



# CATHOLIC LEGAL IMMIGRATION NETWORK, INC.

## TPS Terminations: Understanding the 9<sup>th</sup> Circuit's *Ramos* Decision and How it Affects TPS Clients

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Temporary Protected Status (TPS) is a temporary immigration status for qualifying nationals of a country that has been designated by the Department of Homeland Security (DHS) based on ongoing armed conflict, environmental disaster, or another extraordinary and temporary condition. The ten countries currently designated are: El Salvador, Haiti, Honduras, Nepal, Nicaragua, Somalia, Sudan, South Sudan, Syria and Yemen.<sup>1</sup> Since its creation in 1990, TPS designations have routinely been extended, especially for countries with long-term designations.<sup>2</sup> However, during 2017 and 2018, the Trump administration announced decisions to terminate TPS for six countries — El Salvador, Haiti, Honduras, Nicaragua, Nepal, and Sudan.<sup>3</sup> These terminations were met with a number of legal challenges filed in U.S. district courts. Claims included that the decisions stemmed from racial discrimination, violated required procedures, and infringed on the Constitutional rights of TPS beneficiaries and their U.S. citizen children. The FAQs below review three of the pending lawsuits with a focus on how the Sept. 14, 2020 decision by the Ninth Circuit Court of Appeals in *Ramos v. Nielsen* could affect TPS clients.

### How has litigation prevented the administration from implementing TPS terminations?

While a number of cases have challenged the administration's TPS terminations, this advisory covers two lawsuits filed in the U.S. District Court in the Northern District of California (*Ramos v. Nielsen* and *Bhattarai v. Nielsen*) and one lawsuit filed in the U.S. District Court in the Eastern District of New York (*Saget v. Trump*). A summary of all challenges to TPS terminations and other TPS-related litigation is found [here](#).

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<sup>1</sup> See [uscis.gov/humanitarian/temporary-protected-status](https://uscis.gov/humanitarian/temporary-protected-status)

<sup>2</sup> For example, Honduras was designated for TPS in 1999 and El Salvador in 2001.

<sup>3</sup> Designations for TPS for the remaining four countries — Somalia, South Sudan, Syria, and Yemen — have been extended by the current administration. DHS will assess whether to extend or terminate these designations before the respective expiration dates of March 31, 2021 (Syria), Sept. 3, 2021 (Yemen), Sept. 17, 2021 (Somalia), and May 2, 2022 (South Sudan).

***Ramos v. Nielsen*** — This class action lawsuit was filed on March 12, 2018, by TPS recipients and their U.S. citizen children challenging the legality of terminating TPS for El Salvador, Haiti, Nicaragua and Sudan. A federal district court in California issued a nationwide [preliminary injunction](#) on Oct. 4, 2018.

The court's order temporarily prevented DHS from implementing the terminations of TPS for El Salvador, Haiti, Nicaragua and Sudan while the case proceeded on its merits. The government appealed the injunction to the Ninth Circuit Court of Appeals and, on Sept. 14, 2020, the appellate court lifted the injunction. The impact of that [decision](#) is discussed in the next question.

***Saget v. Trump*** — The TPS termination for Haiti, in addition to being a part of the *Ramos* case, was also challenged in a lawsuit filed in federal district court in New York on March 15, 2018. The *Saget* court also issued a nationwide [injunction](#) on April 11, 2019, which temporarily prevented DHS from enforcing the end of TPS for Haitians. While the government appealed the injunction to the Second Circuit Court of Appeals, the higher court has not yet issued a decision.

***Bhattarai v. Nielsen*** — A third pending lawsuit, filed on Feb. 10, 2019, challenges the TPS terminations for Honduras and Nepal. Since this case was brought in the same federal district court in California where the *Ramos* case is pending and presents similar issues, the judge [linked](#) the case to the *Ramos* litigation. On March 12, 2019, the court placed the *Bhattarai* case on hold until the appeal of the *Ramos* injunction was resolved. To date, this stay has temporarily prevented DHS from implementing the termination of TPS for Nepal and Honduras.

