



December 19, 2022

Secretary Alejandro Mayorkas
U.S. Department of Homeland Security
3801 Nebraska Avenue NW
Washington, DC 20016

Director Ur Jaddou
U.S. Citizenship and Immigration Services
20 Massachusetts Ave NW
Washington, DC 20001

RE: PROCESSING BACKLOGS FOR TEMPORARY PROTECTED STATUS (TPS)

Secretary Mayorkas and Director Jaddou:

The undersigned 125 local, state, national, and international organizations serving and advocating for Temporary Protected Status (TPS) holders, write to urge you to implement policies to urgently alleviate the processing backlog for TPS applicants. Any delay in adjudication eats into an already short grant period, leaving applicants at risk of deportation and without permission to work, even while qualifying for those benefits. In addition to policy and decision-making around TPS designations, the way that decisions are implemented is crucial and has major impacts on the day-to-day lives of those these blanket protections are intended to protect.

I. Processing Delays and Consequences for TPS Applicants

While the effects of the adjudication backlog are felt across TPS designations, we are especially concerned about the acute impact on designations with a high number of beneficiaries. The top two countries with the highest number of pending applications in the third fiscal quarter were Venezuela (135,452) and Haiti (90,943), which made up 90% of the total backlog.¹ As of December 2022, the processing time for most Venezuelan initial applicants is within 15.5 months and within 12.5 months for Haiti, the majority of the grant period itself.² The processing time for Nepali applicants is a full 17.5 months, nearly 100% of the grant period, and Somali initial and renewal applicants can find themselves waiting 14.5 to 24.5 months for processing.³ These delays, which can last more than the grant period, make the TPS designations functionally meaningless if people cannot work and are unable to access the legal protections associated with TPS, including protection from deportation.

Over the last three quarters, USCIS has processed an average of 42,566 applications per quarter (though trending upward) and received a quarterly average of 30,172 applications for a net adjudication rate of 12,394.⁴ If that net rate continued, USCIS could work through its current backlog of 251,614 in a little over 20 quarters, or five years. In comparison, the average TPS designation is only 18 months long. If we take recent improvement into account and measure by the most recent and productive quarter (Q3), which had a net rate of 44,460 processed

¹ U.S. Citizenship and Immigration Services (hereinafter "USCIS"), "Number of Form I-821, Application for Temporary Protected Status By Country of Designation, Quarter, and Case Status October 1, 2021 - June 30, 2022," U.S. Department of Homeland Security (hereinafter "DHS"), July 2022, https://www.uscis.gov/sites/default/files/document/data/I821_RADP_FY22_Q3.pdf.

² USCIS, "Check Case Processing Times," DHS, accessed December 19, 2022, <https://egov.uscis.gov/processing-times/>.

³ Id.

⁴ USCIS, "Number of Form I-821, July 2022.

applications, it would take almost six quarters, or nearly an entire grant period to work through the backlog.

Processing delays also negatively impact the benefits that are meant to accompany TPS status, particularly the ability to receive work authorization. At the time of a TPS extension or redesignation decision, given the time it takes to process, USCIS has typically issued an automatic extension of employment authorization documents (EADs) in the announcing Federal Register Notice (FRN). Failure to adjudicate timely filed re-registrations prior to the expiration of that automatic extension can and has resulted in loss of employment, licenses, and harassment from employers, as noted previously in a comment to your agency.⁵ We draw particular attention to likely the last auto-extension for six TPS countries under the Ramos litigation, whose beneficiaries will likely submit EAD applications and experience threats to their safety, employment, and other urgent needs that depend on a valid EAD.

II. Delays in Publishing a Federal Register Notice

A compounding factor of the overall processing delays at USCIS is the prolonged wait times for the release of the instigating document—the Federal Register Notice (FRN). The law requires the DHS Secretary to make TPS decisions for currently designated countries at least 60 days in advance of the end of the designation period and publish these decisions in the Federal Register in a timely manner.⁶ However, both the previous and current administrations have routinely announced TPS decisions without the accompanying FRN. While some initial and re-designations since 2021 have been followed by the FRN within a few days, the vast majority have had delays of over 40 days after the decision announcement. Whether or not there will be a delay and the length of such a delay has been unpredictable, varying from no delay at all (South Sudan in March 2022) to a delay of over 70 days (Burma and Haiti in 2021). The most recent such delay was Venezuela’s TPS extension FRN, which came 59 days after the extension’s announcement—one day before the previous grant period was to end.

