

Changes to the Temporary Protected Status Program in the United States

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August 28, 2018

Introduction

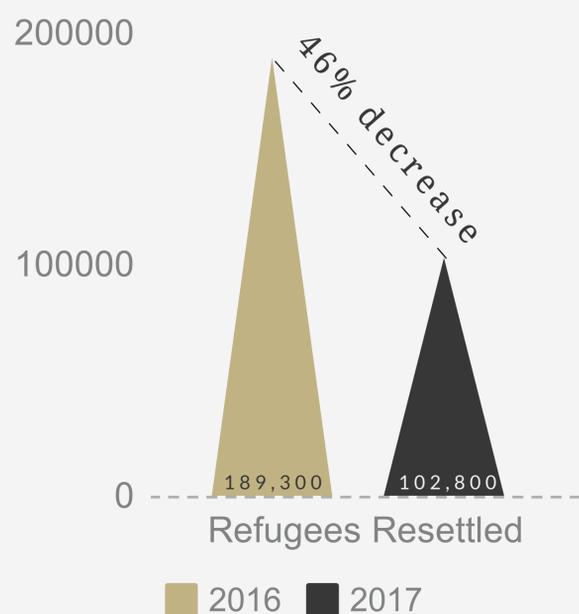
Over
90%
of TPS will be
terminated by
2020

Over the past two decades, the global population of forcibly displaced persons has grown from 33.9 million in 1997 to 65.6 million by the end of 2016 (UNHCR, 2018). This includes internally displaced persons (IDPs), those displaced by environmental disasters, asylum seekers, and stateless persons, as well as ‘official’ refugees. The latter is the most recognized category of the displaced as those who qualify as refugees are protected by international human rights law. A ‘refugee’ is defined by the UN High Commissioner for Refugees (UNHCR) on the basis of personal persecution and being located outside of one’s own country of origin, residence, or citizenship. Displaced persons who qualify for protection as so-called ‘Convention’¹ refugees under UNHCR’s mandate—estimated at 22.5 million persons in 2017 (UNHCR, 2018)—are granted certain rights and protections under international law. It is important to note that those who qualify as official refugees constitute less than a third of all currently displaced people, and an even smaller fraction qualify for resettlement in a third country. In 2015, fewer than 200,000 people were resettled in third countries and that number has dropped by nearly 50% between 2016

¹ This shorthand refers to those who fall under the protection of the 1951 Convention Relating to the Status of Refugees (<http://www.unhcr.org/en-us/1951-refugee-convention.html>)

Refugees Resettled in Third Countries Worldwide 2016-2017

(UNHCR, 2016; UNHCR, 2017)



and 2017 (UNHCR, 2018). Such changes have been the norm in nations that had previously been a significant part of the global refugee regime, including the US, Scandinavian countries, and Australia (Vonberg, 2017). A growing tide of opposition to migrants – couched in terms that have ranged from xenophobic to security-focused—has meant that refugees have become less welcome precisely at the same moment that their numbers are at an all-time high.

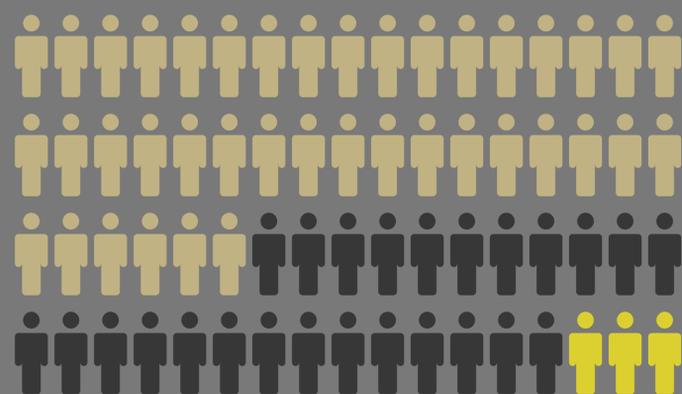
If the landscape for the displaced who are officially recognized as such has become challenging, it is even more bleak for those who are not seen as ‘legitimate’ refugees. These include many whose lives may be similarly disrupted or threatened as by persecution and conflict – people displaced by the building of a dam or highway, the creation of a conservation area, or even the gentrification of their neighborhood. So-called ‘development refugees’ (Penz, Drydyk and Bose, 2011) have never been recognized under international law; nor too have ‘environmental refugees’ who may be displaced by climate change, resource extraction or even environmental protection initiatives (Lunstrum and Bose, 2014).

