

What is Happening with the TPS Terminations Announced by President Trump?

A backgrounder prepared by the ACLU of Southern California, Adhikaar, CARECEN-Los Angeles, the National TPS Alliance, the National Day Laborer Organizing Network, and Working Families United.

Background:

The six TPS terminations announced by President Trump (El Salvador, Haiti, Honduras, Nepal, Nicaragua, Sudan) have been put on hold as a result of federal court orders in two related cases: *Ramos* and *Bhattarai*. In addition, the federal government has agreed to maintain the status of Salvadorans for an additional time period. We provide the latest information on TPS below.

What did the court order?

In *Ramos*, the district court issued a “preliminary injunction” in October 2018 that prevents the government from implementing the TPS terminations for Sudan, Nicaragua, Haiti, and El Salvador. The injunction also requires the government to make sure TPS holders from those countries maintain their lawful status and work authorization until the case comes to an end. The government has appealed the district court’s decision and asked the Ninth Circuit to reverse the preliminary injunction.

In *Bhattarai*, the district court entered a “stipulated order” in March 2019 pursuant to an agreement between the government and the plaintiffs. The order prevents the government from implementing the TPS terminations for Honduras and Nepal until the *Ramos* appeal is decided. It also requires the government to make sure TPS holders from those countries maintain their lawful status and work authorization until the *Ramos* appeal is decided.

Under the district court’s orders, TPS holders must be permitted to stay and work in the United States for at least six months after any decision reversing the *Ramos* injunction.

In a separate agreement between the governments of the United States and El Salvador that was announced on October 28, 2019, the Department of Homeland Security agreed to permit TPS holders from El Salvador to remain in the U.S. and to work here for *one year* after any decision reversing the *Ramos* injunction.

What happens next: We are waiting for a decision from the Ninth Circuit Court of Appeals.

When will the Ninth Circuit decide the case? We don’t know. A decision could come at any time.

What’s the worst-case scenario for TPS holders? If we lose in the Ninth Circuit, the government could end TPS in as little as six months (except for Salvadorans, who would be protected for one year under the agreement between the governments of the United States and El Salvador).

What's the best-case scenario? If we win in the Ninth Circuit, protections for TPS holders stay in place during any further appeals by the government and/or until the case comes to an end. That could take two years or even longer.

If we lose, can we appeal? Yes. We could ask the Ninth Circuit to rehear the case en banc (with a larger group of judges). Or we could ask the Supreme Court to rehear the case. But both could reject our request.

Are there other TPS cases besides Ramos? Do any of them provide additional protection? Yes. There are four other cases challenging the termination of TPS. None of the other cases cover Sudan, Nicaragua, or Nepal. The only group that currently has protection from the other cases is Haitian TPS holders. In *Saget v. Trump*, the court issued an order preventing DHS from implementing its decision to terminate TPS for Haiti. The government has appealed that decision. That protection is independent of the protection provided in *Ramos*. It is also possible that one of the other cases could provide protection for people from El Salvador, Honduras, or Haiti in the future.

Can the litigation win permanent residence for TPS holders? No. Only Congress can provide permanent status for TPS holders. At most, the litigation can protect TPS temporarily while the courts decide the cases. But in the end, all the litigation can do is stop the government from enforcing the *previously announced* terminations. The court cannot stop the government from terminating TPS again (as long as the government follows the proper procedures and acts lawfully). It also cannot make the government give permanent status to TPS holders.

What is the schedule for automatic extensions of TPS and work authorization during the litigation? As long as the *Ramos* preliminary injunction remains in place, the government is required to issue automatic extensions of TPS and work authorization. The next extension is scheduled to be published on November 4, 2019. It will automatically extend TPS and work authorization for TPS holders from El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan through *January 2, 2021*. If the *Ramos* preliminary injunction remains in place in mid-November 2020, DHS will announce another automatic extension for the six countries.

How does the agreement between the U.S. and El Salvador announced on October 28, 2019 affect all this? Details are still emerging, but it appears that the agreement would guarantee that TPS holders from El Salvador would be permitted to remain in the U.S. for at least one year following any decision reversing the *Ramos* injunction. In other words, instead of a guarantee of six months to remain in the U.S. in the event the *Ramos* injunction is reversed, TPS holders from El Salvador would have twelve months. The agreement does not affect TPS holders from any other country.