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**UNSETTLEMENTS:
THE POTENTIAL TERMINATION OF TEMPORARY PROTECTED
STATUS AND THE THREAT OF DISPLACEMENT AMONG
SALVADORANS IN THE UNITED STATES**

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438

October
2020

paper



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IN THE UNITED STATES**

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Working Paper #438 – October 2020**

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ABSTRACT

The 2018 decision by the US government to terminate Temporary Protected Status (TPS) for Salvadorans, the largest population of TPS holders, would displace nearly 200,000, many of whom have lived in the United States for decades. TPS, a form of humanitarian relief that provides a broad set of protections for those who have fled disaster and instability in their countries of origin, has been continually reapproved for Salvadorans over many years, making it a liminal legal status that has come to resemble a permanent legal status. This paper examines the unsettling effects of this decision, should it be enforced, for Salvadoran holders of TPS (TPSianos) who have established lives and families in the United States. The decision to abruptly end TPS threatens TPSianos and their family members with forced displacement and extraordinary hardships; the decision also has the potential to send them to live under dangerous conditions in El Salvador. Drawing from ethnographic findings, the paper shows how the decision contradicts the logics and realities of permanency in the United States that have guided TPSianos' future planning and expectations that they should be allowed to transition to a more permanent legal status. Conceptualizing such disruptions and contradictions wrapped up in the ending of TPS for Salvadorans as an entanglement of *unsettlements*, this analysis extends scholarship on the political, economic, and legal dynamics surrounding TPS and on the lived experiences of liminal legality.

RESUMEN

La decisión del gobierno de Estados Unidos en 2018 de suspender el Estatus de Protección Temporal (TPS por sus siglas en inglés) para los salvadoreños, la población más grande de beneficiarios del TPS, desplazaría a muchos que han vivido en Estados Unidos por décadas. El TPS, una forma de ayuda humanitaria que brinda una amplia gama de protecciones para aquellos que han huido de desastres o de inestabilidad en sus países de origen, ha sido aprobado de forma consecutiva a lo largo de muchos años, convirtiéndolo en un estatus legal liminal que ha llegado a parecerse a un estatus legal permanente. Este documento analiza los efectos desestabilizadores de esta decisión, en caso de ser implementada, para los beneficiarios salvadoreños del TPS (*TPSianos*) que han establecido sus vidas y sus familias en Estados Unidos. La decisión de poner fin al TPS abruptamente amenaza a los TPSianos y sus familiares con desplazamiento forzado y dificultades extraordinarias, y posiblemente con mandarlos a condiciones peligrosas en El Salvador. Partiendo de hallazgos etnográficos, este documento también demuestra cómo esta decisión contradice la lógica y las realidades de la permanencia en los Estados Unidos que han alimentado los planes a futuro de los TPSianos y las expectativas de que se les permita la transición a un estatus legal más permanente. Al conceptualizar dichos desajustes y contradicciones implícitos en la suspensión del TPS para los salvadoreños como un conflicto de desarraigos, este análisis ofrece una mirada académica sobre las dinámicas políticas, económicas y legales alrededor del TPS y sobre vivencias de legalidad liminal.

The administration of US President Donald Trump decided to terminate a Temporary Protected Status (TPS) for nearly 400,000 migrants in the United States from six countries: El Salvador, Honduras, Haiti, Nicaragua, Nepal, and Sudan. By allowing migrants from affected countries to remain in the United States, TPS has offered humanitarian relief to people from countries affected by devastating natural disasters, conflicts, and extraordinary situations that would make returning there unsafe. The countries marked for termination account for about 95 percent of those who hold TPS, from a total of ten countries that held a TPS designation when the new administration took over.¹ In response, advocacy on behalf of TPS has mobilized across the United States, and two class-action lawsuits are contesting the administration's decision to terminate TPS designation for the six countries.

The decision to terminate TPS for Salvadorans, the largest population of TPS holders, would displace around 200,000, many of whom have lived in the United States for decades. In this paper, I examine the unsettling effects of the decision to end TPS for Salvadoran TPS holders (referred to hereafter as “TPSianos”)² who have established lives and families in the United States. TPS can be understood as a liminal status that according to its name is “temporary,” as it can only be renewed for periods of up to eighteen months at a time. However, until the recent decision to terminate their status eligibility, the United States has permitted eligible Salvadorans to continually renew their TPS over the course of many years. As I find and discuss, the long-term renewals have conditioned TPSianos' long-settled life paths and a sense of permanency in the United States, as well as their expectations for the future and the likelihood of eventually holding a more permanent legal status. The decision to abruptly end TPS threatens TPSianos and their family members with forced displacement and may put many in situations of hardship and even danger, and it contradicts the logics and realities of permanency that guide TPSianos' reasoning and expectations for the need to transition to a more permanent legal status.

¹ Only Syria, Somalia, South Sudan, and Yemen—countries experiencing crises that are widely understood to be the most severe in the world—had their TPS designations extended under the Trump administration. Several of the countries marked for termination have continually received TPS designation status for similarly long periods of time: Sudan (since 1997) and Honduras and Nicaragua (since 1999). Haiti's designation began in 2010, and Nepal's in 2015. Like the case of El Salvador, the reality of harsh conditions in each of these countries calls into question the reasoning for ending their TPS designations.

² I use the naming “TPSianos” because this is how Spanish-speaking activists and holders of TPS refer to the group (to include anyone who holds TPS from any TPS-designated country). This naming reminds us that TPS has shaped identities and lived realities over the life course. Unlike such legalistic terms as “TPS holders” or “TPS beneficiaries,” TPSianos better represents the humanity of the population.

