



2020

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Recommended Citation

Gecht, Cody M. (2020) "Lawful Permanent Residency: A Potential Solution for Temporary Protected Status Holders in the Eastern District of New York," *Touro Law Review*. Vol. 36 : No. 2 , Article 6.
Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol36/iss2/6>

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LAWFUL PERMANENT RESIDENCY: A POTENTIAL SOLUTION FOR TEMPORARY PROTECTED STATUS HOLDERS IN THE EASTERN DISTRICT OF NEW YORK

*Cody M. Gecht**

I. INTRODUCTION

In the United States, there are approximately 300,000 individuals from ten nations that have been granted Temporary Protected Status (“TPS”) by the government.¹ TPS is a program that allows foreign nationals to remain legally in the United States because they are prevented from “returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately.”² The Trump Administration extended some TPS programs; however, the administration has terminated or not re-designated most TPS programs, leaving many individuals without a means of lawful status in the United States.³ The terminations and non-re-designations⁴ of TPS keeps President Trump’s campaign

* Juris Doctor, May 2020; graduated from Binghamton University. To my family, thank you for all the support and freedoms that they have offered me and the ability to explore and grow. To my former employers, for taking the time and opportunity to train me and establishing my foundation of immigration knowledge. To my editors, Thomas Narducci and Nicole Johnson, for their time and commitments to oversee and help me improve my Note. Finally, to Professor Jeffrey B. Morris for his guidance, edits, insights to the Court, and understanding the importance of this Note to me.

¹ Kathryn Johnson & Peniel Ibe, *Trump Has Ended Temporary Protected Status for Hundreds of Thousands of Immigrants: Here’s What You Need to Know*, AM. FRIENDS SERV. COMM., <https://www.afsc.org/blogs/news-and-commentary/trump-has-ended-temporary-protected-status-hundreds-thousands-immigrants> (last updated Jan. 08, 2020).

² See *infra* text accompanying note 42.

³ Johnson & Ibe, *supra* note 1.

⁴ Termination of a TPS program is when the Secretary of Homeland Security has concluded that the conditions in which why a TPS program was created have been overcome or resolved and it is safe for a foreign national to return home. On the other hand, when a TPS program is re-designated by a Secretary of Homeland Security, the conditions in a foreign national’s home country have not improved and a foreign national may apply for a continuation of his or her legal immigration status under the TPS program.

promise to reduce the number of immigrants in the United States.⁵ Nonetheless, lawsuits were filed by foreign nationals to challenge the Trump administration's decision to end these programs.⁶ For example, on March 12, 2018, Crista Ramos filed a complaint against the Secretary of Homeland Security, Kirstjen Nielsen, contesting the end of El Salvador, Haiti, Nicaragua, and Sudan TPS programs.⁷ On October 3, 2018, in *Ramos v. Nielsen*,⁸ the United States District Court for the Northern District of California ruled that these programs are to continue and the government is “[enjoined and restrained] from engaging in, committing, or performing, directly or indirectly, by any means whatsoever, implementation and/or enforcement of the decisions to terminate TPS for Sudan, Haiti, El Salvador, and Nicaragua pending resolution of this case on the merits.”⁹

Though causes of action have been filed against the administration to keep the TPS programs alive, lawsuits have been, and continue to be, filed to grant Legal Permanent Resident (“LPR”) status to TPS visa holders.¹⁰ On February 22, 2018, Amado de Jesus Moreno¹¹ filed a lawsuit in the Eastern District of New York (“E.D.N.Y.”).¹² Mr. Moreno asked the court to grant TPS visa holders who live in the E.D.N.Y. and other districts across all circuits, via a class certification, the ability to go through the Adjustment of Status (“AOS”) process so that a valid holder of TPS may receive a “Green

⁵ David Leblang, Ankita Satpathy, Alexa Iadarola, Ben Helms, Kelsey Hunt, Eric Xu, Rebecca Brough, & Mahesh Rao, *By Ending ‘Temporary Protected Status’ for Half a Million People, Trump Has Probably Increased Illegal Migration*, THE WASHINGTON POST, (Aug. 07, 2018, 7:00 AM), https://www.washingtonpost.com/news/monkey-cage/wp/2018/08/07/by-ending-temporary-protected-status-for-half-a-million-people-trump-has-probably-increased-illegal-migration/?utm_term=.c206de9273e5.

