the sole statutory authority upon which EVD is based, clearly does not directly authorize deferring the deportation of an entire nationality of aliens and arguably speaks to the method of deportation (voluntarily versus involuntarily) rather than whether deportation should occur at all.⁴

² H.R. Rep. No. 101-244, Part 1, 7-8 (1989).

³ *Id.* at 8.

⁴ H.R. Rep. No. 100-627, at 7 (1988).

In 1988, Romano Mazzoli (D-Ky.), Chairman of the House Judiciary Committee's Subcommittee on Immigration, Refugees, and International Law, set forth on the House floor four main concerns regarding EVD:

[First, EVD] has only the shakiest of legislative foundations, and indeed is arguably outside the scope of current law. Second, the process by which EVD grants are made, extended, or terminated is without guidelines. There exists no statutory criteria to guide the administration in its actions. Third, EVD decisions are neither publicized nor accompanied by an explanation as to why they were made. . . . Fourth, neither statutes nor regulations describe the rights and responsibilities of individuals who are in EVD status. What documents are issued to such individuals? Are they allowed to work in the United States? Can they travel abroad? Are they entitled to welfare benefits? Answers to these and similar questions are difficult, if not impossible, to find.⁵

In 1989, U.S. Representative Bill Richardson (D-N.M.) noted on the House floor that "The United States has suspended the deportation of illegal immigrants from specific countries some 14 times during the past 25 years. In fact, in the last 29 years only 2 months have gone by during which there was not at least one group of aliens in the United States under EVD status."⁶

Congress created Temporary Protected Status (TPS) as part of the Immigration Act of 1990⁷ for three reasons.

The primary reason was apparently to provide immigration relief to illegal aliens from El Salvador. During House floor consideration of the Immigration Act of 1990's conference report, U.S. Representative Bruce Morrison (D-Conn.), author of the House version (H.R. 4300) and Chairman of the House Judiciary Committee's Subcommittee on Immigration, Refugees, and International Law, stated:

⁵ 134 Cong. Rec. 28603 (Oct. 5, 1988), available at <https://www.govinfo.gov/content/pkg/GPO-CRECB-1988-pt20/pdf/GPO-CRECB-1988-pt20-1-2.pdf>.

⁶ 135 Cong. Rec. 25837 (Oct. 25, 1989), available at <https://www.govinfo.gov/content/pkg/GPO-CRECB-1989-pt18/pdf/GPO-CRECB-1989-pt18-7-1.pdf>.

⁷ Pub. L. No. 101-649, §§ 302-03 of title III (1990), available at <https://www.congress.gov/101/statute/STATUTE-104/STATUTE-104-Pg4978.pdf>.

The House Rules Committee's report on H. Res 484, providing for the consideration of H.R. 4300, made U.S. Representative Joe Moakley's (D-Mass.) amendment adding a new section on "Temporary Protected Status for Nationals of El Salvador, Lebanon, Liberia, and Kuwait, and other Designated Foreign States" self-executing. H.R. Rep. No. 101-786 (1990).

The Conference Report to S. 358, the "Immigration Act of 1990" (the House having inserted the text of H.R. 4300 into S. 358 during House floor consideration of the latter bill) explained that:

The House amendment created a new "temporary protected status" with work authorization for aliens in the U.S. who are nationals of countries subject to armed conflict, natural disaster, or other extraordinary and temporary conditions. It specified that certain nationals of El Salvador, Lebanon, Liberia, and Kuwait be granted temporary protected status for three years. The Senate bill contained no comparable provision.

The Conference substitute provides for the establishment of the House's temporary protected status program, but requires the Attorney General to provide such status only to Salvadorans and only for a period of 18 months.

H.R. Rep. No. 100-955, at 127 (1990).

[T]hanks to the work of the chairman of the Rules Committee [Joe Moakly (D-Mass.)], a battle that he has fought since the early 1980's has been won. Those who fled the violence and death in El Salvador will not be sent home because of temporary protected status that they are given, and beyond that the rules are put in place for [TPS] for other nationals such as the Chinese and the Liberians and the Kuwaitis and the Lebanese who might need this protection now, and other nationalities who might need that protection in the future.”⁸

The second reason was, as Hamilton Fish (R-N.Y.), Ranking Member of the House Judiciary Committee, stated during House floor consideration of TPS legislation (H.R. 45) in 1989, to “fill[] an important gap in our immigration and refugee laws by making temporary protected status available to certain persons who cannot safely return home because of armed conflict, natural disaster, or ‘extraordinary and temporary conditions.’”⁹ As Rep. Fish explained, “[T]here is no clear statutory relief available to the individual who needs temporary protection for reasons unrelated to persecution. . . . The threat to human life posed by war or natural disaster can be as great-or even greater-than the risk to life posed by the threat of persecution.”¹⁰ Rep. Morrison stated during the floor debate on H.R. 45 that “some individuals need to be here temporarily for their own protection, not because they will individually be subject to persecution because they are a member of a particular group, politically, religiously or socially, but because their country is torn by war or because the situation in their country in terms of national disaster requires that protection.”¹¹ Morrison added during House floor consideration of H.R. 4300 that “[t]his provision . . . establishes a standard rule to be applied in future cases in other countries.”¹²

The third reason was, as Rep. Morrison stated during floor consideration of H.R. 45, that the Executive Branch “created [EVD] out of whole cloth”, purportedly as “a matter of prosecutorial discretion”.¹³ He concluded that “[This] is an inadequate basis for this kind of [TPS]. There ought to be a statutory structure. This bill creates that kind of statutory structure.”¹⁴ Rep. Richardson stated elaborated during House floor consideration of H.R. 45:

[One of t]he two strongest arguments in favor of this bill [is] that it is going to establish an orderly, systematic procedure for providing [TPS] . . . because we need to replace the current ad hoc, haphazard regulations and procedures that exist today The current bureaucratic procedure is not only arbitrary but it is so discretionary that aliens currently under temporary stays are never certain that they are truly protected. It is unclear what the aliens’ rights are, how the Justice Department determines what countries merit EVD status or how long they will be able to stay.¹⁵

⁸ 136 Cong. Rec. 36839 (Oct. 27, 1990), available at <https://www.govinfo.gov/content/pkg/GPO-CRECB-1990-pt25/pdf/GPO-CRECB-1990-pt25-1-2.pdf>.

⁹ 135 Cong. Rec. 25836 (Oct. 25, 1989).

