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PLAYING POLITICS WITH HUMANITARIAN PROTECTIONS: HOW POLITICAL AIMS TRUMPED U.S. NATIONAL SECURITY AND THE SAFETY OF TPS RECIPIENTS

A MINORITY STAFF REPORT

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LETTER OF TRANSMITTAL

UNITED STATES SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC, November 7, 2019.

DEAR COLLEAGUES: Congress established the Temporary Protected Status (TPS) program in 1990 to provide humanitarian protections to foreign nationals within the United States who do not meet the legal definition of refugee or asylee, but who are nonetheless unable to return to their homeland due to the perils of armed conflict or natural disasters. Since the inception of TPS, Democratic and Republican administrations have utilized the TPS statute to provide humanitarian relief to hundreds of thousands of foreign nationals. However, during the past two years, the Trump administration has departed sharply from historical precedent in its interpretation and application of the TPS statute. Specifically, the administration sought to rescind humanitarian protections from nearly 400,000 TPS recipients from El Salvador, Honduras, and Haiti, despite readily apparent evidence of continued instability in each country.

Given the precarious conditions in the three countries, I directed my senior Senate Foreign Relations Committee (SFRC) staff member for the Western Hemisphere, Brandon P. Yoder, and SFRC Democratic Staff to investigate the role of the Department of State in the Trump administration's decision to terminate the TPS designations El Salvador, Honduras, and Haiti. During the course of this investigation, SFRC Democratic Staff secured access to a broad array of unclassified State Department documents related to the TPS decision-making process. These documents illustrated a troubling pattern of facts.

Senior officials at all levels of the State Department, including the U.S. Embassies in the three countries, repeatedly warned the Trump administration of the dire consequences that would result from the decisions to end TPS for El Salvador, Honduras, and Haiti. Senior State Department officials alerted the Trump administration that terminating the three TPS designations would have negative consequences for U.S. national security and would likely prompt increased irregular migration in the region.

Additionally, senior diplomats cautioned that nearly 400,000 TPS recipients, specifically those returning to El Salvador and Honduras, would face alarming levels of criminal violence and unstable social conditions in their countries of origin. Even more disturbing, officials throughout the State Department notified the Trump administration that an estimated 273,200 U.S. citizen children would face similar levels of crime and violence if they accompanied their TPS recipient parents. In several chilling cases, the State Department directly informed senior Trump administration officials that the American children who accompanied their TPS recipient parents would be vulnerable to recruitment by illicit actors, such as MS-13, and that these criminal gangs would be strengthened as a result. In the face of such risks, far too many TPS recipients will feel forced to leave their U.S. citizen children in the United States, prompting a new family separation crisis—one that has a direct impact on American families.

Despite these warnings, the Trump administration recklessly sought to end the TPS designations for El Salvador, Honduras, and Haiti with full knowledge of the inherent dangers of its decisions. SFRC Democratic Staff also revealed that in recommending the termination of the three TPS programs, senior Trump administration officials made explicit written references related to the 2020 election period—considerations which have no basis for humanitarian protections.

The report by Mr. Yoder and SFRC Democratic Staff demonstrates the manner in which decisions related to immigration matters have been increasingly politicized since the start of 2017. Nearly three decades ago, Congress came together in bipartisan consensus to establish TPS, in recognition of the importance of maintaining the United States' historical role as a place of refuge for all those unable to return safely to their homelands. Today, there must be a bipartisan sense of urgency to defend the integrity of the TPS program and reverse a decision that directly threatens the well-being of hundreds of thousands of men, women, and children—many of whom have been living in the United States for years. It is also time for Congress to come together to find a permanent solution for the nearly 400,000 TPS recipients from El Salvador, Honduras, and Haiti who have been productive members of our communities and our nation, in some cases for over two decades. We cannot afford to fail in this endeavor.

Sincerely,

ROBERT MENENDEZ,
Ranking Member.

EXECUTIVE SUMMARY

Since 1990, Congress has authorized humanitarian relief to foreign nationals in the United States who are unable to return to their countries of origin due to armed conflict or natural disasters that would pose a serious threat to their personal safety. Over the last 29 years, Republican and Democratic administrations alike have designated and extended these protections, known as Temporary Protected Status (TPS), after carefully weighing and assessing the dangers and the risks facing individuals should they be forced to return to their homeland. Eleven months into the Trump administration, however, the administration abruptly began seeking to end these protections. In particular, the administration's effort to strip TPS from nearly 400,000 individuals from El Salvador, Honduras, and Haiti would revoke their ability to remain in the United States, setting in motion a domestic and international crisis with grave implications for U.S. national security and severe risks to the personal safety of hundreds of thousands of people.[1]

While the Trump administration's efforts have been stymied to date by a series of judicial injunctions, terminating the three TPS designations will have catastrophic consequences for U.S. foreign policy, including setting off a new wave of irregular migration towards the United States. Terminating these humanitarian protections will also lead to a de facto forced separation of American families, as up to 273,000 U.S. citizen children could be separated from their TPS recipient parents—a figure that exponentially eclipses the number of migrant children separated from their parents by the Trump administration to date.[2]

By seeking to deny continued humanitarian relief to hundreds of thousands of TPS recipients and return them to El Salvador, Honduras, and Haiti, the Trump administration risks further undermining the political stability and internal security conditions of these countries. This carries significant negative consequences for U.S national interests. In the case of El Salvador and Honduras, it would also subject TPS recipients—and any of their U.S. citizen children that accompany them—to the alarming levels of criminal violence perpetrated by narcotics traffickers and violent street gangs, such as MS-13, and strengthen these illicit organizations in the process.

[1] Since January 2017, the Trump administration has sought to terminate the TPS designations for six countries: El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan. This report examines the efforts to terminate the TPS designations for El Salvador, Honduras, and Haiti. The number of TPS recipients comes from data provided by U.S. Citizenship and Immigration Services (USCIS) to the Congressional Research Service. Congressional Research Service (CRS), *Temporary Protected Status: Overview and Current Issues,* at 5, Table I, updated Mar. 29, 2019.

[2] The number of TPS recipients' children comes from Robert Warren & Donald Kerwin, *A Statistical and Demographic Profile of the US Temporary Protected Status Populations from El Salvador, Honduras, and Haiti,* Journal on Migration and Human Security, at 581 (Aug. 2017).

Disturbingly, the Trump administration decided to terminate the TPS designations for these three countries with full knowledge of the overwhelming magnitude of the crisis it was creating. Throughout 2017, the U.S. Embassies in San Salvador, Tegucigalpa, and Port-au-Prince alerted senior Trump administration officials at the National Security Council (NSC), Department of State, and Department of Homeland Security (DHS) in writing of the consequences of terminating TPS for the three countries. Specifically, U.S. Embassies cautioned that such decisions will harm U.S. national security, trigger a new wave of migration to the United States, and jeopardize the safety of TPS recipients and their American children. Senior officials at all levels of the State Department provided additional written warnings and signaled that these decisions would undermine the Trump administration's foreign policy priorities, which include countering transnational criminal organizations and consolidating the rule of law in the three countries in order to address the underlying factors driving migration towards the United States. The Trump administration intentionally ignored these warnings.

Additionally, in one alarming example, Senate Foreign Relations Committee Democratic Staff uncovered that senior Trump administration appointees in the State Department recommended a shorter termination period to avoid hundreds of thousands of TPS recipients losing their status during the height of the 2020 election. Trump administration political appointees thus injected electoral considerations into the decision-making process not contemplated under the TPS statute, raising the likely prospect that the Trump administration elevated electoral concerns over U.S. national security and the personal safety of nearly 400,000 TPS recipients and an estimated 273,000 American children.

Principal Findings

The Senate Foreign Relations Committee Democratic Staff's investigation into the role of the U.S. Department of State in the Trump administration's decisions to terminate TPS designations for El Salvador, Honduras, and Haiti found the following:

- 2020 election considerations were injected into the decision to end TPS for El Salvador, Honduras, and Haiti;
- The Trump administration announced the termination of TPS for the three countries after intentionally ignoring risks to U.S. national security priorities;
- When recommending the termination of the three TPS designations, Trump administration officials were aware that TPS recipients—and any of their accompanying American children—would face crime and violence if repatriated;
- Ending TPS for the three countries would lead to an unprecedented wave of de facto forced separation of American families; and
- In ending TPS for the three countries, the Trump administration knowingly made a decision that could accelerate irregular migration to the United States.

This report provides an in-depth review of the State Department's decisions and issues recommendations for legislative action to strengthen the TPS program and insulate it from future political manipulation.[3] Chapter One provides an overview of TPS and details how the Trump administration abandoned the precedent set by Democratic and Republican administrations regarding designations and extensions for El Salvador, Honduras, and Haiti.

Chapter Two examines the Trump administration's politicization of the State Department's decision-making process and disregard for the expertise of senior national security experts, including a previously undisclosed memorandum of dissent and personal appeal by then-Undersecretary of State Thomas Shannon to then-Secretary of State Rex Tillerson. Chapter Three describes how Trump administration officials recommended terminating TPS despite direct knowledge that such a decision would likely lead the three foreign governments to take retaliatory actions that run counter to U.S. national security. This chapter also examines how the Trump administration's March 2019 decision to curtail U.S. foreign assistance for El Salvador and Honduras undermines U.S. efforts to address the factors driving irregular migration.

Chapter Four delineates how State Department and U.S. Embassy officials cautioned that the three countries lacked the capacity to guarantee the safety of the hundreds of thousands of returning citizens, or the security of their American children that would accompany them. The chapter depicts how, in the face of such risks to their U.S. citizen children, many TPS recipients would be compelled to leave their American children in the United States, thereby creating an unprecedented wave of de facto forced family separation.

The Findings and Recommendations outlines legislative action needed to depoliticize the TPS program and to ensure that future decisions regarding the designation, extension, and termination of TPS are based on the objective examination of country conditions. This section recommends that the State Department's Office of the Inspector General investigate the politicization of the administration's TPS decisions and that the Trump administration immediately exercise its authority to extend the TPS designations for El Salvador, Honduras, and Haiti.

The report includes three annexes: (1) the statutory authority for TPS and historical background on its application; (2) a brief summary of ongoing litigation related to the termination of TPS designations for El Salvador, Honduras, and Haiti; and (3) State Department documents reviewed for this report.

In conducting its investigation and compiling this report, Senate Foreign Relations Committee Democratic Staff reviewed unclassified internal documents and memoranda from the State Department related to its recommendations regarding the TPS designations for El Salvador, Honduras, and Haiti. These documents include Secretary Tillerson's recommendation to terminate TPS, State Department assessments on country conditions in El Sal-

[3] The U.S. Senate Committee on Foreign Relations is the principal Senate committee responsible for conducting oversight of U.S. foreign policy and the U.S. Department of State. As such, this report exclusively focuses on the role of the Department of State in the TPS program. It does not review DHS's internal decision-making processes for TPS.

vador, Honduras, and Haiti, diplomatic cables from U.S. Embassies from the three countries, and a memorandum to Tillerson from Undersecretary Shannon, the most senior career Foreign Service Officer in the Department of State at that time. Many of these documents were subsequently made publicly available through Freedom of Information Act (FOIA) request and litigation, and are included in Annex 3. Staff also traveled to El Salvador, Honduras, and Haiti.

CHAPTER ONE

TEMPORARY PROTECTED STATUS: LONGSTANDING HUMANITARIAN RELIEF

"[N]atural disasters have generated a cascade of political, economic, and social crises whose impacts are still deeply felt."

—*Undersecretary of State Thomas Shannon* [4]

Congress established the Temporary Protected Status (TPS) program in 1990 to provide humanitarian relief to foreign nationals within the United States who are unable to return to their country of origin due to potential threats to their personal safety.[5] In establishing TPS, Congress re-affirmed the need to provide temporary safe haven to certain foreign nationals in the United States who do not meet the legal definition of refugee or asylee, but nonetheless are unable to return to their homeland due to the perils of armed conflict or natural disasters.[6]

Since 1990, Democratic and Republican presidents and their administrations have utilized TPS to provide humanitarian relief to foreign nationals from a wide range of countries. Specifically, successive administrations from both parties have maintained TPS for El Salvador, Honduras, and Haiti as initial natural disasters have, in the words of former Undersecretary of State Thomas Shannon, "generated a cascade of political, economic, and social crises whose impacts are still deeply felt." [7] Nevertheless, in 2017 and 2018, the Trump administration announced the termination of TPS designations for the three countries, departing radically from the historical precedent of how the TPS statute had been interpreted and applied for these countries.[8]

Statutory Authority for Temporary Protected Status

Upholding the United States' longstanding tradition as a refuge for individuals and populations facing danger in their countries of origin, Congress established TPS as part of the Immigration Act of 1990 to provide humanitarian protection to foreign nationals whose

[4] Memorandum from Thomas A. Shannon, Under Secretary for Political Affairs, to Secretary Rex Tillerson ("Shannon Memorandum"), at 2, Oct. 23, 2017.
[5] Immigration and Nationality Act of 1990, Pub. L. No. 101-649, 8 U.S.C. § 1254a.
[6] CRS, *Temporary Protected Status: Overview and Current Issues,* at 2.
[7] Shannon Memorandum at 2.
[8] The Trump administration announced the termination of the three TPS designations on the following dates: Haiti—November 20, 2017; El Salvador—January 8, 2018; and Honduras—May 4, 2019. Press Release, Department of Homeland Security, "Acting Secretary Elaine Duke Announcement on Temporary Protected Status for Haiti," Nov. 20, 2017; Press Release, Department of Homeland Security, "Secretary of Homeland Security Kirstjen M. Nielsen Announcement on Temporary Protected Status for El Salvador," Jan. 8, 2018; Press Release, Department of Homeland Security, "Secretary of Homeland Security Kirstjen M. Nielsen Announcement on Temporary Protected Status for Honduras," May 4, 2018.

countries were devastated by conflict or natural disasters. As a result, under existing statute, the Secretary of Homeland Security[9] may designate a foreign country or any part of a foreign country for TPS for the following conditions:

- ongoing armed conflict in a foreign state that poses a serious threat to personal safety;
- a foreign state requests TPS because it temporarily cannot handle the return of its nationals due to an environmental disaster; or
- extraordinary and temporary conditions in a foreign state that prevent its nationals from safely returning.[10]

The TPS statute requires the Secretary of Homeland Security to consult with appropriate U.S. Government agencies—predominantly the Department of State—prior to designating a country for TPS.[11] A country may be designated for TPS for a period of six to eighteen months.[12] At the end of the designation period, the Secretary of Homeland Security may make a new designation, extend the existing designation, or terminate the existing designation.[13]

To be eligible for TPS, foreign nationals must have been present in the United States at the time of the most recent designation and be able to show their continuous presence in the United States since that time.[14] TPS recipients are entitled to work authorization in the United States and may not be removed or deported from the United States while they maintain TPS status.[15] TPS recipients must file a formal application, pay an application fee, and pay a fee for a background check and biometrics review.[16] Foreign nationals convicted of a felony in the United States or involved in drug offenses or terrorist activities are ineligible for TPS.[17]

Notably, as established by Congress in the Immigration Act of 1990 and in existing statute, TPS does not provide foreign nationals with a path to obtain lawful permanent residence (known as a Green Card) or citizenship in the United States.

Humanitarian Relief for El Salvador, Honduras, and Haiti

Following the statute and the spirit of the law, the U.S. Government designated El Salvador, Honduras, and Haiti for TPS in the aftermath of massive natural disasters, and has provided continuing humanitarian relief to hundreds of thousands of foreign nationals from the three countries that reside in the United States.

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[9] Under the Immigration and Nationality Act of 1990 (Pub. L. No. 101-649), the authority to designate a country for TPS was initially vested in the Attorney General. Following approval of the Homeland Security Act of 2002 (Pub. L. No. 107-296), this authority was transferred to the Secretary of Homeland Security.

[10] 8 U.S.C. § 1254a; CRS, *Temporary Protected Status: Overview and Current Issues,* at 2.

[11] CRS, *Temporary Protected Status: Overview and Current Issues,* at 2.

[12] 8 U.S.C. § 1254a.

[13] *Id.*

[14] 8 C.F.R. § 244.9; CRS, *Temporary Protected Status: Overview and Current Issues,* at 2.

[15] 8 U.S.C. § 1254a.

[16] 8 U.S.C. § 1254a; 8 C.F.R. § 103.7; CRS, *Temporary Protected Status: Overview and Current Issues,* at 2.

[17] CRS, *Temporary Protected Status: Overview and Current Issues,* at 2-3.

Country	# of TPS Recipients[18]
El Salvador	251,526
Honduras	80,633
Haiti	56,209
Total	388,368

[18] The number of TPS recipients comes from data provided by USCIS to the Congressional Research Service. CRS, ***Temporary Protected Status: Overview and Current Issues,*** at 5, Table 1.

Beyond the initial designations related to natural disasters, the U.S. justification for continuing to provide TPS for Salvadoran, Honduran, and Haitian nationals consistently recognized that the three governments lacked the capacity to safely receive back tens of thousands of their own citizens—a key element of the TPS statute.[19] Furthermore, many of the TPS extensions also affirm that the repatriation of such large numbers of people would have undercut disaster recovery efforts and would further complicate challenges that remain in the three countries, including challenges exacerbated by events that took place after the country was designated for TPS.

In the case of Honduras, the Clinton administration designated the country for TPS in January 1999 in the aftermath of the extensive destruction caused by Hurricane Mitch.[20] Given the overwhelming magnitude of the damage caused by the hurricane and the way in which it touched every aspect of daily life in Honduras, including governance and state presence, the U.S. Government approved 14 extensions of TPS for Honduran nationals.[21] In the earliest extensions of the TPS designation for Honduras, the U.S. Government offered an assessment of the scope of the widespread impact that Hurricane Mitch had on the country's roads and bridges, housing, urban water systems, and food supplies and security, as well as related levels of malnutrition.[22]

As of May 2007, the Bush administration had identified that, as a result of the extensive destruction caused by Hurricane Mitch, Honduras faced "daunting long-term development challenges with hundreds of thousands of people living in areas designated as 'high risk.'"[23] In October 2014, the Obama administration's assessment of conditions in Honduras included a description of the enduring impact of Hurricane Mitch and subsequent natural disasters, not-

[19] *See* Annex 1 for relevant excerpts of the TPS statute, 8 U.S.C. § 1254a.

[20] Designation of Honduras Under Temporary Protected Status, 64 Fed. Reg. 524, Jan. 5, 1999.

[21] *See, e.g.,* Extension of Designation of Honduras Under Temporary Protected Status Program, 65 Fed. Reg. 30438, May 11, 2000; Extension of the Designation of Honduras for Temporary Protected Status, 81 Fed. Reg. 30331, May 16, 2016. *See* Annex 1 for a complete list of the original designation and the extensions of the designation for TPS for Honduras.

[22] *See, e.g.,* Extension of the Designation of Honduras Under the Temporary Protected Status Program, 67 Fed. Reg. 22451, May 3, 2002; Extension of the Designation of Honduras Under Temporary Protected Status Program; Automatic Extension of Employment Authorization Documentation for Hondurans, 68 Fed. Reg. 23744, May 5, 2003; Extension of the Designation of Temporary Protected Status for Honduras; Automatic Extension of Employment Authorization Documentation for Honduras TPS Beneficiaries, 69 Fed. Reg. 64084, Nov. 3, 2004.

[23] Extension of the Designation of Honduras for Temporary Protected Status; Automatic Extension of Employment Authorization Documentation for Honduran TPS Beneficiaries, 72 Fed. Reg. 29529, May 29, 2007.

ing that "Honduras is considered to be among the countries that are the most vulnerable to natural disasters," and citing the United Nations Development Programme, which stated that "Mitch economically and socially set-back [sic] Honduras by twenty years."[24]

The Bush administration designated El Salvador for TPS in 2001 in the wake of three devastating earthquakes that killed more than 1,000 people and displaced approximately 1.3 million people.[25] Due to the far-reaching damage caused by the temblors, subsequent natural disasters, and the manner in which these crises have undermined governance and the rule of law in the country, the U.S. Government extended TPS for Salvadoran nationals on 11 separate occasions since 2001.[26] In justifying the initial extensions of the El Salvador TPS designation, the U.S. Government provided details on the overall disruption of living conditions, including the exact number of houses and hospitals destroyed by the 2001 earthquakes, as well as the impact on critical infrastructure.[27]

By 2008, the Bush administration recognized that the enduring devastation had aggravated the country's existing social and economic fragility, and it justified the extension of TPS by stating "[t]ransportation, housing, education, and health sectors are still suffering from the 2001 earthquakes, the lingering effects of which limit El Salvador's ability to absorb a large number of potential returnees."[28] In the justification of the two most recent extensions of the TPS designation for El Salvador in 2015 and 2016, the U.S. Government accounted for the manner in which the earthquakes and subsequent natural disasters had a metastasizing impact on economic and social vulnerabilities across the country and their relation to growing levels of crime and violence.[29]

The Obama administration designated Haiti for TPS in early 2010, following a catastrophic January 12, 2010 earthquake that claimed 230,000 lives and displaced more than 1.5 million people.[30] Given the widespread damage to infrastructure across Haiti, the significant cost and time required for rebuilding the country, and the impact of subsequent natural disasters, the U.S. Government extended the TPS designation for Haiti five times following the original designation in 2010.[31] In 2011, the U.S. Government re-

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[24] Extension of the Designation of Honduras for Temporary Protected Status, 79 Fed. Reg. 62170, October 16, 2014.

[25] Designation of El Salvador Under Temporary Protected Status Program, 66 Fed. Reg. 14214, Mar. 9, 2001.

[26] *See, e.g.,* Extension of the Designation of El Salvador Under Temporary Protected Status Program; Automatic Extension of Employment Authorization Documentation for El Salvador, 68 Fed. Reg. 42071, July 16, 2003; Extension of the Designation of El Salvador for Temporary Protected Status, 81 Fed. Reg. 44645, July 8, 2016. *See* Annex 1 for a complete list of the original designation and extensions of the designation for TPS for El Salvador.

[27] *See, e.g.*, Extension of the Designation of El Salvador Under the Temporary Protected Status Program; Automatic Extension of Employment Authorization Documentation for Salvadorans, 67 Fed. Reg. 46000, July 11, 2002.

[28] Extension of the Designation of El Salvador for Temporary Protected Status and Automatic Extension of Employment Authorization Documentation for Salvadoran TPS Beneficiaries, 73 Fed. Reg. 57128, Oct. 1, 2008.

[29] *See* Federal Registrar notices: Extension of the Designation of El Salvador for Temporary Protected Status, 80 Fed. Reg. 893, Jan. 7, 2015; Extension of the Designation of El Salvador for Temporary Protected Status, 81 Fed. Reg. 44645, July 8, 2016.

[30] Press Statement, Secretary John Kerry, Department of State, "Marking Five Years Since the 2010 Earthquake in Haiti," Jan. 9, 2015, *available at* https://2009-2017.state.gov/secretary/remarks/2015/01/235755.htm; Designation of Haiti for Temporary Protected Status, 75 FR 3476, Jan. 21, 2010.

[31] *See, e.g.,* Extension of the Designation of Haiti for Temporary Protected Status, 77 Fed. Reg. 59943, Oct. 1, 2012; Extension of the Designation of Haiti for Temporary Protected Status,

designated Haiti for TPS and extended the existing TPS designation by underscoring the sheer magnitude of the destruction in the country: the death toll, the number of buildings destroyed, the subsequent outbreak of cholera, and the proliferation of camps for internally displaced persons (IDPs), which suffered outbreaks of disease, crime, and gender-based violence.[32] By 2015, the Obama administration's justification for extending TPS not only included a description of the enduring challenges from the 2010 earthquake, but also described the manner in which the earthquake had weakened governance and the rule of law in Haiti, created lasting damage to the country's food security, and exacerbated longstanding public health challenges.[33]

The Trump administration's six-month extension of TPS for Haiti in 2017 reflected a continuation of the traditional interpretation of the TPS statute, and documented how the earthquake had debilitated governance and created lasting conditions in which "personal security is a serious and pervasive issue."[34] The Trump administration's Haiti extension also recognized the impact of subsequent natural disasters, noting that "[t]he damage from Hurricane Matthew [in October 2016] and the recent heavy rains are compounding the existing food insecurity experienced by an estimated 3.2 million people (approximately 30 percent of the population)."[35]

The Trump Administration Abandons Longstanding Precedent

While the U.S. Government consistently had taken a holistic approach to evaluating the conditions in El Salvador, Honduras, and Haiti and justifying the repeated extension of the existing TPS designations, the Trump administration abandoned established precedent for comprehensively interpreting the TPS statute when it sought to terminate the three TPS programs in 2018. The Trump administration's justifications for terminating TPS for all three countries no longer accounted for lasting damage caused by the initial natural disaster in each country, nor the manner in which longstanding economic, social, and security vulnerabilities have been aggravated by the enduring impact of the original crises.[36] Furthermore, the justifications entirely ignored established concerns about the three countries' inability to safely receive tens of thousands of individuals back to their country.

The Trump administration's move to terminate TPS for El Salvador and Haiti in January 2018 is currently facing litigation that was brought in October 2018, and the U.S. District Court for the Northern District of California subsequently enjoined DHS from

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82 Fed. Reg. 23830, May 24, 2017. *See* Annex 1 for a complete list of the original designation, the redesignation, and the extensions of the designation for TPS for Haiti.

[32] Extension and Redesignation of Haiti for Temporary Protected Status, 76 Fed. Reg. 29000, May 19, 2011.

[33] Extension of the Designation of Haiti for Temporary Protected Status, 80 Fed. Reg. 51582, Aug. 25, 2015.

[34] Extension of the Designation of Haiti for Temporary Protected Status, 82 Fed. Reg. 23830, May 24, 2017.

[35] *Id.*

[36] *See* Termination of the Designation of Honduras for Temporary Protected Status, 83 Fed. Reg. 26074, June 5, 2018; Termination of the Designation of El Salvador for Temporary Protected Status, 83 Fed. Reg. 2654, Jan. 18, 2018; Termination of the Designation of Haiti for Temporary Protected Status, 83 Fed. Reg. 2648, Jan. 18, 2018.

enforcing the termination of TPS for both countries.[37] Similarly, the Trump administration's termination of TPS for Honduras in June 2018 was met with a class action lawsuit in February 2019, which also led to an injunction prohibiting DHS from terminating the designation, pending the end of litigation.[38]

On October 28, 2019, to comply with court orders in ongoing litigation, the Trump administration announced that it was "providing El Salvadorans with TPS an additional 365 days after the conclusion of the TPS-related lawsuits to repatriate back to their home country."[39] In early November 2019, the administration made a similar announcement for Honduras and Haiti.[40] These were not formal extensions of TPS designations for El Salvador, Honduras, and Haiti. Instead, they merely allowed TPS recipients additional time for work permits following the end of litigation.[41] This move only further underscores the ad hoc manner in which the Trump administration interprets and applies TPS statute.

Conclusion

Over the course of approximately twenty years in the cases of Honduras and El Salvador and over seven years in the case of Haiti, the U.S. Government developed ample precedent for interpreting TPS statute in a comprehensive manner that accounted for how initial natural disasters had exacerbated the countries' economic and social fragility. The U.S. Government repeatedly extended TPS based on conditions beyond the original destruction in each country, which often included recognition of damage caused by subsequent natural disasters. It also consistently emphasized that the inability of each country to safely receive back its citizens was an essential part of the justification for extending TPS for El Salvador, Honduras, and Haiti.

Nevertheless, the Trump administration ignored this precedent and historical practice in an effort to terminate these TPS designations. In the subsequent chapters, this report will document how the Trump administration elevated political calculations over extensive warnings from senior State Department and U.S. Embassy officials about the potentially dire consequences of terminating TPS for El Salvador, Honduras, and Haiti.

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[37] *See* Annex 2; U.S. Citizenship and Immigration Services, Temporary Protected Status, *available at* https://www.uscis.gov/humanitarian/temporary-protected-status (last visited Oct. 25, 2019).

[38] *Id.*

[39] Press Release, U.S. Department of Homeland Security, "U.S. and El Salvador Sign Arrangements on Security & Information Sharing; Give Salvadorans with TPS More Time," Oct. 28, 2019.

[40] On November 4, 2019, USCIS published a notice in the Federal Registrar that continues the documentation of TPS recipients from El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan. Continuation of Documentation for Beneficiaries of Temporary Protected Status Designations for El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan, 84 Fed. Reg. 59403, Nov. 4, 2019.

[41] As Acting U.S. Citizenship and Immigration Services Acting Director Ken Cuccinelli tweeted: "A clarification: some reporting has spoken of 'extending TPS.' That has important legal meaning, and that's not what happened w/ the agreements. Rather, work permits for Salvadorans will be extended for 1 year past resolution of litigation for an orderly wind down period." USCIS Acting Director Ken Cuccinelli, @USCISCuccinelli, Oct. 28, 2019, available at https://twitter.com/USCISCuccinelli/status/1188862281737621509?s=20.

CHAPTER TWO

IGNORING THE ALARM BELLS: HOW THE TRUMP ADMINISTRATION DISREGARDED REPEATED WARNINGS FROM THE STATE DEPARTMENT AND U.S. EMBASSIES

> "[I]t is our purpose to provide the best possible foreign policy and diplomatic advice. From my point of view that advice is obvious: extend TPS for the countries indicated."
>
> —*Undersecretary of State Thomas Shannon* [42]

In the autumn of 2017, Senate Foreign Relations Committee (SFRC) Democratic Staff initiated an investigation into the role that the U.S. Department of State played in the Trump administration's decision to terminate the TPS designations for El Salvador, Honduras, and Haiti.

This investigation found that senior officials at all levels of the State Department—including the U.S. Embassies in the three affected countries, the Bureau of Western Hemisphere Affairs, the Bureau of Population, Refugees, and Migration, and the Undersecretary for Political Affairs—warned the Trump administration about the severe consequences of terminating TPS for El Salvador, Honduras, and Haiti. They repeatedly cautioned that terminating TPS for the three countries would have adverse implications for U.S. national security and likely would prompt a new wave of irregular migration to the United States. Senior diplomats also alerted the Trump administration that ending the TPS designations for El Salvador and Honduras would jeopardize the physical safety of TPS recipients, and any of their accompanying American citizen children, by sending them to countries where they would be vulnerable to criminal violence and gang recruitment. Despite these numerous warnings, then-Secretary Tillerson recommended in October 2017 that then-Acting DHS Secretary Elaine Duke terminate the TPS designations for El Salvador, Honduras, and Haiti.

SFRC Democratic Staff also found that, in one alarming example, senior Trump administration appointees in the Secretary of State's Office of Policy Planning explicitly noted political considerations related to the 2020 presidential election in recommending the termination of TPS designations for El Salvador, Honduras, and Haiti. To the degree that Secretary Tillerson's final recommendation to terminate TPS for the three countries was based on the partisan policy guidance of his political advisors, the Trump administration elevated electoral concerns over considerations related to U.S. na-

[42] Shannon Memorandum at 2.

tional security and the personal safety of nearly 400,000 TPS recipients and their estimated 273,000 U.S. citizen children.[43]

A review of the State Department internal documents and recommendations provides unique insight about the inherent contradictions in the Trump administration's decision-making process for TPS and the roles of various State Department offices and U.S. Embassies. It also illustrates how the countless warnings of senior diplomats were disregarded repeatedly in order to advance a decision that recklessly endangers U.S. national security and the safety of hundreds of thousands of men, women, and children.

The Contradictions of Secretary Tillerson's Recommendation

Given the State Department's principal authority for the conduct of U.S. foreign policy and its preeminent expertise on the political, economic, and social conditions of countries around the world, the Secretary of State's recommendation is an essential component of the TPS decision-making process and directly informs the decision of the DHS Secretary.

On October 31, 2017, Secretary Tillerson transmitted his formal recommendation to Acting DHS Secretary Duke on TPS for El Salvador, Honduras, and Haiti. In his letter, Tillerson asserted that the three countries "no longer meet the conditions required for continued designation for Temporary Protected Status" and that an 18-month period should be provided for the wind down of the program.[44]

However, the remaining content of Secretary Tillerson's letter and the accompanying State Department assessments on the three countries stood in such open contradiction to Tillerson's recommendation to DHS that it appears as if they were written with the intention to substantiate a decision to extend the three TPS designations rather than terminate them.[45]

For example, in his letter to DHS, Tillerson acknowledged that, "[i]n the case of El Salvador and Honduras, both countries continue to have some of the world's highest homicide rates, and weak law enforcement capabilities and inadequate government services will make it difficult for their respective governments to ensure the protection of returning citizens—no less the U.S. citizen children who may accompany their parents."[46] This statement makes it clear that Tillerson was fully aware of the risks to the personal safety of TPS recipients and their American children, even as he rec-

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[43] The number of TPS recipients comes from data provided by USCIS to the Congressional Research Service. CRS, *Temporary Protected Status: Overview and Current Issues,* at 5, Table I. The number of TPS recipients' children comes from Warren & Kerwin, *A Statistical and Demographic Profile of the US Temporary Protected Status Populations from El Salvador, Honduras, and Haiti,* at 581.