⁶ Laura D. Francis, *Trump’s Immigration Comments Again at Play in Federal Lawsuit*, BLOOMBERG LAW, (Aug. 07, 2018, 9:28 AM), <https://news.bloomberglaw.com/daily-labor-report/trumps-immigration-comments-again-at-play-in-federal-lawsuit>.

⁷ Andrea Castillo, *San Francisco Judge Suspends Trump Administration’s Decision to End Protected Status for Hundreds of Thousands of Immigrants*, LOS ANGELES TIMES, (Oct. 03, 2018, 8:45 PM), <http://www.latimes.com/local/california/la-me-ln-tps-immigrant-decision-20181003-story.html>.

⁸ 336 F. Supp. 3d 1075 (N.D. Cal. 2018).

⁹ *Id.* at 1108.

¹⁰ American Immigration Council, *Ending Obstacles for Temporary Protected Status Recipients Seeking Legal Permanent Residence*, AM. IMMIGR. COUNCIL, <https://www.americanimmigrationcouncil.org/litigation/ending-obstacles-temporary-protected-status-recipients-seeking-legal-permanent-residence> (last visited Feb. 17, 2020).

¹¹ *Moreno v. Nielsen*, No. 1:18-cv-01135-RRM, 2019 WL 653139, at *1 (E.D.N.Y. Feb. 15, 2019).

¹² *Id.*

Card.”¹³ Nevertheless, even without class certification, if TPS holders within the E.D.N.Y. are not granted the opportunity to go through the AOS process, it would most likely have a negative mass effect within the foreground and background of the District.¹⁴ For instance, once a beneficiary’s TPS is over, it opens him or herself up to deportation.¹⁵ Thus, the recipient of TPS would not have a legal avenue of remaining in the United States.¹⁶

The named plaintiff, Amada de Jesus Moreno, is a foreign national from El Salvador.¹⁷ Mr. Moreno came to the United States and Entered Without Inspection (“EWI”)¹⁸ in 2000.¹⁹ In 2001, the government granted Mr. Moreno TPS and has maintained valid status since.²⁰ In 2011, Mr. Moreno was granted by the United States Citizenship and Immigration Services (“USCIS”) an I-131, “Application for Travel Document” (“Advance Parole”)²¹ petition, so that he may travel to El Salvador.²² Later in the year, Mr. Moreno left the United States and returned in July 2011.²³ When he returned to the

¹³ *Id.* at *2.

¹⁴ *See infra* note 42.

¹⁵ *See infra* note 42.

¹⁶ *Id.*

¹⁷ *Moreno*, 2019 WL 653139, at *1.

¹⁸ According to the 8 U.S.C. § 1225(a)(3) (2009), “[a]ll aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.” In other words, to gain lawful admission into the United States, a citizen of another country must be inspected and admitted by an immigration official. An immigration official will physically review a foreign national’s documents (“inspection”) and allow him or her entry into the United States (“admission”). If a foreign national is not inspected and admitted, he or she is deemed to have Entered Without Inspection. The easiest way for an individual to determine if he or she entered the United States lawfully is to check the Government’s I-94 website. *See I-94 Website: Travel Records for U.S. Visitors*, U.S. CUSTOMS & BORDER PROTECTION, <https://i94.cbp.dhs.gov/I94/#/home> (last visited May 15, 2020).

¹⁹ *Moreno*, 2019 WL 653139, at *1.

²⁰ *Id.*

²¹ As the USCIS states, the purpose of Advance Parole for foreign nationals is to “[u]se this form to apply for a re-entry permit, refugee travel document, or advance parole travel document, to include parole into the U.S. for humanitarian reasons.” *I-131, Application for Travel Document*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/i-131> (last updated May 07, 2020).

