



Frequently Asked Questions: TPS Terminations and the *Ramos v. Mayorkas* Litigation

Nov. 16, 2022

What is *Ramos v. Mayorkas* about and where is the case procedurally?

Ramos v. Mayorkas was filed in 2018 in the U.S. District Court in the Northern District of California to challenge the Trump administration's termination of Temporary Protected Status (TPS) for several countries: El Salvador, Haiti, Nicaragua and Sudan. Plaintiffs alleged that the terminations were unlawful because they were motivated by racism in violation of the constitution and were implemented in an arbitrary and capricious manner in violation of the Administrative Procedures Act (APA).

On Oct. 3, 2018, Judge Edward Chen issued a [preliminary injunction](#) preventing the Department of Homeland Security (DHS) from implementing TPS terminations for El Salvador, Haiti, Nicaragua, and Sudan while the case is resolved on its merits. The government appealed the injunction and on Sept. 14, 2020, the Ninth Circuit Court of Appeals issued a [decision](#) lifting the injunction that temporarily barred the administration from implementing TPS termination for these four countries. However, the plaintiffs immediately requested a rehearing *en banc* and the Ninth Circuit did not issue its mandate to implement its decision. While the petition for rehearing *en banc* remained pending, the parties entered into settlement talks. The parties were unable to come to a resolution and the case has returned to the Ninth Circuit where the plaintiffs' application for rehearing *en banc* remains pending. The Ninth Circuit will now decide whether the panel's decision should be reviewed by the full court.

Wasn't TPS terminated for Honduras and Nepal as well? How do those terminations relate to the *Ramos* case?

On Feb. 10, 2019, a similar class action lawsuit against DHS was filed in the U.S. District Court in the Northern District of California to challenge the terminations of TPS for Honduras and Nepal, alleging that the terminations suffer from the same flaws that resulted in terminations for the *Ramos* countries. The case, *Bhattarai v. Mayorkas*, seeks to vacate the TPS terminations for Honduras and Nepal and enjoin the defendants from implementing these decisions. On Mar. 12, 2019, Judge Edward Chen signed an [order](#) linking this case to the preliminary injunction in the *Ramos* case and preventing DHS from implementing termination of TPS for Honduras and Nepal while the case is resolved on its merits. Thus, the *Ramos* injunction currently protects eligible Honduran and Nepalese TPS beneficiaries as well.

Now that the settlement talks have ended, what happens next?

The *Ramos* case is once again before the Ninth Circuit Court of Appeals. Plaintiffs previously requested a rehearing *en banc* and proceedings will resume where they left off. The Ninth Circuit will vote on whether the full court should rehear the case and reconsider the earlier decision issued by the three-judge panel.

Will TPS beneficiaries from the *Ramos* and *Bhattarai* countries lose their status on Dec. 31, 2022?

No. DHS had previously provided an [automatic extension](#) of TPS through Dec. 31, 2022, for beneficiaries from El Salvador, Haiti, Honduras, Nepal, Nicaragua and Sudan while the *Ramos* injunction and *Bhattarai* order remain in effect. Under an agreement with the government, if the litigation remained pending on Nov. 30, 2022, then DHS would be required to issue an additional nine-month automatic extension. However, on Nov. 16, 2022, DHS published a [Federal Register Notice](#) (FRN) that provides eligible TPS beneficiaries from the six countries an 18-month automatic extension of TPS and related documents through June 30, 2024.

DHS will not implement termination of TPS for any of the affected countries pending final disposition of the *Ramos* appeal. However, if the litigation concludes, the preliminary injunction is lifted, and the termination is implemented, the affected TPS beneficiaries would maintain TPS through a wind-down period. Beneficiaries from El Salvador, Haiti, Nicaragua, Honduras, Sudan and Nepal would continue to have TPS for an additional 365 days or until June 30, 2024, whichever is later. While we do not know what the ultimate timing or outcome of the litigation will be, the affected beneficiaries remain protected for now.

Note that Haiti and Sudan were both redesignated for TPS during the pendency of the litigation, allowing eligible TPS beneficiaries covered by the *Ramos* injunction as well as newly eligible individuals to register for and maintain TPS through Feb. 3, 2023 (for Haiti), and Oct. 19, 2023 (for Sudan).

Should TPS beneficiaries from Haiti or Sudan register under the new TPS designations for these countries?

Yes. Even though eligible TPS beneficiaries from Haiti and Sudan are protected by the 18-month automatic extension, they are strongly encouraged to also register under the new Haiti and Sudan designations in order to ensure that their TPS continues beyond the court-ordered extensions and without any gaps in status. The registration period for Haiti remains open through February 3, 2023, and the registration period for Sudan remains open through October 19, 2023. Details about initial registration are available at: <https://www.uscis.gov/humanitarian/temporary-protected-status>

Can the Biden administration still redesignate the *Ramos* countries for TPS, despite the ongoing litigation?

Yes. Nothing about the current litigation prevents the administration from extending or redesignating a country for TPS. As mentioned, during the pendency of the litigation, the Biden administration redesignated both Sudan and Haiti for TPS. Advocates are pushing the administration and DHS to redesignate El Salvador, Nepal, Nicaragua and Honduras as well.

How can I help TPS clients who may be at risk of losing their TPS if their country is not redesignated over the next year and a half?

Make sure clients understand that the collapse of settlement talks does not mean an immediate end of TPS for the countries affected by the litigation. Even in the worst-case scenario, where DHS is allowed to move forward with implementing terminating the TPS designations for the affected countries, TPS recipients would not lose their status and work authorization immediately. As described above, TPS recipients would maintain their status for an additional winddown period.

Remind Haitian and Sudanese TPS recipients that they should register as initial applicants under the new TPS designations for their countries in order to be protected into the future, regardless of the outcome of the pending litigation.

Finally, remember to screen all TPS clients for more permanent relief, including whether authorized travel could create adjustment of status eligibility in the future.

For additional tips and TPS practitioner resources, visit CLINIC's TPS page at <https://cliniclegal.org/issues/temporary-protected-status-tps-and-deferred-enforced-departure-ded>