

Partially Protected? Non-Asylum Protection in the United States and the European Union



JUNE 14, 2019

**Briefing of the
Commission on Security and Cooperation in Europe**

Washington: 2019

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ABOUT THE ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE

The Helsinki process, formally titled the Conference on Security and Cooperation in Europe, traces its origin to the signing of the Helsinki Final Act in Finland on August 1, 1975, by the leaders of 33 European countries, the United States and Canada. As of January 1, 1995, the Helsinki process was renamed the Organization for Security and Cooperation in Europe (OSCE). The membership of the OSCE has expanded to 56 participating States, reflecting the breakup of the Soviet Union, Czechoslovakia, and Yugoslavia.

The OSCE Secretariat is in Vienna, Austria, where weekly meetings of the participating States' permanent representatives are held. In addition, specialized seminars and meetings are convened in various locations. Periodic consultations are held among Senior Officials, Ministers and Heads of State or Government.

Although the OSCE continues to engage in standard setting in the fields of military security, economic and environmental cooperation, and human rights and humanitarian concerns, the Organization is primarily focused on initiatives designed to prevent, manage and resolve conflict within and among the participating States. The Organization deploys numerous missions and field activities located in Southeastern and Eastern Europe, the Caucasus, and Central Asia. The website of the OSCE is: <www.osce.org>.

ABOUT THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE

The Commission on Security and Cooperation in Europe, also known as the Helsinki Commission, is a U.S. Government agency created in 1976 to monitor and encourage compliance by the participating States with their OSCE commitments, with a particular emphasis on human rights.

The Commission consists of nine members from the United States Senate, nine members from the House of Representatives, and one member each from the Departments of State, Defense and Commerce. The positions of Chair and Co-Chair rotate between the Senate and House every two years, when a new Congress convenes. A professional staff assists the Commissioners in their work.

In fulfilling its mandate, the Commission gathers and disseminates relevant information to the U.S. Congress and the public by convening hearings, issuing reports that reflect the views of Members of the Commission and/or its staff, and providing details about the activities of the Helsinki process and developments in OSCE participating States.

The Commission also contributes to the formulation and execution of U.S. policy regarding the OSCE, including through Member and staff participation on U.S. Delegations to OSCE meetings. Members of the Commission have regular contact with parliamentarians, government officials, representatives of non-governmental organizations, and private individuals from participating States. The website of the Commission is: <www.csce.gov>.

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	Page
PARTICIPANTS	
Alex T. Johnson, Chief of Staff, Commission for Security and Cooperation in Europe	1
Nathaniel Hurd, Senior Policy Advisor, Commission on Security and Cooperation in Europe	2
Jill H. Wilson, Analyst in Immigration Policy, Congressional Research Service	3
Marleine Bastien, Executive Director, Family Action Network Movement	5
Sui Chung, Attorney at Law, Immigration Law and Litigation Group, and Chair, Immigration and Customs Enforcement Committee, American Immigration Lawyers Association ..	9
Catherine Woollard, Secretary General, European Council on Refugees and Exiles	11
APPENDIX	
Prepared statement of Jill H. Wilson	22
Prepared statement of Marleine Bastien	26
Prepared statement of Catherine Woollard	35

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June 14, 2019

**Commission on Security and Cooperation in Europe
Washington, DC**

The briefing was held at 2:00 p.m. in Room 2237, Rayburn House Office Building, Washington, DC, Nathaniel Hurd, Senior Policy Advisor, Commission on Security and Cooperation in Europe, presiding.

Panelists present: Alex T. Johnson, Chief of Staff, Commission for Security and Cooperation in Europe; Nathaniel Hurd, Senior Policy Advisor, Commission on Security and Cooperation in Europe; Jill H. Wilson, Analyst in Immigration Policy, Congressional Research Service; Marleine Bastien, Executive Director, Family Action Network Movement; Sui Chung, Attorney at Law, Immigration Law and Litigation Group, and Chair, Immigration and Customs Enforcement Committee, American Immigration Lawyers Association; and Catherine Woollard, Secretary General, European Council on Refugees and Exiles.

Mr. JOHNSON. Good afternoon, everyone. Welcome. Thank you so much for taking the time to join us for this hearing today. My name is Alex Johnson. I'm the chief of staff of the U.S. Helsinki Commission. I'm here on behalf of Chairman Alcee Hastings to welcome you and really extend his appreciation for your interest in these particular issues related to protected status throughout the OSCE region.

First, Chairman Hastings has a particular interest in this through his work in Florida over the years advancing, and supporting, and advocating for the many communities within the United States who have temporary protected status. Even at the beginning of this Congress, he introduced H. Con. Res. 5, which specific reference to Haitians in the United States who have temporary protected status. Through that resolution he has sought to work with a number of Members of Congress to explore both a pathway to citizenship as well as addressing other issues associated with the vulnerability of those communities.

Chairman Hastings sees this as a priority, particularly in the United States and in the OSCE region, because of the erosion of human rights and democratic institutions that we are seeing right now. It's particularly urgent as we look at our own domestic compli-

ance with commitments in the Organization for Security and Cooperation in Europe, and how we partner with countries who are also exploring issues related to granted protected status for vulnerable communities in their midst. In this sense, we will have a great and tremendous conversation, a chance to learn about how we are living up domestically to the commitments within the OSCE related to transient community, but also looking at how we can explore other activity in this threat throughout the remainder of this year, especially later in the Congress.

With that, I wanted to turn you over to the capable hands of Nathaniel Hurd, who is our resident expert working on issues related to freedom of religion, migration, and others. Give a warm welcome to also our panelists who are remoting in from various far locations to share with you their wisdom and their spirit on why these issues matter, and why we should care. Thank you so much.

With that, I will turn you over to Nathaniel's capable hands.

Mr. HURD. Thanks, Alex. As Alex mentioned, I'm a senior policy advisor at the U.S. Helsinki Commission.

Migration, immigration, and refugee movements are among the most contentious subjects in the United States and Europe among policymakers and publics. The Helsinki Commission's perch on Capitol Hill is an excellent place to explore the legal, policy, and human implications of one aspect—temporary protection for people who have left armed conflict or natural disaster, but do not qualify for asylum. For more than 43 years, this commission of lawmakers from both parties and both chambers has been a place for substantive discussion that puts the human person, especially the vulnerable, at the heart of the conversation.

Today's briefing on implementation of temporary protection laws and other measures on both sides of the Atlantic is part of that tradition. You can follow the briefing on our Twitter handle at @HelsinkiComm. You can also watch it live and submit questions for the panelists on our Facebook page, which is [Facebook.com/HelsinkiCommission](https://www.facebook.com/HelsinkiCommission).

Before I introduce our panelists, a few words on the format. One of our speakers joining us by video, Marleine Bastien, will have to sign off after about 30 or so minutes, so that she can return to the major summit on temporary protected status that she's organized in Miami, Florida. We're grateful that she's able to join us, even for a short while. After Ms. Bastien speaks, I'll ask her several questions. The rest of the panelists will then make their opening remarks, followed by my questions for them. I'll then invite you, our in-person audience and those of you that are watching on Facebook, to ask questions. I would note, for those of you in the room, that the full biographies of our panelists are in your packets. I'll be giving an abbreviated version of them.

Jill Wilson, to my right, is an analyst in immigration policy at the Congressional Research Service. She has worked in the field of immigration studies for 17 years. Ms. Wilson received a BA in sociology and anthropology from Wheaton College, and an MA in geography from The George Washington University.

Marleine Bastien, who you can see on your video screen, is a licensed clinical social worker and the founder and executive directive of the Miami, Florida-based Family Action Network Movement, or FANM. FANM has aided Haitian women, their families, and the community at large—including with an array of social services. FANM has also organized around a range of issues. Ms. Bastien has worked on many campaigns over the last 30

years and is the chair of the Florida Immigration Coalition and vice chair of the Haitian American Grassroots Coalition.

Sui Chung, to my immediate left, is an attorney with the Immigration Law and Litigation Group in Miami, Florida. She chairs the Immigration and Customs Enforcement Committee of the American Immigration Lawyers Association, or AILA, and is past president of AILA South Florida. Ms. Chung began her career at the Board of Immigration Appeals through the United States Department of Justice Attorney General Honors Program. She received a juris doctor from Georgetown University Law Center, and my favorite fun fact about her bio is that she received a Bachelor of Arts and Bachelor of Music from Oberlin College and Conservatory of Music.

And then finally, as you can see on your video screen, Catherine Woollard. Catherine Woollard is joining us from Brussels. She is secretary general of ECRE, the European Council on Refugees and Exiles. ECRE is an alliance of 102 organizations in 41 European countries working to defend the rights of displaced persons in Europe and in European external policies. ECRE is based in Brussels. Its work covers litigation, research, advocacy, and communications. Ms. Woollard earned a Bachelor of Arts in philosophy, politics, and economics at the University of Oxford.

Ms. Wilson, we'll begin with you.

Ms. WILSON. Thanks, Nathaniel, and good afternoon, everybody. As Nathaniel said, my name is Jill Wilson and I'm an immigration policy analyst at the Congressional Research Service at the Library of Congress. I'd like to thank the Helsinki Commission for convening this briefing, and for inviting me to participate.

As an analyst for CRS, I adhere to congressional guidelines on nonpartisanship and objectivity, and so I'll confine my remarks to the technical, professional, and non-advocative aspect of temporary protected status, or TPS. My remarks are intended to provide some context for our discussion today, including what TPS is, how it came about as part of U.S. immigration law, how it's been implemented, the recent terminations and lawsuits around those, and then recent congressional action on TPS.

So, first, what is TPS, and why did Congress create it? As a state party to the 1967 U.N. Protocol Relating to the Status of Refugees, the United States agrees to the principle of non-refoulement, which asserts that refugees should not be returned to countries where they would face serious threats to their life or freedom on account of a protected ground. Those grounds are race, religion, nationality, political opinion, membership in a particular social group. This is now considered a rule of customary international law.

Non-refoulement is embodied in several provisions of U.S. immigration law, including one that requires the government to withhold the removal of a foreign national to a country in which his or her life or freedom would be threatened on the basis of one or more of those protected grounds. But there are situations in which foreign nationals already present in the U.S. do not meet this strict definition for relief, but who may nevertheless be fleeing or reluctant to return to countries in which conditions threaten their safety. Historically, the United States provided ad hoc blanket relief in these types of situations through discretionary actions by the executive branch. Since 1962, of those forms of relief—which are called extended voluntary departure, or EVD, and deferred enforced departure, or DED—have been provided in the case of about 20 countries. Liberia is the only country currently covered by DED.