¹⁰ 135 Cong. Rec. 25837 (Oct. 25, 1989).

¹¹ 135 Cong. Rec. 25844 (Oct 25, 1989).

¹² 136 Cong. Rec. 27131 (Oct. 2, 1990).

¹³ 135 Cong. Rec. 25844 (Oct. 25, 1989).

¹⁴ *Id.*

¹⁵ 135 Cong. Rec. 25837 (Oct. 25, 1989).

The TPS Promise: Temporary Means Temporary

Advocates for a statutory TPS program were careful to emphasize that it would convey a purely temporary status that would eventually expire, and additionally that once a country's TPS status was terminated, beneficiaries would have to leave the United States. For example, in 1988, Rep. Mazzoli stated during House floor consideration of a TPS bill (H.R. 4379) that “[i]t allows the Attorney General to establish cutoff dates after which the **alien must return home** unless [TPS] status is extended.”¹⁶

In 1989, during House floor consideration of H.R. 45, Rep. Moakley (the bill's author) stated:

I have heard it said that if we enact this bill, the people covered will stay here forever. Well, I don't know about all of you, but I have had long conversations with these exiles from China, Nicaragua, and El Salvador. Over the years, I've come to know these people very well. They are patriots; they love their countries; they cherish their heritage; they value their culture; and they believe in democracy. I am certain that **many, if not most, dreams of the day that they can return to the land where they were born**, with the hope of building a better life. And yes, the United States is a great country, and sure, some people who have come here in fear will hope to remain. But I believe **a substantial majority will return voluntarily and this bill provides a mechanism to ensure this result.**¹⁷

Additionally, during floor debate on H.R. 45:

- Rep. Morrison stated:

[The bill] will create humanitarian relief in an organized and fair way for three nationalities of individuals who are here in the United States and for whom there is no will to send them back, to deport them at this time, but **who are not to be admitted as permanent residents of the United States, but rather to be in this temporary status**, and be identified so that when a decision is made a few years down the road as to whether they can safely return home, we know who they are, we can direct them to return, and **we can enforce the laws with respect to them.**¹⁸

- Rep. Richardson stated that “[T]he bill . . . provide[s] . . . simply temporary protected status under very limited circumstances. The suspension of deportation is not the same as the granting of political asylum, because **the deferral of deportation is only temporary. The bill is not granting . . . aliens permanent resident status.**”¹⁹

¹⁶ 134 Cong. Rec. 28604 (Oct. 5, 1988) (emphasis added), available at <https://www.govinfo.gov/content/pkg/GPO-CRECB-1988-pt20/pdf/GPO-CRECB-1988-pt20-1-2.pdf>.

¹⁷ 135 Cong. Rec. 25845 (Oct. 25, 1989) (emphasis added).

¹⁸ 135 Cong. Rec. 25833 (Oct. 25, 1989) (emphasis added).

¹⁹ 135 Cong. Rec. 25837 (Oct. 25, 1989) (emphasis added).

- Rep. Fish stated that “Aliens who register . . . will become more identifiable. This is far better than the present situation where we do not know the identity or whereabouts of hundreds of thousands. **They will be more likely to leave the country if conditions at home improve and their temporary status terminates.**”²⁰

In 1989, the House Judiciary Committee’s report on a TPS bill (H.R. 2929) stated that:

[T]he Committee believe that the current temporary protected status (i.e., EVD) program is seriously flawed and in urgent need of reform. Some of the more glaring deficiencies in the present program [include] . . . **INS cannot effectuate the deportation of aliens whose EVD status has expired**, since it does not monitor those aliens' whereabouts”.²¹

In 1990, Democrat Whip William Gray III (D-Pa.) stated during House floor consideration of H.R. 4300 that “[W]e are not asking that these people be given permanent resident status in this country. **We are not asking that they be allowed to live indefinitely in this country.** We are simply asking that they be spared detention and deportation until the war in their land subsides.”²²

The TPS Promise: The Extinction of Extended Voluntary Departure

Congress was clear that TPS was replacing the Executive Branch’s use of non-statutory class-based deportation relief/immigration benefit programs – TPS was to be the sole mechanism available. The Immigration Act of 1990 provided that:

Except as otherwise specifically provided, this section shall constitute the exclusive authority of the Attorney General under law to permit aliens who are or may become otherwise deportable or have been paroled into the United States to remain in the United States temporarily because of their particular nationality or region of foreign state of nationality.²³

For years, Congress had been sending this message quite clearly. In 1988, the Judiciary Committee’s report on H.R. 4379 stated that the bill “does not permit the Attorney General to craft a different safe haven program on the basis of any alleged prosecutorial discretion”,²⁴ and Rep. Mazzoli stated during House floor consideration that that bill “removes from the Attorney General his present powers to grant [EVD].”²⁵ And, in 1989, the Judiciary Committee’s report on H.R. 2929 stated that the bill “does not permit the Attorney General to craft a different safe haven

²⁰ 135 Cong. Rec. 25836-37 (Oct. 25, 1989) (emphasis added).

²¹ H.R. Rep. No. 101-245, at 12 (1989) (emphasis added).

²² 136 Cong. Rec. 27130 (Oct. 2, 1990) (emphasis added), available at <https://www.govinfo.gov/content/pkg/GPO-CRECB-1990-pt19/pdf/GPO-CRECB-1990-pt19-2-2.pdf>.

²³ Section 302(a) of Pub. L. No. 101-649 (now found at INA § 244(g) (8 U.S.C § 1254a(g)).

²⁴ H.R. Rep. No. 100-627, at 9 (1988).

