

# RELIEF NOT RAIDS

TEMPORARY  
PROTECTED  
STATUS FOR  
EL SALVADOR,  
GUATEMALA,  
AND HONDURAS

January 2016





**RELIEF NOT RAIDS:**  
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EL SALVADOR, GUATEMALA, AND  
HONDURAS

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# TABLE OF CONTENTS

<b>I. EXECUTIVE SUMMARY .....</b>	<b>1</b>
<b>II. INTRODUCTION .....</b>	<b>3</b>
<b>III. TEMPORARY PROTECTED STATUS BACKGROUND.....</b>	<b>4</b>
<b>IV. FACTUAL GROUNDS FOR TPS EXPANSION .....</b>	<b>5</b>
A. EL SALVADOR .....	6
B. GUATEMALA .....	7
C. HONDURAS.....	8
<b>V. ESTIMATES OF EXPANSION OF TEMPORARY PROTECTED STATUS.....</b>	<b>8</b>
A. METHODOLOGY .....	9
B. EL SALVADOR .....	10
C. GUATEMALA .....	10
D. HONDURAS.....	11
<b>VI. LEGALITY OF BROADLY EMPLOYING TEMPORARY PROTECTED STATUS.....</b>	<b>11</b>
<b>VII. CONCLUSION.....</b>	<b>12</b>

## I. EXECUTIVE SUMMARY

On January 4, 2016, Secretary Jeh Johnson of the U.S. Department of Homeland Security announced a large-scale series of immigration raids, mostly targeting Central American families from El Salvador, Guatemala, and Honduras. These immigration raids triggered widespread outrage as they primarily targeted families who fled extreme violence, many with valid claims for humanitarian relief that had been truncated by various Administration policies such as expedited court processing and family detention. In addition to demanding the end of these immigration raids, 40 national Latino civil rights groups, 146 House Democrats, the Congressional Hispanic Caucus, Senator Bernie Sanders, and other prominent figures and groups implored the Administration to designate El Salvador, Guatemala, and Honduras for Temporary Protected Status.

Temporary Protected Status is a temporary, humanitarian form of immigration relief that provides employment authorization and short-term protection from deportation for immigrants who cannot be safely returned to their home countries. While many have called for the expansion of Temporary Protected Status for El Salvador, Guatemala, and Honduras—the Northern Triangle Central American countries—few have closely examined the legal basis for such extension and likely impact. Consequently, this report outlines the legal and factual grounds for future designations of Temporary Protected Status and estimates how many individuals could potentially benefit. Among the report’s findings:

- According to a comprehensive study conducted by social scientist Elizabeth Kennedy at San Diego State University, between January 2014 and September 2015, at least 83 nationals deported to El Salvador, Honduras, and Guatemala were reported to have been subsequently murdered, with 45 murders in El Salvador, 35 in Honduras, and three in Guatemala. The overwhelming majority of these murders occurred within a year of deportation. Moreover, the rate of these types of murders has dramatically increased in the last two years.
- While various civil wars within the Northern Triangle countries ended in the last few decades, these armed conflicts functionally continue with criminal gangs and government actors replacing previous warring factions. Consequently, El Salvador, Guatemala, and Honduras have the highest murder rates in the world, with El Salvador at 104 out of 100,000 people, Guatemala at 36 out of 100,000 people, and Honduras at 61 out of 100,000 people.
- Based on the individualized conditions within each country, the Administration has the legal authority to designate El Salvador, Guatemala, and Honduras for Temporary Protected Status because of the existence of “extraordinary and temporary conditions” and de facto “armed conflicts.” Independent of these grounds, the Administration may also designate and redesignate these countries for Temporary Protected Status based on various natural disasters.
- Temporary Protected Status is explicitly authorized by Congress and contains express provisions limiting judicial review. Therefore, Temporary Protected Status is likely to withstand legal challenges as it represents a lawful and constitutional exercise of executive authority. As former congressman Bruce Morrison, former chairman of the House Immigration Subcommittee and House author of the Immigration Act of 1990, which established TPS, stated, “The southwest border children crisis should have been addressed with a more creative use of TPS.”

- By analyzing current and historical data from the Pew Research Center and official U.S. Department of Homeland Security statistics, this report makes the following findings:
  - Designation of Temporary Protected Status for El Salvador, Guatemala, and Honduras would make approximately 1.2 million (1,226,044) additional individuals potentially eligible for Temporary Protected Status, though only 757,422 (62%) would ultimately obtain this status because of various eligibility criteria and application requirements. Furthermore, unless subsequent designations or re-designation occur, future arrivals from these countries would not be eligible to apply for Temporary Protected Status.
  - There are currently 204,000 Salvadorans who currently hold Temporary Protected Status. A re-designation of Temporary Protected Status for El Salvador would make approximately 445,785 additional Salvadorans potentially eligible for Temporary Protected Status, though only 258,555 (58%) would ultimately obtain this status.
  - There are no Guatemalans who currently hold Temporary Protected Status. Designation of Temporary Protected Status for Guatemalans would make approximately 507,694 Guatemalans eligible for Temporary Protected Status, though only 294,463 (58%) would ultimately obtain this status.
  - There are currently 61,000 Hondurans who currently hold Temporary Protected Status. A re-designation of Temporary Protected Status for Honduras would make approximately 272,565 additional Hondurans eligible for Temporary Protected Status, though only 204,424 (75%) would ultimately obtain this status.

## II. INTRODUCTION

During the summer of 2014, the United States experienced an unprecedented number of refugees, including large numbers of women and children, fleeing extreme violence in El Salvador, Guatemala, and Honduras.<sup>1</sup> In many cases, families intentionally turned themselves over to U.S. Customs and Border Patrol (CBP) seeking to apply for asylum and other forms of humanitarian relief.<sup>2</sup> Troublingly, in response to the refugee crisis, the Obama Administration enacted a multi-prong strategy across federal agencies to discourage additional Central American refugees from fleeing to the United States.

The most damaging of these measures included expedited court processing and the resumption of family detention. The Administration directed the Executive Office for Immigration Review (EOIR) to prioritize families and unaccompanied children in court processing using so-called “rocket dockets.”<sup>3</sup> The expedited nature of the procedures meant that many families were unable to retain counsel, learn about their legal rights, or comprehend the nature of the proceedings against them. Concurrently, the Administration resumed the practice of family detention, a practice that, for the most part, had ceased in 2009.<sup>4</sup> In many cases, these new family detention centers made it substantially difficult for families to obtain and regularly communicate with counsel, both because of facility policies and isolated location of these facilities.<sup>5</sup>

In January of 2016, Secretary Johnson announced a series of immigration raids targeting Central American families with final orders of removal, regardless of whether they received effective assistance of counsel.<sup>6</sup> These raids were precipitated by the rising number of additional migrants arriving to the United States in fall of 2016 and as a continuation of the Administration’s strategy to further discourage individuals fleeing violence to flee to the United States. Detaining at least 121 individuals, mostly families,<sup>7</sup> the immigration raids quickly triggered

outrage from NGOs, politicians, and community members.<sup>8</sup>

Instead of raids, the Administration has a valuable—and so far underused—executive tool to provide relief to these Central American families: Temporary Protected Status or TPS.<sup>9</sup> TPS is a form temporary immigration relief that provides employment authorization and protection from deportation for individuals who cannot be safely returned to their home countries. TPS does not provide a path to lawful permanent resident status, citizenship, or most benefits associated with permanent status.<sup>10</sup> Currently, Guinea, Haiti, Liberia, Nepal, Nicaragua, Sierra Leone, Somali, Sudan, South Sudan, Syria, and Yemen have been designated or re-designated for TPS.<sup>11</sup> El Salvador and Honduras have TPS but only for individuals who entered before 2001 and 1999, respectively.<sup>12</sup> The Secretary of U.S. Department of Homeland Security (DHS) has the legal authority to designate a country for TPS when that country experiences natural or man-made conditions that would threaten the return of that country’s nationals.<sup>13</sup> In the case of the Northern Triangle countries, those conditions are easily met. And while the Administration has creatively employed deferred action to provide relief for millions of undocumented immigrants,<sup>14</sup> it has not heavily relied on TPS when fully exercising its executive authority. While TPS is not a panacea for the Central American humanitarian crisis, it represents a sorely needed down payment for additional executive action to comprehensively address the crisis.

Notably, the statutory foundation for TPS strongly indicates that it is even stronger legally than other forms of executive action as TPS is based in explicit congressional authorization, instead of the Executive’s historical use of prosecutorial discretion. TPS, as an exercise of executive authority, also provides significant latitude to the Secretary because Congress itself exempted TPS designations from most legal challenges.<sup>15</sup>

Moreover, the statute provides the Secretary substantial discretion in determining when the requisite conditions exist in these countries.<sup>16</sup> Thus, the largest obstacle preventing the expansion of TPS to the Northern Triangle countries is as not legal, but political.

Based on Pew Research Center (Pew) and official DHS data, this report estimates that expansion of

TPS for the Northern Triangle countries would make approximately 1.2 million (1,226,044) individuals eligible for TPS, though only 62% or 757,442 would successfully obtain TPS. Of these individuals, 258,555 (34%) would be from El Salvador, 294,462 (39%) would be from Guatemala, and 204,423 (27%) would be from Honduras. For the report’s complete methodology, see Part V.A. Methodology.