[44] Letter from Rex Tillerson, Secretary of State, to Elaine Duke, Acting Secretary of Homeland Security ("Tillerson Letter"), at 1, Oct. 31, 2017. *See* Annex 3.

[45] While this report focuses on the State Department's role in the termination of the TPS designations for El Salvador, Honduras, and Haiti, it is imperative to note that similarly disjointed memorandums and recommendations were found at DHS. In one instance related to the TPS designation for Sudan, an internal email from senior DHS official L. Francis Cissna stated, "The memo reads like one person who strongly supports extending TPS for Sudan wrote everything up to the recommendation section, and then someone who opposes extension snuck up behind the first guy, clubbed him over the head, pushed his senseless body out of the way, and finished the memo." Nick Miroff, "Government emails reveal internal debates over ending immigrant protections," *The Washington Post*, Aug. 23, 2018.

[46] Tillerson Letter at 1.

ommended terminating the three TPS designations to advance the Trump administration's immigration agenda.

In the course of the same letter, Tillerson recognized that the "[t]ermination of TPS will also likely generate a backlash from the governments themselves, particularly the Honduran and Salvadoran governments" and that "[t]hey may take retaliatory actions counter to our long-standing national security and economic interests like withdrawing their counternarcotics and anti-gang cooperation with the United States, reducing their willingness to accept the return of their citizens, or refraining from efforts to control illegal migration."[47] As Tillerson openly acknowledged such severe risks, it is apparent that the Trump administration made national security considerations subordinate to its immigration agenda when it sought to terminate the three TPS designations.

Secretary Tillerson's October 31, 2017 letter to DHS was accompanied by a series of formal State Department assessments on the conditions in El Salvador, Honduras, and Haiti, which outlined the precarious conditions in each country and additional negative consequences that could stem from the decision to terminate the TPS designations. In the country assessment for El Salvador, the State Department warned that repatriating TPS beneficiaries would "undermine U.S.-Salvadoran efforts to combat TCOs [transnational criminal organizations]" and "likely drive increased illegal migration to the United States and the growth of MS-13 and similar gangs."[48] This startling statement underscores that the Trump administration was fully aware that the decision to end the TPS designation for El Salvador would exacerbate the problems with criminal gangs and increase their membership, even as Tillerson recommended termination of the TPS program.

In the assessment for Honduras that accompanied Tillerson's letter, the State Department explicitly noted that "many of the deportees [TPS recipients] would be accompanied by their U.S. born children, many of whom would be vulnerable to recruitment by gangs."[49] This disturbing analysis shows that the State Department cautioned that ending the TPS designation for Honduras would leave American children vulnerable to the predatory recruitment practices of criminal gangs, such as MS-13, yet Tillerson still recommended terminating the TPS program. In the assessment for Haiti, the State Department acknowledged that terminating TPS "would . . . threaten the strides the Government of Haiti has made towards political stability."[50]

Furthermore, in one extraordinary and outright contradiction, while Secretary Tillerson's letter recommended terminating TPS for El Salvador, Honduras, and Haiti in 18 months, the three accompanying State Department country assessments recommended that DHS "provide TPS benefits for . . . *36 months* beyond the end

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[47] *Id.* at 1-2.

[48] Department of State Recommendation Regarding Temporary Protected Status (TPS) for El Salvador—2017, Enclosure to Tillerson Letter, at 6. *See* Annex 3.

[49] Department of State Recommendation Regarding Temporary Protected Status (TPS) for Honduras—2017, Enclosure to Tillerson Letter, at 2. *See* Annex 3.

[50] Department of State Recommendation Regarding Temporary Protected Status (TPS) for Haiti—2017, Enclosure to Tillerson Letter, at 4. *See* Annex 3.

of the current designation" to allow for an orderly transition.[51] The fact that the Secretary of State would transmit a formal package of recommendations to DHS with such disjointed and opposing points of view is yet another indication of how the Trump administration favored a predetermined political decision over the collective expertise of the State Department. It also alludes to internal disagreements in the State Department decision-making process and the countless warnings that the Trump administration received about the dangerous consequences of its course of action.

The Secretary's Personal Staff Politicizes the Process

On October 26, 2017, the State Department's Bureau of Western Hemisphere Affairs (WHA), Bureau of Population, Refugees, and Migration (PRM), and the Secretary's Office of Policy Planning (S/P) submitted a memorandum to Secretary Tillerson that outlined recommendations regarding the TPS designations for El Salvador, Honduras, and Haiti. This memorandum was the results of months of internal deliberations, negotiations, and attempts to forge consensus across the State Department, which was ultimately not attainable. In the October 26, 2017 memorandum, PRM recommended extending TPS for the three countries.[52] WHA and S/P, in contrast, jointly recommended ending the three TPS designations with a 36-month wind down period.[53]

Further, in a highly unusual bureaucratic maneuver that was not vetted by the rest of the State Department, the Secretary's personal staff in S/P dissented on its own joint recommendation with WHA and instead advocated that TPS be terminated more quickly.[54] In attempting to justify this accelerated schedule, S/P stated that a 36-month delayed termination "would put the wind down of the program directly in the middle of the 2020 election cycle." [55]

In making such an overt reference to the 2020 presidential race, senior Trump administration appointees reporting directly to the Secretary of State revealed that their recommendation to end TPS more quickly was based on political, not policy reasons. This recommendation effectively prioritized electoral calculations over considerations of U.S. national security, not to mention the personal safety of nearly 400,000 TPS recipients and their estimated 273,000 American children.

In the October 26, 2017 memorandum, Trump administration appointees in S/P openly acknowledged that they were aware of the adverse consequences for U.S. national security, stating, "PRM and WHA, as well as Under Secretary Shannon in his separate note to you, accurately describe the negative political and foreign policy implications of terminating TPS for these countries." [56] Nevertheless, such damaging consequences were ultimately subordinate to direction from the White House. As *The Washington Post* reported

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[51] *See, e.g.,* Department of State Recommendation Regarding Temporary Protected Status (TPS) for El Salvador—2017, Enclosure to Tillerson Letter, at 6 (emphasis added).

[52] Memorandum from Simon Henshaw, Acting Assistant Secretary, Bureau of Population, Refugees, and Migration, and Francisco Palmieri, Acting Assistant Secretary, Bureau of Western Hemisphere Affairs, to Rex Tillerson ("Henshaw Memorandum"), Secretary of State, at 1-2, Oct. 26, 2017. *See* Annex 3.

[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] Henshaw Memorandum at 4.

in May 2018, according to current and former officials, "Trump senior adviser and immigration hard-liner Stephen Miller placed phone calls to DHS Chief of Staff Chad Wolf and top Tillerson advisers telling them to end TPS." [57]

Disregard for the State Department's Top Career Diplomat

Days prior to the Trump administration officials' efforts to politicize the State Department process, on October 23, 2017, then-Undersecretary of State for Political Affairs Thomas Shannon submitted a private note to Secretary Tillerson on the foreign policy implications of the decision to end TPS for El Salvador, Honduras and Haiti. Undersecretary Shannon is a renowned expert in U.S.-Latin American relations and, at the time, was the State Department's highest-ranking career diplomat.[58]

Undersecretary Shannon's memorandum to Tillerson laid bare the potential pitfalls of terminating TPS for the three countries and made clear his personal recommendation to extend the TPS designations. Shannon stated that, "a negative decision on TPS would undermine our larger purpose," which he wrote included "our cooperation with these countries in addressing illegal migration, especially enhancing border security, attacking smuggling organizations, and improving repatriation capacity." [59] Shannon also explicitly noted that "the countries involved cannot manage a quick return of the more than 400,000 people covered by TPS." [60]

At the end of his private memo to Tillerson, Undersecretary Shannon was unequivocal in his recommendation: "[I]t is our purpose to provide the best possible foreign policy and diplomatic advice. From my point of view that advice is obvious: *extend TPS for the countries indicated.*" [61]

One year later, in November 2018, *Foreign Policy* published excerpts of an interview with Shannon, who had announced his resignation in February of that year. In this retrospective interview about the decision to end TPS for the three countries, Shannon told *Foreign Policy*, "[It's] bad in terms of its human consequences, because it will lead to the largest forced removal of people in our history. But also, bad in terms of our foreign policy because it called into question our reliability as a partner with [these] countries . . . that are now part of a larger migration crisis." [62]

Undersecretary Shannon commented to *Foreign Policy* on the Trump administration's rationale for terminating TPS for all three countries by stating, "[t]here was an effort made to politicize this process and to determine what got to the Secretary not based on the best thinking of our embassies and the Department, but on

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[57] Nick Miroff et al., "U.S. embassy cables warned against expelling 300,000 immigrants. Trump officials did it anyway," The *Washington Post,* May 8, 2018.

[58] Although he has since resigned, Undersecretary Thomas Shannon previously served under Presidents Ronald Reagan, George H.W. Bush, Bill Clinton, George W. Bush, and Barack Obama. Throughout his distinguished career, he served as U.S. Ambassador to Brazil, Assistant Secretary of State for Western Hemisphere Affairs, and Senior Director for the Western Hemisphere in the National Security Council.

[59] Shannon Memorandum at 1.

[60] *Id.*

[61] *Id.* at 2 (emphasis added).

[62] Robbie Gramer, "How One Top Diplomat Took a Stand Against Trump's Immigration Policy," *Foreign Policy*, Nov. 23, 2018 (brackets in original).

what we thought, in this instance, the White House wanted."[63] According to *Foreign Policy*, Shannon confirmed that ending the program was a forgone conclusion—"The decision had been made elsewhere. They were just trying to put into place the bureaucratic pieces."[64]

While Shannon was the most senior official to oppose the Trump administration's final decision to terminate the three TPS designations, his concerns were shared by officials at all levels of the State Department and the U.S. Embassies in El Salvador, Honduras, and Haiti.

Overlooking the Expertise of the Bureau of Western Hemisphere Affairs (WHA)

In the October 26, 2017 memorandum to Tillerson, WHA jointly recommended with S/P to terminate the TPS designations for El Salvador, Honduras, and Haiti with a 36-month wind down period.[65] As the State Department's bureau with unique expertise on Canada, Latin America, and the Caribbean, WHA offered numerous caveats and warnings about ending TPS.

WHA repeatedly recommended an extended period for the wind down of TPS benefits, stating, "a delayed effective date of 36 months is necessary" in order to permit an orderly transition process.[66] WHA also asserted that a 36-month period was needed to "prevent a negative impact on the national security interests of the United States" and to ensure that the three countries could adequately prepare to receive and repatriate their citizens.[67]

In addition to urging the delayed termination of the TPS programs, WHA cautioned about the adverse consequences of ending TPS for the three countries. As part of the October 26, 2017 memorandum, WHA prepared a draft letter for Secretary Tillerson to send to DHS that asserted:

> Negative perceptions by populations in the TPS countries of the United States and the administration are likely to be intense and sustained, generating significant pressure on national leaders to take actions that run counter to our long-standing national security interests and efforts to promote U.S. exports in the region. The nations could withdraw their counternarcotics and anti-gang cooperation with the United States, reduce their willingness to accept our return of their deported citizens, or refrain from efforts to control illegal migration of their citizens to our nation.
>
> Given the large number of beneficiaries from the [three] countries, countries in the region and beyond the hemisphere that seek to undermine our international standing will find new fodder in our actions, likely alleging we are acting inhumanely by sending their citizens who have contributed to the American economy and broader society to crime ridden countries bereft of opportunities.[68]

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[63] *Id.*
[64] *Id.*
[65] Henshaw Memorandum at 1-2.
[66] *Id.* at 3.
[67] *Id.*
[68] Terminating TPS, Attachment to Henshaw Memorandum (Tab 1) at 2. *See* Annex 3.

This blunt assessment by WHA underscored the far-reaching implications for U.S. foreign policy objectives. It recognized that terminating TPS would severely harm U.S. standing and credibility in the three countries, and increase the political cost for foreign government officials to collaborate with the United States. WHA's analysis warned that the decision to end TPS could undercut progress on the President's stated priorities, like combatting narcotics trafficking and transnational criminal gangs. Finally, at a time when the United States is seeing new competition in Latin America and the Caribbean from China and Russia, WHA's warnings acknowledged broader geopolitical and economic repercussions of the decision to end TPS for the three countries.[69]

Despite WHA senior officials presenting this alarming assessment and urging an extended period of 36 months for the wind down of the TPS programs, the Trump administration directly disregarded this advice and instead sought to terminate the TPS designations for El Salvador, Honduras, and Haiti with a shortened 18-month window.

Ignoring the Assessment of the Bureau of Population, Refugees, and Migration (PRM)

In stark contrast to the Trump administration's ultimate decision, PRM recommended that Secretary Tillerson call for the extension of the TPS designations for El Salvador and Honduras for another 18 months and for Haiti for 6 months.[70] As the State Department's bureau with the greatest degree of subject matter expertise on migration-related issues, PRM was unequivocal in the October 26, 2017 memorandum to Tillerson.

In the country conditions assessments included in the October 26, 2017 memorandum, PRM provided an in-depth analysis of the enduring challenges in each country that justified an extension of the TPS designations. PRM identified how repeated environmental disasters, including a crippling 2016 drought, accelerated widespread economic and security challenges across El Salvador.[71] In its analysis that this combination of factors would undermine the Salvadoran government's ability to repatriate its nationals, PRM maintained that "[e]xtending TPS for El Salvador is in the U.S. national interest." [72]

For Honduras, PRM detailed various environmental disasters and extreme weather events that have further debilitated the country since Hurricane Mitch struck in 1998, which have had a detrimental impact on social and economic development.[73] Along with widespread security challenges, PRM assessed that conditions in Honduras "render it temporarily unable to adequately handle the return of its nationals." [74] In the case of Haiti, PRM described how

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[69] *See* John E. Herbst & Jason Marczak, *Russia's Intervention in Venezuela: What's at Stake?* Atlantic Council (Sept. 2019); see also Anabel González, *Latin America-China Trade and Investment Amid Global Tensions,* Atlantic Council (Dec. 2018).

[70] Henshaw Memorandum at 1.

[71] Country Conditions Report for El Salvador, Attachment to Henshaw Memorandum (Tab 5), at 2. *See* Annex 3.

[72] *Id.* at 8.

[73] Country Conditions Report for Honduras, Attachment to Henshaw Memorandum (Tab 7), at 2. *See* Annex 3.

[74] *Id.*

the country had been continuously battered by subsequent natural disasters after the devastating 2010 earthquake, which overwhelmed the Haitian government's response capacity, contributed to ongoing housing shortages, and fueled precarious social conditions.[75]

Taken together, PRM assembled an expansive justification for extending the TPS designations for El Salvador, Honduras, and Haiti. PRM also compiled an array of information that would have been sufficient to meet the TPS program's statutory threshold of extraordinary and temporary conditions in a foreign country.[76] Nevertheless, the Trump administration ignored PRM's advice and sought to end TPS for all three countries.

Rejecting the Recommendations of Ambassadors and Embassies

As part of the review process for the three TPS designations, the U.S. Embassies in San Salvador, Tegucigalpa, and Port-au-Prince sent diplomatic cables containing their written assessments and recommendations. These cables, which were personally approved by the respective U.S. Ambassador or acting chief of mission in the three countries, were sent to senior Trump administration officials at the National Security Council (NSC), Department of State, and DHS. Given their presence in the countries, the embassies' first-hand knowledge of local conditions and analysis of foreign government capacity should have served as the foundation of U.S. Government decision-making related to the TPS designations, as historically had been the case.

On June 29, 2017, the U.S. Embassy in Tegucigalpa, Honduras transmitted a diplomatic cable addressing the country's TPS designation. Evaluating the potential impact of ending TPS, U.S. Embassy Tegucigalpa offered an ominous warning to the NSC, State Department, and DHS—"adding tens of thousands of deportees to an economy that is not prepared to integrate them will only exacerbate the principal cause of irregular migration."[77] The diplomatic cable also observed that "[g]iving the GOH [Government of Honduras] more time and space to improve conditions in Honduras is directly in the U.S. national interest."[78] U.S. Embassy Tegucigalpa closed its diplomatic cable with an unambiguous message, stating, "we recommend that TPS for Hondurans be renewed."[79]

On July 7, 2017, the U.S. Embassy in San Salvador sent a diplomatic cable that offered a dire depiction of the likely consequences for ending TPS. In one instance, the embassy evaluated the risks to U.S. foreign policy objectives by noting that "a termination of TPS could undermine U.S.-Salvadoran efforts on a range of issues of mutual concern and fighting transnational criminal organizations, such as MS-13."[80] Additionally, U.S. Embassy San Salvador

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[75] Country Conditions Report for Haiti, Attachment to Henshaw Memorandum (Tab 6), at 2. *See* Annex 3.

[76] *See* Annex 1 of this report for relevant excerpts of the TPS statute.

[77] Cable No. 17 Tegucigalpa 618 from U.S. Embassy Tegucigalpa to Department of State Washington D.C. Headquarters, Honduras: Temporary Protected Status Recommendation ("Tegucigalpa Cable"), at 73, June 29, 2017. *See* Annex 3.

[78] *Id.* at 75.

[79] *Id.*

[80] Cable No. 17 San Salvador 860 from U.S. Embassy San Salvador to Department of State Washington D.C. Headquarters, El Salvador: Temporary Protected Status Recommendation ("San Salvador Cable"), at 24, July 7, 2017. *See* Annex 3.

described the serious security and economic challenges that would be faced by Salvadoran TPS beneficiaries and potentially their U.S. citizen children, stating that "[t]he lack of legitimate employment opportunities is likely to push some repatriated TPS recipients, or their younger family members, into the gangs or other illicit employment."[81] Similar to the case of Honduras, U.S. Embassy San Salvador upheld that "[e]xtending TPS for El Salvador is in the U.S. national interest" and stated clearly, "we recommend that TPS for El Salvador be renewed."[82]

The U.S. Embassy in Port-au-Prince transmitted its diplomatic cable regarding the TPS designation for Haiti on August 3, 2017. In its cable to the NSC, State Department, and DHS, U.S. Embassy Port-au-Prince affirmed that Haiti "lacks the adequate infrastructure, health, sanitation services, and emergency response capacity necessary to ensure the personal safety of a large number of TPS returnees."[83] The embassy also noted the limited ability of the Haitian National Police to uphold security throughout the country.[84] Given the risks to the safety of returning TPS recipients and the U.S. citizen children accompanying them, U.S. Embassy Port-au-Prince also emphasized that extending TPS is in the U.S. national interest.[85] The diplomatic cable also closed by affirming, "we recommend that TPS for Haiti be renewed."[86]

Despite the three embassies having the most direct knowledge of respective country conditions, the Trump administration rejected the recommendations put forward by the U.S. Ambassadors and acting chiefs of missions at the U.S. Embassies in San Salvador, Tegucigalpa, and Port-au-Prince.

Conclusion

Given the human dimension of a decision affecting nearly 400,000 TPS beneficiaries and their estimated 273,000 American children, as well as the potential repercussions for U.S. national security, Secretary Tillerson's recommendation to DHS should have reflected the collective expertise of the State Department's diplomatic corps. Senate Foreign Relations Committee Democratic Staff found that senior officials at all levels of the State Department disagreed with nearly every element of the Trump administration's decision. In the end, the Trump administration directly disregarded the advice and warnings of senior diplomats and instead made a decision that was in line with the White House's immigration agenda and likely tainted by political calculations.

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[81] *Id.* at 21.
[82] *Id.* at 23-24.
[83] Cable No. 17 Port-au-Prince 2744 from U.S. Embassy Port-au-Prince to Department of State Washington D.C. Headquarters, Haiti: Temporary Protected Status Recommendation ("Port-au-Prince Cable"), at 12, Aug. 3, 2017. *See* Annex 3.
[84] *Id.*
[85] *Id.* at 13.
[86] *Id.*

CHAPTER THREE

ENDANGERING NATIONAL SECURITY: HOW THE TRUMP ADMINISTRATION JEOPARDIZED REGIONAL STABILITY AND U.S. EFFORTS TO COMBAT DRUG TRAFFICKING AND CRIMINAL GANGS

> "[Central American leaders] may take retaliatory actions counter to our long-standing national security and economic interests like withdrawing their counternarcotics and anti-gang cooperation with the United States, reducing their willingness to accept the return of their deported citizens, or refraining from efforts to control illegal migration."
>
> —*Secretary of State Rex Tillerson* [87]

Instability, violence, and ineffective levels of the rule of law in El Salvador, Honduras, and Haiti have far-reaching consequences for the national security of the United States. Transnational criminal organizations, including narcotics traffickers and criminal gangs, such as MS-13, have taken advantage of fragile political and legal systems in Central America to perpetuate a range of illicit activities. In turn, approximately 90 percent of cocaine bound for the United States is trafficked through the Central American corridor.[88] These activities simultaneously fuel and are compounded by high levels of societal violence and a lack of economic activities. Due to this confluence of factors, El Salvador and Honduras are leading source countries for irregular migration to the United States.[89] In Haiti, endemic poverty and inequality, systemic corruption, and deeply deficient levels of democratic governance have contributed to levels of irregular migration that affect regional stability.[90]

In order to address the implications stemming from these challenges, the United States Government invests significant levels of foreign assistance in a wide range of bilateral programs to uphold U.S. national security.[91] The success of these programs in El Salvador, Honduras, and Haiti depends on the continued political will and cooperation of each country's government.

In diplomatic cables sent to the NSC, State Department, and DHS, the U.S. Embassies in the three countries cautioned that ending the TPS programs would undercut the bilateral collaboration necessary to ensure the success of U.S. foreign assistance, leading to severe consequences for U.S. foreign policy objectives. In

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[87] Tillerson Letter at 1-2.

[88] Congressional Research Service, *U.S. Strategy for Engagement in Central America: Policy Issues for Congress,* at 30, updated July 24, 2019.

[89] *Id.* at Summary.

[90] Congressional Research Service, *Haiti's Political and Economic Conditions*, at 12, updated July 1, 2019.

[91] Congressional Research Service, *U.S. Strategy for Engagement in Central America: Policy Issues for Congress,* at 12-16, updated July 24, 2019; Congressional Research Service, *Haiti's Political and Economic Conditions*, at 8-10, updated July 1, 2019.

one instance, in the October 26, 2017 memorandum to Secretary Tillerson, senior State Department officials noted:

> PRM [The Bureau of Population, Refugees, and Migration] believes that the return [of] hundreds of thousands of people would destabilize the region, causing significant harm to U.S. foreign policy and national security interests. [The Bureau of Western Hemisphere Affairs] concurs with PRM's assessment of potential harm to U.S. foreign policy and national security.[92]

Despite these dire assessments by senior officials at the State Department and U.S. Embassies in each of the three countries, the Trump administration discarded their warnings and sought to terminate the TPS designations for El Salvador, Honduras, and Haiti in 2017 and 2018.

Additionally, while this chapter provides insight on how the Trump administration knowingly overlooked risks to U.S. national security when seeking to end the three TPS programs, subsequent administration actions have further complicated the impact of these decisions. In March 2019, the Trump administration cut and later reprogrammed hundreds of millions of dollars in U.S. foreign assistance to El Salvador and Honduras.[93] These funds were appropriated by Congress to support programs to combat transnational criminal organizations, strengthen the rule of law, and advance economic development, as well as expand the government's capacity to repatriate citizens returning from the United States.[94] The Trump administration's decision to cut these funds increases the likelihood that the return of over 330,000 TPS recipients to El Salvador and Honduras would have a destabilizing impact on both countries, in turn, creating collateral damage to U.S. national security interests.[95]

U.S. National Security Interests in El Salvador, Honduras, and Haiti

Weak rule of law in El Salvador, Honduras, and Haiti has been exploited by transnational and domestic criminal actors engaged in drug trafficking, violent crime, extortion, corruption, and a wide range of illicit activities. This prevalence of violence and crime has direct implications for U.S. national security and the stability of Central America and the Caribbean.

According to the State Department's 2019 International Narcotics Control Strategy Report, El Salvador and Honduras are transit countries for illicit narcotics originating from source countries in

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[92] Henshaw Memorandum at 3. In its October 28, 2019 announcement on El Salvador, DHS openly acknowledged the risks to regional stability, stating "a sudden inflow of 250,000 individuals to El Salvador could spark another mass migration to the U.S. and reinvigorate the crisis at the southern border." Press Release, U.S. Department of Homeland Security, "U.S. and El Salvador Sign Arrangements on Security & Information Sharing; Give Salvadorans with TPS More Time," Oct. 28, 2019. This public recognition of the risks of mass deportation further strengthens the legitimacy of the arguments put forward by senior officials at all levels of the State Department and the three U.S. Embassies in 2019.

[93] Congressional Research Service, *U.S. Strategy for Engagement in Central America: Policy Issues for Congress,* at 2, 19-20, updated July 24, 2019.

[94] *Id.* at 6-12.

[95] The number of TPS recipients comes from data provided by USCIS to the Congressional Research Service. CRS, *Temporary Protected Status: Overview and Current Issues,* at 5, Table I.

South America and destined for the United States.[96] This position as transit countries for illicit drugs bound for the United States makes El Salvador and Honduras susceptible to escalating homicides and generalized crime.[97] In 2016, the year before the Trump administration sought to terminate the TPS designation for El Salvador, the country posted a homicide rate of 81 per 100,000 people—the highest in the Western hemisphere.[98] Moreover, El Salvador suffers the expansive presence of criminal gangs, such as MS-13 and the 18th Street gang, with estimates reaching 65,000 active gang members.[99]

In Honduras, transnational criminal organizations have penetrated state institutions to the degree that the government has purged 5,000 personnel from the Honduran National Police in recent years.[100] A series of high profile corruption investigations during the same time period have implicated the family members and close professional contacts of officials at the highest levels of the Honduran Government.[101]

In the Caribbean, Haiti remains a transit point for cocaine originating in South America, which crosses the country's porous borders en route to the United States and other markets.[102] Furthermore, as in El Salvador and Honduras, Haiti's suffers from a weak judicial system, which impedes its ability to effectively prosecute drug traffickers or money launderers.[103]

Combined with precarious social and economic conditions, these alarming security statistics in El Salvador, Honduras, and Haiti have pushed tens of thousands of individuals to pursue irregular immigration to the United States.[104] In response, the U.S. Government provides foreign assistance for a series of initiatives to increase security, political and economic stability, and the rule of law in the three countries. To that end, U.S. foreign policy toward Haiti is "designed to foster the institutions and infrastructure necessary to achieve strong democratic foundations and meaningful poverty reduction through sustainable development."[105] Priority areas include support for economic development, improved food security, and strengthening the Haitian National Police so that Haiti can be a stronger partner against transnational crime.[106]

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[96] U.S. Department of State, *International Narcotics Control Strategy Report,* at 163, 181, Mar. 2019.

[97] Congressional Research Service, *El Salvador: Background and U.S. Relations,* at 6, 25, updated Aug. 14, 2019; Congressional Research Service, *Honduras: Background and U.S. Relations*, at 9, updated July 22, 2019.

[98] InSight Crime, "InSight Crime's 2016 Homicide Round-up," Jan. 16, 2017, *available at* https://www.insightcrime.org/news/analysis/insight-crime-2016-homicide-round-up/ (last visited Oct. 25, 2019)

[99] Sofia Martinez, "Today's Migrant Flow is Different," *The Atlantic*, June 28, 2018.

[100] The Wilson Center, *Policy Reform in Honduras: The Role of the Special Purge and Transformation Commission,* at 23 (June 2019).

[101] Jeff Ernst & David C. Adams, "Jury finds 'Tony' Hernandez, brother of Honduran president, guilty of drug trafficking," *Univision,* Oct. 18, 2019.

[102] U.S. Department of State, *International Narcotics Control Strategy Report,* at 177, Mar. 2019.

[103] Congressional Research Service, *Haiti's Political and Economic Conditions*, at 11, updated July 1, 2019.

[104] Congressional Research Service, *U.S. Strategy for Engagement in Central America: Policy Issues for Congress,* updated July 24, 2019; *See also* U.S. Customs and Border Protection, "Southwest Border Migration FY 2019," updated October 29, 2019, *available at* https://www.cbp.gov/newsroom/stats/sw-border-migration, updated Oct. 29, 2019.

[105] U.S. Department of State, *U.S. Relations with Haiti,* Fact Sheet, Mar. 16, 2019.

[106] *Id.*

U.S. foreign policy in El Salvador and Honduras seeks to address the underlying factors driving irregular migration to the United States. These efforts include support for social and economic development initiatives so that Salvadorans and Hondurans can find opportunities in their own communities, as well as a wide array of programs to strengthen national legal systems, professionalize civilian police forces, counter transnational criminal organizations, and expand the capacity of democratic institutions.[107]

In 2017 and 2018, the Trump administration repeatedly offered public support for U.S. engagement in Central America as an initiative that "protect[s] American citizens by addressing the security, governance, and economic drivers of illegal immigration and illicit trafficking, while increasing opportunities for U.S. and other businesses."[108] In 2017, the Trump administration issued a statement on the Conference on Prosperity and Security in Central America saying that "the United States views the security and prosperity of Central America as key to regional stability and to the security of the United States."[109]

Ending TPS: A Self-Inflicted Wound to U.S. National Security

Despite the stated aims of U.S. foreign policy towards El Salvador, Honduras, and Haiti, the Trump administration sought to end TPS for the three countries over the repeated warnings of senior U.S. diplomats. Officials at all levels of the State Department and U.S. Embassies in the three countries directly informed Secretary Tillerson that ending the TPS programs would undermine the productive partnerships that the United States needs to advance its national security.

In the October 26, 2017 memorandum to Tillerson, WHA and PRM detailed how ending the TPS for El Salvador and Honduras would jeopardize U.S. foreign policy by stating:

> A DHS decision to terminate TPS is likely to generate a backlash from the Honduran and Salvadoran governments who, together with Guatemala, committed $5.4 billion from 2016 to 2017 to implement reforms [. . .] to address the conditions driving illegal immigration from their countries to the United States. Negative reactions by [their] citizens could generate significant pressure on government leaders to take actions that run counter to the $2 billion U.S. strategy in Central America, which addresses the security, governance, and economic drivers of illegal immigration and illicit trafficking. A DHS decision to terminate TPS could also cause the governments to reduce their counter-narcotics and anti-gang cooperation with the United States and stop combatting human-smuggling and discouraging their citizens from illegally immigrating to the United

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[107] Congressional Research Service, *U.S. Strategy for Engagement in Central America: Policy Issues for Congress,* at 6-12, updated July 24, 2019.

[108] U.S. Department of State, *U.S. Programs and Engagement Promote a Prosperous, Secure, and Well-Governed Central America,* June 2018, *available at* https://www.state.gov/wp-content/uploads/2018/12/U.S.-Programs-and-Engagement-Promote-a-Prosperous-Secure-and-Well-Governed-Central-America.pdf.

[109] Press Release, The White House, "White House Statement on the Conference on Prosperity and Security in Central America," June 15, 2017, *available at* https://gt.usembassy.gov/white-house-statement-conference-prosperity-security-central-america.

> States. Progress in all of these areas is critical to the administration's national security goals at the Southwest border.[110]

With regard to Haiti, WHA and PRM also documented the implications of terminating the country's TPS designation, noting:

> A DHS termination of TPS would also jeopardize the progress made in developing a more secure, stable, and self-sufficient Haiti. [. . .] Haitians who are returned to a country that is not yet able to ensure their safe reintegration and provide economic opportunities would further incentivize illegal immigration. [. . .] To this end, such an irregular flow of Haitian migrants through the region [of Latin America and the Caribbean], similar to what was seen in 2016, could threaten the progress made on the U.S. strategy in Central America, and the efforts we have made to further secure our southern and northern borders.[111]

With these frank assessments, WHA and PRM provided Tillerson with a clear understanding of the potential damage to U.S. national security equities in the three countries. WHA and PRM identified how ending TPS and stripping humanitarian protections from nearly 400,000 individuals would generate multifaceted consequences that would touch on nearly all aspects of U.S. foreign policy, including undermining U.S. foreign assistance directed to programs related to security, governance, and economic issues. Furthermore, WHA and PRM underscored that ending TPS would have negative implications for the Trump administration's stated foreign policy priorities, including addressing irregular migration, drug trafficking and criminal gangs.

