

EXHIBIT 110

PRE-DECISIONAL / DELIBERATIVE

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (645 2000)
Washington, DC 20529-2000



U.S. Citizenship
and Immigration
Services

December 20, 2017

DECISION MEMORANDUM FOR THE SECRETARY

FROM: L. Francis Cissna *LFC*
Director

SUBJECT: **El Salvador's Designation for Temporary Protected Status**

Purpose: El Salvador's existing designation for Temporary Protected Status (TPS) will expire on March 9, 2018. At least 60 days before the expiration of a TPS designation, the Secretary, after consultation with appropriate U.S. Government agencies, must review the conditions in a country designated for TPS to determine whether the conditions supporting the designation continue to be met. If the Secretary determines that the conditions in the country no longer meet the statutory requirements for designation, she shall terminate the designation. If the Secretary does not determine, however, that the conditions for designation are no longer met, the TPS designation shall be extended for 6 months or, in the Secretary's discretion, 12 or 18 months.¹

U.S. Citizenship and Immigration Services (USCIS) has completed a review of the conditions in El Salvador and is presenting options and a recommendation for your consideration. In summary, USCIS assesses that El Salvador suffers few remaining residual effects related to the major earthquakes that led to its designation for TPS in 2001. Accordingly, USCIS recommends that you terminate El Salvador's existing TPS designation.

As part of the review process, USCIS has consulted with the Department of State (DOS). DOS assesses that El Salvador no longer meets the conditions required for continued designation for TPS, and Secretary Tillerson recommends termination with a delayed effective date of 18 months to provide for an orderly wind down (see Attachment B).²

El Salvador's TPS Designation: On March 9, 2001, then Attorney General Ashcroft designated El Salvador for TPS on environmental disaster grounds, specifically, because of the devastation caused by major earthquakes in January and February of that year.³

¹ See Immigration and Nationality Act (INA) § 244(b)(3)(A-C), 8 U.S.C. § 1254a(b)(3)(A-C); see also Attachment A: Temporary Protected Status Legal Authority.

² DOS sent its country conditions report and Secretary Tillerson's recommendation to DHS on October 31, 2017. In conjunction with USCIS' December 2017 update of this memorandum, USCIS asked DOS whether it wished to update its country conditions report or recommendation. On December 13, 2017, DOS confirmed that Secretary Tillerson's October 31 recommendation stands, as State assesses that conditions have not changed since that time.

³ See Designation of El Salvador Under Temporary Protected Status Program, 66 FR 14214 (Mar. 9, 2001).

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The reason for El Salvador's designation for TPS stated in the Federal Register at the time of the initial designation was that due to earthquakes on January 13, February 13, and February 17 of 2001, "the Attorney General has determined that, due to the environmental disaster and substantial disruption of living conditions caused by the earthquakes, El Salvador is 'unable, temporarily, to handle adequately the return' of its nationals." The Federal Register notice specifically cited that the earthquakes resulted in at least 1,100 deaths, 7,859 injuries, over 2,500 missing, and had displaced an estimated 1.3 million persons out of a population of 6.2 million—over 80,000 of whom were living in temporary camps. The 2001 notice also stated that "approximately 220,000 homes, 1,696 schools, and 856 public buildings have been damaged or destroyed. Earthquake-caused losses in housing, infrastructure, and the agricultural sector exceed \$2.8 billion."

At the time, the Attorney General estimated that there would be no more than 150,000 nationals of El Salvador in the United States who would be eligible for TPS. El Salvador's designation has been continuously extended since the 2001 designation, with the most recent extension announced on July 8, 2016.⁴

To be eligible for TPS under El Salvador's designation, along with meeting the other eligibility requirements, individuals must have continuously resided in the United States since February 13, 2001, and have been continuously physically present in the United States since March 9, 2001. There are approximately 262,500 Salvadoran TPS beneficiaries. Approximately 186,700 individuals re-registered for TPS under El Salvador's last extension.⁵

Current Country Conditions

USCIS and DOS have each conducted in-depth reviews of conditions in El Salvador. The country condition reports, upon which USCIS' assessment and recommendation are based, can be found in Attachments B and C.