²⁵ 134 Cong. Rec. 28604 (Oct. 5, 1988).

program for an entire class of people on the basis of any alleged prosecutorial discretion”²⁶ and Rep. Moakley used exactly the same words during House floor consideration of H.R. 45.²⁷

The TPS Reality: “There Is Nothing as Permanent as a Temporary Refugee”²⁸

At a March 4, 1999, hearing of the House Judiciary Committee’s Subcommittee on Immigration and Claims, Subcommittee Chairman Lamar Smith (R-Texas) stated that “The question is not whether TPS should be granted—in many instances it should be. The question is whether it is really temporary and to what extent TPS invites fraud.”²⁹ And my colleague Mark Krikorian, Executive Director of the Center for Immigration Studies, testified at the hearing that: “The fallout from Hurricane Mitch in Central America is precisely the kind of natural disaster TPS was intended to address. If the up to 90,000 Hondurans who received this status actually go home after their TPS expires, then it may well have served its purpose.”³⁰

At the hearing, Mr. Krikorian bluntly addressed whether they would ever go home:

Temporary protection would simply be a lie if it were used as a back door to permanent immigration or a fig leaf to cover political unwillingness to enforce the law.³¹

[I]f Congress or the Administration consider it advisable to grant an amnesty to illegal aliens from a certain country, simple honesty demands that the amnesty be called by its proper name.³²

He also predicted what the likely outcome of a new TPS program would be:

Experience suggests that the grant of TPS to Hondurans and Nicaraguans is unlikely to be any different [from past grants] and that they probably will end up remaining.³³

Few, if any, Hondurans or Nicaraguans currently covered by TPS will ever depart voluntarily or be removed.³⁴

²⁶ H.R. Rep. No. 101-245 at 14.

²⁷ 135 Cong. Rec. 25847 (Oct. 25, 1989).

²⁸ In 1999, Mark Krikorian testified before the House Judiciary Committee that “[i]t is clear that every previous large grant of temporary status has resulted in amnesty, confirming the truism that there is nothing as permanent as a temporary refugee”. See *Designations of Temporary Protected Status and Fraud in Prior Amnesty Programs: Hearing Before the Subcomm. on Immigration and Claims of the House Comm. on the Judiciary*, 106th Cong. at 69 (1999), available at https://commdocs.house.gov/committees/judiciary/hju59871.000/hju59871_0.HTM.

²⁹ *Id.* at 9.

³⁰ *Id.* at 69.

³¹ *Id.*

³² *Id.* at 77.

³³ *Id.* at 70.

³⁴ *Id.* at 77.

Mr. Krikorian was not the only one with such concerns. In 1987, Assistant Attorney General John Bolton stated in explaining the George H.W. Bush administration's opposition to H.R. 2922 that:

[T]his bill will hamper enforcement of our immigration laws because of the anticipated accumulation of an enormous backlog of cases. We see great difficulty in controlling and enforcing departure of aliens who have received deferred departure relief. It is the experience of the Department of Justice (DOJ) that aliens with EVD maintain residence here and ultimately fail to voluntarily depart, causing substantial increased costs to the government to effect their removal. Although the bill only applies to those aliens in the United States on a specific date, it will be impossible to preclude later entrants who assert a prior entry date, thus hampering our efforts to control illegal entry along the southern borders.³⁵

These fears were certainly prescient. Last year, Mohamad Moslimani, writing for the Pew Research Center, concluded that:

Some current TPS beneficiaries have lived in the U.S. for two decades or more. For example, those from Honduras and Nicaragua have been eligible because of damage from Hurricane Mitch in 1998, provided they have been living in the U.S. since Dec. 30 of that year. And current protections for immigrants from El Salvador apply to those who have lived in the U.S. since Feb. 13, 2001, following a series of earthquakes that killed more than a thousand people and inflicted widespread damage there.³⁶

The Wharton School at the University of Pennsylvania's Penn Wharton Business Model has provided a graphic demonstration:³⁷

³⁵ Letter from John Bolton, Assistant Attorney General, DOJ, to Peter Rodino, Chairman, House Judiciary Committee (Oct. 28, 1987), reproduced in H.R. Rep. No. 100-627 at 10.

³⁶ Mohamad Moslimani, Pew Research Center, *How Temporary Protected Status has Expanded under the Biden Administration*, Mar. 29, 2024, available at <https://www.pewresearch.org/short-reads/2024/03/29/how-temporary-protected-status-has-expanded-under-the-biden-administration/>.

³⁷ Jesús Villero, Brendan Warshauer, and Youran Wu, *550,000 Workers Lose Status by End of 2025: Potential Impact by State and Industry*, The Wharton School of Business, Univ. of Penn., Penn Wharton Business Model, Nov. 19, 2025, available at <https://budgetmodel.wharton.upenn.edu/issues/2025/11/19/demographic-and-labor-market-profile-of-tps-beneficiaries>.