The State Department's concerns over the adverse effects of ending the three TPS designations were so significant that Tillerson's October 31, 2017 letter to DHS was accompanied by three country assessments that detailed the potential risks. In the assessment for El Salvador, the State Department informed DHS that:

> El Salvador is a consistent partner of the United States in working to combat illegal immigration and transnational organized criminal organizations. The Government of El Salvador has shown itself willing to proactively address concerns related to illegal immigration, investing time, money, and political capital in trying to keep its citizens in El Salvador. [. . .] If, however, the Government of El Salvador were expected to immediately absorb 263,282 of its citizens, its institutional capacity and willingness to continue to be a receptive partner would diminish. In addition, [. . .] the Salvadoran government would be forced to dedicate all available resources to receiving its nationals, undermining the medium- to longer-term U.S. goals in El

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[110] PRM and WHA Assessment of the *Foreign Policy* Implications, Attachment to Henshaw Memorandum (Tab 4). *See* Annex 3.

[111] *Id.*

Salvador, which could lead to an increase in illegal migration from El Salvador to the United States.[112]

The State Department country assessment on Honduras provided specific details of the bilateral cooperation that would be at risk if the Trump administration ended TPS for the country. It documented that, "U.S. engagement and programs [in Honduras] aim to dismantle transnational criminal organizations, combat drug trafficking, halt illegal immigration, and promote sustainable economic growth by addressing the underlying causes of insecurity, impunity, and lack of economic opportunity." [113] The assessment also observed that, "Honduras has been a collaborative extradition partner [. . .] Nearly 30 such indicted criminals now face justice in the United States for corruption, drug trafficking, and money laundering."[114] The State Department warned, "[i]f the Government of Honduras were expected to immediately receive and reintegrate 86,163 deportees and potentially their family members, it would likely cause a negative public reaction and strain the bilateral relationship.[115]

The country assessment on Haiti that accompanied Tillerson's letter to DHS offered similarly frank observations, including that, "[w]hile the Haitian government has exemplified its commitment to remain a cooperative partner of the United States, an abrupt DHS termination of TPS benefits for Haitian beneficiaries would jeopardize this progress." [116] The State Department also informed DHS that, "[i]t would also threaten the strides the Government of Haiti has made towards political stability." [117]

The collective concerns of the State Department were also summarized by Undersecretary Thomas Shannon in his private memorandum to Tillerson. In advocating for an extension of TPS for El Salvador, Honduras, and Haiti, Shannon asserted that it "would not only continue the compassion and generosity that have underscored our approach to disaster and humanitarian assistance over time. It would also guarantee the necessary partnerships we have built with these countries and others in the struggle to promote safe and orderly migration, and fight the traffickers and criminal organizations that prey on the fears and aspirations of our neighbors." [118]

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[112] Department of State Recommendation Regarding Temporary Protected Status (TPS) for El Salvador—2017, Enclosure to Tillerson Letter, at 4. While the State Department assessment on El Salvador stated that there were 263,282 Salvadoran TPS recipients, the official U.S. Government statistics on TPS recipients, compiled and maintained by USCIS, indicate that as of November 2018, the number of Salvadoran TPS recipients is 251,526. *See* data provided by USCIS to the Congressional Research Service. CRS, *Temporary Protected Status: Overview and Current Issues,* at 5, Table I.

[113] Department of State Recommendation Regarding Temporary Protected Status (TPS) for Honduras—2017, Enclosure to Tillerson Letter, at 3.

[114] *Id.* at 4.

[115] *Id.* at 2. While the State Department assessment on Honduras stated that there were 86,163 Honduran TPS recipients, the official U.S. Government statistics on TPS recipients, compiled and maintained by USCIS, indicate that as of November 2018, the number of Honduran TPS recipients is 80,633. *See* data provided by USCIS to the Congressional Research Service. CRS, *Temporary Protected Status: Overview and Current Issues,* at 5, Table I.

[116] Department of State Recommendation Regarding Temporary Protected Status (TPS) for Haiti—2017, Enclosure to Tillerson Letter, at 4, Oct. 31, 2017.

[117] *Id.*

[118] Shannon Memorandum at 2.

Across numerous documents, senior officials at the State Department and U.S. Embassies presented a holistic assessment of how terminating the TPS designations for the three countries would endanger a wide range of U.S. national security interests. Nevertheless, their analysis was discarded by the Trump administration. Although ending TPS for El Salvador, Honduras, and Haiti would cause major damage to U.S. foreign policy objectives, steps that the Trump administration took in March 2019 further complicate the impact of terminating the three TPS programs.

The Collateral Damage of Suspending U.S. Foreign Assistance

In response to security, governance, and migration challenges in the Northern Triangle of Central America, the U.S. Government has invested significant financial resources to advance its national security interests in the region.[119] In 2014, the administration of President Barack Obama developed a long-term strategy that would combat illicit trafficking and violence and advance economic and social inclusion in the Northern Triangle.[120] The policy also included initiatives to strengthen governance, justice systems, and civilian law enforcement, as well as improve the capacity of migration agencies in order to facilitate the safe and orderly repatriation of their citizens.[121] These efforts—known as the U.S. Strategy for Engagement in Central America—became a multi-year U.S. government plan that has received repeated Congressional support, with the U.S. Congress appropriating nearly $2.6 billion since FY2016.[122]

In March 2019, President Trump abruptly announced the suspension of U.S. foreign assistance to the three Northern Triangle countries in a move that appeared to blindside senior officials across the government.[123] As details of the decision emerged in the ensuing weeks and months, the Trump administration confirmed that it cut and reprogrammed $404 million in Congressionally appropriated funds directed for the three countries.[124]

By cutting U.S. foreign assistance to the Northern Triangle, President Trump and his administration drastically weakened the United States' capacity to address the alarming levels of criminal violence and social and economic factors prompting Salvadoran, Guatemalan, and Honduran citizens to flee their countries. Additionally, in reducing U.S. engagement, the Trump administration diminished its ability to improve the security conditions that will be faced by TPS recipients if they voluntarily return or are deported to their countries of origin, as well as any of their U.S. citizen children that accompany them. U.S. foreign assistance funds supported efforts that assist migrants—which would include TPS

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[119] El Salvador, Guatemala, and Honduras constitute the region in Central America known as the Northern Triangle.

[120] President Barack Obama, *U.S. Strategy for Engagement in Central America,* The White House, Mar. 16, 2015, *available at* https://obamawhitehouse.archives.gov/sites/default/files/docs/central—america—strategy.pdf.

[121] *Id.*

[122] Congressional Research Service, *U.S. Strategy for Engagement in Central America: Policy Issues for Congress,* at 12, updated July 24, 2019.

[123] John Hudson & Karen DeYoung, "Trump's aid cuts to Central America still undetermined despite announcement," *Washington Post,* Apr. 9, 2019.

[124] Congressional Research Service, *U.S. Strategy for Engagement in Central America: Policy Issues for Congress,* at 19-20, updated July 24, 2019.

recipients—returning to their home countries, including short-term reception services, such as food and transportation, renovating reception centers, and collecting data on returning migrants that are used to support their reintegration.[125] Therefore, by cutting foreign assistance, the Trump administration reduced U.S. support to strengthen the capacity of the migration agencies in El Salvador and Honduras that are responsible for repatriation efforts and would need to ensure the personal safety of 332,159 Salvadoran and Honduran TPS recipients and their estimated 246,000 American children.[126]

Although President Trump publicly criticized the effectiveness of U.S. foreign assistance when he announced the cuts, the State Department and U.S. Agency for International Development had consistently documented the progress achieved by U.S.-funded programs.[127] During the Trump administration, the State Department submitted nine separate reports to Congress certifying that the Northern Triangle governments were meeting key benchmarks on security, governance, and economic development.[128] Moreover, USAID—which administers a wide range of programs in the Northern Triangle—reported a 61 percent decrease in homicides in El Salvador between 2015 and 2017 in municipalities that received U.S. security assistance.[129]

While the Trump administration announced in October 2019 that it would once again provide foreign assistance to the Northern Triangle, its decision to cut over $400 million in funds damaged U.S. national security interests and also undermined programs that had a proven track record of improving security conditions.

Conclusion

Despite repeated warnings from senior officials at all levels of the State Department and U.S. Embassies in the three countries, the Trump administration sought to terminate the TPS designations for El Salvador, Honduras, and Haiti with the full awareness of the severity of the consequences for regional stability and U.S. national security. Disturbingly, the Trump administration knowingly moved to end the three TPS designations regardless of analysis that the decisions would undermine its own stated foreign policy priorities of combatting drug trafficking, countering criminal gangs, and reducing irregular migration to the United States.

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[125] U.S. Government Accountability Office, *Central America: USAID Assists Migrants Returning to their Home Countries, but Effectiveness of Reintegration Efforts Remains to Be Determined,* at 7-9, Nov. 2018.

[126] The number of TPS recipients comes from data provided by USCIS to the Congressional Research Service. CRS, *Temporary Protected Status: Overview and Current Issues.* The number of TPS recipients' children comes from Warren & Kerwin, *A Statistical and Demographic Profile of the US Temporary Protected Status Populations from El Salvador, Honduras, and Haiti,* at 581.

[127] Julia Harte & Tim Reid, "Trump cuts aid to Central American countries as migrant crisis deepens," *Reuters*, Mar. 30, 2019.

[128] Congressional Notifications from U.S. Department of State to the Senate Foreign Relations Committee, Aug. 25, 2017, Nov. 30, 2017, June 29, 2018, Sept. 4, 2018.

[129] Megan Specia, "Trump Wants to Cut Aid to Central America. Here are Some of the Dozens of U.S.-Funded Programs," *The New York Times*, Apr. 2, 2019.

The Trump administration's decision to cut $400 million in foreign assistance to the Northern Triangle compounds the catastrophic impact of the decision to end TPS for El Salvador, Honduras, and Haiti. Moreover, with these cuts, the Trump administration fueled the potential for a new humanitarian crisis in Latin America and the Caribbean, one that will jeopardize the physical safety and well-being of TPS beneficiaries and their American children.

CHAPTER FOUR

HARMING AMERICAN FAMILIES: HOW THE TRUMP ADMINISTRATION EXPOSED TPS RECIPIENTS AND AMERICAN CITIZEN CHILDREN TO CRIME, VIOLENCE, AND FAMILY SEPARATION

> "In the case of El Salvador and Honduras, both countries continue to have some of the world's highest homicide rates, and weak law enforcement capabilities and inadequate government services will make it difficult for their respective governments to ensure the protection of returning citizens—no less the U.S. citizen children who may accompany their parents."
>
> —*Secretary of State Rex Tillerson* [130]

Throughout the course of its investigation, the Senate Foreign Relations Committee Democratic Staff found that officials at all levels of the State Department repeatedly warned the Trump administration about the widespread violence and crime that TPS recipients would face if they return to their countries of origin. Senior State Department and U.S. embassy officials also raised numerous concerns about the dangers that the American children of TPS recipients would be subject to if they accompanied their parents to El Salvador, Honduras, and Haiti. Among the most disturbing warnings, these officials alerted the Trump administration that U.S. citizen children accompanying their TPS recipient parents to El Salvador and Honduras would be vulnerable to recruitment by criminal gangs, such as MS-13.

Given the perilous security, social, and economic conditions in El Salvador, Honduras, and Haiti, many TPS recipients would face the harrowing decision of leaving their American children in the United States.[131] The result of such decisions would amount to the de facto forced separation of American families, with potentially hundreds of thousands of U.S. citizen children separated from their TPS recipient parents.[132] The potential exists that far more children would be separated from their parents due to the termination of TPS than has occurred to date under the Trump administration's "zero tolerance" policy.[133] This prevalence of de facto forced family separation would have a lasting and traumatizing impact on the lives of the U.S. citizen children of TPS recipients and would irreparably harm American families.

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[130] Tillerson Letter at 1.

[131] Center for American Progress, "How Ending TPS Will Hurt U.S. Citizen Children," Feb. 11, 2019, *available at* https://www.americanprogress.org/issues/immigration/reports/2019/02/11/466022/ending-tps-will-hurt-u-s-citizen-children/ (last visited Oct. 25, 2019).

[132] There are an estimated 273,000 U.S. citizen children born to TPS recipients from El Salvador, Honduras, and Haiti. Warren & Kerwin, *A Statistical and Demographic Profile of the US Temporary Protected Status Populations from El Salvador, Honduras, and Haiti,* at 581.

[133] As of October 24, 2019, there are 5,460 known cases of family separation caused by the Trump administration's "zero tolerance" policy. Elliot Spagat, "Tally of children split at border tops 5,400 in new count," *Associated Press*, Oct. 25, 2019.

Senior State Department officials cautioned the Trump administration that many TPS recipients would remain in the United States without legal status rather than subject their American children to the crime and violence of their countries of origin or endure forced family separation.[134] Additionally, State Department officials warned that in the event that a significant number of TPS recipients voluntarily return or are deported to El Salvador, Honduras, and Haiti, an influx of hundreds of thousands of TPS recipients would create a destabilizing effect that will likely result in a new surge of unauthorized immigration to the United States.[135]

The Trump administration's decision to end the TPS designations for El Salvador, Haiti, and Honduras directly affects the legal status of 388,368 people—251,526 Salvadorans, 80,633 Hondurans, and 56,209 Haitians.[136] The majority of TPS recipients reside in California, Florida, Texas, New York, Virginia, Maryland, and New Jersey.[137] Many, if not most, of these individuals have children who were born in the United States. There are an estimated 192,700 American children born to Salvadoran parents that are TPS recipients, as well as 53,500 and 27,000 U.S. citizen children born to Honduran and Haitian TPS recipients, respectively.[138]

Country	Estimated # of U.S. Citizen Children Born to TPS Recipients [139]
El Salvador	192,700
Honduras	53,500
Haiti	27,000
Total	273,200

[139] The number of TPS recipients' children comes from Warren & Kerwin, ***A Statistical and Demographic Profile of the US Temporary Protected Status Populations from El Salvador, Honduras, and Haiti,*** Journal on Migration and Human Security, at 581.

Endangering the Safety of TPS Recipients

The Trump administration's decision to terminate the TPS designations for El Salvador, Honduras, and Haiti was done with full knowledge that TPS recipients who voluntarily return or are deported to the three countries upon termination of their status will face precarious social and economic conditions and elevated security risks given the alarming levels of violence that plague these countries. In particular, the Trump administration was warned that El Salvador and Honduras are marked by homicide rates that remain among the highest in the world outside a war zone.[140]

[134] Henshaw Memorandum at 2.
[135] *See, e.g.,* Country Conditions Report for El Salvador, Attachment to Henshaw Memorandum (Tab 5), at 7; *see also* Nick Miroff et al., "U.S. embassy cables warned against expelling 300,000 immigrants. Trump officials did it anyway," *The Washington Post*, May 8, 2018.
[136] CRS, *Temporary Protected Status: Overview and Current Issues,* at 5, Table I.
[137] *Id.* at 12.
[138] Warren & Kerwin, *A Statistical and Demographic Profile of the US Temporary Protected Status Populations from El Salvador, Honduras, and Haiti,* at 581.
[140] *See, e.g.,* Country Conditions Report for El Salvador, Attachment to Henshaw Memorandum (Tab 5), at 4.

In his private October 23, 2017 memorandum to Secretary Tillerson, Undersecretary Thomas Shannon summed up the challenges that TPS recipients would face in their countries of origin:

> [M]any of those fleeing these events come from areas that were either completely destroyed, or still suffer damage. Significantly, many of these areas now face the additional dangers generated by gang warfare, drug trafficking, and the breakdown of state and social institutions.[141]

The diplomatic cable from the U.S. Embassy in San Salvador to the NSC, State Department, and DHS underscored the dangerous conditions in the country, highlighting that "El Salvador continues to suffer from serious security and economic challenges, and could not adequately handle the return of an additional 195,000 TPS beneficiaries and potentially their family members, including a significant number of American citizen children."[142] U.S. Embassy San Salvador directly cautioned against returning TPS recipients at a time when El Salvador is facing increased levels of gang violence:

> The surge in gang violence in El Salvador, and other gang-related crime drives internal displacement and remains a major driver of immigration to the United States. The Internal Displacement Monitoring Centre estimates that nearly 220,000 Salvadorans were forced to flee violence in 2016. This puts the country second in terms of the number of new displacement relative to population size, after Syria.[143]

Similarly, for Honduras, U.S. Embassy Tegucigalpa's assessment expressed serious concerns about the security conditions in the country. The embassy's diplomatic cable noted that the security situation in Honduras is characterized by "extraordinary circumstances created by a combination of gang activity, drug trafficking, and poor economic conditions."[144] U.S. Embassy Tegucigalpa explained in great detail that an additional factor preventing the Honduran Government from guaranteeing the protection of TPS recipients was the "limited government presence in many parts of the country, including in coastal regions where many Hondurans with TPS previously resided and where transnational criminal organizations currently exert disproportionate influence."[145]

In Haiti, according to the on-the-ground analysis provided by U.S. Embassy Port-au-Prince, there are challenges of weak law enforcement given that "the HNP [Haitian National Police] remains highly concentrated in Port-au-Prince and has limited resources, challenging its ability to guarantee security throughout the coun-

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[141] Shannon Memorandum at 2.

[142] San Salvador Cable at 22. While the original cable from U.S. Embassy San Salvador estimated that there were 195,000 Salvadoran TPS recipients, the official U.S. Government statistics on TPS recipients, compiled and maintained by USCIS, indicate that as of November 2018, the number of Salvadoran TPS recipients is 251,526. The number of TPS recipients comes from data provided by USCIS to the Congressional Research Service. CRS, *Temporary Protected Status: Overview and Current Issues,* at 5, Table I; San Salvador Cable at 21.

[143] San Salvador Cable at 22.

[144] Tegucigalpa Cable at 74.

[145] *Id.*

try."[146] The embassy also stated that Haiti "lacks the adequate infrastructure, health, sanitation services, and emergency response capacity necessary to ensure the personal safety of a large number of TPS returnees."[147]

In addition to the dire assessments from the three embassies, the State Department's Bureau of Population, Refugees, and Migration (PRM) also alerted Tillerson about the adverse consequences of terminating TPS for Salvadoran, Honduran, and Haitian nationals. Specifically, in the October 26, 2017 memorandum to Tillerson, PRM underscored that, in the case of El Salvador, the termination of TPS would have severe repercussions and a destabilizing impact. PRM asserted that "[i]ntroducing an additional 263,282 working-age people and children vulnerable to recruitment by transnational criminal organizations (TCOs), such as MS-13, to a country rife with gangs and that cannot provide the 60,000 jobs required every year for its current population will undermine U.S.-Salvadoran efforts to combat TCOs."[148]

Additionally, the high levels of violence in these countries directly affects the ability to conduct business and employ individuals. In particular, in its analysis for El Salvador, PRM highlighted that:

> Extortion of businesses drives up cost and discourages investment. Business leaders assess that extortion payments have tripled since 2013, with small businesses paying approximately 10-20 percent of their income to organized crime, while larger businesses face monthly payments in the tens of thousands of dollars. The [Salvadoran] Central Bank estimates that extortion fees paid by businesses could amount to approximately $756 million—or almost 3 percent of GDP—though other estimates are lower.[149]

In the case of Honduras, PRM assessed that "although Honduras [has] been able to reduce its national homicide rate from 86 per 100,000 in 2011 to 58 per 100,000 in 2016, it continues to have one of the highest murder rates in the world for a country not at war."[150] PRM also added that "[i]mpunity for all categories of crime, including serious offenses like murder and kidnapping is high."[151] Given these circumstances, PRM concluded that the situation in Honduras "continues to represent extraordinary circumstances created by a combination of gang activity, drug trafficking, and poor economic conditions."[152]

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[146] Port-au-Prince Cable at 12.
[147] *Id.*
[148] Country Conditions Report for El Salvador, Attachment to Henshaw Memorandum (Tab 5), at 7. The original memorandum to Secretary Tillerson references "263,282 working-age people and children." However, the official U.S. Government statistics on TPS recipients, compiled and maintained by USCIS, state that as of November 2018, the number of Salvadoran TPS recipients was 251,526. Estimates indicate that these 251,526 Salvadoran TPS recipients have approximately 192,700 American citizen children. The number of TPS recipients comes from data provided by USCIS to the Congressional Research Service. CRS, *Temporary Protected Status: Overview and Current Issues,* at 5, Table I. The number of TPS recipients' children comes from Warren & Kerwin, *A Statistical and Demographic Profile of the US Temporary Protected Status Populations from El Salvador, Honduras, and Haiti,* at 581.
[149] Country Conditions Report for El Salvador, Attachment to Henshaw Memorandum (Tab 5), at 5.
[150] Country Conditions Report for Honduras, Attachment to Henshaw Memorandum (Tab 7), at 5.
[151] *Id.*
[152] *Id.*

Lastly, regarding Haiti, PRM noted that subsequent natural disasters following the 2010 earthquake had exacerbated existing social, economic, and security challenges on the island. Specifically, PRM asserted:

> With more than a half its total population living in extreme poverty, Hurricane Matthew demonstrated Haiti's weakened ability to cope, recover, and adapt to shocks from natural disasters. This fragility was exposed again most recently by Hurricane Irma, which temporarily displaced over 10,000 people into shelters and exacerbated an existing food security crisis on the northern coast.[153]

In addition, PRM stated that "gender based violence in the IDP [internally displaced persons] areas remains a serious concern, and personal security is a serious and pervasive problem."[154] Intensifying these challenges, PRM also emphasized that as the United Nations Stabilization Mission in Haiti continues to withdraw from the country, the Haitian National Police remains concentrated in Port-au-Prince with limited resources that impair its ability to guarantee security nationwide.[155]

The Trump administration received repeated pointed warnings that TPS recipients would face challenging security and socioeconomic conditions. In the case of El Salvador and Honduras, senior State Department and U.S. Embassy officials signaled that TPS recipients would face alarming levels of criminal violence, including recruitment by criminal gangs, such as MS-13. Nevertheless, the Trump administration ignored the clear risks to TPS recipients' personal safety when it sought to end the TPS designations for El Salvador, Honduras, and Haiti.

Exposing American Children to Criminal Violence

The Trump administration's decision to terminate TPS designations for El Salvador, Honduras, and Haiti will have a direct effect on an estimated 273,000 U.S. citizen children. TPS recipients who voluntarily depart the United States or are deported to their countries of origin upon termination of their status will have to decide whether to take their American children with them, knowing that they will face security risks and criminal violence present in the three countries. In particular, Salvadoran and Honduran TPS recipients that return with their U.S. citizen children—most of whom know no other country than the United States—will have to grapple with a series of detrimental factors that will affect these children for the rest of their lives.

In recognition of these dangers, the U.S. Embassies in El Salvador and Honduras provided analysis that underscored the various risks and harmful effects that a termination of status would have for the American children born to TPS recipient parents. In one example, the diplomatic cable from U.S. Embassy San Salvador noted that "parents in many communities in El Salvador fear that boys may be targeted for gang recruitment and girls may be forced

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[153] Country Conditions Report for Haiti, Attachment to Henshaw Memorandum (Tab 6), at 3.

[154] *Id.*

[155] *Id.*

into sexual relations with gang members."[156] The cable stated that, as a result, "many parents in El Salvador refuse to even send their children to school out of fear of the gangs."[157] The embassy further documented that this situation is so prevalent, warning that:

> The Salvadoran teacher's union on January 13 [2017] reported that 60,000 students (or 5 percent of the student population) did not register for the 2017 school year, most likely due to fear of gang recruitment or that their children could be in danger crossing the boundaries of gang territory. U.S.-born American citizen children of TPS recipients would be particularly vulnerable to security threats, as well as challenges registering for basic services upon their return to El Salvador.[158]

Similarly, in its joint memorandum to Tillerson, PRM also warned about risks to the safety and well-being of American children born to Salvadoran TPS recipient parents. PRM concluded that the high rate of homicide along with the lack of economic opportunities in El Salvador create "a climate of fear and hopelessness."[159] These are factors that force many parents in El Salvador to make difficult choices that affect the future of their children, which TPS recipients will also face if their U.S. citizen children accompany them.

In Honduras, where high levels of violence mirror those in El Salvador, PRM warned that "impunity for all categories of crime, including serious offenses like murder and kidnapping, is high."[160] Additionally, given such conditions, PRM underscored that "many of the [TPS recipients] would be accompanied by their U.S.-born children, many of whom would be vulnerable to recruitment by gangs."[161] As a result of the combination of high levels of violence and lack of accountability, TPS recipients and their U.S. citizen children will face serious threats to their physical safety and significant barriers to reintegrate into Honduran communities.

The Trump administration was acutely aware of the dangers that American children would encounter if they accompany TPS recipient parents to El Salvador and Honduras. As documented in Chapter Two of this report, Secretary Tillerson's October 31, 2017 letter to DHS stated that in El Salvador and Honduras, "weak law enforcement capabilities and inadequate government services will make it difficult for their respective governments to ensure the protection of returning citizens—no less the U.S. citizen children who may accompany their parents."[162] Despite this recognition, the Trump administration recklessly sought to terminate the TPS designations for El Salvador and Honduras with direct knowledge of the threats of criminal violence that American children would face

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[156] San Salvador Cable at 22.
[157] *Id.*
[158] *Id.*
[159] Country Conditions Report for El Salvador, Attachment to Henshaw Memorandum (Tab 5), at 4.
[160] Country Conditions Report for Honduras, Attachment to Henshaw Memorandum (Tab 7), at 5.
[161] *Id.* at 4.
[162] Tillerson Letter at 1.

if they accompany their TPS recipient parents to their countries of origin.

Separating American Families

The Trump administration's decision to terminate the three TPS designations will inevitably result in the de facto forced separation of American families. Given the challenging security, social, and economic conditions in El Salvador, Honduras, and Haiti, a significant number of TPS recipient parents who voluntarily return or are deported to their country of origin will feel obligated to leave their American children in the United States. As a result, up to 273,000 U.S. citizen children could be separated from at least one of their parents.[163] This prevalence of family separation will have long-lasting, severe consequences on American children.

Due to the Trump administration policy of "zero tolerance" the U.S. government has been able to document the impact upon children of forced separation from their parents. In September 2019, the Office of the Inspector General at the U.S. Department of Health and Human Services Office (HHS OIG) published a report on the Trump administration's "zero tolerance" policy, under which, DHS forcibly separated 5,460 immigrant children from their foreign national parents at the southwestern border of the United States, and placed them in detention, in some cases for months." [164] This HHS OIG report explicitly stated that "separated children exhibited more fear, feelings of abandonment, and post-traumatic stress than did children who are not separated." [165] This report also highlighted that "separated children experienced heightened feelings of anxiety and loss as a result of their unexpected separation from their parents after their arrival in the United States." [166] In addition, the HHS OIG report documented that "children who did not understand why they were separated from their parents suffered elevated levels of mental distress." [167]

Although the HHS OIG report evaluated different circumstances—the "zero tolerance" policy separated foreign national children from their foreign national parents—the American children of TPS recipients would likely face many of the same traumatic consequences of family separation. The Trump administration's efforts to terminate the TPS designations for El Salvador, Honduras, and Haiti has the potential to prompt similar long-lasting consequences on U.S. citizen children born to TPS recipients. Prior to the HHS OIG report, the Center for American Progress (CAP) reviewed the repercussions of family separation for TPS recipients, which included analysis by the American Psychological

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[163] Center for American Progress, "How Ending TPS Will Hurt U.S.-Citizen Children," Feb. 11, 2019. The number of TPS recipients' children comes from Warren & Kerwin, *A Statistical and Demographic Profile of the US Temporary Protected Status Populations from El Salvador, Honduras, and Haiti,* at 581.

[164] U.S. Department of Health and Human Services, Office of Inspector General, *Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody,* Sept. 2019. As of October 24, 2019, there are 5,460 known cases of family separation caused by the Trump administration's "zero tolerance" policy. Elliot Spagat, "Tally of children split at border tops 5,400 in new count," *Associated Press*, Oct. 25, 2019.

[165] U.S. Department of Health and Human Services, Office of Inspector General, *Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody,* at 10, Sept. 2019.

[166] *Id.*

[167] *Id.*

Association that noted children separated from parents who are deported from the United States often show signs of trauma, such as depression, anxiety, frequent crying, difficulties in school, and disrupted eating and sleeping.[168] According to the CAP report, these effects of persistent stress can affect a child for his or her future, resulting in challenges with learning, behavior, emotion regulation, and physical health.[169]

In its efforts to strip humanitarian protections from TPS recipients, the Trump administration made a decision that will lead to the separation of American families and would have adverse effects on the mental health and well-being of U.S. citizen children. Such consequences show the far-reaching impact of the Trump administration seeking to terminate the TPS designations for El Salvador, Honduras, and Haiti.

Accelerating Irregular Migration to the U.S.

In warning about the multifaceted consequences of ending TPS for the three countries, senior State Department and U.S. Embassy officials informed the Trump administration that it risked undermining its own stated goal of reducing irregular migration to the United States. TPS recipients who voluntarily return or are deported to El Salvador, Honduras, or Haiti, will go back to countries where the government is not adequately prepared to receive them. Moreover, TPS recipients will be departing communities in the United States where they have lived and worked for extended periods and where many of them have U.S. citizen children, pay taxes, own homes and businesses, and employ American citizens.[170] Given these factors, senior State Department and U.S. Embassy officials alerted the Trump administration that many TPS recipients would seek to return to the United States through irregular channels. These officials also warned that TPS recipients—who have garnered years of professional experience in the United States—would push current residents of the three countries to migrate, as they would be unable to sufficiently compete for jobs amidst the influx of repatriated individuals.

The U.S. Embassy in San Salvador highlighted that because El Salvador struggles with severe security, economic, environmental challenges, as well as inadequate government services to provide protection for their own citizens, introducing hundreds of thousands of additional individuals will likely accelerate irregular migration to the United States.[171] In its diplomatic cable to the NSC, State Department, and DHS, U.S. Embassy San Salvador noted that "El Salvador needs to create approximately 60,000 new jobs every year to meet the needs of its current population, yet was only

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[168] *See* American Psychological Association Presidential Task Force on Immigration, *Crossroads: The Psychology of Immigration in the New Century* (2012), *cited in* Center for American Progress, "Trump's Immigration Policies are Harming American Children," July 31, 2017, *available at* https://www.americanprogress.org/issues/early-childhood/reports/2017/07/31/436377/trumps-immigration-policies-harming-american-children/ (last visited Nov. 1, 2019).

[169] National Scientific Council on the Developing Child, *Persistent Fear and Anxiety Can Affect Young Children's Learning and Development* (2010), *cited in* Center for American Progress, "Trump's Immigration Policies are Harming American Children," July 31, 2017, *available at* https://www.americanprogress.org/issues/early-childhood/reports/2017/07/31/436377/trumps-immigration-policies-harming-american-children/ (last visited Oct. 25, 2019).

[170] Cecilia Menjívar, Temporary Protected Status in the United States: The Experiences of Honduran and Salvadoran Immigrants, University of Kansas, Executive Summary, May 2017.

[171] *See* San Salvador Cable at 21.

able to create approximately 12,000 jobs in 2016." [172] Consequently, the embassy assessed that prospects for work for returned TPS recipients would be scarce and they would have to compete with local residents for limited employment opportunities to support themselves and their families.[173] These dynamics led PRM to advise Secretary Tillerson that "the immediate return of a population of TPS Salvadoran nationals of the magnitude currently residing in the United States—which El Salvador is currently unable to adequately absorb or employ—could intensify the push factors that drive illegal migration." [174]

With regard to Honduras, PRM warned Tillerson that the return of 80,633 Hondurans who currently hold TPS "could overwhelm the government's ability to properly reintegrate them and make it more likely they would attempt to return to the United States." [175] In the case of Haiti, PRM cautioned Tillerson that the Haitian government's capacity for migrant reception is low, and that "it would be very difficult for the Government of Haiti to absorb the approximately 58,706 Haitians currently residing in the United States under TPS in a short period of time." [176] PRM concluded that:

> An immediate DHS termination of benefits at this juncture, when Haiti is focused on developing opportunities that allow Haitians to stay and help build their country, would have implications not only for Haiti's stability, but for the region. Haitians who are involuntarily returned to a country that is not yet able to handle the influx of returns would further incentivize illegal migration, to the United States and other destinations.[177]

Thus, a potential massive irregular migration from Haiti and into other countries in Central America and other Caribbean countries, would strain the limited resources of those nations.[178]

As previously noted in Chapter Three of this report, to characterize the collective impact on Latin America and the Caribbean of returning nearly 400,000 TPS recipients to El Salvador, Honduras, and Haiti, PRM bluntly informed Tillerson that "the return [of] over hundreds of thousands of people would destabilize the region, causing significant harm to U.S. foreign policy and national security interests." [179]

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[172] *Id.*
[173] *Id.*
[174] Country Conditions Report for El Salvador, Attachment to Henshaw Memorandum (Tab 5), at 5.
[175] Country Conditions Report for Honduras, Attachment to Henshaw Memorandum (Tab 7), at 3.
[176] Country Conditions Report for Haiti, Attachment to Henshaw Memorandum (Tab 6), at 4. While the original memorandum to Secretary Tillerson referenced 58,706 Haitian TPS recipients, official U.S. Government statistics on TPS recipients are compiled and maintained by USCIS. USCIS statistics indicate that as of November 2018, the number of Haitian TPS recipients is 56,209. The number of TPS recipients comes from data provided by USCIS to the Congressional Research Service. CRS, *Temporary Protected Status: Overview and Current Issues,* at 5, Table I.
[177] Country Conditions Report for Haiti, Attachment to Henshaw Memorandum (Tab 6), at 6. *Id.*
[178] *Id.*
[179] Henshaw Memorandum at 3.

