



What You Need to Know:

Temporary Protected Status and Deferred Enforced Departure

Updated March 13, 2019

- 1. What is TPS?** [Temporary Protected Status](#) or TPS, was codified by Congress in [§ 244](#) of the Immigration and Nationality Act in 1990. It provides temporary immigration status to nationals of specifically designated countries that are experiencing an ongoing armed conflict, an environmental disaster, or extraordinary and temporary conditions. Beneficiaries of TPS receive a stay of deportation and work authorization. The Secretary of Homeland Security, in consultation with other agencies, has discretion to designate which countries merit a TPS designation. The United States Citizenship and Immigration Services (USCIS), a hub of the Department of Homeland Security (DHS) is responsible for processing TPS applications. Many current TPS holders have lived in the United States for decades.
- 2. What is DED?** [Deferred Enforced Departure](#) or DED is a discretionary decision made by the President to protect a class of individuals from removal. According to the [Congressional Research Service](#), DED has been used five times since 1990 and most recently for Liberia. DED decisions are country specific and typically in response to war, civil unrest, or natural disasters. Many current DED holders have lived in the United States for decades.
- 3. What is the difference between TPS and DED?** While there is a similarity between Temporary Protected Status of TPS and DED, the source and type of relief are different. TPS originates from a statute enacted by Congress and is used to protect people temporarily from removal. TPS beneficiaries receive a stay of deportation and work authorization. By contrast, DED does not have a statutory basis but is derived from the presidential powers in the U.S. Constitution. DED beneficiaries receive a tenuous status akin to prosecutorial discretion and work authorization.
- 4. What changes have been made to TPS in the current administration?** Under the current administration, the former or current Secretary of Homeland Security has announced multiple decisions to end the TPS designations of **Sudan** ([announced](#) Oct. 2017), **Haiti** ([announced](#) Nov. 2017), **Nicaragua** ([announced](#) Nov. 2017) and **El Salvador** ([announced](#) Jan. 2018), **Nepal** ([announced](#) May 2018), and **Honduras** ([announced](#) July 2018). Secretary Nielsen explained that the country conditions which originally called for the designation no longer exist. TPS designations have been extended for the following countries: Syria ([expiring](#) Sep. 30, 2019), Yemen ([expiring](#) March 3, 2020), Somalia ([expiring](#) March 17, 2020), and South Sudan ([expiring](#) Nov. 3, 2020).
- 5. What changes have been made to DED in the current administration?** Currently, **Liberians** are the only nationals with DED. They were initially designated for DED by

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President George W. Bush in 2007, and subsequently received extensions for varying time periods. On March 27, 2018, President Donald J. Trump announced a “wind-down” period for DED holders beginning on March 31, 2018. Work authorization for DED holders will run for 12-months, starting on March 31, 2018. The President announced **March 31, 2019 as the effective date for termination of DED for all Liberian beneficiaries.**

- 6. Have courts challenged the end of TPS and DED?** Several courts have challenged the termination of TPS for certain countries. Below is a non-exhaustive summary of these cases.

TPS:

Ramos v. Nielsen – The plaintiffs argued TPS terminations for Sudan, Nicaragua, Haiti and El Salvador violate the Administrative Procedure Act (APA) and the Fifth Amendment of the U.S. Constitution. On Oct. 3, 2018, the U.S. District Court for the Northern District of California blocked DHS from implementing and enforcing decisions to terminate TPS for Sudan, Nicaragua, Haiti, and El Salvador, pending further resolution of the case. DHS published a notice in the Federal Register on [March 1, 2019](#) **extending TPS for Salvadorans, Haitians, Nicaraguans, and Sudanese through January 2, 2020** as a result of the litigation. The government has appealed the *Ramos* injunction to the Ninth Circuit Court of Appeals.

NAACP v. DHS – On January 24, 2018, the National Association for the Advancement of Colored People (NAACP) sued DHS in U.S. District Court for the District of Maryland. The Plaintiffs allege that the November 2017 decision to rescind TPS for Haiti was intended to discriminate against Haitian immigrants because of race and/or ethnicity in violation of the Due Process Clause of the Fifth Amendment. On April 17, 2018, Plaintiffs filed an amended complaint; Haitian Women for Haitian Refugees and the Haitian Lawyers’ Association joined in the suit. Plaintiffs seek to enjoin the defendants from implementing the TPS termination decision.