COUNTRY	CURRENT UNDOCUMENTED POPULATION	CURRENT TPS HOLDERS	CURRENT DACA HOLDERS	ELIGIBLE FOR TPS UNDER EXPANSION	OBTAIN TPS UNDER EXPANSION	TOTAL FUTURE TPS HOLDERS
EL SALVADOR	675,000	204,000	25,215	445,785	258,555	462,555
GUATEMALA	525,000	0	17,306	507,694	294,463	294,463
HONDURAS	350,000	61,000	16,435	272,565	204,424	265,424
<b>TOTAL</b>	<b>1,550,000</b>	<b>265,000</b>	<b>58,956</b>	<b>1,226,044</b>	<b>757,442</b>	<b>1,022,442</b>

**Notes:** The above chart represents the findings of this report. *Current Undocumented Population* refers to the existing undocumented population. *Current TPS Holders* refers to the number of individuals who currently hold TPS. *Current DACA Holders* refers to individuals who currently hold Deferred Action for Childhood Arrivals (DACA). *Eligible for TPS Under Expansion* refers to individuals who would be potentially eligible under a future TPS expansion. *Obtain TPS Under Expansion* refers to individuals who would successfully obtain TPS under a future expansion. *Total Future TPS Holders* refers to the total future TPS population, e.g. both current and future TPS holders.

### III. TEMPORARY PROTECTED STATUS BACKGROUND

Established by Congress through the Immigration Act of 1990,<sup>17</sup> Temporary Protected Status is a temporary, renewable, and statutorily authorized immigration status that provides employment authorization and protection from deportation for immigrants from countries experiencing temporary environmental, armed conflict, or extraordinary conditions.<sup>18</sup> Federal law specifically directs that the Secretary “shall not remove” an immigrant with a valid grant of TPS.<sup>19</sup> Similarly, federal law<sup>20</sup> authorizes the Secretary to issue employment authorization for TPS recipients.<sup>21</sup> TPS does not provide a path to lawful permanent

resident status, citizenship, or any other permanent immigration status.<sup>22</sup>

Federal law authorizes the Secretary<sup>23</sup> to designate a foreign country for TPS in three scenarios:<sup>24</sup>

1. The Secretary finds that there is “an ongoing armed conflict” and, as a result of that conflict, deporting immigrants to that country would “pose a serious threat to their personal safety;”<sup>25</sup>
2. The Secretary determines that there is an “earthquake, flood, drought, epidemic, or other environmental disaster” that leads to a substantial, but temporary, disruption; the foreign country is unable to adequately handle

the return of their nationals; and the foreign country officially requests TPS;<sup>26</sup> or

3. The Secretary finds that there are “extraordinary and temporary conditions” in the foreign country that prevents immigrants from returning to the foreign country “in safety.”<sup>27</sup>

Notably, all three grounds provide substantial discretion to the Secretary to determine when the requisite conditions exist and whether they would prevent immigrants from returning safely. Designation lasts for a minimum of six months and a maximum of 18 months.<sup>28</sup> The Secretary must review the conditions in the foreign state and determine whether the conditions continue to exist at least 60 days before the end of an initial designation or re-designation.<sup>29</sup> If the Secretary concludes the conditions still exist, then she may designate TPS for an additional six to 18 months. Notably, there is no specific provision that limits the re-designation of TPS and, if the Secretary continues to find the conditions still exist, may re-designate a country indefinitely.

In terms of eligibility for TPS, the Secretary has the authority to set two critical time periods: (a) the date on which an individual must have been “continuously physically present” in the United States;<sup>30</sup> and (b) the length of time an individual must have “continuously resided” in the United States.<sup>31</sup> The “continuous physically present” date usually constitutes the designation date or a date shortly before and therefore requires that individuals be physically present within the United States at the time designation is made.<sup>32</sup> The “continuously resided” requirement usually requires individuals to remain in the country (absent minor exceptions) after designation occurs.<sup>33</sup>

## IV. FACTUAL GROUNDS FOR TPS EXPANSION

As previously noted, the Secretary has substantial latitude in designating and re-designating countries for TPS. Where the Secretary previously

designated a country for TPS, he may re-designate the country on those original grounds and update both the “continuously physically present” and “continuously resided” dates to the date of the most recent designation. For example, the Secretary designated El Salvador on March 9, 2001 with a continuous presence date of March 9, 2001 and a continuously residing date of February 13, 2001.<sup>34</sup> The Secretary has regularly extended the designation since then, arguing that returning Salvadoran nationals would risk their personal safety.<sup>35</sup>

Yet, Salvadorans who entered the country after February 13, 2001 are ineligible for TPS and subject to deportation as the Secretary has not updated the continuous physical presence and continuous resided dates.<sup>36</sup> The Secretary has the legal authority to re-designate El Salvador on the same grounds as the regular extension of *original* designation. Alternatively, the Secretary could re-designate a country based on a new, unrelated ground. For example, as noted below, the Secretary could re-designate El Salvador based on the rampant gang-related violence that recently precipitated a substantial humanitarian crisis.

In light of the above and existing TPS designations for some of the Northern Triangle countries, the Secretary has the authority to undertake the following designations and re-designations:

- Re-designation of El Salvador based on the 2001 earthquakes and subsequent disasters;
- Re-designation of El Salvador based on gang-related violence;
- Designation of Guatemala based on various natural disasters;
- Designation of Guatemala based on gang-related violence;
- Re-designation of Honduras based on Hurricane Mitch and subsequent disasters; and
- Re-designation of Honduras based on gang-related violence.

Designations based on various forms of violence could either fall under the “extraordinary and temporary conditions” or “armed conflict”

provisions of the TPS statute. The Northern Triangle countries experienced a significant influx of firearms, with some studies estimating that up to two million AK-47s entered the country as a result of cold war between the United States and Russia.<sup>37</sup> The United States also provided a large amount of weaponry to El Salvador and Honduras in the 1980s and beginning of the 1990s to support our nation's various foreign policy goals.<sup>38</sup> As a result of these and other factors, there are approximately 2.8 million firearms circulating through the Northern Triangle countries, the vast majority of them illegal and unregistered.<sup>39</sup> This high number of illegal firearms is one of the primary factors behind the surging homicide rates in all three Northern Triangle countries, including the murder of many returned immigrants.<sup>40</sup>

Elizabeth Kennedy, a social scientist at San Diego State University, conducted a systematic search of local news articles from El Salvador, Guatemala, and Honduras and contacted over 200 immigration attorneys in the United States to identify cases of individuals who were deported and subsequently murdered.<sup>41</sup> Consequently, between January 2014 and September of 2015, she found that at least 83 nationals deported to El Salvador, Honduras, and Guatemala were reported to have been subsequently murdered, with 45 murders in El Salvador, 35 in Honduras, and three in Guatemala.<sup>42</sup> Disturbingly, the overwhelming majority of murders occurred within one year of deportation, some within 24 hours.<sup>43</sup> Furthermore, while the study, to be published by the American Immigration Council, identified murders that occurred as far back as 2004, the vast majority of these cases occurred in the past two years, indicating a recently escalating murder rate for deported immigrants in these three countries.<sup>44</sup>

## A. EL SALVADOR

The Secretary has the legal authority to designate El Salvador for TPS based on: (a) the 2001 earthquake and subsequent environmental disasters; or (b) violence between criminal gangs and the government.

Under 8 USC § 1245a(b)(B), the Secretary has the legal authority to re-designate El Salvador for TPS on the grounds of the 2001 earthquakes and subsequent disasters. In 2001, the Bush Administration designated El Salvador for TPS as a result of multiple earthquakes.<sup>45</sup> Subsequent Administrations regularly extended TPS for El Salvador, with the latest extension issued January 7, 2015.<sup>46</sup> Most recently, DHS premised extension of TPS on the argument that Salvadorans present in the country during 2001 can still not safely return to El Salvador.<sup>47</sup> Specifically, DHS argued that there “continues to be a substantial, but temporary, disruption of living conditions in El Salvador resulting from a series of earthquakes in 2001, and El Salvador remains unable, temporarily, to handle adequately the return of its nationals.”<sup>48</sup> DHS also cited subsequent environmental disasters, including tropical storms, earthquakes, and flooding.<sup>49</sup> Finally, DHS also referenced infrastructure problems related to these disasters, including lack of potable water, dearth of housing, food insecurity, and unemployment.<sup>50</sup>

DHS could re-designate TPS for El Salvador citing these same grounds and update the continuous physical presence and continuous residence dates to the present day. By failing to do so, DHS undercuts its own argument that it is not safe to return Salvadoran nationals to their country. After all, by extending TPS for those Salvadorans who resided in the United States in 2001 but *not* for those who entered afterwards, the Secretary is implicitly arguing that it is “safe” for one group of Salvadorans to return to their country but not another—based solely on their date of entry into the United States.