Conclusion

Senior officials at all levels of the State Department and the three U.S. Embassies extensively documented the severity of the human consequences of terminating the TPS designations for El Salvador, Honduras, and Haiti. They explicitly warned that hundreds of thousands of TPS recipients and their U.S. citizen children would be vulnerable to recruitment by violent transnational criminal organizations, and that criminal gangs, such as MS-13, would be strengthened by expanding their membership. Additionally, these security risks would force many TPS recipients to leave their children in the United States, which would amount to a new wave of de facto forced family separation. Nevertheless, the Trump administration recklessly proceeded without regard for the potential impact on American families or the lives and safety of nearly 400,000 TPS recipients and their estimated 273,000 U.S. citizen children.

Beyond the traumatic human impact of the decision, senior State Department and embassy officials also cautioned that ending the TPS designations for the three countries would likely set off a new wave of irregular migration in the region. The Trump administration still sought to terminate TPS at the potential expense of its own stated goal of addressing unauthorized immigration to the United States.

FINDINGS AND RECOMMENDATIONS

PRINCIPAL FINDINGS

- **2020 Election Considerations Were Injected into the Decision to End TPS for El Salvador, Honduras, and Haiti.** Trump administration political appointees in the State Department Office of Policy Planning sought to accelerate ending TPS to avoid hundreds of thousands of TPS recipients losing their status during the height of the 2020 election. Secretary of State Rex Tillerson's staff thus put political concerns above the adverse effects on U.S. national security and the personal safety of nearly 400,000 TPS recipients and their estimated 273,000 American children.[180]
- **The Trump Administration Intentionally Ignored Risks to U.S. National Security Priorities.** The Trump administration sought to terminate TPS for El Salvador, Honduras, and Haiti, despite the repeated warnings of senior State Department officials that ending TPS could endanger long-standing U.S. foreign policy objectives in the three countries, including combatting drug trafficking, countering violent criminal gangs, such as MS-13, strengthening the rule of law, and tackling obstacles to economic development. Advancing these foreign policy priorities is essential to addressing the underlying factors driving irregular migration to the United States.
- **Trump Administration Officials Knew that Ending TPS Would Jeopardize U.S. Counternarcotics Cooperation and Strengthen Criminal Gangs, Like MS-13.** Secretary Tillerson recommended terminating TPS despite acknowledging that the "[t]ermination of TPS will also likely generate a backlash from the governments [. . .], particularly the Honduran and Salvadoran governments" and that "[t]hey may take retaliatory actions counter to our long-standing national security and economic interests like withdrawing their counternarcotics and anti-gang cooperation."[181] The State Department also documented that returning TPS recipients to El Salvador would leave them and their accompanying American children vulnerable to recruitment by transnational criminal organiza-

[180] The number of TPS recipients comes from data provided by USCIS to the Congressional Research Service. CRS, *Temporary Protected Status: Overview and Current Issues,* at 5, Table I. The number of TPS recipients' children comes from Warren & Kerwin, *A Statistical and Demographic Profile of the US Temporary Protected Status Populations from El Salvador, Honduras, and Haiti,* at 581.

[181] Tillerson Letter at 1.

tions and that it would fuel "the growth of MS-13 and similar gangs." [182] The Trump administration ignored these warnings.

- **The Trump Administration Was Aware that Ending TPS Would Put the Personal Safety of nearly 400,000 TPS Recipients at Risk.** In 2017, the U.S. Embassies in El Salvador, Honduras, and Haiti cautioned senior Trump administration officials at the National Security Council, State Department, and DHS that the three governments would be unable to guarantee the safety of repatriated TPS recipients. In El Salvador and Honduras, senior diplomats alerted the Trump administration that TPS recipients would be subject to alarming levels of criminal violence and would fall prey to drug traffickers and criminal gangs, such as MS-13. Disturbingly, the Trump administration ignored these risks.
- **The Trump Administration Knew its Decision Would Expose Thousands of American Children to Crime and Violence.** A State Department assessment of the country conditions in Honduras warned that a large number of deported TPS beneficiaries would be accompanied by their American children, "many of whom would be vulnerable to recruitment by gangs." [183] Recognizing that levels of violence in El Salvador are among the highest outside a war zone, the U.S. Embassy in San Salvador cautioned that U.S.-citizen children would be pushed "into the gangs or other illicit employment." [184] Despite these risks to the safety of an estimated 273,000 American citizen children, the Trump administration still sought to end the three TPS designations.[185]
- **Terminating TPS for the Three Countries Would Lead to an Unprecedented Wave of De Facto Forced Family Separation.** Given the widespread violence, crime, and precarious social conditions present in the three countries, hundreds of thousands of TPS recipients would confront the decision of leaving their American citizen children in the United States rather than taking them to countries with dangerous security conditions and limited economic and educational opportunities. An estimated 273,000 U.S. citizen children could face separation from one of their parents as a result of the Trump administration's decision to end the TPS designations for El Salvador, Honduras and Haiti.
- **The Trump Administration Intentionally Made a Decision that Could Accelerate Irregular Migration to the United States.** Diplomatic cables from the U.S. Embassies in San Salvador, Tegucigalpa, and Port-au-Prince and the formal country assessments prepared by the State Department for DHS explicitly and repeatedly warned that deporting hundreds of thousands of TPS beneficiaries to countries that were unable

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[182] Country Conditions Report for El Salvador, Attachment to Henshaw Memorandum (Tab 5), at 7.
[183] Country Conditions Report for Honduras, Attachment to Henshaw Memorandum (Tab 7), at 4.
[184] San Salvador Cable at 21.
[185] The number of TPS recipients' children comes from Warren & Kerwin, *A Statistical and Demographic Profile of the US Temporary Protected Status Populations from El Salvador, Honduras, and Haiti,* at 581.

to handle the influx of returns would incentivize a new wave of unauthorized immigration to the United States. Additionally, senior diplomats warned in writing that TPS recipients would likely be unable to find economic opportunities upon arriving in El Salvador, Honduras and Haiti, and would likely seek to return to the United States. Additionally, in his letter to DHS, Secretary Tillerson warned that ending TPS for El Salvador and Honduras could lead both governments to take retaliatory actions, including "refraining from efforts to control illegal immigration." [186]

- **Ending TPS Would Lead to a Deportation Campaign of a Potentially Unprecedented Scale.** The Trump administration's move to end the TPS designations for El Salvador, Haiti, and Honduras will strip humanitarian protections and legal status from 388,368 foreign nationals currently residing lawfully in the United States—251,526 Salvadorans, 80,633 Hondurans, and 56,209 Hondurans.[187] Deporting nearly 400,000 people would constitute one of the largest forced removals of foreign nationals in the history of the United States. Former Undersecretary of State Thomas Shannon publicly expressed this concern after he resigned from the State Department. The State Department's Bureau of Population, Refugees, and Migration (PRM) warned in writing that the magnitude of these deportations "would destabilize the region." [188]

RECOMMENDATIONS

1. **The Trump Administration Must Immediately Extend or Re-designate El Salvador, Honduras, and Haiti for TPS:** Although the Trump administration's attempts to end the three TPS designations have been temporarily suspended by the courts, DHS has the authority to immediately provide a new 18-month extension to the TPS designations for El Salvador, Honduras, and Haiti or to re-designate the three countries for TPS due to the temporary and extraordinary conditions present in each. It is imperative that the Trump administration and DHS take immediate action.[189]
2. **The Senate Must Pass the SECURE Act (S.879):** Introduced in March 2019, the Safe Environment from Countries Under Repression and Emergency Act (SECURE Act) would allow TPS recipients to apply for lawful permanent resident status to obtain a green card if they meet certain criteria, including passing all applicable criminal and national security checks. The bill would protect TPS recipients and TPS eligible individuals from El Salvador, Honduras, and Haiti, as well as

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[186] Tillerson Letter at 2.

[187] The number of TPS recipients comes from data provided by USCIS to the Congressional Research Service. CRS, *Temporary Protected Status: Overview and Current Issues,* at 5, Table I.

[188] Henshaw Memorandum at 3.

[189] On October 28, 2019, the Trump Administration extended the work permits for Salvadoran TPS recipients until January 4, 2021 and one year beyond the end of current litigation related to the TPS designation for El Salvador. The Trump Administration made a similar announcement for Haiti, Honduras, Nepal, Nicaragua, and Sudan in early November 2019. The extension of work permits for TPS recipients confers legal residence in the United States during this period. It is not an extension of the TPS designation. *See* Chapter One.

Nepal, Nicaragua, Somalia, South Sudan, Sudan, Syria and Yemen. It would also protect eligible individuals from Guinea, Liberia, and Sierra Leone who were previously designated for TPS or Deferred Enforced Departure. The Senate should take up and pass this legislation, and end the legal limbo and uncertainty of TPS recipients.

3. **Congress Must Reform Existing TPS Statute:** The investigation conducted by Senate Foreign Relations Committee Democratic Staff revealed how Trump administration officials were able to deliberately discard the input of senior foreign policy practitioners at the State Department and the on-the-ground assessments of U.S. Embassies in El Salvador, Honduras, and Haiti. Congress must reform the existing statutory framework for TPS to ensure future decisions reflect objective analysis of existing country conditions as documented by U.S. Embassies abroad. Reform must incorporate and elevate considerations related to U.S. foreign policy and national security equities.
4. **The State Department OIG Should Investigate the Department's Decision to End TPS:** The State Department's Office of the Inspector General (OIG) should examine all the factors in the decision to end TPS for El Salvador, Honduras, and Haiti, including an assessment of the role electoral considerations played, and State Department's communications with the White House.
5. **The Trump Administration Must Fully Restore Foreign Assistance for Central America:** President Trump's March 2019 decision to cut and reprogram U.S. foreign assistance funding approved by Congress for El Salvador, Guatemala, and Honduras had severe consequences for U.S. national security interests and foreign policy objectives. U.S. foreign assistance to these countries helps to address the underlying factors driving irregular migration to the United States and to strengthen the countries' capacity to safely repatriate and reintegrate their citizens—objectives that would benefit the future return of TPS recipients and any of their American citizen children that accompany them. The Trump administration must immediately reverse its misguided decision and fully restore U.S. foreign assistance to Central America.[190]
6. **Congress Must Pass Comprehensive Legislation on U.S. Policy Towards Central America:** The erratic nature of President Trump's decisions regarding U.S. foreign assistance for El Salvador, Guatemala, and Honduras, as well as his administration's inconsistent policies towards Central America, make it essential for Congress to authorize a long-term ap-

[190] On October 16, 2019, Secretary of State Mike Pompeo announced that the U.S. was restarting "targeted U.S. foreign assistance" for El Salvador, Guatemala, and Honduras. Media reports indicated that the funding covered by the announcement totals $143 million, a small percentage of the approximately $400 million in foreign assistance funding for Central America that the Trump Administration cut and reprogrammed in 2019. Press Statement, Secretary of State Mike Pompeo, Department of State, "United States Resumes Targeted U.S. Foreign Assistance for El Salvador, Guatemala, and Honduras," Oct. 16, 2019, *available at* https://www.state.gov/united-states-resumes-targeted-u-s-foreign-assistance-for-el-salvador-guatemala-and-honduras/; Nick Miroff, "President Trump says he will unfreeze security aid to Central American countries," *The Washington Post,* Oct. 16, 2019; *see also* Chapter 3.

proach to Central America. This legislation must establish key foreign policy priorities to address security, the rule of law, democratic governance, and economic development challenges; provide multi-year funding; require progress by Central American governments; and identify benchmarks to ensure the effectiveness of U.S. foreign assistance.

7. **Congress Must Pass Legislation to Strengthen Asylum and Migrations Systems in Latin America and the Caribbean:** Irregular migration has emerged as a major risk to stability across Latin American and the Caribbean, and a challenge for U.S. foreign policy. Given the Trump administration's irresponsible approach to the migration issues, Congress must pass legislation that establishes key policy priorities, ensures ongoing technical assistance to partner countries and multilateral institutions, and provides multi-year funding. Such an approach would also ensure greater support for TPS recipients that return to their countries of origin.
8. **GAO Must Fully Examine Politicization of the TPS Decision-Making Process:** The Government Accountability Office (GAO) is currently reviewing the process that led to the Trump administration's decision to terminate the TPS designations for El Salvador, Honduras, and Haiti. This review must fully account for efforts by political appointees in the White House, State Department, and DHS to politicize the decision-making processes related to the three TPS programs.
9. **The Senate Judiciary Committee and Senate Homeland Security and Governmental Affairs Committee Should Investigate Politicization of the TPS Process at DHS:** As the investigation of the Senate Foreign Relations Committee Democratic Staff exclusively focused on politicization of the TPS decision-making process at the State Department, the appropriate committees of jurisdiction—including the Senate Judiciary Committee and Senate Homeland Security and Government Affairs Committee—should review internal DHS deliberations for inappropriate partisan influence as the Trump administration sought to end the TPS designations for El Salvador, Honduras, and Haiti.

ANNEX 1

TPS STATUTE AND HISTORY

This annex includes excerpts of the relevant portion of the TPS statute, as well as an overview of current and past TPS designations. The excerpt below covers the conditions for which the Secretary of Homeland Security can designate a country for TPS, as well as the statutory guidance for reviewing, extending, or terminating a TPS designation.

8 U.S.C. § 1254a: [191]

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(b)DESIGNATIONS

(1) IN GENERAL—

The Attorney General, after consultation with appropriate agencies of the Government, may designate any foreign state (or any part of such foreign state) under this subsection only if—

(A) the Attorney General finds that there is an ongoing armed conflict within the state and, due to such conflict, requiring the return of aliens who are nationals of that state to that state (or to the part of the state) would pose a serious threat to their personal safety;

(B) the Attorney General finds that—

(i) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected,

(ii) the foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state, and

(iii) the foreign state officially has requested designation under this subparagraph; or

(C) the Attorney General finds that there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless the Attorney General finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.

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[191] Under the Immigration and Nationality Act of 1990 (Pub. L. No. 101-649), the authority to designate a country for TPS was initially vested in the Attorney General. Following approval of the Homeland Security Act of 2002 (Pub. L. No. 107-296), this authority was transferred to the Secretary of Homeland Security.

(2) EFFECTIVE PERIOD OF DESIGNATION FOR FOREIGN STATES—

The designation of a foreign state (or part of such foreign state) under paragraph (1) shall—

(A) take effect upon the date of publication of the designation under such paragraph, or such later date as the Attorney General may specify in the notice published under such paragraph, and

(B) shall remain in effect until the effective date of the termination of the designation under paragraph (3)(B).

For purposes of this section, the initial period of designation of a foreign state (or part thereof) under paragraph (1) is the period, specified by the Attorney General, of not less than 6 months and not more than 18 months.

(3) PERIODIC REVIEW, TERMINATIONS, AND EXTENSIONS OF DESIGNATIONS—

(A) Periodic review

At least 60 days before end of the initial period of designation, and any extended period of designation, of a foreign state (or part thereof) under this section the Attorney General, after consultation with appropriate agencies of the Government, shall review the conditions in the foreign state (or part of such foreign state) for which a designation is in effect under this subsection and shall determine whether the conditions for such designation under this subsection continue to be met. The Attorney General shall provide on a timely basis for the publication of notice of each such determination (including the basis for the determination, and, in the case of an affirmative determination, the period of extension of designation under subparagraph (C)) in the Federal Register.

(B) Termination of designation

If the Attorney General determines under subparagraph (A) that a foreign state (or part of such foreign state) no longer continues to meet the conditions for designation under paragraph (1), the Attorney General shall terminate the designation by publishing notice in the Federal Register of the determination under this subparagraph (including the basis for the determination). Such termination is effective in accordance with subsection (d)(3), but shall not be effective earlier than 60 days after the date the notice is published or, if later, the expiration of the most recent previous extension under subparagraph (C).

(C) Extension of designation

If the Attorney General does not determine under subparagraph (A) that a foreign state (or part of such foreign state) no longer meets the conditions for designation under paragraph (1), the period of designation of the foreign state is extended for an additional period of 6 months (or, in the discretion of the Attorney General, a period of 12 or 18 months).

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History of Temporary Protected Status Designations

Since 1990, successive Democratic and Republican administrations have designated nearly two dozen different countries for TPS.

As of October 15, 2019, ten countries are currently designated for TPS: El Salvador, Haiti, Honduras, Nepal, Nicaragua, Somalia, South Sudan, Sudan, Syria, and Yemen.[192] The Trump administration has announced terminations for six of the ten. This diverse group of countries represents a range of conditions that justified a TPS designation, including armed conflict and natural disasters such as earthquakes and hurricanes. As of November 2018, approximately 417,341 foreign nationals from these ten countries currently were recipients of TPS.[193] Among those countries currently designated for TPS, Somalia represents the longest standing designation, dating back to 1991 as the result of a protracted civil conflict and terrorism.[194] Ongoing legal cases involving the termination of TPS for six countries have resulted in various U.S. district courts enjoining DHS from implementing and enforcing the Trump administration's decisions to terminate these TPS designations.[195]

Thirteen countries or regions of countries previously were designated for TPS and subsequently had their designations expire, some more than once: Angola, Bosnia-Herzegovina, Burundi, El Salvador, Guinea, Guinea-Bissau, the Province of Kosovo, Kuwait, Lebanon, Liberia, Montserrat, Rwanda, and Sierra Leone.[196] This group of countries similarly represents an array of conditions that merited a TPS designation, including armed conflict, epidemics, and natural disasters, such as volcanic eruptions. El Salvador was granted TPS by Congress through the Immigration Act of 1990, which later expired in 1992.[197] El Salvador's 1990 designation marks the only time that a country has been granted TPS by Congress.[198]

HISTORY OF TPS DESIGNATIONS AND EXTENSIONS FOR HONDURAS

Designation/Extension Date	Federal Register Notice
Original Designation, 01/05/1999	64 Fed. Reg. 524, Designating
First Extension, 05/11/2000	65 Fed. Reg. 30438, Extending
Second Extension, 05/08/2001	66 Fed. Reg. 23269, Extending

[192] U.S. Citizenship and Immigration Services, Temporary Protected Status, *available at* https://www.uscis.gov/humanitarian/temporary-protected-status, (last visited Oct. 25, 2019).

[193] CRS, *Temporary Protected Status: Overview and Current Issues,* at 5, Table I.

[194] The Migration Policy Institute, "Temporary Protected Status in the United States: A Grant of Humanitarian Relief that Is Less than Permanent," July 2, 2014.

[195] *See* Annex 2 of this report; U.S. Citizenship and Immigration Services, Temporary Protected Status, *available at* https://www.uscis.gov/humanitarian/temporary-protected-status, (last visited Oct. 25, 2019).

[196] American Immigration Council, *Temporary Protected Status: An Overview,* at 3-4 (May 2019), *available at* https://www.americanimmigrationcouncil.org/research/temporary-protected-status-overview; The Migration Policy Institute, "Temporary Protected Status in the United States: A Grant of Humanitarian Relief that Is Less than Permanent," July 2, 2014.

[197] Immigration and Nationality Act of 1990 (Pub. L. No. 101-649); The Migration Policy Institute, "Temporary Protected Status in the United States: A Grant of Humanitarian Relief that Is Less than Permanent," July 2, 2014, *available at* https://www.migrationpolicy.org/article/temporary-protected-status-united-states-grant-humanitarian-relief-less-permanent.

[198] The Migration Policy Institute, "Temporary Protected Status in the United States: A Grant of Humanitarian Relief that Is Less than Permanent," July 2, 2014.

HISTORY OF TPS DESIGNATIONS AND EXTENSIONS FOR HONDURAS—Continued

Designation/Extension Date	Federal Register Notice
Third Extension, 05/03/2002	67 Fed. Reg. 22451, Extending
Fourth Extension, 05/05/2003	68 Fed. Reg. 23744, Extending
Fifth Extension, 11/03/2004	69 Fed. Reg. 64084, Extending
Sixth Extension, 03/31/2006	71 Fed. Reg. 16328, Extending
Seventh Extension, 05/29/2007	72 Fed. Reg. 29529, Extending
Eighth Extension, 10/01/2008	73 Fed. Reg. 57133, Extending
Ninth Extension, 05/05/2010	75 Fed. Reg. 24734, Extending
Tenth Extension, 11/04/2011	76 Fed. Reg. 68488, Extending
Eleventh Extension, 04/03/2013	78 Fed. Reg. 20123, Extending
Twelfth Extension, 10/16/2014	79 Fed. Reg. 62170, Extending
Thirteenth Extension, 05/16/2016	81 Fed. Reg. 30331, Extending
Fourteenth Extension, 12/15/2017	82 Fed. Reg. 59630, Extending

HISTORY OF TPS DESIGNATIONS AND EXTENSIONS FOR EL SALVADOR

Designation/Extension Date	Federal Register Notice
Original Designation, 03/09/2001	66 Fed. Reg. 14214, Designating
First Extension, 07/11/2002	67 Fed. Reg. 46000, Extending
Second Extension, 07/16/2003	68 Fed. Reg. 42071, Extending
Third Extension, 01/07/2005	70 Fed. Reg. 1450, Extending
Fourth Extension, 06/15/2006	71 Fed. Reg. 34637, Extending
Fifth Extension, 08/21/2007	72 Fed. Reg. 46649, Extending
Sixth Extension, 10/01/2008	73 Fed. Reg. 57128, Extending
Seventh Extension, 03/09/2001	75 Fed. Reg. 39556, Extending
Eighth Extension, 07/09/2010	77 Fed. Reg. 1710, Extending
Ninth Extension, 05/30/2013	78 Fed. Reg. 32418, Extending
Tenth Extension, 01/07/2015	80 Fed. Reg. 893, Extending
Eleventh Extension, 07/08/2016	81 Fed. Reg. 44645, Extending

HISTORY OF TPS DESIGNATIONS AND EXTENSIONS FOR HAITI

Designation/Extension Date	Federal Register Notice
Original Designation, 01/21/2010	75 Fed. Reg. 3476, Designating
Redesignation and First Extension, 05/19/2011	76 Fed. Reg. 29000, Extending and Redesignating
Second Extension, 10/01/2012	77 Fed. Reg. 59943, Extending
Third Extension, 03/03/2014	79 Fed. Reg. 11808, Extending
Fourth Extension, 08/25/2015	80 Fed. Reg. 51582, Extending
Fifth Extension, 05/24/2017	82 Fed. Reg. 23830, Extending

ANNEX 2

CURRENT TPS LITIGATION

In response to the Trump administration's decision to terminate Temporary Protected Status (TPS) designations for El Salvador, Honduras, and Haiti, there have been a number of legal challenges brought in the courts. A majority of these cases argue the termination was a politically-motivated decision that violates the Administrative Procedure Act and the constitutional rights of TPS recipients to due process and equal protection. Some lawsuits focus on the trauma that termination puts on TPS recipients and their U.S. citizen children, many of whom would be forced to choose between staying in the United States and following their parents to potentially dangerous environments.

On October 3, 2018, the U.S. District Court for the Northern District of California granted a preliminary injunction in *Ramos* v. *Nielsen* to enjoin the termination of TPS for El Salvador, Haiti, Nicaragua, and Sudan.[199] On March 12, 2019, the parties in a separate case pending in the same court, *Bhattarai* v. *Nielsen* agreed upon a temporary injunction for the TPS programs for Nepal and Honduras pending the decision of *Ramos.*[200] These temporary injunctions ensure that TPS will not be terminated before January 2, 2020 for recipients from El Salvador, Honduras, Haiti, Nicaragua, Nepal and Sudan (assuming government compliance and depending on a pending appeal in the Ninth Circuit Court of Appeals).[201]

Current Litigation

NAACP v. *DHS.*[202] On January 23, 2018, the National Association for the Advancement of Colored People (NAACP) filed a lawsuit against the Department of Homeland Security (DHS) in the U.S. District Court for the District of Maryland challenging the decision to terminate the TPS program designation for Haiti. On April 16, 2018, an amended complaint was filed adding the Haitian Women for Haitian Refugees and Haitian Lawyers Association as additional plaintiffs.[203] The plaintiffs allege, among other things, that DHS discriminated against Haitian TPS recipients on account of their race in violation of their constitutional right to due process

[199] *Ramos et al.* v. *Nielsen et al.*, 336 F. Supp.3d 1075 (N.D. Cal. 2018).
[200] *Bhattarai et al.* v. *Nielsen et al.*, No. 3:19-cv-00731 (N.D. Cal. 2019).
[201] Continuation of Documentation for Beneficiaries of Temporary Protected Status Designations for Sudan, Nicaragua, Haiti, and El Salvador, 84 Fed. Reg. 7103, Mar. 1, 2019.
[202] *NAACP et al.* v. *U.S. Dep't of Homeland Sec. et al.*, 364 F. Supp.3d 568 (D. Md. 2019).
[203] Press Release, National Association for the Advancement of Colored People, "Haitian Civil Rights Organizations Join NAACP and LDF in TPS Lawsuit," Apr. 18, 2018, available at https://www.naacp.org/latest/haitian-civil-rights-organizations-join-naacp-ldf-tps-lawsuit/.

and equal protection. On March 12, 2019, the presiding judge denied the government's attempt to dismiss the lawsuit.

Centro Presente v. *DHS.*[204] On February 22, 2018, eight TPS recipients from El Salvador and Haiti, and the immigrants' rights organization Centro Presente filed a lawsuit against DHS, President Trump, Secretary Kirstjen Nielsen, and Deputy Secretary Elaine Duke in the U.S. District Court for the District of Massachusetts. The case challenges DHS' elimination of the TPS programs for Haitians and El Salvadorans, claiming, among other things, racial discrimination in violation of the equal protection clause of the Fourteenth Amendment as incorporated through the Fifth Amendment. On July 23, 2018, the presiding judge denied the government's request to remove President Trump as a defendant.

Ramos v. *Nielsen.*[205] On March 12, 2018, fourteen plaintiffs—nine TPS recipients and five American citizen children of TPS recipients from El Salvador, Haiti, Nicaragua, and Sudan—presented a class action lawsuit against DHS Secretary Kirstjen Nielsen and Deputy Secretary Elaine Duke in the U.S. District Court for the Northern District of California. The lawsuit claims that the termination of the program violates the Administrative Procedure Act and the plaintiffs' constitutional right to equal protection. The lawsuit also argues that the decision would separate families, cause irreparable harm, and endanger the lives of U.S. citizens. On October 3, 2018, the presiding judge awarded a preliminary injunction and the case is in the process of appeals in the Ninth Circuit Court of Appeals.

Saget v. *Trump.*[206] On March 15, 2018, ten Haitian TPS recipients, media outlet Haiti Liberté, and the Family Action Network Movement Inc., filed a lawsuit against DHS and President Trump in the U.S. District Court for the Eastern District of New York. The lawsuit alleges that the decision to terminate the TPS designation for Haiti was an arbitrary action with racist motives and was done without the necessary procedures outlined by the Administrative Procedures Act. On April 11, 2019, the presiding judge issued a nationwide preliminary injunction against the termination of TPS for Haiti.

CASA de Maryland Inc. v. *Trump.*[207] On March 23, 2018, three TPS recipients from El Salvador and immigration advocacy organization CASA de Maryland filed a lawsuit against President Trump in the U.S. District Court for the District of Maryland. The plaintiffs assert that the decision to terminate the El Salvador TPS designation violated their constitutional right to equal protection and was not based on a change in the conditions of the origin country.[208] On November 28, 2018, the presiding judge denied the government's attempt to dismiss the lawsuit.

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[204] *Centro Presente et al.* v. *U.S. Dep't of Homeland Sec. et al.*, 332 F. Supp.3d. 393 (D. Mass. 2018).

[205] *Ramos et al.* v. *Nielsen et al.*, 336 F. Supp.3d 1075.

[206] *Saget et al.* v. *Donald Trump et al.*, 375 F. Supp.3d 280 (E.D.N.Y. 2019).

[207] *CASA de Maryland, Inc. et al.* v. *Donald J. Trump et al.*, 355 F. Supp.3d 307 (D. Md. 2018).

[208] Catholic Legal Immigration Network, "Challenges to TPS and DED Terminations," *available at* https://cliniclegal.org/resources/challenges-tps-terminations (updated Apr. 16, 2019).

Bhattarai v. *Nielsen.*[209] On February 10, 2019, eight plaintiffs—six TPS recipients and two American citizen children of TPS recipients from Honduras and Nepal—filed a class action lawsuit against DHS Secretary Kirstjen Nielsen in the U.S. District Court in the Northern District of California. The plaintiffs assert that the termination of the TPS designations for Honduras and Nepal would force American citizen children to make an "intolerable choice: either leave this country or live without their parents" and states that the argument made by *Ramos* v. *Nielsen* for TPS recipients from El Salvador, Haiti, Nicaragua, and Sudan could be similarly applied to TPS recipients from Honduras and Haiti.[210]

[209] *Bhattarai et al.* v. *Nielsen et al.*, No. 3:19-cv-00731 (N.D. Cal. 2019).
[210] *Id.*

ANNEX 3

Letter from Secretary Tillerson to Acting Secretary Duke

THE SECRETARY OF STATE
WASHINGTON

October 31, 2017

The Honorable
Elaine C. Duke
Acting Secretary of the Department of Homeland Security
Washington, DC 20528

Dear Acting Secretary Duke:

The State Department has assessed that El Salvador, Haiti, Honduras, and Nicaragua no longer meet the conditions required for continued designation for Temporary Protected Status (TPS). The disruption in living conditions in El Salvador, Honduras, and Nicaragua attributable to the environmental disasters that served as the basis for their TPS designations has decreased in severity to a degree that it may no longer be considered "substantial" within the meaning of the TPS statute. The extraordinary and temporary conditions that served as the basis for Haiti's most recent designation have sufficiently improved such that they no longer prevent nationals of Haiti from returning in safety. Attached are country conditions reports that provide the Department's assessment of conditions in each country as they pertain to their respective TPS designations.

Given the number of impacted beneficiaries, and to minimize any negative implications that termination would have on our bilateral relations with these countries, I recommend that should the Department of Homeland Security (DHS) decide to terminate TPS for these countries, that you do so with delayed effective dates of 18 months. An 18-month wind down period would provide adequate time for long-term beneficiaries to arrange for their departure and for their home countries to prepare for their reception and reintegration.

I do not make these recommendations lightly. As you consider your decision, I am sure you are well aware of the significant humanitarian, foreign policy, and political interests at play. First and foremost, termination of TPS would likely leave hundreds of thousands of TPS recipients – many of whom have lived and worked in the United States for more than 15 years and have U.S. citizen children – out of legal status. For those that depart, they will return to countries with limited economic opportunities for their reintegration. In the case of El Salvador and Honduras, both countries continue to have some of the world's highest homicide rates, and weak law enforcement capabilities and inadequate government services will make it difficult for their respective governments to ensure the protection of returning citizens – no less the U.S. citizen children who may accompany their parents.

Termination of TPS will also likely generate a backlash from the governments themselves, particularly the Honduran and Salvadoran governments, who have agreed to engage with the United States in support of the U.S. strategy in Central America. Central American leaders are likely to assert that the resources required for a large-scale re-integration of TPS beneficiaries and their dependents will undermine the Central America Strategy and Central America's complementary Alliance for Prosperity, both of which seek to generate prosperity for the region's citizens and reduce irregular migration to the United States. They may take retaliatory actions counter to our long-standing national security and economic interests like withdrawing their counternarcotics and anti-gang cooperation with the United States, reducing

their willingness to accept the return of their deported citizens, or refraining from efforts to control illegal migration.