I argue that the disruptions and contradictions wrapped up in the ending of TPS for Salvadorans can be conceptualized as an entanglement of *unsettlements*. First, it unsettles lives established in the United States with the threat of legally enforced displacement and the potential separation of members of TPSianos' families. Ending TPS would produce another wave of displacement for people who were displaced in the first place. Second, the decision to end TPS also unsettles rational logics that guide understandings of immigration legal frameworks because it stands in contradiction to the pattern of long-range TPS extensions and to current realities that characterize both the lives of TPSianos and conditions in El Salvador.

Scholarship on TPS has focused on the experiences of uncertainty, limbo, and limitations that come with the status. Even as many TPSianos have worked to build lives that closely resemble those of permanent residents and citizens, TPSianos find their lives have already been partially unsettled by the looming worry that a renewal may someday not be granted. Remaining in legal limbo with the prospect of losing status is known to be a source of stress and anxiety (Abrego and Lakhani 2015; Kanstroom 2007). An inability to pay application fees, confusion about or misunderstanding of the technocratic language of the application requirements, and the tight two-month application window has meant that some eligible Salvadorans have fallen out of status after holding TPS for a period of time (Abrego and Lakhani 2015).

The officially "temporary" nomenclature of TPS and its conditioned and restricted set of rights and protections impede the possibility of fully integrating or making future plans, which in some ways extends experiences of displacement (Coutin 2000). As such, the state has been able to keep this population in a state of space-time relations of "permanent temporariness" (Bailey et al. 2002), which facilitates surveillance and control. As this condition permeates the daily lives of Salvadorans, it restricts their geographic, economic, and social mobility. By suspending transnational migrants in time and space, these limitations have truncated possibilities for fully planning for the future or moving forward with education and careers (Miyares et al. 2003).

As a form of "liminal legality" (Menjívar 2006), TPS provides only partial inclusion in society and a limited set of rights. It is a conditioned, tenuous legal position similar to other liminal legal categories or "twilight statuses" (Motomura 2014), such as Deferred Action for Childhood Arrivals (DACA), which tend to leave their recipients in limbo for indefinite periods. Such statuses construct racialized and stratified hierarchies by differentiating access to rights and protections (Menjívar 2006; Motomura 2014) and contribute to zones of graduated sovereignty

(Ong 1999). Even as they do not share the same set of rights as citizens and permanent residents, TPSianos submit a slew of documents and records—thus making them legible to the state—to prove their eligibility for the status and its renewal. Nonetheless, their liminal status positions them in an in-between space illustrative of the false binaries of “undocumented” and “documented” (Abrego and Lakhani 2015), a reminder that immigration law reproduces ambiguity and is a contested social process (Coutin 1998, 2000). TPS renders immigrants beyond an undocumented legal “non-existence” (Coutin 2000) but without a full set of rights and a temporary status, which impedes their ability to fully thrive, integrate, and make plans for the future (Abrego and Lakhani 2015). As Hallett (2014) argues, TPS contradictorily produces conditions of inclusion and exclusion by allowing for legal papers and a work permit, even as biometrics and records may be used to deport TPSianos once a designation ends. Its use of partial exclusions helps the state mediate labor market demands and nativist anxieties over sovereignty.

Like the threat of revoking DACA, the announced cessation of TPS does the work of “un-documenting” those with a documented status. It is exemplary of the way reconstructions of the law produce illegalization (Coutin 2000), and of the legal violence that ensues as laws are used and reworked in ways that produce various forms of violence and suffering (Menjívar and Abrego 2012). DACA conditionally authorized a liminal legal status for hundreds of thousands of DREAMers, young people who represent a decades-long fight for a “DREAM Act” intended to offer a permanent legislative resolution to the lived contradictions of being legally non-existent despite having grown up and forged a future in the United States. Scholarship on DREAMers has underscored the social, economic, and emotional repercussions of the uncertainty surrounding indefinite liminality and the looming threat of un-documentation that would force displacement, separation from loved ones, and extreme hardships (Abrego 2006; Gonzales 2016; Gonzales and Chavez 2012).

Building on this existing scholarship on the legal contradictions and lived experiences of TPS and liminal legality, this paper examines the potential human consequences of this process of de-documentation through the lens of unsettlements. Ending TPS is part of a hurricane of unsettling changes in the current anti-immigrant climate in the United States, from new obstacles to asylum, to mass deportations, to the expansion of migrant detention, to the construction of the border wall. Officially justified through racialized tropes of immigrant criminality and non-

belonging, it is one more piece of what Johnson (2019) calls “Trump’s Latinx repatriation.” This point of rupture forces us to move beyond examinations of what TPS has meant for populations that have held the status to consider what it means to end TPS, the consequential effects that would follow, and how alternative paths forward can be imagined and mobilized.