Figure 2. TPS holders by country over time

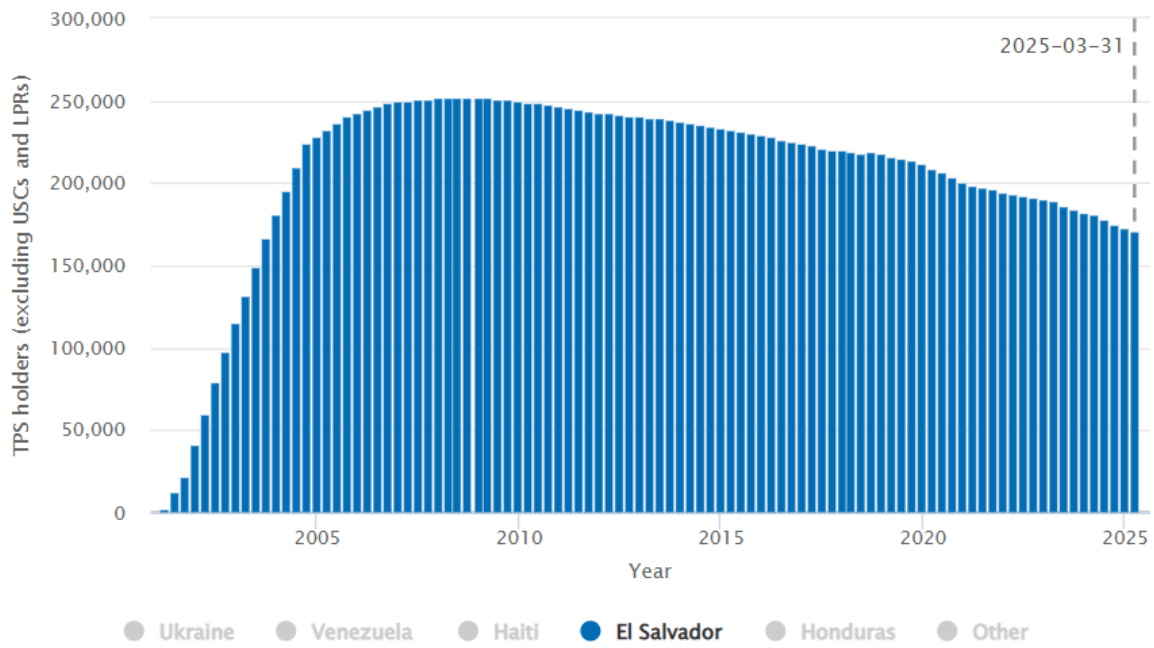
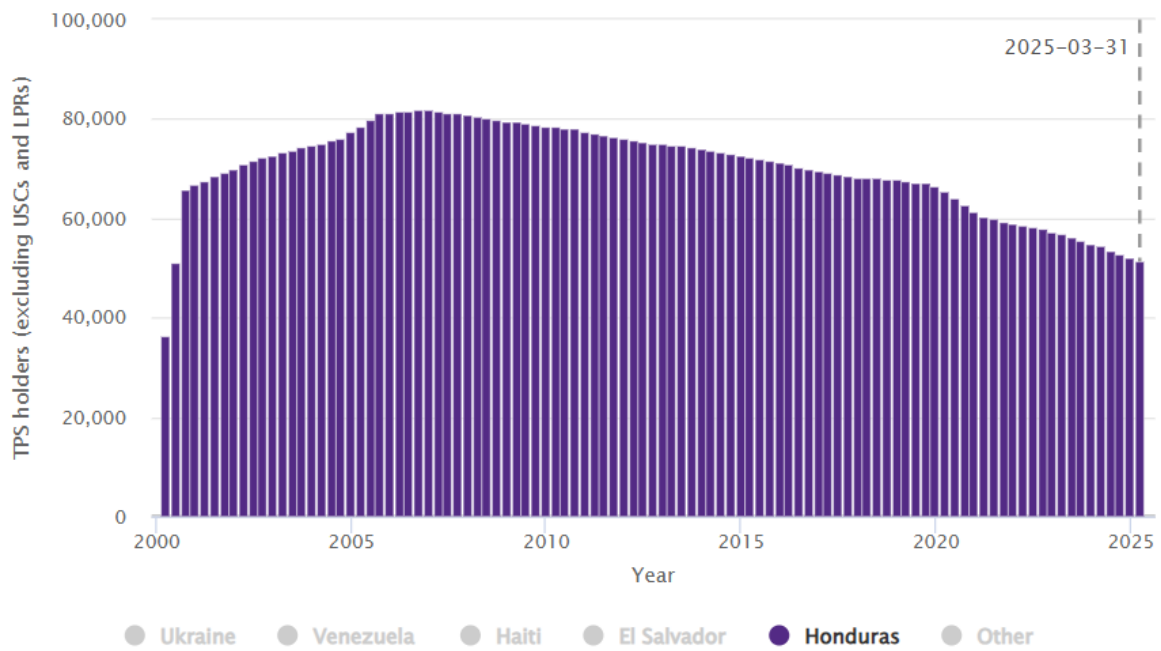


Figure 2. TPS holders by country over time



As to the promised voluntary departure or forced removal of aliens following the termination of their TPS status, an exchange at the Judiciary Committee's 1999 hearing between Chairman Smith and Paul Virtue, the INS's General Counsel, is instructive:

[Rep. Smith] What figures do you have to show how many individuals who received temporary protective status actually voluntarily departed when they were supposed to? . . . voluntarily left when the TPS period, typically 18 months, had expired?

[Mr. Virtue] We have no information on that.

[Rep. Smith] Do you have any information on the number of individuals the INS has sought out and deported after their TPS had expired?

[Mr. Virtue] We don't track our removals on the basis of whether the person had applied for and been granted [TPS].

[Rep. Smith] In other words, you have no idea what happens to the individuals who were granted TPS?... [Y]ou don't know how many leave when they are supposed to, nor do you deport anybody or [have] any record of deporting anybody after the time has lapsed?

[Mr. Virtue] We haven't tracked those removals either in terms of voluntarily removals or required removals in terms of tracking them, relating that to the temporary status.³⁸

I would tend to doubt that DHS would be in a position to give a different answer today.

Elisa Massomino, Director, Lawyers Committee for Human Rights, even went so far as to suggest at the hearing that "The United States should consider building in incentives to encourage return and assist in overcoming the fears and uncertainties that may prevent TPS beneficiaries from returning home. For example, the United States may be able . . . to provide financial assistance to returnees to ease reintegration."³⁹

The Reality: Extended Voluntary Departure/ Deferred Enforced Departure

At the Judiciary Committee's 1999 hearing. Mark Krikorian testified that "[b]efore the existence of the current TPS system, people from a number of countries in Latin America, Eastern Europe, Africa and Southeast Asia were granted [EVD]".⁴⁰ However, when the TPS status of almost 200,000 illegal aliens from El Salvador expired in 1992, "the administration still choose not to deport them and simply reverted to the old practice of EVD, though with the purely cosmetic

³⁸ *Designations of Temporary Protected Status and Fraud in Prior Amnesty Programs* at 52-53.

³⁹ *Id.* at 113 (written statement).

⁴⁰ *Designations of Temporary Protected Status and Fraud in Prior Amnesty Programs* at 68.

change of changing the name of this ad hoc status from [EVD] to deferred enforced departure [DED]”.⁴¹ Three decades later, little has changed despite the availability of TPS. This August, the Congressional Research Service (CRS) noted the Executive Branch’s most recent grants of DED to Liberians (2017), Palestinians (2024), Lebanese (2024), and residents of Hong Kong (2025).⁴²

Despite Congress’s creation of TPS and its command to the contrary in the Immigration Act of 1990, EVD/DED is alive and well.

On What Basis May TPS Be Terminated or Extended?

The TPS statute (§ 244 of the Immigration and Nationality Act (INA)) provides that:⁴³

- Periodic review

At least 60 days before end of the initial period of designation, and any extended period of designation, of a foreign state (or part thereof) under this section **the [Secretary of Homeland Security]**, after consultation with appropriate agencies of the Government, **shall review the conditions in the foreign state (or part of such foreign state) for which a designation is in effect . . . and shall determine whether the conditions for such designation . . . continue to be met. . . .**

- Termination of designation

If the [Secretary] determines . . . that a foreign state (or part of such foreign state) no longer continues to meet the conditions for designation . . . , the [Secretary] shall terminate the designation

- Extension of designation

If the [Secretary] does not determine . . . that a foreign state (or part of such foreign state) no longer meets the conditions for designation . . . , the period of designation of the foreign state is extended for an additional period of 6 months (or, in the discretion of the Attorney General, a period of 12 or 18 months).

