

Termination of Temporary Protected Status for Certain Countries: Recent Litigation Developments

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Certain aliens (as defined in the [Immigration and Nationality Act](#) (INA)) who otherwise are subject to removal from the United States may stay and work here when the Department of Homeland Security (DHS) designates their countries for [Temporary Protected Status](#) (TPS) because of unstable or dangerous conditions in those countries. In 2017 and 2018, DHS announced the termination of TPS designations for [Sudan](#), [Nicaragua](#), [Haiti](#), [El Salvador](#), [Nepal](#), and [Honduras](#). The agency's decisions affect, as of November 2022, roughly 292,000 [TPS beneficiaries](#) from those six countries who potentially could lose authorization to remain in the United States upon the effective termination date of the countries' TPS designations. Several [lawsuits](#) challenged DHS's decisions on various constitutional and statutory grounds. In one of those cases, *Ramos v. Wolf*, the U.S. Court of Appeals for the Ninth Circuit in 2020 reversed a lower court's [preliminary injunction](#) barring DHS from ending the TPS designations for four of those countries—Sudan, Nicaragua, Haiti, and El Salvador. In 2023, following unsuccessful efforts by the parties to reach a settlement, the Ninth Circuit [granted](#) the plaintiffs' petition to rehear the case *en banc* and vacated the 2020 panel decision. A separate court challenge to the termination of TPS designations for Honduras and Nepal [remains stayed](#) pending the outcome in *Ramos*. DHS newly designated Haiti and Sudan for TPS in [2021](#), [2022](#), and [2023](#), thereby allowing nationals of those countries to apply for TPS benefits based on the newer designations. This Legal Sidebar examines the litigation concerning the TPS designation terminations and the implications it may have for TPS recipients.

Background

Under [8 U.S.C. § 1254a](#), DHS, in consultation with other federal agencies, may designate a country (or any part of a country) for TPS if (1) there is an armed conflict that prevents the safe return of nationals from that country; (2) there has been an environmental disaster in that country that substantially disrupts living conditions in the area affected; or (3) there are “extraordinary and temporary conditions” in the foreign country that prevent alien nationals from safely returning. An alien from a country designated for TPS may be [permitted to remain and work](#) in the United States for the period in which the TPS designation is in effect, even if the alien had not originally entered the United States lawfully. The [initial](#)

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period of TPS designation may last between 6 and 18 months, and the designation may be extended thereafter. If the DHS Secretary concludes that the designated country “no longer continues to meet the conditions for [TPS] designation,” the agency “shall terminate” the TPS designation. 8 U.S.C. § 1254a(b)(5) provides that “[t]here is no judicial review of any determination of the [DHS Secretary] with respect to the designation, or termination or extension of a designation, of a foreign state” Upon termination of their respective country’s TPS designation, TPS beneficiaries revert to the same immigration status they had before TPS (unless that status has since expired or been terminated) or to any lawful immigration status they obtained while registered for TPS relief (as long as the lawful status remains valid on the date a TPS designation terminates).

From September 2017 through May 2018, DHS successively announced the termination of TPS designations for Sudan, Nicaragua, Haiti, El Salvador, Nepal, and Honduras. In its *Federal Register* notices, the agency declared that the conditions which originally warranted TPS designations for these countries no longer existed or had substantially improved. The agency granted 12- or 18-month wind-down periods for each country before the terminations would become effective.

Preliminary Injunction in *Ramos v. Wolf* and Related Litigation

In *Ramos v. Wolf*, nine TPS beneficiaries and their five U.S. citizen children filed a lawsuit in the U.S. District Court for the Northern District of California, challenging DHS’s decisions to end TPS designations for Sudan, Nicaragua, Haiti, and El Salvador. The plaintiffs argued that, in terminating the TPS designations, DHS only considered whether the original country conditions warranting those designations had continued, without examining more recent events in those countries. The plaintiffs argued that DHS’s actions violated the Administrative Procedure Act (APA) because they “represented a sudden and unexplained departure from decades of decision-making practices and ordinary procedures.” The plaintiffs also argued that DHS’s decision to terminate TPS violated their constitutional right to equal protection because it was “motivated in significant part by racial and national-origin animus.”

