

# Congress of the United States

Washington, DC 20515

July 24, 2019

Kevin McAleenan  
Acting Secretary  
U.S. Department of Homeland Security  
Nebraska Avenue Complex  
3801 Nebraska Ave. NW  
Washington, D.C. 20016

The Honorable Kenneth T. Cuccinelli, II  
Acting Director  
U.S. Citizenship and Immigration Services  
U.S. Department of Homeland Security  
111 Massachusetts Ave. NW  
Washington, D.C. 20529

Dear Acting Secretary McAleenan and Acting Director Cuccinelli:

We write to obtain more information regarding the administration's use of Temporary Protected Status (TPS) and issues related to the program's management. TPS has provided protection to over 400,000 foreign nationals<sup>1</sup>, in addition to their over more than one quarter million U.S. citizen children, who cannot be safely returned to their countries because of environmental conditions, armed conflict, or other extraordinary and temporary conditions.<sup>2</sup> The administration has terminated status for 98 percent of TPS holders and has overseen an unprecedented number of administrative and regulatory issues affecting re-registration applications.<sup>3</sup>

In light of the critical importance of TPS for the safety of foreign nationals and their U.S. citizen children, we request that the U.S. Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS) jointly respond the following questions:

1. The administration extended, but did not re-designate, TPS for South Sudan, Syria, Yemen, and Somalia.<sup>4</sup> An extension, by its nature, suggests that conditions in a designated country continue to exist and the immediate return of foreign nationals to such country is not possible due to such circumstances. Given this practice:
  - a. Please provide a detailed description of the methodologies and sources (including the names of specific departments or agencies) that provided resources that were used to conclude that a re-designation would not be provided.
  - b. With regards to the failure to re-designate TPS for these countries (despite providing an extension of current status): what was the intent of this decision by the administration? The failure to re-designate appears to imply that it is your agencies' intention to block foreign nationals from further participation in this program despite being potentially eligible based on current country conditions.

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<sup>1</sup> Temporary Protected Status: Overview and Current Issues. Jill H. Wilson, Congressional Research Service. See Appendix Table A-1.

<sup>2</sup> 8 U.S.C § 1254a (West 2019); Leila Schochet and Nicole Prchal Svajlenka, *How Ending TPS Will Hurt U.S.- Citizen Children*, Center for American Progress, Feb. 11, 2019, available at <https://www.americanprogress.org/issues/immigration/reports/2019/02/11/466022/ending-tps-will-hurt-u-s-citizen-children/>.

<sup>3</sup> Catholic Legal Immigration Network, Inc., Temporary Protected Status (TPS) and Deferred Enforcement Departure (DED) (last accessed June 17, 2019), available at <https://cliniclegal.org/tps>.

<sup>4</sup> See: 82 FR 44205 (RIN: 1615-ZB67); 84 FR 13688 (RIN: 1615-ZB79); 83 FR 9329 (RIN: 1615-ZB72); 83 FR 40307 (RIN: 1615-ZB76); 83 FR 43695 (RIN: 1615-ZB77)

2. On several occasions, Members of Congress have asked for the USCIS to exercise its powers under section 244 of the Immigration and Nationality Act to actively address issues impacting the safe return of foreign nationals to certain countries. Last year, Guatemala experienced a volcanic eruption that affected over 1.7 million people and made it unsafe to return nationals. The Guatemalan government requested TPS and over 300 national, state, and local organizations delivered a request to your administration to designate Guatemala for TPS under section 244(b)(1)(B).<sup>5</sup> Forty-six Members of Congress echoed the request in a letter that also called that the administration provide safe haven for Nicaraguans under section 244(b)(1)(C), fleeing from insecurity generated by protests that ultimately morphed into violence, coupled with the foreign state's inability to ensure security and—simultaneously—equal due process.<sup>6</sup> Since last year, Venezuela has experienced rampant civil unrest, leading to pervasive violence and unstable conditions; and made it unsafe for the return of Venezuelan nationals. Bicameral, bipartisan legislation was introduced to provide TPS for Venezuela.<sup>7</sup>

On multiple occasions, Members of Congress requested that your administration issue these designations.<sup>8</sup> **Notwithstanding such concerns, your agency has failed to provide an appropriate response as to why it chooses not to exercise its statutory authority despite these countries being potentially eligible for TPS.**<sup>9</sup> In response to these congressional queries, please provide responses to the following questions:

- a. Has your administration come to a final determination regarding whether to grant TPS to Guatemala, Venezuela, or Nicaragua? If so, what is that determination and on what basis was it made?
- b. What was the State Department's recommendation to DHS regarding whether the conditions in Guatemala, Venezuela, and Nicaragua warranted TPS?
- c. What was USCIS' recommendation to DHS regarding whether the conditions in Guatemala, Venezuela, and Nicaragua warranted TPS?
- d. If your administration decided not to designate Guatemala, Venezuela, or Nicaragua for TPS, will the administration commit to exercise prosecutorial discretion for such nationals arrested, detained, or in removal proceedings while conditions in these countries continue to exist?

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<sup>5</sup> Letter from 307 national, state, and local organizations, in the areas of immigration, civil rights, human rights, labor, religion, and education to Kirstjen Nielsen, Secretary of Homeland Security, U.S. Department of Homeland Security, and Michael Pompeo, Secretary of State, U.S. Department of State (July 25, 2018), *available at* <https://cliniclegal.org/resources/over-300-national-state-and-local-organizations-sign-letter-supporting-tps-guatemala>.

<sup>6</sup> See footnote 8.