The Biden administration’s extension of El Salvador’s TPS designation earlier this year amply demonstrates why a country can remain designated a quarter century after the event (in this case, an earthquake) that precipitated its initial designation⁴⁴ – 1) DHS did not believe that the adverse

⁴¹ *Id.*

⁴² Jill Wilson, Analyst in Immigration Policy, CRS, *Temporary Protected Status and Deferred Enforced Departure*, at 9 (table 2), Aug. 28, 2025, available at <https://www.congress.gov/crs-products/RS20844>.

⁴³ INA § 244(b)(3) (8 U.S.C. § 1254a(b)(3)) (emphasis added), available at <https://www.govinfo.gov/content/pkg/USCODE-2024-title8/pdf/USCODE-2024-title8-chap12-subchapII-partV-sec1254a.pdf>.

⁴⁴ INA § 244(b)(1) provides that:

conditions in the country had to bear any relation to the original precipitating event, and 2) DHS believed that non-optimal climactic conditions (with no expectation of reversal over a human lifespan) were sufficient to justify an extension. DHS explained that:

[T]he Secretary has determined that an 18-month TPS extension is warranted because the conditions supporting El Salvador’s 2001 designation for TPS on the basis of environmental disaster remain.

Geological and weather events, including significant storms and heavy rainfall in 2023 and 2024, have continued to affect El Salvador, including some of the areas most heavily impacted by the 2001 earthquakes. In addition, a significant percentage of El Salvador’s population continues to lack access to adequate clean water and lives in conditions similar to those described in previous TPS designations for El Salvador. While progress has been made in repairing physical damage caused by the 2001 earthquakes, subsequent environmental disasters, infrastructure challenges, continued climate risks, a weak macroeconomic environment, and food insecurity underscore that the country conditions underlying the original designation continue to significantly disrupt living conditions in El Salvador.

Environmental Considerations El Salvador continues to experience significant climate and geological events, including in regions that were severely impacted in the 2001 earthquakes. Parts of El Salvador are located in Central America’s “Dry Corridor,” an area that experiences dangerously long periods of drought alternating with periods of significant rainfall that negatively impact the livelihoods and food security of its inhabitants. The Atlantic hurricane season . . . frequently impacts El Salvador and results in significant flooding as well as the destruction of crops and infrastructure.[] In addition to climate events, El Salvador is prone to significant geological events, such as earthquakes and volcanic eruptions. The United Nations International Organization for Migration reports that the “recurrent shocks are

The [Secretary of Homeland Security], after consultation with appropriate agencies of the Government, may designate any foreign state (or any part of such foreign state) under this subsection only if—

(A) the [Secretary] finds that 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) the [Secretary] finds that—

(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) the [Secretary] finds that 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 [Secretary] finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.

becoming more intense; in the last seven years, storms and hurricanes have increased both in number and destructive force.” In January 2023, Salvadoran authorities reported a series of 219 earthquakes, which caused at least 20 landslides in El Salvador in the span of 24 hours. In June 2024, increased humidity off the Pacific coast of El Salvador led to exceptionally heavy and persistent rainfall, resulting in multiple landslides and flooding. The landslides affected homes and roads, causing 1,542 families (more than 4,000 people) to be evacuated. Among the areas most impacted by heavy rains were regions that were significantly impacted by the 2001 earthquakes While those areas were some of the most heavily affected, there was disastrous flooding throughout the entire country. The rains resulted in volatile conditions causing infrastructure damage and ultimately led to nationwide “red alerts,” warnings issued in response to dangerous weather conditions, and a declaration of a national state of emergency.⁴⁵

Consequently, these “extreme weather events . . . impact [El Salvador’s] ability to meet certain basic needs, like access to water and food, for impacted Salvadorans.”⁴⁶

Clearly, such climatic conditions could be cited in perpetuity as a basis for “Temporary” Protected Status, despite the fact that El Salvador “was initially designated for TPS on the basis of environmental disaster, following two separate massive earthquakes in 2001 that resulted in a substantial disruption of living conditions”.⁴⁷ What of the statutory requirements that the disruption of living conditions be “**temporary**” and that the country be “unable, **temporarily**, to handle adequately the return to the state of aliens who are nationals”?⁴⁸

Further, it is surprising to learn that, according to the United Nations’ World Tourism Organization (UN Tourism) Tourism Statistics Database⁴⁹ and Data Dashboard,⁵⁰ that in 2024, 3,187,000 international tourists visited El Salvador and stayed for at least one night, while there were 3,956,800 total visits (representing a 129% increase over 2016).⁵¹ El Salvador can handle millions of foreign tourists a year but is “still unable to handle adequately the return to the state of aliens who are nationals”?

The meaning of a country “continu[ing] to meet the conditions for designation” is crucial – for if a country does not continue to meet the conditions, the Secretary of Homeland Security **must** terminate its designation during a periodic review. In the case of El Salvador, does it mean that the

⁴⁵ Extension of the Designation of El Salvador for Temporary Protected Status, 90 Fed. Reg. 5953, 5955 (Jan. 17, 2025) (footnotes omitted), available at <https://www.govinfo.gov/content/pkg/FR-2025-01-17/pdf/2025-00626.pdf>.

⁴⁶ *Id.*

⁴⁷ *Id.* at 5954 (footnote omitted).

⁴⁸ *See* n.52.

⁴⁹ UN Tourism, Tourism Statistics Database, Tourism Statistics -- Inbound Tourism: Arrivals, <https://www.untourism.int/tourism-statistics/tourism-statistics-database> (last visited Dec. 14, 2025).

⁵⁰ UN Tourism, Dashboard, <https://www.untourism.int/tourism-data/un-tourism-tourism-dashboard> (last visited Dec. 14, 2025).

⁵¹ In 2022, 1,494,000 international tourists visited Guatemala and stayed at least one night, while there were 1,844,700 total visits (a 6% decrease from 2016). In 2022, 844,000 international tourists visited Honduras and stayed at least one night, while there were 1,911,000 total visits (equivalent to 2016). In 2022, 817,900 international tourists visited Nicaragua and stayed at least one night, while there were 932,700 total visits (a 45% decrease from 2016). *See* n.57-58.

2001 earthquake still must be causing substantial, but temporary, disruption of living conditions a quarter century later or does it mean that any subsequent “environmental disaster” can be causing the requisite disruption? Or does it mean whatever the Secretary in her discretion determines that it to mean?