One mechanism that does exist in the US and a number of other wealthier countries is to provide short-term relief to those who have been displaced by a sudden catastrophe – an earthquake, a hurricane, perhaps even a civil war or political instability – through a grant of temporary relief from removal. In the US, this relief has been granted through ‘Temporary Protected Status’ (TPS) while in Canada, similar protection has come through ‘Temporary Suspension of Removals’ (TSR). These programs are intended to provide sanctuary and assistance to those who are rendered the most vulnerable by events out of their control. In the US, recipients of TPS protection are allowed to live and work in the US until the situation in their country of origin has subsided and the foreign government can accept the return of its nationals (Wilson, 2018). This limited protection in the US is granted in terms that range between 6 to 18 months and must be periodically renewed by the US Department of Homeland Security upon review of the conditions of the individual’s country of origin. There are similar kinds of programs in other countries (such as the one in Canada mentioned previously) but the TPS program in the US has been one of the most extensive used in the world over the past several decades. For recipients of temporary protection, their right to remain in new countries is extremely tenuous and leaves them as vulnerable to changes in political leadership and popular sentiment as to the conditions that forced them to flee in the first place. And for many it means profound insecurity – unsure about their ability to stay in a temporary home and unable to return to their home country safely. Many who have received some form of temporary protected status worldwide (as opposed to the more long-lasting or ‘durable’ solutions of third-country resettlement, refugee status, or asylum protections) now find such programs progressively curtailed in the face of a global backlash against migrants (especially poorer migrants). Such has also been the experience of TPS grantees in the US under the current administration.

Global Displacement Overview

All data taken from the UNHCR's 2018 "Figures at a Glance" (UNHCR, 2018)

68.5 million people currently displaced worldwide



40 million internally displaced people

3.1 million asylum seekers

25.4 million refugees

In 2017, TPS recipients from El Salvador, Nicaragua, Honduras, and Haiti accounted for more than 90% of the individuals registered within the program in the US. Their status had been originally granted under a range of different Republican and Democratic administrations over a period of years. As of September 2018, almost all recipients from these countries are set to lose their protected status within the US at different points in 2019, with Hondurans given temporary protection until January 5, 2020. All recipients in the US program were originally granted TPS based on environmental disasters or civil conflicts in their respective countries of origin.

Of the ten programs active when the Trump administration took office, 6 have been marked for expiry, affecting the vast majority of current TPS recipients. TPS has been terminated for El Salvador, Haiti, Honduras, Nicaragua, Nepal and Sudan. Of these, only Sudan had a conflict-related qualification for TPS, with the others being originally disaster-related. The four active programs – Somalia, South Sudan, Yemen, and Syria – are for countries that are either in the midst of a civil war or profound political stabilization. In July 2018, US Secretary of Homeland Security Nielsen extended TPS for Somalia from September 17 2018 to March 17, 2020 (USCIS, 2017b).

TPS Recipient Breakdown

Country	Original Designation Year	Reason for Designation	Continuous Physical Presence Required Since	Expiration Date	Number of Beneficiaries
El Salvador	2001	Aftermath of earthquakes	3/9/2001	9/9/2019	262,528
Honduras	1999	Aftermath of Hurricane Mitch	1/5/1999	1/5/2020	86,031
Haiti	2010	Aftermath of earthquake	7/23/2011	7/22/2019	58,557
Nepal	2015	Aftermath of earthquake	6/24/2015	6/24/2019	14,791
Syria	2012	Civil conflict	10/1/2016	9/30/2019	6,916
Nicaragua	1999	Aftermath of Hurricane Mitch	1/5/1999	1/5/2019	5,306
Yemen	2015	Civil conflict	3/4/2017	3/3/2020	1,116
Sudan	1997	Civil conflict	5/3/2013	11/2/2018	1,048
Somalia	2012	Civil conflict	9/18/2012	3/17/2020	499
South Sudan	2011	Civil conflict	5/3/2016	5/2/2019	77
Total					436,869