Under 8 USC § 1254a(b)(A) and (C), the Secretary also has the legal authority to designate El Salvador for TPS on the grounds of current gang- and state-related violence under the “temporary extraordinary conditions” or “armed conflict” provisions. Violence in El Salvador has been steadily climbing since a truce between the nation's two most prominent gangs ended in

2014.<sup>51</sup> Consequently, in 2015, El Salvador's murder rate skyrocketed to approximately 104 homicides for every 100,000 people, representing a 70 percent increase from the prior year and the highest homicide rate since the country's civil war in 1992.<sup>52</sup> Concurrently, state-sponsored violence, mostly in the force of extrajudicial killings, also contributes to the violence and chaos.<sup>53</sup>

There are at least 30,000 gang members in El Salvador, with some estimates placing that number at twice that amount.<sup>54</sup> The number of gang members rival the nation's police force and is divided among two rival gangs: Mara Salvatrucha and the 18<sup>th</sup> Street gang.<sup>55</sup> In addition to the conflict between the two gangs, both gangs are essentially at war with the nation's police force. This rampant violence has not only driven refugees to the United States and neighboring countries, but also made it incredibly dangerous for individuals deported back to El Salvador. Since January of 2014, at least 45 individuals who were deported back to El Salvador were reported murdered days or months after their return.<sup>56</sup> Consequently, while El Salvador's civil war ended in 1992, a new, informal armed conflict continues to rage in its place.

## B. GUATEMALA

The Secretary has the legal authority to designate El Salvador for TPS based on: (a) various environmental disasters; or (b) violence between criminal gangs and the government.

Under 8 USC § 1245a(b)(B), the Secretary has the legal authority to re-designate El Salvador for TPS on the grounds of various environmental disasters. Since 2010, Guatemala experienced a series of serious natural disasters, including volcanoes and tropical storms. In May of 2010, the Pacaya Volcano erupted in Guatemala, forcing 1,600 to evacuate from nearby Guatemala City.<sup>57</sup> Two days later, tropical storm Agatha battered the country, damaging homes, infrastructure, crops, water supplies and compromising health and food security.<sup>58</sup> The storm killed at least 174 people, injured 154, and affected close to 400,000

Guatemalans.<sup>59</sup> Moreover, 112,000 people evacuated and 20,000 Guatemalans were displaced from their homes.<sup>60</sup> The storm caused nearly one billion in damage and led to collateral disasters such as flooding and sinkholes.<sup>61</sup> Finally, the storm destroyed thousands of hectares of agricultural land in virtually every province.<sup>62</sup> Predictably these disasters decapitalized households and increased vulnerability to future disasters, meaning Guatemalans will be less able to cope with future disasters.<sup>63</sup> The 2010 natural disasters affected nearly 4% of the entire population of Guatemala and cost the equivalent of 25% of the Guatemala's annual budget.<sup>64</sup> Indeed, even U.S. lawmakers recognized the extent of these environmental disasters and sent a letter to DHS requesting TPS designation for Guatemala,<sup>65</sup> mirroring the Guatemalan government's previous request for TPS.<sup>66</sup>

Under the provisions of 8 USC § 1254a(b)(A) and (C), the Secretary also has the legal authority to designate Guatemala for TPS on the grounds of current gang-related violence under the "temporary extraordinary conditions" or "armed conflict" provisions. Beginning in 1960 and ending in 1996, Guatemala experienced a brutal civil war that left over 200,000 individuals dead.<sup>67</sup> While officially over, the civil war effectively evolved into a new type of armed conflict, with many of the forces in the civil war, including police officers, death squads, and counter-insurgency forces, evolving into criminal organizations, including gangs.<sup>68</sup> Consequently, even the State Department admits that Guatemala suffers from violent crime as a result of "endemic poverty, an abundance of weapons, a legacy of societal violence, and weak law enforcement and judicial systems" and rates Guatemala's crime rate as "critical."<sup>69</sup> Moreover, Guatemala's homicide rate represents one of the highest in the entirety of the Western Hemisphere, reporting approximately 96 homicides per week or 36 murders for every 100,000 people.<sup>70</sup> The State Department admits that "organized crime groups and gangs pose a real, dangerous threat to local, regional, and international interests."<sup>71</sup> There are

also reports of deported individuals being killed upon their return to Guatemala.<sup>72</sup>

Disturbingly, violent crime is now even higher in the country than it was during the country's civil war.<sup>73</sup> The violence in Guatemala towards women is particularly worrisome, with "nearly 10 out of every 100,000 women are killed."<sup>74</sup> Indeed, the killings of women in Guatemala have reached epidemic levels, with the country ranking third in terms of the murder of women worldwide.<sup>75</sup> While Guatemala's civil war is over, many of the same strategies employed during the war, such as "rape, torture and mutilation," remain in use.<sup>76</sup>

### C. HONDURAS

The Secretary has the legal authority to designate El Honduras for TPS based on: (a) Hurricane Mitch and subsequent environmental disasters; or (b) violence between criminal gangs and the government.

Under 8 USC § 1245a(b)(B), the Secretary has the legal authority to re-designate Honduras for TPS based on the lasting impacts of Hurricane Mitch and subsequent disasters. In 1999, the Clinton Administration designated Honduras for TPS as a result of Hurricane Mitch.<sup>77</sup> Since then, subsequent Administration regularly extended TPS for Honduras, with the latest extension issued October 16, 2014.<sup>78</sup> Most recently, the Secretary premised extension of TPS on the argument that Hondurans present in the country during 1999 can still not safely return. Specifically, the Secretary argues that the "effects of Hurricane Mitch are still being felt in Honduras, causing continued disruption of living conditions."<sup>79</sup> The Secretary also cites subsequent environmental disasters, including droughts, agricultural failures, flooding, and tropical storms.<sup>80</sup> Finally, the Secretary also references infrastructure problems related to these disasters, including lack of potable water, compromised transportation infrastructure, dearth of housing, food insecurity, and unemployment.<sup>81</sup>

Like El Salvador, the Secretary could legally re-designate TPS for Honduras by citing these same grounds and update the continuous physical presence and continuous residence dates to the present day. Failure to do so indicates that the Secretary is implicitly arguing that it is "safe" for one group of Hondurans to return to their country but not another—based solely on their date of entry into the United States.

Secretary Johnson also has the legal authority to designate Honduras for TPS on the grounds of current gang-related violence under the "temporary extraordinary conditions" or "armed conflict" provisions of 8 USC § 1254a(b)(A) and (C). Like El Salvador and Guatemala, the State Department rates crime in Honduras as "critical" and notes that crime and violence is "still high by international standards."<sup>82</sup> While Honduras' murder rate has slightly fallen in the last few years, it remains at 61 per 100,000 as of 2014.<sup>83</sup> Like El Salvador, MS-13 and the 18<sup>th</sup> Street gang represent the two most powerful criminal enterprises in the country.<sup>84</sup> Honduras is second only to El Salvador in the number of Honduran nationals murdered after their deportation, with 35 murders since 2014.<sup>85</sup> Furthermore, as a result of neighboring countries' successful crackdown on drugs, much of the trafficking has moved to Honduras along with the accompanying violence.<sup>86</sup> Violence against women in Honduras is similarly problematic, with 96 percent of domestic abuse complaints never obtaining resolution.<sup>87</sup> In response to soaring crime rates, the Honduran government stepped up enforcement against gangs, which in turn led to murders, torture, and illegal detention performed by the military, further exacerbating the violence.<sup>88</sup>

## V. ESTIMATES OF EXPANSION OF TEMPORARY PROTECTED STATUS

Designation is only the first step in the TPS process. Individuals must meet a series of requirements to be eligible for TPS. Even if an undocumented immigrant resides in the United States as of the date of designation for TPS, she

may not ultimately obtain TPS. Those potentially eligible individuals may not be able to apply because of financial obstacles, unawareness of potential for relief, or fear of immigration authorities. Even those who submit an application for TPS may not receive relief as a result of criminal background issues, inadmissibility grounds, failure to provide sufficient evidence, and other factors.<sup>89</sup>

Individuals must satisfy several requirements. As previously stated, under presence requirements, an immigrant must have: (1) “been continuously physically present” since the most recent designation of their home country;<sup>90</sup> and (2) “continuously resided” since “such date as the [Secretary] may designate.”<sup>91</sup> Under criminal background requirements, the immigrant must not (1) have been convicted of any felony or two or more misdemeanors;<sup>92</sup> (2) be subject to the asylum bars;<sup>93</sup> or (3) be inadmissible, subject to certain exceptions.<sup>94</sup>

Under the procedural requirements, an individual must: (a) register for TPS during a registration period that lasts at least 180 days;<sup>95</sup> and (b) pay a registration fee not to exceed \$50 and a separate fee for an employment authorization, likely DHS’s current fee, \$380.<sup>96</sup> Individuals may register after the expiration of the registration period if they can demonstrate “good cause.”<sup>97</sup>

Accordingly, the total number of undocumented immigrants from a foreign country currently residing in the United States is not the measure of the likely population to actually *receive* TPS, but instead represents a ceiling. Consequently, this report projects that designation of TPS to El Salvador, Guatemala, and Honduras would make approximately 1.2 million (1,226,044) additional individuals potentially eligible for TPS, although only 757,422 (62%) would ultimately obtain this status. These 757,422 new TPS holders would represent 6.7% of the total undocumented population, estimated to be 11.3 million in 2014.<sup>98</sup>

## A. METHODOLOGY

This report employs the Pew Research Center’s 2000 and 2012 estimates for total undocumented population in the United States for El Salvador, Guatemala, and Honduras.<sup>99</sup> For each of these estimates, Pew provides an over and under margin of error.<sup>100</sup> This report uses Pew’s median estimate when referencing undocumented population. Importantly, Pew classifies immigrants with TPS and DACA as “unauthorized” immigrants and therefore part of the broader undocumented population.<sup>101</sup> Therefore, to avoid double counting and accurately estimate the population potentially eligible for TPS, this report excludes individuals with TPS and DACA from the number of individuals potentially eligible for TPS.