Ramos v. Wolf

In 2000, the Ninth Circuit concluded in *Ramos v. Wolf*⁵² that:

Nothing in the language of the TPS statute requires the Secretary to consider intervening events prior to terminating TPS, or to explain her failure to do so. In fact, the statute is entirely silent as to the specific types of events or factors the Secretary must consider in reaching her TPS determinations. As far as the TPS statute is concerned, the decision whether to consider intervening events when making TPS determinations appears to be fully within the Secretary’s discretion.⁵³

[T]he statute [does not] set forth or define the “conditions in the foreign state” that the Secretary must consider in her periodic review, or how she should weigh these conditions. . . . [T]he Secretary’s discretion to consider and weigh various conditions in a foreign country in reaching her TPS determinations is not only broad, but unreviewable. In other words, the statute not only sets forth very few legal parameters on what the Secretary must consider in designating, extending, or terminating TPS for a foreign country, but also expressly bars judicial review over these determinations.⁵⁴

The court concluded that:

As far as the TPS statute is concerned, the decision whether to consider intervening events when making TPS determinations appears to be fully within the Secretary’s discretion. Thus, even presuming that DHS adopted a new practice of refusing to consider intervening events, as Plaintiffs allege, the TPS statute provides no legal basis to challenge such an action.⁵⁵

The Ninth Circuit noted that:

The district court compared the TPS designation notices issued by prior administrations with the ones issued under the Trump administration, and also relied heavily on testimony and decision memoranda from Leon Rodriguez, a former U.S. Citizenship and Immigration Services (USCIS) director, regarding past policy and practices.

⁵² See n.1.

⁵³ 975 F.3d at 893.

⁵⁴ *Id.* at 891.

⁵⁵ *Id.* at 893.

(fn) Rodriguez stated in a declaration that, both before and during his tenure at USCIS, there was no agency policy or practice that precluded “consideration of the full range of current country conditions” in assessing whether a TPS designation should be terminated or extended. “Rather, USCIS had broad discretion to consider current conditions in the subject country. Intervening factors arising after a country’s original TPS designation, such as subsequent natural disasters, issues of governance, housing, health care, poverty, crime, general security, and other humanitarian considerations were considered relevant to determining whether a country continued to meet the conditions for continuing TPS designation. **This was true regardless of whether those intervening factors had any connection to the event that formed the basis for the original designation or to the country’s recovery from that originating event.**”⁵⁶

The dissent by Judge Morgan Brenda Christen explained that:

The complaint [in the case] alleges that although “no relevant statute or regulation has changed in the intervening decades,” DHS now [during President Trump’s first term] takes the position that intervening events cannot be considered. According to the complaint, the Secretaries adopted a novel interpretation of the TPS statute, and concluded that they lacked the statutory authority to consider intervening events. This change was adopted “without a formal announcement to disclose its rationale for making a dramatic change to a decades-old policy.”⁵⁷

The central allegation in plaintiffs’ [Administrative Procedure Act] APA claim is that DHS arbitrarily changed a practice that had been followed by several administrations.⁵⁸

The complaint unmistakably asserts that “Defendants’ sudden and unexplained departure from decades of consistent interpretation and corresponding practice violates the [APA].”⁵⁹

Judge Christen wrote that “[o]n appeal, the government argues that it did not change its policy, practice, or interpretation of the TPS statute”⁶⁰ but that “[t]he complaint expressly alleges that the agency’s changed practice resulted from the Secretary’s re-interpretation of the TPS statute.”⁶¹

She then pointed out that:

⁵⁶ *Id.* at 884, 884 n.9.

⁵⁷ *Id.* at 908 (footnote omitted).

⁵⁸ *Id.* at 912.

⁵⁹ *Id.* at 914.

⁶⁰ *Id.* at 920.

⁶¹ *Id.* at 914.

The cornerstone of th[e majority’s] argument is [its] assumption that the TPS statute grants the Secretary unbridled discretion to decide whether to consider intervening events. But a key allegation in the complaint is that both Secretary Kelly and Secretary Nielsen testified before Congress that the TPS statute did not allow them that discretion. . . . [T]he district court cited additional evidence that strongly suggests Acting Secretary Duke had the same understanding regarding the scope of her statutory authority.⁶²

Indeed, despite Secretary Kelly’s testimony that he did not have the discretion to consider intervening events, it is uncontested that he considered them when he extended Haiti’s designation in 2017.⁶³

There is no real room for debate that the agency changed its practice. Former Secretary Kelly, former Acting Secretary Duke, and former Secretary Nielsen all said as much. In January 2018, Secretary Nielsen testified before the Senate Judiciary Committee and described the administration’s process for making TPS decisions:

- “We did not talk generally about the country conditions, and I want to be very clear on this. The law does not allow me to look at the country conditions of a country, writ large.”
- The TPS statute “requires me to look very specifically as to whether the country conditions originating from the original designation continue to exist.”
- Referring specifically to El Salvador, Secretary Nielsen stated, “[W]e didn’t dispute the country conditions are difficult . . . , unfortunately, the law requires me, if I cannot say that the conditions emanating from the earthquakes still exist, regardless of other systemic conditions, I must terminate TPS.”

Secretary Nielsen also testified in April 2018 before the House Appropriations Subcommittee on Homeland Security. . . . stat[ing]:

- “[T]he law really restricts my ability to extend TPS. The law says that if the effects of the originating event, so that’s a causation issue, do not continue to exist, then the [S]ecretary of Homeland Security must terminate.”

In 2017, before Elaine Duke became Acting Secretary, Secretary Kelly testified to a similar understanding of the scope of his authority pursuant to the TPS statute, explaining that TPS is granted “for a specific event,” such as the 2010 earthquake in Haiti, and the law required that he look only at whether the original condition

⁶² *Id.* at 914-15.