<sup>7</sup> Zuzana Cepla, *Bill Summary: Venezuela TPS Act*, National Immigration Forum, Feb. 12, 2019, <https://immigrationforum.org/article/bill-summary-venezuela-tps-act/>; Venezuela TPS Act of 2019, H.R.549, 116th Cong. (2019); Venezuela TPS Act of 2018, S.3759, 115th Cong. (2018).

<sup>8</sup> Letter from Richard J. Durbin, Senator, U.S. Senate to Donald J. Trump, President, United States (March 7, 2019), *available at*

<https://www.durbin.senate.gov/imo/media/doc/March7%20Venezuela%20TPS%20Letter%20FINAL%20SIGNED.pdf>; Letter to L. Francis Cissna, Director, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security from Nydia M. Velázquez, Representative, U.S. House of Representative (July 27, 2019), *available at* <https://velazquez.house.gov/sites/velazquez.house.gov/files/Velazquez%20MOC%20Letter%20to%20USCIS%20on%20TPS%20for%20Guatemala%20and%20Nicaragua%20July%2027%202018.pdf>.

<sup>9</sup> Note: "USCIS argues that: "because TPS is discretionary, even if the Secretary determines that conditions meet one or more of the prongs for TPS, he or she may still decline to designate the country." See USCIS response to Richard J. Durbin on July 11, 2019.

- e. Does your agency believe that the statutory authority does not apply for these countries? If so, please provide a description of country events that have been highlighted in each of these examples, along with a description of how your agency is limited by the statute (other than previous “discretionary” arguments) for TPS designation.
3. Prior to announcing terminations, USCIS failed to adjudicate timely re-registration applications for nationals from El Salvador, Haiti, Syria, and Honduras following these countries’ final statutory (and not court-ordered) 18-month extensions. These processing delays are unprecedented and resulted in TPS holders not receiving their new Employment Authorization Document (EAD) before the automatic extension of work authorization expired. This in turn is jeopardizing the livelihoods of TPS holders at no fault of their own. USCIS issued Notices of Evidence of Continued Work Authorization for these populations. Estimates are that 20,000 Salvadorans, 4,500 Haitians, 335 Syrians, and an unknown number of Hondurans were affected by these delays.<sup>10</sup> TPS holders covered by Federal Register Notices (FRN) that have been given automatic extensions have also experienced employment issues when presenting FRNs and expired EADs, unable to renew licenses or other identifications as well as harassment from employers.
    - a. Please provide the number of all Notices of Evidence of Continued Work Authorization that USCIS mailed to TPS recipients, broken down by country.
    - b. Please provide information regarding whether USCIS issued a second round of Notices of Evidence of Continued Work Authorization for these countries once the initial notices expired. If so, please provide a number of notices mailed, broken down by country.
    - c. Please provide the legal and policy rationale for employing Notices of Evidence of Continued Work Authorization *instead* of a FRN, especially in light of legal experts expressing serious concerns regarding the compliance of these notices with the Administrative Procedure Act.<sup>11</sup>
    - d. Advocates report employers improperly terminating employees for lack of current EADs and DMVs improperly denying license renewal.
      - i. What steps are you taking to ensure that all jurisdictions are following current policies?
      - ii. Please provide any communication materials (i.e. informational guides or other educational documents) that have been sent to Departments of Motor Vehicles (or other state level entities) on the eligibility of automatically extended EADs.
  4. Please provide a report regarding the number of Tentative Nonconfirmations (TNCs) for TPS and DED holders, broken down by month and country, issued by DHS since January 20, 2017.
  5. Previously, your administration requested information regarding criminal conduct by Haitian nationals and use of public benefits to inform your decision regarding whether to extend TPS for Haiti. Such request is particularly odd, as the statutory authority provided under the TPS program is unambiguous over criminal activities and its impact on eligibility.<sup>12</sup> You should also be aware that the use of public benefits, by law, is extremely limited.

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<sup>10</sup> Letter from 70 law professors and scholars to Kirstjen Nielsen, Secretary of U.S. Department of Homeland Security, and L. Francis Cissna, Director of U.S. Citizenship and Immigration Services (Nov. 28, 2018), *available at* <https://cliniclegal.org/resources/letter-70-law-professors-and-scholars-uscis-and-dhs-regarding-work-permit-extensions-tps>.

<sup>11</sup> *Id.*

<sup>12</sup> See 8 U.S.C. §1254a(c)(2)(B)

For example, TPS holders are ineligible for SNAP, TANF and have limited conditional eligibility for Medicaid or SSI.<sup>13</sup> Such attempts to investigate the use of public benefits or criminal histories illustrates a severe misunderstanding of the law governing TPS and, arguably, indicates a sense of mistrust of USCIS employees' ability in following statutory guidelines.

- a. Has your administration requested information regarding criminal conduct for other countries who hold or held TPS? If so, for which country's nationals? Please provide copies of those requests and subsequent responses.
  - b. Has your administration requested information regarding use of public benefits for other countries who hold or held TPS? If so, for which country's nationals? Please provide copies of those requests and subsequent responses.
6. TPS terminations and unprecedented delays in FRNs following TPS decisions have resulted in a drop off in re-registration. Please provide:
- a. The number of TPS holders who applied for TPS during the most recent re-registration period for each country.
  - b. The number and percentage of approvals for the most recent re-registration period for each country.
  - c. The actual number (not percentage) of denials for the most recent re-registration period for each country.
7. Litigation has produced documentation that suggests a significant role of the White House in advising or urging DHS Secretaries to make decisions terminating TPS in some instances.
- a. What was the role of the Domestic Policy Council or other White House officials in making each decision?
  - b. Has the Domestic Policy Council recommended or advised:
    - i. an extension for any country? Please list which countries;
    - ii. termination for any country? Please list which countries;
    - iii. re-designation for any country? Please list which countries; and
    - iv. against re-designation for any country? Please list which countries.
8. There are hundreds of thousands of US citizen children of TPS holders who face the threat of family separation if TPS for their parents is terminated as announced.
- a. In making its determinations, did DHS consider the impact of terminating TPS on U.S. citizen children of TPS recipients? If yes, please provide information regarding the weight given to that factor and the rationale in terminating or not re-designating TPS for each country. If no, why not?
9. TPS holders and advocates have expressed that your agency's publicly available resources regarding the current state of TPS are unclear. Advocates have expressed concerns about the USCIS' TPS resource webpage.<sup>14</sup>