In the late 1980s, Congress began holding hearings on the need for a statutory basis for this kind of discretionary relief, something that would fill a gap in the law by providing safe haven for individuals whose home countries are experiencing generalized violence or disaster, and that would address concerns over the lack of clear standards for country designations that had been occurring under EVD. To address these concerns, Congress enacted TPS in 1990 as part of a broader immigration bill, the Immigration Act of 1990. The new TPS law specified the three circumstances under which the attorney general, now secretary of DHS, could designate a country for temporary protection in periods of 6, 12, or 18 months. And those were: One, armed conflict; two, natural disaster; or, three, other extraordinary circumstances that prevent the safe return of a country's nationals.

The law also included the procedures by which the secretary of DHS would make subsequent decisions to either extend or terminate a country's designation. The law also spelled out the benefits to individuals covered by TPS, most notably that they're protected from removal and are authorized to work. As part of the 1990s Immigration Act, Congress also designated El Salvador for an 18-month grant of TPS. Since then, 22 countries have been designated for TPS, some on more than one occasion. U.S. Government has extended TPS designations for some of these countries and has terminated it for others. Prior to the Trump administration, there were 15 terminations—nine under Democratic administrations and six under Republican ones.

Ten countries are currently covered by TPS, benefiting some 400,000 individuals in the United States. The Trump administration has announced terminations for six of these ten countries on the grounds that the conditions on which the original designations were based no longer exist. These terminations are currently on hold pending court action. The four countries whose designations have been extended by the Trump administration are Somalia, South Sudan, Syria, and Yemen. The TPS statute requires the DHS secretary to consult with, quote, "appropriate agencies of the government," end quote, before deciding whether to designate, extend, or terminate a country for TPS. But it does not otherwise specify a process for making such decisions.

The State Department is the main agency typically consulted. State Department officials submit information on country conditions and a recommendation to DHS for its consideration. DHS conducts its own research on country conditions, independently of the State Department. In a telephone conversation, DHS officials indicated that the initial decision to designate a country for TPS is not entirely objective and can take foreign policy and congressional and other stakeholder interests into account, assuming that the statutory conditions are met. By contrast, they indicated that the extension or termination decisions cannot take these other factors into account.

Lawsuits are ongoing, covering all six of the countries whose TPS designations have been terminated by the Trump administration. The legal challenges focus on the administration's process for deciding whether to extend or to terminate the TPS designations for El Salvador, Sudan, Haiti, Nicaragua, Honduras, and Nepal. The plaintiffs, who are TPS recipients and their U.S. citizen relatives from those countries, contend that DHS violated their constitutional right to equal protection because the agency's decision to end TPS were allegedly "motivated in significant part by racial and national origin animus."

The plaintiffs also argue that the TPS terminations violated the Administrative Procedures Act because DHS adopted a different approach without adequate justification to assessing whether to continue TPS with respect to those six countries than it had in

the past. Specifically, they claim that DHS now only considered whether the original basis for a country's TPS designation had continued without examining more recent events in the country that might warrant extending the TPS designation.

Individuals covered by the ten current TPS designations reside in all 50 states, the District of Columbia, and U.S. territories. The largest populations live in four traditional immigrant gateway states—California, Florida, Texas, and New York. In addition, there are six other states that had at least 100,000 TPS recipients as of November 2018. Those are Virginia, Maryland, New Jersey, Massachusetts, North Carolina, and Georgia.

I'll conclude by talking briefly about recent congressional action on TPS. Congress has not made substantive changes to the TPS statute since its enactment in 1990. Over the years, many of the legislative proposals related to TPS have had to do with granting or extending TPS for particular countries, none of which passed. Beginning in the 115th Congress, however, a greater number and variety of TPS-related bills have been introduced. They can be categorized into two groups: Those that would restrict TPS in some way and those that would expand it.

In the restrictive category are bills that would require Congress, rather than the DHS secretary, to designate foreign states for TPS, bills making ineligible for TPS foreign nationals who are unlawfully present or who are members of criminal gangs, bills restricting the criteria for designating a foreign state, bills making TPS recipients subject to detention and expedited removal, and bills phasing out the program completely. In the expansion category are those bills that would extend or grant TPS for particular countries and bills that would prohibit Federal funds from being used to implement the recent TPS terminations.

Most expansive are the bills that would provide longer-term status for TPS recipients who have been living in the United States for several years. These proposals seek to address the situation of hundreds of thousands of TPS recipients who have lived in the U.S. for decades, whose temporary status is now being terminated, and who have no other mechanism by which to stay lawfully in the country. Including in this group of bills is H.R. 6, which recently passed the House. It would provide lawful permanent residence to TPS and DED recipients who have lived in the United States for at least 3 years.

Now I'll turn it back to Nathaniel.

Mr. HURD. Thank you. Ms. Bastien.

Ms. BASTIEN. Thank you so much. I'd like to start by thanking Commissioner Alcee [Hastings] for creating space for us. I also would like to start by thanking and commending Commissioner Alcee Hastings, who has been the staunch advocate over the years of not only human rights but, since he's been elected to Congress, he's been a strong advocate for immigrants and to encourage and pressure those in power to respect the rule of law and to create more spaces for those who come to our shores in search of a safe haven. Thank you very much to Commissioner Hastings.

At FANM we are right here in the middle of Little Haiti, where our office is located. We have been organizing around TPS and other issues since 1981. I'm going to talk a little bit about TPS, and then all the stuff that's been going on in Haiti. Throughout its history, as we know, Haiti has suffered a lot of natural disasters, including cyclones, hurricanes, tropical storms, floods, and earthquakes. From 1998 to 2010, for example, Haiti has been a bread basket for a series of storms and hurricanes, including Hurricane George in 1998, Hurricane Ivan and Jeanne in 2004, Hurricane Wilma in 2005. In 2008,

just to give you an example, Haiti saw, for one, three but four hurricanes, which resulted in 2,000 killed livestock and then many of the food shortages around the Nation.

But the worst disaster of all was the earthquake on January 12, 2010, which killed 350,000 people. Over 700,000 were displaced and the entire Haitian infrastructure was destroyed. The Haitian Government had also suffered a lot of damages because in the capital itself it lost 28 of its 29 government ministry buildings, including the national palace, which has yet to be rebuilt. A lot of officials of the justice department lost their lives. The women's movement was struck by a big blow, because with the earthquake we lost about five pillars of the women's rights in Haiti.

Even though Haiti has qualified for TPS for many years, since 1998, we at FANM, we organize to work regarding status for Haitians. Both Democratic and Republican administrations have declined to recognize Haiti for temporary protected status. However, after the earthquake in 2010, President Obama [had no choice], and through the Secretary of DHS, Janet Napolitano, approved TPS for Haiti to allow, in his statements, to give it the chance to recover. And then since then, over 58,000 TPS families have been benefiting from temporary protected status.

Over the years, 2010 TPS has been renewed and re-designated without a lot of work. We, at FANM, we usually organize and coordinate campaigns locally, statewide, and nationally. TPS has been renewed for the 58,000 families because it was recognized that Haiti still qualified as a result not only of political instability, but also a lot of damages and crises created by the cholera which was brought to Haiti after the earthquake in 2011, which left many people contaminated and killed. Even up to today there are still thousands of people suffering as a result of the imported cholera in Haiti.

However, after Mr. Trump was elected, he clearly indicated his intent to terminate TPS in 2017. When Secretary John Kelly went to Haiti, he spent about 4 hours at the national palace, and came back to indicate that Haiti has recovered, and that the 58,000 families could return to Haiti. However, we, at FANM, we led a coalition to Haiti, and we completed a fact-finding mission. In our assessment, it was determined that Haiti has yet to recover as a result of the earthquake. It would take years for any nation to recover from a disaster of such magnitude, let alone an island that has been crippled by not only natural disasters within years, but also political upheaval and political instability.

We were able to show that not only has Haiti yet to recover from the earthquake, a lot of Haitian families were still suffering as a result of the imported cholera epidemic. There were still a lot of peasants and a lot of villages suffering as a result of food shortages resulting from Hurricane Matthew in 2016. We were able to show that at the border of the Dominican Republic and Haiti there were thousands of refugees who have been living at the border since 2013. The Haitian Government has not been able to help them. If the Haitian Government has not been able to absorb these refugees, who have been living in squalor at the border, the assessment showed that there is no way that Haiti could absorb the 58,000 families of temporary protected status.

So, what is going on in Haiti right now? We know that Haiti has been having a hard time recovering from the earthquake, from the Hurricane Matthew, from the imported cholera epidemic. Now there is an added challenge, because for the past few months the political situation has really worsened in Haiti. As a result of the increase of the fuel price, as a result of the PetroCaribe corruption scandal, Haitians have been taking to the streets of Haiti en masse, asking for the resignation of President Jovenel Moïse. They've also been protesting as a result of many arrests and human rights abuses as a result of

the absence of rule of law and as a result of several massacres that have happened in Port-au-Prince and in different villages, resulting in the deaths of many, many civilians. Haitians have been taking to the street. Since Monday, they've been on the streets every day, resulting in additional loss of lives.

Obviously Haiti is not ready. Haiti is not safe. Haiti cannot absorb the 58,000 TPS recipients who have been living here for an average of 7 to 13 years. That is why we were in Washington, DC a week ago to advocate not only Members of Congress on both sides of the aisle, Republicans and Democrats, for the passage of the Dream and Promise Act, H.R. 6. We are very happy that it passed the House. But as I'm speaking to you right now, next door 300 TPS families, who have been gravely concerned about the termination of TPS—some of them have suffered from post-traumatic stress syndrome since the Trump administration terminated TPS for Haiti and Honduras, Salvador, Nicaragua, and other nations.

I must say that the TPS recipients who are in the summit next door, they are from different nations. Why? They are there to develop a strategy so that if H.R. 6, the Dream and Promise Act cannot go past the U.S. Senate, we know where the hurdle will be. TPS is still needed in Haiti. TPS is still needed in Honduras, Salvador, and Nicaragua, and Sudan, and a few other nations. That is why we are continuing to organize to see that these TPS families are protected from deportations. But we also want countries to organize to find permanent solutions so that the 300,000 TPS recipients from Haiti, from Nicaragua, from El Salvador, from Liberia and other African nations can live here in peace and harmony, and that they can eventually become permanent residents with a path to citizenship.

Last, we hope that Congress will take a close look at what's going on in Haiti today. Because even yesterday people were on the streets, people have died. I have my mom and my sister in Haiti right now. They are stuck in the capital. They cannot leave. The conditions in Haiti continue to deteriorate. Haiti still qualifies for temporary protected status. I'm going to end on that note. TPS is still applicable, not only for the countries that qualify now, but for countries in the future which may experience natural and political disasters like those qualifying recently in TPS right now.

Thank you for this opportunity, and I am open to your questions.

Mr. HURD. Thanks very much. Just a few before you have to get back to the summit. As you mentioned, an earthquake of that magnitude would have devastated and taken years for recovery time had it happened in the United States or some other country like it. But it happened in Haiti. Just before asking the question, a little bit of historical context. In 2009, the year before the earthquake, Haiti was ranked 149th out of 182 countries on the United Nations Development Program's Human Development Index. The index was based on life expectancy at birth, years at school for children and adults, and per capita income. In 2017, the last year for which the UNDP has released an index, Haiti was 168th out of 181 countries.