In the discussion that follows, I first offer background on the political, economic, and legal dynamics surrounding the history of TPS in the United States and in El Salvador. My discussion then turns to the contradictions of ending TPS through a closer look at its legal criteria, the official reasoning behind the recent termination of El Salvador’s TPS designation, and actual current security and economic conditions in El Salvador. I discuss the particular potential threats to safety TPSianos would face in El Salvador and the economic consequences of ending TPS for both El Salvador and the United States. Through ethnographic vignettes of two mixed status TPSiano families, I then offer a glimpse into the ways TPSianos have come to set down roots, raise families, and build lives of permanency in the United States, revealing the remarkable hardships they would face should TPS termination be upheld and removals enforced. Rather than conducting a set of interviews with TPSianos that captures a particular point in time and space, these two illustrative examples draw from my recurring ethnographic interviews and ethnographic visits to these families’ homes over the course of twenty years to understand how their lives—and their expectations about their future—have been shaped by TPS renewals since they first left El Salvador. In each example, TPSianos made life decisions based on the reasonable expectation that TPS will lead to a path to permanent residency, and they cannot make sense of why TPS would be terminated without such a path. To conclude the paper, my final comments focus on the role of activism and litigation on behalf of TPSianos and their families in challenging these unsettlements.

TPS AND SALVADORANS: LEGAL, POLITICAL, AND ECONOMIC CONTEXT

By statute, TPS was created in 1990 to provide a temporary form of blanket humanitarian relief for those who may not qualify as asylees or refugees. A country may be designated for TPS eligibility if it experiences an armed conflict, an environmental disaster, or some other extraordinary or temporary condition, and if foreign nationals are unable to safely return or if the country is unable to adequately handle their return. Today, TPS designations are made at the

discretion of the Secretary of the Department of Homeland Security (DHS). Once a determination to designate is made, migrants already in the United States may apply for TPS by a deadline, paying an application fee and satisfying various criteria, including proving eligibility by providing evidence of their arrival prior to the designation date. TPS eligibility generally ranges from six to eighteen months at a time.

The US government then determines whether those already holding TPS may apply for a status renewal by providing notification of a designation extension. As a non-immigrant legal status, TPSians share some of the same entitlements and obligations as US permanent residents and citizens: they are assigned a Social Security number, must pay income taxes, may carry a driver's license, and are granted a work permit. They may own a home or a business. However, they may not vote in elections, and unlike Green Card holders, they may only visit their country of origin under particular circumstances and with advanced permission. If an individual with TPS status is found to have committed a felony, the status may be revoked, resulting in deportation.

El Salvador received its first TPS designation in 1990 when the US Congress created TPS as part of the Immigration Act of 1990. The program was initially only for an eighteen-month period, after which recipients of TPS could apply for Deferred Enforced Departure (DED), another conditional and liminal relief status. TPS was a legislative response to a hard-fought battle by Salvadoran and Guatemalan activists who advocated for legal status for those who fled wars in these countries but were not recognized as refugees by the US government (Coutin 2007). In the 1980s, the United States denied asylum to, on average, 97 percent of Salvadorans and 99 percent of Guatemalans at the time, whereas only around 50 percent of Nicaraguans and Cubans were denied asylum (Mountz et al. 2002, 342). Because Salvadorans and Guatemalans were fleeing atrocities and human rights violations committed by militaries generously funded by the United States, to recognize these nationalities as refugees or to consistently grant them asylum would have drawn attention to the flawed and harmful US foreign policy interventions in the region. In response to the disproportionate asylum rates, two class-action lawsuits were filed on behalf of Salvadoran plaintiffs, who argued that Salvadorans and Guatemalans were unfairly denied asylum. As a result of the lawsuits, Salvadorans were allowed to apply for asylum a second time, and while awaiting hearings (during a large backlog) were granted a temporary relief status known as ABC. While Salvadorans were never recognized as refugees, TPS, and

later Deferred Enforced Departure (DED) functioned as legislative responses to grant statutory relief to Salvadorans who had fled the 1980–1992 civil war (Coutin 1998, 2007; Mountz et al. 2002).

Salvadoran political leaders have a tradition of visiting the United States to advocate alongside migrant rights activists for TPS reapprovals. Salvadoran political leaders were quick to request a second TPS designation after two earthquakes in 2001 left hundreds of thousands internally displaced and homeless. As Hallett (2014) suggests, the 2001 designation depoliticized the reasoning for TPS, framing it as humanitarian relief for a natural disaster rather than as a response to the “political disaster” of the civil war.

Even as it is aligned with efforts to advocate for the protection of migrants’ rights, the Salvadoran government’s advocacy has also been motivated by economic interests. TPSianos have a major economic impact on El Salvador’s economy. The remittances they send help to hold up El Salvador’s national economy.³ In 2019, the estimated 5.65 billion dollars in remittances that El Salvador received amounted to about 20 percent of the country’s Gross Domestic Product (GDP).⁴ Political leaders have argued that without the remittances, El Salvador’s economy would be destabilized. They have also traditionally used the public anxiety that surrounds the threat of Salvadorans possibly losing TPS renewals to leverage support for their campaigns. Leaders of the right-wing ARENA political party, which held the presidency in El Salvador from the civil war through 2009, warned Salvadoran citizens in their campaign platforms that should the opposing leftist FMLN party ever gain the presidential administration, US-El Salvador relations would deteriorate and consequently the TPS designation would likely not be reapproved.

Allowing hundreds of thousands of TPSianos to continuously renew their status also benefits the United States politically and economically. Over the years, the possibility of losing TPS designation has compelled El Salvador’s government to cooperate economically and diplomatically with the United States. As an expendable labor force, TPSianos have been economically advantageous for the United States. Together, the households of those with TPS and DED contribute more than \$4.6 billion annually to federal, state, and local taxes and more

³ The businesses started by TPSianos oftentimes provide employment for other Salvadorans who may also send remittances, further contributing to the economy in El Salvador.