This report assumes that the undocumented population from El Salvador, Guatemala, and Honduras has not radically increased or decreased since 2012, the year of the most recent estimates provided by Pew. This assumption aligns with Pew’s findings that the undocumented population has remained relatively stable in the last decade.<sup>102</sup>

This report examines the total number of undocumented immigrants at the time of previous TPS designations, specifically from El Salvador and Honduras. In many cases, however, designation occurred the year after (El Salvador, 2001) or the year before (Honduras, 1999) Pew’s original 2000 estimates. For calculations related to these estimates, this report assumes that the undocumented population did not substantially fluctuate the year before or after Pew’s estimates for the year 2000.

This report also excludes DACA recipients as part of the potentially eligible population under a TPS expansion on the grounds that they already possess employment authorization and are unlikely to apply for TPS.<sup>103</sup> Accordingly, to identify this excluded population, this report uses the latest data released by USCIS regarding the number of approved and renewed requests for DACA.<sup>104</sup> As the data provided by USCIS is unclear

as to how many DACA recipients have failed to successfully renew, this report assumes that all initial DACA recipients have timely and successfully renewed.

To estimate how many individuals would successfully receive TPS, this report looks closely at historical application rates for a country, when available, and for similarly situated countries, when not. Consequently, for El Salvador and Honduras—both countries that previously received TPS—this report examines the total eligible population for TPS at the time of the country’s previous designation and number of individuals who successfully obtained TPS. To determine how many individuals successfully applied for TPS, this report uses the peak number of individuals with TPS identified by various Federal Register notices issued by DHS. Through these notices, DHS estimated the number of individuals from each country who ultimately obtained TPS. For Guatemala, which has never received TPS, this report assigns an application rate similar to El Salvador as a result of the similarities in population, country size, cultural similarities and regional proximity.

Where calculations yielded decimals, this report rounds.

## B. EL SALVADOR

- There are approximately **204,000** Salvadorans with TPS.
- Re-designation would make approximately **445,785** additional Salvadorans eligible for TPS.
- Approximately **258,555** (58%) of those 445,785 would ultimately obtain TPS.
- Re-designation would thus lead to a total of **462,555** Salvadorans with TPS.

In 2001, the Bush Administration designated El Salvador for TPS as a result of multiple earthquakes.<sup>105</sup> Pew estimates that in 2000 there were approximately 500,000 undocumented Salvadorans.<sup>106</sup> By 2003, a peak of 290,000, or 58% of the total undocumented Salvadoran population obtained TPS.<sup>107</sup> As of the date of the

latest extension, January 7, 2015, there are approximately 204,000 Salvadorans with TPS status.<sup>108</sup>

There are approximately 675,000 undocumented Salvadorans in the United States,<sup>109</sup> 204,000 of who currently hold TPS<sup>110</sup> and 25,215 who hold DACA.<sup>111</sup> The remaining 445,785 undocumented, non-TPS, non-DACA Salvadorans represent the total eligible population for TPS. Employing the historical application rate for Salvadorans applying for TPS (58%), if DHS re-designated El Salvador for TPS and updated the continuous residence and continuous physical presence date to the present date, approximately 258,555 (58% of 445,785) additional Salvadorans would obtain TPS. Combined with the existing Salvadoran TPS population, a total of 462,555 Salvadorans would ultimately hold TPS.

## C. GUATEMALA

- DHS has never designated Guatemala for TPS.
- Designation would make **504,694** Guatemalans eligible for TPS.
- Approximately **294,463** (58%) of those 504,694 would ultimately obtain TPS.
- Designation would thus lead to a total of **292,463** Guatemalans with TPS.

Currently, DHS has not designated Guatemala for TPS.<sup>112</sup> Pew estimates that as of 2012, there were approximately 525,000 undocumented Guatemalans,<sup>113</sup> 17,306 who currently hold DACA.<sup>114</sup> These 507,694 undocumented, non-DACA Guatemalans represent the total potential eligible population for TPS. While there is no historical application rate for Guatemalans obtaining TPS, the similar size of the 2012 undocumented, non-DACA Guatemalan population (507,694) compared to the 2000 undocumented Salvadoran population in 2000 (500,000)<sup>115</sup> and cultural similarities<sup>116</sup> between these two countries indicates that Guatemala would, roughly, have a similar application rate in the TPS context.<sup>117</sup> If DHS designated Guatemala for TPS with a continuous residence and continuous physical presence date to the present

date, approximately 292,463 (58% of 507,694) total Guatemalans would successfully apply for and obtain TPS.

#### D. HONDURAS

- There are currently **61,000** Hondurans with TPS
- Re-designation would make **272,565** additional Hondurans eligible for TPS.
- Approximately **204,424** (75%) of those 272,565 would ultimately obtain TPS.
- Re-designation would thus lead to a total of **265,424** Hondurans with TPS.

In 1999, the Clinton Administration designated Honduras for TPS as a result of Hurricane Mitch.<sup>118</sup> The Pew Research Center estimates that in 2000 there were approximately 140,000 undocumented Hondurans.<sup>119</sup> By 2003, a peak of 105,000, or 75% of the total undocumented Honduran population obtained TPS.<sup>120</sup> As of the date of the latest extension, October 16, 2014, there are approximately 61,000 Hondurans with TPS status.<sup>121</sup>

There are approximately 350,000 undocumented Hondurans in the United States,<sup>122</sup> 61,000 of who currently hold TPS<sup>123</sup> and 16,435 who hold DACA.<sup>124</sup> The remaining 272,565 non-TPS, non-DACA Hondurans represent the total eligible population for TPS. If DHS re-designated Honduras for TPS and updated the continuous residence and continuous physical presence date to the present date, approximately 204,424 (75% of 272,565) additional Hondurans would successfully apply for and obtain TPS, for a total of 265,424 total Hondurans with TPS.

## VI. LEGALITY OF BROADLY EMPLOYING TEMPORARY PROTECTED STATUS

As *Texas v. United States* and the continued injunction of Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) demonstrate, any large scale exercise of executive authority in the immigration context

invites legal and constitutional challenges.<sup>125</sup> Broad use of TPS provides protection from deportation to an estimated 6.7% of the total undocumented population and, therefore, necessitates a firm legal and constitutional foundation. This legal and constitutional foundation not only exists, but is even stronger than in the executive action/DAPA context.

Federal law inherently allows for the broad use of 8 USC § 1254a(b)(1)(a) because the statute does not define what constitutes an “ongoing armed conflict” and provides the Secretary the authority to determine *when* such conditions exists.<sup>126</sup> Importantly, the law does not limit when the Secretary may find the existence of an “ongoing armed conflict,” for example by listing specific metrics—such as a minimum amount of deaths or injuries that must occur over a specific period of time.<sup>127</sup> Indeed, the only duties of the Secretary in determining whether an ongoing armed conflict exists are to include a “statement of findings” in the Federal Register notice required for designation.<sup>128</sup> In the unlikely event the issue of whether a designation was proper is raised in litigation, courts would likely defer to DHS under *Chevron* and its progeny,<sup>129</sup> which provides substantial latitude for agencies interpreting ambiguous terms. Indeed, one of the original authors of TPS has argued for broader use. As Congressman A. Bruce Morrison, former chairman of the House Immigration Subcommittee and House author of the Immigration Act of 1990, which created TPS, stated, “The southwest border children crisis should have been addressed with a more creative use of TPS.”<sup>130</sup>

Moreover, unlike DAPA, TPS contains an additional barrier to legal challenge. Congress *explicitly* prohibited legal challenges regarding the designation or lack of designation of countries under TPS.<sup>131</sup> The TPS law provides that: “There is no judicial review of any determination of the [Secretary] with respect to the designation, or termination or extension of a designation, of a foreign state under this subsection.”<sup>132</sup> Practically, this prohibition means that if a state like Texas

brought a legal challenge on the substantive issue of designation, courts would dismiss the challenge—even if designation was done on factually sparse grounds. A state like Texas, however, could likely file a legal challenge against other, procedural portions of the TPS statute, for example, if the Secretary failed to publish a notice of designation for a country in the Federal Register, as required by the statute.<sup>133</sup> Such a challenge, however, could easily be preempted by having the Secretary follow all procedural requirements. Moreover, because designation does not require notice and comment under the Administrative Procedures Act (APA), DHS could easily and efficiently address any procedural requirements without substantial delay.

A plaintiff could still—assuming she satisfies standing and other procedural requirements—bring forth a *constitutional* challenge against the Administration, likely arguing that the Administration’s broad use of TPS violates the Constitution’s requirement that the President “take Care and the Laws be faithfully executed.”<sup>134</sup> Indeed, this very argument was made by Texas in the *Texas v. United States* litigation<sup>135</sup> and in the forerunner litigation challenging DACA in *Crane v. Napolitano*.<sup>136</sup> Such constitutional challenges in the immigration context are issues of first impression and it is uncertain how the Supreme Court would ultimately rule. There is, however, a strong constitutional argument that the use of TPS is an *affirmative* exercise of statutory authority granted by Congress, meaning that the Administration is satisfying the “take Care” clause by implementing the very laws that Congress directed the Executive to implement.<sup>137</sup>

Moreover, a plaintiff, similar to the claim brought against DAPA,<sup>138</sup> could potentially bring suit under *Heckler v. Cheney*—which potentially opens the door to challenge lack of agency action under certain circumstances—arguing that, by

employing TPS broadly, DHS “consciously and expressly adopted a general policy” that represents an “abdication of its statutory responsibilities.”<sup>139</sup> However, in the TPS context this argument would not be likely to prevail because the robust use of TPS would represent the Executive’s implementation of statutory responsibilities given to it by Congress, e.g. the designation of TPS for countries where return of a national is not feasible or dangerous. Moreover, challengers would be hard-pressed to demonstrate how providing relief from deportation for 6.7% of the undocumented population would constitute the abdication of DHS’s regulatory and enforcement responsibilities.