My first question is whether you can give us a sense of what conditions were like in Haiti prior to the earthquake in areas like public health, education, crime, corruption, rule of law, and human rights. That's one question.

Another question for you, as someone who is part of the community in Florida, and has been not only a resident but active in the community through your organization for many decades, what was Haiti like before the earthquake?

The second question is: What, in your view, would be the economic impact in Florida itself if Haitian TPS recipients had to return home?

The final question is: Decisions are going to be made in the Congress about the legislation you just mentioned, they're going to be made by the administration, they're going to be made by the courts. There are implications for American-born children. Can we say a bit more about that aspect of it? What are the implications in all of this for American-born children?

Ms. BASTIEN. I'll read the questions back. I'm going to start with the first one: What was Haiti like before the earthquake? As I indicated, Haiti has been the bread basket for a series of natural disasters, even prior to the earthquake. There were a long list of political storms and cyclones that have destroyed the infrastructure. I know that not only from hearing it from the news, but after Hurricane Wilma, for example, FANM organized the relief effort to Haiti after several of these hurricanes.

Economically, politically, the situation was already very unstable as a result of these natural disasters that had destroyed a lot of the crops, pushing farmers from their land to the capital, creating a lot of instability, a shortage of employment and, most importantly, human rights violation. The justice system in Haiti has always been in trouble because of the impunity. Even those women and children who are victimized, for example, because of arbitrary arrest, didn't have any recourse in the justice system in Haiti. Before the earthquake, there was a lot of instability in Haiti. The earthquake exacerbated conditions that already existed even prior to that serious disaster.

Now, in regard to the TPS recipients, and the economic impact of deporting 58,000 TPS recipients on Florida: I must say that 20 percent of the TPS recipients live in Florida. The TPS recipients contribute economically because they are employed in our school system, in our hospitals. They are employed in the service industry. You would lose billions of dollars if the TPS recipients were to be deported to Haiti. The economic impact would be tremendous, because the TPS recipients, they work, they pay taxes, and they contribute to the economy of Florida. These are people who have been living here for a long time. They are homeowners. They are employers. Deporting will definitely have a serious economic impact, in addition to the humane and moral impact that they will create to divide our families.

We also know that within the 58,000 TPS recipients, there is an average of 27,000 U.S.-born children. Deporting the 58,000 TPS families will have a very serious economic impact on the economy of Florida and will also divide our families. If a permanent solution is not found to protect the TPS recipients, we could witness the biggest mass-deportation of U.S.-born children in the U.S. We just heard from several of our TPS in the summit. They are still working right now to find equality, to find humanitarian solution. We heard their pain. We heard their anxiety. We heard their concerns about being separated from their parents. This is really something that we'd like to highlight, that not only the 58,000 TPS families from Haiti, but the 300,000 TPS recipients from Haiti, from El Salvador, from Honduras, from Nicaragua, from Sudan, and other African nations. There is an average of 375,000 to half a million U.S.-born children. This is a thing that we must take into consideration when we consider the termination of temporary protected status.

What was the last question?

Mr. HURD. You actually answered it. It was about the children.

Ms. BASTIEN. The implications for the families are really, really, really serious, especially in matters like that. Children of TPS recipients are deeply rooted in our communities, and they are children. They can't be separated. I will end by saying that in Miami, in Florida, we are at the intersection of immigration. Beyond TPS families that were forced out of their countries, they build their communities right, in South Florida, in Miami. Now they are facing displacement again. This time there is nowhere to go. There is nowhere to go.

Mr. HURD. Thank you. Thanks, again, for taking the time from the summit. We hope it goes well.

We'll return to opening remarks. To my left, Ms. Chung.

Ms. CHUNG. Hello. My name's Sui Chung. I'm here on behalf of the American Immigration Lawyers Association, AILA. I want to thank the Helsinki Commission, Chairman Alcee Hastings, all of your work on TPS, all of your engagement with us in Florida. I am also from Miami, Florida, so I enjoyed hearing the remarks of Ms. Bastien. Also, I'd like to thank Nathaniel and my co-panelists for today.

I'm going to briefly read some AILA statements and press releases, as well as go over some of the challenges that TPS recipients face in gaining permanent status. A little bit later on, I'm going to highlight some case samples from my own work with TPS recipients and the complexities that are involved. I think that probably the public is under the impression that if you have TPS perhaps that leads to permanent residence. But there's a lot of wrangling and a lot of difficulty involved to become a permanent resident. So temporary protected status is exactly that—temporary.

On June 4th, AILA applauded the passage of the American Dream and Promise Act, H.R. 6, in the House of Representatives on a bipartisan vote of 237 to 187. The bill offers permanent legal status for "Dreamers," thousands of people with temporary protected status, and deferred enforced departure holders. However, unless legislation is passed, TPS recipients remain at risk of being detained and deported. For more than two decades, Congress has been unable to pass laws that provide much-needed reform to our immigration system. AILA, a nonpartisan entity, is prepared to work with Congress to pass immigration reform that meet the current needs of the U.S. economy, families, and safety.

TPS recipients are at greater risk of deportation. Since taking office, the Trump administration has attempted to end temporary protected status for the nationals of several countries. Ending TPS for these hundreds of thousands of individuals would end their ability to lawfully work in the U.S. and would subject them to arrest and deportation. This group has lived, worked, and established extensive family and community ties within the United States. On average, TPS recipients have been in the U.S. for 22 years.

Although the Federal courts have enjoined the termination of TPS for some countries, these court orders are temporary. If a higher court rules unfavorably, those with TPS would be vulnerable to losing authorization to work and reside in the U.S., and they would be subject to deportation. Current enforcement priorities are such that U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection will continue to rarely exercise prosecutorial discretion, and instead arrest, detain, and deport people that have no criminal history, do not present a threat to public safety, have significant family and community ties, and contribute to the U.S. economy through their employment and spending.

Ninety-four percent of TPS recipients are employed. In 2017, they paid \$5.5 billion in Federal, State, and local taxes. Collectively, they have \$25 billion in spending power. Loss of this entire population would cripple the U.S. economy and harm entire communities. Eighty percent of Americans wish to protect TPS holders and Dreamers.

TPS for Venezuela has been proposed in both the House and the Senate. Earlier this year, on March 13th, AILA joined together with more than 200 national, state, and local organizations whose work focused in the areas of immigration, civil rights, human rights, labor, faith, and education. The collective groups wrote a letter to the Department of Homeland Security and the Department of State requesting that Venezuela be designated for TPS under Section 244 of the Immigration and Nationality Act. It is an objective fact that the ongoing civil unrest and humanitarian crisis makes it impossible for some 72,000 Venezuelan nationals and their families to safely return to the country at this time.

The secretary may designate a country for TPS if she “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 would pose a serious threat to their personal safety” or “there exist extraordinary and temporary conditions in the foreign state, but prevent aliens who are nationals of the state from returning to the state in safety.” Since April 2017, Venezuela has faced unprecedented civil crisis, including persecution and killings of citizens, medicine and food shortages, erosion of civil and human rights, suppression of the media, arbitrary arrests, detention, and riots.

The U.S. Department of State currently has a travel advisory in effect warning U.S. citizens against visiting the country as a result of “social unrest, violent crime, pervasive food and medicine shortages,” and specifically noting that “indiscriminate violent crime is endemic throughout the country and can occur anywhere at any time.” Today, 4 of the top 10 most dangerous cities in the world are in Venezuela.

With any type of proposals pertaining to TPS, what is it that we need fixed? Generally speaking, the situations that individuals require fixing is even something like adjustment of status to permanent resident after marriage as an immediate relative. Probably the public believes that marriage to a U.S. citizen would result in permanent residency. For many TPS holders, if not most TPS holders, this requires multiple steps and is very difficult.

Oftentimes TPS holders are in the United States already with a final order of removal, or they did enter without initial inspection. Accessing permanent residency is not just a simple step of a petition. It involves multiple waivers. It could be dangerous to travel abroad. It has an element of discretion regarding hardship. It has been a long process, and a very expensive process, for individuals who are lucky enough to have an immediate relative petition available to them because they have since married a U.S. citizen.

Another situation that we’re trying to cure with any type of legislation would be to patch those who have fallen out of status, who then can’t go on to access permanent residency channels. They may have entered with status, and then unable to adjust status to permanent residency because they’ve since fallen out. Because of the civil unrest or the conditions in their country, they are unable to return. There are also situations where individuals were unable to apply properly, or they applied pro se, or through the assistance of perhaps a notario. The original TPS applications were not adjudicated properly. They were not able to access that protection from the beginning.

Finally, those that don't have an immediate relative petition, or any relative petition, or an employment-based petition. Many TPS recipients have employers that wish to petition for them, but that are unable to before permanent residency because of various bars of being out of status or initially entered without a visa admission. Multiple steps are involved to gain permanent residency. I think that's a question that we have to ask ourselves: What is it that we're trying to do with H.R. 6 or any type of bill for TPS recipients? It is not necessarily to extend temporary protected status but to move those who have been here on average 22 years into some sort of permanent status, to eventually become permanent residents and then on to U.S. citizenship to become permanent members of our community.

I'll save the case samples for the question and answer.

Thank you.

Mr. HURD. Thank you. Ms. Woollard.

Ms. WOOLLARD. Thanks very much for the invitation to provide the comments here. I've been asked to give a comparative perspective from Europe. I'm going to cover three points in my brief comments. First, what is situation in Europe when it comes to public protection statuses? Second, the consequences of this situation. Then, third, conclusions on the reason why this has been the response to the contemporary arrivals of the people in Europe.

Looking at the first point, what is the situation in Europe? When it comes to protection status, and the protection status of individuals arriving to seek protection may be granted, we have what we call the asylum lottery. We call it a lottery because there is inconsistent, and therefore unfair, decisionmaking, and inconsistent use of status across Europe. There's also a strong variation in the content of protection in the rights that are attached to different protection statutes. In that, I think we see similarities with the U.S. situation, in the sense that refugee status, of course, is the gold standard, greater rights attached, and then there are other protection statuses that are more precarious, or more fragile.

The three main types of protection status in Europe are refugee protection, subsidiary protection, and humanitarian protection. Refugee protection is based on the convention grounds—persecution according to membership with one of the groups defined in the convention. Subsidiary protection is awarded to individuals who face a real risk of suffering serious harm if returned to their countries of origin. Now, this protection status is really something that's evolved because of the limitations of the refugee convention. As we know, there are situations of violence, other risks to an individual, who may not meet those persecuted grounds under the convention but still cannot be returned because there's a risk of serious harm.