⁴ See BCR (2020) for estimate of remittances received in 2019. According to the World Bank, personal remittances amounted to at least 20.9 percent of El Salvador’s GDP in 2019: <https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS?end=2019&locations=SV&start=1976&view=chart>.

than \$35.2 billion to the GDP (Gonzalez et al. 2019). According to statistical data from a study of Salvadoran, Haitian, and Honduran TPSianos, around 11 percent are entrepreneurs who created their own job or started a business that generated new jobs, and their labor force participation ranges from 81 to 88 percent. That figure far surpasses the participation in the labor force of the US population as a whole, at 63 percent, and that of the total foreign-born population, at 66 percent (Warren and Kerwin 2018).

CONDITIONS IN EL SALVADOR, LEGAL CRITERIA, AND THE CONTRADICTIONS OF ENDING TPS

The decision to end El Salvador's TPS designation is a source of contradiction and disruption, both in terms of the established legal frameworks of TPS designations and in the lives of Salvadoran families. The officially stated reasoning in the notice of termination published in the Federal Registrar strays from the standards and criteria employed in TPS status notices issued in the past for El Salvador and other countries, and it misrepresents the reality of the current conditions in El Salvador. Consequently, Salvadoran TPSianos and their family members face the threat of being displaced to harsh and dangerous conditions in El Salvador.

According to its specific legal criteria, TPS may be designated for countries experiencing 1) an ongoing armed conflict that “would pose a serious threat to the safety” of returnees, 2) an environmental disaster that temporarily disrupts living conditions, making the state unable “to adequately handle the return” of its nationals, or 3) extraordinary and temporary conditions “that prevent nationals from returning to the state in safety,” unless the DHS Secretary (in the past, preceding the formation of the DHS, the Attorney General) finds that permitting nationals from the state to temporarily remain in the country “is contrary to the national interest of the United States.”⁵

To justify the recent terminations, the Trump administration asserts that determination to extend TPS should be based on whether the country has recovered from the particular disaster or conflict upon which the designation was initially reasoned,⁶ even though this is not specified in the Immigration and Nationality Act's (INA) guidelines for TPS country designations and

⁵ 244 NA Temporary Protected Status TPS [8 USC 1254a], available at: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1254a&num=0&edition=prelim> (accessed July 31, 2020).

⁶ See Lind (2019).

extensions.⁷ In the case of El Salvador, both the earthquakes and the armed conflict have had enduring and devastating multiplier effects that have broadly aggravated living conditions and have been exacerbated by further disasters since the earthquakes. El Salvador's 2018 notice of termination offers a strikingly rosy picture of current conditions in El Salvador when compared to the notices of extension that precede it.⁸ Prior notices considered a broader scope of factors that indicate that El Salvador would be unsafe and unprepared for returning TPSianos.

In fact, conditions of insecurity that continue to plague El Salvador are strikingly absent from the 2018 notice of termination. El Salvador's homicide and femicide rates have recently ranked among the highest in the world.⁹ Much of the violence can be attributed to the proliferation of gangs that reach throughout the small country, from urban to rural areas, with the ability to overpower police and influence the political system. The twelve-year-long US-funded armed conflict—followed by a lack of investment in postwar reconstruction and a mass wave of deported members of gangs initially formed in Los Angeles—was foundational to today's widespread violence. Nonetheless, El Salvador's current public security situation should not be understood as a permanent condition; it is fluid and evolving. In retrospect, had the United States not committed to immigration enforcement strategies that caused gang-based violence to spread throughout El Salvador and to neoliberal economic interventions that deepened class inequalities throughout the 1990s and 2000s, El Salvador would likely have reached a state of greater stability shortly after the war, with much lower incidences of violence.

Today, TPSianos, and their family members, including their US-citizen children, would by no means be going to safe conditions in El Salvador. Moreover, expelled TPSianos and their families would likely face particular kinds of safety threats in El Salvador because of their former status as US residents. Many TPSianos hail from poor and working-class urban and rural communities where the consequences of conflict and disasters carry on in the form of economic marginalization, social exclusion, and both structural and everyday violence. Salvadorans seeking asylum in the United States commonly report having had to escape threats from a gang because they were perceived as relatively well-off compared to others in poor and working-class

⁷ 244 NA Temporary Protected Status TPS [8 USC 1254a].

⁸ The January 18, 2018 Notice from US Citizenship and Immigration Services of DHS can be found in Federal Register Vol 83, No 12, available at: <https://www.federalregister.gov/documents/2018/01/18/2018-00885/termination-of-the-designation-of-el-salvador-for-temporary-protected-status>.

⁹ For comparative and longitudinal data on global homicides, see the searchable database on the United Nations Office of Drugs and Crime's DATAUNODC website at: <https://dataunodc.un.org/> (accessed July 26, 2020).

areas where they lived.¹⁰ Some owned businesses or their jobs paid higher than ordinary wages. Recently deported and returned migrants, in particular, tend to stand out as newcomers and are often met with the assumption that they have thousands in savings stashed in a US bank account or that they have a family member still in the United States who can send them remittances. When gang members demand migrants pay an unpayable sum, their lives are often threatened, forcing them to flee. Furthermore, newcomers who have spent years abroad are generally unfamiliar with the codes of conduct gangs enforce over citizens or the geographic boundaries of territories currently under gang control. For example, those who unknowingly cross from one gang-controlled territory to another are commonly threatened under the assumption that they are acting as informants to the rival gang.