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<sup>13</sup> Noncitizen Eligibility for Federal Public Assistance: Policy Overview. Audrey L. Singer. Congressional Research Service. December 12, 2016.

<sup>14</sup> Letter from Jill M. Bussey, Director of Advocacy, Catholic Legal Immigration Network, Inc. to L. Francis Cissna, Director, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security (April 26, 2019), *available at* <https://cliniclegal.org/resources/clinic-recommendations-uscis-regarding-tps-implementation-issues-and-ramos-v-nielsen>.

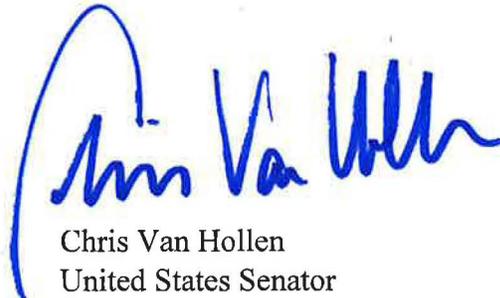
- a. Will you commit to revisit your public facing materials on TPS to make them clearer in response to stakeholder comments?
10. We would also like to take this opportunity to flag concerns relating to similar issues seen with Deferred Enforced Departure (DED) holders. We have learned that multiple DED holders have received erroneous rejection notices from USCIS in response to their timely and properly filed I-765 applications. USCIS indicated that DED holders may submit their applications for work authorization beginning April 3, 2019.<sup>15</sup> Confusion continues to exist among DED recipients, and at this time we request USCIS take the following course of action to correct the individual rejections and to stop potential harm to DED holders:
- a. Identify and re-open, on USCIS Service Motion, all I-765 applications that may have been improperly rejected by USCIS on this basis, and waive the filing fee so that applications may immediately resume processing.
    - i. Immediately alert DED holders, legal representatives, and the public about the error by sending notice of the error and USCIS's response via email and social media;
    - ii. Directly inform EAD applicants and legal representatives of the improper rejection of their application via mail with clear instructions on the next steps USCIS will take to correct the error; and
    - iii. Conduct a stakeholder engagement to provide information and answer questions.
  - b. Alternatively, if USCIS is unable to re-open rejected cases, it should identify and notify all applicants whose I-765s were improperly rejected with clear instruction on refiling. Due to unprecedented USCIS processing delays, the re-filed I-765 applications should be accepted *nunc pro tunc*.
  - c. USCIS should immediately investigate the root causes that led to this error, put into place corrective action, and share its findings with Congress.
  - d. Ensure E-Verify and SAVE have been properly updated to reflect the continued work authorization of DED and EAD holders.

We anticipate a timely response within 30 days. Thank you for your attention to this matter; we look forward to your prompt response.

Sincerely,



Nydia M. Velázquez  
Member of Congress



Chris Van Hollen  
United States Senator

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<sup>15</sup> 84 Fed. Reg. 13,059 (April 3, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-04-03/pdf/2019-06577.pdf>.



Jan Schakowsky  
Member of Congress



Richard Blumenthal  
United States Senator



Eleanor Holmes Norton  
Member of Congress



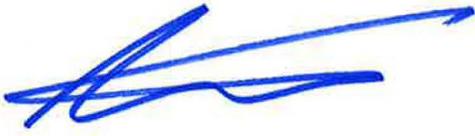
Mazie K. Hirono  
United States Senator



Adam Smith  
Member of Congress



Patty Murray  
United States Senator



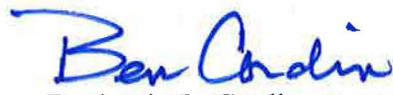
Adriano Espaillat  
Member of Congress



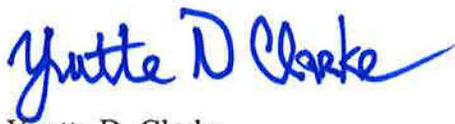
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Member of Congress



Benjamin L. Cardin  
United States Senator



Yvette D. Clarke  
Member of Congress



Tina Smith  
United States Senator



Ilhan Omar  
Member of Congress



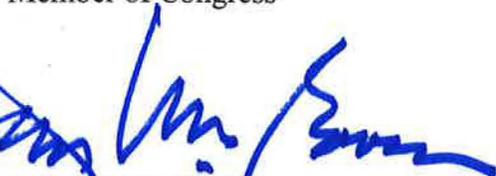
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Amy Klobuchar  
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John B. Larson  
Member of Congress

