

**AMNESTY
INTERNATIONAL**



January 04, 2017

The Honorable Kirstjen M. Nielsen
Secretary of Homeland Security
Washington, DC 20528

RE: Extension of TPS Designation for El Salvador

Dear Secretary Nielsen,

On behalf of Amnesty International USA, and our more than one million supporters and members nationwide, I write to urge you to extend for 18 months the Temporary Protected Status (TPS) designation to El Salvador—the nation with the largest group of TPS recipients. TPS designation has been in place for El Salvador since 2001 and, currently protects a noteworthy 262, 528 —nearly 13 percent of the 2 million Salvadorans currently residing in the U.S.¹ While El Salvador's current TPS designation extends through March 9, 2018, pursuant to the statutory requirement, a decision to extend or terminate TPS for the country must be made by January 8, 2018.

For more than two years Amnesty International has documented the role of the Northern Triangle countries—El Salvador, Honduras and Guatemala—in the deepening refugee crisis in the Americas. The evidence gathered shows that these countries are failing to protect their people because they fail to reduce the violence that causes them to flee and do not protect them when they are deported back. In 2017, Amnesty International has interviewed and documented the cases of refugees from El Salvador who have fled persecution by law enforcement officials as well as the deeply embedded criminal networks, including some who have sought safe haven in the United States.

The Government of El Salvador is clearly not in a position to effectively handle the return of their nationals who currently have TPS (INA Sec. 244. 1/ [8 U.S.C. 1254] b. B. ii). Furthermore, *“there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the*

¹ Congressional Research Service Temporary Protected Status: Overview and Current Issues, by Wilson, Jill H. (November 2017) available at <https://fas.org/sgp/crs/homsec/RS20844.pdf>

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state from returning to the state in safety (INA Sec. 244. 1 [8 U.S.C. 1254] b. C).”² Given the prevailing country conditions, if returned, many Salvadoran may face severe human rights violations. Especially those, who have been in the United States for years and, recognizable as returnees are at increased risk for extortion, kidnapping, coerced service to gangs, and sexual violence.

In addition to stark infrastructure and public health challenges, food, water, and housing shortages and vulnerability to natural disasters³, gang violence in El Salvador has reached unmatched levels—the U.S. State Department reports that more than one in five families claim to have been the victims of violent crime⁴. El Salvador is one of the most violent nations on earth, with a homicide rate several times higher than the global average⁵. Conflict and violence displacement figures peaked in 2016, with an estimated 220,000 to 400,000 internally displaced persons in a nation of only 6.4 million⁶.

According to Amnesty International’s research, many of those who sought to leave El Salvador in 2016 were fleeing the effects of the increasing control of criminal gangs over areas of the country and the impact this had on the rights to life, physical integrity, education and freedom of movement of local populations⁷. The Salvadoran Ministry of Education reported that 39,000 students left school due to harassment or threats by gangs in 2015—three times the 2014 figure of 13,000⁸. The country’s teachers’ union said they believed the real number could be more than 100,000.

² Immigration and Nationality Act INA: ACT 244 Temporary Protective Status

<https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-7238.html>

³Rathod, Jayesh and Stinchcomb, Dennis and Garcia, Victoria and Pillado, LaSarah and De Luna, María and Castañeda, Ricardo and Menkos, Jonathan and Urbina, Juan, Extending Temporary Status for El Salvador: Country Conditions and U.S. Legal Requirements (December 2017). Available at <https://ssrn.com/abstract=3091249>

⁴U.S Department of State, El Salvador 2016 Human Rights Report. Available at <https://www.state.gov/documents/organization/265798.pdf>

⁵Amnesty International Report: Home Sweet Home? Honduras, Guatemala and El Salvador’s Role in a Deepening Refugee Crisis (October 2016). Available at <https://www.amnestyusa.org/reports/home-sweet-home-honduras-guatemala-and-el-salvadors-role-in-a-deepening-refugee-crisis/>

⁶Internal Displacement Monitoring Centre (IDMC) - Norwegian Refugee Council. “El Salvador.” Available at www.internal-displacement.org/countries/el-salvador.

⁷Amnesty International, Annual Report 2016/2017: El Salvador. Available at <https://www.amnesty.org/en/countries/americas/el-salvador/report-el-salvador/>

⁸Amnesty International Report: Home Sweet Home? Honduras, Guatemala and El Salvador’s Role in a Deepening Refugee Crisis (October 2016). Available at <https://www.amnestyusa.org/reports/home-sweet-home-honduras-guatemala-and-el-salvadors-role-in-a-deepening-refugee-crisis/>

Those identified as lesbian, gay, bisexual, transgender and intersex (LGBTI) are at a higher risk of suffering extreme violence because of their sexual orientation and gender identity. Amnesty International's recent report, "*No Safe Place. Salvadorans, Guatemalans and Hondurans seeking asylum in Mexico based on their sexual identity and/or gender orientation*"⁹, shows that LGBTI people are forced to flee El Salvador to protect themselves from the attacks they suffer due in particular to their sexual orientation and gender identity. Gay men and trans women in El Salvador suffer historic discrimination from State institutions and do not have access to adequate and effective measures that guarantee their rights and fulfill their protection needs. It is deeply concerning that authorities do not have policies and programs that fully guarantee the rights of LGBTI people and prevent all forms of violence against them. If returned to El Salvador, LGBTI individuals are at high risk of persecution, harassment and assassination.

