



UPDATE: Termination of Temporary Protected Status for Sudan, Nicaragua, Haiti, and El Salvador: Key Takeaways and Analysis

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*UPDATE: Following the publication of this Sidebar, the Department of Homeland Security (DHS) announced the termination of Temporary Protected Status (TPS) designation for [Nepal](#) and [Honduras](#). DHS had [originally designated](#) Nepal for TPS on June 24, 2015, following a severe earthquake in that country. Honduras was [originally designated](#) for TPS on January 5, 1999, in response to devastation caused by Hurricane Mitch. In its April 26, 2018 [statement](#) announcing the termination of TPS designation for Nepal, DHS declared that conditions in that country have “notably improved,” and announced an effective TPS termination date of **June 24, 2019**. In its May 4, 2018 [statement](#) regarding the termination of TPS designation for Honduras, DHS similarly cited improved conditions in that country, and announced an effective TPS termination date of **January 5, 2020**.*

(In addition, on March 27, 2018, President Trump [directed](#) DHS to phase-out Deferred Enforced Departure (DED), a separate, [non-statutory form of discretionary relief](#), for certain nationals of Liberia, over a 12-month period until March 31, 2019. Unlike TPS, DED is rooted in the President’s inherent executive power over foreign relations rather than statutory authority. But like TPS, it permits nationals of countries experiencing war or instability to remain temporarily in the United States.)

The original post from February 2, 2018, is below.

Recently, the Department of Homeland Security (DHS) announced the impending termination of Temporary Protected Status (TPS) designations for [Sudan](#), [Nicaragua](#), [Haiti](#), and [El Salvador](#). Certain non-U.S. nationals from designated TPS countries, who otherwise might lack the ability to remain in the United States, are permitted to stay and work in the United States during the period of TPS designation. Sudan, Nicaragua, Haiti, and El Salvador had been designated for TPS for most of the past two decades due to unstable or dangerous conditions in those countries. After concluding that the conditions originally

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warranting those TPS designations no longer exist, DHS announced dates on which the designations would no longer be in effect. Consequently, aliens from these countries who had previously been protected from removal through TPS-based relief might not be able to remain in the United States unless they have a separate legal basis for their continued presence. This Legal Sidebar examines some of the key legal takeaways and implications of DHS's decision to terminate the four countries' TPS designations.

Background

Since 1990, federal immigration law has provided a [statutory mechanism](#) by which aliens present in the United States from countries facing armed conflict, natural disaster, or other extraordinary conditions can temporarily remain and work in the United States. Under [Section 244 of the Immigration and Nationality Act \(INA\)](#), DHS in consultation with the State Department may designate a country for TPS on one of the following grounds:

- There is an ongoing armed conflict that prevents the safe return of nationals from that country;
- There has been an environmental disaster in the country (such as an earthquake, flood, drought, or epidemic) that substantially disrupts living conditions in the area affected; the country is unable to adequately handle the return of alien nationals; and the country has officially requested TPS designation; or
- There are “extraordinary and temporary conditions” in the foreign country that prevent alien nationals from safely returning (unless the agency finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States).

An alien from a foreign country designated for TPS may potentially be [permitted](#) to remain in the United States for the period in which the TPS designation is in effect, even if the alien had not originally entered the country lawfully. Although TPS relief does not confer [lawful permanent resident \(LPR\) status](#) or otherwise provide a permanent legal foothold in the United States, it does provide covered aliens with [certain benefits](#). For example, an alien granted TPS relief cannot be [detained](#) based solely on immigration status; nor may he be [removed](#) from the United States while receiving TPS relief (the alien [may still be subject to removal proceedings](#), but an order of removal may not be executed). The alien [may receive work authorization](#) valid during the period of the country's TPS designation and any extensions of that period. In addition, an alien granted TPS relief [may apply](#) for certain other immigration benefits or protections, such as a [nonimmigrant visa](#) and [asylum](#). Reviewing courts have split on whether aliens who entered the United States without inspection and were thereafter granted TPS relief may be eligible to adjust to LPR status, with the U.S. Court of Appeals for the Eleventh Circuit [agreeing](#) with DHS's position that TPS relief does not provide a route to adjustment for aliens who entered the United States unlawfully, while the appellate courts for the [Sixth](#) and [Ninth Circuits](#) have taken the opposite view. A TPS relief recipient may also apply for [advance parole](#) in order to travel to and from the United States (advance parole may also provide some TPS relief recipients outside the Sixth and Ninth Circuits [another avenue](#) to seek adjustment of status). TPS relief recipients must [annually register](#) during specified periods to maintain TPS relief status.