As noted in the Federal Register notice announcing El Salvador's initial designation, the 2001 earthquakes that formed the basis for El Salvador's designation killed, injured, and displaced large numbers of persons, in addition to causing significant damage to transportation infrastructure, housing, education and health services, small and medium businesses, and the environment. Recovery from the earthquakes has been slow and encumbered by subsequent environmental challenges, including hurricanes and tropical storms, heavy rains and flooding, volcanic and seismic activity, a prolonged and severe regional drought that is impacting food security, and an increase in various mosquito-borne diseases.

Following the 2001 earthquake, El Salvador received a significant amount of international aid to assist in its recovery efforts, including millions of dollars dedicated to emergency and long-term assistance. Accordingly, many reconstruction projects have now been completed. Damaged

⁴ See Extension of the Designation of El Salvador for Temporary Protected Status, 81 FR 44645 (July 8, 2016).

⁵ The total number of beneficiaries represents all individuals who have been granted TPS since El Salvador's designation in 2001 and who have not had their TPS withdrawn. Not all of these individuals continue to re-register because they have adjusted to another valid immigration status (e.g., over 37,000 have become lawful permanent residents or U.S. citizens), have left the United States, are no longer eligible for TPS, or have failed to re-register for other reasons. As a result, the number of beneficiaries that re-register for TPS under extensions is lower than the total number of beneficiaries.

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schools and hospitals have been reconstructed and repaired, homes have been rebuilt, and money has been provided for water and sanitation and to repair damaged roads and other infrastructure. Additionally, El Salvador's economy is steadily improving. The Salvadoran government has estimated that the country's unemployment rate was 7 percent in 2014, 2015, and 2016.⁶ The Gross Domestic Product (GDP) in El Salvador reached an all-time high of \$26.80 billion (USD) in 2016 and is expected to reach \$27.3 billion (USD) by the end of 2017. El Salvador's GDP is projected to increase to about \$28.6 billion in 2020.⁷

Apart from the environmental conditions related to the 2001 earthquake, El Salvador has been affected by a regional drought over the last several years. The drought caused crop losses, food insecurity, limited or no access to clean drinking water, and income loss in affected areas. In June 2016, river levels were reportedly 20 to 60 percent below normal and an estimated 170,000 people were suffering from food insecurity. The 2017 growing season has, however, demonstrated slightly improved conditions, allowing normal development of basic grain crops. El Salvador has also experienced an outbreak of hundreds of thousands of cases of mosquito-borne illnesses since 2014.

Although El Salvador's current TPS designation is under the "environmental disaster" prong of the TPS statute, the country is experiencing widespread gang activity and one of the highest homicide rates in the world. In 2015, El Salvador was the most violent country in the world outside of a war zone with a homicide rate of 103 murders per 100,000 inhabitants. In 2016, El Salvador's homicide rate declined to 81.2 per 100,000. This number has fluctuated over the years, however, with a rate of 37.2 per 100,000 in 2003, 42.7 per 100,000 in 2012, and 41.3 per 100,000 in 2013. While the homicide rates remain extremely high in El Salvador, they have continued to trend downward in 2017, with 3,621 homicides reported during the first 11 months of the year—a 27 percent reduction as compared to the same period in 2016.

While internal violence and gang activity are not conditions that led to El Salvador's TPS designation, criminal gangs operate throughout the country. The gangs prey on residents and recruit youth, demanding extortion payments or committing violence against those who refuse. But, El Salvador is not alone with respect to the level and nature of criminal activities. According to the World Health Organization's 2002 "World Report on Violence and Health," violence is "a universal challenge" and "scourge," and "[n]o country or community is untouched by violence." Further, "[v]iolence is among the leading causes of death for people aged 15-44 years worldwide." By way of comparison, Jamaica's homicide rates have similarly fluctuated but have seen years higher than El Salvador's (62.5 in 2005, 58.6 in 2007, 59.6 in 2008, and 61.7 in 2009). Other countries with high rates include Colombia (53.4 in 2003), Brazil (27.7 in 2014), Venezuela (62 in 2014 and 57.2 in 2015), Greenland (31.8 in 2009), and Anguilla (38.8 in 2006 and 35.4 in 2012).

⁶ MINEC y DIGESTYC presentan principales resultados de la EHPM 2016, Dirección General de Estadísticas y Censos (DIGESTYC), <http://www.digestyc.gob.sv/index.php/novedades/noticias/167-ministerio-de-economia-y-digestyc-presentan-principales-resultados-de-la-encuesta-de-hogares-de-propositos-multiples-2016.html> (last visited Oct. 19, 2017); Alemán, Uvelí, Más de 2,000 ingresan a las filas del desempleo y crece el trabajo precario, *El Mundo* (El Sal.), Oct. 20, 2016.