  
Tim Kaine  
United States Senator

  
Earl Blumenauer  
Member of Congress

  
Elizabeth Warren  
United States Senator

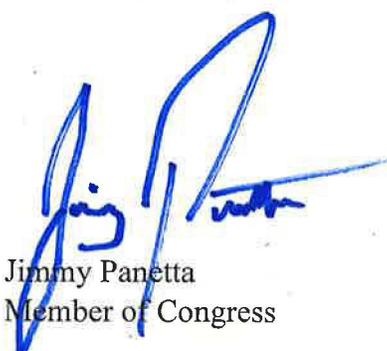
  
Jesús G. "Chuy" García  
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Catherine Cortez Masto  
United States Senator



Ayanna Pressley  
Member of Congress

  
Kirsten Gillibrand  
United States Senator



Jimmy Panetta  
Member of Congress



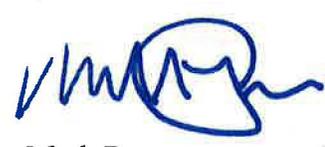
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United States Senator



Frank Pallone, Jr.  
Member of Congress



Gregory W. Meeks  
Member of Congress



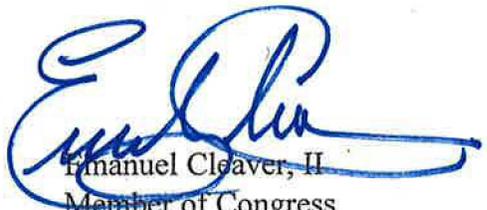
Mark Pocan  
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Rick Larsen  
Member of Congress



Grace F. Napolitano  
Member of Congress



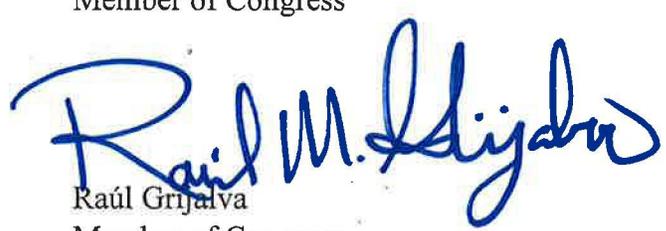
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Marc Veasey  
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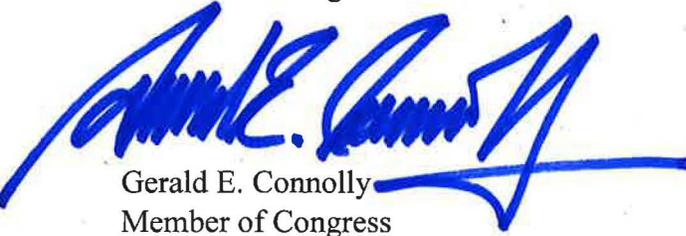
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Frederica S. Wilson  
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Nita M. Lowey  
Member of Congress



Gerald E. Connolly  
Member of Congress



Gilbert R. Cisneros, Jr.  
Member of Congress



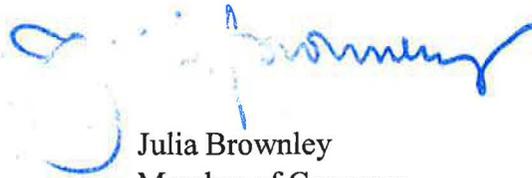
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Member of Congress



Norma J. Torres  
Member of Congress



Pete Aguilar  
Member of Congress



Julia Brownley  
Member of Congress



Lucille Roybal-Allard  
Member of Congress



Salud O. Carbajal  
Member of Congress



Darren Soto  
Member of Congress



Suzan DelBene  
Member of Congress



Kathy Castor  
Member of Congress



U.S. Citizenship  
and Immigration  
Services

October 7, 2019

The Honorable Nydia M. Velázquez  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Velázquez:

Thank you for your July 24, 2019 letter. Acting Secretary McAleenan asked that I respond on his behalf.

I appreciate your interest in the Temporary Protected Status (TPS) and Deferred Enforced Departure (DED) programs. The Secretary of Homeland Security may designate a country for TPS and extend or terminate a country's existing TPS designation based upon specific statutory criteria.<sup>1</sup> USCIS is principally responsible for advising the Secretary on TPS issues and implementing the program. DED is an administrative stay of removal that may be authorized by the President for a designated group of foreign nationals. The authority to grant DED arises from the President's constitutional authority to conduct the foreign relations of the United States.<sup>2</sup>

At least 60 days before the current expiration date for a TPS designation, the Secretary must review conditions in the foreign country and, after consultation with other appropriate federal agencies, determine whether the statutory conditions for TPS continue to be met. Under the Immigration and Nationality Act, if the Secretary determines that the conditions for designation continue to be met with respect to a country, the designation must be extended. However, if the Secretary determines that the conditions are no longer met with respect to a country, the Secretary is required to terminate the designation.<sup>3</sup> The decision to initially designate or to newly designate a country for TPS is at the discretion of the Secretary of Homeland Security.

I would further note that a separation of powers concern has arisen with TPS generally. As long as courts continue to displace executive branch authority to terminate TPS status, it makes a decision to exercise the discretion in the first place considerably more complicated and more akin to a permanent status, rather than temporary.

Please find enclosed responses to your specific questions regarding TPS and DED.

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<sup>1</sup> See Immigration and Nationality Act (INA) § 244(b)

<sup>2</sup> See Executive Order 12711 (April 11, 1990)

<sup>3</sup> See INA § 244(b)(1),(3)

The Honorable Nydia M. Velázquez

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Thank you again for your letter and interest in this important issue. The co-signers of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative and Intergovernmental Affairs at (202) 272-1940.