This table was taken from (Chishti, Bolter and Pierce, 2017) and updated from (USCIS, 2018a) as of 8/20/2018

Unlike the 500 people protected under TPS for Somalia, the vast majority of those in programs that have been canceled could be understood as ‘environmentally induced refugees’ and as such would not qualify for refugee or asylum status under international law. They thus have few other options for international humanitarian relief. Most have also been living within the US for extended periods of time; some of longest standing TPS recipients in the US are from Honduras and Nicaragua, who arrived after Hurricane Mitch devastated the two countries in 1998. El Salvador was designated in 2001 following two catastrophic earthquakes, meaning many of the people forced out after the termination of their TPS will have lived and worked in the US for nearly two decades. In all three of these cases most recipients are deeply rooted within their communities – holding jobs, owning homes and other property, operating businesses, paying taxes, and having families which include children and spouses who are US citizens. In this regard, the termination of TPS for Salvadorans is especially consequential as there are nearly 193,000 U.S. citizens born to Salvadoran TPS holders (Warren and Kerwin, 2017). While it is true that these countries have almost entirely recovered from the environmental disasters that led to the original designation, past administrations—both Democratic and Republican—have continually extended TPS designations for these populations because of the lack of material improvement in the conditions of these countries – including successive environmental disasters, failures of reconstruction, and resultant political instability.

Background

The United States Congress originally created TPS in 1990 as a form of humanitarian relief for foreign nationals of countries that are enduring violent conflict or are devastated by natural disaster (Messick and Bergeron, 2014). In contrast to asylum, which is granted on a case-by-case basis to individuals given their personal situation and threats of persecution (Seghetti, Ester and Wasem, 2015), TPS is premised on generalized conditions of turmoil or deprivation in the country of origin. The Department of Homeland Security may designate a foreign country for TPS based on conditions within the country that temporarily make it unsafe for the country's nationals to return home, or if the country is unable to adequately receive its nationals returning home (USCIS, 2018a). TPS beneficiaries from El Salvador, Honduras, and Haiti accounted for more than 90 percent of all TPS beneficiaries in 2017. Of these, 51 percent of Salvadorans, 63 percent of Hondurans, and 16 percent of Haitians have lived in the U.S. for 20 years or more (Warren and Kerwin, 2017).

Under the Immigration and Nationality Act (INA), the Secretary of the Department of Homeland Security (DHS) “may designate” a foreign state (or part of a foreign state) for TPS upon the following basis (USCIS, 2018b):

1. “There is an ongoing armed conflict within the state and due to such conflict,” the return of its nationals “would pose a serious threat to their personal safety”;
2. “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”;
3. The state is “unable, temporarily, to handle adequately the return” of its nationals, and the state has “officially” requested TPS; OR
4. “There exist extraordinary and temporary conditions” in the state that prevent its nationals from safely returning, unless allowing them to stay would be “contrary to the national interest of the United States.”