²² *Moreno*, 2019 WL 653139, at *1.

²³ *Id.*

country, the United States Customs and Border Protection (“CBP”) officer inspected and paroled²⁴ Mr. Moreno as a TPS beneficiary.²⁵

On or about January 2013, Mr. Moreno’s employer, Jersey Lynne Farms Inc., filed an immigrant visa application for Mr. Moreno with the USCIS.²⁶ The USCIS granted the petition in November 2014, thus making Mr. Moreno eligible under the 8 U.S.C. Section 1153(b)(3)(A)(i),²⁷ as a “skilled worker.”²⁸ With his newly approved visa, Mr. Moreno filed an I-485, “Application to Register Permanent Residence or Adjust Status,”²⁹ in January 2015.³⁰ In April 2017, the USCIS denied Mr. Moreno’s application.³¹ The government deemed Mr. Moreno ineligible to go through the AOS process because he failed to maintain lawful status from the date he originally entered in the United States.³² Mr. Moreno filed a timely appeal to the USCIS and requested the decision be reopened by the government.³³ Mr. Moreno contested that because he was paroled back into the United States in 2011, he had satisfied the requirements of 8 U.S.C. Section 1255(k),³⁴ thus making him exempt under 8 U.S.C. Section 1255(c),³⁵ which bars a foreign national from adjusting his status because of an unlawful presence within the United States.³⁶

²⁴ See *supra* text accompany note 18 and note 21. When a foreign national is “inspected,” a government official, whether it be a customs officer or another government official/agency (e.g. USCIS), reviews the bona fides of the individual requesting entry into the United States and grants him or her entry. When a foreign national is “paroled,” he or she has received a re-entry permit into the United States. An Advance Paroled document is issued to an individual who has applied for the Adjustment of Status process, however, he or she has yet to receive an immigrant visa (“Green Card”). Together, when a foreign national is “inspected and paroled,” he or she has gained lawful admission into the United States.

²⁵ *Moreno*, 2019 WL 653139, at *1.

²⁶ *Id.* at *2.

²⁷ See 8 U.S.C. § 1153(b)(3)(A)(i) (2006).

²⁸ *Moreno*, 2019 WL 653139, at *2.

²⁹ According to the USCIS, the I-485 calls for a foreign national to “[u]se this form to apply for lawful permanent resident status if you are in the United States.” *I-485, Application to Register Permanent Residence or Adjust Status*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/i-485> (last updated Apr. 20, 2020).

³⁰ *Moreno*, 2019 WL 653139, at *2.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ See 8 U.S.C. § 1255(k) (2009). This section in the United States Code discusses the impracticality of fixed provisions for certain types of employment-based immigrants. The overall 8 U.S.C. § 1255 statute establishes who is eligible for AOS and how an admitted nonimmigrant visa holder may obtain permanent residency.

³⁵ See 8 U.S.C. § 1255(c).

³⁶ *Moreno*, 2019 WL 653139, at *2.

In July 2017, the USCIS denied Mr. Moreno's appeal and found Mr. Moreno ineligible under 8 U.S.C. Section 1255(k).³⁷ The USCIS argued that Mr. Moreno was ineligible because reentering the United States on Advance Parole does not constitute admission into the United States.³⁸ Additionally, the USCIS contended that Mr. Moreno initially entered the United States without inspection by a government official, thus making him ineligible for the exemption based in 8 U.S.C. Section 1255(k).³⁹ Because of the denial on appeal, the *Moreno v. Nielsen* suit followed.⁴⁰ Mr. Moreno and other individuals, in a class suit against the government, contend that the USCIS should have treated their granting of TPS as an "inspection and admission" for his AOS petition.⁴¹

The court, in this case, should hold in its final ruling that a foreign national meets the "inspection and admission" requirement when the government grants him or her TPS status, even if the foreign national entered without "inspection and admission" when he or she first entered the United States. A foreign national must go through the AOS process because of the various cancellations and non-re-designations of TPS programs by the Trump administration. Even if the court denies a class certification, the court should allow the named plaintiff (and others in the E.D.N.Y.) the opportunity to go through the AOS process. It is imperative that the AOS process moves forward because once a TPS program ends, it officially terminates the legal status a foreign national has in the United States, thus making an individual subject to removal proceedings and deportation.⁴²

II. ROADMAP

In this article, Part III will explain what TPS is and who is eligible for the program(s). Part IV will elaborate on what is AOS and

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*; see *supra* text accompanying note 34.