However, the fact remains that the conditions in these countries do not – in the State Department's judgment – meet the legal requirements necessary for extension. Should DHS decide to terminate the programs, I hope our Departments can work together in a thoughtful, coordinated manner to develop a plan to work with the four governments, TPS beneficiaries themselves, Congress, NGOs, and other stakeholders to mitigate any negative impact on U.S. national security and foreign policy priorities. As indicated, an 18-month wind down period will be critical to our efforts.

I thank you in advance for including the Department of State's Bureaus of Western Hemisphere Affairs (WHA) and Population, Refugees, and Migration, as well as our public affairs team, in your Department's planning for the public announcement of any TPS decisions, including to foreign audiences. Additionally, I request that you provide WHA with no less than 48-hours lead time prior to the public announcement so that it can notify counterpart governments, on an embargoed basis, of the decision. I also recommend DHS delay a public announcement for Honduras until November 27, to prevent TPS issues from unduly influencing the November 26 presidential election.

Sincerely,

Rex W. Tillerson

Enclosures:
As stated.

Letter from Secretary Tillerson to Acting Secretary Duke: Recommendation Regarding Temporary Protected Status (TPS) for Haiti

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DEPARTMENT OF STATE RECOMMENDATION REGARDING TEMPORARY PROTECTED STATUS (TPS) FOR HAITI – 2017

I. Statutory Basis for Designation

Have the conditions under which the foreign state was designated for temporary protected status ceased to exist?

(SBU) Yes, the conditions have ceased to exist. The extraordinary and temporary conditions that served as the basis for Haiti's most recent designation have sufficiently improved such that they no longer prevent nationals of Haiti from returning in safety. Former Secretary of Homeland Security Janet Napolitano originally designated Haiti for TPS effective January 21, 2010, on the basis of extraordinary and temporary conditions in the wake of Haiti's 2010 earthquake. Since 2010, a 2011 re-designation and four subsequent extensions of TPS designation for Haiti have been made by DHS Secretaries. The most recent extension, effective from July 23, 2017 – January 22, 2018, cited not only temporary and extraordinary conditions in the wake of the 2010 earthquake, but subsequent conditions, including: 2016's Hurricane Matthew, April 2017 heavy rains and landslides, security vulnerabilities that some Haitians who reside in Internally Displaced Persons (IDP) areas experience, and health vulnerabilities due to a weak public health system, which has been strained by a cholera epidemic. The extension also noted Haiti's serious economic and security challenges (82 FR 23830).

(SBU) Country conditions have improved since the January 2010 earthquake. The IDP population has decreased 97 percent from its peak in 2010. A legitimized government is in place after two years of electoral impasse. As of October 15, 2017, all UN military personnel have been withdrawn from Haiti; to be replaced by a police only successor mission focused on strengthening rule of law and promoting human rights.

(SBU) Specific lingering effects of the earthquake remain in the areas of infrastructure, health, sanitation services, and emergency response capacity. Although significant steps have been taken to improve the stability and the quality of life for Haitian citizens, Haiti continues to lack the capacity to ensure that the large population TPS beneficieries currently residing in the United States can return in safety. However, Haiti maintains the ability safely to receive traditional levels of returned Haitian nationals, and is currently doing so.

(SBU) Based on these facts, we assess that the extraordinary and temporary conditions that served as the basis for Haiti's most recent designation have sufficiently improved such that they no longer prevent nationals of Haiti from returning in safety.

A. Armed Conflict

1. Is the foreign state still involved in an ongoing, internal armed conflict?

(U) No.

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a. If so, would the return of nationals of the foreign state to that state (or to the part of the state) still pose a serious threat to their personal safety?

(U) N/A.

B. Environmental Disaster

1. Does there continue to be a substantial, but temporary, disruption of living conditions in the area affected by the environmental disaster?

(U) N/A.

2. Is the foreign state still unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state?

(U) N/A.

3. Does the foreign state continue to support the TPS designation?

(U) N/A.

C. Extraordinary and Temporary Conditions

1. Has the foreign state experienced extraordinary and temporary conditions that prevent aliens who are nationals of the state from returning to the state in safety?

(SBU) No. In the wake of the 2010 earthquake, Haiti continues to be affected by lingering earthquake damage. The earthquake destroyed virtually all government offices and ministries in downtown Port-au-Prince, leaving most in long term temporary facilities spread throughout the city. However, country conditions and the Government of Haiti's capacity have improved sufficiently to allow for the safe return of a moderate flow of Haitian nationals.

(SBU) Since the earthquake, the IDP population had decreased 97 percent (from two million to 37,000) from its estimated peak in 2010, to the point where today, just 27 of the original 1,555 IDP sites remain open. Despite these gains, gender-based violence in the IDP areas remains a serious concern, and personal security is a serious and pervasive problem. An estimated 41,000 Haitians who have been made homeless as a result of various natural disasters since 2010, including Hurricane Matthew in 2016, affecting Haiti remain in IDP areas.

(SBU) With more than a half its total population living in extreme poverty, Hurricane Matthew demonstrated Haiti's weakened ability to cope, recover, and adapt to shocks from natural disasters. This fragility was exposed again most recently by Hurricane Irma, which temporarily displaced over 10,000 people into shelters and exacerbated an existing food security crisis on the northern coast.

(SBU) With the withdrawal of the United Nations Stabilization Mission in Haiti's (MINUSTAH) military component underway, the Haitian National Police (HNP) will be called upon to shoulder increased responsibility for maintaining order throughout the country. However, the HNP remains highly concentrated in Port-au-Prince and has limited resources, challenging its ability to guarantee security throughout the country. The United States and our international partners continue to work to train and support the development and growth of the HNP, which has been increasingly perceived as professional and capable of providing security.

2. Would permitting nationals of the foreign state to remain temporarily in the United States be contrary to the national interest of the United States?

(SBU) No. Permitting Haitians to remain temporarily in the United States would not be contrary to the U.S. national interest. Current TPS beneficiaries have been in TPS status in the United States for six or seven years. The population has been stable and has successfully settled there. The current practice of returning newly arrived illegal migrants via the resumed non-criminal deportation flights has greatly disincentivized new attempts at large-scale illegal migration.

II. Discretionary Factors

What, if any, additional information relevant to this decision should be brought to the attention of the Department of Homeland Security?

(SBU) An abrupt termination of TPS for Haiti that does not provide a period for an orderly transition could jeopardize progress made in our bilateral relationship, particularly our robust partnership with Haiti on migration.

(SBU) Setting a Negative Historical Precedent: Approximately 58,706 Haitians received TPS benefits following the 7.0 magnitude earthquake in 2010. Since 1990 when the TPS statute was passed, approximately 22 countries have been designated under the statute. Only three countries have had their TPS designation terminated without a period of at least six months provided for orderly transition – those cases involved beneficiary populations of as few as 316, and as many as 4,018. The average duration of a TPS designation has been 8.5 years. By this measure, an immediate effective date for termination of Haiti's TPS designation would be a statistical outlier. Haiti has been designated for TPS for less than eight years, and its sudden termination with no delay in effective date to allow for orderly transition period would affect 14 times more people than the largest group of TPS beneficiaries whose status was terminated without an extended transition period (which last occurred in 1993).

(SBU) A Cooperative Partnership: Haiti is a committed and cooperative partner in stemming the irregular flow of migrants to the United States, accepting regular deportation flights, and preventing further illegal migration of Haitians upon their return. This cooperation was best exemplified through their support in managing the irregular flow of Haitian migrants arriving at the U.S. southwest border with Mexico in 2016. Despite political turmoil and economic uncertainty in Haiti, when more than 6,500 Haitians presented themselves at U.S. ports of entries (a 1,300 percent increase from 2015), the Haitian government agreed to receive non-criminal

deportation flights for the first time since the 2010 earthquake. This proved to be a strong deterrent mechanism, bringing a near cessation of Haitians presenting themselves at the U.S. southwest border. To date, Haiti has accepted over 5,200 deportees.

(SBU) Haiti has also shown a commitment to adequately prepare in the event TPS is terminated. Since then-DHS Secretary Kelly's visit to Haiti on May 31, Haiti has made the following preparations:

- **(SBU) Establishment of a Working Group:** The Government of Haiti established a minister-level working group focused on efforts to mitigate factors that cause Haitians to migrate illegally. A sub-group was created in order to focus specifically on preparations for the possible DHS termination of TPS; understanding the need to ensure employment opportunities exist for TPS beneficiaries when they return to Haiti.
- **(SBU) Outreach to Diaspora Leaders:** Haiti's Ambassador in Washington has worked to raise awareness amongst influential diaspora leaders, so they can effectively share information with the Haitian community in the United States on how a policy change will affect them.
- **(SBU) Providing Legal Assistance:** The Haitian Mission in the United States established a hotline to provide legal assistance by way of immigration attorneys.

(SBU) Implications of a Termination: While the Haitian government has exemplified its commitment to remain a cooperative partner of the United States, an abrupt DHS termination of TPS benefits for Haitian beneficiaries would jeopardize this progress. It would also threaten the strides the Government of Haiti has made towards political stability. After two years of electoral impasse, President Jovenel Moise and his government have been legitimized and are able to focus on developing a more secure, stable, and self-sufficient Haiti. It is in our interest to remain committed to the country's long-term security, democratic development, and economic growth, as well as to recognize when adequate conditions exist to warrant DHS termination of TPS.

(SBU) An immediate DHS termination of benefits at this juncture, when Haiti is focused on developing opportunities that allow Haitians to stay and help build their country, would have implications not only for Haiti's stability, but for the region. Haitians who are involuntarily returned to a country that is not yet able to handle the influx of returns would further incentivize illegal migration, to the United States and other destinations. This would strain the already limited resources of our North American, Central American, and Caribbean partners. To this end, such an irregular flow of Haitian migrants, similar to what was seen in 2016, could threaten the progress made on the U.S. strategy in Central America, and the efforts we have made to further secure our borders. It is therefore in the national security interests of the United States to ensure an orderly transition of Haitian TPS beneficiaries.

III. Recommendation

(SBU) The extraordinary and temporary conditions that served as the basis for the 2010 designation and 2011 re-designation have sufficiently improved such that they no longer prevent nationals of Haiti from returning in safety. However, lingering issues from the 2010 earthquake, the aftermath of Hurricane Matthew in 2016, the heavy rains and landslides in 2017, Hurricane

Irma in September 2017, and the additional effects of the cholera epidemic continue to affect Haiti. It is in the national interest of the United States to ensure that Haiti's inability to absorb a large number of TPS beneficiaries does not jeopardize the progress Haiti has made in receiving criminal and noncriminal deportees from the United States. **Based on these factors, the Department recommends that the Acting Secretary of Homeland Security designate an effective date to provide TPS benefits for an additional 36 months beyond the end of the current designation to provide the Haitian government with adequate time to prepare for the safe reintegration of approximately 58,706 Haitians.**

Letter from Secretary Tillerson to Acting Secretary Duke: Recommendation Regarding Temporary Protected Status (TPS) for Honduras

SENSITIVE BUT UNCLASSIFIED

(SBU) DEPARTMENT OF STATE RECOMMENDATION REGARDING TEMPORARY PROTECTED STATUS (TPS) FOR HONDURAS – 2017

I. Statutory Basis for Designation

Have the conditions under which the foreign state was designated for temporary protected status ceased to exist?

(SBU) Yes, the conditions under which Honduras was designated for TPS have ceased to exist. Attorney General Janet Reno originally designated Honduras for TPS on January 5, 1999, on the basis of environmental disaster. The original designation reads, "Hurricane Mitch swept through Central America causing severe flooding and associated damage in Honduras. Based on a thorough review by the Departments of State and Justice, the Attorney General finds that, due to the environmental disaster and substantial disruption of living conditions caused by Hurricane Mitch, Honduras is unable, temporarily, to handle adequately the return of Honduran nationals" (64 FR 524). Subsequent Attorneys General and Secretaries of the Department of Homeland Security extended TPS for Honduras 13 times in 18-month increments; the most recent extension was effective July 6, 2016. The 2016 extension cited not only Hurricane Mitch, but also subsequent environmental disasters, including: (1) severe rains, landslides, and flooding, and heavy winds associated with Tropical Storm Hanna toward the end of 2014; (2) a dramatic increase in mosquito-borne diseases in 2014 and 2015; and (3) a prolonged regional drought and coffee rust epidemic (81 FR 30331).

(SBU) Honduras remains vulnerable to severe weather events, but **the disruption of living conditions attributable to Mitch in the affected area has decreased in severity to a degree that it should no longer be regarded as "substantial" within the meaning of the statute.** Since the storm, much of the destroyed infrastructure and housing has been rebuilt. The social and economic conditions affected by the storm have stabilized and people are able to conduct their daily activities without impediments related to the damage of Mitch.

(SBU) The conditions in Honduras that caused it to be designated for TPS on the basis of the environmental disaster – i.e., the substantial disruption of living conditions caused by Hurricane Mitch, which rendered Honduras temporarily unable to adequately handle the return of its nationals and habitual residents, no longer exist.

A. *Armed conflict*

1. **Is the foreign state currently involved in an ongoing, internal, armed conflict?**

(U) No.

a. **If so, would the return of nationals of the foreign state to that state (or to the part of the state) pose a serious threat to their personal safety?**

(U) N/A.

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B. *Environmental Disaster*

1. Has the foreign state in question experienced an earthquake, flood, drought, epidemic, or other environmental disaster in the state?

(U) Yes. Honduras is vulnerable to extreme weather events. In 1998, Hurricane Mitch swept through Central America causing severe flooding and associated damage in Honduras. Since Hurricane Mitch, Honduras has continued to experience other natural disasters.

a. If so, does there continue to be a substantial, but temporary, disruption of living conditions in the area affected?

(SBU) No. Honduras has stabilized from previous disruptions. Much of the infrastructure and housing destroyed by Hurricane Mitch has been rebuilt. While Honduras has been experiencing a prolonged drought, the Department assesses that the disruption of living conditions attributable to Hurricane Mitch should no longer be regarded as "substantial." The government has demonstrated its ability to rebuild its infrastructure and housing and provide other basic services to its citizens.

2. Is the foreign state still unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state?

(SBU) Yes. Honduras continues to suffer from the same serious security and economic challenges that have led many Honduran nationals with TPS to remain in the United States, and have spurred even more Hondurans to migrate to the U.S. since TPS was granted. The Government of Honduras received approximately 22,000 deportees from the United States and more than 45,000 deportees from Mexico in 2016. While the Honduran government's infrastructure for receiving returned migrants has improved over the last three years, it is largely due to investments by the U.S. government. If TPS is not renewed, Honduras will require significant additional resources and coordination to adequately receive the immediate return of an additional 86,163 former TPS beneficiaries and potentially their family members.

(SBU) The immediate return of 86,163 Hondurans who currently hold TPS could overwhelm the government's ability to properly reintegrate them and make it more likely they would attempt to return to the United States illegally. Recognizing most Hondurans who migrate do so for economic reasons, adding tens of thousands of returnees to an economy that is not prepared to integrate them will only exacerbate the principal driver of illegal immigration. This would also impose severe burdens on a cooperative but under-resourced Honduran government and would be counterproductive to U.S. interests.

(SBU) If the Government of Honduras were expected to immediately receive and reintegrate 86,163 deportees and potentially their family members, it would likely cause a negative public reaction and strain the bilateral relationship. Many of the deportees would be accompanied by their U.S.-born children, many of whom would be vulnerable to recruitment by gangs. The Honduran government would be forced to dedicate significant resources to receiving its nationals, which would undermine the medium to longer-term U.S. economic, security, and

governance goals in Honduras, and would likely lead to an increase in illegal immigration from Honduras to the United States.

3. Does the foreign state continue to support the TPS designation?

(SBU) Yes. Honduran President Juan Orlando Hernandez met with Vice President Pence on June 15, 2017, on the margins of the Conference on Prosperity and Security in Central America in Miami and requested an extension of TPS. On July 18, 2017, Honduran Minister of Foreign Affairs Maria Dolores Agüero Lara submitted an official request for extension.

C. Extraordinary and Temporary Conditions

1. Has the foreign state experienced extraordinary and temporary conditions that prevent aliens who are nationals of the state from returning to the state in safety?

(U) N/A.

2. Would permitting nationals of the foreign state to remain temporarily in the United States be contrary to the national interest of the United States?

(U) N/A.

II. Discretionary Factors

What, if any, additional information relevant to this decision should be brought to the attention of the Department of Homeland Security?

(SBU) Honduras is a consistent partner of the United States. It has shown itself willing to proactively address concerns related to illegal immigration by investing time, money, and political capital in trying to keep its citizens in Honduras. It is also a receptive partner for the U.S. government and other governments in the region seeking to deport Honduran nationals. Honduran authorities have also extradited numerous fugitives, including Honduran nationals to the United States since 2014, including a number of major drug traffickers.

(SBU) As a part of the U.S. strategy in Central America, the U.S. government is providing approximately $2 billion in FY 2015 to FY 2017 assistance to secure our borders, protect U.S. citizens, and increase opportunities for U.S. and other businesses. U.S. engagement and programs aim to dismantle transnational criminal organizations, combat drug trafficking, halt illegal immigration, and promote sustainable economic growth by addressing the underlying causes of insecurity, impunity, and lack of economic opportunity. These efforts, combined with Honduras' own efforts under the Alliance for Prosperity, protect U.S. national security and create conditions to incentivize Honduran citizens to remain and prosper in their home country.

(SBU) Despite recent improvements in Honduras' security situation, insecurity and widespread unemployment and low wages continue to be among the main factors cited by returned migrants for their decision to migrate to the United States.

(SBU) In rural areas that are largely dependent on subsistence agriculture, one out of five Hondurans continues to live in extreme poverty (on less than USD.$1.90 per day according to the World Bank). These rural areas, where a disproportionately large number of Hondurans in the United States, including TPS beneficiaries, originate, have been particularly affected by the drought, which has been persisting since 2014, and many families have resorted to reducing their caloric intake. According to a July 2016 United Nations World Food Programme report, one in four people in Honduras are struggling to feed themselves.

(SBU) Although Honduras was been able to reduce its national homicide rate from 86 per 100,000 in 2011 to 58 per 100,000 in 2016, it continues to have one of the highest murder rates in the world for a country not at war. This was not always the case, and continues to represent extraordinary circumstances created by a combination of gang activity, drug trafficking, and poor economic conditions. To the extent efforts the government and the international community are helping to bring down this rate, it is a temporary condition that can change with continued implementation of improved security and economic policies.

(SBU) Impunity for all categories of crime, including serious offenses like murder and kidnapping, is high. Yet the current administration, with U.S. assistance, has taken steps to address these problems. Honduras has been a collaborative extradition partner, leading many Honduran criminals to self-surrender in lieu of probable arrest and extradition. Nearly 30 such indicted criminals now face justice in the United States for corruption, drug trafficking, and money laundering. The Honduran government is implementing a roadmap to overhaul the Honduran National Police, which has included replacing its troubled former investigative division with a new, better trained and equipped force that is currently up and running. It is also working to hire 15,000 new officers by 2022, roughly 3,200 per year above attrition, almost doubling the size of the force.

(SBU) Permitting Hondurans to remain temporarily in the United States would not be contrary to the U.S. national interest. Current TPS beneficiaries have been in TPS status in the United States for 18 years. The population has been stable and has successfully settled there. The current practice of returning newly arrived illegal migrants via the resumed non-criminal deportation flights has greatly disincentivized new attempts at large-scale illegal migration.

III. Recommendation

(SBU) Since the grounds for Honduras' January 5, 1999 designation for TPS on the basis of environmental disaster no longer exist, the Department recommends that should the Acting Secretary of Homeland Security decide to terminate TPS for Honduras, that the Acting Secretary designate an effective date to provide TPS benefits for 36 months beyond the end of the current designation to allow for an orderly transition. Providing the Honduran government more time to improve security and economic conditions and repatriation systems would increase the likelihood Hondurans would return voluntarily and reduce the likelihood deported migrants would seek to return to the United States illegally. It would also

allow the U.S. government the time to mitigate any possible negative foreign policy impacts stemming from the decision to ensure sustained effective bilateral cooperation on a wide range of issues, such as combatting transnational criminal organizations and addressing the underlying causes of illegal immigration. Moreover, since 1999, Honduran nationals have had TPS, and during that time, many started families, opened businesses, and bought houses and properties. A delayed effective date would provide them and their family members with time to organize their departure from the United States.

(SBU) In addition, the Department recommends that the public announcement of a new effective date be delayed until November 27 so as not to interfere in the domestic politics of Honduras' November 26 presidential election. In order to meet a statutory requirement, the Department of State recommends communication of a DHS decision to the head of government only on November 3.

Letter from Secretary Tillerson to Acting Secretary Duke: Recommendation Regarding Temporary Protected Status (TPS) for El Salvador

SENSITIVE BUT UNCLASSIFIED

RELEASE IN FULL

(SBU) DEPARTMENT OF STATE RECOMMENDATION REGARDING TEMPORARY PROTECTED STATUS (TPS) FOR EL SALVADOR – 2017

I. Statutory Basis for Designation

Have the conditions under which the foreign state was designated for temporary protected status ceased to exist?

(SBU) Yes, the conditions under which El Salvador was designated in 2001 have ceased to exist. Attorney General John Ashcroft designated El Salvador for TPS on March 9, 2001, on the basis of environmental disaster stemming from a devastating earthquake on January 13, 2001, followed by two more earthquakes on February 13 and 17, 2001. Subsequent Attorneys General and Secretaries of Homeland Security have extended the TPS designation for El Salvador eleven times; the most recent extension was effective September 10, 2016, and expires on March 9, 2018. This extension cited not only the 2001 earthquakes, but subsequent natural disasters and environmental challenges, including: (1) hurricanes and tropical storms; (2) heavy rains and flooding; (2) volcanic and seismic activity; (3) an ongoing coffee rust epidemic; (4) a prolonged regional drought that was impacting food security; and (5) an outbreak of mosquito-borne illnesses, all of which have slowed recovery from the 2001 earthquakes. It also noted El Salvador's serious economic and security challenges (81 FR 44645).

(SBU) While the 2001 earthquakes and subsequent environmental disasters have slowed economic growth, the disruption of living conditions attributable to the earthquakes in the affected area has decreased in severity to a degree that it should no longer be regarded as "substantial" within the meaning of the statute. The social and economic conditions affected by the earthquakes have stabilized and people are able to conduct their daily activities without impediments related to damage from the earthquakes. Many of the homes and infrastructure destroyed by the earthquakes have been restored, and economic activity has resumed. However, because El Salvador remains unable, due to ongoing security and economic conditions, to handle adequately the precipitous return of its nationals – should the Acting DHS Secretary decide to terminate TPS for El Salvador, the Department recommends that the effective date of the termination should be delayed 36 months to allow El Salvador much needed time to reabsorb its nationals, and permit the TPS holders time to close out their affairs in the United States.

A. *Armed conflict*

1. Is the foreign state currently involved in an ongoing, internal, armed conflict?

(U) No.

a. If so, would the return of nationals of the foreign state to that state (or to the part of the state) pose a serious threat to their personal safety?

(U) N/A.

SENSITIVE BUT UNCLASSIFIED

B. *Environmental Disaster*

1. Has the foreign state in question experienced an earthquake, flood, drought, epidemic, or other environmental disaster in the state?

(SBU) Yes, but the conditions have ceased to exist. El Salvador experienced a series of earthquakes and aftershocks in early 2001, followed by additional environmental disasters since 2001, including Tropical Storm Stan in 2005, a series of earthquakes in 2006, and storms in 2009 (Ida) and 2010 (Agatha). Most recently, El Salvador declared a drought emergency in 2016, after multiple years of low rainfall that has added to the challenges presented by the prior environmental disasters.

a. If so, does there continue to be a substantial, but temporary, disruption of living conditions in the area affected?

(SBU) No, the disruption of living conditions attributable to the 2001 earthquakes should no longer be regarded as "substantial." Many basic services that were impaired following the 2001 earthquake have been restored.

(SBU) Despite progress in recovery from the 2001 earthquakes, El Salvador continues to experience frequent and significant natural disasters and environmental challenges the effects of which should not be discounted, and which affect its ability to adequately handle a precipitous return of its nationals residing in the United States. Agriculture accounts for 10 percent of GDP but 20 percent of employment, mostly low-wage and subsistence earners who are otherwise likely to migrate illegally. The 2014-2016 drought was particularly acute in the eastern region of the country, where a disproportionately large number of Salvadorans in the United States, including TPS beneficiaries, originate. The drought led to the loss of staple and export crops, and the death of thousands of cattle. The sugarcane industry suffered irreversible damage to 20 percent of cropland. The coffee industry lost over 40,000 jobs, equivalent to half the sector's employment, as production fell by half after the coffee rust outbreak in the region. Sugar and coffee are the two largest agricultural products in the sector.

(SBU) Problems of slow growth and lack of employment, in part due to the series of natural disasters, continue to plague the country. El Salvador has experienced the worst GDP growth rate in the region for 10 straight years – and is only projected to reach 2.4 percent growth for 2017, which is largely due to growth in remittances from the United States and low oil prices. Without remittance growth or with higher oil costs, economic growth would have been negative. El Salvador needs to create approximately 60,000 new jobs every year to meet the needs of its current population, yet was only able to create approximately 12,000 jobs in 2016. A 2012 study by the Ministry of Economy indicates a national housing deficit of 446,000 dwellings, exacerbated by a growing population in a young demographic (50 percent of the population is under the age of 30).

2. Is the foreign state still unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state?

(SBU) Yes, El Salvador continues to suffer from serious security and economic challenges and is unable to adequately handle the immediate return of a large number of TPS beneficiaries – a total of 263,282 Salvadorans – and potentially their family members, including a significant number of children, most of whom are dual U.S.-Salvadoran nationals. The Salvadoran foreign minister estimates at least 200,000 U.S.-born, dual-national children would be impacted by the end of TPS, although the numbers could be much higher.

(SBU) The Salvadoran government works closely with DHS to facilitate the deportation of Salvadorans from the United States, accepting additional deportation flights and expediting the issuance of temporary travel documents to returnees. El Salvador has facilitated the return of 52,000 deportees in 2016, 21,000 from the United States and 31,000 from Mexico. Reports indicate; however, that many of the returnees try to return to the United States illegally shortly after their deportation back to El Salvador. This is because the government cannot provide basic services for these returned nationals and the economy cannot create sufficient jobs to employ them. High levels of insecurity also continue to hinder El Salvador's ability to adequately handle a precipitous return of TPS beneficiaries. Homicide rates in El Salvador in 2016 were the highest in the world outside a war zone, at 81 homicides per 100,000 inhabitants in 2016, and growth was the lowest in Central America, creating a climate of fear and hopelessness that continues to drive migrants north. Parents in many communities in El Salvador fear boys may be targeted for gang recruitment and girls may be forced into sexual relations with gang members. Many parents in El Salvador refuse to even send their children to school out of fear of the gangs.

(SBU) According to a survey by the University of Kansas, the median age of TPS holders is 43 years and approximately 61 percent have no children left in Central America. These returnees would need to compete with locals to find scarce jobs in order to support themselves and their families legally. The lack of legitimate employment opportunities is likely to push some repatriated TPS holders, or their children, into the gangs or other illicit employment. In addition, the immediate return of a population of TPS Salvadoran nationals of the magnitude currently residing in the United States – which El Salvador is currently unable to adequately absorb or employ – could intensify the push factors that drive illegal migration.

(SBU) High levels of insecurity as well as ongoing effects from the series of natural disasters El Salvador has experienced also hamper economic growth and prosperity. El Salvador has experienced the worst GDP growth rate in the region for 10 straight years – and is only projected to reach 2.4 percent growth for 2017, which is largely due to growth in remittances from the United States and low oil prices. Without remittance growth or with higher oil costs, economic growth would have been negative. El Salvador needs to create approximately 60,000 new jobs every year to meet the needs of its current population, yet was only able to create approximately 12,000 jobs in 2016. A 2012 study by the Ministry of Economy indicates a national housing deficit of 446,000 dwellings, exacerbated by a growing population in a young demographic (50 percent of the population is under the age of 30). Extortion of businesses drives up costs and discourages investment. Business leaders assess that extortion payments have tripled since 2013, with small businesses paying approximately 10-20 percent of their income to organized crime, while larger businesses face monthly payments in the tens of thousands of dollars. The Central

Bank estimates that extortion fees paid by businesses could amount to approximately $756 million – or almost 3 percent of GDP – though other estimates are lower.

3. Does the foreign state continue to support the TPS designation?

(SBU) Yes. On June 15, in a meeting with Vice President Pence at the Conference on Prosperity and Security in Central America, Salvadoran Vice President Ortiz requested an extension of TPS. Extension of TPS is the single highest foreign policy priority of the Salvadoran government.

C. *Extraordinary and Temporary Conditions*

1. Has the foreign state experienced extraordinary and temporary conditions that prevent aliens who are nationals of the state from returning to the state in safety?

(U) N/A.

2. Would permitting nationals of the foreign state to remain temporarily in the United States be contrary to the national interest of the United States?

(U) N/A.

II. Discretionary Factors

What, if any, additional information relevant to this decision should be brought to the attention of the Department of Homeland Security?

(SBU) El Salvador is a consistent partner of the United States in working to combat illegal immigration and transnational criminal organizations. The Government of El Salvador has shown itself willing to proactively address concerns related to illegal immigration, investing time, money, and political capital in trying to keep its citizens in El Salvador. El Salvador is also a receptive partner for the U.S. government and other governments in the region seeking to deport Salvadoran nationals. If, however, the Government of El Salvador were expected to immediately absorb 263,282 of its citizens, its institutional capacity and willingness to continue to be a receptive partner would diminish. In addition, without a delayed effective date, the Salvadoran government would be forced to dedicate all available resources to receiving its nationals, undermining the medium- to longer-term U.S. goals in El Salvador, which could lead to an increase in illegal migration from El Salvador to the United States.

(SBU) As a part of the U.S. strategy in Central America, the U.S. government continues efforts to build security, improve prosperity, and strengthen institutions. The Department of State and USAID are investing approximately $2 billion in FY 2015 to FY 2017 assistance to advance our economic, security, and governance goals in Central America. These efforts, combined with El Salvador's own efforts under the Alliance for Prosperity, protect U.S. national security by

combatting transnational criminal organizations, including gangs, and creating conditions for Salvadoran citizens to remain and prosper in their home country.

(SBU) The Government of El Salvador is making a concerted effort to fight crime and restore its economy. The government is expanding a national security plan that significantly reduced homicides in the most crime-ridden municipalities and passed legislation that has helped cut off imprisoned gang members from their rank-and-file members. It is targeting gang financial networks and dismantling extortion rings. El Salvador has demonstrated willingness to combat illegal migration through the creation of a Border Intelligence and Coordination Center, deploying Salvadoran officers to McAllen, Texas, to screen incoming migrants for gang ties and making Salvadoran arrest and investigation records available to DHS and local law enforcement agencies throughout the United States.

(SBU) The Salvadoran government cooperates with U.S. law enforcement in a variety of fields, including investigating transnational gang crime, extraditing criminals, and interdicting drugs. Information sharing on MS-13 gang activity between the two governments has led to major takedowns in the United States. In 2016, El Salvador seized 9.0 metric tons of cocaine – more than four times the amount seized the previous year. El Salvador has been particularly active on maritime seizures of illegal narcotics, including via the Cooperative Security Location at Comalapa Airport, where U.S. surveillance flights track movements of narcotics in the Pacific, but the lease must be renegotiated before 2020. Since 2010, extradition of criminals to the United States has been another example of ongoing cooperation. More recently, the Government of El Salvador opened negotiations with the United States on a detainee transfer agreement to permit the immediate movement of interdicted drug traffickers in the Pacific to U.S. custody for prosecution, a major objective of the U.S. Department of Justice. The immediate deportation of TPS beneficiaries in the United States would create tension with the Salvadoran government, and could jeopardize cooperation in these critical areas.

(SBU) On the economy, the Salvadoran government intends to join a customs union with Guatemala by the end of 2017 to reduce the costs of trade and improve commerce, while it also works to improve the business climate for investment by reducing bureaucratic procedures. Through the Alliance for Prosperity, El Salvador is leading the effort to improve the situation on the ground to attract Salvadorans back to El Salvador in the future. In 2017, the Government of El Salvador passed legislation and kicked off programs through the Ministry of Foreign Affairs to assist Salvadorans deported from the United States, including through small loans and training to show them how to access public services. The U.S. Millennium Challenge Corporation invested $490 million in 2007 to boost agriculture, build roads, provide clean water, and improve education. In 2014, MCC signed a second compact for $367 million, including $88 million in funding from the government of El Salvador, to improve the investment climate, employment, and transportation infrastructure.