## VII. CONCLUSION

Children and families are not migrating from Central America, they are fleeing. Our nation’s refugee and immigration policy must reflect this undeniable reality. The January 2016 immigration raids represent a flawed and counterproductive exercise of the Administration’s executive authority. And yet, as this report demonstrates, the Administration has the opportunity and legal authority to boldly exercise its executive authority and employ Temporary Protected Status to provide relief to over 750,000 undocumented Central Americans.

As the expansion of Deferred Action for Childhood Arrivals and Deferred Action for Parents of Americans and Lawful Permanent Residents remain in limbo, the Administration’s almost exclusive focus on enforcement risks further tarnishing the Administration’s checkered legacy on immigration and refugee issues. Consequently, Temporary Protected Status for El Salvador, Guatemala, and Honduras represents an opportunity for President Obama, in the twilight of his presidency, to potentially shed the label of “deporter-in-chief.”

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<sup>1</sup> *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection*, UNHCR, March 12, 2014, available at

[http://www.unhcrwashington.org/sites/default/files/1\\_UAC\\_Children%20on%20the%20Run\\_Full%20Report.pdf](http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf).

<sup>2</sup> *A Guide to Children Arriving at the Border: Laws, Policies and Responses*, AMERICAN IMMIGRATION COUNCIL, June 2015, available at

[http://immigrationpolicy.org/sites/default/files/docs/a\\_guide\\_to\\_children\\_arriving\\_at\\_the\\_border\\_and\\_the\\_laws\\_and\\_policies\\_governing\\_our\\_response.pdf](http://immigrationpolicy.org/sites/default/files/docs/a_guide_to_children_arriving_at_the_border_and_the_laws_and_policies_governing_our_response.pdf) (“In fact, many women and children are turning themselves over to Border Patrol agents upon arrival and are not seeking to evade apprehension”).

<sup>3</sup> Memorandum from Brian M. O’Leary, Chief Immigration Judge, Executive Office for Immigration Review, U.S. Department of Justice, to All Immigration Judges on Docketing Practices Relating to Unaccompanied Children Cases and Adults with Children Released on Alternatives to Detention Cases in Light of the New Priorities, March 24, 2015, available at <http://www.justice.gov/eoir/pages/attachments/2015/03/26/docketing-practices-related-to-uacs-and-awcatd-march2015.pdf>.

<sup>4</sup> Olga Byrne and Eleanor Acer, *Family Detention: Still Happening, Still Damaging*, HUMAN RIGHTS FIRST, Oct. 2015, available at <http://www.humanrightsfirst.org/sites/default/files/HRF-family-detention-still-happening.pdf>;

Michelle Brané and Brittney Nystrom, *Locking up Family Values Again* 5, LUTHERAN IMMIGRATION & REFUGEE SERVICE AND THE WOMEN’S REFUGEE COMMISSION, Oct. 2014, available at [http://lirs.org/wp-content/uploads/2014/11/LIRSWRC\\_LockingUpFamilyValuesAgain\\_Report\\_141114.pdf](http://lirs.org/wp-content/uploads/2014/11/LIRSWRC_LockingUpFamilyValuesAgain_Report_141114.pdf).

<sup>5</sup> Letter from Benjamin Johnson et. al, Executive Director, American Immigration Council, to Leon Rodriguez et. al, Director, U.S. Citizenship and Immigration Services (Dec. 24, 2015), available at <http://www.aila.org/advocacy/media/aila-correspondence/2015/letter-uscis-ice-due-process>.

<sup>6</sup> Press Release, U.S. Department of Homeland Security, Statement by Secretary Jeh C. Johnson on Southwest Border Security (Jan. 4, 2016), available at <http://www.dhs.gov/news/2016/01/04/statement-secretary-jeh-c-johnson-southwest-border-security>; As a result of these and other policies, families received final orders of removal even though many were eligible for various forms of humanitarian relief. Indeed, a report by the U.N. High Commissioner for Refugees found that 82 percent of women and girls interviewed by the federal government in 2015 from El Salvador, Guatemala, Honduras, and Mexico demonstrated a significant likelihood of eligibility for a form of humanitarian relief. *Women on the Run: First-Hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico* 2, UNHCR, Oct. 28, 2015, available at <http://www.unhcr.org/5630f24c6.html>. These findings mirror reports by U.S. Citizenship and Immigration Services, which demonstrate that 88 percent of mothers and children in family detention facilities based in Pennsylvania and Texas were likely eligible for a form of humanitarian relief. USCIS Asylum Division, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY, FAMILY FACILITIES REASONABLE FEAR (DACA), (April 27, 2015), available at <http://www.uscis.gov/sites/default/files/USCIS/Outreach/PED-CF-RF-family-facilities-FY2015Q2.pdf>.

<sup>7</sup> *Id.*

<sup>8</sup> Julia Preston, *A Rush of Central Americans Complicates Obama’s Immigration Task*, N.Y. TIMES, Jan. 8, 2016, <http://www.nytimes.com/2016/01/09/us/a-rush-of-central-americans-compounds-obamas-immigration-task.html> (“The raids provoked a nationwide outcry from Latino and immigrant groups whose support the White House has long courted. The groups say women and children should be welcomed as refugees and not expelled to face the brutal street gangs they fled. And immigrant advocates — and all three Democratic presidential contenders — have said the administration should close the family detention centers entirely.”); Immediately after the first set of raids occurred, a federal judge temporarily stopped the deportation proceedings of a dozen individuals based on ineffective legal counsel. Press Release, American Immigration Council, CARA Family Detention Pro Bono Project Succeeds in Winning Stays of Deportation of 12, Jan. 6, 2016, available at <http://www.americanimmigrationcouncil.org/newsroom/release/cara-family-detention-pro-bono-project-have-stayed-deportation-12-mothers-and-child>.

<sup>9</sup> 8 U.S.C. § 1254a (West 2016).

<sup>10</sup> Madeline Messick and Claire Bergeron, *Temporary Protected Status in the United States: A Grant of Humanitarian Relief that Is Less than Permanent*, MIGRATION POLICY INSTITUTE, July 2, 2014, available at

<http://www.migrationpolicy.org/article/temporary-protected-status-united-states-grant-humanitarian-relief-less-permanent> [hereinafter “MPI TPS Report”].

<sup>11</sup> See U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY, Temporary Protected Status (November 13, 2015), available at <http://www.uscis.gov/humanitarian/temporary-protected-status>.

<sup>12</sup> *Id.*

<sup>13</sup> 8 U.S.C. § 1254a(b) (West 2016).

<sup>14</sup> See Memorandum, Secretary, U.S. Department of Homeland Security Janet Napolitano, on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012), available at <http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>; Memorandum from Jeh C. Johnson, Secretary, U.S. Department of Homeland Security, on Exercising Prosecutorial Discretion with Respect to Individual Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents to Leon Rodriguez et. al (Nov. 20, 2014), available at [http://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_deferred\\_action.pdf](http://www.dhs.gov/sites/default/files/publications/14_1120_memo_deferred_action.pdf); See MPI TPS Report, *supra* note 10.

<sup>15</sup> 8 U.S.C. § 1254a(b)(5) (West 2016) (“There is no judicial review of any determination of the Attorney General with respect to the designation, or termination or extension of a designation, of a foreign state under this subsection.”).

<sup>16</sup> See Part III. Temporary Protected Status Background.

<sup>17</sup> Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 5029, available at <https://www.gpo.gov/fdsys/pkg/STATUTE-104/pdf/STATUTE-104-Pg4978.pdf>; See MPI TPS Report, *supra* note 10.

<sup>18</sup> 8 U.S.C. § 1254a (West 2016).

<sup>19</sup> *Id.* § 1254a(a)(1)(A).

<sup>20</sup> *Id.* at § 1254a(a)(1), (2).

<sup>21</sup> 8 C.F.R. § 274a.12(a)(12) (West 2016).

<sup>22</sup> See MPI TPS Report, *supra* note 10.

<sup>23</sup> The statute delegates authority to the “Attorney General.” As of March 1, 2003, references in this statute to the Attorney General describing duties and responsibilities were transferred to DHS. Accordingly, references to the Attorney General “shall be deemed to refer to the Secretary” of Homeland Security. See 6 U.S.C. § 557 (West 2016) (codifying HSA, tit. XV, § 1517).

<sup>24</sup> 8 U.S.C. § 1254a(b)(1) (West 2016).

<sup>25</sup> *Id.* at § 1254a(b)(1)(A).

<sup>26</sup> *Id.* at § 1254a(b)(1)(B).

<sup>27</sup> *Id.* at § 1254a(b)(1)(C).

<sup>28</sup> *Id.* at § 1254a(b)(2).

<sup>29</sup> *Id.* at § 1254a(b)(3).