In October 2018, the district court issued a preliminary injunction barring DHS from terminating the TPS designations for Sudan, Nicaragua, Haiti, and El Salvador pending the outcome of the litigation. Previously, the court had rejected the government’s contention that 8 U.S.C. § 1254a(b)(5), barred judicial review of DHS’s TPS terminations, reasoning that the statute did not bar review of the “general policies or practices” employed in deciding whether to end a TPS designation, and that the jurisdictional provision did not foreclose constitutional challenges. In its October 2018 order, the court determined that, given DHS’s failure to explain its “change in practice” of only considering the original country conditions when making a TPS determination, plaintiffs had shown serious questions or a likelihood of success on the merits of their APA claim. The court also ruled that the plaintiffs raised serious questions on their equal protection claim based on evidence that race may have been a “motivating factor” in the TPS designation decisions. The court cited statements reportedly made by President Trump that “expressed animus against non-white, non-European immigrants,” and other evidence suggesting that the DHS Secretary may have been “influenced” by President Trump and administration officials to terminate TPS designations.

While the *Ramos* lawsuit was pending, a group of plaintiffs in *Bhattarai v. Wolf* challenged DHS’s termination of TPS designations for Honduras and Nepal in the U.S. District Court for the Northern District of California. In March 2019, following the *Ramos* injunction, the court in *Bhattarai* stayed the proceedings pending adjudication of the government’s appeal in *Ramos*. Further, the government agreed not to terminate the TPS designations for Nepal and Honduras pending resolution of that appeal.

Additionally, in *Saget v. Trump*, a group of plaintiffs filed a [lawsuit](#) in the U.S. District Court for the Eastern District of New York challenging DHS's termination of Haiti's TPS designation. In April 2019, the court [issued a preliminary injunction](#) enjoining DHS from terminating Haiti's TPS designation, largely on the same grounds that the *Ramos* district court relied on in issuing an injunction.

The Ninth Circuit's Decision in *Ramos v. Wolf*

The government [appealed](#) the preliminary injunction in *Ramos v. Wolf* to the Ninth Circuit. On September 14, 2020, a three-judge panel of the Ninth Circuit, in a split decision, [reversed and vacated](#) the injunction. The court [held](#) that 8 U.S.C. § 1254a(b)(5) barred judicial review of the plaintiffs' APA challenge to DHS's decision to terminate the TPS designations for Sudan, Nicaragua, Haiti, and El Salvador. Recognizing the DHS Secretary's "[broad and unique](#)" discretion over TPS designations, the court [read](#) § 1254a(b)(5) as barring review of the Secretary's "country-specific TPS determinations," but not "general collateral challenges to unconstitutional practices and policies used by the agency" in reaching those determinations. According to the court, the Secretary's unreviewable TPS determinations [include](#) the substantive "considerations and reasoning" underlying those determinations, such as an assessment of country conditions. The court [construed](#) the plaintiffs' arguments about DHS's failure to consider intervening events in a country as "essentially an attack on the substantive considerations underlying the Secretary's specific TPS determinations, over which the statute prohibits judicial review."

The Ninth Circuit did, however, [address](#) the plaintiffs' equal protection claim, and concluded that 8 U.S.C. § 1254a(b)(5) [did not foreclose](#) "colorable constitutional claims." The court [held](#) that the plaintiffs failed to present serious questions on the merits of their claim that the TPS terminations were influenced by President Trump's "animus against non-white, non-European immigrants." The court [determined](#) there was a "glaring lack of evidence" linking the President's alleged discriminatory intent to the specific TPS terminations. Further, the court held that the fact that the TPS terminations affected non-European countries with mainly "non-white" populations also [did not establish racial animus](#) because virtually all countries designated for TPS have that characteristic and any TPS termination would disproportionately impact such countries. The court [vacated](#) the district court's injunction and remanded the case to the lower court for further proceedings.

Following the Ninth Circuit's decision, the *Ramos* plaintiffs filed a [petition for rehearing en banc](#) (i.e., a petition requesting review of the panel's decision by all active judges in the circuit). Subsequently, the Ninth Circuit panel stayed the litigation pending settlement discussions between the parties in light of the Biden Administration's indication that it would review the TPS designation terminations. After a few years, those settlement efforts [reportedly ended](#) without agreement. Eventually, on February 10, 2023, the Ninth Circuit [granted](#) the plaintiffs' request to rehear the case *en banc* and vacated the panel's decision. The court has scheduled oral argument on the rehearing petition for June 2023.

New TPS Designations for Haiti and Sudan

On August 3, 2021, less than a year after the initial ruling in *Ramos*, DHS newly [designated](#) Haiti for TPS. That designation enabled Haitian nationals, including those who received TPS under the previous 2011 designation, as well as those who entered the United States more recently, to pursue TPS benefits under the 2021 designation. Given this development, on October 15, 2021, the parties in the *Saget* case (which involved a challenge to the termination of Haiti's original TPS designation) agreed to dismiss that case. More recently, on January 26, 2023, DHS [extended and redesignated Haiti](#) for TPS, allowing Haitian nationals residing in the United States as of November 6, 2022, to pursue TPS relief based on this new designation.