The [initial period](#) of TPS designation may last from a period between 6 and 18 months. In the absence of a determination by DHS that an extension is not warranted, the TPS designation will automatically be extended an additional 6 months once the initial designation period ends, or either 12 or 18 months if the DHS Secretary determines that a longer extension is appropriate. On the other hand, if DHS concludes that the conditions warranting TPS *no longer exist*, the agency [must terminate](#) the TPS designation by publishing a [Federal Register notice](#). At a minimum, the TPS designation may be terminated no sooner

than 60 days from the publication date of the Federal Register notice. But DHS may also [delay](#) the effective date of termination further to allow for an “orderly transition.” An alien receiving TPS relief may [maintain](#) TPS relief until the effective date that his home country’s TPS designation is terminated.

Although TPS, by its terms, is a temporary designation, DHS has repeatedly extended TPS designations in many instances. Consequently, certain otherwise removable aliens from TPS-designated countries have been permitted to remain in the United States for lengthy periods. For example, although Nicaragua was originally designated for TPS in 1999, DHS has [extended](#) that country’s TPS period thirteen times, allowing eligible Nicaraguan nationals to have TPS relief for nearly 20 years. [Supporters](#) of this practice [argue](#) that it is an [appropriate](#) form of humanitarian relief for persons from countries that continue to experience unsafe or unstable conditions. Conversely, [opponents](#) of TPS extensions [argue](#) that employing TPS for only limited periods is consistent with the program’s original intent to provide a temporary safe haven rather than a permanent immigration benefit.

From September 2017 through January 2018, DHS successively announced the impending termination of TPS for [Sudan](#), [Nicaragua](#), [Haiti](#), and [El Salvador](#). In its press statements, the agency explained that it had determined that the conditions which originally warranted TPS designations for these countries no longer existed. Subsequently, DHS [issued Federal Register notices](#) terminating TPS, and granting 12- or 18-month grace periods for each country before the terminations would become effective.

Answers to Frequently Asked Questions about the TPS Terminations

Why is DHS ending TPS for Sudan and when does the termination become effective? Sudan was originally [designated](#) for TPS on November 4, 1997, due to an ongoing civil war and the “extraordinary and temporary conditions” in that country. In 2011, DHS designated [South Sudan](#) (which had seceded from Sudan and become a new nation in 2011) for TPS on the same basis. Consequently, some Sudanese nationals who had previously qualified for TPS relief based on Sudan’s designation were [eligible to change](#) their TPS registration based on the new South Sudan designation.

In its October 11, 2017 [Federal Register notice](#) terminating TPS for Sudan, DHS concluded that conditions have sufficiently improved in that country – including on account of reduced violence and improved access to food and humanitarian aid – to enable the safe return of nationals to most regions of that country. The most recent TPS periods for Sudan and South Sudan were set to expire on November 2, 2017. Pursuant to the Federal Register notice, the effective TPS termination date for Sudan is **November 2, 2018**. With respect to South Sudan, however, the TPS designation has been [extended](#) to **May 2, 2019**, during which time qualifying South Sudanese nationals within the United States may retain TPS relief.

Why is DHS ending TPS for Nicaragua and when does the termination become effective? [Nicaragua](#) was designated for TPS on January 5, 1999, in response to devastation caused by Hurricane Mitch. This TPS designation was repeatedly extended, with the most recent one set to expire on January 5, 2018. In its December 15, 2017 [Federal Register notice](#) terminating TPS for Nicaragua, DHS cited the completion of most hurricane recovery efforts and improved social and economic conditions in that country as evidence that Nicaragua’s TPS designation was no longer warranted. Nicaragua’s effective TPS termination date is **January 5, 2019**.