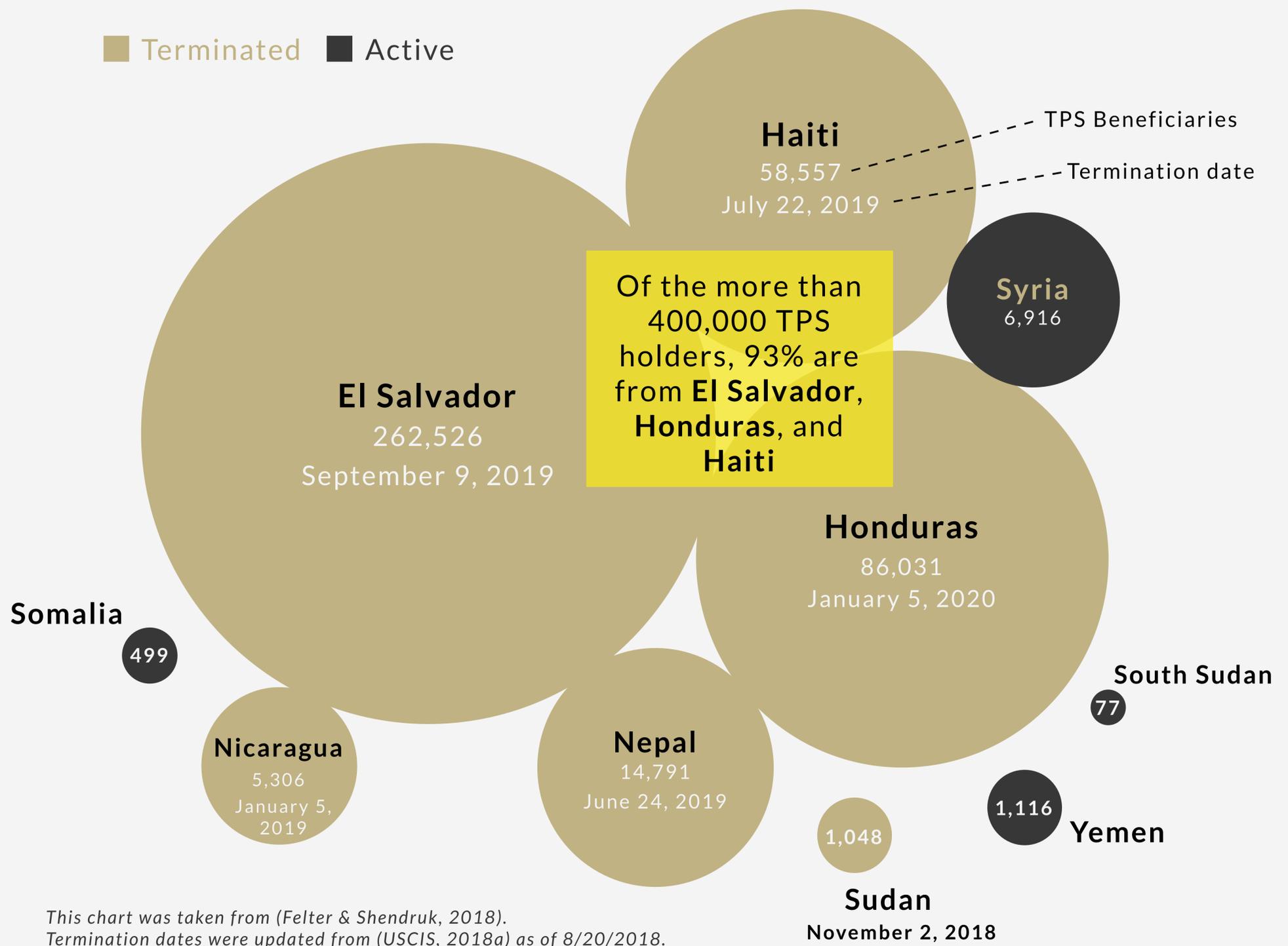
TPS may then be granted to foreign nationals living within the US from designated countries who may otherwise face removal (deportation) due to their legal status in the US. TPS grants temporary immigration status and work authorization to eligible nationals (or stateless habitual residents) of a country designated for TPS under Section 244 of the INA. While TPS recipients can lawfully work in the US, they are not eligible for most public benefits because they are not considered to be present in the US under color of law (MPI, 2018).

During the TPS designation period, TPS beneficiaries are eligible to remain in the US, may not be removed (deported), and are authorized to work and obtain Employment Authorization Documents (EADs) so long as they continue to meet the requirements of TPS. To be eligible for TPS, nationals (and stateless habitual residents) of designated states must: (1) satisfy continuous presence (from the date of designation or re-designation of their state) and continuous residence requirements; (2) register for TPS during a set period; (3) pay a fee; and (4) be otherwise admissible as an immigrant [INA § 244 (c)].

