

United States Senate

WASHINGTON, DC 20510

December 18, 2020

Alejandro Mayorkas
Secretary-Designate of the Department of Homeland Security
Biden-Harris Transition
1401 Constitution Avenue N.W.
Washington, D.C., 20230

Dear Secretary-Designate Mayorkas:

We would like to congratulate you on President-elect Joe Biden's announcement that he intends to nominate you for the position of Secretary of the Department of Homeland Security (DHS). We trust that your experience as Director of United States Citizenship and Immigration Services (USCIS) and as Deputy Secretary of DHS, along with your personal experience as a son of refugees, will leave you well-positioned to address the pressing issues facing our nation's immigration system, many of which have been significantly worsened by the Trump Administration's harmful policies.

The task of the incoming Biden-Harris Administration will be, as the President-elect often states, to "restore the soul of the nation," which is urgently needed in the sphere of immigration policy. We write today to reiterate our support for immediate action to protect the hundreds of thousands of Temporary Protected Status (TPS) recipients whose continued lawful status in the country remains in jeopardy as a result of the Trump Administration's efforts to terminate their protections and to urge you to promptly issue additional TPS designations and redesignations based upon a sober assessment of country conditions and an exercise of your clear statutory authority. We are pleased that President-elect Biden has pledged to grant TPS to Venezuelans already in the United States, something for which we have advocated.¹ It is critical, especially during the ongoing public health and economic crises brought on by the COVID-19 pandemic, for the Biden-Harris Administration to act quickly to provide clarity and long-term stability to TPS recipients in our communities.

Over the past four years, the Trump Administration moved to terminate TPS for recipients from six nations: El Salvador, Haiti, Honduras, Nicaragua, Nepal, and Sudan. President-elect Biden decried these decisions as having been "politically-motivated"—a finding supported by a report prepared by the minority staff of the Senate Foreign Relations Committee and by the federal district court in *Ramos v. Nielsen* that initially blocked several terminations from taking effect. Only by virtue of litigation that remains pending have these designations remained in place, but the success of that litigation is now in doubt, and the continued fear and uncertainty experienced by TPS recipients are very real. While the Trump Administration, as a result of the outstanding court cases, recently extended TPS and associated work authorization documents for these individuals until October 4, 2021, even that brief reprieve could be taken away from many of these individuals if a court ruling comes soon.

¹ <https://lasvegassun.com/news/2020/dec/12/immigrants-living-in-us-under-embattled-federal-pr/>

TPS recipients from these six countries represent approximately 400,000 residents and over 97 percent of all TPS recipients nationwide.² We are proud to represent over 58,000 TPS recipients in the National Capitol region alone. Additionally, approximately 63,100 U.S. citizen children of TPS recipients, many of whom are school-aged, live in our region. We cannot overstate the importance of our desire to protect those American children from the brutal choice they and their families will face if the Trump Administration’s terminations are permitted to go into effect. Their parents will immediately lose their permission to work. And each child will be forced to either separate from their parents or be uprooted from the lives they have built in this—their own—country.³ In Virginia and Maryland alone, an estimated 13,300 TPS holders work in industries that DHS deems “essential critical infrastructure” including health care, agriculture, and manufacturing.⁴ These individuals have worked alongside other Americans at great risk to themselves and their family members to help keep the country running, and they will continue to play an important role in the recovery and rebuilding ahead.

The incoming Biden-Harris Administration has promised to immediately review Temporary Protected Status for vulnerable populations who cannot find safety in their countries due to violence or disaster.⁵ Additionally, the new administration has promoted a pathway to citizenship through legislative immigration reform for TPS and Deferred Enforced Departure (DED) recipients.⁶ While we share the Biden-Harris Administration’s desire for a comprehensive review of TPS policy and pathways to citizenship, we also urge you to take immediate executive actions to provide stability for TPS recipients and their families in the U.S. weathering the public health and economic crises brought on by COVID-19.

First, we respectfully request that the Biden-Harris Administration issue a notice in the Federal Register on January 20, 2021, vacating the Trump Administration’s termination decisions for all six nations and automatically extending current protections, including Employment Authorization Documents, while committing to conduct new fact-based assessments of country conditions required by law. Decisions regarding whether to extend, redesignate, or terminate protections for each of these countries must be made based upon the facts and the law. We also encourage you to consider granting DED to nationals of these countries, if necessary, as a way to ensure continuity of protections in the interim.

Second, in connection with the decision to review country conditions anew, we respectfully request that the Biden-Harris Administration promptly redesignate El Salvador, Honduras, and Nicaragua, for TPS—and issue a new TPS designation for Guatemala—as a result of the devastation left behind by Hurricanes Eta and Iota. The economic damage to these countries from these two unprecedented hurricanes is projected to far surpass the damage caused by Hurricane Mitch in 1998 on which the current designations for Honduras and Nicaragua are

² <https://fas.org/sgp/crs/homesecc/RS20844.pdf>

³ <https://www.americanprogress.org/issues/immigration/reports/2019/02/11/466022/ending-tps-will-hurt-u-s-citizen-children/>

⁴ <https://www.americanprogress.org/issues/immigration/news/2020/04/14/483167/demographic-profile-tps-holders-providing-essential-services-coronavirus-crisis/>

⁵ <https://thevadaindependent.com/article/can-the-biden-administration-deliver-on-its-message-of-a-new-hope-for-immigrants-in-the-u-s>

⁶ <https://thevadaindependent.com/article/can-the-biden-administration-deliver-on-its-message-of-a-new-hope-for-immigrants-in-the-u-s>

based. Widespread flooding and landslides caused substantial damage to critical infrastructure, housing, livelihoods, and food security, and weakened each country’s public health infrastructure at a time when they were already struggling to deal with the coronavirus pandemic. The governments of Honduras and Guatemala already have made formal requests for TPS—a precondition for designations under Section 244(b)(1)(B)—but the “extraordinary and temporary conditions” that make it impossible for these four countries to safely accept the return of their nationals more than justifies designations under Section 244(b)(1)(C), which does not require a request from a foreign government.

As the new administration works to fulfill its promise of sending an immigration reform bill to Congress within its first 100 days, we urge you to consult the models of the bipartisan American Dream and Promise Act, as well as the Safe Environment from Countries Under Repression and in Emergency (SECURE) Act. Both bills include pathways towards lawful permanent residency for TPS recipients.

The COVID-19 pandemic has laid bare the reality that millions of immigrants, both documented and undocumented, work alongside other Americans every day to keep the country going, and their work and contributions will be no less important as we begin to turn the corner and work toward a national recovery that is strong, resilient, and equitable. This is true of more than 131,000 TPS holders who are serving in jobs essential to the nation’s critical infrastructure. As we overcome this crisis, we owe a debt of gratitude to these communities that we can begin to pay by extending citizenship to those who have dutifully served their neighbors in a time of crisis. We commit to working with you to achieve that goal. Thank you for your time and consideration.

Sincerely,



Mark R. Warner
United States Senator



Tim Kaine
United States Senator



Benjamin L. Cardin
United States Senator



Chris Van Hollen
United States Senator