⁴⁰ *Moreno*, 2019 WL 653139, at *2.

⁴¹ *Id.*

⁴² If a TPS visa holder loses lawful status, it could have significant consequences for the holder themselves and their families. TPS holders and their families, for example, would likely go into hiding as to avoid Immigration and Customs Enforcement ("ICE"). Additionally, for the older TPS programs and holders, years of establishing oneself in the United States would be lost. A holder would be sent to their original nation in which he or she might not recognize anymore because of all the time he or she had spent in the United States building a new life.

the filing process. Part V will discuss the various TPS programs and legislation in Congress to create a new TPS program. Part VI will discuss, elaborate, and analyze all cases that focus on whether a TPS recipient has the right and the ability to go through the Adjustment of Status process. Part VII will discuss the facts of *Moreno v. Nielsen* further. Part VIII will analyze and incorporate the applicable case and statutory law to the case at hand and how the E.D.N.Y. should rule. Lastly, Part IX will conclude the Note.

III. WHAT IS TPS? WHO IS ELIGIBLE?

Congress created the TPS program under the Immigration Act of 1990.⁴³ Congress developed TPS to provide foreign nationals the ability to obtain special visas that allow holders to remain legally in the United States.⁴⁴ The program operates as a refuge for foreign nationals whose home country experiences or has experienced some catastrophic event.⁴⁵ Reasons for granting the special visas under TPS include, but are not limited to, political turmoil, natural disasters, famine, and others.⁴⁶ TPS provides relief from the fear of being deported.⁴⁷ Nonetheless, to receive TPS, a foreign national must be eligible for the program and meet all its requirements.⁴⁸

A person is eligible for TPS when the Secretary of Homeland Security needs to designate that a foreign national's home country is unfit to live.⁴⁹ In determining which country is to receive a

⁴³ Nick Miroff, *What is TPS, and What Will Happen to the 200,000 Salvadorans Whose Status is Revoked?*, THE WASH. POST, (Jan. 09, 2018), https://www.washingtonpost.com/news/worldviews/wp/2018/01/09/what-is-tps-and-what-will-happen-to-the-200000-salvadorans-whose-status-is-revoked/?utm_term=.eac6e11744cd; see Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978, 5029 (1990).

⁴⁴ *Temporary Protected Status*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status> (last updated Mar. 30, 2020).

⁴⁵ *Id.*

⁴⁶ *Id.*; see 8 U.S.C. § 1254a(b).

⁴⁷ *Temporary Protected Status*, *supra* note 44.

⁴⁸ *Id.*

⁴⁹ See 8 U.S.C. § 1254a. Formerly, the Attorney General had the power to designate and grant TPS. In 8 U.S.C. § 1254a, the statute references the Attorney General, not the Secretary of Homeland Security. The power to designate TPS from the Attorney General to the Secretary of Homeland Security was in 2002. See Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135, 2311 (2002). Section 1517, codified at 6 U.S.C. § 557 (2015) provides: [W]ith respect to any function transferred by or under this chapter (including under a reorganization plan that becomes effective under section 542 of this title) and exercised on or after the effective date of this chapter, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall

designation, the Secretary of Homeland Security looks to many factors.⁵⁰ Before making a discretionary determination in issuing a designation, the Secretary of Homeland Security consults the appropriate government agencies.⁵¹ Once the Secretary of Homeland Security designates a country as unfit to live, a foreign national must meet additional requirements.⁵² For example, one requirement is that a foreign national must have continually resided in the United States since the foreign national's home country was designated.⁵³ Also, 8 U.S.C. 1254a(c)(1)(A)(i) establishes another requirement that a foreign national must have "been continuously physically present in the United States since the effective date of the most recent designation of that state."⁵⁴

