



First 180 Day Timeline and Urgent Recommendations on Restoring TPS and DED Protection

December 9, 2020

The Biden administration must take immediate action for Temporary Protected Status (TPS) and Deferred Enforced Departure (DED) holders who were targeted under the previous administration and are currently without stable status; and potential TPS and DED recipients. The below recommendations were developed by the Temporary Protected Status Advocacy Working Group, a national campaign and coalition—more than 100 organizations strong—focused on fighting for rights and life-saving protection for these vulnerable groups and their families, from all countries. Restoring TPS and DED will ensure that people are not returned to situations where their lives and freedom would be at risk and that families remain united and stable.

While some TPS holders currently have their status protected by ongoing litigation, the population affected by the Trump administration's attacks on TPS and DED is much larger, including those who did not have the opportunity to apply for protection due to the failure to redesignate¹ or newly designate TPS for any country. In calling for immediate action on TPS and DED, we also remind the Biden administration that in order to address systemic racism, immigration issues *must* be included. Tens of thousands of Black immigrants were affected by the previous administration's attacks on TPS and DED and are encompassed by the recommendations below.

The below 180-day timeline maps out how executive power can be used efficiently and effectively to safeguard hundreds of thousands of people in urgent need of protection:

1. On Day 1

- a. Issue a presidential memorandum extending (and backdating) DED for Liberia from January 1, 2021, through January 20, 2023 (10,000).²
- b. Issue DED through January 15, 2022, for the 2.2 million people from TPS-eligible countries, including the Bahamas (14,200), Cameroon, El Salvador (750,000), Guatemala (600,000), Guinea (930), Haiti (100,000), Honduras (400,000), Hong Kong, Lebanon, Mauritania, Nepal (36,795), Nicaragua (54,926), Sierra Leone (1,180), Somalia (455), South Sudan (96), Sudan (774), Syria (6,934), Venezuela (200,000), and Yemen (1,646);

¹ Redesignation is the DHS Secretary's authority to move forward in time the date by which a person needed to be in the United States in order to apply for TPS. As newly arrived people and those who have been in the U.S. for longer often have the same need for protection, this tool is essential in achieving Congressional intent. The previous administration failed to redesignate any country, including countries like Syria, Yemen, and South Sudan, which had been redesignated and extended at every decision prior to the Trump administration.

² Temp. Protected Status Advocacy Working Grp. & Afr. Cmty. Together, *Failing Our Liberian Neighbors: Eligibility and Application Rates Under Liberian Refugee Immigration Fairness 4* (2020), available at <https://cliniclegal.org/resources/humanitarian-relief/liberian-refugee-immigration-fairness-lrif/report-failing-our>. Back dating the DED memorandum is particularly important as Liberian DED holders will be out of status when the Biden administration takes office.



and begin agency process to issue designations, redesignations, and extensions for TPS for these countries.³

- c. Direct the Department of Justice (DOJ) to begin settlement talks in all TPS litigation, including *NAACP v. DHS*, *Centro Presente v. Trump*, *Ramos et al v. Nielsen*, *Saget v. Trump*, *Casa De Maryland, Inc. v. Trump*, *Bhattarai et al v. Nielsen*, *Moreno v. Nielsen*, and *Central American Resource Center v. Cuccinelli*.⁴

2. Within 30 Days

- a. Department of Homeland Security (DHS) Secretary designates Venezuela for TPS (200,000).⁵
- b. DOJ settles litigation for *NAACP v. DHS*, *Centro Presente v. Trump*, *Ramos et al v. Nielsen*, *Saget v. Trump*, *Casa De Maryland, Inc. v. Trump*, *Bhattarai et al v. Nielsen*, *Moreno v. Nielsen*, and *Central American Resource Center v. Cuccinelli*; and commit to conduct a new review and issue a new determination to redesignate and extend TPS for these countries.⁶
- c. DHS Secretary redesignates and extends TPS for Somalia (455), Syria (6,934), Yemen (1,646), and South Sudan (98) for TPS.⁷ Notably, the Syria TPS decision is due on January 30, 2021,⁸ and Syria should be both extended for 18 months and redesignated at that time.

3. Within 90 Days

- a. DHS Secretary designates remaining eligible countries for TPS, including the Bahamas (14,200), Cameroon, El Salvador (750,000), Guatemala (600,000), Guinea (930), Haiti (100,000), Honduras (400,000), Hong Kong, Lebanon, Mauritania, Nepal (36,795), Nicaragua (54,926), Sierra Leone (1,180), Somalia (455), and Sudan (774).⁹

4. Within 180 Days

- a. Issue a presidential memorandum directing U.S. Citizenship and Immigration Services (USCIS) to consider TPS as an “admission” under 8 U.S.C. § 1255(a), implementing the policy across all circuits aside from the Third, Fifth, and Eleventh Circuits, which are bound by *Serrano v. U.S. Attorney General*; *Sanchez v. DHS*; and *Nolasco v. Crockett*.¹⁰

³ Temp. Protected Status Advocacy Working Grp., How Many Could Executive Action Protect? Estimating the Scope of Protection Through TPS and DACA 2–4 (2020), available at <https://cliniclegal.org/resources/humanitarian-relief/deferred-action-childhood-arrivals/how-many-could-executive-action>.

⁴ *Challenges to TPS and DED Terminations and Other TPS-Related Litigation*, Cath. Legal Immigr. Network, Inc. (Sept. 21, 2020), <https://cliniclegal.org/resources/humanitarian-relief/temporary-protected-status-and-deferred-enforced-departure/challenges>. CLINIC is co-counsel for plaintiffs in *Central American Resource Center v. Cuccinelli*, No. 1:20-cv-02363-RBW (D.D.C. filed Aug. 26, 2020).

⁵ Temp. Protected Status Advocacy Working Grp., *supra* note 3, at 4.

⁶ Cath. Legal Immigr. Network, Inc., *supra* note 4.

⁷ *Id.*

⁸ Immigration and Nationality Act § 244, 8 U.S.C. § 1254a (2020); 84 Fed. Reg. 49,751 (Sept. 23, 2020).

⁹ Temp. Protected Status Advocacy Working Grp., *supra* note 3, at 2–4.

¹⁰ Immigration and Nationality Act § 245(a), 8 U.S.C. § 1255(a) (2020); *Serrano v. U.S. Att’y Gen.*, 655 F.3d 1260 (11th Cir. 2011); *Sanchez v. DHS*, --- F.3d --- (3d Cir. 2020); *Nolasco v. Crockett*, No. 19-30646 (5th Cir. 2020).



- b. Issue a presidential memorandum directing USCIS to reverse its August 2020 memorandum, returning to the previous policy of allowing TPS holders to leave the country on advance parole and be considered “admitted and inspected” upon return.¹¹

Note on implementation/mechanics: Because DED is a blanket protection for an entire country and there is no affirmative registration process—and because it can be designated through presidential memorandum—it is a highly efficient and effective tool ready to use on day one of the Biden administration. Protection from deportation would apply immediately. Following designation, people could apply for work authorization at USCIS. The TPS Advocacy Working Group envisions that those protected under the *Ramos* and *Bhattarai* litigation would maintain work authorization through those existing automatic extensions and that the other populations would have the opportunity to apply for work authorization through DED. Those covered by the litigation can simultaneously be covered by DED.

¹¹ *USCIS Adopts AAO Decision on TPS and Authorized Travel*, U.S. Cit. & Immigr. Servs. (Aug. 31, 2020), <https://www.uscis.gov/news/news-releases/uscis-adopts-ao-decision-on-tps-and-authorized-travel>.