In gang-affected areas, the safety of youth coming from the United States would also be threatened in particular ways. Adolescent boys are prime targets of gang recruitment, and young women face the threat of being forced into relationships with gang members. Youngsters raised or born in the United States may struggle to find a sense of belonging in marginalized Salvadoran communities and may be especially vulnerable to gang recruitment. Youth who live in communities with a strong gang presence may be treated as gang suspects, increasing their susceptibility to the widespread human rights abuses and extrajudicial killings committed by Salvadoran security forces.¹¹ Deported migrants have historically been stereotyped as criminals or gang members in El Salvador, and so young men and adolescents arriving from the United States also risk getting profiled as such. In sum, there are several specific kinds of safety threats TPSianos and their families would likely face as newcomers arriving in a country and in localities that are unfamiliar to them.

In addition to these safety threats, the expulsion of hundreds of thousands of TPSianos and their family members would disrupt El Salvador's economy. El Salvador would suffer from a decline in remittances that serve as a foundational economic subsidy. Suddenly uprooting and sending TPSianos to El Salvador would produce substantial economic hardships for family members both in the United States and in El Salvador, further impeding possibilities for social and economic integration. For families, the impact of cutting off an income subsidy from abroad

¹⁰ My observations of gang-related threats to safety that could affect TPSianos in El Salvador are based both on my ethnographic research in El Salvador and on my interviews with Salvadoran asylum seekers who arrived in the United States after fleeing gang-related violence.

¹¹ For data on abuses and killings by security forces, see the 2019 US Department of State's Report on Human Rights Practices for El Salvador.

can be monumental. Because remittances are so entrenched in El Salvador's economy, the cost of living has become relatively high, and families count on remittances to get by. Along with the growing flood of remittances have come rising consumer power, price inflation, and a turn toward a service- and import-based economy. With generally low salaries and a relatively high cost of living, even many working professionals count on remittances as supplemental income. In situations where TPSianos are the breadwinners for a family in the United States, there would be devastating financial consequences should some family members remain in the United States while TPSianos are forced to depart for El Salvador. Considering these economic hardships and the poor security situation in El Salvador, many TPSianos would likely be inclined to migrate again to return to the homes and lives they have established in the United States. Leaving El Salvador would mark another round of displacement, after already having fled El Salvador many years earlier and having been forcibly displaced from the United States with the termination of TPS.

The 2018 notice of El Salvador's TPS termination fails to acknowledge that these conditions seriously hinder the ability of the Salvadoran state to safely and adequately receive TPSianos. Prior to the Trump administration, most of the countries that saw their TPS designations terminated followed relatively short-lived designation periods.¹² As a key indicator that conditions had significantly improved in these countries and that states were prepared to receive returning TPSianos, the notices typically make note of large-scale voluntary returns of refugees and forced migrants who had previously fled to neighboring countries. El Salvador's 2018 notice of termination, however, does not note any such voluntary returns. Rather, the notice points out that in fiscal years 2017 and 2018, DHS forcibly removed around 20,000 Salvadorans annually, deporting them to El Salvador. The removals in themselves are not an indication of the feasibility of safe return, nor do these figures include a measure of the extent to which those deportees were able to reintegrate permanently in El Salvador or whether they thereafter

¹² Kuwait, Lebanon, Rwanda, Kosovo Province, Guinea-Bissau, and Angola had shorter-term TPS designation periods ranging from one to four years. Terminations after longer-period designations include Bosnia-Herzegovina (1992–2001), Burundi (1997–2007), and the unique case of Montserrat: its designation was terminated after a seven-year period when the US government determined that ongoing volcanic eruptions on the island's southern end would not cease in the foreseeable future and could no longer be considered a "temporary" condition. Guinea, Liberia, and Sierra Leone were designated from 2014–2017 in response to the Ebola virus disease. However, Sierra Leone had been designated from 1997–2003. Similar to the case of El Salvador, some Liberians have continued to be eligible to remain in the United States since its first designation in 1991 because of multiple designations, extensions, exceptions, and the granting of DED, another liminal legal status that is being rolled back under the Trump administration.

migrated again to the United States or elsewhere. Additionally, it is also important to note that earlier TPS terminations typically affected a few hundred or thousand TPSianos, some of whom may have then been eligible for alternative relief to be able to remain in the United States. At around 200,000, El Salvador stands out as the nation of origin of the largest group of total TPSianos. The 2018 notice fails to take into consideration the extraordinary challenges that such a large-scale expulsion would pose for El Salvador.

Even so, in cases where a TPS designation is offered for “extraordinary and temporary conditions” other than ongoing armed conflicts and natural disasters, the legislation specifies that an additional condition needs to be met: it must not be “contrary to the national interest” to allow TPSianos to remain, as subjectively determined by the DHS Secretary (formerly the Attorney General).¹³ Accordingly, determination notices to extend TPS published in the Federal Registrar duly state that allowing TPSianos to remain in the United States is not contrary the national interest, but none state *why* this is so.

Even without the provision of explicit reasoning, there are several reasons why retaining TPS designation has been in the US national interest. The United States benefits from Salvadoran TPSianos’ enormous contributions to the US economy. Unlike unauthorized migrants residing in the United States without official documentation, TPSianos are a disposable labor force that is still legible to the state and therefore able to be managed, surveilled, and regulated. The state is able to advantageously restrict their rights and mobility while compelling them to be behaviorally compliant through surveillance, a condition of uncertainty, and the looming threat of status revocation.