IV. WHAT IS ADJUSTMENT OF STATUS? WHAT IS THE FILING PROCESS?

Adjustment of Status is the process in which a foreign national who possesses a nonimmigrant visa applies to become an LPR.⁵⁵ AOS is also the process in which an individual obtains a "Green Card."⁵⁶ Under 8 U.S.C. Section 1255, the statute establishes the foundation of who is eligible for AOS and how lawfully admitted nonimmigrant visa holders might obtain permanent residency.⁵⁷ There are numerous categories in which a foreign national may be eligible to apply to go through the AOS process.⁵⁸ For instance, an individual may file a petition for a Green Card based on family, employment, asylum, human trafficking, and other categories.⁵⁹ To apply, the foreign

be deemed to refer to the Secretary, other official, or component of the Department to which such function is so transferred.

⁵⁰ See *supra* note 46.

⁵¹ See 8 U.S.C. § 1254a(b)(1) (2018). The statute does not specify which agencies, the Department of State or the Department of Justice, the Secretary of Homeland Security would consult in making his or her determination.

⁵² *Temporary Protected Status*, *supra* note 44.

⁵³ See *supra* note 46.

⁵⁴ 8 U.S.C. § 1254a(c)(1)(A)(i); see *supra* note 4 for termination of a TPS program.

⁵⁵ *Adjustment of Status*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/greencard/adjustment-of-status> (last updated Jan. 11, 2018).

⁵⁶ *Id.*

⁵⁷ See 8 U.S.C. § 1255 (2009). The statute section is also known as "Adjustment of Status of Nonimmigrant to That of Person Admitted for Permanent Residence." *Id.*

⁵⁸ *Adjustment of Status*, *supra* note 55.

⁵⁹ *Green Card Eligibility Categories*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/greencard/eligibility-categories> (last updated May 15, 2020). TPS is

national must submit the I-485⁶⁰ and the appropriate Green Card petition⁶¹ to the USCIS.⁶²

Some Green Card applications must be approved first before filing an I-485; however, some Green Card categories allow a foreign national to file both petitions, “concurrently.”⁶³ “Concurrent filing” is when an adjustment application and an immigrant petition are filed together to the appropriate filing location and with the applicable fees.⁶⁴ Concurrent filing is permissive only in a few cases.⁶⁵ For example, the petitioners can concurrently file when they are immediate relatives of a United States citizen, if an immigrant visa is immediately available (for family and employment-based Green Cards), the abusive parent or spouse is a United States citizen, et cetera.⁶⁶ Nevertheless, all concurrently filed petitions are subject to the immediate availability of an immigrant visa, except if a foreign national is an immediate relative to a United States citizen.⁶⁷

In determining if an immigrant visa is readily available, generally for employment and family-based Green Cards, the Department of State (“DOS”) publishes a monthly Visa Bulletin,⁶⁸ which “indicates when statutorily limited visas are available to prospective immigrants based on their individual priority date.”⁶⁹ Additionally, “[t]he priority date is generally the date when the applicant’s relative or employer properly filed the immigrant visa

not listed as an eligible category in the statute nor on the USCIS website; however, according to the USCIS, a foreign national is not prohibited for filing for AOS because he or she simply has a TPS visa. *See Temporary Protected Status*, *supra* note 44. What is the general issue is whether a TPS recipient is eligible to go through the process as a whole because he or she may or may not be deemed lawfully admitted to the United States at the time the foreign national entered the United States without inspection?

⁶⁰ *See supra* text accompanying note 29.

⁶¹ *See Adjustment of Status*, *supra* note 55. There are various Green Card forms. For example, the I-130, the I-140, the I-918, et cetera.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Concurrent Filing of Form I-485*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/greencard/concurrent-filing-form-i-485> (last updated Feb. 02, 2017).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *See* U.S. DEP’T OF STATE, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html> (last visited Feb. 17, 2020).