Why is DHS ending TPS for Haiti and when does the termination become effective? DHS originally [designated](#) Haiti for TPS on January 21, 2010, following a strong earthquake in that country. The most recent TPS period for Haiti was set to expire on January 22, 2018. In its January 18, 2018, [Federal Register notice](#), DHS stated that the “extraordinary but temporary conditions” caused by the earthquake no longer exist because the country has made notable progress in its recovery and rebuilding efforts; there

has been a marked decline in the number of displaced people from the earthquake; and the country's economy has continued to recover. Accordingly, the agency announced an effective TPS termination date of **July 22, 2019**.

Why is DHS ending TPS for El Salvador and when does the termination become effective? El Salvador was originally [designated](#) for TPS on March 9, 2001, due to a series of earthquakes in that country. The most recent TPS period for El Salvador was due to expire on March 9, 2018. In its January 18, 2018 [Federal Register notice](#), DHS cited the completion of reconstruction projects and recovery efforts in El Salvador; the significant amount of international aid the country has received; an improving economy; and the country's ability to repatriate more than 39,000 nationals in recent years as factors warranting the termination of TPS. The agency thus announced an effective TPS termination date of **September 9, 2019**.

Will TPS relief recipients from Sudan, Nicaragua, Haiti, and El Salvador now be subject to removal? Although DHS announced the termination of TPS designation for Sudan, Nicaragua, Haiti, and El Salvador, the agency has delayed the effective dates of termination for each country for either 12 or 18 months. The [stated purpose](#) for these grace periods is to allow for an "orderly transition"; give TPS relief recipients an opportunity to explore other immigration relief; and provide Congress a window to consider legislation allowing TPS relief recipients to remain in the United States. Accordingly, DHS has provided that *existing* TPS relief recipients [can maintain their TPS](#) through the extended duration of their country's TPS period *if* they re-register during specified 60-day periods (see Table 1 below for more information). While they retain such status, TPS relief recipients [will not be subject to removal](#).

Upon termination of their respective country's TPS designation, TPS relief recipients [will no longer have](#) that status and [will revert to the same immigration status](#) they had before TPS (unless that status had since expired or been terminated); or to any lawful immigration status they obtained while registered for TPS relief (as long as it remains valid on the date a TPS designation terminates). Therefore, some former TPS relief recipients may be subject to removal on account of their presence in the United States without legal authorization. The Trump Administration indicated in 2017 [its intent to prioritize](#) immigration enforcement resources towards the removal of aliens who have committed crimes; engaged in fraud or willful misrepresentation; abused any public benefits program; pose a risk to public safety or national security; or are subject to a "final order of removal, but have not complied with their legal obligation to depart the United States." Many former TPS relief recipients would not fall under these removal priorities (in fact, the [statutory requirements](#) for TPS explicitly bar aliens convicted of any felony or 2 or more misdemeanors from TPS relief). However, former TPS relief recipients who were subject to a final order of removal before obtaining relief might be deemed, at least in some cases, to be a priority for removal if they do not comply ["with their legal obligation to depart"](#) the country once their TPS relief status is terminated.

Nevertheless, some former recipients may meet certain eligibility requirements for other forms of relief, including [asylum](#), [withholding of removal](#), [cancellation of removal](#), [adjustment of status](#), and [deferred action](#). Eligibility for these forms of relief depends on an alien's particular circumstance, and most likely would not be available to many former TPS relief recipients.

Can TPS relief recipients from Sudan, Nicaragua, Haiti, and El Salvador continue to receive work authorization during the remaining period that their countries have TPS designations? Despite the announced termination of TPS designations for Sudan, Nicaragua, Haiti, and El Salvador, current TPS relief recipients from those countries may continue to [receive work authorization](#) pending the effective date of such terminations. In its [Federal Register notices](#), DHS announced that it was automatically extending the validity of employment authorization documents (EADs) issued to current TPS relief recipients for a period of 180 days (60 days for Nicaraguan TPS relief recipients) after the expiration of their current EAD (but in the case of Sudan, the automatic extension applies only if a TPS relief recipient timely re-registered for TPS relief and requested a new EAD; and in the case of Nicaragua, the automatic

extension increases to 180 days if the recipient timely re-registers for TPS and requests a new EAD). In addition, TPS relief recipients whose applications for re-registration and employment authorization are approved will be issued new EADs valid for the duration of time that their countries retain TPS designations (see Table 1 below for more information).