The Trump administration followed through on that threat. Whereas no notice of TPS termination has ever stated that it *would be* contrary to the national interest to allow TPSianos from a given country to remain in the United States, Trump’s comments have filled the void: in a meeting to discuss an immigration reform proposal held just days after the DHS Secretary’s January 8, 2018 announcement of the termination of TPS for El Salvador, Trump reportedly asked why the United States should accept migrants from Haiti and “shithole” countries in Africa, and he suggested that the United States should allow more migrants from countries such as Norway.¹⁴ Noting that the remarks are exemplary of other comments and proposals by the

¹³ 244 NA Temporary Protected Status TPS [8 USC 1254a].

¹⁴ See Fram and Lemire (2018).

President that indicate a racially driven immigration agenda, plaintiffs of the TPS lawsuits argue that the decisions to terminate TPS for these countries were based not on country conditions or proper legal standards but instead on racial bias against non-white and non-European immigrants.

LIVES BUILT IN THE UNITED STATES

TPSianos face the threat of forced displacement from the United States, which would unsettle long-established US-based lives and families. Evidence of the extent to which TPSiano lives have been built in their new country, Warren and Kerwin's (2018) demographic study of Salvadoran, Honduran, and Haitian TPSianos show that about 11 percent had started a business or created their own job, around 30 percent of their households had mortgages, and nearly 90 percent speak English. More than half of the Salvadoran and Hondurans populations have resided in the United States longer than twenty years, and about 22 percent arrived in the United States as children. Some are married to a legal resident, and about 273,000 US citizens were born to TPSianos from these three countries.

The following ethnographic profiles of two Salvadoran families illustrate how some TPSianos have built lives of permanency in the United States for themselves and their families, despite the limitations of TPS. Their long-range life paths in the United States, along with their understandings of what the logic behind immigration legal frameworks should look like, have conditioned the expectations they have in mind about their future. Ending TPS both unsettles their lives and those of their family members with forced displacement and possible separations, and it unsettles the logic they believe would reasonably guide immigration law reform.

I first met Linda¹⁵ in 1999, a year before she left El Salvador, when she was a chef in a community kitchen in a small town, and I got to know her kids when they were young children, before they joined her in the United States years later. Both DACA recipients, they each went on to graduate from community college. As a TPSiana, Linda had been working for the US Census Bureau as a janitor. On a hot summer day in 2011, I visited her home in suburban Maryland, which she had bought with her husband, for a barbecue with her family in the picket-fenced yard. At the time, I was studying the pressures that were motivating some migrants to plan returns to

¹⁵ Throughout this paper, I use pseudonyms to protect the identities of TPSianos.

El Salvador, and so I asked her if she was building a house back in El Salvador and had eventual plans to retire there.

“No,” she replied. “Lots of people are focused on building a house back in El Salvador so that they can go back. They’re investing lots of money on building there. I’m investing here because I know that eventually, the US government will have to give residency for those of us who have TPS. They’ve always renewed it, and now we’ve been here so many years. It just wouldn’t make sense for the government not to create path to residency, maybe citizenship, to those of us with TPS. They know we work hard, we are not criminals, we pay taxes. Some have been here for 20 years.”

By contrast, other migrants I had interviewed from her town who arrived in the United States after the last TPS designation in 2001, but who lacked any legal status and were not TPSianos, were building homes in El Salvador and had plans to return after several years in the United States. I was struck by her decisiveness about her future and her unquestioned reasoning: TPS would someday end, she believed, but undoubtedly it would end with a path to residency, so there was no reason to plan otherwise. She had “paid her dues” (as the National TPS Alliance, a national advocacy network for TPSianos, puts it) and set down roots in the United States. Living for more than a decade in a condition of relative inclusion and stability, despite the restrictions and uncertainty of liminal legality, meant that she could not make sense of the kind of incompatible logic that could inform the enforcement of rupture by ending TPS.

I also first met Fausto in El Salvador in 1999, a year before he came to New Jersey. Back in his Salvadoran hometown, he had reached the fourth grade and then become skilled in carpentry. By the age of fourteen, he had begun working in a local co-op making furniture. His common-law marriage partner, now a homemaker and the mother of his children, followed him to New Jersey from El Salvador within a year. When he first came to the United States, he worked in roofing. After a few years, he began subcontracting others—relatives, friends, and acquaintances from El Salvador—and led his own full-service construction crew for residential projects. These days, he commutes more than an hour from northern New Jersey to New York where he works for the city doing underground infrastructure renovations at subway stations. Additionally, his own construction business now focuses on flipping houses, funded by the collective of trusted friends and family who are co-investors.

For years, the family lived in a 600-square-foot apartment on a busy street with two small bedrooms, a kitchen, and no living room. Once their third child was born, they moved and started renting a suburban home with a yard.

TPS status elimination forces upon families the decision of whether TPSiano parents would be forced to separate from children who are US citizens and legal residents, or whether these young US citizens would also be compelled to leave the United States, accompanying their parents. In the United States, the unsettlements caused by the separation of family members by immigration enforcement have become a naturalized, everyday occurrence. Class-action lawsuits against the elimination of TPS argue, in part, that it is unconstitutional to force US citizen children to choose between staying with their family or remaining in the United States.

Even though Fausto has established a life of permanency in the United States for himself and the family, and even though his children—a four-year-old girl, a nine-year-old boy, and a fourteen-year-old girl—are all US citizens, the family continues to live in limbo. Fausto watches the news, awaiting the outcome of litigation and heeding to the advice of his lawyer. Like Linda, he cannot see any logic in abruptly ending TPS.

“It’s not logical,” he said when I interviewed him in early 2019. “They cannot just end TPS. They will have to offer a replacement. Some kind of status—it may not be permanent residency, but something. Something in the interim, for some number of years, and then maybe you could apply for residency after that. They will have to. It’s just not logical.”