⁶⁹ *USCIS Announces Revised Procedures for Determining Visa Availability for Applicants Waiting to File for Adjustment of Status*, U.S. CITIZENSHIP AND IMMIGR. SERVS., archived at <https://www.uscis.gov/archive/uscis-announces-revised-procedures-determining-visa-availability-applicants-waiting-file-adjustment-status> (last updated Sept. 09, 2015).

petition on the applicant's behalf with USCIS.”⁷⁰ Also, “[i]f a labor certification is required to be filed with the applicant's immigrant visa petition, then the priority date is when the labor certification⁷¹ application was accepted for processing by Department of Labor.”⁷² Statutorily, only 226,000 family-based Green Cards are immediately available each year.⁷³ Furthermore, the Immigration and Nationality Act only allows for 140,000 Green Cards, which are immediately available each year.⁷⁴ Moreover, “[b]oth categories are further divided into several sub-categories, each of which receives a certain percentage of the overall visa numbers as prescribed by law. . . . [T]here are limits to the percentage of visas that can be allotted based on an immigrant's country of chargeability (usually the country of birth).”⁷⁵

Once a petitioner applies, whether it is a single form, or it is concurrently filed, the USCIS sends a written confirmation that it received and is processing the application.⁷⁶ Thusly, this begins the long and arduous journey of becoming an LPR.

V. TPS PROGRAMS

As of October 2019, there are currently ten active TPS programs that the government expects to end, have not been re-designated, or are extended through 2021.⁷⁷ The active TPS programs include El Salvador, Haiti, Honduras, Nepal, Nicaragua, Somalia, Sudan, South Sudan, Syria, and Yemen.⁷⁸

Table 1 shows why each country received a TPS designation.

⁷⁰ *Id.*

⁷¹ *See* case cited *infra* note 447.

⁷² *Id.*

⁷³ *See* 8 U.S.C. § 1151(c)(1)(B)(ii) (2009).

⁷⁴ *See id.* § 1151(d)(1)(A).

⁷⁵ *Visa Availability and Priority Dates*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/greencard/visa-availability-priority-dates> (last updated Nov. 05, 2015).

⁷⁶ *See Adjustment of Status*, *supra* note 55.

⁷⁷ *Temporary Protected Status*, *supra* note 44.

⁷⁸ *Id.*

Table 1.

Country:	Reason for Designation:
El Salvador	Earthquake ⁷⁹
Haiti	Earthquake ⁸⁰
Honduras	Hurricane ⁸¹
Nepal	Earthquake ⁸²
Nicaragua	Hurricane ⁸³
Somalia	Armed Conflict ⁸⁴
Sudan	Armed Conflict ⁸⁵
South Sudan	Armed Conflict ⁸⁶
Syria	Armed Conflict ⁸⁷
Yemen	Armed Conflict ⁸⁸

Table 2 shows when the Secretary of Homeland Security/Attorney General⁸⁹ granted a country a TPS designation, its re-designation (if applicable), and its termination or its extension.

⁷⁹ Designation of El Salvador Under Temporary Protected Status Program, 66 Fed. Reg. 14,214, 14,214-16 (Mar. 09, 2001), <https://www.govinfo.gov/content/pkg/FR-2001-03-09/pdf/01-5818.pdf>.

⁸⁰ Designation of Haiti for Temporary Protected Status, 75 Fed. Reg. 3476, 3476-79 (Jan. 21, 2010), <https://www.govinfo.gov/content/pkg/FR-2010-01-21/pdf/2010-1169.pdf>.

⁸¹ Designation of Honduras Under Temporary Protected Status, 64 Fed. Reg. 524, 524-26 (Jan. 05, 1999), <https://www.govinfo.gov/content/pkg/FR-1999-01-05/pdf/98-34849.pdf>.

⁸² Designation of Nepal for Temporary Protected Status, 80 Fed. Reg. 36,346, 36,346-50 (June 24, 2015), <https://www.govinfo.gov/content/pkg/FR-2015-06-24/pdf/2015-15576.pdf>.