Respectfully,



Ken Cuccinelli II  
Acting Director

Enclosure

**The Department of Homeland Security's Response to  
Representative Velázquez's July 24, 2019 Letter**

**1. The administration extended, but did not re-designate, TPS for South Sudan, Syria, Yemen, and Somalia. An extension, by its nature, suggests that conditions in a designated country continue to exist and the immediate return of foreign nationals to such country is not possible due to such circumstances. Given this practice:**

**a. Please provide a detailed description of the methodologies and sources (including the names of specific departments and agencies) that provided resources that were used to conclude that a re-designation would not be provided.**

The Temporary Protected Status (TPS) statute (Immigration and Nationality Act (INA) §§ 244(b)(1),(b)(3)(A)) requires the Secretary to consult with "appropriate agencies of the Government" in making a determination to extend or terminate a country's TPS designation. As part of the TPS review process, Department of Homeland Security (DHS)/U.S. Citizenship and Immigration Services (USCIS) generally engages directly with counterparts at the Department of State (DOS) Bureau of Population, Refugees, and Migration (PRM). We understand that PRM coordinates with regional and functional offices across DOS, to develop DOS input, typically including an assessment of country conditions, on TPS designations. Typically, the Secretary of State provides the Secretary of Homeland Security with an assessment of conditions and a recommendation for TPS determinations that the Secretary of Homeland Security considers in the TPS review. The Secretary of Homeland Security may consult other appropriate Government agencies, depending on the facts and circumstances of the TPS determination at issue. For instance, the Department of Justice reviews TPS Federal Register Notices (FRNs). All interagency consultations are specific to the circumstances of the TPS designation, and at times representatives of other external agencies have contacted DHS/USCIS with information that they believe is relevant to TPS determinations.

**b. With regards to the failure to re-designate TPS for these countries (despite providing an extension of current status): what was the intent of this decision by the administration? The failure to re-designate appears to imply that it is your agencies' intention to block foreign nationals from further participation in this program despite being potentially eligible based on current country conditions.**

Under the TPS statute, at least 60 days prior to the expiration of a country's TPS designation, the Secretary of Homeland Security must review the conditions in the country to determine whether it still meets the requirements for a designation. If the conditions are no longer met, the Secretary of Homeland Security is obligated to terminate the designation. If the conditions continue or no determination is made, the TPS designation must be extended a minimum of 6 months, but may be extended, at the discretion of the Secretary of Homeland Security, for 12 or 18 months. Newly designating (previously known as "re-designating") a country for TPS is not a concept expressly spelled out in the statute and is a discretionary action.

A TPS designation is meant to delay an alien's return to his/her home country because statutory conditions arose there while the alien was in the U.S. Likewise, to newly designate a country for TPS would be to delay an additional group of aliens' return to their home country because new statutory conditions arose while the second group of aliens was in the U.S. If the same original designation's country conditions exist, without new, additional statutory conditions arising, newly designating a country for TPS is not warranted.

The Secretary of Homeland Security may choose not to use his discretion to newly designate a country for TPS as a matter of policy. DHS does not release internal communications on policy deliberations, including TPS determinations.

- 2. On several occasions, Members of Congress have asked for the USCIS [sic] to exercise its powers under section 244 of the Immigration and Nationality Act to actively address issues impacting the safe return of foreign nationals to certain countries. Last year, Guatemala experienced a volcanic eruption that affected over 1.7 million people and made it unsafe to return nationals. The Guatemalan government request TPS and over 300 national, state, and local organizations delivered a request to your administration to designate Guatemala for TPS under section 244(b)(1)(B). Forty-six Member of Congress echoes the request in a letter that also called that the administration provide safe haven for Nicaraguans under section 244(b)(1)(C), fleeing from insecurity generated by protests that ultimately morphed into violence, coupled with the foreign state's inability to ensure security and – simultaneously – equal due process. Since last year, Venezuela has experienced rampant civil unrest, leading to pervasive violence and unstable conditions; and made it unsafe for the return of Venezuelan nationals. Bicameral, bipartisan legislation was introduce to provide TPS for Venezuela.**

**On multiple occasions, Members of Congress requested that your administration issue these designations. Notwithstanding such concerns, your agency has failed to provide an appropriate response as to why it chooses not to exercise its statutory authority despite these countries being potentially eligible for TPS. In response to these congressional queries, please provide responses to the following questions:**

- a. Has your administration come to a final determination regarding whether to grant TPS to Guatemala, Venezuela, or Nicaragua? If so, what is that determination and on what basis was it made?**

DHS does not release internal communications on policy deliberations, including TPS determinations.

- b. What is the State Department's recommendation to DHS regarding whether the conditions in Guatemala, Venezuela, and Nicaragua warranted TPS?**

DHS is not authorized to disclose any potential DOS records regarding TPS for these or any countries. The access procedures and guidelines for the availability of DOS records are recorded in 22 Code of Federal Regulations 171.

- c. What was USCIS' recommendation to DHS regarding whether the conditions in Guatemala, Venezuela, and Nicaragua warranted TPS?**

DHS does not release internal communications on policy deliberations, including TPS determinations.

- d. If your administration decided not to designate Guatemala, Venezuela, or Nicaragua for TPS, will the administration commit to exercise prosecutorial discretion for such nationals arrested, detained, or in removal proceedings while conditions in these countries continue to exist?**

DHS does not exempt entire categories or classes of aliens from removal. It remains a case-by-case determination.