<sup>30</sup> *Id.* at § 1254a(c)(1)(i).

<sup>31</sup> *Id.* at § 1254a(c)(1)(ii).

<sup>32</sup> Designation of Haiti for Temporary Protected Status, 75 Fed. Reg. 3,476 (Jan. 21, 2010), available at <https://www.federalregister.gov/articles/2010/01/21/2010-1169/designation-of-haiti-for-temporary-protected-status> (“Under this designation, Haitian nationals (and aliens having no nationality who last habitually resided in Haiti) who have continuously resided in the United States since January 12, 2010, and who remain in continual physical presence in the United States from the effective date of the notice, may apply for TPS within the 180-day registration period that begins on the date of publication of the notice.”).

<sup>33</sup> *Id.*

<sup>34</sup> Designation of El Salvador Under Temporary Protected Status Program, 66 Fed. Reg. 14,214 (March 9, 2001), available at <https://www.federalregister.gov/articles/2001/03/09/01-5818/designation-of-el-salvador-under-temporary-protected-status-program> (“Certain nationals of El Salvador (or aliens having no nationality who last habitually resided in El Salvador) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions, if they meet: (1) At least one of the late initial filing criteria; and, (2) all TPS eligibility

criteria (including continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001”).

<sup>35</sup> See *Federal Register*, <http://www.federalregister.gov> (Searching for “Temporary Protected Status” “Guatemala” yields no designations for Guatemala).

<sup>36</sup> Designation of El Salvador Under Temporary Protected Status Program, 66 Fed. Reg. 14,214 (March 9, 2001), available at <https://www.federalregister.gov/articles/2001/03/09/01-5818/designation-of-el-salvador-under-temporary-protected-status-program>.

<sup>37</sup> Ironically, in many cases, the United States’ historical and current foreign policy in large part contributed to the violent and dangerous conditions in the Northern Triangle. The United States essentially contributed to the rise of criminal gangs in the Northern Triangle by deporting hundreds of thousands of gang members to these countries. Ana Arana, *How the Street Gangs Took Central America*, FOREIGN AFFAIRS, May/June 2005, available at <https://www.foreignaffairs.com/articles/central-america-caribbean/2005-05-01/how-street-gangs-took-central-america>.

<sup>38</sup> *Small Arms Survey 2012: Moving Targets* 18, Small Arms Survey (2012), available at <http://www.smallarmssurvey.org/publications/by-type/yearbook/small-arms-survey-2012.html>.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 17.

<sup>41</sup> Telephone and Email Interview with Elizabeth Kennedy, Social Scientist, San Diego State University (Jan. 11, 2016); Sibylla Brodzinsky and Ed Pilkington, *U.S. government deporting Central American migrants to their deaths*, THE GUARDIAN, Oct. 12, 2015, <http://www.theguardian.com/us-news/2015/oct/12/obama-immigration-deportations-central-america>.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Designation of El Salvador Under Temporary Protected Status Program, 66 Fed. Reg. 14,214 (March 9, 2001), available at <https://www.federalregister.gov/articles/2001/03/09/01-5818/designation-of-el-salvador-under-temporary-protected-status-program>; Congress originally granted TPS to El Salvador through the Immigration Act of 1990 in light of civil war but that designation subsequently lapsed. See Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 5036, available at <https://www.gpo.gov/fdsys/pkg/STATUTE-104/pdf/STATUTE-104-Pg4978.pdf>; See MPI TPS Report, *supra* note 10. (“El Salvador was the first country to receive TPS and the only country to have been granted TPS by Congress, which initially designated El Salvador for TPS through the Immigration Act of 1990; that designation expired in 1992.”).

<sup>46</sup> Extension of Designation of El Salvador Under Temporary Protected Status Program, 80 Fed. Reg. 893 (Jan. 7, 2015), available at <https://www.federalregister.gov/articles/2015/01/07/2015-00031/extension-of-the-designation-of-el-salvador-for-temporary-protected-status>.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Joshua Partlow, *Why El Salvador became the hemisphere’s murder capital*, THE WASHINGTON POST, Jan. 5, 2016, <https://www.washingtonpost.com/news/worldviews/wp/2016/01/05/why-el-salvador-became-the-hemispheres-murder-capital/>.

<sup>52</sup> Jerry Markon and Joshua Partlow, *Unaccompanied children crossing southern border in greater numbers again, raising fears of new migrant crisis*, THE WASHINGTON POST, Dec. 16, 2015, <https://www.washingtonpost.com/news/federal-eye/wp/2015/12/16/unaccompanied-children-crossing-southern-border-in-greater-numbers-again-raising-fears-of-new-migrant-crisis/> (“But the violence that was a key factor in driving people to leave has surged again. El Salvador’s homicide rate, for example, is now at its highest since the country’s civil war ended in 1992, after a truce between two prominent gangs broke down last year.”); Alan Gomez, *El Salvador: World’s new murder capital*, USA TODAY, Jan. 8, 2016, <http://www.usatoday.com/story/news/world/2016/01/07/el-salvador-homicide-rate-honduras-guatemala-illegal-immigration-to-united-states/78358042/>.

- <sup>53</sup> Elijah Stevens, *Death Squads in El Salvador Kill, Face No Investigation: Report*, InSight Crime, Nov. 10, 2015, available at <http://www.insightcrime.org/news-briefs/death-squads-in-el-salvador-kill-face-no-investigation-report>.
- <sup>54</sup> *Breaking Good*, THE ECONOMIST, Feb. 8, 2013, available at <http://www.economist.com/news/americas/21595933-two-year-old-ceasefire-has-saved-thousands-lives-can-it-survive-bumpy-presidential>.
- <sup>55</sup> Joshua Partlow, *El Salvador is on pace to become the hemisphere's most deadly nation*, THE WASHINGTON POST, May 17, 2015, [https://www.washingtonpost.com/world/the-americas/el-salvador-is-on-pace-to-become-the-hemispheres-most-deadly-nation/2015/05/17/fc52e4b6-f74b-11e4-a47c-e56f4db884ed\\_story.html](https://www.washingtonpost.com/world/the-americas/el-salvador-is-on-pace-to-become-the-hemispheres-most-deadly-nation/2015/05/17/fc52e4b6-f74b-11e4-a47c-e56f4db884ed_story.html).
- <sup>56</sup> Telephone and Email Interview with Elizabeth Kennedy, Social Scientist, San Diego State University (Jan. 11, 2016); Sibylla Brodzinsky and Ed Pilkington, *U.S. government deporting Central American migrants to their deaths*, THE GUARDIAN, Oct. 12, 2015, <http://www.theguardian.com/us-news/2015/oct/12/obama-immigration-deportations-central-america>.
- <sup>57</sup> *Hundreds flee Guatemala volcano*, BBC News, May 29, 2010, <http://www.bbc.co.uk/news/10186112>.
- <sup>58</sup> *Emergency appeal final report Guatemala: Tropical Storm Agatha*, International Federation of Red Cross and Red Crescent Societies, May 2011, available [http://reliefweb.int/sites/reliefweb.int/files/resources/Full\\_Report\\_3835.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_3835.pdf).
- <sup>59</sup> *Id.* at 3.
- <sup>60</sup> *Storm leaves 18 dead in Central America: official*, Hindustantimes (May 30, 2010), <http://www.hindustantimes.com/world/storm-leaves-18-dead-in-central-america-official/story-iYbFPzLftHrzWkFjPGEZN.html>.
- <sup>61</sup> John L. Beven II, NATIONAL HURRICANE CENTER, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, Tropical Cyclone Report 2, [http://www.nhc.noaa.gov/data/tcr/EP012010\\_Agatha.pdf](http://www.nhc.noaa.gov/data/tcr/EP012010_Agatha.pdf); Ker Than, *Sinkhole in Guatemala: Giant Could Get Even Bigger*, National Geographic News, June 3, 2010, <http://news.nationalgeographic.com/news/2010/06/100601-sinkhole-in-guatemala-2010-world-science/>.
- <sup>62</sup> Aridane Hernandez, *Guatemala: The Perfect Storm*, UNICEF, United Nations, 2010, available at [http://www.unicef.org/socialpolicy/files/The\\_perfect\\_storm\\_UNICEF\\_Guatemala.pdf](http://www.unicef.org/socialpolicy/files/The_perfect_storm_UNICEF_Guatemala.pdf).
- <sup>63</sup> *Id.*
- <sup>64</sup> *Id.* at 13.
- <sup>65</sup> *Ros-Lehtinen and 9 other lawmakers request TPS status for Guatemalans*, FOX NEWS LATINO, June 18, 2015 <http://latino.foxnews.com/latino/politics/2015/06/18/ros-lehtinen-and-other-lawmakers-request-tps-status-for-guatemalans/>.
- <sup>66</sup> See MPI TPS Report, *supra* note 10 (“Guatemala has requested TPS on numerous occasions, with the most recent request in 2012 following an earthquake.”).
- <sup>67</sup> Ana Arana, *The New Battle for Central America* 88-101, Foreign Affairs, Vol. 80, No. 6 (Nov./Dec. 2001), available at <https://www.foreignaffairs.com/articles/central-america-caribbean/2001-11-01/new-battle-central-america>.
- <sup>68</sup> David Grann, *A Murder Foretold*, THE NEW YORKER, April 4, 2011, available at <http://www.newyorker.com/magazine/2011/04/04/a-murder-foretold>.
- <sup>69</sup> OVERSEAS SECURITY ADVISORY COUNCIL, UNITED STATES DEPARTMENT OF STATE, Guatemala 2015 Crime and Safety Report, 2015, <https://www.osac.gov/Pages/ContentReportDetails.aspx?cid=17785>.
- <sup>70</sup> *Id.*; Alan Gomez, *El Salvador: World's new murder capital*, USA TODAY, Jan. 8, 2016, <http://www.usatoday.com/story/news/world/2016/01/07/el-salvador-homicide-rate-honduras-guatemala-illegal-immigration-to-united-states/78358042/>.
- <sup>71</sup> OVERSEAS SECURITY ADVISORY COUNCIL, UNITED STATES DEPARTMENT OF STATE, Guatemala 2015 Crime and Safety Report, 2015, <https://www.osac.gov/Pages/ContentReportDetails.aspx?cid=17785>.
- <sup>72</sup> Telephone and Email Interview with Elizabeth Kennedy, Social Scientist, San Diego State University (Jan. 11, 2016); Sibylla Brodzinsky and Ed Pilkington, *U.S. government deporting Central American migrants to their deaths*, THE GUARDIAN, Oct. 12, 2015, <http://www.theguardian.com/us-news/2015/oct/12/obama-immigration-deportations-central-america>.
- <sup>73</sup> Julie Guinan, *Nearly 20 years after peace pact, Guatemala's women relive violence*, CNN, April 7, 2015, <http://www.cnn.com/2015/04/02/world/iyw-guatemala-gender-violence/>.
- <sup>74</sup> *Id.*