In response to the *Ramos*, *Saget* and *Bhattarai* court orders temporarily preventing the TPS terminations for El Salvador, Haiti, Honduras, Nicaragua, Nepal and Sudan from going into effect, DHS issued a number of Federal Register Notices detailing the steps it would take to comply.<sup>4</sup> DHS confirmed that the TPS designations for El Salvador, Nicaragua, and Sudan will remain in effect as long as the *Ramos* injunction remains in effect; the Haiti designation will stay in effect as long as either the *Ramos* or *Saget* injunction remains in effect; and the Honduras and Nepal designations will remain in effect pending final disposition of the government's appeal of the *Ramos* injunction. On Nov. 4, 2019, DHS announced an automatic extension of status and work authorization for TPS holders from the affected six countries through Jan. 4, 2021.

### **What was the effect of the Ninth Circuit's September 14, 2020 decision in *Ramos*?**

The Ninth Circuit Court of Appeals issued a [decision](#) on Sept. 14, 2020, lifting the *Ramos* injunction that temporarily barred DHS from implementing the termination of TPS for El Salvador, Haiti, Nicaragua and Sudan. This moved DHS one step closer to ending TPS for these countries. As explained above, Haiti is still protected as long as the *Saget* injunction remains in effect.

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<sup>4</sup> See Federal Register Notices published on [Oct. 31, 2018](#), [March 1, 2019](#), [May 10, 2019](#), and [Nov. 4, 2019](#).

As for Honduras and Nepal, if the government seeks to lift the *Bhattarai* stay in light of the recent *Ramos* decision, DHS could also proceed with implementing the termination decisions for those two countries.

The plaintiffs in the *Ramos* case are likely to challenge the Ninth Circuit's decision within the coming weeks. They could petition for en banc review which would involve all Ninth Circuit judges reviewing the Sept. 14, 2020, decision which was issued by a panel of only three judges. The plaintiffs could also file a petition asking the U.S Supreme Court to review the decision.

### **How soon could TPS recipients actually lose their TPS and related work authorization?**

The fact that the *Ramos* injunction has been lifted does not permit DHS to take immediate action to enforce TPS termination for the affected countries. At a minimum, TPS beneficiaries from all six countries should maintain their status and work authorization through Jan. 4, 2021. According to the Nov. 4, 2019 [Federal Register Notice](#), once all appeals have been exhausted, the wind down periods for each country will vary. Most countries will have approximately six months - while El Salvador will have one year - from the date a court decision allows DHS to implement the termination of TPS. The below summary outlines when termination could go into effect should the government prevail in each of the lawsuits.

Nicaragua and Sudan — Approximately six months after DHS is permitted to terminate (120 days from the issuance of an appellate mandate, which will take 52 days following a final decision).

El Salvador — 365 days after DHS is permitted to terminate (following the issuance of an appellate mandate) given the 2019 [bilateral agreement](#) with the government of El Salvador.

Honduras and Nepal — Approximately six months after DHS is permitted to terminate (180 days after the stay in *Bhattarai* is lifted).

Haiti — Approximately six months after DHS is permitted to terminate (120 days from the issuance of an appellate mandate, which will take 52 days following a final decision) should the government prevail in **both** the *Ramos* and *Saget* lawsuits.

### **How should I advise clients in the light of the possible end of TPS?**

Once DHS is legally permitted to enforce TPS terminations, a TPS recipient will return to the status he or she held before receiving TPS (unless that status has since expired or terminated). Clients who lose TPS and have no other lawful status are subject to immigration enforcement, including being arrested and placed into removal proceedings. Those with any prior involvement in the criminal justice system or prior removal orders are at greater risk of enforcement.

The pending litigation may delay the administration's TPS terminations from going into effect, but only Congress has the power to pass legislation that would provide a permanent solution for TPS holders. Screen TPS clients to see whether they might be eligible for a more permanent immigration benefit or

status, including eligibility for relief from removal upon losing TPS status and being placed in proceedings. As long as someone remains in valid TPS status, he or she is eligible to apply for and travel using advance parole. In some cases, a return on advance parole may help create eligibility for certain TPS holders to adjust to lawful permanent resident status. Note, however, that under [current USCIS policy](#), travel and return on advance parole after Aug. 20, 2020 is not considered an inspection or admission for purposes of INA §245(a) adjustment of status.