- e. Does your agency believe that the statutory authority does not apply for these countries? If so, please provide a description of country events that have been highlighted in each of these examples, along with a description of how your agency is limited by the statute (other than previous "discretionary" arguments) for TPS designation.**

The INA governs the process and requirements to designate a country for TPS. Specifically, under INA section 244(b)(1), the Secretary of Homeland Security may designate a foreign country (or any part of such foreign country) if the conditions in the foreign country fall into one, or more, of the three statutory bases for designation: (1) ongoing armed conflict, (2) environmental disaster, or (3) extraordinary and temporary conditions. Initial TPS designations are wholly discretionary upon one of these conditions being met; they are not required.

- 3. Prior to announcing terminations, USCIS failed to adjudicate timely re-registration applications for nationals from El Salvador, Haiti, Syria, and Honduras following these countries' final statutory (and not court-ordered) 18-month extensions. These processing delays are unprecedented and resulted in TPS holders not receiving their Employment Authorization Document (EAD) before the automatic extension of work authorization expired. This in turn is jeopardizing the livelihoods of TPS holders at no fault of their own. USCIS issued Notices of Evidence of Continued Work Authorization for these populations. Estimates are that 20,000 Salvadorans, 4,500 Haitians, 335 Syrians, and an unknown number of Hondurans were affected by these delays. TPS holders covered by Federal Register Notices (FRN) that have been given automatic extensions have also experienced employment issues when presenting FRNs and expired EADs, unable to renew licenses or other identifications as well as harassment from employers.**

**a. Please provide the number of all Notices of Evidence of Continued Work Authorization that USCIS mailed to TPS recipients, broken down by country.**

USCIS issued approximately 30,161 notices. Please see a break down by country below.

- Haiti
  - 4,364 notices – first round
  - 4,659 notices– second round
- El Salvador
  - 19,992 notices
- Syria
  - 338 notices
- Honduras
  - 808 notices

**b. Please provide information regarding whether USCIS issued a second round of Notices of Evidence of Continued Work Authorization for these countries once the initial notices expired. If so, please provide a number of notices mailed, broken down by country.**

Haiti is the only TPS country that received a second round of notices. Please see the data below.

- Haiti
  - 4,659 notices – second round

**c. Please provide the legal and policy rationale for employing Notices of Evidence of Continued Work Authorization instead of a FRN, especially in light of legal experts expressing serious concerns regarding the compliance of these notices with the Administrative Procedure [sic] Act.**

USCIS opted to mail individual notices for the automatic extensions of Employment Authorization Document (EAD) for Haiti, El Salvador, Honduras, and Syria due to the large number of affected beneficiaries and to ensure that there were no gaps in work authorization.

Each time EADs are automatically extended, USCIS updates the country-specific TPS web page with instructions explaining how TPS beneficiaries can demonstrate continued employment authorization. The USCIS TPS web pages further instruct beneficiaries with a pending EAD application who believe they are eligible for the additional automatic extension to contact the USCIS Contact Center for assistance. The USCIS Office of Public Affairs' Public Engagement Division maintains a mailbox that receives complaints, although this mailbox has not received any complaints on this issue to date. USCIS has at times received letters from stakeholders raising concerns about the potential challenges of auto-extensions such as employment discrimination, loss of income or employment, and inability to renew personal or commercial driver's licenses. USCIS is aware of these issues and continues to address them through ongoing engagement with the public, employers,

and state agencies involved with employment verification, as well as through regular updates to the USCIS TPS web pages.

**d. Advocates report employers improperly terminating employees for lack of current EADs and DMVs improperly denying license renewal.**

**i. What steps are you taking to ensure that all jurisdictions are following current policies?**

USCIS does not control the type of documents that Departments of Motor Vehicles (DMVs) accept. However, USCIS does provide information about automatic extensions of TPS-related documents and current policies through prominent announcements posted on the USCIS website, email updates to those subscribed to the USCIS news distribution list, country-specific TPS web pages in the USCIS website, FRNs announcing each TPS decision, and ongoing engagement with DMVs and other stakeholders. Through the Systematic Alien Verification for Entitlements (SAVE) program, USCIS also works with the DHS REAL ID office to provide guidance to DMVs. Through each of these channels, USCIS provides state agencies and TPS beneficiaries information about how TPS beneficiaries may demonstrate their continued lawful status to DMVs.

**ii. Please provide any communication materials (i.e. informational guides or other educational documents) that have been sent to Departments of Motor Vehicles (or other state level entities) on the eligibility of automatically extended EADs.**

SAVE publishes guidance in the What's New section of the SAVE website. See <https://www.uscis.gov/save/whats-new>. SAVE also highlights the items noted above in program announcements posted prominently on the home page in the SAVE system and sent as email alerts to DMVs and other SAVE user agencies. Additional resources in the SAVE system also provide information about TPS in general, how TPS beneficiaries may demonstrate their continued lawful status to DMVs and other SAVE user agencies, and specific instructions for submitting and processing SAVE cases for TPS beneficiaries using TPS-based documents, including those that are automatically extended in order to verify immigration status. SAVE also frequently addresses TPS through ongoing engagements with SAVE user agencies.

**4. Please provide a report regarding the number of Tentative Nonconfirmations (TNCs) for TPS and DED holders, broken down by month and country, issued by DHS since January 20, 2017.**

E-Verify users enter information from Form I-9 to create a case in E-Verify. Because Form I-9 rules prohibit employers from requiring employees to provide evidence of their nationality, E-Verify does not have information about an employee's citizenship or nationality and is unable to provide a list of TPS and DED beneficiaries who received Tentative Nonconfirmations (TNC's) by country designation. However, E-Verify can

provide the number of TNCs issued to DED and TPS beneficiaries by month for each year beginning on January 20, 2017.