⁷ *Trading Economics*, El Salvador GDP, available at: <https://tradingeconomics.com/el-salvador/gdp>.

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The U.S. Department of State has a current travel warning for El Salvador due to the high crime rate. Crimes are underreported due to Salvadorans' low confidence in the police and justice system, as well as threats and fears of reprisals from gangs. In confrontations between gangs and security forces, members of the police and military have been accused of participating in death squads and committing extrajudicial executions of alleged gang members. The Salvadoran government has, however, responded to gang violence by intensifying security measures and deploying thousands of extra police officers and soldiers, and limiting access to prisons to restrict gangs' communications.

It should be noted, however, the U.S. Government has been repatriating individuals back to El Salvador. During the Obama administration's second term alone, Immigration and Customs Enforcement (ICE) removed over 90,000 individuals to El Salvador.⁸ ICE removed 20,538 Salvadorans in Fiscal Year 2016 and 18,838 in Fiscal Year 2017.⁹ Government assistance and resources for returnees are reportedly limited, but the Salvadoran government, U.S. Government, and international organizations are working cooperatively to improve security and economic opportunity in El Salvador to lay the groundwork for an eventual return of many Salvadorans from the United States.

Options

1) *Extend El Salvador's Designation for TPS*

Although USCIS assesses the conditions linked to the 2001 earthquakes do not support an extension of El Salvador's designation, under the TPS statute, if you determine that the statutory conditions supporting a country's designation for TPS continue to exist, you must extend the TPS designation for an additional period of 6, 12, or 18 months. El Salvador was initially designated for TPS in 2001 as a result of the effects of a series of earthquakes. As noted in the country condition report summary, the review of conditions in El Salvador indicates that reconstruction and recovery efforts relating to the earthquakes have largely been completed. Although, as noted, subsequent environmental challenges have hampered El Salvador's recovery and development, El Salvador's current challenges cannot be directly tied to destruction stemming from the earthquakes. Therefore, USCIS assesses that, on balance of the factors, the conditions in El Salvador no longer support its TPS designation on the basis of the 2001 earthquakes.

However, an argument could be made that subsequent and, in some cases, ongoing environmental challenges – in particular, the prolonged, severe drought, and mosquito-borne disease outbreak – and other conditions have sufficiently hindered recovery such that a substantial disruption in living conditions endures. Under this counterpoint, based upon conditions subsequent to the earthquake, El Salvador continues to be unable to handle the return of its nationals, and extension is justified.

⁸ From 2013-2016, 91,240 individuals were removed to El Salvador. This total is the cumulative number of removals found in the following reports: <https://www.ice.gov/sites/default/files/documents/Report2016/removal-stats-2016.pdf>; <https://www.ice.gov/sites/default/files/documents/Report2016/fy2016removalstats.pdf>; <https://www.ice.gov/doclib/about/offices/enr/pdf/2014-ice-immigration-removals.pdf>; <https://www.ice.gov/doclib/about/offices/enr/pdf/2013-ice-immigration-removals.pdf>.

⁹ U.S. Immigration and Customs Enforcement, "Fiscal Year 2017 ICE Enforcement and Removal Operations Report", available at: <https://www.ice.gov/sites/default/files/documents/Report2017/iceEndOfYearFY2017.pdf>.

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To that point, the Government of El Salvador has requested that its TPS designation be extended (see Attachment D).

Should the decision be made to extend based upon these subsequent challenges hindering recovery, from an operational perspective, extension periods of less than 12 months are challenging given the significant workload and timeframes involved in receiving and adjudicating re-registration applications and issuing new employment authorization documents. Additionally, the deliberative review process to support TPS decision making, including consultation with DOS, typically begins 10 months before the expiration date of a country's current designation. A 12- or 18-month extension of El Salvador's designation for TPS would permit Salvadoran TPS beneficiaries to re-register for TPS and remain in the United States with work authorization through March or September 9, 2019, respectively.