(SBU) The broad U.S. support for improving security and economic opportunity in El Salvador is designed to address the underlying drivers of illegal migration and lay the groundwork for an eventual return of many Salvadorans from the United States. Under current conditions, however, immediate repatriation of the TPS beneficiaries and their families would likely endanger those U.S. foreign policy goals. Introducing an additional 263,282 working-age people and children

vulnerable to recruitment by transnational criminal organizations (TCOs), such as MS-13, to a country rife with gangs and that cannot provide the 60,000 jobs required every year for its current population will undermine U.S.-Salvadoran efforts to combat TCOs. With no employment and few ties, options for those returning to El Salvador and those overwhelmed by the additional competition will likely drive increased illegal migration to the United States and the growth of MS-13 and similar gangs. A delayed effective date of 36 months will allow much-needed time for our work with the government of El Salvador to combat TCOs and create jobs to bear fruit. This will hopefully mean that the large number of returnees will have access to employment and services, making their re-entry smoother and increasing the likelihood that they will remain in El Salvador.

(SBU) Finally, Permitting El Salvadorans to remain temporarily in the United States would not be contrary to the U.S. national interest. Current TPS beneficiaries have been in TPS status in the United States for 16 years. The population has been stable and has successfully settled there. The current practice of returning newly arrived illegal migrants via the resumed non-criminal deportation flights has greatly disincentivized new attempts at large-scale illegal migration.

III. Recommendation

(SBU) Since the grounds for El Salvador's January 13, 2001, designation for TPS on the basis of environmental disaster no longer exist, the Department recommends that should the Acting Secretary of Homeland Security decide to terminate TPS for El Salvador, that the Acting Secretary designate an effective date to provide TPS benefits for an additional 36 months beyond the end of the current designation for the purpose of orderly transition. Providing the government more time to improve conditions and repatriation systems is directly in the U.S. national interest, since it would reduce incentives for illegal immigration and encourage continued bilateral cooperation on other national security issues, including the fight against transnational criminal organizations. It would increase the likelihood of sustaining effective cooperation with the United States on a wide range of issues. Improved conditions in El Salvador would give Salvadorans residents there, especially young people, an incentive to continue to seek their fortunes in El Salvador, and would make it more likely that Salvadorans in the United States would return to El Salvador voluntarily. Moreover, since 2001, 263,282 Salvadoran nationals have received TPS, and during that time, many started families, opened businesses, and bought houses and properties in the United States. This period of transition would provide them and their family members with time to prepare for their departure from the United States.

(SBU) While the conditions in El Salvador that justified the designation of El Salvador for TPS on the basis of environmental disaster no longer exist, a sudden DHS termination of TPS for El Salvador without a delayed effective date would overwhelm the country's ability to absorb returnees.

Action Memo for Secretary Tillerson from
Acting Assistant Secretary Henshaw and
Acting Assistant Secretary Palmieri

Recommendation Regarding Temporary Protected
Status (TPS) for Honduras, Nicaragua, Haiti, and El Salvador

ORIGINAL MEMO
Submitted thru
Everest.

201716812
United States Department of State

Washington, D.C. 20520

SENSITIVE BUT UNCLASSIFIED

October 26, 2017

ACTION MEMO FOR THE SECRETARY

RELEASE IN PART B6

FROM: PRM – Simon Henshaw, Acting
WHA – Francisco L. Palmieri, Acting

SUBJECT: (SBU) Recommendation Regarding Temporary Protected Status (TPS) for Honduras, Nicaragua, Haiti, and El Salvador

Joint Recommendation:
(SBU) That you approve our joint recommendation to notify DHS Acting Secretary Duke that Nicaragua no longer meets the conditions required for continued designation for TPS and request that, if DHS terminates Nicaragua's TPS status, it delay the effective date for 18 months. S/P concurs with this recommendation. (Approve/Disapprove by 10/27/17).

PRM Recommendation:
(SBU) That you approve and sign a letter to Duke (Tab 3) recommending extension of TPS for El Salvador (18 months), Haiti (6 months), and Honduras (18 months). (Approve/Disapprove by 10/27/17).

WHA & S/P Recommendations:
(SBU) That you:

(1) El Salvador: Approve the provided letter to Duke (Tab 1) indicating El Salvador no longer meets the conditions required for continued designation for TPS and request that, if DHS should terminate its TPS status, that it delay the effective date for ~~36 months~~ 18 months. (~~Approve/Disapprove~~ by 10/27/17).

- S/P asks that you approve the provided letter to Duke (Tab 2). S/P agrees that El Salvador no longer meets the conditions required for continued designation for TPS, but believes that the letter to Duke should request a 24 rather than 36-month delay in the effective date. Although a 36-month wind down period is not precluded by the plain language of the statute, this period would be double the longest amount of time TPS status can be extended under the statute. It would put the wind down of the program directly in the middle of the 2020 election cycle. Moreover, two years should be enough time for TPS beneficiaries and their home countries to prepare for their departure, as it is very unlikely they will all return at once. (Approve/Disapprove by 10/27/17)

(2) Haiti: Approve the provided letter to Duke (Tab 1) indicating that Haiti no longer meets the conditions required for continued designation for TPS and request that, if DHS should terminate its TPS status, it delay the effective date for ~~36 months~~ 18 months. (~~Approve~~/Disapprove by 10/27/17).

SENSITIVE BUT UNCLASSIFIED

- S/P asks that you approve the provided letter to Duke (Tab 2). S/P agrees that Haiti no longer meets the conditions required for continued designation for TPS, but believes that the letter to Duke should request a 24 rather than 36-month delay in the effective date. Although a 36-month wind down period is not precluded by the plain language of the statute, this period would be double the longest amount of time TPS status can be extended under the statute. It would put the wind down of the program directly in the middle of the 2020 election cycle. Moreover, two years should be enough time for TPS beneficiaries and their home countries to prepare for their departure, as it is very unlikely they will all return at once. (Approve/Disapprove by 10/27/17)

(3) Honduras: Approve the provided letter to Duke (Tab 1) indicating Honduras no longer meets the conditions required for continued designation for TPS and request that, if DHS should terminate its TPS status, it delay the effective date for 36 months, and separately request that DHS delay any public notice or announcement of its Honduras decision until November 27 (one day after the Honduran presidential elections). S/P agrees with the WHA's request that DHS delay any public notice or announcement of its Honduras decision until November 27. (Approve/Disapprove by 10/27/17).

- S/P asks that you approve the provided letter to Duke (Tab 2). S/P agrees that Honduras no longer meets the conditions required for continued designation for TPS, but believes that the letter to Duke should request a 24 rather than 36-month delay in the effective date. Although a 36-month wind down period is not precluded by the plain language of the statute, this period would be double the longest amount of time TPS status can be extended under the statute. It would also put the wind down of the program directly in the middle of the 2020 election cycle. Moreover, two years should be enough time for TPS beneficiaries and their home countries to prepare for their departure, as it is very unlikely they will all return at once. (Approve/Disapprove by 10/27/17)

Background

(SBU) TPS for Nicaragua and Honduras will expire January 5, 2018; for Haiti January 22, 2018; and for El Salvador March 9, 2018. The DHS Secretary must review and decide whether to extend or terminate TPS designations no later than 60 days before expiration, and intends to make a decision on El Salvador, Honduras, and Nicaragua by November 3, and on Haiti by November 22. DHS requested that the Department provide a report and recommendation on whether the conditions for each country's TPS designation continue to be met and whether further extension, potential re-designation, or termination is warranted. Based on your decision, the country reports will be edited accordingly and forwarded to DHS with the appropriate cover letter.

(SBU) Should Duke terminate TPS for these countries, as many as 413,500 beneficiaries, many of whom have lived and worked in the United States for more than 20 years, as well as their U.S. citizen children, many of whom have few if any ties to these countries, will return to countries with limited economic opportunities for their reintegration. Lacking prospects for employment, many will likely fail to depart the United States in the first instance or will re-migrate illegally following their return. In the case of El Salvador and Honduras, both countries continue to have

some of the world's highest homicide rates, and weak law enforcement capabilities and inadequate government services (e.g., education, social services) will make it difficult for the governments to protect and provide for their returning citizens – no less the U.S. citizen children who accompany their parents.

(SBU) WHA believes El Salvador, Haiti, Honduras, and Nicaragua no longer meet the conditions for continued TPS designation and that should DHS terminate TPS, it should be done with a delayed effective date of 18 months for Nicaragua and 36 months for El Salvador, Haiti, and Honduras to allow adequate time for beneficiaries to arrange their departure, for countries to prepare for reception and reintegration of their citizens, and to prevent a negative impact on the national security interests of the United States. According to WHA, in El Salvador, Honduras, and Nicaragua, the disruption in living conditions caused by natural disasters that led to their respective TPS designations should no longer be regarded as "substantial" within the meaning of the TPS statute. WHA further believes the extraordinary and temporary conditions underlying Haiti's most recent designation have sufficiently improved such that they no longer prevent nationals of Haiti from returning safely.

(SBU) PRM agrees with WHA with respect to Nicaragua but recommends that TPS be extended by 18 months for El Salvador and Honduras and six months for Haiti. In El Salvador and Honduras, PRM believes there continues to be a substantial, but temporary, disruption of living conditions, worsened by a series of subsequent natural disasters and environmental challenges that have impaired recovery efforts from the original disasters that served as the basis for designation. Both of these countries remain unable, temporarily, to handle adequately the return of their nationals. As for Haiti, extraordinary and temporary conditions continue to prevent Haitians from returning in safety. PRM does not believe there have been significant improvements in relevant country conditions since recent past extensions of TPS. **In addition, PRM believes that the return over hundreds of thousands of people would destabilize the region, causing significant harm to U.S. foreign policy and national security interests. WHA concurs with PRM's assessment of potential harm to U.S. foreign policy and national security, but it nevertheless believes that conditions in El Salvador, Haiti, and Honduras no longer meet the conditions for continued designation.** PRM and WHA agree that if TPS is ended for any of these countries, delayed effective termination dates are warranted.

(SBU) A DHS termination of TPS for any country will have significant foreign policy implications for the Department and United States. As a result, in the event of termination, WHA and PRM agree that a delayed effective date is essential to mitigate the negative impact on U.S. national security and foreign policy priorities in the region. It is in the U.S. national interest to provide the governments with sufficient time to improve conditions and their repatriation systems as it would reduce incentives for illegal re-immigration to the United States and ensure continued bilateral cooperation on migration and bolstering the fight against transnational criminal organizations. Additionally, while these countries are currently cooperating in accepting the repatriation of their nationals, the sudden return of tens of thousands of their citizens would overwhelm their capacity to receive deportees in El Salvador, Haiti, and Honduras. For these countries, a delayed effective date of 36 months is necessary. Nicaragua has relatively better conditions than the other three countries and a smaller population of TPS beneficiaries that will be impacted, and therefore a delayed effective date of 18 months is sufficient.

S/P Comment

(SBU) The purpose of the TPS program is to provide ***temporary*** safe haven to foreign nationals who are in the United States when armed conflict or disaster strikes their home country. The underlying statute specifically discourages turning TPS into a pathway to permanent legal residence in the United States, as it requires a supermajority in the Senate to even consider legislation that would provide TPS recipients with permanent status. Prior administrations' consistent extension of TPS status for nationals of these countries – for more than 15 years for El Salvador, Honduras, and Nicaragua – violated the spirit and strict legal requirements of the statute, putting this administration in a very difficult position.

(SBU) PRM and WHA, as well as Under Secretary Shannon in his separate note to you, accurately describe the negative political and foreign policy implications of terminating TPS for these countries. While it is important that the Department provide such insight to DHS, it does not absolve us from operating within the statute. TPS beneficiaries and their countries of origin know that this is a temporary program governed by statute that must eventually come to an end. The treatment of the program by prior administrations as something more than temporary shelter does not change that. Another extension for any of these countries based on environmental disaster that struck more than a decade ago (slightly shorter for Haiti) is not supported by the facts on the ground and will only delay the inevitable. While the very real domestic, humanitarian, and foreign policy considerations at play may well lead Congress to reconsider the future legal treatment of long-term TPS beneficiaries – much like with respect to the Deferred Action for Childhood Arrivals (DACA) program – that is not for the Executive Branch to decide. To maintain the integrity of the program for future TPS beneficiaries and fulfill our duty to faithfully execute the law as intended by Congress, S/P agrees with WHA that the Department of State should not recommend extension for any country since the conditions on the ground in each country do not meet the legal requirements to warrant it.

(SBU) The Department should instead focus its engagement with DHS on advocating for a thoughtful and coordinated inter-agency approach to termination of the programs that seeks to mitigate the negative foreign policy impacts and foster any positive impacts of TPS beneficiaries who have lived, worked, or gone to school in the United States returning to their home countries. Such an approach should include a plan for engagement with the governments of the four countries, the TPS beneficiaries themselves, and congressional, NGO, and other stakeholders.

Attachments:

Tab 1 – WHA – Terminating TPS
Tab 2 – S/P – Terminating TPS
Tab 3 – PRM – Extending TPS
Tab 4 – PRM and WHA Assessment of the Foreign Policy Implications
Tab 5 – Country Conditions Report for El Salvador
Tab 6 – Country Conditions Report for Haiti
Tab 7 – Country Conditions Report for Honduras
Tab 8 – Country Conditions Report for Nicaragua
Tab 9 – Overview of TPS

Approved:	PRM – Simon Henshaw, Acting	[SH]
	WHA – Francisco L. Palmieri, Acting	[FLP]
Drafted:	PRM/PIM – Brook Hefright, ext. 3-9209 and home/cell.	B6
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	WHA/FO – Kenneth Merten, Acting	(ok)
	WHA/FO – John Creamer	(ok)
	PRM/PIM – Christopher Ashe	(ok)
	D – Jamie Shufflebarger	(ok)
	J – Richmond Blake	(info by request)
	P – Luis Mendez	(info by request)
	S/P – Taryn Frideres	(ok)
	L/HRR - Anna Melamud	(ok)
	L/FO – Kathleen Hook	(ok)
	WHA/CEN – Eric Sigmon	(ok)
	WHA/HSC – Allyson Bowers	(ok)

Action Memo for Secretary Tillerson from
Acting Assistant Secretary Henshaw and
Acting Assistant Secretary Palmieri

Tab 1: WHA—Terminating TPS

The Honorable
Elaine C. Duke
Acting Secretary of the Department of Homeland Security
Washington, DC 20528

Dear Acting Secretary Duke:

I have assessed that El Salvador, Haiti, Honduras, and Nicaragua no longer meet the conditions required for continued designation for Temporary Protected Status (TPS). The disruption in living conditions in El Salvador, Honduras, and Nicaragua attributable to the environmental disasters that served as the basis for their TPS designations has decreased in severity to a degree that it may no longer be considered "substantial" within the meaning of the TPS statute. The extraordinary and temporary conditions that served as the basis for Haiti's most recent designation have sufficiently improved such that they no longer prevent nationals of Haiti from returning in safety. Enclosed are country conditions reports that provide the Department's assessment on conditions in each country as they pertain to their respective TPS designations.

Given the number of impacted beneficiaries, and to minimize any negative implications that termination would have on our bilateral relations with the countries, I recommend that, should the Department of Homeland Security (DHS) decide to terminate TPS for these countries, you do so with delayed effective dates of 18 months to allow adequate time for beneficiaries to arrange for their departure, and for countries to prepare for the reception and reintegration of their citizens and accompanying American citizen dependents.

As you consider your decision, I wish to highlight the significant foreign policy and humanitarian impact a DHS decision to terminate will have on our engagement with these countries. First and foremost, as many as 413,500 beneficiaries, many of whom have lived and worked in the United States for more than 20 years, as well as their U.S. citizen children, many of whom have few if any ties to these countries, will return to countries with limited economic opportunities for their reintegration. Lacking prospects for employment, many will likely fail to depart the United States in the first instance or will re-migrate illegally following their return. In the case of El Salvador and Honduras, both countries continue to have some of the world's highest homicide rates, and weak law enforcement capabilities and inadequate government services (e.g. education, social services) will make it difficult for the governments to protect and provide for their returning citizens – no less the U.S. citizen children who accompany their parents.

TPS termination is likely to generate a backlash from the governments themselves, particularly the Honduran and Salvadoran governments, who have agreed to engage with the United States in support of the U.S. strategy in Central America. Central American leaders are likely to assert that the large-scale re-integration of hundreds of thousands of TPS beneficiaries (and their scores of dependents) will undermine the Central America Strategy and Central America's complementary Alliance for Prosperity, both of which seek to generate prosperity for the region's citizens and reduce irregular migration to the United States. They may allege the

United States is breaking with former Secretary of Homeland Security John Kelly's February 23, 2017 pledge that "there will be no mass deportations" to Central America – viewing TPS termination as a de-facto deportation effort.

Negative perceptions by populations in the TPS countries of the United States and the Administration are likely to be intense and sustained, generating significant pressure on national leaders to take actions that run counter to our long-standing national security interests and efforts to promote U.S. exports in the region. The nations could withdraw their counternarcotics and anti-gang cooperation with the United States, reduce their willingness to accept our return of their deported citizens, or refrain from efforts to control illegal migration of their citizens to our nation.

Given the large number of beneficiaries from the four countries, countries in the region and beyond the hemisphere that seek to undermine our international standing will find new fodder in our actions, likely alleging we are acting inhumanely by sending their citizens who have contributed to the American economy and broader society to crime ridden countries bereft of opportunities. Finally, the splitting of beneficiaries from their American citizen children will likely cause a backlash from communities across America and from political leaders across the spectrum.

I thank you in advance for including the Department of State's Bureaus of Western Hemisphere Affairs (WHA) and Population, Refugees, and Migration, as well as our public affairs team, in your Department's planning for the public announcement of any TPS decisions, including to foreign audiences. Additionally, I request that you provide WHA with no less than 48 hours lead time prior to the public announcement so that it can notify counterpart governments, on an embargoed basis, of the decision. I also recommend DHS delay a public announcement for Honduras until November 27, to prevent TPS issues from unduly influencing the November 26 presidential election.

Sincerely,

Rex W. Tillerson

Enclosures:
As stated.

Action Memo for Secretary Tillerson from
Acting Assistant Secretary Henshaw and
Acting Assistant Secretary Palmieri

Tab 2: S/P—Terminating TPS

The Honorable
Elaine C. Duke
Acting Secretary of the Department of Homeland Security
Washington, DC 20528

Dear Acting Secretary Duke:

The State Department has assessed that El Salvador, Haiti, Honduras, and Nicaragua no longer meet the conditions required for continued designation for Temporary Protected Status (TPS). The disruption in living conditions in El Salvador, Honduras, and Nicaragua attributable to the environmental disasters that served as the basis for their TPS designations has decreased in severity to a degree that it may no longer be considered "substantial" within the meaning of the TPS statute. The extraordinary and temporary conditions that served as the basis for Haiti's most recent designation have sufficiently improved such that they no longer prevent nationals of Haiti from returning in safety. Attached are country conditions reports that provide the Department's assessment of conditions in each country as they pertain to their respective TPS designations.

Given the number of impacted beneficiaries, and to minimize any negative implications that termination would have on our bilateral relations with these countries, I recommend that should the Department of Homeland Security (DHS) decide to terminate TPS for these countries, that you do so with delayed effective dates of 18 months. An 18-month wind down period would provide adequate time for long-term beneficiaries to arrange for their departure and for their home countries to prepare for their reception and reintegration.

I do not make these recommendations lightly. As you consider your decision, I am sure you are well aware of the significant humanitarian, foreign policy, and political interests at play. First and foremost, termination of TPS would likely leave hundreds of thousands of TPS recipients – many of whom have lived and worked in the United States for more than 15 years and have U.S. citizen children – out of legal status. For those that depart, they will return to countries with limited economic opportunities for their reintegration. In the case of El Salvador and Honduras, both countries continue to have some of the world's highest homicide rates, and weak law enforcement capabilities and inadequate government services will make it difficult for their respective governments to ensure the protection of returning citizens' – no less the U.S. citizen children who may accompany their parents.

Termination of TPS will also likely generate a backlash from the governments themselves, particularly the Honduran and Salvadoran governments, who have agreed to engage with the United States in support of the U.S. strategy in Central America. Central American leaders are likely to assert that the resources required for a large-scale re-integration of TPS beneficiaries and their dependents will undermine the Central America Strategy and Central America's complementary Alliance for Prosperity, both of which seek to generate prosperity for the region's citizens and reduce irregular migration to the United States. They may take retaliatory actions counter to our long-standing national security and economic interests like withdrawing their counternarcotics and anti-gang cooperation with the United States, reducing

their willingness to accept the return of their deported citizens, or refraining from efforts to control illegal migration.

However, the fact remains that the conditions in these countries do not – in the State Department's judgment – meet the legal requirements necessary for extension. Should DHS decide to terminate the programs, I hope our Departments can work together in a thoughtful, coordinated manner to develop a plan to work with the four governments, TPS beneficiaries themselves, Congress, NGOs, and other stakeholders to mitigate any negative impact on U.S. national security and foreign policy priorities. As indicated, an 18-month wind down period will be critical to our efforts.

I thank you in advance for including the Department of State's Bureaus of Western Hemisphere Affairs (WHA) and Population, Refugees, and Migration, as well as our public affairs team, in your Department's planning for the public announcement of any TPS decisions, including to foreign audiences. Additionally, I request that you provide WHA with no less than 48-hours lead time prior to the public announcement so that it can notify counterpart governments, on an embargoed basis, of the decision. I also recommend DHS delay a public announcement for Honduras until November 27, to prevent TPS issues from unduly influencing the November 26 presidential election.

Sincerely,

Rex W. Tillerson

Enclosures:
As stated.

Action Memo for Secretary Tillerson from
Acting Assistant Secretary Henshaw and
Acting Assistant Secretary Palmieri

Tab 3: PRM—Extending TPS

The Honorable Elaine C. Duke
Acting Secretary
Department of Homeland Security
Washington, DC 20528

Dear Ms. Duke:

I have assessed that El Salvador, Haiti, and Honduras continue to meet the conditions required for continued designation for Temporary Protected Status (TPS). The disruption in living conditions in El Salvador and Honduras attributable to the environmental disasters that served as the basis for their TPS designations remain "substantial" within the meaning of the TPS statute, and both countries remain unable to handle adequately the return of their nationals who are TPS beneficiaries. The extraordinary and temporary conditions that served as the basis for Haiti's most recent designation have not sufficiently improved such that nationals of Haiti can return in safety. The disruption in living conditions in Nicaragua attributable to the environmental disasters that served as the basis for its TPS designation has decreased in severity to a degree that it may no longer be considered "substantial" within the meaning of the TPS statute. Enclosed are country conditions reports that provide the Department's assessment on conditions in each country as they pertain to their respective TPS designations.

Given the number of impacted beneficiaries, and to minimize the potential adverse impact Department of Homeland Security (DHS) terminations would have on our bilateral relations with the countries, I recommend that, should you decide to terminate TPS for any of these countries, you do so with delayed effective dates of 18-36 months to allow adequate time for beneficiaries to arrange for their departure, and for countries to prepare for the reception and reintegration of their citizens and accompanying American citizen dependents. As Haiti, Honduras, and El Salvador will have tremendous difficulties managing the sudden return of tens of thousands of TPS beneficiaries and dependents, I strongly endorse a delayed termination effective date of 36 months should you terminate their respective TPS designations. For Nicaragua, with its lower crime rate, better economic conditions, and smaller number of TPS beneficiaries, I believe a shorter delayed effective date of 18 months for the termination is reasonable and is in-line with transition periods granted for other countries where TPS has been terminated.

As you consider your decision, I wish to highlight the significant foreign policy and humanitarian impact a DHS decision to terminate will have on our engagement with these countries. First and foremost, as many as 413,500 beneficiaries, many of whom have lived and worked in the United States for more than 20 years, as well as their U.S. citizen children, many of whom have few if any ties to these countries, will return to countries with limited economic opportunities for their reintegration. Lacking prospects for employment, many will likely fail to depart the United States in the first instance or will re-migrate illegally following their return. In the case of El Salvador and Honduras, both countries continue to have some of the world's highest homicide rates, and weak law enforcement capabilities and inadequate government services (e.g. education, social services) will make it difficult for the governments to protect and provide for their returning citizens – no less the U.S. citizen children who accompany their parents.

TPS termination is likely to generate a backlash from the governments themselves, particularly the Honduran and Salvadoran governments, who have agreed to engage with the United States in support of the U.S. strategy in Central America. Central American leaders are likely to assert that the large-scale re-integration of hundreds of thousands of TPS beneficiaries (and their scores of dependents) will undermine the Central America Strategy and Central America's complementary Alliance for Prosperity, both of which seek to generate prosperity for the region's citizens and reduce irregular migration to the United States. They may allege the United States is breaking with former Secretary of Homeland Security John Kelly's February 23 pledge that "there will be no mass deportations" to Central America – viewing TPS termination as a de-facto deportation effort.

Negative perceptions by populations in the TPS countries of the United States and the Administration are likely to be intense and sustained, generating significant pressure on national leaders to take actions that run counter to our long-standing national security interests and efforts to promote U.S. exports in the region. The nations could withdraw their counternarcotics and anti-gang cooperation with the United States, reduce their willingness to accept our return of their deported citizens, or refrain from efforts to control illegal migration of their citizens to our nation.

Given the large number of beneficiaries from the four countries, countries in the region and beyond the hemisphere that seek to undermine our international standing will find new fodder in our actions, likely alleging we are acting inhumanely by sending their citizens who have contributed to the American economy and broader society to crime ridden countries bereft of opportunities. Finally, the splitting of beneficiaries from their American citizen children will likely cause a backlash from communities across America and from political leaders across the spectrum.

I thank you in advance for including the Department of State's Bureaus of Western Hemisphere Affairs (WHA) and Population, Refugees, and Migration, as well as our public affairs team, in your Department's planning for the public announcement of any TPS decisions, including to foreign audiences. Additionally, I request that you provide WHA with no less than 48 hours lead time prior to the public announcement so that it can notify counterpart governments, on an embargoed basis, of the decision. I also recommend DHS delay a public announcement for Honduras until November 27, to prevent TPS issues from unduly influencing that country's November 26 presidential election.

Sincerely,

Rex W. Tillerson

Enclosures:
As stated.

Action Memo for Secretary Tillerson from
Acting Assistant Secretary Henshaw and
Acting Assistant Secretary Palmieri

Tab 4: PRM and WHA Assessment of
the Foreign Policy Implications

(U) PRM and WHA Assessment of the Foreign Policy Implications of DHS Termination of Temporary Protected Status for El Salvador, Haiti, Honduras, Nicaragua

(SBU) A DHS decision to terminate TPS is likely to generate a backlash from the Honduran and Salvadoran governments who, together with Guatemala, committed $5.4 billion from 2016 to 2017 to implement reforms under the Alliance for Prosperity to address the conditions driving illegal immigration from their countries to the United States. Negative reactions by citizens could generate significant pressure on government leaders to take actions that run counter to the $2 billion U.S. strategy in Central America, which addresses the security, governance, and economic drivers of illegal immigration and illicit trafficking. A DHS decision to terminate TPS could also cause the governments to reduce their counternarcotics and anti-gang cooperation with the United States and stop combatting human smuggling and discouraging their citizens from illegally immigrating to the United States. Progress in all of these areas is critical to the Administration's national security goals at our Southwest border.

(SBU) A DHS termination of TPS for these countries will have serious negative humanitarian and other consequences. It will directly impact as many as 413,500 individuals who have lived and worked in the United States for many years. Many of them have U.S. citizen children and own homes and businesses and employ American citizens. These individuals will be required to return to countries with limited economic opportunities, high levels of insecurity and corruption, and poor government services. When faced with these prospects, many of these individuals will likely seek to illegally return to the United States. El Salvador and Honduras continue to have some of the world's highest homicide rates, which will make it difficult for the governments to ensure the safety of their returning citizens, including U.S. citizen spouses and children who may accompany them. Many could make asylum or withholding of removal claims prior to departure that could overwhelm current resources.

(SBU) A DHS termination of TPS would also jeopardize the progress made in developing a more secure, stable, and self-sufficient Haiti. Haiti historically has been plagued by issues such as endemic poverty, food insecurity, and subsequent devastating natural disasters. Haitians who are returned to a country that is not yet able to ensure their safe reintegration and provide economic opportunities would further incentivize illegal immigration. This would strain the already limited resources of our North American, Central American, and Caribbean partners. To this end, such an irregular flow of Haitian migrants through the region, similar to what was seen in 2016, could threaten the progress made on the U.S. strategy in Central America, and the efforts we have made to further secure our southern and northern borders.

Action Memo for Secretary Tillerson from
Acting Assistant Secretary Henshaw and
Acting Assistant Secretary Palmieri

Tab 5: Country Conditions Report for El Salvador

(SBU) DEPARTMENT OF STATE RECOMMENDATION REGARDING TEMPORARY PROTECTED STATUS (TPS) FOR EL SALVADOR – 2017

1. **Statutory Basis for Designation**

Have the conditions under which the foreign state was designated for temporary protected status ceased to exist?

~~WH POSITION~~

(SBU) Yes, the conditions under which El Salvador was designated in 2001 have ceased to exist. Attorney General John Ashcroft designated El Salvador for TPS on March 9, 2001, on the basis of environmental disaster stemming from a devastating earthquake on January 13, 2001, followed by two more earthquakes on February 13 and 17, 2001. Subsequent Attorneys General and Secretaries of Homeland Security have extended the TPS designation for El Salvador eleven times: the most recent extension was effective September 10, 2016, and expires on March 9, 2018. This extension cited not only the 2001 earthquakes, but subsequent natural disasters and environmental challenges, including: (1) hurricanes and tropical storms; (2) heavy rains and flooding; (2) volcanic and seismic activity; (3) an ongoing coffee rust epidemic; (4) a prolonged regional drought that was impacting food security; and (5) an outbreak of mosquito-borne illnesses, all of which have slowed recovery from the 2001 earthquakes. It also noted El Salvador's serious economic and security challenges (81 FR 44645).

(SBU) While the 2001 earthquakes and subsequent environmental disasters have slowed economic growth, the disruption of living conditions attributable to the earthquakes in the affected area has decreased in severity to a degree that it should no longer be regarded as "substantial" within the meaning of the statute. The social and economic conditions affected by the earthquakes have stabilized and people are able to conduct their daily activities without impediments related to damage from the earthquakes. Many of the homes and infrastructure destroyed by the earthquakes have been restored, and economic activity has resumed. However, because El Salvador remains unable, due to ongoing security and economic conditions, to handle adequately the precipitous return of its nationals – should the Acting DHS Secretary decide to terminate TPS for El Salvador, the Department recommends that the effective date of the termination should be delayed 36 months to allow El Salvador much needed time to reabsorb its nationals, and permit the TPS holders time to close out their affairs in the United States.

PRM POSITION

(SBU) No. Substantial, but temporary, disruption of living conditions continues to exist in El Salvador that renders the country temporarily unable to handle the return of its nationals. Attorney General John Ashcroft designated El Salvador for TPS on March 9, 2001, on the basis of environmental disaster. The original designation reads "El Salvador suffered a devastating earthquake on January 13, 2001, and experienced two more earthquakes on February 13 and 17, 2001. Based on a thorough review by the Departments of State and Justice, the Attorney General has determined that, due to the environmental disaster and substantial disruption of living conditions caused by the earthquakes, El Salvador is unable, temporarily, to handle adequately the return of its nationals" (66 FR 14214). Subsequent Attorneys General and Secretaries of Homeland Security have extended the TPS designation for El Salvador eleven

times; the most recent extension was effective September 10, 2016, and expires on March 9, 2018. This extension cited not only the 2001 earthquakes, but subsequent natural disasters and environmental challenges, including: (1) hurricanes and tropical storms; (2) heavy rains and flooding; (2) volcanic and seismic activity; (3) an ongoing coffee rust epidemic; (4) a prolonged regional drought that was impacting food security; and (5) an outbreak of mosquito-borne illnesses, all of which have slowed recovery from the 2001 earthquakes. It also noted El Salvador's serious economic and security challenges (81 FR 44645).

(SBU) The 2001 earthquakes and subsequent environmental disasters have slowed economic growth, exacerbating the economic and security challenges the country is facing, and undermining the ability of the government to handle adequately the return of its nationals. Most recently, in 2016, El Salvador declared a drought emergency after multiple years of low rainfall that has added to the challenges presented by the prior environmental disasters. We assess that there continues to be a substantial disruption of living conditions caused by environmental disasters, and that due to these disruptions, as well as accompanying insecurity and its fragile economy, El Salvador remains temporarily unable to handle adequately the return of its nationals. For these reasons, we recommend that the Acting Secretary of Homeland Security extend the TPS designation for El Salvador on the basis of environmental disaster.

