

LETTER OF TRANSMITTAL

UNITED STATES SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC, November 7, 2019.

DEAR COLLEAGUES: Congress established the Temporary Protected Status (TPS) program in 1990 to provide humanitarian protections to foreign nationals within the United States who do not meet the legal definition of refugee or asylee, but who are nonetheless unable to return to their homeland due to the perils of armed conflict or natural disasters. Since the inception of TPS, Democratic and Republican administrations have utilized the TPS statute to provide humanitarian relief to hundreds of thousands of foreign nationals. However, during the past two years, the Trump administration has departed sharply from historical precedent in its interpretation and application of the TPS statute. Specifically, the administration sought to rescind humanitarian protections from nearly 400,000 TPS recipients from El Salvador, Honduras, and Haiti, despite readily apparent evidence of continued instability in each country.

Given the precarious conditions in the three countries, I directed my senior Senate Foreign Relations Committee (SFRC) staff member for the Western Hemisphere, Brandon P. Yoder, and SFRC Democratic Staff to investigate the role of the Department of State in the Trump administration's decision to terminate the TPS designations El Salvador, Honduras, and Haiti. During the course of this investigation, SFRC Democratic Staff secured access to a broad array of unclassified State Department documents related to the TPS decision-making process. These documents illustrated a troubling pattern of facts.

Senior officials at all levels of the State Department, including the U.S. Embassies in the three countries, repeatedly warned the Trump administration of the dire consequences that would result from the decisions to end TPS for El Salvador, Honduras, and Haiti. Senior State Department officials alerted the Trump administration that terminating the three TPS designations would have negative consequences for U.S. national security and would likely prompt increased irregular migration in the region.

Additionally, senior diplomats cautioned that nearly 400,000 TPS recipients, specifically those returning to El Salvador and Honduras, would face alarming levels of criminal violence and unstable social conditions in their countries of origin. Even more disturbing, officials throughout the State Department notified the Trump administration that an estimated 273,200 U.S. citizen children would face similar levels of crime and violence if they accompanied their TPS recipient parents. In several chilling cases, the State Department directly informed senior Trump administration officials that the American children who accompanied their TPS recipient parents would be vulnerable to recruitment by illicit actors, such as MS-13, and that these criminal gangs would be strengthened as a result. In the face of such risks, far too many TPS recipients will feel forced to leave their U.S. citizen children in the United States, prompting a new family separation crisis—one that has a direct impact on American families.

Despite these warnings, the Trump administration recklessly sought to end the TPS designations for El Salvador, Honduras, and Haiti with full knowledge of the inherent dangers of its decisions. SFRC Democratic Staff also revealed that in recommending the termination of the three TPS programs, senior Trump administration officials made explicit written references related to the 2020 election period—considerations which have no basis for humanitarian protections.

The report by Mr. Yoder and SFRC Democratic Staff demonstrates the manner in which decisions related to immigration matters have been increasingly politicized since the start of 2017. Nearly three decades ago, Congress came together in bipartisan consensus to establish TPS, in recognition of the importance of maintaining the United States' historical role as a place of refuge for all those unable to return safely to their homelands. Today, there must be a bipartisan sense of urgency to defend the integrity of the TPS program and reverse a decision that directly threatens the well-being of hundreds of thousands of men, women, and children—many of whom have been living in the United States for years. It is also time for Congress to come together to find a permanent solution for the nearly 400,000 TPS recipients from El Salvador, Honduras, and Haiti who have been productive members of our communities and our nation, in some cases for over two decades. We cannot afford to fail in this endeavor.

Sincerely,

ROBERT MENENDEZ,
Ranking Member.

EXECUTIVE SUMMARY

Since 1990, Congress has authorized humanitarian relief to foreign nationals in the United States who are unable to return to their countries of origin due to armed conflict or natural disasters that would pose a serious threat to their personal safety. Over the last 29 years, Republican and Democratic administrations alike have designated and extended these protections, known as Temporary Protected Status (TPS), after carefully weighing and assessing the dangers and the risks facing individuals should they be forced to return to their homeland. Eleven months into the Trump administration, however, the administration abruptly began seeking to end these protections. In particular, the administration's effort to strip TPS from nearly 400,000 individuals from El Salvador, Honduras, and Haiti would revoke their ability to remain in the United States, setting in motion a domestic and international crisis with grave implications for U.S. national security and severe risks to the personal safety of hundreds of thousands of people.¹

While the Trump administration's efforts have been stymied to date by a series of judicial injunctions, terminating the three TPS designations will have catastrophic consequences for U.S. foreign policy, including setting off a new wave of irregular migration towards the United States. Terminating these humanitarian protections will also lead to a de facto forced separation of American families, as up to 273,000 U.S. citizen children could be separated from their TPS recipient parents—a figure that exponentially eclipses the number of migrant children separated from their parents by the Trump administration to date.²

By seeking to deny continued humanitarian relief to hundreds of thousands of TPS recipients and return them to El Salvador, Honduras, and Haiti, the Trump administration risks further undermining the political stability and internal security conditions of these countries. This carries significant negative consequences for U.S. national interests. In the case of El Salvador and Honduras, it would also subject TPS recipients—and any of their U.S. citizen children that accompany them—to the alarming levels of criminal violence perpetrated by narcotics traffickers and violent street gangs, such as MS-13, and strengthen these illicit organizations in the process.

¹ Since January 2017, the Trump administration has sought to terminate the TPS designations for six countries: El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan. This report examines the efforts to terminate the TPS designations for El Salvador, Honduras, and Haiti. The number of TPS recipients comes from data provided by U.S. Citizenship and Immigration Services (USCIS) to the Congressional Research Service. Congressional Research Service (CRS), *Temporary Protected Status: Overview and Current Issues*, at 5, Table I, updated Mar. 29, 2019.