TPS is temporary in nature and does not lead to any form of lawful permanent residency, leaving the beneficiaries of the program with no means to legally remain in the country if they lose their protected status. This only gives them the options of remaining in the country illegally, returning to conditions of danger and deprivation in their country of origin, or seeking asylum elsewhere. As all forms of immigration have come under intense scrutiny since the Trump administration assumed the White House, hundreds of thousands TPS beneficiaries who have or are expected to lose their protected status have become increasingly and understandably anxious about their fates; an increasing number have already begun crossing the border to Canada in an attempt to seek asylum in fear of losing their TPS in the US (Raphelson, 2018).

By 2020, more than 400,000 people legally in the US will become unauthorized immigrants as the Trump Administration has announced the termination of TPS for individuals from 6 different countries over the next 1-2 years: El Salvador, Nicaragua, Honduras, Haiti, Nepal, and Sudan while the small number of Somalis under TPS had their status extended as previously mentioned. TPS for Guinea, Liberia, and Sierra Leone expired in May 2017, but certain Liberians maintained relief until March 2018 under an administrative mechanism known as Deferred Enforced Departure (DED) (Wilson, 2018).

Where do TPS beneficiaries come from?



Debates over the TPS Program

Since May 2018, the Trump administration has reduced the size of the TPS program by ninety-eight percent. This represents a significant departure from established norms governing international humanitarian relief and the intended mission of this program as enacted by the US Congress. Prior to the current administration, TPS has historically received consistent bipartisan support under both Republican and Democratic administrations for nearly 30 years. The Trump administration has prioritized immigration enforcement, detention and deportation policies and advocated for strict limits to legal immigration and under its watch the nearly 437,000 individuals they inherited through the TPS program will have been successively reduced in a matter of years to less than 9,000. This does not mean, of course, that all TPS recipients will be immediately deported, yet it bears repeating that the dismantling of TPS will produce a population of over 425,000 vulnerable individuals within the borders of the US who will become illegal despite often decades worth of contributions to their communities.

While the recent actions terminating the majority of the TPS program are in line with the stated goals of changing the US immigration system and policies of the current administration, other critics of the TPS program have long argued that the original intent of the program has been lost since its implementation (Wilson, 2018). That is to say that the idea of providing a temporary safe haven has transformed into a means for otherwise irregular immigrants to live and work in the United States indefinitely. The current administration has justified its termination of TPS protections by arguing that since the original conditions that led to the granting of status – an earthquake or a hurricane, for example – are in some cases years and decades in the past, they should no longer be used as a legitimate reason to provide relief (NPR, 2018). Those in favor of eliminating the TPS program or winding it down also argue that the intent was never to provide an alternative pathway for immigration to the US, a separate avenue for asylum claims, or an indefinite stay in the country. They also suggest that the environmental or political conditions that necessitated the original extension of protection have abated and thus the justification for the status has expired. Yet many regional experts and human rights organizations argue against the notion that conditions have improved in originating countries (Dotson, Chavla, and Burgi-Palomino, 2017; Hume, 2018; Garcia, 2017; Thale, 2017; Mahoney, 2017). Instead, they argue that there has been continued – and in some cases intensified – instability, arising out of not just the original circumstances but their longer-term effects and that many of the countries of origin of TPS recipients still face a myriad of challenges. To send recipients back would thus be unfair both to individuals and to the countries that are often unprepared to receive them (Hume, 2018; Jordan, 2018). And indeed the governments of countries like El Salvador, Honduras and Haiti have suggested at various times that they are not capable of reintegrating returnees, which under the TPS legislation in the US is one of the grounds upon which protected status may be extended (Charles, 2017).