Finally, we have humanitarian protection statuses, which are kind of individual statuses, where none of the refugee laws or subsidiary protection apply—the individual doesn't qualify for them—but there are still reasons why they cannot be returned. Those cover a whole variety of different cases. They include things like cases where people have suffered violations en route, for instance, where the threshold is not met for risk of violence, indiscriminate violence, under subsidiary protection case.

The final type of status I want to mention is temporary protection status. Now, the statuses just mentioned, in effect, are temporary, in the sense that they're time bound. What has been less used recently in Europe is the type of temporary protection status

that is similar to the TPS in the U.S., where people of a particular nationality fleeing from a particular country will be after a particular temporary protection regime.

Where we saw this used in Europe was in the 1990s in response to this recent crisis in the former Yugoslavia, where individual European countries generally dealt with that displacement by putting in place temporary protection regimes, due to influx situation emergency. A big question in Europe in recent years is why such a regime wasn't put in place to cope with the increase in arrivals that took place during this political crisis on refugee issues. I want to sometimes call it the refugee crisis, but we prefer not to use that term.

You do see a temporary protection regime of this type in Turkey. That is basically because Turkey has a number of restrictions in place when it comes to refugee conventions, only on this refugee status, essentially to Europeans. Slightly more complicated, but basically that. And they've put in place a temporary protection regime for the 3.6 million Syrians who are currently hosted by Turkey. In the rest of Europe, that has been a limited response in recent years.

And let me move, briefly, to the situation of these different statuses, what we see happening within Europe. Basically, there's widespread divergence across the countries of Europe, the 28 EU member States. There's inconsistency in the use of different statuses. The same person would be awarded refugee status in one country, but subsidiary protection in another. Take the example of Syria, where of course recognition rates are high because we know what's happening in Syria. In some countries in Europe, the majority of Syrians arriving receive refugee status. In other European countries, they receive subsidiary protection status. Different entitlements then follow.

Our analysis shows that these different protection statuses have a wide variation when it comes to the rights attached. Key rights that are of interest and necessity for people who are seeking protection vary. If you have refugee status, your residence rights are for a longer duration. For subsidiary protection, less time is granted for residential rights. In some cases, there are very stark differences. For instance, in France, if you have refugee status, you get 10-year residence rights. Subsidiary protection, 4 years. Slovenia, 10 years and 1 year. Which protection status you get is, of course, extremely important.

Family reunification has been a key issue in recent years. We've seen a dramatic increase in the awarding of subsidiary protection, partly because it doesn't come with the same family reunification rights. That then means, for instance, Syrians granted subsidiary protection don't have the same family reunification rights as those granted a refugee status in a neighboring country. There are similar issues with social benefits and access to citizenship.

To wrap up on that point, we're seeing the use of subsidiary protection as an inferior protection status. So fewer rights attached. It was introduced as something that was intended to be a temporary nature. For that reason, it tends to have fewer rights attached to it. However, if it's being granted to Syrians, to other caseloads, people who are in situations of long-term displacement, in practice it hasn't turned out to be a temporary protection status. It's something where people have protection needs for longer times as well. One of our main arguments is to equalize the rights attached to these different statuses.

Let me just conclude with a few comments on the consequences of this situation. I think, above all, what concerns us is the lack of fairness for applicants. There are serious consequences depending on what protection status somebody is granted, particularly in an

era where Europe is very much focused on deportation and cessation of status as early as possible. The family separation has been increased. This is the number of people getting subsidiary protection without family reunification rights.

Other things, like the shortened period of residency rights, means that we see challenges with inclusion, for instance, access to the job market. If people's residence permit is for a limited time, it's less likely that employers will provide jobs. We also see a situation of secondary movement, which is movement from one EU country to another, because of this question of different rights and the likelihood of being given refugee status or another status. Our system creates inefficiency because we and others, and governments themselves, are tied up in legal challenges. We do a lot of work on litigation. Quite a body of that work is about upgrading statuses, to try to get people's status upgraded to a better form of status.

We see within this context in Europe an increasing use of precarious statuses. I would give you one example there, which is perhaps a more extreme example. Denmark, which operates outside, and has opted out, of most of the EU asylum law, has introduced a temporary protection status for Syrian refugees. It's now attempting to impose the sanction to end that protection and return them to Syria. We can discuss that more if it's of interest.

The reason this is happening stems, I think, from the response to the 2015 European political crisis on asylum and migration, where the strategy has been to focus on prevention and arrival into Europe, including prevention of the arrival of refugees. An aspect of that is creating a so-called hostile environment within Europe. These changes, using more precarious protection statuses, is based on the idea of deterrence, and the idea that there are pull factors drawing people to Europe.

My final remark, I would say, is that this is part of a wider picture where rights are at risk and where we see inconsistencies, and therefore a situation of lottery. Recognition rates also vary hugely across Europe. Protection rates, whatever status, may vary with certain nationalities, from 8 percent to 98 percent, depending on which country in Europe they lodge an asylum application in. Particularly for Afghans and Iraqis applying for asylum in Europe, there's this huge divergence in terms of the likelihood of recognition.

I will end there. I'm happy to provide more detail on the points that are relevant to your discussion.

Mr. HURD. Thank you. Before we open it up to questions from the audience, I'm going to ask each of our speakers just a few questions each. If you could keep your responses somewhat short to make sure that we have time for questions from the audience, I would appreciate it. I'll start with Ms. Wilson.

As we've heard, TPS designation is for effectively an entire country. It covers all nationals from a country, nationals who are currently here in the United States.

Under U.S. law, are there any mechanisms for granting temporary protection on an individual basis, rather than on a national basis? Are you also aware of any legislation that would amend the underlying TPS statute to replace the designation of entire countries with temporary protection on an individual case-by-case basis that's more akin to what we've seen in Europe?

The final question has to do with process. The lawsuits, as we've heard, in part rest on the argument that proper process and procedure haven't been followed, particularly as they relate to the statute. What can you tell us about the process of determination and

extension, termination and, in particular, whether there is anything in the statute itself, or whether there's anything in the rules or regulations that guide or determine those processes?

That's for you. I'll just throw my other questions out there, and then we'll go down the line and answer them.

Ms. Chung, you hinted at this a little bit in your opening remarks. But as a practitioner, as someone who has clients, who works with clients every day, can you walk us through with a little bit more granularity, the challenges, complications, and problems for your TPS clients as they navigate the U.S. legal system? In your judgment, what needs to be done? Who needs to do what, basically, to address those complications and problems?

The other question that I would ask has to do with H.R. 6, and then the statute more broadly. That legislation covers current TPS recipients, people who are currently living in the United States who have been granted TPS protection.

In your view, should the underlying TPS statute be amended so that future TPS populations would be affected by that change in statute? If you think it shouldn't be amended, if you could sort of explain why you think it shouldn't be. But if you think it should be, you know, what should those statutory changes be?

Then for Ms. Woollard: As you alluded, there is a mechanism that has been used in the past, this temporary protection mechanism, that covers entire nationalities. You mentioned examples from the Balkans.

In your view, what are the advantages and disadvantages to granting temporary protection on an individual basis rather than on a blanket nationality basis? Do you think that Europe should shift to a more blanket nationality basis? Or, should they maintain the currently mostly individual basis for non-refugee protection?

You highlighted the inconsistency between decisionmaking depending on which country someone seeking protection ends up at. I think the term you used was the lottery. The context, of course, is you have 28 individual member States who have their own sovereignty. What is the best way to ensure more consistent decisionmaking, and better protection for those seeking it, given the sovereignty of the individual EU member States?

In a final area, something that one reads about periodically, and I think you may have alluded to, is the issue of destitution—literally, destitution of people who have come to Europe and are seeking protection.

Can you expand a little bit on that as well?

We'll start with Ms. Wilson for answers.

Ms. WILSON. Your first question was about what mechanisms exist in current law that can provide protection of some sort on an individual basis. Because this briefing is about non-asylum protection, I won't go into that. But of course, that exists, and it is adjudicated on an individual basis.

But there are few other mechanisms that exist that provide relief from removal for individuals. A couple of those are things that can be applied for affirmatively, such as parole.

This is only given in the case of an urgent humanitarian reason, or if there's a significant public benefit. It's completely at the discretion of DHS. Those are adjudicated, decided on an individual basis. The conditions under which those individuals are allowed to stay in the United States are at the discretion of DHS, and they vary. Sometimes you're allowed to apply for work authorization. Sometimes you're not.

Deferred action is another mechanism that's sometimes used to provide temporary protection on an individual basis. The DACA initiative is one example, where that was done for a group, the Deferred Action for Childhood Arrivals. But there are other forms of deferred action.

Then there are three mechanisms which provide individual relief in the case of somebody who's already in removal proceedings. There's withholding of removal under the INA, which is the Immigration and Nationality Act, and then there's also withholding of removal under the Convention Against Torture, or CAT. There's also deferral of removal under the CAT.

These are three examples where somebody's in removal proceedings, and then they claim that they would be in danger if they were to be returned to their countries. These are mechanisms that can be considered and decided on an individual basis.

Your second question was about whether there's any legislation that's been introduced to replace TPS with something like we see in the EU. That's a short answer: No. I haven't seen anything in the last two Congresses. I'm not aware of anything before that. In terms of the process, I mentioned some of it in my opening remarks, the process for deciding whether a country's going to be designated initially and then whether it will be extended or terminated after that. There are some guidelines in the statute, but it doesn't go into specifics.

It does require the DHS secretary to consult with appropriate agencies of government. As I mentioned, that's typically the State Department, but it can sometimes include other agencies. For example, when the Ebola epidemic was going on in West Africa, DHS consulted with the CDC to track the epidemic. TPS was designated for Liberia, Sierra Leone, and Guinea between 2014 and 2017 as a result of that epidemic. Then in 2017, the Obama administration decided the conditions had improved such that they were going to terminate TPS for those three West African countries.

But in the statute, it does say that 60 days prior to the termination date, the DHS secretary has to reexamine the conditions in the country and make a decision about whether things have improved to an extent that he or she determines TPS is no longer required. That decision then has to be put in the Federal Register with the justification, the reasoning for why he or she made the decision that was made. Beyond what's in the statute, there's not written guidance on the decisionmaking process. I mentioned some of the conversations that I've had over the phone with DHS officials about this. But it's also one of the main points of contention that's being played out right now in the courts.

Ms. CHUNG. I was asked different questions, but I just want to comment on those questions, just very briefly. Regarding parole, deferred action withholding, deferral of removal, those are all very difficult things to get. Right now, the administration very rarely is patrolling asylum seekers. We're seeing that play out with the family separation crisis that is all over the news, as well as the "remain in Mexico" policy, where asylum seekers are being returned to Mexico to wait out their time to complete their asylum process. So, hypothetically something like parole, because you are an applicant for asylum and you're waiting for that adjudication to occur, is supposed to happen. But it's very difficult and not so common. There are many criteria that have to be fulfilled—that you're not a flight risk, that you have certain ties. So, it's not as easy as it sounds when you list these various provisions.