Moreover, the El Salvador government's failure to address citizens' safety and humanitarian concerns related to large-scale internal displacement, as well as flagrant corruption and weak rule of law, proves its inability to adequately handle the return of its TPS population. The January 2016 suspension of the U.S. Peace Corps program in El Salvador¹⁰—the first time in nearly half a decade—further highlights the instability that has racked the nation and serves as proof that no one is exempt from its escalating violence.

Regardless of your decision, Amnesty International reiterates that U.S. policy must ensure access to asylum procedures for all TPS beneficiaries, in order to ensure individualized assessments as necessary, irrespective of questions regarding generalized humanitarian protection regimes based on the situations of the countries in question. Moreover, the lifting of the TPS designation and the current situation in El Salvador would constitute both "changed circumstances" and "extraordinary circumstances", which would make all TPS beneficiaries eligible for an exception to the one-year filing deadline for asylum applications.

⁹Amnesty International Report: "*No Safe Place. Salvadorans, Guatemalans and Hondurans seeking asylum in Mexico based on their sexual identity and/or gender orientation*", (November 2017). Available at <https://www.amnestyusa.org/wp-content/uploads/2017/11/No-Safe-Place-Briefing-ENG-1.pdf>

¹⁰Markon, Jerry. "Peace Corps Suspends El Salvador Program as Violence Surges." *The Washington Post* (January 2016). Available at www.washingtonpost.com/news/federal-eye/wp/2016/01/14/peace-corps-suspends-el-salvador-program-as-violence-surges/?utm_term=.d153836301d5.

Based on the above facts, and while U.S Congress does not pass legislation to find permanent solutions to those in the country for decades, and in order to protect more than 190,000 U.S. born children¹¹ who have Salvadoran parents that are TPS beneficiaries, we urge you to extend the current TPS designation for El Salvador for 18 months.

We request your timely consideration and prompt reply. If you need additional information or have questions related to this request, please do hesitate to contact me by email: marselha@aiusa.org or by telephone: 202-675-8766

Best regards,

Marselha Gonçalves Margerin
Advocacy Director for the Americas
Amnesty International USA

¹¹ U.S. Senator Ben Cardin, Ranking Member of the Senate Foreign Relations Committee, letter to Secretary of State Rex Tillerson and Secretary of Homeland Security Kirstjen Nielsen [https://www.foreign.senate.gov/imo/media/doc/12-21-17%20Cardin%20Letter%20to%20State%20\(Tillerson\)%20and%20DHS%20\(Nielsen\)%20on%20TPS-El%20Salvador.pdf](https://www.foreign.senate.gov/imo/media/doc/12-21-17%20Cardin%20Letter%20to%20State%20(Tillerson)%20and%20DHS%20(Nielsen)%20on%20TPS-El%20Salvador.pdf)



**U.S. Citizenship
and Immigration
Services**

March 12, 2018

Ms. Marselha Gonçalves Margerin
Advocacy Director
Amnesty International USA
600 Pennsylvania Avenue, SE, 5th Floor
Washington, DC 20003

Dear Ms. Gonçalves Margerin:

Thank you for your January 4, 2018 letter to the Department of Homeland Security (DHS). Secretary Nielsen asked that I respond on her behalf.

I appreciate your interest in the Temporary Protected Status (TPS) designation for El Salvador. The Secretary of Homeland Security's authority to designate a country for TPS and to extend or terminate a country's existing designation is based upon specific statutory criteria. *See* Immigration and Nationality Act (INA) § 244(b). U.S. Citizenship and Immigration Services (USCIS) is principally responsible for advising the Secretary on TPS issues and implementing the program.

At least 60 days before the current expiration date for a TPS designation, the Secretary must review conditions in the foreign country and, after consultation with other appropriate federal agencies, determine whether the statutory conditions for TPS continue to be met. Under the INA, if the Secretary determines that the conditions for designation are no longer met with respect to a country, the Secretary is required to terminate the designation. *See* INA § 244(b)(1),(3).

Secretary Nielsen decided to terminate the TPS designation for El Salvador after considering information from several U.S. Government sources, with a delay of 18 months to allow for an orderly transition before the designation terminates on September 9, 2019. DHS is committed to an orderly transition that will allow time for El Salvador to prepare for the return and reintegration of its citizens. USCIS will work with the State Department and the government of El Salvador to help inform relevant stakeholders in-country and in the United States to ensure an orderly return and reintegration of El Salvador's citizens. Additional details on the Secretary's decision and the process for current El Salvador TPS beneficiaries to renew their work authorization documentation until TPS terminates on September 9, 2019, can be found on the USCIS website and in the notice that was published in the *Federal Register* on January 18, 2018.

Ms. Marselha Goncalves Margerin
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Thank you again for your letter and interest in this important issue. Should you wish to discuss this matter further, please do not hesitate to contact me.

Respectfully,

A handwritten signature in black ink, appearing to read "L. Francis Cissna". The signature is fluid and cursive, with the first letter of each word being capitalized and prominent.

L. Francis Cissna
Director