In the case of Haiti, for example, the country was designated for TPS by the Obama administration following the 7.1 magnitude earthquake (USCIS, 2018a) that caused catastrophic damage to the country in 2010. While the granting of TPS was explicitly temporary in nature, the events surrounding the aftermath of the earthquake have significantly impeded the country's recovery. This includes most notably one of the largest cholera epidemics in the world, reportedly introduced by UN Peacekeepers following the earthquake (Frerichs, Keim, Barraix and Piarroux, 2012) and the devastation of Hurricane Matthew in October 2016 (BBC, 2016). As a result of the current environmental conditions coupled with ongoing political instability the President of Haiti formally requested that Haiti's TPS designation be extended in November 2017 (Edmonds, 2017). This official request meets the qualifications for the designation or re-designation of a state for TPS by the Secretary of Homeland Security per section 244 of the INA; however, TPS for Haiti has only been extended until July 22, 2019 (USCIS, 2018c).

El Salvador is another example of a country where returning recipients holds considerable risk to them and their country of origin. It is considered one of the most dangerous countries in the Western Hemisphere, and women are especially at risk given the frequency of gender-based violence (Dotson et al, 2017). There is also the issue of remittances sent from TPS beneficiaries to El Salvador, accounting for some 12% of all remittances in El Salvador—a substantial part of the country's economy at more than 2% of GDP (Orozco, 2017). A similar situation in Honduras means more than 86,000 of those forced to leave by 2020 will be returning to a state of political and economic turmoil, along with the growing everyday threat of violence and exploitation from gangs (WOLA, 2018). For hundreds of thousands of individuals, many of whom have been living in the US for more than 15 years, returning to these countries will only cause increased instability, both domestically and regionally. This has the potential to further processes of displacement in the region, and create new forms of refugee, IDP, and migrant crises that the US may have to address in the future.

Many of the current TPS beneficiaries will thus have a difficult choice to make – either return to their countries of origin and face an uncertain future there or risk becoming undocumented persons at risk of detention and/or deportation in the US. And while some stoke fears of TPS recipients as a burden on the US economy, on US taxpayers or as competitors for jobs and other resources, the reality is far different according to most studies.

There is in fact a strong economic case against the termination of these programs. The cost of deporting TPS beneficiaries from El Salvador, Honduras, and Haiti would cost taxpayers an estimated \$3.1 billion dollars in direct federal, state and local tax revenues, an additional \$6.9 billion in Social Security and Medicare contributions, a \$45.2 billion reduction in GDP, and a cost of \$976 million in turnover and lost productivity to employers, all over the next decade (Baran, Magaña-Salgado and Wong, 2017; CAP Immigration Team, 2017). The most severely affected areas in the US would be major metropolitan areas in Florida, New York, California, Texas, Maryland, and Virginia, where the majority of TPS holders reside. A prime example of the paradox of non-citizenship for TPS populations is evident in the fact that, because they are authorized to work, they must pay taxes. They are not, however, eligible to access most federal safety-net benefits (SNAP food benefits, Medicaid, etc.) funded by such taxes (USDA, 2010; DTA, 2004). Their removal represents a 'lose-lose' scenario in which TPS recipients

are unable to accumulate and move assets and the broader community loses revenue-generating individuals. Beyond the trauma of breaking up the citizen/non-citizen families that have developed out of the TPS program, then, there is the potential for significant and deep harm to many communities in removing a large population of contributors from their midst (Hume, 2018; Wilson, 2018).

While terminations of TPS designations overall is not unheard of – for example in 2017 TPS was terminated for Guinea, Liberia and Sierra Leone (USCIS, 2017a), it has been less commonly cancelled for those beneficiaries who have lived in the US for prolonged periods of time; in other words, the majority of TPS recipients as the program was constituted in 2016 (Chishti, Bolter and Pierce, 2017).

The elimination (or significant drawdown) in the TPS program may represent a new direction in US policy regarding temporary protection, but it is not out of step with the broader immigration policy framework undertaken by the Trump administration. It is part of a broader attempt to remake and significantly curtail both irregular and legal immigration in the US. Much of the public attention has been focused on travel bans, increased border enforcement and deportations, attempts to deter would-be-migrants through increased criminalization, prosecution, and separation of families, as well as the drastic reductions to the US Refugee Admissions Program, the proposed elimination of the Diversity Immigrant Visa Program, and a shift away from family reunification towards skills-based immigrant selection. The changes to the TPS system have received less press and seen somewhat less public engagement. Yet the significant reductions to the TPS must be seen not on their own but rather in light of the wholesale changes proposed (and in some cases already implemented) for US immigration policies overall.