Something on deferred action is typically tied with some other benefits. Jill mentioned DACA. That is a pure sort of deferred action program. But there are other programs that permit deferred actions, such as Violence Against Women Act recipients, or those who were victims of violent crimes in the United States waiting for that non-immigrant visa. Then deferred action may be given. But these are all conceptually things that you can do, but it's very rare and very small to get. Even humanitarian parole in the United States is very difficult to get. Often if we have to request that, we are going to all of you, people on the Hill, requesting assistance in extremely compelling circumstances.

As far as case samples, I want to illustrate just how difficult it is when a TPS recipient wants to get permanent residency. I have a couple of case samples that I'm going to read.

Case of F.A.: F.A. was only a child when she arrived from Haiti. She does not know when or how she arrived but believes she may have been drugged and brought by plane. She lived most of her childhood without knowing she was undocumented, up until she began filing TPS applications after the earthquake in Haiti.

In her early 20s, F.A. was working in a retail establishment when she was held up at gunpoint. She was able to file for a nonimmigrant visa as a victim of a violent crime committed in the United States, but the wait time for adjudication is measured in years, and visa issuance is backlogged for as much as 8 or 9 years. Her immediate future is uncertain because of the future of TPS, even with a pending nonimmigrant victim of crime visa. She cooperated with law enforcement to help protect our communities. That's why she's being issued this visa. She would be subject to arrest and deportation if TPS is terminated.

Case of D.A.: D.A. was an asylum seeker in the United States and pregnant with her third U.S.-citizen child when her spouse was suddenly arrested and deported to Haiti. Her spouse had no crimes but had an order of removal after losing his asylum case—despite being eligible for Section 245[i] adjustment of status to lawful permanent resident, after his U.S.-citizen sibling petitioned for him before April 2001. This is a special provision, an old provision. He was eligible for it. He could have adjusted his status. But he was arrested and deported.

Months later, after much delay by the by the immigration courts, D.A. also lost her own asylum case before an immigration judge. She continued to reside and worked two jobs in the U.S., separated from her spouse, raising three of her own United States-citizen children, her stepdaughter, while supporting her deported spouse in Haiti. Nearly a decade later, D.A. was able to obtain TPS, and she had better access to employment in the nursing profession. Later, her spouse was able to rejoin her in the U.S. with lawful permanent residency. However, the reunion was short-lived. She discovered he was unfaithful and had another family in Haiti. He was abusive, and he violently raped her.

The two separated and she was able to petition for herself under the Violence Against Women Act, and she was able to obtain permanent residency in the United States through that. Because she was married to a permanent resident and was a victim of severe domestic violence, of extreme cruelty, she was able to access this. Had she not been able to do this, she would be in TPS status, until TPS is terminated. Then she would be removed and deported. Her access was a result of a very violent situation, the same as the child example I gave. Otherwise, they are not eligible for permanent residency in any other way, because they don't have access to the relevant petitions or the waivers.

I have one more case example. J.A. arrived from Honduras, based on poor and dangerous country conditions. J.A. lived in an apartment complex where many undocumented persons resided. This region became a target for armed robbers, as criminals know that immigrants are hardworking and often carry cash in their homes and on their persons, because they're unable to open bank accounts—or, it's difficult to. One evening J.A. was talking on his porch with friends and neighbors. Multiple armed persons attacked them, shooting him and injuring many of them.

A police investigation ensued. J.A. cooperated, giving a description of the incident as a victim and a witness. He continued to be responsive to police inquiries and investigation. To this day, he has psychological and emotional problems based on the violence he witnessed. He is eligible for a nonimmigrant visa as somebody who is a victim of a violent crime. However, despite repeated requests, law enforcements are not signing the certification necessary to proceed with that formal application. So, he is out of luck. Right now, he's in TPS status. Once that concludes, he doesn't have any petitions available to him to try to address any type of permanent residency, so he will be deported.

I think you had another question for me.

Mr. HURD. I did. The question basically was, should, in your view, changes be made to the underlying TPS?

Ms. CHUNG. H.R. 6 does provide for what one of the lawsuits that we're seeing is about.

There's a class action right now in New York to deem temporary protected status as an admission in itself. It prevents the necessity for people to have to travel abroad to gain permanent residency and return. There's something called the 3-year or the 10-year bar. If you've been here longer than 6 months, in the United States, without status, you have a 3-year bar if you depart. If you've been here longer than 1 year, you have a 10-year bar to return. This is what's preventing a lot of people from being able to access permanent residency, this 3-year but, in most cases, 10-year bar.

H.R. 6 does assist with that, in that it allows people here to have already been considered to have been admitted just by way of the TPS grant. Moving on to permanent residency through an immediate relative, at times it's available through an employment-based option. That is favorable. As far as any future for TPS, the TPS statute has to consider these populations have been here for a long time—some of them decades. Just the designation or the termination going away, it's a loss of a huge population that contributes to our economy, tens of thousands—hundreds of thousands of U.S.-born children who are here, and their parents have to leave.

What I think needs to be addressed in the future is the fact that there needs to be something else, something beyond just TPS on a temporary basis. If populations are here for an extensive amount of time, we need to move into some sort of permanent residency process or availability for them. We're doing that on a case-by-case basis, where we're looking at a population now, and we're seeing, should they be eligible for a permanent residency? That's a lot of wrangling and difficulty. If it could move onto, yes, a certain amount of time has passed, allow TPS recipients to move forward, I think that would be a better program.

Mr. HURD. Thank you.

Ms. Woollard.

Ms. WOOLLARD. Thank you very much. Let me take those three questions in turn. You're very correct in saying the three main statuses that I referred to are designed as individual assessments. So actually, the same caseworker will have the option of considering refugee status if the person doesn't qualify. Then you see if there are grounds for awarding subsidiary protection or a humanitarian protection status.

We support individualized assessment because it is in line with international refugee law and international human rights law, that an individual's case is assessed, they have a fair hearing, regardless of their country of origin, and that aspect isn't part of the assessment. However, there may be situations of large-scale displacement, where a temporary protection regime for a particular nationality is appropriate.

So long as the rights that are attached to that temporary protection status are adequate, and these will include exactly the kind of issues that you're discussing today. The European experience was that in the 1990s, the temporary protection regimes offered to people fleeing former Yugoslavia were decided at the national level. They were very inconsistent. They had different rights according to the country. A piece of EU legislation was introduced to ensure consistency. But that has never been invoked. It wasn't invoked in 2015 when we saw a million people arriving.

That could have been a situation where a temporary protection regime for those leaving Syria would have been helpful, because it would have immediately have allowed for assumption of protection needs for people leaving a particular place, rather than them having to enter a status determination process. It would also have allowed for a fair distribution across Europe of people arriving which, as you know, was one of the reasons for the unnecessary political crisis in Europe. That was an absence of fair responsibility sharing among the European countries, and absence of a collective response.

Instead of putting in place a temporary protection regime, despite having the legislation to do that, instead the EU-Turkey deal was the solution chosen, which was to prevent people from arriving rather than apply a particular kind of temporary regime and allow them to arrive. That continues to be the approach in Europe.

The second question, in terms of harmonization and the lack of consistency, one of the responses to the crisis was to try and ensure better consistency with a raft of proposals to reform EU asylum law. The problem there was that it was harmonization at the lowest possible level. It removed the discretion that European countries have to offer more favorable treatment—the proposal did. These proposals haven't been passed. But the idea was to tackle inconsistency through a lowest common denominator approach.

For us, this is problematic. We are concerned about the inconsistency, because it's so unfair. But our solution to that would be that the member States are obliged to comply with the existing standards, rather than the standards are reduced for everybody. If we look at the reasons for the inconsistencies across Europe, these are to do with incompetency, poor decisionmaking, lack of capacity in asylum systems. But I think they're also to do with issues such as political interference, often indirect rather than direct, but political interference in asylum decisionmaking. All of that is based on trying to reduce protection rates, because that is the contemporary reality. Our approach to that is to ensure support for all member States, as well as legal proceedings where necessary, to make sure that they're being complied.

The final question on this destitution arises from some of these issues, but I would say to some extent it's tangential. We have different categories of people on the move who

are in situations of destitution within Europe. In some cases, they're asylum seekers. Destitution arises because assistance has been cut to such a low level that it's not enough to survive on while the asylum cases are being processed. This is introduced as a deterrent. It's part of a sort of attempt to reduce the pull factors.

The second group is people in irregular situations. These are people who can't access assistance because they have no status—undocumented people, people who have moved within Europe even though the rules say that they're not allowed to do so. The Dublin Regulation allocates responsibility to the country of first arrival. If people move to another country, they may lose benefits. People who don't want to register for exactly the reasons of inconsistency that we've just been discussing. If you're an Afghan, and you know that your chance of being recognized in Bulgaria is 8 percent, whereas in France it's 98 percent, then clearly you have an incentive to move. But this may then have consequences for your access to assistance and lead to irregularity.

The final question of destitution: I'm afraid it's what we call strategic destitution. This is the use of destitution as a political tool. That may be to make particular countries seem less appealing, so that people don't settle there. It may be due to the removal of statuses. We have extreme right-wing ministers holding ministry of interior positions in a number of European countries. They will use that kind of tactic.

For example, in Italy, many of the reforms put in place by Matteo Salvini, the interior minister, willfully to increase destitution of third-country nationals in Italy. That's not necessarily something that Salvini will suffer from, because the destitution then creates public fear, which leads to increased votes for him and his party.

Mr. HURD. Thank you. We'll then open it up to questions from the audience. One of my colleagues has a microphone. If you ask a question, please state your name and affiliation.

Yes, the gentleman in the front.

QUESTIONER. Thank you all for doing this. I really appreciate it. Quinn Owen with ABC News.

I have a two-part question for Ms. Wilson. First, does CRS have any estimates and breakouts on the number of people TPS-eligible right now? Then, to your knowledge, does H.R. 6 apply equally to all of the TPS-designated nationalities now, and all those that would be designated going forward?

Ms. WILSON. In terms of the estimates for the currently covered countries, we do have numbers that USCIS, which is part of DHS, puts out. I've got those numbers I can give to you afterwards, broken down by country, and that includes the six that have been terminated. In total, it's around 400,000. But certain countries are much, much larger. El Salvador's almost half.

In terms of H.R. 6, the way it's written is that anyone who had TPS about 3 years ago, and who has been in the country for at least 3 years, would qualify. It includes those who were from the three countries that I mentioned earlier that were designated under the Ebola epidemic: Liberia, Sierra Leone, and Guinea. It's actually 13 countries that would be able to qualify, even if they've left the country, because the way the statute is written is anyone who had TPS and has been in the U.S. for at least 3 years prior to that date.

Mr. HURD. Any other questions from the audience? Do we have any from our Facebook viewers? Sir, yes, the gentleman in the middle.