Signaling frustration, Fausto kept repeating that it was “not logical” (*no es lógico*), and that “it’s complicated” (*es complicado*). In Spanish, “*es complicado*” does not necessarily imply that a problem is complicated (an interim status, as he suggests, could be a simple fix), but that something is not easy, gets messy, or has lot of moving parts, making even a simple problem difficult to resolve. For Fausto, the complications were the hardships and the potential mess that the threat of forced displacement could create for him and his family. They were also the contradictions wrapped up in trying to make sense of the seemingly illogical decision to end TPS. The complications were the unsettlements.

Even as he puts faith in a logical solution to TPS, Fausto decided it was best to prepare for anything. In 2017, he and his partner had a difficult conversation with their oldest daughter to help her understand her parents’ precarious status and future possibilities. In summer 2018, the two oldest children traveled with him for a two-week visit to El Salvador. It was their first-ever

trip there, and his first trip back since his departure seventeen years earlier. There the kids met their grandmother and uncle in person for the first time. He had also begun to prepare for the possibility of working in El Salvador. When I visited Fausto's mother there in August 2019, one of the rooms in the house had become a storage area for an assortment of power tools he had brought down on his recent visit.

The situation of Fausto's family exemplifies some of the potential hardships and dilemmas that families of TPSianos face if a final termination of TPS forced expulsions and separations. Linda also faces the threat of displacement and family separation; as DACA recipients, her daughters await a permanent legislative resolution to their own liminal legality and may be hesitant to risk travelling to El Salvador should Linda move there. Both Linda and Fausto have set down roots in the United States, where they have been living for two decades. They wrestle with the unsettlements of forced displacements and the unsettlement of logic in times of turbulence and political disaster.

THE ROAD AHEAD: ADVOCACY, LITIGATION, AND UNCERTAINTY

Should the government ultimately move forward with enforced removals of Salvadoran TPSianos, a multiplicity of unsettlements would follow. It would be detrimental to the US economy in crushing the contributions of a segment of the population that is among the most productive in the labor force and contributes billions in US taxes and GDP. The rippling effect would extend along social networks, resulting in job losses for those employed by TPSiano-owned businesses, and devastating the financial wellbeing of entire families dependent upon breadwinning TPSianos in the United States.

It would also hurt the economy in El Salvador and reproduce the forces that cause displacement. It would decimate remittance flows to families there who count on money sent to them to be able to make ends meet, to pay for educational expenses, and to use as start-up funds for small businesses that would enable them to have other life options than migrating abroad in search of work. Salvadoran TPSianos—and their US-born family members—would be displaced to a land unfamiliar to them and rife with threats to their security. In a country today known for its displacement crisis as a result of pervasive gang-related and gender-based violence, TPSiano families could face particular threats to their safety, resulting in another round of displacement in

their lives if they are compelled to again leave El Salvador. Finally, ending TPS would produce extreme hardships for mixed-status TPSiano families, as US-born school-aged children would either be forced to separate from their parents should they remain in the United States or exiled from their home country (the United States) through a de facto form of deportation along with their TPSiano parents.

In light of these realities, it is not surprising that activism on behalf of TPSianos has been hard fought. Over many years, advocates have pushed for a path to legal permanent residency for TPSianos to be included in proposed immigration reform bills headed to Congress. Since the announcements that TPS designation would end for several countries, advocacy has ramped up to contest the decisions and to draw public attention to TPSianos' call for a path to residency. Organizations initially founded by Central American refugees, such as the Central American Resource Center in Los Angeles and Alianza America, have been at the forefront of this fight. Among others, they helped form a strategic national network, the National TPS Alliance, in response to the recent decisions. By mobilizing TPSianos and their allies, including attorneys and advocates, researchers, community-based committees, and policymakers, the National TPS Alliance has been instrumental in coordinating advocacy efforts across the United States, making the situation of TPSianos more visible, and cohering a clear message about the injustice of the decision to end TPS and about arguments for—and the importance of—a path to residency for TPSianos.

Nonetheless, advocacy on behalf of TPSianos and their families faces challenges. Because it has been quietly renewed over the course of many years, and because TPSianos have lived with a status resembling that of Green Card holders, it remains relatively unheard of and misunderstood by the US public at large. Street protests have not reached the scale of other immigrant advocacy struggles, such as the movement of DREAMers. In part, mobilization around DACA may be more visible because the DACA population (estimated at around 643,000)¹⁶ is more substantial than the population of TPSianos. However, when the estimated 273,000 children born to TPSianos are added to the count of over 400,000 TPSianos, the affected populations are comparable in size.

¹⁶ As of March 31, 2020, US Citizenship and Immigration Services data reflects approximately 643,560 active DACA recipients. Data sheet available at: <https://www.uscis.gov/sites/default/files/document/data/Approximate%20Active%20DACA%20Receipts%20-%20March%2031%2C%202020.pdf> (accessed July 29, 2020).

Also, over the course of twenty years of advocacy, the ongoing and public struggle in pursuit of a DREAM Act has gained more traction than the quieter quest for a permanent legislative solution to resolve the liminal status of long-term TPSianos. Although the fierce activism of Central Americans since the late 1980s led to the creation of TPS and its renewal for certain groups, the consequences of cutting TPS for long-term status holders has remained largely under the radar in debates on comprehensive immigration reform. One reason for this is that advocacy on behalf of TPSianos, who are largely an adult-aged population, many of whom are parents, is less likely to garner public sympathy in an age of US immigration unsettlements. Whereas DACA recipients are deemed “innocent” for having come to the United States “through no fault of their own,”¹⁷ as former US President Obama put it, TPSianos may be publicly presumed to be “guilty”—even if they fled natural and political disasters long ago and have maintained a legal status in the United States ever since. The sole basis for this judgment is that they are viewed as adult parents in a US immigration climate where parents today are portrayed and treated by the US government as alleged criminal “smugglers” of children into the United States.