FRN delays tip off a domino effect of consequences for TPS holders and their families. When a decision arrives or is announced without an FRN (opening the re-registration period) the clock starts to tick on TPS holders’ current TPS-related documents, which are only valid through certain expiration dates. TPS holders are then unable to obtain needed documents for work, driver’s licenses, maintain access to bank accounts, student loans, etc. at no fault of their own. The U.S. Department of Justice Immigrant and Employee Rights Section lists numerous examples of TPS holders being impacted by these issues and the government resources being spent to address them.⁷ The timely publication of FRNs is critical, because late publications make vulnerable communities more likely to be taken advantage of by unscrupulous actors, including notarios and individuals engaging in the unauthorized practice of law. Moreover, an official FRN is critical to ensure that on-the-ground enforcement officers are appropriately prioritizing cases, releasing individuals from detention, and appropriately closing out immigration-related cases.

⁵ Comment responding to Request for Public Input U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security regarding *Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services*, Docket ID USCIS-2021-0004-0001, May 17, 2021, <https://cliniclegal.org/resources/humanitarian-relief/temporary-protected-status-and-deferred-enforced-departure/comment>.

⁶ 8 U.S.C. § 1254b(3)(A) (“At least 60 days before end of the initial period of designation, and any extended period of designation . . . the Attorney General . . . shall determine whether the conditions for such designation under this subsection continue to be met.”).

⁷ U.S. Department of Justice, Civil Rights Division, “Telephone Interventions: IER Interventions: Temporary Protected Status (TPS) and Deferred Enforced Departure (DED),” accessed October 14, 2022, <https://www.justice.gov/crt/telephone-interventions-2>.

III. Conclusion and Recommendations

We thank you for your engagement on this matter and look forward to working with you to eliminate these delays going forward for a healthier, functional TPS program. We are heartened by the commitment from USCIS in the most recent FY22 progress report to leverage “technology solutions to increase the integrity and efficiency of TPS case processing,” and we look to leadership to fully invest in this commitment.⁸ We are thankful for the progress USCIS has made over the past two years to rebuild capacity and address this backlog, and we respectfully make the following recommendations to alleviate the harm to TPS applicants as the agency continues to improve:

- a. Additional staff at USCIS should be immediately assigned to process the TPS backlog.
- b. Allow for fee waivers to be filed online to drive more applicants to online filing, which USCIS has indicated helps streamline application adjudications.
- c. Allow for automatic extensions of employment authorization documents for TPS holders once the announcement is made and before the FRN is released.
- d. To minimize confusion and the impact on employers and employees, DHS/USCIS should publish FRNs at least 60 days in advance of the end of a TPS designation period or on the same day as a statement, press release, or social media engagement for new designations.

Please contact Daniel Tse at Haitian Bridge Alliance (dtse@haitianbridge.org), Yanira Arias (varias@alianzaamericas.org) at Alianza Americas, Michelle Nawar (michelle.nawar@gmail.com), and Lora Adams at the TPS-DED Administrative Advocacy Coalition (lora@masadc.com) with any questions.

Sincerely,

National

African Communities Together
Alianza Americas
America’s Voice
American Immigration Lawyers Association
American-Arab Anti-Discrimination Committee (ADC)
Asian Americans Advancing Justice | AAJC
Asylum Seeker Advocacy Project (ASAP)
Cameroon Advocacy Network (CAN)
CASA
Catholic Legal Immigration Network, Inc. (CLINIC)
Center for Gender & Refugee Studies
Climate Refugees
Communities United for Status & Protection (CUSP)
Disciples Immigration Legal Counsel
Haitian Bridge Alliance
Immigrant Legal Resource Center
InReach
Latino Commission on AIDS

⁸ USCIS, *Fiscal Year 2022 Progress Report*, DHS, December 2022, https://www.uscis.gov/sites/default/files/document/reports/OPA_ProgressReport.pdf.