⁶³ *Id.* at 915 n.7.

warranting the TPS designation had abated. Kelly testified that it was admittedly hard to remove people who had relied on TPS for twenty years, “[b]ut according to the law, I don’t have the ability to solve it.” Later, in an email to then-White House Chief of Staff Kelly, Acting Secretary Duke made clear that she understood the agency’s practice had changed. Acting Secretary Duke wrote that her decision to terminate the TPS designation for Nicaragua reflected “a strong break with past practice” that “will send a clear signal that TPS in general is coming to a close.”⁶⁴

Judge Christen concluded that “the government’s position on appeal is in significant tension with the majority’s view that the statute grants the Secretary unfettered discretion to consider or not consider intervening events”⁶⁵ and that “[t]he district court’s review of the record compellingly supports the plaintiffs’ contention that DHS changed its policy in the way plaintiffs’ complaint describes”.⁶⁶

It seems likely that DHS in President Trump’s first term did change its interpretation of the meaning of “continu[ing] to meet the conditions for designation”. However, I believe DHS’s revised interpretation to be the correct one. It makes absolutely no sense to read the TPS statute as requiring DHS to extend (potentially indefinitely) a country’s TPS designation based on intervening factors “regardless of whether those intervening factors had any connection to the event that formed the basis for the original designation or to the country’s recovery from that originating event” (in the words of Leon Rodriguez).

For, as the Ninth Circuit pointed out in *Ramos*:

[W]hen it comes to designating a country for TPS, the Secretary “may” do so if she finds that the country has been stricken by a natural disaster, armed conflict, or other “extraordinary and temporary conditions in the foreign state.” . . . The word “may” indicates that, even if the Secretary finds one of these three requisite criteria is met, she retains the discretion not to designate a country for TPS. . . . [T]o the extent the TPS statute places constraints on the Secretary’s discretion, it does so in favor of limiting unwarranted designations or extensions of TPS.⁶⁷

The statute provides that “[i]f the [Secretary] does not determine . . . that a foreign state . . . no longer meets the conditions for designation”, then “the period of designation of the foreign state **is extended**”.⁶⁸ Thus, requiring consideration of intervening factors “regardless of whether [they] had any connection to the event that formed the basis for the original designation or to the country’s recovery from that originating event” in essence means that a Secretary must continue to extend a country’s designation despite the fact that the TPS statute is built around the precept that the Secretary “may designate any foreign state”. Again, this makes no sense. As the Supreme Court concluded in *United States v. Boisdore’s Heirs* back in 1850, “[i]n expounding a statute, we

⁶⁴ *Id.* at 920.

⁶⁵ *Id.* at 921 n.10.

⁶⁶ *Id.* at 923.

⁶⁷ *Id.* at 890-91.

⁶⁸ Emphasis added.

must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.”⁶⁹

Post-Ramos v. Wolf

As CRS explained, after the Ninth Circuit’s decision in *Ramos*:

[The plaintiffs] filed a petition for rehearing en banc (i.e., a petition requesting review of the panel’s decision by all active judges in the circuit). Subsequently, the Ninth Circuit panel stayed the litigation pending settlement discussions between the parties in light of the Biden Administration’s indication that it would review the TPS designation terminations. After a few years, those settlement efforts reportedly ended without agreement. . . . [O]n February 10, 2023, the Ninth Circuit granted the plaintiffs’ request to rehear the case . . . and vacated the panel’s decision.⁷⁰

Then, on June 13, 2023, DHS “announced the rescission of the prior Administration’s terminations of the [TPS] designations for El Salvador, Honduras, Nepal, and Nicaragua and the extension of TPS for these for countries for 18 months.”⁷¹

Interestingly, it is not clear whether DHS during President Trump’s second term is continuing to (correctly) assert that intervening factors may not be considered in extension decisions. Consider that:

- On November 25, 2025, DHS published a notice in the Federal Register stating that it was terminating TPS for Burma. “Burma continues to face humanitarian challenges due in part to continued military operations against armed resistance and the need for humanitarian assistance [but] there have . . . been improvements in Burma’s governance and stability at the national and local levels” and “[b]ased on the Department’s review, the Secretary has determined that, while certain extraordinary and temporary conditions may remain, such conditions no longer hinder the safe return of aliens who are nationals of Burma to the country.”⁷²
- On November 25, 2025, DHS published a notice in the Federal Register stating that it was terminating TPS for South Sudan. “Based on the Department’s review, the Secretary has determined the situation in South Sudan no longer meets the criteria for an ongoing armed conflict that poses a serious threat to the personal safety of returning South Sudanese

⁶⁹ 49 U.S. 113, 122 (1850), available at <https://supreme.justia.com/cases/federal/us/49/113/>.

⁷⁰ Hillel Smith, Legislative Attorney, CRS, *Legal Sidebar: Termination of Temporary Protected Status for Certain Countries: Recent Litigation Developments*, at 3 (Mar. 8, 2023), available at <https://www.congress.gov/crs-product/LSB10541>; *Ramos v. Wolf*, No. 18-16981, slip op. at 1 (9th Cir. Feb. 10, 2023), available at <https://cdn.ca9.uscourts.gov/datastore/opinions/2023/02/10/18-16981.pdf>.

⁷¹ DHS, *DHS Rescinds Prior Administration’s Termination of Temporary Protected Status Designations for El Salvador, Honduras, Nepal, and Nicaragua*, June 13, 2023, available at <https://www.dhs.gov/archive/news/2023/06/13/dhs-rescinds-prior-administrations-termination-temporary-protected-status>.

⁷² Termination of the Designation of Burma (Myanmar) for Temporary Protected Status, 90 Fed. Reg. 53378, 53379-80 (Nov. 25, 2025), available at <https://www.govinfo.gov/content/pkg/FR-2025-11-25/pdf/2025-21069.pdf>.

nationals” and “regarding the extraordinary and temporary conditions, there have been improvements in South Sudan’s civil safety outlook, which would allow aliens to safely return to the country.”⁷³

- On December 15, 2025, DHS published a notice in the Federal Register stating that it was terminating TPS for Ethiopia. “Based on the Department’s review, the Secretary has determined the situation in Ethiopia no longer meets the criteria for an ongoing armed conflict that poses a serious threat to the personal safety of returning Ethiopian nationals” and “a review of the extraordinary and temporary conditions that gave rise to past designations such as internal displacement, food insecurity, and disease outbreaks are showing signs of improvement which would allow aliens to safely return to the country and live in the regions not affected by the conflict.”⁷⁴

Is DHS abandoning the view that intervening factors cannot be considered? I would certainly hope not.

Vetted or Unvettable?