<b>Number of TNCs issued to TPS and DED Beneficiaries</b>				
<b>Year</b>	<b>Month</b>	<b>DED</b>	<b>TPS</b>	<b>Total</b>
<b>2017</b>	JAN 20 through 31	1	17	18
	FEB	.	41	41
	MAR	.	44	44
	APR	1	56	57
	MAY	1	38	39
	JUN	2	57	59
	JUL	1	69	70
	AUG	1	84	85
	SEP	.	78	78
	OCT	.	65	65
	NOV	3	59	62
	DEC	2	55	57
<b>2017 Total</b>		<b>12</b>	<b>663</b>	<b>675</b>
<b>2018</b>	JAN	.	73	73
	FEB	.	64	64
	MAR	1	154	155
	APR	4	702	706
	MAY	11	884	895
	JUN	14	401	415
	JUL	9	543	552
	AUG	23	557	580
	SEP	12	463	475
	OCT	18	502	520
	NOV	14	348	362
	DEC	7	252	259
<b>2018 Total</b>		<b>113</b>	<b>4,943</b>	<b>5,056</b>
<b>2019</b>	JAN	3	147	150
	FEB	8	402	410
	MAR	9	385	394
	APR	30	313	343
	MAY	16	381	397
	JUN	11	291	302
	JUL	19	407	426
	AUG 1 through 14	4	195	199
<b>2019 Total</b>		<b>100</b>	<b>2,521</b>	<b>2,621</b>
<b>Grand Total</b>		<b>225</b>	<b>8,127</b>	<b>8,352</b>

- 5. Previously, your administration requested information regarding criminal conduct by Haitian nationals and use of public benefits to inform your decision regarding whether to extend TPS for Haiti. Such request is particularly odd, as the statutory authority provided under the TPS program is ambiguous over criminal activities and its impact on eligibility. You should also be aware that the use of public benefits, by law, is extremely limited.**

**For example, TPS holders are ineligible for SNAP, TANF and have limited conditional eligibility for Medicaid or SSI. Such attempts to investigate the use of public benefits or criminal histories illustrates a severe misunderstanding of the law governing TPS and, arguably, indicates a sense of mistrust of USCIS employees' ability in following statutory guidelines.**

- a. Has your administration requested information regarding criminal conduct for other countries who hold or held TPS? If so, for which country's nationals? Please provide copies of these requests and subsequent responses.**

In making decisions about TPS designations, the Secretary of Homeland Security reviews and considers input and country conditions provided by a variety of sources, both internal to DHS and external. All appropriate and available information relating to the statutory conditions underlying a country's TPS designation is taken into account. Following the Secretary's review, the law requires that he extend a country's designation if the statutory conditions for designation continue to be met, and that he terminate the designation if they are not. The Secretary takes TPS decisions very seriously and makes each decision in full compliance with the law. DHS does not release internal communications on policy deliberations, including TPS determinations.

- b. Has your administration requested information regarding use of public benefits for other countries who hold or held TPS? If so, for which country's nationals? Please provide copies of those requests and subsequent responses.**

Please see the above response to question 5.a.

- 6. TPS terminations and unprecedented delays in FRNs following TPS decisions have resulted in a drop-off in re-registration. Please provide:**

- a. The number of TPS holders who applied for TPS during the most recent re-registration period for each country.**

The TPS re-registration requirement stems from INA § 244(c)(3)(C). TPS beneficiaries must generally re-register timely for TPS in accordance with the procedures described in the applicable FRN for their designated country if they

wish to maintain their TPS by filing Form I-821, Application for Temporary Protected Status, with USCIS. During adjudication of the regular re-registration

applications, the USCIS Service Centers also assess whether the beneficiary has maintained all TPS eligibility requirements.

**b. The number and percentage of approvals for the most recent re-registration period for each country.**

TPS Countries	Approvals	% of Approvals
El Salvador	178,621	98.57%
Haiti	24,329	90.62%
Honduras	39,771	93.23%
Nepal	8,100	95.52%
Nicaragua	1,993	94.54%
Somalia	136	71.20%
South Sudan	D	D
Sudan	289	94.14%
Syria	3,025	92.03%
Yemen	886	84.06%
Grand Total	257,150	96.60%

D: Data withheld to protect applicants' privacy.

**c. The actual number (not percentage) of denials for the most recent re-registration period for each country.**

TPS Countries	Denials
El Salvador	1,746
Haiti	665
Honduras	402
Nepal	90
Nicaragua	28
Somalia	D
South Sudan	D
Sudan	12
Syria	64
Yemen	37
Grand Total	3,049

D: Data withheld to protect applicants' privacy.

**7. Litigation has produced documentation that suggests a significant role of the White House in advising or urging DHS Secretaries to make decisions terminating TPS in some instances.**

**a. What was the role of the Domestic Policy Council or other White House officials in making each decision?**

DHS does not comment on internal decision making processes.

**b. Has the Domestic Policy Council recommended or advised:**

- i. an extension for any country? Please list which countries;**
- ii. termination for any country? Please list which countries;**
- iii. re-designation for any country? Please list which countries; and**
- iv. against re-designation for any country? Please list which countries.**

As discussed above, DHS does not comment on internal decision making processes.