QUESTIONER. Kyle with Congressman Kim's office.

Just a quick clarifying question. If TPS is done in periods of 6 to 18 months, how does it work that many TPS recipients have been here for 2-plus decades, and certain countries have been TPS-designated for 10-plus years?

Ms. WILSON. After the initial designation of 6, 12, or 18 months—in practice, I don't think it's ever been designated for 6 months. It's always been 12 or 18. But after that initial period, as a I mentioned, 60 days prior to the end of that period, the DHS secretary has to make a determination about whether they'll extend or terminate. For these ones that have had it for so long, it's just a factor of the fact that it has been extended many, many times over that period.

QUESTIONER. Can be extended indefinitely?

Ms. WILSON. Yes.

Ms. CHUNG. I also want to state that some persons are here prior to the TPS designation, so they may have resided here with status, without status, or they may even have a final order, but because of that TPS designation they are able to then access that relief, that ability to be here with TPS. That could, you know, play into the number of years.

Mr. HURD. Yes, gentleman in the back.

QUESTIONER. Hi. Thank you for joining us today.

I had a question about the role of climate change. We talk about TPS and basically its status protecting people who are coming from places where there's conflict, places where they wouldn't be able to return. I'm curious about the role of climate change, whether that's considered—or whether that will be considered in terms of migration policy in the United States and EU, seeing as the effects of climate change are pushing people—are a push factor for migration.

Mr. HURD. Thank you for that question. And, your name and affiliation?

QUESTIONER. Susan.

Mr. HURD. Thank you.

Sui and Catherine? Any responses to that?

Ms. WOOLLARD. I think this takes us really to the crux of the discussion that we're having today. What we've seen in Europe is an attempt to deny protection to people other than those meeting the very narrow convention grounds based on persecution. We know that there are a number of other reasons for which people will need protection and climate change is among them. But rather than seeing a trend toward expanding and creating new types of protection status, we're actually seeing the opposite happening. I think the risk is that we'll see people displaced due to climate, multiple reasons, Climate change may affect their security, their livelihoods, and so on—but without any provision for a legal response to that.

There has been a debate over the last 10 years about whether the refugee convention should be opened up in order to introduce new grounds for offering protection. The real push has come because of climate change to offer some form of protection for those displaced through climate. Our view, unfortunately, is that in the current political context, it would be very unwise to open up a discussion about the refugee convention, to open up the convention and try to revise and reform the convention, because unfortunately it would lead actually to the situation of a more restrictive approach rather than the kind of expansion that we want.

Finally, I would note, the sort of patchwork that we see in Europe with the three different types of protection status and then increasing numbers of people in irregular situations, a lot of that is due to climate displacement. It's a factor in the situations from which many people are fleeing. Those who don't apply for refugee status under the convention grounds, they're not being persecuted, but they're on climate-related issues that are forcing them to leave. There's been that we see, I would say, a political failure to get to grip the consequences in terms of additional displacement that climate change is generating.

Mr. HURD. Thank you.

Are there any other questions from the audience or from our Facebook viewers? I'm seeing none. I want to extend a hearty thanks to our panelists, especially Ms. Woollard, for joining us late into the night. It's about a 6-hour time difference with Brussels. So, we especially appreciate you joining us.

Before we close out I also want to thank several of my colleagues, starting with one of our Max Kampelman fellows, Annie Lentz, whose heroics, especially with the audio-visual, you were able to see in action today and made what was a very complicated briefing possible. Thank you, Annie.

Thanks also to my colleague Stacy Hope, our communications director, and Jordan Warlick, who is our events coordinator, and all other colleagues who helped put this together.

Thanks, again.

[Whereupon, at 3:32 p.m., the briefing ended.]

A P P E N D I X

PREPARED STATEMENT OF JILL H. WILSON, ANALYST IN IMMIGRATION POLICY,
CONGRESSIONAL RESEARCH SERVICE

Introduction

Good afternoon. I would like to thank the Commission on Security and Cooperation in Europe for convening this briefing and for including me in it.

As an analyst for the Congressional Research Service, I adhere to congressional guidelines on objectivity and non-partisanship and will confine my remarks to the technical, professional, and non-advocative aspects of Temporary Protected Status. Thus, my remarks are intended to provide some context for our discussion today, including what Temporary Protected Status (TPS) is, how it came about as part of U.S. immigration law, how it's been implemented, and recent legal challenges to TPS terminations.

What is TPS and why did Congress create it?

As a State Party to the 1967 United Nations Protocol Relating to the Status of Refugees, which incorporates the 1951 Refugee Convention, the United States agrees to the principle of nonrefoulement, which asserts that refugees should not be returned to countries where they would face serious threats to their life or freedom on account of a protected ground (i.e., race, religion, nationality, membership of a particular social group or political opinion). (This is now considered a rule of customary international law.) Nonrefoulement is embodied in several provisions of U.S. immigration law, including one that requires the government to withhold the removal of a foreign national to a country in which his or her life or freedom would be threatened on the basis of one or more of the five protected grounds.

There are situations in which foreign nationals present in the United States do not meet this strict definition for relief, but who may nevertheless be fleeing or reluctant to return to countries in which conditions threaten their safety. Historically, the United States provided ad hoc relief in these types of situations through discretionary actions by the executive branch. Since 1960, two forms of relief—Extended Voluntary Departure (or EVD) and Deferred Enforced Departure (or DED)—have been provided in the case of about 20 countries. Liberia is the only country currently covered by DED.

In the late 1980's, Congress began holding hearings on the need for a statutory basis for this kind of discretionary relief from removal—something that would fill the gap in the law by providing safe haven for individuals whose home countries are experiencing generalized violence or disaster and that would address concerns over the lack of clear standards for country designations that had been occurring under EVD.

To address these concerns, Congress enacted the TPS statute in 1990 as part of a broader immigration bill, the Immigration Act of 1990. The new TPS law specified the three circumstances under which the Attorney General (later, the Secretary of DHS) could designate a country—in periods of 6, 12, or 18 months—for temporary protection: 1) armed conflict, 2) natural disaster, or 3) other extraordinary circumstances that prevent the safe return of a country’s nationals. It also included the procedures by which the Secretary of DHS would make subsequent decisions to extend or terminate a country’s designation. The law also spelled out the benefits to individuals covered by TPS, most notably that they are protected from removal and may apply for work authorization. As part of the 1990 Immigration Act, Congress also designated El Salvador for an 18-month grant of TPS.

Implementation of TPS and recent litigation

Since then, 22 countries have been designated for TPS, some on more than one occasion. The U.S. Government has extended TPS designations for some of these countries, and has terminated TPS designations for others. Prior to the Trump Administration, there were 15 TPS terminations, nine under Democratic Administrations and six under Republican ones. Ten countries are currently covered by TPS, benefiting some 400,000 individuals in the United States. The Trump Administration has announced terminations for six of the ten countries on the grounds that the conditions on which the original designations were based no longer exist. These terminations are currently on hold pending court action. The four countries whose designations have been extended by the Trump Administration are Somalia, South Sudan, Syria, and Yemen.

The TPS statute requires the DHS Secretary to consult with “appropriate agencies of the government” before deciding whether to designate, extend, or terminate a country for TPS, but does not otherwise specify a process for making such decisions. The State Department is the main agency typically consulted; State Department officials submit information on country conditions and a recommendation to DHS for its consideration. DHS conducts its own research on country conditions independently of the State Department. In a telephone conversation, DHS officials indicated that the initial decision to designate a country for TPS is not entirely objective and can take foreign policy and congressional and other stakeholder interests into account, assuming statutory conditions are met. By contrast, they indicated that extension or termination decisions cannot take these other factors into account.

Lawsuits are ongoing covering all six of the countries whose TPS designations have been terminated by the Trump Administration. The legal challenges focus on the Administration’s process for deciding whether to extend or terminate the TPS designations for El Salvador, Sudan, Haiti, Nicaragua, Honduras, and Nepal. The plaintiffs, who are TPS relief recipients from those countries and their U.S. citizen relatives, contend that DHS violated their constitutional right to equal protection because the agency’s decisions to end TPS were allegedly “motivated in significant part by racial and national-origin animus.” The plaintiffs also argue that the TPS terminations violated the Administrative Procedure Act because DHS adopted a different approach—without adequate justification—to assessing whether to continue TPS with respect to the six countries than it had in the past. Specifically, they claimed that DHS now only considered whether the original basis for a country’s TPS designation had continued, without examining more recent events in the country that might warrant extending the TPS designation.

Individuals covered by the 10 current TPS designations reside in all 50 States, the District of Columbia, and U.S. territories. The largest populations live in four traditional immigrant gateway States: California, Florida, Texas, and New York. In addition, 6 other States had at least 10,000 TPS recipients as of November 2018: Virginia, Maryland, New Jersey, Massachusetts, North Carolina, and Georgia.

Congressional action

Congress has not made substantive changes to the TPS statute since its enactment. Over the years, many of the legislative proposals related to TPS have had to do with granting or extending TPS for particular countries (none of which passed). Beginning in the 115th Congress, however, a greater number and variety of TPS-related bills have been introduced. They can be categorized into two groups: those that would restrict TPS in some way and those that would expand it.

In the restrictive category are bills that would require Congress-rather than the DHS Secretary-to designate foreign States; making ineligible for TPS foreign nationals who are unlawfully present or who are members of criminal gangs; restricting the criteria for designating a foreign State; making TPS recipients subject to detention and expedited removal; or phasing out the program completely.

In the expansion category are those bills that would extend or grant TPS for particular countries and bills that would prohibit Federal funds from being used to implement recent TPS terminations. Most expansive are the bills that would provide longer-term status for TPS recipients who have been living in the United States for several years. These proposals seek to address the situation of hundreds of thousands of TPS recipients who have lived in the United States for decades, whose temporary status is now being terminated, and who have no other mechanism by which to stay lawfully in the country. Included in this group of bills is H.R. 6, which recently passed the House. It would provide lawful permanent residence to TPS and DED recipients who have lived in the United States for at least 3 years.

Family Action Network Movement

Statement of
Marleine Bastien
Executive Director of FANM

Commission on Security and Cooperation in Europe
U.S. Joint Committee

June 14, 2019

Introduction

FANM is a private, nonprofit 501(c) 3 organization, FANM is governed by a diverse Board of Directors comprised of a cross-section of the community. Located in the heart of Little Haiti, FANM serves the needs of low-income women and their families as well as victims of abuse, neglect, violence, discrimination and racism. FANM has a history of championing and advocating for the rights of those who have been underserved, marginalized, disenfranchised and discriminated against in South Florida.

