Temporary Protected Status for El Salvador
Findings of a Refugees International Research Mission

December 2017

Summary

In the next few weeks, the Trump Administration will decide the fate of some 200,000 Salvadorans who are living in the United States. By January 8, 2018, the Secretary of Homeland Security must decide whether or not to approve an extension of El Salvador as a Temporary Protected Status (TPS)-designated country. Should the Secretary decide not to extend TPS, some 200,000 Salvadorans will be subject to deportation. Most of the Salvadorans facing possible deportation are parents to U.S.-born children and have known no home other than the United States for almost two decades. The TPS statute clearly provides the Trump Administration with the legal authority to extend TPS for 18 months in this particular circumstance. Based on the findings of a November 2017 Refugees International mission, RI concludes that humanitarian, human rights and ethical imperatives — as well as the promotion of peace and stability in El Salvador — demand that TPS be renewed and that Salvadoran beneficiaries and their families not be forced to return.

Background

The Temporary Protected Status legislation enables the U.S. government to protect eligible foreign nationals in the United States from being returned to their countries of citizenship when those countries experience: 1) armed conflict that prevents safe return; 2) an earthquake, flood, drought, epidemic or other environmental disaster rendering the foreign state unable to handle adequately return of its nationals; or 3) other extraordinary and temporary conditions in the foreign state that prevent safe return. The Secretary of Homeland Security is authorized to designate a foreign country with TPS for six to 18 months and, when that period ends, is further empowered to extend TPS for six, twelve or eighteen months if the Secretary determines “the conditions for such designation…continue to be met.”

El Salvador was designated with TPS on March 9, 2001, after two devastating earthquakes earlier that year which led to the deaths of more than one thousand people, affected 1.5 million Salvadorans, and caused an estimated US$1.66 billion in damages. El Salvador’s TPS status has been extended continually by subsequent U.S. administrations, beginning with the administration of George W. Bush. The most recent extension was conferred in 2016, with U.S. Citizenship and Immigration Services (USCIS) noting that “conditions in El Salvador supporting the TPS designation continue to be met.” As USCIS indicated in its statement less than two years ago, living conditions in El Salvador continued to be substantially impacted as a result of the earthquakes. That remains the case today, while other socio-economic, political and security challenges in El Salvador have only made it more difficult to address pervasive impacts of the earthquakes.

This circumstance provides the Secretary of Homeland Security with ample authority to renew TPS for 18 months. The question is whether, for humanitarian, human rights and ethical reasons — as well as to promote peace and stability in El Salvador — the Secretary should use her authority to do so.

Refugees International (RI) recently concluded a mission to Mexico, Honduras, and El Salvador, where it researched the mounting protection and humanitarian challenges
migrants, asylum-seekers, and deportees face. Based on its findings, RI is convinced that El Salvador is not in a position to absorb the return of its nationals safely and in a manner that addresses basic needs, and that such return will have serious and substantial negative human rights and humanitarian implications. This is due primarily to the ongoing violence in El Salvador and the unwillingness or inability of the Salvadoran government to provide adequate reception conditions for returnees.

**Violence and Displacement**

El Salvador is plagued by criminality and gang-related violence that continues to result in a record loss of life. In 2016 alone, the homicide rate was 85.91 per 100,000 inhabitants — a deadly level of violence unparalleled outside war zones. Everyday challenges for people living in El Salvador include extortion, forced recruitment into gangs, rape, and murder. This violence is fueling both displacement in El Salvador and migration throughout Central America and northward to Mexico and the United States.

In a 2015 UN Refugees Agency (UNHCR) study on the Northern Triangle, *Women on the Run*, 85 percent of women interviewed described living in neighborhoods under the control of gangs — *maras* — or other criminal groups. In addition, 64 percent of women described being the targets of direct threats and attacks by members of criminal armed groups as a primary reason for their flight. In 2014, in another UNCHR report, *Children on the Run*, 72 percent of children interviewed shared reasons for flight that raised international protection concerns. From 2008 to 2014, UNHCR documented a 1,185 percent increase in the number of asylum applications across Latin America from citizens of El Salvador and other Northern Triangle countries.

**A Protection Vacuum**

The Government of El Salvador fails to acknowledge violence-driven internal displacement and violence-driven migration. As such, it has also failed to establish adequate protection mechanisms for citizens residing in the country, much less for Salvadoran deportees. During its mission, RI observed the reception process for Salvadoran deportees from the United States and Mexico and found that no formal protection options exist during arrival or reintegration. When deportees arrive in El Salvador, they are transferred to a reception center, the *Dirección de Atención al Migrante* (the Directorate of Attention to Migrants), which is known colloquially as *La Chacra*. At this center, deportees are presented with a wide array of services by government officials and volunteers, including immediate food assistance, health and mental health screening, and referrals for hospitals, education, and employment agencies. However, there are no services to address protection needs.