Can TPS relief recipients from Sudan, Nicaragua, Haiti, and El Salvador still travel outside of the United States? Generally, a TPS relief recipient who wishes to travel outside of the United States [may apply](#) for [advance parole](#) with USCIS. A grant of advance parole [permits](#) an alien to leave the United States and return during a specified period of time. In the absence of advance parole, DHS may [withdraw](#) the grant of TPS relief to an alien who leaves the United States (unless the departure was a “[brief, casual, and innocent absence](#)”). In its notices terminating TPS designations for Sudan, Nicaragua, Haiti, and El Salvador, DHS provided that those who timely re-register for TPS relief will maintain that status until their country’s TPS termination date. Therefore, insofar as a TPS relief recipient timely re-registers and maintains that status, he would likely remain able to apply for advance parole.

Is the decision to end TPS susceptible to legal challenge? INA [Section 244\(b\)\(5\)](#) provides that there is [no judicial review](#) of DHS’s decision to either designate a country for TPS or to extend or terminate that designation. On January 24, 2018, the NAACP filed a [federal lawsuit](#) in Maryland challenging DHS’s decision to end Haiti’s TPS designation, claiming that the agency’s action was unlawful because it was motivated by racial or ethnic discrimination. And on January 25, 2018, a Freedom of Information Act (FOIA) [lawsuit](#) was filed in federal district court in New York City, seeking the agency records that documented the basis for DHS’s decision to end TPS for Haiti. Further analysis of these and other related challenges will be forthcoming pending the outcome of the litigation. In the meantime, to date there has not been a successful challenge to the termination of a TPS designation.

Does Congress play a role in the termination process? In its [press releases](#) announcing the termination of TPS for Nicaragua and El Salvador, DHS called on Congress to find “a permanent solution” for TPS relief recipients who wish to remain in the United States lawfully. In the 115th Congress, a [number of bills](#) have been introduced that would [extend TPS](#) designation for certain countries, or allow long-term TPS relief recipients [to adjust their status to LPR](#) if they meet certain requirements. To date, Congress has not acted on such legislation. Moreover, even if Members of Congress believe that legislation is appropriate to enable certain TPS relief recipients to remain in the United States past the date of their TPS termination, the nature of the rights and privileges that might be conferred by such legislation – e.g., whether or not persons granted statutory relief should receive legal immigration status or be eligible for public benefits – could be subject to differing views and debate.

Table I. Countries Scheduled to Have TPS Designation Terminated

	Original TPS Designation Date	Scheduled Expiration Date of Most Recent TPS and Employment Authorization Period	Effective Date for TPS Termination	TPS Relief Re-Registration Period	Automatic Extension of Employment Authorization Document (EAD)	Validity Period of Approved Employment Authorization
Sudan	November 4, 1997	November 2, 2017	November 2, 2018	October 11, 2017 to December 11, 2017	Through May 1, 2018 if applicant timely re-registered for TPS and filed new EAD application	Through November 2, 2018
Nicaragua	January 5, 1999	January 5, 2018	January 5, 2019	December 15, 2017 to February 13, 2018	Generally through March 6, 2018; through July 4, 2018 if applicant timely re-registers for TPS relief and files new EAD application	Through January 5, 2019
Haiti	January 21, 2010	January 22, 2018	July 22, 2019	January 18, 2018 to March 19, 2018	Through July 21, 2018	Through July 22, 2019
El Salvador	March 9, 2001	March 9, 2018	September 9, 2019	January 18, 2018 to March 19, 2018	Through September 5, 2018	Through September 9, 2019
Nepal	June 24, 2015	June 24, 2018	June 24, 2019	May 22, 2018 to July 23, 2018	Through December 21, 2018	Through June 24, 2019
Honduras	January 5, 1999	July 5, 2018	January 5, 2020	June 5, 2018 to August 6, 2018	Through January 1, 2019	Through January 5, 2020