Casa De Maryland, Inc. v. Trump – On March 23, 2018, TPS recipients from El Salvador and CASA de Maryland, filed suit in the U.S. District Court for the District of Maryland challenging the DHS’ termination of TPS for El Salvador, alleging violation of the Equal Protection and Due Process Clauses, the INA and the APA. The Plaintiffs argue that the decision to end TPS for El Salvador was based not on a change in conditions in El Salvador, but rather on discrimination toward Latino immigrants on the basis of race, ethnicity, and/or national origin based on President Trump’s comments. The administration moved to dismiss this suit. [On November 28, 2018](#), the court dismissed the Plaintiffs’ INA claim but held that the remaining claims may go forward.

Bhattari et al v. Nielsen – On February 10, 2019, six TPS holders and two U.S. citizen children of TPS recipients filed a class action lawsuit against DHS in the U.S. District Court in the Northern District of California. Similar to *Ramos*, the Plaintiffs allege that the terminations of TPS for Honduras and Nepal were a sudden and unexplained departure from decades of

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consistent standards and practices in violation of the APA and the Fifth Amendment of the U.S. Constitution. The Plaintiffs also contend that the termination decisions violate the substantive due process rights of TPS holders' school-aged U.S. citizen children who are forced to make the "intolerable choice" of either departing the U.S. or living without their parents. The case seeks to vacate the TPS terminations for Honduras and Nepal and enjoin the Defendants from implementing these decisions. On March 12, 2019, the parties asked the Court to enter an order temporarily halting termination of TPS for people from those countries. Under the [stipulation](#) order signed by the judge on **March 12, 2019 TPS for Nepal and Honduras will remain in place for at least six months** after the appeal in *Ramos v. Nielsen*, is decided.

DED: [African Communities Together v. Trump](#) – On March 8, 2019, The Lawyers' Committee for Civil Rights Under Law and Lawyers for Civil Rights jointly filed a lawsuit, in the U.S. District Court for the District of Massachusetts, challenging President Donald Trump's termination of humanitarian protection and relief for immigrants from Liberia. The lawsuit was filed on behalf of African Communities Together (ACT), the UndocuBlack Network, and fifteen affected individuals, including Liberians raising U.S. citizen children. The Plaintiffs seek injunctive relief to prevent the Trump administration from implementing or enforcing the termination of the DED program for Liberians, and from taking any further action to terminate DED for Liberians in violation of the U.S. Constitution or other applicable laws.

7. **What role does Congress play?** On March 12, Representatives Lucille Roybal-Allard (CA-40), Nydia Velázquez (NY-07), and Yvette Clarke (NY-09) introduced H.R. 6, the [Dream and Promise Act](#), a bill that would cover DACA, TPS, and DED recipients. The proposed legislation would provide a pathway to lawful permanent residence (green card) to qualifying DACA, TPS, and DED holders. As of this writing, the bill text has not yet been released. Further, on March 1, 2019, fifty members of Congress from both the House and Senate sent a [letter](#) to the White House asking President Trump to reinstate DED for Liberia.
8. **What should current TPS and DED holders do now?** TPS and DED holders should stay informed about future announcements from the administration and the courts. Individuals should consult with an immigration attorney about what visa options they may be eligible for. Each person's situation and immigration history will vary. Some TPS and DED holders may be eligible for asylum. Others may be able to "adjust" their status to "lawful permanent resident" (obtain a green card) through a qualifying relationship with a U.S. citizen, like a spouse. Individuals should be aware of "notaries" and refuse advice from individuals who seek to take advantage them.
9. **Where can I find more resources?** More information can be found on the USCIS [TPS](#) and [DED](#) website pages as well as our [website](#). Additional information may also be found on the [Undocublack](#), [TPS Alliance](#) and [American Immigration Council](#) web pages.

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