FANM is unique in South Florida. It is not only a full stop center that provides wrap-around services to strengthen families, but it also organizes its members to provide education and advocacy on important issues that improve the quality of life of all citizens including immigration (temporary protected status, DED, DACA, family reunification, detention, deportation, comprehensive immigration reform affordable housing, climate gentrification/climate justice, Be My Vote, civic education, etc. FANM has won the following campaigns over the years:

Haitian Immigration Refugees Fairness Act (1998), Temporary Protected Status (2010), and Haitian Family Reunification Parole Program (2014), TPS Renewal (2017), officialization of Little Haiti (2016) among many others.

FANM led the campaign for TPS approval in 2010

Historical Background of TPS in Haiti: Designation, Re-designation and Extension

Statute: DHS can designate a foreign state for TPS only if:

The Attorney General finds that there is an ongoing armed conflict, political instability, natural, and health disasters among others 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 immigrants personal safety if they were to return. Throughout its history, Haiti has suffered cyclones, hurricanes, tropical storms, torrential rains, floods and earthquakes. From 1998 -2010 Haiti has been a bed baskets for a series of storm and hurricanes including: Hurricanes Georges (1998), Hurricanes Ivan and Jeanne in 2004 (FANM brought medication , medical equipments and food to Fond Verrettes and other places impacted by Jeanne.....), Hurricane Wilma in 2005 (FANM raised \$85,000 after Wilma to help women who lost their businesses during Wilma...). In 2008, Haiti was hit by one major tropical storm and 3 different hurricanes namely: Fay and hurricanes Gustav, Hanna, and Ike which resulting in thousands of displacements, food shortage, thousands of deaths and disappearances , and widespread destruction. Storms have frequently destroyed arable land and killed livestock, leaving an already destitute people struggling to feed themselves and dependent on imported food. Political infighting and poverty have been exacerbated by repeated assaults to the environment.

However, on January 12 , 2010 , Haiti experienced one of the worst disasters in recent history: a 7.0 magnitude earthquake which landed at 4:53 local time. The earthquake killed an estimated 316,000 people. Another 300,000 were injured. More than 600,000 people left Port-au-Prince to stay with

families outside the capital. The quake displaced 1.5 million people. Makeshift camps sprung up to shelter them. In total, the quake-affected 20 percent of the nation's 10.4 million population. I co-chaired the Haitian Relief Effort for Miami after the earthquake, FANM coordinated volunteers nationally to bring relief to the country and I was part of the first responders on the ground and few days later. Smaller earthquakes with magnitudes ranging from 5.0 to 5.9 were registered during the hours which followed sending waves of traumatized folks on the streets each time. The earthquake quasi destroyed Haiti's infrastructure and has caused. It had an immediate impact on governance and the rule of law in Haiti, killing an estimated 18 percent of the country's civil service and destroying key government infrastructure, including the National Palace, 28 of 29 government ministry buildings, the National police headquarters, and various judicial facilities" (5) . It also dealt a blow to the women's movement in Haiti. 5 pillars of the movement died.

Even though Haiti qualified for TPS since the early 1990s, both democratic and republican administrations ignored advocates' call to designate Haiti for TPS. However, after the earthquake, President Obama had no choice but to approve TPS for Haitians. Janet Napolitano, Secretary for the Department of Homeland Security, announced that the " administration will extend temporary protected status to Haitians in the US. Providing work authorization through a TPS designation empowers Haitians to share responsibility for the relief and rebuilding of their own country, and it enables the US to meet its human rights obligations under international law and standards" (USCIS 2010).

Since then, 58,000 Haitians here since before the 2010 earthquake, who as of last year had 27,000 US-born children, had been protected by Temporary Protected Status.

Years when TPS has been redesignated Post Approval in 2010

Key sources: DHS USCIS Notice of Designation; IOM; United Nations facts

History of Extension of TPS

2011: Extension for 18 months + Redesignation of TPS Relevance of redesignation: Extremity of disaster

Increase pool of eligible TPS applicants

Displacement and housing crisis (over 350,000 homes destroyed by the earthquake & 1.6 million IDPs in camps with poor conditions).

Cholera outbreak: Nearly 4,000 deaths in first 6 months of outbreak; worst in recent history

"Nationals of Haiti still cannot safely return to Haiti due to continued extraordinary and temporary conditions." (USCIS Notice on May 19th, 2011)

2012: Extension for 18 months in May of 2012 (USCIS Notice) Haiti not recovered from earthquake

Displacement and camp conditions: in 2012, 500,000 people continued to live in IDP camps

Camp conditions are terrible: Camps prone to “flooding, disease, crime, and gender based violence” (at 59944).

October 2010 rains exacerbated camp conditions; cholera in camps Security: Earthquake killed 77 police officers, injured 253 officers, destroyed/damaged 45 police stations;

Children and Education: 80% of schools west of the capital were destroyed or damaged; half of the displaced population is children.

New conditions that further justify extension

Political Instability: Resignation of Prime Minister Gary Conille

Cholera: Ministry of Health reported that as of May 1, 2012 there were an estimated 532,192 cases of cholera and 7,060 deaths (at 59945).

Food security

Conclusion: “Given the risk of contracting cholera, unsafe living conditions in IDP camps, damaged infrastructure, and a shortage of permanent shelter, it is unsafe for Haitians currently in the United States with TPS to return home. While the situation has improved, the effects of the earthquake continue to reverberate in Haiti” (at 59945).

Extension of 18 months in March of 2014 (USCIS Notice) – extended through January 2016
Haiti has made progress since the quake, but has not fully recovered

Infrastructure & Housing Approximately 172,000 remained in IDP camps

Economic damage

Lack of employment and educational opportunities

Earthquake cost \$7.8 billion in damage; extreme poverty persists

Lack of basic services to absorb the approximately 58,000 Haitian nationals living in the U.S. under TPS

New conditions that justify TPS extension

Elections have not been held; overdue.

Security and fundamental human rights:

Earthquake exacerbated pre-existing vulnerabilities: “gender based violence, trafficking, sexual exploitation, child labor, domestic violence, recruitment into crime or violence, and forced evictions” (at 11810).

“The most serious impediments to human rights in Haiti are weak governance; inadequate respect for the rule of law, a deficient judicial system; and a high prevalence of corruption in various branches of government” (at 11809).

MINUSTAH was voted to stay; need to “further contribute to...stability and development” (at 11810).

Cholera Fewer resources available for cholera response than in previous years

Heavy rains contribute to cholera cases

Extension of 18 months in January **2016** (USCIS Notice)

Original conditions for designation and redesignation persist; Haiti has not recovered from quake Housing shortage

IDP camps closed due to lack of funding; Haitians have moved into homes that are unsafe or into informal settlements

Cholera epidemic

As of 2014, approximately 725,000 people had been sick and 8,800 dead

Ongoing lack of waste management and sanitation make risk persist

Limited access to medical care

Weak economy

Political instability

Martelly rule by decree

Increase in violent demonstrations

Insecurity

Food insecurity

2.5 million people are unable to meet their basic food requirements

Over 60,000 people suffer from “severe food insecurity”

Conclusion: “Although the Government of Haiti has taken significant steps to improve stability and the quality of life for Haitian citizens, Haiti continues to lack the adequate infrastructure, health and sanitation services, and emergency response capacity necessary to ensure the personal safety of Haitian nationals” (at 51584).

Once President Trump got elected , his administration sent a clear signal that he wanted to terminate TPS which it did contrary to its own internal fact findings and unanimous political opinion from both sides of the aisle and editorial opinion, terminated last November -- effective July 22, 2019. That status had been renewed and was fully deserving of extension based on three massive catastrophes which made it unsafe to return anyone to Haiti , any one of which would have sufficed to warrant its extension: incomplete earthquake recovery; the still-unchecked cholera epidemic which has killed at least 10,000 and sickened over 800,000; and Hurricane Matthew's massive destruction in October 2016

to infrastructure and Haiti's food supply. Haiti's government had strongly urged DHS to extend TPS for at least another 18 months to permit it to recover, saying it could not handle an influx of 50,000 nationals while trying to recover from these blows, from the effects of which Haiti still today has not yet recovered (IJDH Report). FANM worked closely with Ambassador Altidor to advocate and support this demand.

Haiti's Conditions Today

Today's economic and political crisis not only warrants TPS in itself but has further impeded recovery from the effects of the earthquake, cholera, and Matthew. The crisis underscores the need for the Trump administration to reinstate TPS or redesignate it immediately pending a permanent solution.

Haiti is in the midst of an escalating political crisis that has repeatedly paralyzed the nation. Tens of thousands have been taking to the streets to protest President Jovenel Moïse's corruption, economic mismanagement and impunity for human rights abuses.¹ While the demonstrations have largely been peaceful, some protests have resulted in property damage, and clashes with police have at times turned deadly.² During the ten days of protest in February that placed the country in lock-down, at least 34 people died and over 100 people were injured.³ People were unable to leave their homes to access food, water and other basic necessities, placing an already-vulnerable population on the brink of a humanitarian emergency (IJDH Report-May 2019).

Root Causes of Haiti's Turmoil

Fuel Price Hike

PetroCaribe Corruption Scandal

Protests have been organized for months now throughout Haiti around demands for accountability for the disappearance of an estimated \$3.8 billion from the PetroCaribe fund, from Venezuela intended to finance socioeconomic development in Haiti.

Arrest and Release of Foreign Mercenaries

At the height of the February protests, the arrest and subsequent unlawful release to the United States of seven heavily armed foreign mercenaries to the U.S. angered Haitians..

Impunity for Human Rights Abuses

President Moïse's implication in human rights violations, direct misuse of state institutions for his personal interest, and inadequate responses to abuses by others have further eroded confidence in his leadership, and have intensified the current crisis. President Moïse oversees a government responsible for grave human rights violations, including extrajudicial killings, violent evictions. (IJDH Report)

Absence of Rule of Law

The lack of rule of law in Haiti is another root cause of the current protests. The Haitian justice system suffers from pervasive corruption and chronic underinvestment, resulting in systematic impunity for human rights violations.¹³⁶

Lawsuits:

At least 4 lawsuits have been filed to protect Haitians and TPS recipients from Honduras, Nicaragua, El Salvador, Sudan, et al...

Ramos v Nielsen

Provisions. Automatic 9 month extensions, starting in April 2019, unless there is a loss at a court of appeals: "DHS will issue another Federal Register Notice approximately 30 days before April 2, 2019, that will extend TPS for an additional nine months from April 2, 2019, for all affected beneficiaries under the TPS designations for Sudan, Nicaragua, Haiti, and El Salvador.

DHS will continue to issue Federal Register Notices at nine-month intervals so long as the preliminary injunction remains in place and will continue its commitment to [an] orderly transition period, as described above." (There's no way the Ninth Circuit will decide by early March, much less the Supreme Court. So the early March additional Federal Register Notice referenced above will issue.)

TPS work and legal status will be automatic for those registered—no need to pay for employment authorization cards or further registration: Under the agreement, for as long as the district court's order is in place, people with TPS who have re-registered previously – or who re-register late – will not need to register again or apply for a new EAD. They can rely on their existing (to-be-expired) EAD or TPS approval notice, as well as the Federal Register Notice, as valid authorization to work or as proof of legal status in the United States. They do not need to pay any further money to the US government, and should not need to pay for additional legal assistance either.