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<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Designation of Honduras Under Temporary Protected Status Program, 64 Fed. Reg. 524 (Jan. 5, 1999), available at <https://www.federalregister.gov/articles/1999/01/05/98-34849/designation-of-honduras-under-temporary-protected-status>.

<sup>78</sup> Extension of the Designation of Honduras for Temporary Protected Status, 79 Fed. Reg. 62,170 (Oct. 16, 2014), available at <https://www.federalregister.gov/articles/2014/10/16/2014-24559/extension-of-the-designation-of-honduras-for-temporary-protected-status>.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> OVERSEAS SECURITY ADVISORY COUNCIL, UNITED STATES DEPARTMENT OF STATE, Honduras 2015 Crime and Safety Report, 2015, <https://www.osac.gov/pages/ContentReportDetails.aspx?cid=17494>.

<sup>83</sup> Alan Gomez, *El Salvador: World's new murder capital*, USA TODAY, Jan. 8, 2016, <http://www.usatoday.com/story/news/world/2016/01/07/el-salvador-homicide-rate-honduras-guatemala-illegal-immigration-to-united-states/78358042/>.

<sup>84</sup> *Id.*

<sup>85</sup> Telephone and Email Interview with Elizabeth Kennedy, Social Scientist, San Diego State University (Jan. 11, 2016); Sibylla Brodzinsky and Ed Pilkington, *U.S. government deporting Central American migrants to their deaths*, THE GUARDIAN, Oct. 12, 2015, <http://www.theguardian.com/us-news/2015/oct/12/obama-immigration-deportations-central-america>.

<sup>86</sup> Ashley Miller and Harold Trinkunas, *Why is Honduras so violent?* BROOKINGS, Oct. 1, 2015, <http://www.brookings.edu/blogs/order-from-chaos/posts/2015/10/01-justice-human-rights-challenges-honduras-miller-trinkunas>.

<sup>87</sup> *Inside the 'pure hell' of Honduras's rising tide of domestic violence*, PBS Newshour, Oct. 24, 2015 <http://www.pbs.org/newshour/bb/inside-pure-hell-violence-women-honduras/>.

<sup>88</sup> *Police militarization in Honduras has helped cut violence, but soldiers are being accused of murder and torture*, BUSINESS INSIDER, July 9, 2015, <http://www.businessinsider.com/r-military-helps-cut-honduras-murder-rate-but-abuses-spike-2015-7>.

<sup>89</sup> Michelle Chen, *Are Haitians Forgoing Temporary Protected Status?*, COMMONDREAMS, April 3, 2010 <http://www.commondreams.org/views/2010/04/03/are-haitians-forgoing-temporary-protected-status> (“The legal red tape and paperwork may be daunting. Many survivors could still be reeling from the trauma of losing or being separated from loved ones. Language barriers limit people's access to attorneys' services, and a past criminal record could disqualify an applicant. And there is a very real and well-founded fear of what might happen if you make yourself or your family known to federal authorities—even if only to be recognized for the immigration relief you're entitled to.”).

<sup>90</sup> 8 U.S.C. § 1254a(c)(A)(i) (West 2016).

<sup>91</sup> *Id.* at § 1254a(c)(1)(A)(ii).

<sup>92</sup> *Id.* at § 1254a(c)(2)(B)(i).

<sup>93</sup> *Id.* at § 1182(b)(2)(A).

<sup>94</sup> *Id.* at § 1254a(c)(1)(iii).

<sup>95</sup> *Id.* at § 1254a(c)(1)(iv).

<sup>96</sup> See U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY, Instructions for I-821, Instructions for Application for Temporary Protected Status (Feb. 20, 2014), available at <https://www.uscis.gov/sites/default/files/files/form/i-821instr.pdf> (“If you are seeking employment authorization, you must submit a \$380 filing fee and the Form I-765 . . .”).

<sup>97</sup> 8 U.S.C. § 1254a(b)(3)(C) (West 2016).

<sup>98</sup> Jens Manuel Krogstad and Jeffrey S. Passel, *5 facts about illegal immigration in the U.S.*, PEW RESEARCH CENTER, Nov. 19, 2015, <http://www.pewresearch.org/fact-tank/2015/11/19/5-facts-about-illegal-immigration-in-the-u-s/>.

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<sup>99</sup> *Unauthorized Immigrant Population Trends for States, Birth Countries and Regions*, PEW RESEARCH CENTER, Dec. 11 2014, <http://www.pewhispanic.org/2014/12/11/unauthorized-trends/> (Select “Region/Country of Birth” and then desired country from dropdown menu. Move the slider to obtain estimates for different years).

<sup>100</sup> *See id.*

<sup>101</sup> Jeffrey S. Passel, *As Growth Stalls, Unauthorized Immigrant Population Becomes More Settled* 1, PEW RESEARCH CENTER, Sept. 3, 2014, [http://www.pewresearch.org/fact-tank/2015/11/19/5-facts-about-illegal-immigration-in-the-u-s/http://www.pewhispanic.org/files/2014/09/2014-09-03\\_Unauthorized-Final.pdf](http://www.pewresearch.org/fact-tank/2015/11/19/5-facts-about-illegal-immigration-in-the-u-s/http://www.pewhispanic.org/files/2014/09/2014-09-03_Unauthorized-Final.pdf) (“The vast majority of unauthorized immigrants entered the country without valid documents or arrived with valid visas but stayed past their visa expiration date or otherwise violated the terms of their admission. Some who entered as unauthorized immigrants or violated terms of admission have obtained work authorization by applying for adjustment to legal permanent status, obtaining Temporary Protected Status (TPS) or receiving Deferred Action for Childhood Arrivals (DACA) status.”).

<sup>102</sup> *Id.* at 4.

<sup>103</sup> The report makes this assumption because individuals may be more likely to apply for DACA instead of TPS because of the longer period of deferred action (two years, likely soon to be three depending on the outcome of pending litigation) versus TPS (18 months maximum).

<sup>104</sup> U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY, NUMBER OF I-821D, CONSIDERATION OF DEFERRED ACTION FOR CHILDHOOD ARRIVALS BY FISCAL YEAR, QUARTER, INTAKE, BIOMETRICS AND CASE STATUS: 2012-2015, 1 (Sept. 30, 2015), available at <http://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-deferred-action-childhood-arrivals>.

<sup>105</sup> Designation of El Salvador Under Temporary Protected Status Program, 66 Fed. Reg. 14,214 (March 9, 2001), available at <https://www.federalregister.gov/articles/2001/03/09/01-5818/designation-of-el-salvador-under-temporary-protected-status-program>.

<sup>106</sup> *Unauthorized Immigrant Population Trends for States, Birth Countries and Regions*, PEW RESEARCH CENTER, Dec. 11 2014, <http://www.pewhispanic.org/2014/12/11/unauthorized-trends/> (Select “Region/Country of Birth” and then “El Salvador” from dropdown menu). Pew estimates that the Salvadoran population was 500,000 in 2000 with an over/under margin of 95,000. Consequently, anywhere from 405,000 to 595,000 undocumented Salvadorans resided in the United States in 2001, meaning that the 290,000 Salvadorans who obtained TPS represent anywhere from 71% (population of 405,000) to 49% (population 595,000) of the total eligible population. This report uses Pew’s median estimate of 500,000 undocumented Salvadorans, assumes that approximately 58% of undocumented Salvadorans obtained TPS, and applies this percentage to the 2012 undocumented Salvadoran population to estimate how many Salvadorans would likely benefit from re-designation of TPS. *See id.*

<sup>107</sup> Extension of El Salvador for Temporary Protected Status Program, 68 Fed. Reg. 42,072 (July 16, 2003), available at <https://www.federalregister.gov/articles/2003/07/16/03-17872/extension-of-the-designation-of-el-salvador-under-temporary-protected-status-program-automatic> (“There are approximately 290,000 nationals of El Salvador (or aliens having no nationality who last habitually resided in El Salvador) who have been granted TPS and who are eligible for re-registration.”).