A short three- to five-minute demographic survey is administered upon arrival, in which deportees are asked why they left El Salvador in the first place. It is at this point that deportees may disclose their experience with past violence or concerns over the ability to return to their villages of origin. If the deportees express concerns, they may be referred to the new *Oficina Local de Asistencia a Victimas* (the Local Office for Assistance to Victims or OLAV). The OLAV, in theory, will provide protection options. However, these protection options are not meaningful. The OLAV office in *La Chacra* offers some social services and a basket of goods, but neither the OLAV nor any other institution in *La Chacra* can provide physical protection or alternatives to people for whom going home will present a threat to their lives.

If deportees indicate that they cannot go home, authorities in *La Chacra* scramble to assemble temporary solutions. These include a few days in a migrant detention center and urgent pleas to civil society for assistance. RI heard first-hand testimony of how low-resourced civil society support groups struggle to pay — often out of their own pockets — for short-term accommodation in hostels in an effort to save people’s lives. RI also learned how these same groups have created a grassroots network to shuttle survivors out of the country through Guatemala, precisely because their government still fails to recognize violence-fueled displacement.
In fact, El Salvador’s Constitutional Court, which sits in the Supreme Court of Justice, has recently admitted five lawsuits for judicial protection for families who have been forced to displace internally as a result of violence and who accuse the government and the Office of the Attorney General of failing to protect them.

While UNHCR is the most critical international protection actor in the country, it does not have a presence in La Chacra. This is because the Government of El Salvador only recognizes the search for economic opportunity or family reunification as causes of displacement and migration. USAID currently finances a “welcome package” for these deportees in both countries, which includes a hygiene kit, among other nominal goods and services. The obvious question is whether, through these and other modest efforts to assist deportees, the United States is meeting its humanitarian and ethical obligations surrounding protection when it deports people to such conditions.

We believe it is not.

**Implications for Return of TPS beneficiaries**

In light of the violence in El Salvador and the extraordinarily limited protection options that exist for those Salvadorans who are currently being deported (at the rate of many thousands per year), return of nearly 200,000 TPS beneficiaries risks creating a human rights and humanitarian disaster, with dramatic implications for TPS beneficiaries and negative implications for the United States. With return of TPS beneficiaries, the enormous reintegration challenges would be compounded by the fact that there is likely to be nearly 200,000 U.S. citizen children of Salvadoran TPS beneficiaries. These children know no other home than the United States, and their relocation to El Salvador would impose enormous challenges in a society that is plagued by violent gangs — and whose members prey on young people. Such an outcome would seem to contrast sharply with U.S. efforts to promote stability and address gang violence in El Salvador.

**Conclusion**

Each year, many thousands of Salvadorans are deported from the United States back to El Salvador, and many of those have protection needs that go unmet, creating serious and substantial risks. U.S. government efforts to support protection for such returnees are already inadequate. As a result, the U.S. government is already failing to meet humanitarian and ethical obligations surrounding protection when it deports people to such conditions.

Under these circumstances, it is unreasonable and unethical for the United States to return some 200,000 TPS beneficiaries, an action that would substantially increase the unmet protection challenge. Moreover, and in light of the ongoing violence in El Salvador and the limited capacity of the government to address protection issues, such mass returns would undermine U.S. policy efforts to promote peace and stability in El Salvador in particular and in Central America in general.

To be sure, some Members of Congress have proposed a permanent legislative solution that would create a path to citizenship for this group of Salvadorans, who have been in the United States and have made substantial contributions for many years. But that permanent solution has yet to be achieved. In the meantime, the Secretary of Homeland Security, who has ample legal authority to extend TPS for Salvadorans, should indicate her intention to so do for a period of 18 months.

Such action would meet critical humanitarian obligations, and well serve both the values of the United States and U.S. interests in peace and stability in Central America.
Endnotes

1 The TPS statute can be found at the USCIS website: https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-7238.html.


7 See American Immigration Council Factsheet, October 2017, at https://www.americanimmigrationcouncil.org/research/temporary-protected-status-united-states. The Factsheet does not provide a number for U.S. citizen children of Salvadoran TPS beneficiaries, but RI is able to make this assertion based on a reasonable extraction of the data provided in that document, combined with conversations that RI has conducted with experts in the region.

8 To be sure, some parents might attempt to have their children remain in the United States, but this could put the United States in the awkward position of encouraging the break-up of families, as well as create significant burdens to states and localities and put young children at risk.