As most alien beneficiaries of TPS status are illegally present, the question arises as to whether it is at all possible to adequately vet them for criminal and national security concerns. Keep in mind that, as the House Committee on Homeland Security’s 2024 report on H. Res. 863, the impeachment resolution against President Biden’s DHS Secretary Alejandro Mayorkas, stated:

Rodney Scott, Secretary Mayorkas’ first USBP Chief, has explained to Committee staff the limitations involved in “thoroughly” or “rigorously” vetting many foreign nationals:

The Secretary knows that when U.S. Border Patrol agents run those records checks, or ICE [U.S. Immigration and Customs Enforcement] or anybody else, on foreign nationals . . . it is only checking points of entry, well, it is only checking U.S. databases really, but it’s primarily only criminal offenses that have happened in the U.S.

On a limited basis, we will get information from . . . INTERPOL or we’ll have a connectivity to another nation, but we don’t have direct plug-ins to other nations’ criminal databases. And many of the nations these people are coming from, we know for a fact, don’t even have good criminal database records systems to pull from.

And, a lot of times, we have no idea even who the person is. So the fingerprints, that’s valid, but they can make up any name they want.

⁷³ Termination of the Designation of South Sudan for Temporary Protected Status, 90 Fed. Reg. 50484, 50485 (Nov. 6, 2025), available at <https://www.govinfo.gov/content/pkg/FR-2025-11-06/pdf/2025-19800.pdf>.

⁷⁴ Termination of the Designation of Ethiopia for Temporary Protected Status, 90 Fed. Reg. 58028, 58029-30 (Dec. 15, 2025), available at <https://www.govinfo.gov/content/pkg/FR-2025-12-15/pdf/2025-22746.pdf>.

In the perfect world, if an agent has any suspicion, then that agent has the ability to work through the State Department or the consulate's office, go to that country, ask a bunch of more questions. But when you're handling over a thousand arrests a day, let alone 10,000, the agents don't have time to do any of that.

This has all been briefed to . . . Secretary [Mayorkas]. He knows that vetting is a joke. It's literally a check-the-box. It's only people that have been in the U.S., committed a crime, and either left on their own or been deported. And we have no idea what any of these people did anywhere else in the world.⁷⁵

The report also presented testimony by Mr. Scott before the House Judiciary Committee:

When law enforcement officers at any level in the U.S. use a person's biographical and biometric information to run records checks, that freshly collected information is being compared to existing records in specific U.S. agency databases. It is extremely rare for any information about criminal acts committed by a foreign national outside the U.S. to be documented within these U.S. criminal history databases. When Secretary Mayorkas or any U.S. official asserts that aliens are properly vetted, they are really telling you that they checked U.S. databases to see if the alien had any known criminal history inside the U.S. or if the alien had been identified and placed in the Terrorist Screening Database or Data Set.

To ensure there is no confusion here, running records checks on any alien that has not been arrested by U.S. law enforcement in the past or is not currently known by U.S. intelligence is like looking for something on an empty hard drive. There is simply no data to compare it with. The alien could be a saint, or he/she could be a serial killer. There are a few ways to find out more about who the alien really is. One way is to request information from officials in the alien's home nation. At best, that is extremely time consuming and requires U.S. State Dept. support. In many cases this is not even an option due to a lack of diplomatic relations or a lack of capabilities in the other nation. Another way to solicit more information is for a skilled interviewer to conduct an in-depth face-to-face interview in the alien's native language.⁷⁶

⁷⁵ H.R. Rep. No. 118-372, book 1, at 107-08 (2024) (citing H. Comm. on Homeland Sec., Transcribed Interview with Rodney Scott, at 51–52, Jan. 22, 2024), available at <https://www.congress.gov/118/crpt/hrpt372/CRPT-118hrpt372-pt1.pdf>.

⁷⁶ *Id.* at 108 (2025) (citing *Terrorist Entry Through the Southwest Border: Hearing Before the Subcomm. on Immig'r Integrity, Sec., and Enf't of the H. Judiciary Comm.* 118th Cong. (Sept. 14, 2023)).

Characteristics of TPS Beneficiaries

Penn Wharton Business Model has prepared an estimate of demographic characteristics of alien beneficiaries of TPS status:⁷⁷

Table 3. Demographic characteristics of TPS beneficiaries

	TPS	U.S. born	Foreign-born, non-TPS
Age	44.0	47.0	48.8
Age (standard deviation)	12.6	19.4	16.8
Female (%)	47.2	51.1	51.3
Hispanic (%)	77.8	12.5	44.1
Education: Less than high school (%)	38.9	10.7	24.8
Education: High school (%)	24.3	26.8	22.4
Education: Some college (%)	16.1	29.7	18.9
Education: College (%)	14.0	20.7	18.8
Education: Advanced degree (%)	6.7	12.1	15.0
Years of residence in the U.S.	17.7	N/A	25.1
Years of residence (standard deviation)	12.6	N/A	16.1
Does not speak English or does not do it well (%)	44.3	0.5	25.5

Recommendations

I would recommend that the Committee consider a modification of the TPS statute proposed in 2017 by Raúl Labrador (R-Idaho), then-Chairman of the House Judiciary Committee’s Subcommittee on Immigration and Border Security, as part of his “Michael Davis, Jr. and Danny Oliver in Honor of State and Local Law Enforcement Act” (H.R. 2431).⁷⁸ The legislation would have required that Congress sign off on any extensions of TPS extensions by DHS:

⁷⁷ Jesús Villero, Brendan Warshauer, and Youran Wu.

⁷⁸ H.R. 2431, § 608 (115th Cong.), available at <https://www.congress.gov/115/bills/hr2431/BILLS-115hr2431ih.pdf>.

If the Secretary determines . . . that a foreign state . . . continues to meet the condition for designation . . . the Secretary . . . shall submit a recommendation to the Congress to extend the period of designation for not more than 18 months. The Secretary shall set forth the justification for the extension, including the humanitarian concerns, or how the extension otherwise is in the national interest. If, 90 days after the submission of the Secretary's recommendation, the President has not signed into law legislation passed by the House and the Senate extending the designation, the designation shall be terminated

The Committee should also consider proposals to make illegal aliens ineligible for TPS status (thus, limiting such status to temporary visa holders whose authorized period of stay would otherwise expire during adverse events in their home countries). For example, in 2002, U.S. Rep. George Gekas (R-Pa.), Chairman of the House Judiciary Committee's Subcommittee on Immigration, Border Security, and Claims, included such a provision in his "Securing America's Future through Enforcement Reform Act of 2002" (H.R. 5013).⁷⁹

⁷⁹ H.R. 5013, § 901 (107th Cong.), available at <https://www.congress.gov/107/bills/hr5013/BILLS-107hr5013ih.pdf>.