Two class-action lawsuits challenge the Trump administration’s decisions to end TPS for the six countries. Each lawsuit’s plaintiffs are TPSianos and US citizen children of TPSianos, with the plaintiffs of *Ramos v. Nielsen* representing TPSiano families from El Salvador, Haiti, Nicaragua, and Sudan, and *Bhattari v. Nielsen* suing on behalf of families from Honduras and Nepal. In each case, plaintiffs assert that the decision to terminate TPS for the respective countries was made without clear explanation and was based on racist discrimination and a new and undefined standard for TPS designation, making the decision unconstitutional and in violation of the Administrative Procedure Act (APA). They also argue that school-aged US-citizen children of TPSianos would face the hardship of either separating from their parents and staying in the United States alone or accompanying their TPSiano parents to a foreign country.¹⁸

On June 18, 2020, the US Supreme Court brought to an end long-standing litigation in response to lawsuits challenging the Trump administration’s 2017 announcement that it would

¹⁷ For a discussion of this discourse, see, for example, Bacon (2020).

¹⁸ In September 2020, a preliminary injunction entered as a result of *Ramos v. Nielsen* (currently *Ramos v. Wolf*) was vacated when a three-judge panel of the Ninth Circuit Court of Appeals ruled to allow the presidential administration to end TPS. The plaintiffs plan to appeal the decision to ask the full Ninth Circuit Court of Appeals to rehear the case. If their appeal is denied, they plan to ask the Supreme Court to hear the case. My summary of the lawsuits’ arguments and this current status (at the time of writing) is informed by the TPS National Alliance website, available at: <https://www.nationaltpsalliance.org/tps-lawsuit/> (accessed Oct 3, 2020).

end DACA. The Court found that the administration's decision to end DACA was arbitrary and capricious and without a clear and substantive basis, as required by the APA. Even though the Court recognized a lack of substantive reasoning, it did not agree with the plaintiffs' claims that the decision was based on racial animus. The Court also found that the administration still holds the authority to terminate DACA (just as the Obama administration created it). Should the administration bring forward a substantively reasonable basis (which may have to include proving that alternative courses of action are not appropriate, and the decision will not cause undue harm), then the administration could effectively rescind DACA.¹⁹ A July 28, 2020 DHS memorandum suggests that the agency is determined to do so.²⁰

Similar questions are at play in the two lawsuits challenging TPS termination. At the heart of the matter are the reasons for the administration's decision to end TPS for the respective countries and whether taking action on the decisions could cause undue harm. Echoing the DACA case, what remains at stake are the threat of displacement and the potential for hardship and harm for the hundreds of thousands who rely on the program.”

Internal government documents submitted to the courts by the plaintiffs help us make sense of the senseless: the seemingly illogical and contradictory decision to terminate a TPS designation when safety conditions for the reception of TPSianos are lacking and when serious hardships and harmful consequences would ensue for those whose lives are further unsettled by the decision. The documents offer several revelations. Among them, they show that anti-immigrant hardliners appointed by the Trump administration revised memoranda on TPS drafted by career-staff subject matter experts so that descriptions of country conditions in the memoranda would support termination, even if the descriptions misrepresented actual country conditions on the ground. They also reveal that the administration ignored serious concerns of State Department staff and embassy personnel in TPS-designated countries regarding TPS terminations.²¹

¹⁹ I draw from the analysis of the decision in *De La Hoz and Valle* (2020). For the full written decision of the Supreme Court, see: https://www.supremecourt.gov/opinions/19pdf/18-587_5ifl.pdf (accessed July 29, 2020).

²⁰ See “Department of Homeland Security Will Reject Initial Requests for DACA As It Weighs Future of the Program,” US Department of Homeland Security website, published July 28, 2020 <https://www.dhs.gov/news/2020/07/28/department-homeland-security-will-reject-initial-requests-daca-it-weighs-future> (accessed July 29, 2020).

²¹ The submitted documents providing evidence of these findings are publicly available at the TPS National Alliance website: <https://www.nationaltpsalliance.org/tps-lawsuit/list-of-documents-related-to-motion-for-preliminary-injunction/> (accessed July 29, 2020).

TPSianos continue to live with uncertainty as they await a final outcome of the lawsuits moving through the courts and the possibility of legislative action that would allow them to transition to a permanent legal status. However, as this paper shows, today's uncertainty is of a different kind than before. Throughout the years of consecutive TPS designation reapprovals, Salvadoran TPSianos built lives in the United States for themselves and their families, expecting that TPS would someday transition them from a liminal legality to a permanent legal status. Even so, they lived with the uncertainty of not really knowing when and whether their status would become permanent or perhaps would someday be truncated in a moment of severe rupture. Today there is a new urgency to this uncertainty as they vigilantly watch the outcomes of pending decisions and voice their reasonings for continuing with their lives of permanency in the United States. Displaced by natural and political disasters long ago, TPSianos again face potential displacement as a result of a new political disaster in the United States: sweeping and unsettling changes to US immigration policy that are incompatible with the realities and understandings of those with established lives and families in the United States.

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