A. *Armed conflict*

1. **Is the foreign state currently involved in an ongoing, internal, armed conflict?**

(U) No.

a. **If so, would the return of nationals of the foreign state to that state (or to the part of the state) pose a serious threat to their personal safety?**

(U) N/A.

B. *Environmental Disaster*

1. **Has the foreign state in question experienced an earthquake, flood, drought, epidemic, or other environmental disaster in the state?**

~~WHA POSITION~~

(SBU) Yes, but the conditions have ceased to exist. El Salvador experienced a series of earthquakes and aftershocks in early 2001, followed by additional environmental disasters since 2001, including Tropical Storm Stan in 2005, a series of earthquakes in 2006, and storms in 2009 (Ida) and 2010 (Agatha). Most recently, El Salvador declared a drought emergency in 2016, after multiple years of low rainfall that has added to the challenges presented by the prior environmental disasters.

~~PRM POSITION~~

(SBU) Yes. El Salvador experienced a series of earthquakes and aftershocks in early 2001, followed by additional environmental disasters since 2001, that have slowed economic growth and including Tropical Storm Stan in 2005, a series of earthquakes in 2006, and storms in 2009 (Ida) and 2010 (Agatha). Most recently, El Salvador declared a drought emergency in 2016, after multiple years of low rainfall that has added to the challenges presented by the prior environmental disasters.

a. If so, does there continue to be a substantial, but temporary, disruption of living conditions in the area affected?

~~WHA POSITION~~
(SBU) No, the disruption of living conditions attributable to the 2001 earthquakes should no longer be regarded as "substantial." Many basic services that were impaired following the 2001 earthquake have been restored.

(SBU) Despite progress in recovery from the 2001 earthquakes, El Salvador continues to experience frequent and significant natural disasters and environmental challenges the effects of which should not be discounted, and which affect its ability to adequately handle a precipitous return of its nationals residing in the United States. Agriculture accounts for 10 percent of GDP but 20 percent of employment, mostly low-wage and subsistence earners who are otherwise likely to migrate illegally. The 2014-2016 drought was particularly acute in the eastern region of the country, where a disproportionately large number of Salvadorans in the United States, including TPS beneficiaries, originate. The drought led to the loss of staple and export crops, and the death of thousands of cattle. The sugarcane industry suffered irreversible damage to 20 percent of cropland. The coffee industry lost over 40,000 jobs, equivalent to half the sector's employment, as production fell by half after the coffee rust outbreak in the region. Sugar and coffee are the two largest agricultural products in the sector.

(SBU) Problems of slow growth and lack of employment, in part due to the series of natural disasters, continue to plague the country. El Salvador has experienced the worst GDP growth rate in the region for 10 straight years – and is only projected to reach 2.4 percent growth for 2017, which is largely due to growth in remittances from the United States and low oil prices. Without remittance growth or with higher oil costs, economic growth would have been negative. El Salvador needs to create approximately 60,000 new jobs every year to meet the needs of its current population, yet was only able to create approximately 12,000 jobs in 2016. A 2012 study by the Ministry of Economy indicates a national housing deficit of 446,000 dwellings, exacerbated by a growing population in a young demographic (50 percent of the population is under the age of 30).

PRM POSITION
(SBU) Yes. Although many basic services that were impaired following the 2001 earthquake have been restored, the disruption to living conditions has continued. El Salvador continues to experience frequent and significant natural disasters and environmental challenges, including, most recently, a drought in 2014-2016, that led to the continued disruption of living conditions. Agriculture accounts for 10 percent of GDP but 20 percent of employment, mostly low-wage and subsistence earners who are otherwise likely to migrate illegally. The drought was particularly

acute in the eastern region of the country, where a disproportionately large number of Salvadorans in the United States, including TPS beneficiaries, originate. The drought led to the loss of staple and export crops, and the death of thousands of cattle. The sugarcane industry suffered irreversible damage to 20 percent of cropland. The coffee industry lost over 40,000 jobs, equivalent to half the sector's employment, as production fell by half after the coffee rust outbreak in the region. Sugar and coffee are the two largest agricultural products in the sector.

(SBU) The disruption resulting from the 2001 earthquakes was compounded, and recovery efforts slowed, due to subsequent disasters. Problems of slow growth and lack of employment, in part due to the series of natural disasters, continue to plague the country. El Salvador has experienced the worst GDP growth rate in the region for ten straight years – and is only projected to reach 2.4 percent growth for 2017, which is largely due to growth in remittances from the United States and low oil prices. Without remittance growth or with higher oil costs, economic growth would have been negative. El Salvador needs to create approximately 60,000 new jobs every year to meet the needs of its current population, yet was only able to create approximately 12,000 jobs in 2016. A 2012 study by the Ministry of Economy indicates a national housing deficit of 446,000 dwellings, exacerbated by a growing population in a young demographic (50 percent of the population is under the age of 30).

2. Is the foreign state still unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state?

(SBU) Yes, El Salvador continues to suffer from serious security and economic challenges and is unable to adequately handle the immediate return of a large number of TPS beneficiaries – a total of 263,282 Salvadorans – and potentially their family members, including a significant number of children, most of whom are dual U.S.-Salvadoran nationals. The Salvadoran foreign minister estimates at least 200,000 U.S.-born, dual-national children would be impacted by the end of TPS, although the numbers could be much higher.

(SBU) The Salvadoran government works closely with DHS to facilitate the deportation of Salvadorans from the United States, accepting additional deportation flights and expediting the issuance of temporary travel documents to returnees. El Salvador has facilitated the return of 52,000 deportees in 2016, 21,000 from the United States and 31,000 from Mexico. Reports indicate, however, that many of the returnees try to return to the United States illegally shortly after their deportation back to El Salvador. This is because the government cannot provide basic services for these returned nationals and the economy cannot create sufficient jobs to employ them. High levels of insecurity also continue to hinder El Salvador's ability to adequately handle a precipitous return of TPS beneficiaries. Homicide rates in El Salvador in 2016 were the highest in the world outside a war zone, at 81 homicides per 100,000 inhabitants in 2016, and growth was the lowest in Central America, creating a climate of fear and hopelessness that continues to drive migrants north. Parents in many communities in El Salvador fear boys may be targeted for gang recruitment and girls may be forced into sexual relations with gang members. Many parents in El Salvador refuse to even send their children to school out of fear of the gangs.

(SBU) According to a survey by the University of Kansas, the median age of TPS holders is 43 years and approximately 61 percent have no children left in Central America. These returnees

would need to compete with locals to find scarce jobs in order to support themselves and their families legally. The lack of legitimate employment opportunities is likely to push some repatriated TPS holders, or their children, into the gangs or other illicit employment. In addition, the immediate return of a population of TPS Salvadoran nationals of the magnitude currently residing in the United States – which El Salvador is currently unable to adequately absorb or employ – could intensify the push factors that drive illegal migration.

(SBU) High levels of insecurity as well as ongoing effects from the series of natural disasters El Salvador has experienced also hamper economic growth and prosperity. El Salvador has experienced the worst GDP growth rate in the region for 10 straight years – and is only projected to reach 2.4 percent growth for 2017, which is largely due to growth in remittances from the United States and low oil prices. Without remittance growth or with higher oil costs, economic growth would have been negative. El Salvador needs to create approximately 60,000 new jobs every year to meet the needs of its current population, yet was only able to create approximately 12,000 jobs in 2016. A 2012 study by the Ministry of Economy indicates a national housing deficit of 446,000 dwellings, exacerbated by a growing population in a young demographic (50 percent of the population is under the age of 30). Extortion of businesses drives up costs and discourages investment. Business leaders assess that extortion payments have tripled since 2013, with small businesses paying approximately 10-20 percent of their income to organized crime, while larger businesses face monthly payments in the tens of thousands of dollars. The Central Bank estimates that extortion fees paid by businesses could amount to approximately $756 million – or almost 3 percent of GDP – though other estimates are lower.

3. Does the foreign state continue to support the TPS designation?

(SBU) Yes. On June 15, in a meeting with Vice President Pence at the Conference on Prosperity and Security in Central America, Salvadoran Vice President Ortiz requested an extension of TPS. Extension of TPS is the single highest foreign policy priority of the Salvadoran government.

C. *Extraordinary and Temporary Conditions*

1. Has the foreign state experienced extraordinary and temporary conditions that prevent aliens who are nationals of the state from returning to the state in safety?

(U) N/A.

2. Would permitting nationals of the foreign state to remain temporarily in the United States be contrary to the national interest of the United States?

(U) N/A.

II. Discretionary Factors

What, if any, additional information relevant to this decision should be brought to the attention of the Department of Homeland Security?

(SBU) El Salvador is a consistent partner of the United States in working to combat illegal immigration and transnational criminal organizations. The Government of El Salvador has shown itself willing to proactively address concerns related to illegal immigration, investing time, money, and political capital in trying to keep its citizens in El Salvador. El Salvador is also a receptive partner for the U.S. government and other governments in the region seeking to deport Salvadoran nationals. If, however, the Government of El Salvador were expected to immediately absorb 263,282 of its citizens, its institutional capacity and willingness to continue to be a receptive partner would diminish. In addition, without a delayed effective date, the Salvadoran government would be forced to dedicate all available resources to receiving its nationals, undermining the medium- to longer-term U.S. goals in El Salvador, which could lead to an increase in illegal migration from El Salvador to the United States.

(SBU) As a part of the U.S. strategy in Central America, the U.S. government continues efforts to build security, improve prosperity, and strengthen institutions. The Department of State and USAID are investing approximately $2 billion in FY 2015 to FY 2017 assistance to advance our economic, security, and governance goals in Central America. These efforts, combined with El Salvador's own efforts under the Alliance for Prosperity, protect U.S. national security by combatting transnational criminal organizations, including gangs, and creating conditions for Salvadoran citizens to remain and prosper in their home country.

(SBU) The Government of El Salvador is making a concerted effort to fight crime and restore its economy. The government is expanding a national security plan that significantly reduced homicides in the most crime-ridden municipalities and passed legislation that has helped cut off imprisoned gang members from their rank-and-file members. It is targeting gang financial networks and dismantling extortion rings. El Salvador has demonstrated willingness to combat illegal migration through the creation of a Border Intelligence and Coordination Center, deploying Salvadoran officers to McAllen, Texas, to screen incoming migrants for gang ties and making Salvadoran arrest and investigation records available to DHS and local law enforcement agencies throughout the United States.

(SBU) The Salvadoran government cooperates with U.S. law enforcement in a variety of fields, including investigating transnational gang crime, extraditing criminals, and interdicting drugs. Information sharing on MS-13 gang activity between the two governments has led to major takedowns in the United States. In 2016, El Salvador seized 9.0 metric tons of cocaine – more than four times the amount seized the previous year. El Salvador has been particularly active on maritime seizures of illegal narcotics, including via the Cooperative Security Location at Comalapa Airport, where U.S. surveillance flights track movements of narcotics in the Pacific, but the lease must be renegotiated before 2020. Since 2010, extradition of criminals to the United States has been another example of ongoing cooperation. More recently, the Government of El Salvador opened negotiations with the United States on a detainee transfer agreement to permit the immediate movement of interdicted drug traffickers in the Pacific to U.S. custody for prosecution, a major objective of the U.S. Department of Justice. The immediate deportation of

TPS beneficiaries in the United States would create tension with the Salvadoran government, and could jeopardize cooperation in these critical areas.

(SBU) On the economy, the Salvadoran government intends to join a customs union with Guatemala by the end of 2017 to reduce the costs of trade and improve commerce, while it also works to improve the business climate for investment by reducing bureaucratic procedures. Through the Alliance for Prosperity, El Salvador is leading the effort to improve the situation on the ground to attract Salvadorans back to El Salvador in the future. In 2017, the Government of El Salvador passed legislation and kicked off programs through the Ministry of Foreign Affairs to assist Salvadorans deported from the United States, including through small loans and training to show them how to access public services. The U.S. Millennium Challenge Corporation invested $490 million in 2007 to boost agriculture, build roads, provide clean water, and improve education. In 2014, MCC signed a second compact for $367 million, including $88 million in funding from the government of El Salvador, to improve the investment climate, employment, and transportation infrastructure.

(SBU) The broad U.S. support for improving security and economic opportunity in El Salvador is designed to address the underlying drivers of illegal migration and lay the groundwork for an eventual return of many Salvadorans from the United States. Under current conditions, however, immediate repatriation of the TPS beneficiaries and their families would likely endanger those U.S. foreign policy goals. Introducing an additional 263,282 working-age people and children vulnerable to recruitment by transnational criminal organizations (TCOs), such as MS-13, to a country rife with gangs and that cannot provide the 60,000 jobs required every year for its current population will undermine U.S.-Salvadoran efforts to combat TCOs. With no employment and few ties, options for those returning to El Salvador and those overwhelmed by the additional competition will likely drive increased illegal migration to the United States and the growth of MS-13 and similar gangs. A delayed effective date of 36 months will allow much-needed time for our work with the government of El Salvador to combat TCOs and create jobs to bear fruit. This will hopefully mean that the large number of returnees will have access to employment and services, making their re-entry smoother and increasing the likelihood that they will remain in El Salvador.

(SBU) Finally, Permitting El Salvadorans to remain temporarily in the United States would not be contrary to the U.S. national interest. Current TPS beneficiaries have been in TPS status in the United States for 16 years. The population has been stable and has successfully settled there. The current practice of returning newly arrived illegal migrants via the resumed non-criminal deportation flights has greatly disincentivized new attempts at large-scale illegal migration.

III. Recommendation

~~WHA POSITION~~

(SBU) Since the grounds for El Salvador's January 13, 2001, designation for TPS on the basis of environmental disaster no longer exist, the Department recommends that should the Acting Secretary of Homeland Security decide to terminate TPS for El Salvador, that the Acting Secretary designate an effective date to provide TPS benefits for an additional ~~36~~ 18 months beyond the end of the current designation for the purpose of orderly transition.

Providing the government more time to improve conditions and repatriation systems is directly in the U.S. national interest, since it would reduce incentives for illegal immigration and encourage continued bilateral cooperation on other national security issues, including the fight against transnational criminal organizations. It would increase the likelihood of sustaining effective cooperation with the United States on a wide range of issues. Improved conditions in El Salvador would give Salvadorans residents there, especially young people, an incentive to continue to seek their fortunes in El Salvador, and would make it more likely that Salvadorans in the United States would return to El Salvador voluntarily. Moreover, since 2001, 263,282 Salvadoran nationals have received TPS, and during that time, many started families, opened businesses, and bought houses and properties in the United States. This period of transition would provide them and their family members with time to prepare for their departure from the United States.

(SBU) While the conditions in El Salvador that justified the designation of El Salvador for TPS on the basis of environmental disaster no longer exist, a sudden DHS termination of TPS for El Salvador without a delayed effective date would overwhelm the country's ability to absorb returnees.

PROPOSITION

(SBU) The conditions in El Salvador that justified the designation of El Salvador for TPS on the basis of environmental disaster continue to be met. In addition, a sudden termination of TPS for El Salvador would overwhelm the country's ability to absorb returnees. Extending TPS for El Salvador is in the U.S. national interest. The drivers of illegal migration remain acute, but there is a path to address them. However, the government of El Salvador needs more time with the assistance of the United States and other international partners to make sustainable gains. A rapid repatriation of some 187,000 Salvadorans will undermine ongoing efforts to protect U.S. national security by combatting transnational criminal organizations. **The Department recommends that the Secretary of Homeland Security extend the TPS designation for El Salvador for 18 months on the basis of environmental disasters and the fragile security and economic situation, which render El Salvador unable to reabsorb its nationals.**

(SBU) PRM agrees with WHA that a sudden DHS termination of TPS for El Salvador without a delayed effective date would overwhelm the country's ability to absorb returnees.

Action Memo for Secretary Tillerson from
Acting Assistant Secretary Henshaw and
Acting Assistant Secretary Palmieri

Tab 6: Country Conditions Report for Haiti

SENSITIVE BUT UNCLASSIFIED

RELEASE IN FULL

DEPARTMENT OF STATE RECOMMENDATION REGARDING TEMPORARY PROTECTED STATUS (TPS) FOR HAITI – 2017

I. Statutory Basis for Designation

Have the conditions under which the foreign state was designated for temporary protected status ceased to exist?

WHA POSITION

(SBU) Yes, the conditions have ceased to exist. The extraordinary and temporary conditions that served as the basis for Haiti's most recent designation have sufficiently improved such that they no longer prevent nationals of Haiti from returning in safety. Former Secretary of Homeland Security Janet Napolitano originally designated Haiti for TPS effective January 21, 2010, on the basis of extraordinary and temporary conditions in the wake of Haiti's 2010 earthquake. Since 2010, a 2011 re-designation and four subsequent extensions of TPS designation for Haiti have been made by DHS Secretaries. The most recent extension, effective from July 23, 2017 – January 22, 2018, cited not only temporary and extraordinary conditions in the wake of the 2010 earthquake, but subsequent conditions, including: 2016's Hurricane Matthew, April 2017 heavy rains and landslides, security vulnerabilities that some Haitians who reside in Internally Displaced Persons (IDP) areas experience, and health vulnerabilities due to a weak public health system, which has been strained by a cholera epidemic. The extension also noted Haiti's serious economic and security challenges (82 FR 23830).

(SBU) Country conditions have improved since the January 2010 earthquake. The IDP population has decreased 97 percent from its peak in 2010. A legitimized government is in place after two years of electoral impasse. As of October 15, 2017, all UN military personnel have been withdrawn from Haiti; to be replaced by a police only successor mission focused on strengthening rule of law and promoting human rights.

(SBU) Specific lingering effects of the earthquake remain in the areas of infrastructure, health, sanitation services, and emergency response capacity. Although significant steps have been taken to improve the stability and the quality of life for Haitian citizens, Haiti continues to lack the capacity to ensure that the large population TPS beneficiaries currently residing in the United States can return in safety. However, Haiti maintains the ability safely to receive traditional levels of returned Haitian nationals, and is currently doing so.

(SBU) Based on these facts, we assess that the extraordinary and temporary conditions that served as the basis for Haiti's most recent designation have sufficiently improved such that they no longer prevent nationals of Haiti from returning in safety.

PRM POSITION

(SBU) No, the conditions under which Haiti was designated for TPS continue to exist. Former Secretary of Homeland Security Janet Napolitano originally designated Haiti for TPS effective January 21, 2010, on the basis of extraordinary and temporary conditions in the wake of Haiti's 2010 earthquake. The original designation reads "On January 12, 2010, Haiti was struck by a 7.0-magnitude earthquake. Given the size of the destruction and humanitarian challenges,

there clearly exist extraordinary and temporary conditions preventing Haitian nationals from returning to Haiti in safety" (75 FR 3476).

(SBU) Secretary Napolitano re-designated Haiti for TPS effective July 23, 2011, on the same basis. The re-designation reads, "Over the past year, DHS and the Department of State (DOS) have continued to review conditions in Haiti. Based on this review, and after consulting with DOS, the Secretary has determined that an 18-month extension of Haiti's TPS designation from July 23, 2011, through January 22, 2013, is warranted because the conditions prompting the original designation continue to be met. The Secretary has further determined that these same conditions in Haiti support re-designating Haiti for TPS ..." (76 FR 29000).

(SBU) Since re-designation, subsequent DHS Secretaries have extended Haiti's TPS designation four times; the most recent extension is effective from July 23, 2017 – January 22, 2018. This extension cited not only temporary and extraordinary conditions in the wake of the 2010 earthquake, but subsequent conditions, including: Hurricane Matthew in 2016, heavy rains and landslides in April 2017, security vulnerabilities that some Haitians experience because they continue to reside in IDP camps or temporary homes, and health vulnerabilities due to a weak public health system, which has been strained by a cholera epidemic. The extension also noted Haiti's serious economic and security challenges.

(SBU) Haiti historically has faced challenges unique to its counterparts in the hemisphere, which still affect the country today. While there has been notable progress in recovering from the 2010 earthquake, Haiti continues to be plagued by issues affecting its development, such as endemic poverty. Since the 2010 earthquake, country conditions and the government's capacity have improved sufficiently to adequately handle the return of moderate numbers of its nationals. However, Haiti continues to be affected by the lingering effects of the 2010 earthquake damage and subsequent conditions that have exacerbated pre-existing security, socio-economic, and environmental vulnerabilities and disparities. Based on these facts, we assess that the extraordinary and temporary conditions that formed the basis for the 2010 designation and 2011 re-designation continue to exist and prevent Haitians from returning in safety. Therefore, the Department recommends that the Acting Secretary of Homeland Security extend the TPS designation for Haiti on the basis of extraordinary and temporary conditions.

A. Armed Conflict

1. Is the foreign state still involved in an ongoing, internal armed conflict?

(U) No.

a. If so, would the return of nationals of the foreign state to that state (or to the part of the state) still pose a serious threat to their personal safety?

(U) N/A.

B. Environmental Disaster

1. Does there continue to be a substantial, but temporary, disruption of living conditions in the area affected by the environmental disaster?

(U) N/A.

2. Is the foreign state still unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state?

(U) N/A.

3. Does the foreign state continue to support the TPS designation?

(U) N/A.

C. *Extraordinary and Temporary Conditions*

1. Has the foreign state experienced extraordinary and temporary conditions that prevent aliens who are nationals of the state from returning to the state in safety?

WHA POSITION

(SBU) **No.** In the wake of the 2010 earthquake, Haiti continues to be affected by lingering earthquake damage. The earthquake destroyed virtually all government offices and ministries in downtown Port-au-Prince, leaving most in long-term temporary facilities spread throughout the city. However, country conditions and the Government of Haiti's capacity have improved sufficiently to allow for the safe return of a moderate flow of Haitian nationals.

(SBU) Since the earthquake, the IDP population had decreased 97 percent (from two million to 37,000) from its estimated peak in 2010, to the point where today, just 27 of the original 1,555 IDP sites remain open. Despite these gains, gender-based violence in the IDP areas remains a serious concern, and personal security is a serious and pervasive problem. An estimated 41,000 Haitians who have been made homeless as a result of various natural disasters since 2010, including Hurricane Matthew in 2016, affecting Haiti remain in IDP areas.

(SBU) With more than a half its total population living in extreme poverty, Hurricane Matthew demonstrated Haiti's weakened ability to cope, recover, and adapt to shocks from natural disasters. This fragility was exposed again most recently by Hurricane Irma, which temporarily displaced over 10,000 people into shelters and exacerbated an existing food security crisis on the northern coast.

(SBU) With the withdrawal of the United Nations Stabilization Mission in Haiti's (MINUSTAH) military component underway, the Haitian National Police (HNP) will be called upon to shoulder increased responsibility for maintaining order throughout the country. However, the HNP remains highly concentrated in Port-au-Prince and has limited resources, challenging its ability to guarantee security throughout the country. The United States and our international partners

continue to work to train and support the development and growth of the HNP, which has been increasingly perceived as professional and capable of providing security.

PRM POSITION

(SBU) Yes. In the wake of the 2010 earthquake, country conditions and the Government of Haiti's capacity have improved sufficiently to absorb the return of a moderate flow of Haitian nationals. However, Haiti continues to be affected by lingering earthquake damage. The earthquake destroyed virtually all government offices and ministries in downtown Port-au-Prince, leaving most in long-term temporary facilities spread throughout the city.

(SBU) In addition, the Haitian government's capacity for migrant reception remains low, and it would be very difficult for the Government of Haiti to absorb the approximately 58,706 Haitians currently residing in the United States under TPS in a short period of time.

(SBU) Throughout Haiti, country conditions have improved, but remain generally poor. While the institutional capacity of the Haitian government to adequately respond to the lingering effects of the earthquake remains weak, the U.S. government has worked toward strengthening the Haitian civil service and government service delivery. For example, there have been some improvements in access to primary education, resulting in a noticeable increase in participation rates of school-aged children from 79 to 87.3 percent. However, only 29.5 percent of school-aged children are enrolled and the quality of education remains a challenge.

(SBU) Gender-based violence in the internally displaced persons (IDP) areas remains a serious concern, and personal security is a serious and pervasive problem. Of the original two million people made homeless by the earthquake, approximately 37,000 remain in IDP areas. Despite efforts by the Haitian authorities and the international community to address these concerns, the effects of earthquake-related infrastructure damage to housing in Haiti remains. Some of those who were displaced have moved back to unsafe homes, begun reconstruction of damaged homes without adequate guidance as to how to bring their homes up to code, or relocated to informal settlements located in other hazardous areas.

(SBU) With more than 98 percent of Haitians exposed to two or more types of disasters (floods, landslides, droughts, earthquakes and hurricanes), the impact of recurring natural disasters is particularly severe, especially considering pre-existing security, socio-economic and environmental vulnerabilities and disparities. With more than a half its total population living in extreme poverty, Hurricane Matthew demonstrated Haiti's weakened ability to cope, recover, and adapt to shocks from natural disasters. This fragility was exposed again most recently by Hurricane Irma, which temporarily displaced more than 10,000 people into shelters and exacerbated an existing food security crisis on the northern coast. Meanwhile, as a result of electoral-related tensions, politically motivated demonstrations and insecurity have affected the humanitarian operating environment. At the same time, the international humanitarian presence has decreased in the field due to downward funding trends.

(SBU) With the withdrawal of the United Nations Stabilization Mission in Haiti's (MINUSTAH) military component underway, the Haitian National Police (HNP) will be called upon to shoulder increased responsibility for maintaining order throughout the country. However, the HNP

remains highly concentrated in Port-au-Prince and has limited resources, challenging its ability to guarantee security throughout the country. The United States and our international partners continue to work to train and support the development and growth of the HNP, which has been increasingly perceived as professional and capable of providing security. Thanks to this assistance, the HNP almost met its five-year development plan goal of 15,000 officers on the force, allowing it to assume a greater responsibility for security ahead of MINUSTAH's closure on October 15, 2017.

(SBU) Finally, based on the challenging experience Haiti has had with the weekly return of noncriminal deportees, it lacks the adequate infrastructure, health, sanitation services, and emergency response capacity necessary to ensure the personal safety of a large number of TPS returnees in tandem with the resumption of noncriminal deportations by the United States.

2. Would permitting nationals of the foreign state to remain temporarily in the United States be contrary to the national interest of the United States?

(SBU) No. Permitting Haitians to remain temporarily in the United States would not be contrary to the U.S. national interest. Current TPS beneficiaries have been in TPS status in the United States for six or seven years. The population has been stable and has successfully settled there. The current practice of returning newly arrived illegal migrants via the resumed non-criminal deportation flights has greatly disincentivized new attempts at large-scale illegal migration.

II. Discretionary Factors

What, if any, additional information relevant to this decision should be brought to the attention of the Department of Homeland Security?

(SBU) An abrupt termination of TPS for Haiti that does not provide a period for an orderly transition could jeopardize progress made in our bilateral relationship, particularly our robust partnership with Haiti on migration.

(SBU) Setting a Negative Historical Precedent: Approximately 58,706 Haitians received TPS benefits following the 7.0 magnitude earthquake in 2010. Since 1990 when the TPS statute was passed, approximately 22 countries have been designated under the statute. Only three countries have had their TPS designation terminated without a period of at least six months provided for orderly transition – those cases involved beneficiary populations of as few as 316, and as many as 4,018. The average duration of a TPS designation has been 8.5 years. By this measure, an immediate effective date for termination of Haiti's TPS designation would be a statistical outlier. Haiti has been designated for TPS for less than eight years, and its sudden termination with no delay in effective date to allow for orderly transition period would affect 14 times more people than the largest group of TPS beneficiaries whose status was terminated without an extended transition period (which last occurred in 1993).

(SBU) A Cooperative Partnership: Haiti is a committed and cooperative partner in stemming the irregular flow of migrants to the United States, accepting regular deportation flights, and preventing further illegal migration of Haitians upon their return. This cooperation was best

exemplified through their support in managing the irregular flow of Haitian migrants arriving at the U.S. southwest border with Mexico in 2016. Despite political turmoil and economic uncertainty in Haiti, when more than 6,500 Haitians presented themselves at U.S. ports of entries (a 1,300 percent increase from 2015), the Haitian government agreed to receive non-criminal deportation flights for the first time since the 2010 earthquake. This proved to be a strong deterrent mechanism, bringing a near cessation of Haitians presenting themselves at the U.S. southwest border. To date, Haiti has accepted over 5,200 deportees.

(SBU) Haiti has also shown a commitment to adequately prepare in the event TPS is terminated. Since then-DHS Secretary Kelly's visit to Haiti on May 31, Haiti has made the following preparations:

- **(SBU) Establishment of a Working Group:** The Government of Haiti established a minister-level working group focused on efforts to mitigate factors that cause Haitians to migrate illegally. A sub-group was created in order to focus specifically on preparations for the possible DHS termination of TPS; understanding the need to ensure employment opportunities exist for TPS beneficiaries when they return to Haiti.
- **(SBU) Outreach to Diaspora Leaders:** Haiti's Ambassador in Washington has worked to raise awareness amongst influential diaspora leaders, so they can effectively share information with the Haitian community in the United States on how a policy change will affect them.
- **(SBU) Providing Legal Assistance:** The Haitian Mission in the United States established a hotline to provide legal assistance by way of immigration attorneys.

(SBU) Implications of a Termination: While the Haitian government has exemplified its commitment to remain a cooperative partner of the United States, an abrupt DHS termination of TPS benefits for Haitian beneficiaries would jeopardize this progress. It would also threaten the strides the Government of Haiti has made towards political stability. After two years of electoral impasse, President Jovenel Moise and his government have been legitimized and are able to focus on developing a more secure, stable, and self-sufficient Haiti. It is in our interest to remain committed to the country's long-term security, democratic development, and economic growth, as well as to recognize when adequate conditions exist to warrant DHS termination of TPS.

(SBU) An immediate DHS termination of benefits at this juncture, when Haiti is focused on developing opportunities that allow Haitians to stay and help build their country, would have implications not only for Haiti's stability, but for the region. Haitians who are involuntarily returned to a country that is not yet able to handle the influx of returns would further incentivize illegal migration, to the United States and other destinations. This would strain the already limited resources of our North American, Central American, and Caribbean partners. To this end, such an irregular flow of Haitian migrants, similar to what was seen in 2016, could threaten the progress made on the U.S. strategy in Central America, and the efforts we have made to further secure our borders. It is therefore in the national security interests of the United States to ensure an orderly transition of Haitian TPS beneficiaries.

III. Recommendation

WHA POSITION

(SBU) The extraordinary and temporary conditions that served as the basis for the 2010 designation and 2011 re-designation have sufficiently improved such that they no longer prevent nationals of Haiti from returning in safety. However, lingering issues from the 2010 earthquake, the aftermath of Hurricane Matthew in 2016, the heavy rains and landslides in 2017, Hurricane Irma in September 2017, and the additional effects of the cholera epidemic continue to affect Haiti. It is in the national interest of the United States to ensure that Haiti's inability to absorb a large number of TPS beneficiaries does not jeopardize the progress Haiti has made in receiving criminal and noncriminal deportees from the United States. **Based on these factors, the Department recommends that the Acting Secretary of Homeland Security designate an effective date to provide TPS benefits for an additional 36 months beyond the end of the current designation to provide the Haitian government with adequate time to prepare for the safe reintegration of approximately 58,706 Haitians.**

PRM POSITION

(SBU) The extraordinary and temporary conditions that formed the basis for the 2010 designation and 2011 re-designation continue to exist and prevent Haitians from returning to Haiti in safety. Lingering issues from the 2010 earthquake, the aftermath of Hurricane Matthew in 2016, the heavy rains and landslides in 2017, Hurricane Irma in September 2017, and the additional effects of the cholera epidemic continue to prevent Haitians from returning to Haiti in safety. Furthermore, it is in the national interest of the United States to ensure that Haiti's inability to absorb a large number of TPS beneficiaries does not jeopardize the progress Haiti has made in receiving criminal and noncriminal deportees from the United States. **Based on these factors, we recommend that the Acting Secretary of Homeland Security extend the TPS designation for Haiti for a further six months on the basis of extraordinary and temporary conditions.**

Action Memo for Secretary Tillerson from
Acting Assistant Secretary Henshaw and
Acting Assistant Secretary Palmieri

Tab 7: Country Conditions Report for Honduras

(SBU) DEPARTMENT OF STATE RECOMMENDATION REGARDING TEMPORARY PROTECTED STATUS (TPS) FOR HONDURAS – 2017

I. **Statutory Basis for Designation**

Have the conditions under which the foreign state was designated for temporary protected status ceased to exist?