Re-registration possible—and likely guaranteed—for people who did not re-register during the Trump Administration: Crucially, Haitians with TPS who didn't reregister in 2017 or 2018 due to fear or other good reason can successfully do so now! If they now re-register for TPS late for good cause, the USG will give their applications "presumptive weight" as being valid! This means that any Haitian TPS recipient who failed to re-register in 2017 or 2018 should be successful in doing so now -- late -- if they explain that they didn't reregister on time due to fear, confusion, or other good reason. (This is extremely important for example for the estimated nearly 16,000 Haitians with TPS who let their TPS status lapse early this year by not trying to re-register!)

Saget V. Trump (FANM is a Plaintiff) (which we won)

Here are a few Highlights of Judge William Kuntz's Decision (National Immigration Project)

In an unusual step, the Court issued the injunction not only against DHS, but also against President Trump, to ensure the White House operates in accordance with the law (pp. 67-70).

The Court found that Acting DHS Secretary Elaine Duke sought to terminate TPS for Haiti due in part to President Trump's "America First" policy of reducing the number of non-white immigrants in the U.S., and unrelated to conditions in Haiti (pp. 91-93).

The Court found that former DHS Secretary Kelly unlawfully predetermined the termination of Haiti's TPS when he made his decision to extend TPS for Haiti in May of 2017. The Court cited to a "privileged"

email directive to the agency that it should announce a 6-month extension, but also make clear in the federal register notice that Haiti’s TPS will be terminated in 6 months. In other words, it was unlawful for DHS to predetermine to cancel TPS at the same time that DHS extended TPS (p. 29, pp. 93-95).

The Court found that high level officials furthered the agenda to dismantle the TPS program, including Gene Hamilton, then-Senior Advisor to Secretary Kelly and previously a member of President Trump’s transition team on immigration, who wrote, “African countries are toast â€¦ Haiti is next” (p. 115, p. 132).

The Court found that after the Haiti termination decision was announced, a DHS official admitted in a privileged email that it was the White House who led the TPS decision-making process for Haiti and influenced Duke. This included a November 2017 meeting orchestrated by the White House, during which Jeff Sessions, attorney general at the time, and many other White House officials, leaned on Duke to terminate Haiti’s TPS status. The implication of this finding is that the White House did indeed pressure DHS to change its process about TPS decisions (p. 128, p. 129).

Finding A Permanent Solution for TPS

The Dream and Promise Act passed the House last Wednesday. Now the new Hurdle in the U.S. Senate.

It is important to find a permanent solution otherwise, we’ll witness the biggest deportation of U.S. citizen children to nations in turmoil in our history.

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PREPARED STATEMENT OF CATHERINE WOOLLARD, SECRETARY GENERAL, EUROPEAN
COUNCIL ON REFUGEES AND EXILES

The Asylum Lottery in Europe: Playing with Protection

1) What is the “asylum lottery”?

The asylum lottery: inconsistent and therefore unfair decision-making in asylum systems across Europe.

Background: EU law covers asylum decision-making (Asylum Procedures Directive) and status determination (Qualification Directive). The 28 EU Member States (and certain associated European countries) implement EU law and are responsible for decision-making.

EU Directives set out the results to be achieved but Member States+ decide on the means for achieving the results, i.e. in this policy area, they manage their own asylum systems, with their agencies and institutions implementing law including making asylum decisions.

There are three main types of protection status in use in Europe:

- Refugee protection
- Subsidiary protection
- Humanitarian protection

Analysis of asylum systems and the decisions they produce by ECRE in through its Asylum Information Database (AIDA), the only independent assessment of asylum decision-making, and from official figures produced by national and EU agencies leads to the following conclusions.

General concerns:

- 1) Divergence in all aspects of decision making in asylum systems in Europe
- 2) Inconsistency in the use of different statuses (e.g. the same person would be awarded refugee status in one country but subsidiary protection in another)
- 3) Nationality based decision-making with unfair treatment of particular nationalities
- 4) Divergence in the rights attached to different statuses
- 5) Use of subsidiary protection as an inferior status with fewer rights when this is not intended by EU law.

<p>Refugee status and subsidiary protection: rights compared</p> <p>Duration of residence (EU law permits differential treatment: Qualification Directive)</p> <ul style="list-style-type: none">▪ Equal treatment: ES, GR, HU, IT, MT, NL, UK▪ Unequal treatment: AT, BE, BG, CY, DE, FR, HR, IE, PL, PT, RO, SE, SI,▪ Stark differences in FR (10/4 years) and SI (10/1 years) <p>Family reunification (EU law permits differential treatment: Family Reunification Directive)</p> <ul style="list-style-type: none">▪ Equal treatment: FR, NL, BG, HR, PL, UK, IT, BE, PT, RO▪ No right to family reunification for subsidiary protection holders: GR, MT, CY, SE (to be lifted)▪ Unequal treatment: AT, HU, DE, SI <p>Access to citizenship: minimum required residence (Governed by national law)</p> <ul style="list-style-type: none">▪ Equal treatment: BE, CY, DE, HR, MT, NL, PT, SI, UK▪ Unequal treatment: AT, BG, ES, FR, GR, HU, IT, PL, RO, SE▪ Sharp differences in AT (6/15 years), FR (0/5 years) and IT (5/10 years) <p>Social benefits (EU law permits differential treatment: Qualification Directive)</p> <ul style="list-style-type: none">▪ Equal treatment: DE, IT, SE, SI, ES, BG, IE, PL, RO, UK, BE, HR, CY, NL, HU, GR, PT▪ Unequal treatment: AT, MT, FR (retroactivity)
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Permitted but no longer suitable:

“When subsidiary protection was introduced, it was assumed that this status was of a temporary nature. As a result, the Directive allows Member States the discretion to grant them a lower level of rights in certain respects. However, practical experience acquired so far has shown that this initial assumption was not accurate. It is thus necessary to remove any limitations of the rights of beneficiaries of subsidiary protection which can no longer be considered as necessary and objectively justified.” (European Commission, [2009 Qualification Directive proposal](#))

Trends:

- 1) Increasing use of inferior statuses for people who would have previously been entitled to refugee status.
- 2) Weakening of rights available to holders of all protection status – when discretion lies with MS, i.e. they change national level implementation to reduce rights. e.g. Germany and Sweden.
- 3) Attempts to change EU law to reduce rights for all statuses – and to remove discretion. Harmonisation but at lower level, especially the 2016 EU asylum law reform proposals

Some related issues:

- 1) Huge divergence when it comes to recognition rates, especially for certain key nationalities, e.g. Afghanistan and Iraq. Ranging from 8% to 98% for the former.
- 2) Inexplicable decline in recognition rates for certain caseloads of applicants.
- 3) Experiments with even more precarious statuses and removal of all protection: e.g. Denmark: use of temporary protection, Syria and the end of “integration”; Italy: severe reduction in humanitarian protection status and in rights attached to it.
- 4) Temporary Protection Directive – a separate, unused crisis response measure, to be invoked to support management of large numbers of arrivals.

2) The consequences of this situation

There are legal, political and practical consequences of this situation.

- Lack of fairness for applicants, with serious consequences (especially given increased focus on deportation).
- Family separation and inclusion challenges.
- Uneven compliance and competition to have lowest standards.
- Secondary movement from one Member State to another.
- Irregularity and related destitution.

3) Reasons for the situation

The approach stems from the response to the 2015/6 European political crisis on asylum and migration, which is now focused on prevention of all arrivals into Europe, including of refugees. One aspect of this is to create a hostile environment within Europe. Other reasons include incompetence, lack of capacity, resources and expertise in some asylum systems and political interference in legal systems and in judicial decision-making. Particular concerns arose with regard to family reunification rights in certain countries, especially Germany, which accepted

the largest number of refugees in absolute terms, and Sweden which accepted the largest number per capita.

These changes are based on the idea of deterrence – creation of a hostile environment to eliminate “pull factors” (despite their being no evidence that they exist). Related, there is a strong focus on return and temporary/ reduced duration statuses are seen as a means of achieving this.

4) ECRE and other civil society responses

- Litigation –

Efforts to upgrade statuses, to challenge deportation or detention decisions, to challenge removal of status in legal framework, to challenge reduction of rights afforded to statuses.

- Analysis –

Exposing the wild inconsistency, poor decision-making, lack of compliance.

- Advocacy –

Influencing the EU legal framework which is then implemented by the MS, e.g. work on the 2016 CEAS reform proposals.

Presentation of alternatives, including making asylum work in Europe, rather than keeping people out. Including the role of EU institutions and agencies in supporting compliance of member states with the spirit and letter of EU law.

- Communications –

Debunking the myths about pull factors and exposing the consequences of these measures, including negative impact on European interests of the current situation and of proposed changes.

5) Conclusions

The question of status arises partly because the Refugee Convention and Protocol are out of date – unsurprisingly. It has long been established that people need protection who might not meet the persecution based grounds in the Convention. In addition, the numbers of people in situation of forced displacement and the average length of displacement are increasing.

Unfortunately, the political context does not allow for an expansion of protection types or of the number of people offered protection to respond to this need. The tendency is the opposite – to limit types of protection and awarding thereof. Opening up the Convention would be too risky as it would likely lead to a more restricted international legal framework.

This situation gives rise to the patchwork of different statuses in Europe, awarded to people who do not qualify as “refugees” but who need protection. It also plays into the toxic political debate which refers to “genuine refugees” worthy of protection (although even that is no longer a given in all countries), and the undeserving others who are seen opportunists, or migrants through choice or described as “economic migrants”, often used as a derogatory term.

In fact, we see many categories of people who are arriving to seek asylum and who need protection but do not receive refugee status. In some cases, they receive other statuses, which

are inferior in terms of the rights attached – even though they should not be. This is in addition to those who have decisions rejected due to flaws in or interference in decision-making.

There is a general effort to render all statuses more precarious due to a continued belief that pull factors are attracting people to Europe, rather than their displacement resulting from push factors (persecution, violence, conflict, repression), which appears a more reasonable conclusion based on all evidence of decision-making, choices (or lack thereof) and situations in countries of origin and transit.

The situation will only change if there is a switch in strategy. ECRE proposes its alternatives:

- 1) Functioning asylum systems in Europe, including solidarity mechanisms
- 2) Safe and legal channels for those who need protection
- 3) EU external policies to address the causes of forced displacement
- 4) Inclusion of all through rights, respect and regularization.

See background documents:

- 2019 figures – see Annex 1
- For a comprehensive assessment <http://www.asylumineurope.org/2017>
- For a comment piece on 2018 figures: <https://www.ecre.org/editorial-asylum-in-2018-decision-making-must-improve/>

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