2) *Terminate El Salvador's Designation for TPS*

If you determine that conditions in El Salvador no longer meet the statutory requirements for its TPS designation, you must terminate TPS for El Salvador. Termination would end TPS benefits for existing Salvadoran TPS beneficiaries. Upon the termination of TPS benefits, former beneficiaries without another immigration status would no longer have permission to work and remain in the United States. They may, however, apply for any other immigration benefits for which they may be otherwise eligible (e.g., asylum, lawful permanent residence). As explained above, USCIS assesses that termination is warranted because reconstruction efforts relating to the 2001 earthquakes have largely been completed and current challenges cannot be directly tied to damage from the earthquakes. Given that the U.S. Government removed more than 90,000 individuals to El Salvador in the last 4 years, it can be argued that the country is able to handle adequately the return of its nationals.

If you decide to terminate El Salvador's designation, you may determine the appropriate effective date of the termination. In doing so, you have the option to provide for an orderly transition period (e.g., 6, 12, or 18 months) after which TPS benefits will end. Note: the effective date of termination may not be earlier than 60 days after the date the Federal Register notice announcing the termination is published or, if later, the expiration of the most recent previous extension.

Delaying the effective date would provide those beneficiaries without any other immigration status a reasonable amount of time following the announcement of termination of the designation to plan and prepare for their departure from the United States, of particular importance for this population given the extended length of time Salvadoran TPS beneficiaries have been living in the United States. Delaying the effective date would also allow El Salvador time to prepare for and absorb those of its nationals who choose to leave the United States in a more orderly fashion -- a concern heightened by the large size of El Salvador's TPS population. DOS assesses that El Salvador remains unable to handle adequately the precipitous return of its nationals, and therefore recommends that the effective date of a termination be delayed, specifically, by 18 months to allow El Salvador much needed time to reabsorb its nationals, and permit TPS holders time to close out their affairs in the United States.

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3) *Redesignate El Salvador for TPS*

In addition to making a decision to terminate or extend El Salvador's TPS designation, you could also consider redesignating the country for TPS. A decision to redesignate a country for TPS, unlike termination or extension, is entirely at your discretion; if the statutory conditions are met, you may, but do not have to, redesignate a country for TPS. While one could argue that widespread violence warrants a new TPS designation, it is not advised. Such a basis is not explicitly contemplated by the statute outside of an armed conflict and would raise questions about the temporary need for protection given the continuing and universal challenge that crime and violence present worldwide.

Timeliness: You are required to provide timely notice of whether existing TPS designations will be extended or terminated through publication in the *Federal Register*.¹⁰ Your earliest decision will facilitate publication of notice in the *Federal Register* sufficiently in advance of the March 9, 2018 expiration of El Salvador's designation, providing predictability and clarity to beneficiaries and their employers. By statute, if you do not make a decision at least 60 days before the expiration of the current designation (i.e., by January 8, 2018), El Salvador's designation will automatically be extended for a minimum of 6 months.¹¹

¹⁰ See INA § 244(b)(3)(A).

¹¹ See INA § 244(b)(3)(A), (C).

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Recommendation: Upon consideration of all of the factors, users recommends that you terminate El Salvador's existing designation for TPS based on the 2001 earthquakes. If you decide to terminate, users recommends terminating with an effective date delayed by 6, 12, or 18 months to permit an orderly transition. This would permit current Salvadoran TPS beneficiaries to continue to remain and work in the United States through July 5, 2018; January 5, 2019; or July 5, 2019, respectively.

Decision:

1. ~~Extend~~: Extend El Salvador's existing designation for (circle one):

6 months

12 months

18 months

Approve/date _____

2. Terminate: Terminate El Salvador's designation with an orderly transition period of (circle one or specify period):

6 months

12 months

18 months

Other _____

Approve/date 1/8/18

3. Terminate and Redesignate: Terminate El Salvador's existing designation and simultaneously redesignate El Salvador:

Specify duration of redesignation (6-18 months): _____

Specify continuous residence date for eligibility under redesignation (currently February 13, 2001): _____

Approve/date _____

Attachments:

Attachment A: Temporary Protected Status Legal Authority

Attachment B: October 31, 2017 DOS Country Condition Assessment and Recommendation from Secretary Tillerson

Attachment C: December 2017 USCIS RAIO Research Unit Report on Conditions in El Salvador

Attachment D: August 2017 Letter from Government of El Salvador in Support of Temporary Protected Status Extension

Attachment E: Temporary Protected Status Vetting Process