² The number of TPS recipients' children comes from Robert Warren & Donald Kerwin, *A Statistical and Demographic Profile of the US Temporary Protected Status Populations from El Salvador, Honduras, and Haiti*, *Journal on Migration and Human Security*, at 581 (Aug. 2017).

Disturbingly, the Trump administration decided to terminate the TPS designations for these three countries with full knowledge of the overwhelming magnitude of the crisis it was creating. Throughout 2017, the U.S. Embassies in San Salvador, Tegucigalpa, and Port-au-Prince alerted senior Trump administration officials at the National Security Council (NSC), Department of State, and Department of Homeland Security (DHS) in writing of the consequences of terminating TPS for the three countries. Specifically, U.S. Embassies cautioned that such decisions will harm U.S. national security, trigger a new wave of migration to the United States, and jeopardize the safety of TPS recipients and their American children. Senior officials at all levels of the State Department provided additional written warnings and signaled that these decisions would undermine the Trump administration's foreign policy priorities, which include countering transnational criminal organizations and consolidating the rule of law in the three countries in order to address the underlying factors driving migration towards the United States. The Trump administration intentionally ignored these warnings.

Additionally, in one alarming example, Senate Foreign Relations Committee Democratic Staff uncovered that senior Trump administration appointees in the State Department recommended a shorter termination period to avoid hundreds of thousands of TPS recipients losing their status during the height of the 2020 election. Trump administration political appointees thus injected electoral considerations into the decision-making process not contemplated under the TPS statute, raising the likely prospect that the Trump administration elevated electoral concerns over U.S. national security and the personal safety of nearly 400,000 TPS recipients and an estimated 273,000 American children.

Principal Findings

The Senate Foreign Relations Committee Democratic Staff's investigation into the role of the U.S. Department of State in the Trump administration's decisions to terminate TPS designations for El Salvador, Honduras, and Haiti found the following:

- 2020 election considerations were injected into the decision to end TPS for El Salvador, Honduras, and Haiti;
- The Trump administration announced the termination of TPS for the three countries after intentionally ignoring risks to U.S. national security priorities;
- When recommending the termination of the three TPS designations, Trump administration officials were aware that TPS recipients—and any of their accompanying American children—would face crime and violence if repatriated;
- Ending TPS for the three countries would lead to an unprecedented wave of de facto forced separation of American families; and
- In ending TPS for the three countries, the Trump administration knowingly made a decision that could accelerate irregular migration to the United States.

This report provides an in-depth review of the State Department's decisions and issues recommendations for legislative action to strengthen the TPS program and insulate it from future political manipulation.³ Chapter One provides an overview of TPS and details how the Trump administration abandoned the precedent set by Democratic and Republican administrations regarding designations and extensions for El Salvador, Honduras, and Haiti.

Chapter Two examines the Trump administration's politicization of the State Department's decision-making process and disregard for the expertise of senior national security experts, including a previously undisclosed memorandum of dissent and personal appeal by then-Undersecretary of State Thomas Shannon to then-Secretary of State Rex Tillerson. Chapter Three describes how Trump administration officials recommended terminating TPS despite direct knowledge that such a decision would likely lead the three foreign governments to take retaliatory actions that run counter to U.S. national security. This chapter also examines how the Trump administration's March 2019 decision to curtail U.S. foreign assistance for El Salvador and Honduras undermines U.S. efforts to address the factors driving irregular migration.

Chapter Four delineates how State Department and U.S. Embassy officials cautioned that the three countries lacked the capacity to guarantee the safety of the hundreds of thousands of returning citizens, or the security of their American children that would accompany them. The chapter depicts how, in the face of such risks to their U.S. citizen children, many TPS recipients would be compelled to leave their American children in the United States, thereby creating an unprecedented wave of de facto forced family separation.

The Findings and Recommendations outlines legislative action needed to depoliticize the TPS program and to ensure that future decisions regarding the designation, extension, and termination of TPS are based on the objective examination of country conditions. This section recommends that the State Department's Office of the Inspector General investigate the politicization of the administration's TPS decisions and that the Trump administration immediately exercise its authority to extend the TPS designations for El Salvador, Honduras, and Haiti.

The report includes three annexes: (1) the statutory authority for TPS and historical background on its application; (2) a brief summary of ongoing litigation related to the termination of TPS designations for El Salvador, Honduras, and Haiti; and (3) State Department documents reviewed for this report.

In conducting its investigation and compiling this report, Senate Foreign Relations Committee Democratic Staff reviewed unclassified internal documents and memoranda from the State Department related to its recommendations regarding the TPS designations for El Salvador, Honduras, and Haiti. These documents include Secretary Tillerson's recommendation to terminate TPS, State Department assessments on country conditions in El Sal-

³ The U.S. Senate Committee on Foreign Relations is the principal Senate committee responsible for conducting oversight of U.S. foreign policy and the U.S. Department of State. As such, this report exclusively focuses on the role of the Department of State in the TPS program. It does not review DHS's internal decision-making processes for TPS.

vador, Honduras, and Haiti, diplomatic cables from U.S. Embassies from the three countries, and a memorandum to Tillerson from Undersecretary Shannon, the most senior career Foreign Service Officer in the Department of State at that time. Many of these documents were subsequently made publicly available through Freedom of Information Act (FOIA) request and litigation, and are included in Annex 3. Staff also traveled to El Salvador, Honduras, and Haiti.