For example, while several of the more prominent executive orders regarding immigration released by the Trump administration do not directly relate to the TPS program, they have the potential to have significant impacts on TPS populations, especially as their protections are withdrawn. There are three Executive Orders – all issued during the first weeks of the Trump administration in 2017 – that stand out in this regard. The first, EO 13767 “Border Enforcement Order,” includes measures that would curtail due process and expand a number of detention and enforcement practices. The American Immigration Council asserts “the order will likely result in asylum seekers, families, children, and others being turned away and denied access to humanitarian protection guaranteed for decades under U.S. and international law” (AIC, 2017a) The second, EO 13768 “Interior Enforcement Order,” introduced a massive expansion of immigration enforcement in the interior of the country. The American Immigration Council asserts that the order defines enforcement priorities so broadly as to place all unauthorized individuals at risk of deportation, including families, and long-time residents (AIC, 2017b). This order prioritizes all undocumented immigrants for removal, rather than convicted criminals or those who recently crossed the border, as was practice under the Obama administration. The order also encourages criminal prosecutions (rather than civil and administrative action) for illegal entry into the US. The third, EO 13769 “Seven Country Ban,” suggested a suspension of the US Refugee Admissions Program (USRAP), a ban on Syrian refugees, and a ban on entry of nationals from Muslim-majority countries. While this so-called travel ban was subsequently challenged in court, and revised twice, the Supreme Court in 2018 upheld the basic Presidential prerogative to enact such immigration controls (585 U.S., 2018)

While these EOs do not name TPS recipients explicitly, they do place them in the crosshairs of the Trump administration’s stricter immigration enforcement policies. These measures put a new emphasis on enforcement in the interior and as such are of particular concern to TPS populations in the US. These populations already held the fear that their protected status would be terminated under a Trump administration seemingly determined to drastically reduce immigration – both regular and irregular – in the US. The subsequent elimination of protected status after protected status coupled with both the increasing anti-immigrant rhetoric and the tightening of immigration protocols in the country have increased the anxiety level of many TPS recipients (Ferris, 2018).

Statistics of Terminating TPS for El Salvador, Honduras, and Haiti



Over 300,000
TPS recipients
(CAP, 2017)



273,000
US-born children with Salvadoran, Honduran, or Haitian parents currently holding TPS
(CAP, 2017)



Over 967m
Estimated in turnover costs for businesses losing employees from these three countries.
(Baran et al, 2017)



5.6 billion
Estimated loss in social security contributions over the next decade.
(Baran et al, 2017)

Conclusion

The termination of TPS for the majority of the program's beneficiaries represents a significant departure from program's previous history under both Republican and Democratic administrations. Under the Trump administration, all forms of immigration, both legal and illegal, have come under intense scrutiny, with TPS given no exception. While the exact impact of ending TPS, especially for El Salvador, Honduras, and Haiti, is not certain, it is projected to severely impact the US economy, as well as the economies of the home countries of recipients as well. TPS is a flawed program that, rather than offering a path to permanent residence for beneficiaries, has created an unsustainable dynamic in which recipients were forced to accept a type of permanent limbo where their original reasons for fleeing their home country became entangled with domestic, regional and international politics and pressures. Yet despite such uncertainty and insecurity, the recipients of TPS have laid deep roots in the US during their time in the country, buying homes, finding careers, attending school, starting business and building families. To force these hundreds of thousands of people to return to countries devastated by ongoing poverty, violence, and political instability is not only a departure from the humanitarian values enshrined by Congress in the original program, but could wind up costing US taxpayers billions of dollars over the coming decade. It may be fair to criticize the TPS program for its flaws, but terminating TPS for the majority of its recipients does not seem to have much benefit to the individuals granted TPS, their families, their country of origin, or their current home, the United States.

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August 28, 2018

This report and further information on the Refugee Resettlement in Small Cities research project is available at: <http://spatializingmigration.net/>