<sup>108</sup> Extension of El Salvador for Temporary Protected Status Program, 80 Fed. Reg. 895 (Jan. 7, 2015), available at <https://www.federalregister.gov/articles/2015/01/07/2015-00031/extension-of-the-designation-of-el-salvador-for-temporary-protected-status> (“There are approximately 204,000 current El Salvador TPS beneficiaries who are expected to file for re-registration and may be eligible to retain their TPS under the extension.”).

<sup>109</sup> *Unauthorized Immigrant Population Trends for States, Birth Countries and Regions*, PEW RESEARCH CENTER, Dec. 11 2014, <http://www.pewhispanic.org/2014/12/11/unauthorized-trends/> (Select “Region/Country of Birth” and then “El Salvador” from dropdown menu). Pew’s 2012 estimate of the undocumented Salvadoran population has an over/under margin of 25,000. Consequently, anywhere from 650,000 to 700,000 undocumented Salvadorans resided in the United States in 2012. This report uses Pew’s median estimate of 675,000 undocumented Salvadorans.

<sup>110</sup> Extension of El Salvador for Temporary Protected Status Program, 80 Fed. Reg. 895 (Jan. 7 2015), available at <https://www.federalregister.gov/articles/2015/01/07/2015-00031/extension-of-the-designation-of-el-salvador-for-temporary-protected-status>.

<sup>111</sup> U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY, NUMBER OF I-821D, CONSIDERATION OF DEFERRED ACTION FOR CHILDHOOD ARRIVALS BY FISCAL YEAR, QUARTER, INTAKE, BIOMETRICS AND CASE STATUS: 2012-2015, 1 (Sept. 30, 2015), available at <http://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-deferred-action-childhood-arrivals>.

<sup>112</sup> See *Federal Register*, <http://www.federalregister.gov> (Searching for “Temporary Protected Status” “Guatemala” yields no designations for Guatemala).

<sup>113</sup> *Unauthorized Immigrant Population Trends for States, Birth Countries and Regions*, PEW RESEARCH CENTER, Dec. 11 2014, <http://www.pewhispanic.org/2014/12/11/unauthorized-trends/> (Select “Region/Country of Birth” and then “Guatemala” from dropdown menu). Pew estimates that the Honduran population was 525,000 in 2012 with an over/under margin of 25,000. Consequently, anywhere from 500,000 to 550,000 undocumented Guatemalans resided in the United States in 2012.).

<sup>114</sup> U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY, NUMBER OF I-821D, CONSIDERATION OF DEFERRED ACTION FOR CHILDHOOD ARRIVALS BY FISCAL YEAR, QUARTER, INTAKE, BIOMETRICS AND CASE STATUS: 2012-2015, 1 (Sept. 30, 2015), available at <http://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-deferred-action-childhood-arrivals>.

<sup>115</sup> *Unauthorized Immigrant Population Trends for States, Birth Countries and Regions*, PEW RESEARCH CENTER, Dec. 11 2014, <http://www.pewhispanic.org/2014/12/11/unauthorized-trends/> (Select “Region/Country of Birth” and then “El Salvador” from dropdown menu). Pew estimates that the Salvadoran population was 500,000 in 2000 with an over/under margin of 95,000. See *id.*

<sup>116</sup> For example, both countries are primarily Spanish-speaking, Central American countries that are closely rated on the United Nations Education Index (El Salvador at 115 and Guatemala at 125). See UNITED NATIONS DEVELOPMENT PROGRAMME, UNITED NATIONS, Human Development Reports – Education Index, Nov. 15, 2013, <http://hdr.undp.org/en/content/education-index>.

<sup>117</sup> As a result of greater awareness and familiarity with TPS in the Latin American community in the last fifteen years, 58% may represent an undercount of the total number of Guatemalans who would successfully obtain TPS.

<sup>118</sup> Designation of Honduras Under Temporary Protected Status Program, 64 Fed. Reg. 524 (Jan. 5, 1999), available at <https://www.federalregister.gov/articles/1999/01/05/98-34849/designation-of-honduras-under-temporary-protected-status>.

<sup>119</sup> *Unauthorized Immigrant Population Trends for States, Birth Countries and Regions*, PEW RESEARCH CENTER, Dec. 11 2014, <http://www.pewhispanic.org/2014/12/11/unauthorized-trends/> (Select “Region/Country of Birth” and then “Honduras” from dropdown menu). Pew estimates that the Honduran population was 140,000 in 2000 with an over/under margin of 50,000. Consequently, anywhere from 90,000 to 190,000 undocumented Hondurans resided in the United States in 2000, meaning that the 105,000 Hondurans who obtained TPS represent anywhere from 117% (population of 90,000) to 55% (population 190,000) of the total eligible population. This report uses Pew’s median estimate of 140,000 undocumented Hondurans, assumes that approximately 75% of undocumented Hondurans obtained TPS, and applies this percentage to the 2012 undocumented Honduran population to estimate how many Hondurans would likely benefit from re-designation of TPS. See *id.*

<sup>120</sup> Extension of the Designation of Honduras Under the Temporary Protected Status Program, 66 Fed. Reg. 23,271 (May 8, 2001), <https://www.federalregister.gov/articles/2001/05/08/01-11536/extension-of-the-designation-of-honduras-under-the-temporary-protected-status-program> (“I estimate that there are approximately 105,000 nationals of Honduras (or aliens who have no nationality and who last habitually resided in Honduras) who have been granted TPS and who are eligible for re-registration.”).

<sup>121</sup> Extension of the Designation of Honduras Under the Temporary Protected Status Program, 79 Fed. Reg. 62,173 (Oct. 16, 2014), <https://www.federalregister.gov/articles/2014/10/16/2014-24559/extension-of-the-designation-of-honduras-for-temporary-protected-status> (“There are approximately 61,000 current Honduras TPS beneficiaries who are expected to file for re-registration and may be eligible to retain their TPS under the extension.”).

<sup>122</sup> *Unauthorized Immigrant Population Trends for States, Birth Countries and Regions*, PEW RESEARCH CENTER, Dec. 11 2014, <http://www.pewhispanic.org/2014/12/11/unauthorized-trends/> (Select “Region/Country of Birth” and then “Honduras” from dropdown menu). Pew’s 2012 estimate of the undocumented Honduran population has an over/under margin of 25,000. Consequently, anywhere from 325,000 to 375,000 undocumented Hondurans

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resided in the United States in 2102. This report uses Pew’s median estimate of 350,000 undocumented Hondurans.

<sup>123</sup> Extension of the Designation of Honduras Under the Temporary Protected Status Program, 79 Fed. Reg. 62,173 (Oct. 16, 2014), <https://www.federalregister.gov/articles/2014/10/16/2014-24559/extension-of-the-designation-of-honduras-for-temporary-protected-status> (“There are approximately 61,000 current Honduras TPS beneficiaries who are expected to file for re-registration and may be eligible to retain their TPS under the extension.”).

<sup>124</sup> U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY, NUMBER OF I-821D, CONSIDERATION OF DEFERRED ACTION FOR CHILDHOOD ARRIVALS BY FISCAL YEAR, QUARTER, INTAKE, BIOMETRICS AND CASE STATUS: 2012-2015, 1 (Sept. 30, 2015), available at <http://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-deferred-action-childhood-arrivals>.

<sup>125</sup> *Texas v. United States*, 787 F.3d 733 (5th Cir. 2015).

<sup>126</sup> 8 U.S.C. § 1254a(b)(1)(A) (West 2016).

<sup>127</sup> *See id.* at § 1254a.

<sup>128</sup> *See id.* at § 1254a(b)(1). In the context of previous designations, these statement of findings usually include an overview of the conditions that led to TPS designation, citing governmental and non-governmental sources.

<sup>129</sup> *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

<sup>130</sup> *Twenty Five Years Later: Reflecting on the Immigration Act of 1990*, Migration Policy Institute, Dec. 8, 2015, <http://www.migrationpolicy.org/events/twenty-five-years-later-reflecting-immigration-act-1990> (remarks at 2:02:00 in video).

<sup>131</sup> 8 U.S.C. § 1254a(b)(5)(A) (West 2016).

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* at § 1254a(b)(2)(A).

<sup>134</sup> U.S. CONST. Art. II, § 3.

<sup>135</sup> *Texas v. United States*, 787 F.3d 733 (5th Cir. 2015).

<sup>136</sup> *Crane v. Napolitano*, 920 F. Supp. 2d 724, 731 (N.D. Tex. 2013) *aff’d sub nom. Crane v. Johnson*, 783 F.3d 244 (5th Cir. 2015).

<sup>137</sup> The very existence of the TPS statute indicates that Congress intended for the executive to exercise that statutory authority, unlike the DACA/DAPA context, where the administration is employing its inherent prosecutorial discretion authority.

<sup>138</sup> *Texas v. United States*, 787 F.3d at 771.

<sup>139</sup> *Heckler v. Cheney*, 470 U.S. 821, 832-33 n.4 (1985) (“Nor do we have a situation where it could justifiably be found that the agency has ‘consciously and expressly adopted a general policy’ that is so extreme as to amount to an abdication of its statutory responsibilities.”) (citing *Adams v. Richardson*, 480 F.2d 1159 (1973) (en banc)).