WHA POSITION

(SBU) Yes, the conditions under which Honduras was designated for TPS have ceased to exist. Attorney General Janet Reno originally designated Honduras for TPS on January 5, 1999, on the basis of environmental disaster. The original designation reads, "Hurricane Mitch swept through Central America causing severe flooding and associated damage in Honduras. Based on a thorough review by the Departments of State and Justice, the Attorney General finds that, due to the environmental disaster and substantial disruption of living conditions caused by Hurricane Mitch, Honduras is unable, temporarily, to handle adequately the return of Honduran nationals" (64 FR 524). Subsequent Attorneys General and Secretaries of the Department of Homeland Security extended TPS for Honduras 13 times in 18-month increments; the most recent extension was effective July 6, 2016. The 2016 extension cited not only Hurricane Mitch, but also subsequent environmental disasters, including: (1) severe rains, landslides, and flooding, and heavy winds associated with Tropical Storm Hanna toward the end of 2014; (2) a dramatic increase in mosquito-borne diseases in 2014 and 2015; and (3) a prolonged regional drought and coffee rust epidemic (81 FR 30331).

(SBU) Honduras remains vulnerable to severe weather events, but **the disruption of living conditions attributable to Mitch in the affected area has decreased in severity to a degree that it should no longer be regarded as "substantial" within the meaning of the statute.** Since the storm, much of the destroyed infrastructure and housing has been rebuilt. The social and economic conditions affected by the storm have stabilized and people are able to conduct their daily activities without impediments related to the damage of Mitch.

(SBU) The conditions in Honduras that caused it to be designated for TPS on the basis of the environmental disaster – i.e., the substantial disruption of living conditions caused by Hurricane Mitch, which rendered Honduras temporarily unable to adequately handle the return of its nationals and habitual residents, no longer exist.

PRM POSITION

(SBU) No. Conditions under which Honduras was designated for TPS have not ceased to exist. Attorney General Janet Reno originally designated Honduras for TPS on January 5, 1999, on the basis of environmental disaster. The original designation reads, "Hurricane Mitch swept through Central America causing severe flooding and associated damage in Honduras. Based on a thorough review by the Departments of State and Justice, the Attorney General finds that, due to the environmental disaster and substantial disruption of living conditions caused by Hurricane Mitch, Honduras is unable, temporarily, to handle adequately the return of Honduran nationals" (64 FR 524). Subsequent Attorneys General and Secretaries of the Department of Homeland Security have extended TPS for Honduras 13 times in 18-month increments; the most recent

extension was effective July 6, 2016. This extension cited not only Hurricane Mitch, but also subsequent environmental disasters, including: (1) severe rains, landslides, and flooding, and heavy winds associated with Tropical Storm Hanna toward the end of 2014; (2) a dramatic increase in mosquito-borne diseases in 2014 and 2015; and (3) a prolonged regional drought and coffee rust epidemic (81 FR 30331).

(SBU) The effects of Hurricane Mitch (1998) continue to heavily impact Honduras' social and economic development. When the storm hit the country, an estimated 6,000 people were killed. Hurricane Mitch also displaced 1.1 million people and destroyed up to 70 percent of roads, housing, communication infrastructure, water, and sanitation systems. Although much of the destroyed infrastructure and housing has been rebuilt, Honduras continues to suffer from persisting residual effects from the storm, which have been exacerbated by subsequent natural disasters; according to agricultural assessments, Honduras was the country most affected by extreme weather events between 1996 and 2015, with a total of 61 events during this time period. Since Hurricane Mitch, annual droughts and floods have caused low agricultural production and large-scale deforestation, representing major impediments to the Government of Honduras' ability to fully recover. As a result, while Honduras has continued to attempt recovery from Hurricane Mitch, the substantial disruption of living conditions, attributable to the storm and aggravated by subsequent environmental disasters continues.

(SBU) Honduras also faces extraordinary security challenges that, in combination with economic conditions and the effects of the various environmental disasters, render it temporarily unable to adequately handle the return of its nationals. **For these reasons, we recommend that the Acting Secretary of Homeland Security extend the TPS designation for Honduras on the basis of environmental disaster.**

A. *Armed conflict*

1. Is the foreign state currently involved in an ongoing, internal, armed conflict?

(U) No.

a. If so, would the return of nationals of the foreign state to that state (or to the part of the state) pose a serious threat to their personal safety?

(U) N/A.

B. *Environmental Disaster*

1. Has the foreign state in question experienced an earthquake, flood, drought, epidemic, or other environmental disaster in the state?

(U) Yes. Honduras is vulnerable to extreme weather events. In 1998, Hurricane Mitch swept through Central America causing severe flooding and associated damage in Honduras. Since Hurricane Mitch, Honduras has continued to experience other natural disasters.

a. If so, does there continue to be a substantial, but temporary, disruption of living conditions in the area affected?

WHA POSITION

(SBU) No. Honduras has stabilized from previous disruptions. Much of the infrastructure and housing destroyed by Hurricane Mitch has been rebuilt. While Honduras has been experiencing a prolonged drought, the Department assesses that the disruption of living conditions attributable to Hurricane Mitch should no longer be regarded as "substantial." The government has demonstrated its ability to rebuild its infrastructure and housing and provide other basic services to its citizens.

PRM POSITION

(SBU) Yes. The effects of Hurricane Mitch continue to heavily impact Honduras' social and economic development. Although much of the infrastructure and housing destroyed by the storm has been rebuilt, Honduras continues to suffer from persisting residual effects from the storm, which have been exacerbated by subsequent natural disasters. Honduras' agricultural sector has lost nearly one-third of its revenue since Hurricane Mitch, in part due to the 2014 drought as well as declining prices of the country's export crops, especially bananas and coffee. The drought has also slashed bean and maize harvests by up to 90 percent in some areas, triggering higher food prices. In rural areas that are largely dependent on subsistence agriculture, one out of five Hondurans live in extreme poverty (on less that USD $1.90 per day according to the World Bank). These rural areas, where a disproportionately large number of Hondurans in the United States, including TPS beneficiaries, originate, have been particularly affected by the drought and many families have resorted to reducing their caloric intake. According to a July 2016 UN World Food Programme report, one in four people in Honduras are struggling to feed themselves and remain affected by the ongoing prolonged drought.

2. Is the foreign state still unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state?

(SBU) Yes. Honduras continues to suffer from the same serious security and economic challenges that have led many Honduran nationals with TPS to remain in the United States, and have spurred even more Hondurans to migrate to the U.S. since TPS was granted. The Government of Honduras received approximately 22,000 deportees from the United States and more than 45,000 deportees from Mexico in 2016. While the Honduran government's infrastructure for receiving returned migrants has improved over the last three years, it is largely due to investments by the U.S. government. If TPS is not renewed, Honduras will require significant additional resources and coordination to adequately receive the immediate return of an additional 86,163 former TPS beneficiaries and potentially their family members.

(SBU) The immediate return of 86,163 Hondurans who currently hold TPS could overwhelm the government's ability to properly reintegrate them and make it more likely they would attempt to return to the United States illegally. Recognizing most Hondurans who migrate do so for economic reasons, adding tens of thousands of returnees to an economy that is not prepared to integrate them will only exacerbate the principal driver of illegal immigration. This would also

impose severe burdens on a cooperative but under-resourced Honduran government and would be counterproductive to U.S. interests.

(SBU) If the Government of Honduras were expected to immediately receive and reintegrate 86,163 deportees and potentially their family members, it would likely cause a negative public reaction and strain the bilateral relationship. Many of the deportees would be accompanied by their U.S.-born children, many of whom would be vulnerable to recruitment by gangs. The Honduran government would be forced to dedicate significant resources to receiving its nationals, which would undermine the medium to longer-term U.S. economic, security, and governance goals in Honduras, and would likely lead to an increase in illegal immigration from Honduras to the United States.

3. Does the foreign state continue to support the TPS designation?

(SBU) Yes. Honduran President Juan Orlando Hernandez met with Vice President Pence on June 15, 2017, on the margins of the Conference on Prosperity and Security in Central America in Miami and requested an extension of TPS. On July 18, 2017, Honduran Minister of Foreign Affairs Maria Dolores Agüero Lara submitted an official request for extension.

C. *Extraordinary and Temporary Conditions*

1. Has the foreign state experienced extraordinary and temporary conditions that prevent aliens who are nationals of the state from returning to the state in safety?

(U) N/A.

2. Would permitting nationals of the foreign state to remain temporarily in the United States be contrary to the national interest of the United States?

(U) N/A.

II. Discretionary Factors

What, if any, additional information relevant to this decision should be brought to the attention of the Department of Homeland Security?

(SBU) Honduras is a consistent partner of the United States. It has shown itself willing to proactively address concerns related to illegal immigration by investing time, money, and political capital in trying to keep its citizens in Honduras. It is also a receptive partner for the U.S. government and other governments in the region seeking to deport Honduran nationals. Honduran authorities have also extradited numerous fugitives, including Honduran nationals to the United States since 2014, including a number of major drug traffickers.

(SBU) As a part of the U.S. strategy in Central America, the U.S. government is providing approximately $2 billion in FY 2015 to FY 2017 assistance to secure our borders, protect U.S. citizens, and increase opportunities for U.S. and other businesses. U.S. engagement and

programs aim to dismantle transnational criminal organizations, combat drug trafficking, halt illegal immigration, and promote sustainable economic growth by addressing the underlying causes of insecurity, impunity, and lack of economic opportunity. These efforts, combined with Honduras' own efforts under the Alliance for Prosperity, protect U.S. national security and create conditions to incentivize Honduran citizens to remain and prosper in their home country.

(SBU) Despite recent improvements in Honduras' security situation, insecurity and widespread unemployment and low wages continue to be among the main factors cited by returned migrants for their decision to migrate to the United States.

(SBU) In rural areas that are largely dependent on subsistence agriculture, one out of five Hondurans continues to live in extreme poverty (on less than USD $1.90 per day according to the World Bank). These rural areas, where a disproportionately large number of Hondurans in the United States, including TPS beneficiaries, originate, have been particularly affected by the drought, which has been persisting since 2014, and many families have resorted to reducing their caloric intake. According to a July 2016 United Nations World Food Programme report, one in four people in Honduras are struggling to feed themselves.

(SBU) Although Honduras was been able to reduce its national homicide rate from 86 per 100,000 in 2011 to 58 per 100,000 in 2016, it continues to have one of the highest murder rates in the world for a country not at war. This was not always the case, and continues to represent extraordinary circumstances created by a combination of gang activity, drug trafficking, and poor economic conditions. To the extent efforts the government and the international community are helping to bring down this rate, it is a temporary condition that can change with continued implementation of improved security and economic policies.

(SBU) Impunity for all categories of crime, including serious offenses like murder and kidnapping, is high. Yet the current administration, with U.S. assistance, has taken steps to address these problems. Honduras has been a collaborative extradition partner, leading many Honduran criminals to self-surrender in lieu of probable arrest and extradition. Nearly 30 such indicted criminals now face justice in the United States for corruption, drug trafficking, and money laundering. The Honduran government is implementing a roadmap to overhaul the Honduran National Police, which has included replacing its troubled former investigative division with a new, better trained and equipped force that is currently up and running. It is also working to hire 15,000 new officers by 2022, roughly 3,200 per year above attrition, almost doubling the size of the force.

(SBU) Permitting Hondurans to remain temporarily in the United States would not be contrary to the U.S. national interest. Current TPS beneficiaries have been in TPS status in the United States for 18 years. The population has been stable and has successfully settled there. The current practice of returning newly arrived illegal migrants via the resumed non-criminal deportation flights has greatly disincentivized new attempts at large-scale illegal migration.

III. Recommendation

WHA POSITION

(SBU) Since the grounds for Honduras' January 5, 1999 designation for TPS on the basis of environmental disaster no longer exist, the Department recommends that should the Acting Secretary of Homeland Security decide to terminate TPS for Honduras, that the Acting Secretary designate an effective date to provide TPS benefits for 36 months beyond the end of the current designation to allow for an orderly transition. Providing the Honduran government more time to improve security and economic conditions and repatriation systems would increase the likelihood Hondurans would return voluntarily and reduce the likelihood deported migrants would seek to return to the United States illegally. It would also allow the U.S. government the time to mitigate any possible negative foreign policy impacts stemming from the decision to ensure sustained effective bilateral cooperation on a wide range of issues, such as combatting transnational criminal organizations and addressing the underlying causes of illegal immigration. Moreover, since 1999, Honduran nationals have had TPS, and during that time, many started families, opened businesses, and bought houses and properties. A delayed effective date would provide them and their family members with time to organize their departure from the United States.

(SBU) In addition, the Department recommends that the public announcement of a new effective date be delayed until November 27 so as not to interfere in the domestic politics of Honduras' November 26 presidential election. In order to meet a statutory requirement, the Department of State recommends communication of a DHS decision to the head of government only on November 3.

PRM POSITION

(SBU) The conditions in Honduras originally leading to the TPS designation based on environmental disaster continue to be felt in all aspects of daily life. In addition, these conditions, in combination with the security and economic challenges in the country, continue to render it temporarily unable to adequately handle the return of its nationals. Precipitously terminating TPS for Honduras and forcing the country to address the return of an influx of nationals that it is unable to handle would risk overwhelming Honduras' system for reintegrating returned migrants and could hamper the government's ability to effectively cooperate with the United States on a wide range of issues. **Based on these factors, we recommend an 18-month extension of TPS by DHS on the basis of environmental disaster.**

State Department Cable—Haiti:
Temporary Protected Status Recommendation

UNCLASSIFIED//SBU

(U//SBU) Haiti: Temporary Protected Status Recommendation

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(U//SBU) E.O. 13526: N/A
SUBJECT: Haiti: Temporary Protected Status Recommendation

The U.S. Mission to Haiti submits the following recommendation for extension of the Temporary Protected Status (TPS) designation for Haiti:

I. Statutory Basis for Designation

Have the conditions under which the foreign state was designated for temporary protected status ceased to exist?

A. Armed conflict

1. Is the foreign state currently involved in an ongoing, internal, armed conflict?

(U) No.

a. If so, would the return of nationals of the foreign state to that state (or to the part of the state) pose a serious threat to their personal safety?

(U) N/A

B. Environmental Disaster

1. Has the foreign state experienced extraordinary and temporary conditions that prevent aliens who are nationals of the state from returning to the state in safety?

(SBU) Yes. Country conditions and GOH capacity have improved sufficiently to absorb the return of a moderate flow of Haitian nationals. However, Haiti continues to be affected by lingering earthquake damage. The earthquake destroyed virtually all government offices and ministries in downtown Port-au-Prince, leaving most in in long-term temporary facilities spread throughout the city.

(SBU) In addition, the GOH capacity for migrant reception remains low, and it would be very difficult for the GOH to absorb the 59,000 Haitians currently residing in the United States under TPS over a short amount of time.

(SBU) Throughout Haiti, country conditions have improved, but remain generally poor. While the institutional capacity of the GOH to respond adequately to the lingering effects of the earthquake remains weak, the U.S. government has worked toward strengthening the Haitian civil service and government service delivery. For example, there have been some improvements in access to primary education, resulting in a noticeable increase in participation rates of school-aged children from 79 to 87.3 percent. However, only 29.5 percent of school-aged children are enrolled, and the quality of education remains a challenge.

(SBU) Gender-based violence in the remaining IDP areas remains a serious concern, and personal security is a serious and pervasive problem. Despite efforts by the Haitian authorities and the international community to address these concerns, lingering effects of infrastructure damage to housing in Haiti as a result of the earthquake remain. Some of those who were displaced have moved back to unsafe homes, begun reconstruction of damaged homes without assistance or guidance, or relocated to informal settlements located in other hazardous areas.

(SBU) With more than 98 percent of Haitians exposed to two or more types of disasters (floods, landslides, droughts, earthquakes and hurricanes), the impact of recurring natural disasters is particularly severe, especially considering the already pre-existing security, socio-economic and environmental vulnerabilities and disparities. With more than a half of its total population living in extreme poverty, Hurricane Matthew demonstrated Haiti's weakened ability to cope, recover and adapt to shocks from natural disasters. Meanwhile, as a result of electoral-related tensions, politically motivated demonstrations and insecurity have affected the humanitarian operating environment. At the same time, the international humanitarian presence has decreased in the field due to downward funding trends.

(SBU) With the withdrawal of the United Nations Stabilization Mission in Haitis (MINUSTAH) military component underway, the Haitian National Police (HNP) will be called upon to shoulder increased responsibility for maintaining order throughout the country. However, the HNP remains highly concentrated in Port-au-Prince and has limited resources, challenging its ability to guarantee security throughout the country. The United States and our international partners continue to work to train and support the development and growth of the HNP, which has been increasingly perceived as professional and capable of providing security. Thanks to this assistance, the HNP almost met its five-year development plan goal of 15,000 officers on the force, allowing it to assume a greater responsibility for security ahead of MINUSTAHs closure on October 15, 2017.

(SBU) Haiti has been regularly receiving small groups (about 30 per month) of criminal deportees from the United States. Following the resumption of much larger noncriminal deportations to Haiti in November 2016, the GOH has also received over 4,500 noncriminal deportees. The GOH continues to receive weekly flights of between 50 and 100 noncriminal deportees a level which stretches its resources to maintain secure and orderly reception program. It has so far just managed to provide the minimal levels of security and assistance upon each flights arrival.

(SBU) Overall, based on the experience Haiti has had with the weekly flow of noncriminal deportees, it lacks the adequate infrastructure, health, sanitation services, and emergency response capacity necessary to ensure the personal safety of a large number of TPS returnees in tandem with this current flow of noncriminal deportations.

2. Would permitting nationals of the foreign state to remain temporarily in the United States be contrary to the national interest of the United States?

(SBU) With regard to this specific population, no. Current TPS beneficiaries have been in status in the United States for six or seven years. The population has been stable and successfully settled there. The current practice of returning newly arrived migrants via the resumed noncriminal deportations has

greatly disincentivized new attempts at illegal migration in the hopes that TPS will be re-designated once more in the past, a significant pull factor. The broader question of whether such continued presence fits overall national immigration policy priorities is beyond posts scope to address.

II. Discretionary Factors

What, if any, additional information relevant to this decision should be brought to the attention of the Department of Homeland Security?

(SBU) As mentioned, following the determination to extend TPS for Haiti for an additional six months, the GOH has appealed for a further extension of TPS for its nationals in the United States, given the immediate and drastic impact a termination could have on the countrys economic well-being and political stability.

III. Recommendation

(SBU) Extending TPS for Haiti is in the U.S. national interest. At this time, the GOH is not capable of facilitating the reabsorption of the 59,000 Haitians currently holding TPS in the United States in a time frame of less than several years. Lingering issues from the 2010 earthquake, additional effects of the cholera epidemic, and the aftermath of Hurricane Matthew exacerbate this concern, and a termination of TPS for Haiti would threaten the countrys ability to make needed progress across numerous sectors. Based on these factors, we recommend that TPS for Haiti be renewed.
SHUKAN

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State Department Cable—El Salvador: Temporary Protected Status Recommendation

(U//SBU) EL SALVADOR: TEMPORARY PROTECTED STATUS RECOMMENDATION

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FM AMEMBASSY SAN SALVADOR
TO RUEHC/SECSTATE WASHDC
INFO RUEILBQ/NCTC WASHINGTON DC
RUEAIIA/CIA WASHINGTON DC
RUEABND/DRUG ENFORCEMENT ADMIN HQ WASHINGTON DC
RUEKJCS/SECDEF WASHINGTON DC
RHMCSUU/JOINT STAFF WASHINGTON DC
RHMCSUU/HQ EPA WASHINGTON DC
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RUETIAA/DIRNSA FT GEORGE G MEADE MD
RUEPTRS/DEPT OF TREASURY WASHINGTON DC
RUOIAAA/COMDT COGARD WASHINGTON DC
RUEPWDC/DA AMIS WASHINGTON DC
RUEADRO/HQ ICE ERO WASHINGTON DC
BT

(U//SBU) E.O. 13526: N/A
SUBJECT: EL SALVADOR: TEMPORARY PROTECTED STATUS RECOMMENDATION

The U.S. Mission to El Salvador submits the following recommendation for the extension of the Temporary Protected Status designation.

I. Statutory Basis for Designation

A. Armed conflict: Is the foreign state currently involved in an ongoing, internal, armed conflict? If so, would the return of nationals of the foreign state to that state (or to the part of the state) pose a serious threat to their personal safety?

(U) No

B. Environmental Disaster: Has the foreign state in question recently experienced an earthquake, flood, drought, epidemic, or other environmental disaster in the state?

(U) Yes

(SBU) El Salvador declared a drought emergency in 2016, after multiple years of low rainfall. Agriculture accounts for 10 percent of GDP but 20% of employment, mostly low-wage and subsistence earners who are otherwise likely to migrate illegally. The drought was particularly acute in the eastern region of the country, where a disproportionately large number of Salvadorans in the United States, including TPS beneficiaries, originate. The drought led to the loss of staple and export crops, and the death of thousands of cattle. The sugarcane industry suffered irreversible damage to 20 percent of

cropland. The coffee industry lost over 40,000 jobs, equivalent to half the sector employment, as production fell by half after the coffee rust outbreak in the region. Sugar and coffee are the two largest agricultural products in the sector.

C. Is the foreign state unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state?

(U) Yes

(SBU) El Salvador continues to suffer from serious security and economic challenges, and could not adequately handle the return of an additional 195,000 TPS beneficiaries and potentially their family members, including a significant number of American citizen children. Homicide rates in 2016 were the highest in the world outside a war zone and growth the lowest in the region, creating a climate of fear and hopelessness that continues to drive migrants north. In 2016, the United Stated deported 21,000 Salvadorans while Mexico deported 31,000, for a total of 52,000 returned. The Government of El Salvador cannot provide basic services for the deported migrants and the economy cannot create sufficient jobs to employ them. The deportation of the TPS population to El Salvador (population 6.1 million) would result in a concentration of TPS Salvadorans seven times higher than in Haiti, and three-and-a-half-times higher than in Honduras. The return of this population would be counterproductive to U.S. national interests and is likely to accelerate illegal migration.

(SBU) Crime in El Salvador keeps the country at the top of the list of most violent nations outside war zones. The homicide rate in 2016 was 81 per 100,000, compared to 7 per 100,000 in Nicaragua. El Salvador has experienced the worst GDP growth rate in the region for 10 straight years and is only projected to reach 2.4 percent growth for 2017, which is largely due to growth in remittances from the United States and low oil prices. Without remittance growth or with higher oil costs, economic growth would have been negative. El Salvador needs to create approximately 60,000 new jobs every year to meet the needs of its current population, yet was only able to create approximately 12,000 jobs in 2016.

(SBU) According to a survey by the University of Kansas, the median age of TPS holders is 43 years and approximately 61% have no children left in Central America. These deportees would need to compete with locals to find scarce jobs in order to support themselves and their families legally. El Salvador does not have adequate social services to keep these families out of poverty. Older returnees, many of whom did not complete a primary school education, would face particular challenges in finding employment in El Salvador. The lack of legitimate employment opportunities is likely to push some repatriated TPS holders, or their younger family members, into the gangs or other illicit employment.

D. Has the foreign state officially requested TPS for its nationals in the United States?

(U) Yes. On June 15, in a meeting with Vice President Pence at the Conference on Prosperity and Security in Central America, Salvadoran Vice President Ortiz requested an extension of TPS. Extension of TPS is the single highest foreign policy priority of the Salvadoran government.

II. Extraordinary and Temporary Conditions

A. Has the foreign state experienced extraordinary and temporary conditions that prevent aliens who are nationals of the state from returning to the state in safety?

(U) Yes

(SBU) El Salvador has experienced the highest homicide rate of any country in the world for the past two years (excluding war zones), at 81 homicides per 100,000 inhabitants in 2016. With significant U.S. assistance, the government is working to reassert control in the highest crime municipalities. However, the government needs more time to implement its anti-gang strategies and reduce homicides to below critical levels.

(SBU) The surge in gang violence in El Salvador, and other gang-related crime, drives internal displacement and remains a major driver of immigration to the United States. The Internal Displacement Monitoring Centre estimates that nearly 220,000 Salvadorans were forced to flee violence in 2016. This puts the country second in terms of the number of new displacements relative to population size, after Syria.

(SBU) Fear of crime also keeps many immigrants from returning to El Salvador, even if they have the economic means to support themselves. Parents in many communities in El Salvador fear that boys may be targeted for gang recruitment and girls may be forced into sexual relations with gang members. Many parents in El Salvador refuse to even send their children to school out of fear of the gangs. The Salvadoran teachers union on January 13 reported that 60,000 students (or 5 percent of the student population) did not register for the 2017 school year, most likely due to fear of gang recruitment or that their children could be in danger crossing the boundaries of gang territory. U.S.-born American citizen children of TPS recipients would be particularly vulnerable to security threats, as well as challenges registering for basic services upon their return to El Salvador.

B. Would permitting nationals of the foreign state to remain temporarily in the United States be contrary to the national interest of the United States?

(U) No

(SBU) The U.S. national interest in El Salvador continues to be fighting transnational crime and reducing illegal migration through improving security, promoting prosperity, and strengthening institutions. While those lines of efforts have begun to bear fruit, including in the falling homicide rate, an influx of 195,000 deportees and others could overwhelm our efforts and endanger those objectives. Permitting Salvadorans to remain temporarily in the United States would be in the national interest because it would give the Salvadoran government time to continue implementing security and other policies that could improve conditions on the ground.

(SBU) The Salvadoran government also cooperates with U.S. law enforcement in a variety of fields, including investigating transnational gang crime, extraditing criminals, and interdicting drugs. Information sharing on MS-13 gang activity between the two governments has led to major takedowns in the United States. In 2016, El Salvador seized 12.2 metric tons of cocaine more than five times the amount seized the previous year; El Salvador has been particularly active on maritime seizures of illegal narcotics. Much of this effort centers on the Cooperative Security Location at Comalapa Airport, where U.S. surveillance flights track movements of narcotics in the Pacific, but the lease must be renegotiated before 2020. Since 2010, extradition of criminals wanted to the United States has been another example of ongoing cooperation. More recently, the government of El Salvador opened negotiations with the United States on a detainee transfer agreement to permit the rapid movement of interdicted drug traffickers in the Pacific to U.S. custody for prosecution, a major objective of the U.S. Department of Justice. The deportation of the TPS population in the United States would create tension with the Salvadoran government, and could jeopardize cooperation in these critical areas.

III. Discretionary Factors

What, if any, additional information relevant to this decision should be brought to the attention of the Department of Homeland Security?

(SBU) The Salvadoran government currently works closely with DHS to facilitate the deportation of Salvadorans to the United States accepting additional deportation flights and expediting the issuance of temporary travel documents to returnees. El Salvador has also demonstrated willingness to combat illegal migration through the creation of a Border Intelligence and Coordination Center, deploying Salvadoran officers to McAllen, Texas, to screen incoming migrants for gang ties and making Salvadoran arrest and investigation records available to DHS and local law enforcement agencies throughout the United States.

IV. Recommendation

(SBU) Extending TPS for El Salvador is in the U.S. national interest. A sudden termination of TPS for El Salvador would undermine additional cooperation to tackle the root causes of illegal migration and overwhelm the countrys ability to absorb returnees. The drivers

of illegal migration remain acute, but there is a path to address them. However, the government of El Salvador needs more time with the assistance of the United States and other international partners to make sustainable gains. Further, a termination of TPS could undermine U.S.-Salvadoran efforts on a range of issues of mutual concern and fighting transnational criminal organizations, such as MS-13. Based on these factors, we recommend that TPS for El Salvador be renewed.

MANES

State Department Cable—Honduras: Temporary Protected Status Recommendation

MRN: 17 TEGUCIGALPA 618
Date/DTG: Jun 29, 2017
From: AMEMBASSY TEGUCIGALPA
Action: WASHDC, SECSTATE *ROUTINE*
E.O.: 13526
Captions: SENSITIVE
Subject: Honduras: Temporary Protected Status Recommendation

The U.S. Mission to Honduras submits the following recommendation for the extension of the Temporary Protected Status designation.

I. Statutory Basis for Designation

A. Armed conflict: Is the foreign state currently involved in an ongoing, internal, armed conflict? If so, would the return of nationals of the foreign state to that state (or to the part of the state) pose a serious threat to their personal safety?

(U) No

B. Environmental disaster: Has the foreign state in question recently experienced an earthquake, flood, drought, epidemic, or other environmental disaster in the state?

(U) No

C. Is the foreign state unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state?

(SBU) Yes

Honduras continues to suffer from the same serious security and economic challenges that have led many recipients of TPS to remain in the United States, and spurred even more to migrate there since TPS was granted. The GOH already receives approximately 40,000 deportees from the U.S. and another 40,000 from Mexico each year. Conditions in Honduras are slowly improving, but by any objective measure the situation remains critical. Given that most Hondurans who migrate do so for economic reasons, adding tens of thousands of deportees to an economy that is not prepared to integrate them will only exacerbate the principal cause of irregular migration. This would impose severe burdens on a cooperative but underresourced GOH and be counterproductive to U.S. interests.

D. Has the foreign state officially requested TPS for its nationals in the United States?

(U) On June 15, while attending the Conference on Prosperity and Security in Central America, President Hernandez met with Vice President Pence and requested an extension.

II. Extraordinary and Temporary Conditions

A *Has the foreign state experienced extraordinary and temporary conditions that prevent aliens who are nationals of the state from returning to the state in safety?*

(U) Yes

Despite recent statistical improvements, Honduras continues to have one of the highest murder rates in the world for a country not at war, currently estimated to be 58 per 100,000 inhabitants. This was not always the case, and continues to represent an extraordinary circumstances created by a combination of gang activity, drug trafficking, and poor economic conditions. To the extent that efforts by the GOH and the international community are helping to bring down this rate, it is a temporary condition that can change with continued implementation of improved security and economic policies. For example, the country is conducting an aggressive purge of its police force to remove corrupt and criminals elements; 20 percent of the police force has already been removed, proof both of the GOH's political will to address serious problems and its current inability to carry out its primary mission – to enforce the rule of law and protect the lives of its citizens. There is currently only limited government presence in many parts of the country, including in coastal regions where many Hondurans with TPS previously resided and where transnational criminal organizations currently exert disproportionate influence.

B. *Would permitting nationals of the foreign state to remain temporarily in the United States be contrary to the national interest of the United States?*

(SBU) No

Permitting Hondurans to remain temporarily in the U.S. would be in the U.S. national interest because it would give the GOH the time and space to continue implementing policies and making reforms that offer the real possibility of significantly improving conditions on the ground in Honduras. Improved conditions would give Hondurans at home, especially young people, an incentive to continue to seek their fortunes in their own country, and would make it more likely that Hondurans in the U.S., whether there illegally or under TPS, would return to their homeland voluntarily. Extending TPS would also help preserve the strong bilateral relations that currently exist between the United States and Honduras, making it more likely that the GOH would continue to cooperate with the USG on a wide range of issues. These issues include strictly bilateral ones, such as the extradition of major narcotics traffickers to the United States, as well as international ones, such as the current crisis in Venezuela, on which the GOH has been particularly supportive. As noted in our response to Question I.B.2., the rapid return of many additional Hondurans who currently hold TPS could overwhelm the GOH's ability to properly reintegrate them and make it more likely they would attempt to return to the United States.

III. Discretionary Factors

What, if any, additional information relevant to this decision should be brought to the attention of the Department of Homeland Security?

(SBU) Honduras is a solid and consistent partner of the United States. The GOH has shown itself exceptionally willing to proactively address concerns related to irregular migration, investing time, money, and political capital in trying to keep its citizens in Honduras. The GOH regularly runs media campaigns to discourage unauthorized migration, and works to welcome back its citizens with open arms.

IV. Recommendation

(SBU) Precipitously terminating TPS for Hondurans would create significant strains in currently excellent, mutually-beneficial U.S.-Honduras relations. It would risk overwhelming Honduras' system for reintegrating returned migrants and could hamper the GOH's ability to effectively cooperate with the United States on a wide range of issues. Honduras continues to struggle with serious security and economic problems that cannot be solved overnight, but which the GOH has demonstrated the political will to address. Giving the GOH more time and space to improve conditions in Honduras is directly in the U.S. national interest, since it would reduce incentives for unauthorized migration and encourage continued bilateral cooperation on other national security issues, including the fight against transnational criminal organizations. Based on these factors, we recommend that TPS for Hondurans be renewed.

MINIMIZE CONSIDERED
Signature: Fulton

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