Additionally, on April 19, 2022, DHS newly [designated](#) Sudan for TPS. That designation allows Sudanese nationals, including those with TPS relief under the prior 2013 designation as well as those who came to the United States more recently, to pursue TPS benefits under the 2022 designation. The newer TPS designations for Haiti and Sudan are currently set to last until August 3, 2024, and October 19, 2023, respectively.

Implications for TPS Recipients

The Ninth Circuit's 2020 panel decision in *Ramos* would have allowed DHS to terminate the TPS designations for El Salvador and Nicaragua, as well as the *previous* 2011 and 2013 TPS designations for Haiti and Sudan. TPS recipients from those countries would have become subject to removal upon expiration of their TPS (unless they acquired some other lawful immigration status that remained valid). Additionally, the 2020 *Ramos* ruling could have impacted TPS recipients from Nepal and Honduras, whose countries' TPS termination decisions are being separately [challenged](#) in *Bhattarai v. Wolf*. In that case, the court [stayed](#) the proceedings pending adjudication of the government's appeal in *Ramos*. The Ninth Circuit's 2020 decision would have also made TPS recipients from Nepal and Honduras subject to removal. All told, the *Ramos* 2020 decision potentially rendered about [292,000 TPS recipients](#) removable upon the effective termination date of their countries' TPS designations.

Nonetheless, TPS recipients from El Salvador, Nicaragua, Nepal, Honduras, and Haiti and Sudan (under those countries' 2011 and 2013 designations) will not immediately lose their authorization to remain in the United States. As discussed in this Sidebar, the Ninth Circuit has [granted](#) the *Ramos* plaintiffs' petition for rehearing *en banc* and vacated the earlier 2020 panel decision. Consequently, the lower court's injunction [remains in effect](#) pending the Ninth Circuit's *en banc* review of the case. Meanwhile, DHS's U.S. Citizenship and Immigration Services (USCIS) has [extended](#) TPS-related documentation (e.g., work authorization) for TPS recipients from El Salvador, Nicaragua, Honduras, and Nepal, and for TPS recipients from Haiti and Sudan (under those countries' 2011 and 2013 designations) until June 30, 2024. Further, as discussed, nationals of Haiti and Sudan with TPS under those countries' previous designations may pursue TPS benefits [under the newer designations](#), thereby ensuring that they maintain TPS benefits.

USCIS [announced](#) in November 2022 that if the government ultimately prevails in the *Ramos* litigation, the TPS terminations for El Salvador, Honduras, Nepal, and Nicaragua would take effect no earlier than 365 days from issuance of a final court order permitting the TPS designation terminations. However, if the Ninth Circuit's *en banc* review results in a decision allowing DHS to terminate the TPS designations, the plaintiffs could [petition for review before the Supreme Court](#), and [request a stay](#) of the Ninth Circuit's ruling pending disposition of that petition. The plaintiffs could also file a [motion to stay the mandate](#) in the Ninth Circuit pending the Supreme Court's consideration of their petition.

While litigation in *Ramos* continues, Congress may consider [legislation related to TPS](#). For example, in the 118th Congress, the [Temporary Protected Status Reform and Integrity Act](#) (S. 207) would make those who entered the United States without inspection, accrued unlawful presence in the United States, or were issued a final removal order ineligible for TPS. Additionally, under this bill, TPS recipients would be ineligible to adjust to LPR status during the period in which they have TPS status. This bill would also require an Act of Congress for any second or subsequent extension of a country's TPS designation. The bill would also prohibit DHS from designating TPS for a country that had a previous TPS designation that was terminated within the past eighteen months. The bill provides that, if a TPS designation is terminated, aliens who had been granted TPS based on that designation may remain in the United States for 180 days after termination of the designation.

In the 117th Congress, the [American Dream and Promise Act of 2021](#) (H.R. 6), which passed the House in 2021, would have allowed certain nationals of countries designated for TPS to [pursue adjustment](#) of status to [lawful permanent resident](#) (LPR). Other legislation introduced in the 117th Congress would have added

new countries or regions to those designated for TPS (e.g., [Hong Kong](#), [Lebanon](#), and [Ukraine](#)), or, similar to H.R. 6, would have [allowed TPS recipients](#) who have lived in the United States for several years [to adjust to LPR status](#). Conversely, some bills introduced in the 117th Congress would have limited TPS by making those who are [members of criminal gangs](#) or [lack lawful immigration status](#) ineligible for TPS, [terminated an individual's TPS](#) if that person failed to appear for a removal proceeding, or [transferred authority](#) from DHS to Congress to designate countries for TPS.

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