**8. There are hundreds of thousands of U.S. citizen children of TPS holders who face the threat of family separation if TPS for their parents is terminated as announced.**

**a. In making its determinations, did DHS consider the impact of terminating TPS on U.S. citizen children of TPS recipients? If yes, please provide information regarding the weight given to that factor and the rationale [sic] in terminating or not re-designating TPS for each country. If no, why not?**

When the Secretary of Homeland Security terminates a TPS designation, he may determine the appropriate effective date of the termination. In doing so, he may delay the effective date of a termination to provide for an orderly transition period, which affords beneficiaries without any other immigration status a reasonable amount of time following the announcement of termination of a designation to plan and prepare for their departure from the United States or seek another lawful immigration status, if eligible. Such transition periods apply to all beneficiaries under a designation, irrespective of age, health, or family status, but may be particularly helpful to those beneficiaries for whom age, health, or family status present challenges in relation to the loss of TPS. DHS does not release internal communications on policy deliberations, including TPS determinations.

**9. TPS holders and advocates have expressed that your agency's publicly available resources regarding the current state of TPS are unclear. Advocates have expressed concerns about the USCIS TPS resource webpage.**

**a. Will you commit to revisit your public facing materials on TPS to make them clearer in response to stakeholder comments?**

As mentioned in the response to 3.c., USCIS maintains and regularly updates the information on the TPS page on its website, as well as on the county-specific TPS web pages. USCIS publishes this information with the specific intent of informing affected TPS beneficiaries of key points, including the current status of each country's TPS designation and the dates through which TPS beneficiaries' employment authorization is valid, as well as any applicable EAD automatic extensions.

USCIS has continued to comply with the terms of the orders in court proceedings that have either enjoined or stayed the implementation of TPS terminations for several countries: El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan. USCIS is working in good faith with the plaintiffs to resolve any disputes concerning DHS's course of action, including taking reasonable steps to address confusion among TPS beneficiaries and other stakeholders regarding that course of action. USCIS receives and responds to feedback from stakeholders on these issues as well.

**10. We would also like to take this opportunity to flag concerns relating to similar issues seen with Deferred Enforced Departure (DED) holders. We have learned that multiple DED holders have received erroneous rejection notices from USCIS in response to their timely and properly filed I-765 applications. USCIS indicated that DED holders may submit their applications for work authorization beginning April 3, 2019. Confusion continues to exist among DED recipients, and at this time we request USCIS take the following course of action to correct the individual rejections and to stop potential harm to DED holders:**

- a. Identify and re-open, on USCIS Service Motion, all I-765 applications that may have been improperly rejected by USCIS on this basis, and waive the filing fee so that applications may immediately resume processing.**

USCIS records indicate that 155 applications for employment authorization from DED-eligible Liberians were erroneously rejected. These records have been verified through the automated intake system. USCIS returned all fees submitted with the original, rejected application along with the rejection letter. The standard intake procedure for rejected applications does not allow for acceptance of fees on rejected applications. Therefore, all fees associated with the mistakenly rejected applications were returned to the applicant and not accepted during the intake process. Because USCIS returned the filing fees to the affected individuals, USCIS did not waive the subsequent filing fee on resubmitted applications. However, as with all DED-based I-765 applications, individuals are permitted to request a fee waiver with their DED-based I-765 application by filing Form I-912, Request for Fee Waiver. You may visit <https://www.uscis.gov/i-912> for more information about the eligibility requirements for a fee waiver. See also 10.e., below.

- b. Immediately alert DED holders, legal representatives, and the public about the error by sending notice of the error and USCIS's response via email and social media;**

USCIS issued individual notices to the affected applicants and their attorneys/representatives of record on May 9, 2019, inviting them to re-submit their applications. The individual notices were verified by associating the notices to the automated intake system records.

- c. Directly inform EAD applicants and legal representatives of the improper rejection of their application via mail with clear instructions on the next steps USCIS will take to correct the error;**

Please see the above response to 10.a.

- d. Conduct a stakeholder engagement to provide information and answer questions.**

USCIS shared this information with our engagement teams, including community relations officers in the jurisdictions with highest concentration of Liberians. USCIS also continues to maintain relationships with community organizations that serve the DED Liberian population and is prepared to respond to any further concerns through these channels.

- e. Alternatively, if USCIS is unable to re-open rejected cases, it should identify and notify all applicants whose I-765s were improperly rejected with clear instructions on refiling. Due to unprecedented USCIS processing delays, the re-filed I-765 applications should be accepted nunc pro tunc.**

As explained in response to question 10.a., USCIS has identified and issued individual notices to all affected applicants. USCIS has further identified the re-filed applications from the affected applicants and is working to process all re-filed applications in an expeditious manner. Additionally, USCIS is committed to the timely processing of all DED-related applications for employment authorization, and is cognizant that the current automatic extension of employment authorization for DED-eligible Liberians expired on September 27, 2019.

- f. USCIS should immediately investigate the root causes that led to this effort, put in place corrective action, and share its findings with Congress.**

USCIS has identified the cause of the error as code in the Lockbox program that was inadvertently overwritten during a code update. Successful steps have been taken to ensure this does not happen in the future, which include additional storage of program codes before and after all updates, additional program testing, and additional staff training.

- g. Ensure E-Verify and SAVE have been properly updated to reflect the continued work authorization of DED and EAD holders.**

E-Verify and SAVE verify employment authorization or immigration status based on records available to DHS. Social Security Administration (SSA) records are available for E-Verify cases. However, a mismatch may occur in some cases, for example when the information entered by the employer using E-Verify or the registered SAVE agency does not match records available to DHS, a name change was not reported by the individual, or other changes were not updated in DHS records or records available to DHS (including SSA records). If an employee's E-Verify case receives a mismatch (called Tentative Nonconfirmation or "TNC") and the employee contests the TNC, E-Verify automatically conducts further review and research to successfully resolve the case. When there is a mismatch in a SAVE case, the benefit-granting agency must submit a request for additional verification, which prompts SAVE to conduct further review and research to successfully confirm immigration status.