NAHRA, the Nicaraguan American Human Rights Alliance
National Education Association
National Immigration Law Center
National Network for Arab American Communities
National Partnership for New Americans
National TPS Alliance
Robert F. Kennedy Human Rights
Tahirih Justice Center
The Black Alliance for Just Immigration (BAJI)
WIN! The Welcome Immigrant Network
Women Working Together USA
Center for Immigrant Progress
Colectivo de Mujeres Transnacionales
Latinas en Poder
Mission Guatemala USA ONG
Red Mexicana de Líderes y Organizaciones de Migrantes
Southeast Immigrant Rights Network (SEIRN)
United for a Fair Economy

State/Local

Al Otro Lado
Alabama Coalition for Immigrant Justice – ACIJ
Alabama Latino AIDS Coalition
Arkansas United
ASOSAL: Asociación de Salvadoreños de Los Angeles
Ayuda
Babila Law LLC
Central American Resource Center de Washington D.C. - CARECEN D.C.
Central American Resource Center of Los Angeles - CARECEN Los Angeles
Central American Resource Center of San Francisco - CARECEN San Francisco
Church of Our Saviour/La Iglesia de Nuestro Salvador
Church of the Ascension
Ciudadanía en Oregon
Coalición de Derechos Humanos
Coalition for Humane Immigrant Rights (CHIRLA)
Contigo Immigration Justice Ministry of the Mountain Vista Unitarian Universalist Church,
Tucson, Arizona
CRECEN Houston
DIFO LAW FIRM PLLC
Durango Unido en Chicago
Families for Freedom
Florida Immigrant Coalition
Illinois Coalition for Immigrant and Refugee Rights
Illinois Workers in Action
Immigrant Defenders Law Center
Immigrant Law Center of Minnesota
Immigrant Legal Advocacy Project
InterReligious Task Force on Central America
Jewish Voice for Peace, Atlanta chapter
Just Neighbors Ministry
La Resistencia

Louisiana Advocates for Immigrants in Detention
Migrant Center for Human Rights
Mission Graduates
New Hampshire Conference United Church of Christ, Immigrant & Refugee Support Group
New York Immigration Coalition
North Carolina Conference of the United Methodist Church
Opening Doors International Services
Seattle Immigrant Rights Action Group
Sisters of St. Dominic of Blauvelt, New York
Tennessee Immigrant & Refugee Rights Coalition
Texas Civil Rights Project
UnLocal
UUFHCT
Venezuelans and Immigrants Aid (VIA)
Wallingford Indivisible
Wayne Action for Racial Equality
Wilco Justice Alliance (Williamson County, TX)
Wind of the Spirit Immigrant Resource Center
Woori Juntos
Access Living / Cambiando Vidas
America Para Todos
Armadillos Ni Un Migrante Menos
Casa Yurumein
Centro Comunitario CEUS (Comunidad, Educación, Unidad, Solidaridad)
Centro Presente
Centro Romero
Centro San Bonifacio
Chicago Religious Leadership Network on Latin America - CRLN
Cielo - Comunidades Indígenas en Liderazgo
COPAL
Dominican Development Center
Familia Unidas en Acción
Heartland Workers Center
Hondurans Against Aids
Latino Policy Forum
LILA LGBTQ, Inc.
Living Hope Wheelchair Association
Miami Workers Center
Organización Negra Centroamericana - ONECA
RCMA - Redlands Christian Migrant Association
Red de Pueblos Transnacionales
Rural Women's Health Project
Seeds of Resistance
St. Brigid's Casa Mary Johanna
Telpochcalli Community Education Project
We Count!

International

American Friends Service Committee (AFSC)
Church World Service
Comunidad Maya Pixan Ixim (CMPI)

International Refugee Assistance Project (IRAP)
Latin America Working Group (LAWG)
Quixote Center
Sisters of Charity Federation
U.S. Committee for Refugees and Immigrants
Witness at the Border
Asociación de Guatemaltecos Sin Fronteras
Colectivo de Desarrollo Transnacional de Michoacán
Diáspora Hondureña Internacional - DHI
Mundo Maya Foundation

CC:

Representative Zoe Lofgren, Chair of the Subcommittee on Immigration and Citizenship on the House Judiciary Committee

Senator Dick Durbin, Chair of the Senate Judiciary Committee