⁸³ Designation of Nicaragua Under Temporary Protected Status, 64 Fed. Reg. 526, 526-28 (Jan. 05, 1999), <https://www.govinfo.gov/content/pkg/FR-1999-01-05/pdf/98-34848.pdf>.

⁸⁴ Designation of Nationals of Somalia for Temporary Protected Status, 56 Fed. Reg. 46,804, 46,804-05 (Sept. 16, 1991), <https://www.govinfo.gov/content/pkg/FR-1991-09-16/pdf/FR-1991-09-16.pdf>.

⁸⁵ Designation of Sudan Under Temporary Protected Status, 62 Fed. Reg. 59,737, 59,737-38 (Nov. 04, 1997), <https://www.govinfo.gov/content/pkg/FR-1997-11-04/pdf/97-29077.pdf>.

⁸⁶ Designation of Republic of South Sudan for Temporary Protected Status, 76 Fed. Reg. 63,629, 63,629-35 (Oct. 13, 2011), <https://www.govinfo.gov/content/pkg/FR-2011-10-13/pdf/2011-26537.pdf>.

⁸⁷ Designation of Syrian Arab Republic for Temporary Protected Status, 77 Fed. Reg. 19,026, 19,026-30 (Mar. 29, 2012), <https://www.govinfo.gov/content/pkg/FR-2012-03-29/pdf/2012-7498.pdf>. On April 03, 2012, the USCIS issued a correction to its regulation amending some dates that were incorrect in the March 29, 2012 regulation. *See* Designation of Syrian Arab Republic for Temporary Protected Status, 77 Fed. Reg. 20,046, 20,046 (Apr. 03, 2012), <https://www.govinfo.gov/content/pkg/FR-2012-04-03/pdf/C1-2012-7498.pdf>.

⁸⁸ Designation of the Republic of Yemen for Temporary Protected Status, 80 Fed. Reg. 53319, 53319-23 (Sept. 03, 2015), <https://www.govinfo.gov/content/pkg/FR-2015-09-03/pdf/2015-21881.pdf>.

⁸⁹ *See supra* note 49.

Table 2.⁹⁰

Country:	Designation of TPS:	Most Recent Re-designation:	Termination date (T) or Extended through (E):
El Salvador ⁹¹	March 09, 2001	July 08, 2016 ⁹²	T: January 04, 2021 ⁹³
Haiti ⁹⁴	January 21, 2010	May 24, 2017 ⁹⁵	T: January 04, 2021 ⁹⁶

⁹⁰ At the time of publication submission, the dates provided in Table 2 on the re-designation, termination, or extension of a TPS program were the current dates of all programs. Certain dates are subject to change post-publication submission.

⁹¹ *Temporary Protected Status Designated Country: El Salvador*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-el-salvador> (last updated Nov. 01, 2019).

⁹² Extension of the Designation of El Salvador for Temporary Protected Status, 81 Fed. Reg. 44,645, 44,645-51 (July 08, 2016), <https://www.federalregister.gov/documents/2016/07/08/2016-15802/extension-of-the-designation-of-el-salvador-for-temporary-protected-status>.

⁹³ The termination of the El Salvador TPS program has currently been placed on hold because of the ruling from *Ramos v. Nielsen*. 336 F. Supp. 3d 1075 (N.D. Cal. 2018). According to the Federal Registrar, the El Salvador TPS program has been extended until January 04, 2021 as *Ramos* makes its way through the courts. Continuation of Documentation for Beneficiaries of Temporary Protected Status Designations for El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan, 84 Fed. Reg. 59,403, 59,403-10 (Nov. 04, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-11-04/pdf/2019-24047.pdf>.

⁹⁴ *Temporary Protected Status Designated Country: Haiti*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-haiti> (last updated Nov. 01, 2019).

⁹⁵ Extension of the Designation of Haiti for Temporary Protected Status, 82 Fed. Reg. 23,830, 23,830-37 (May 24, 2017), <https://www.govinfo.gov/content/pkg/FR-2017-05-24/pdf/2017-10749.pdf>.

⁹⁶ The termination of the Haiti TPS program has currently been placed on hold because of the ruling from *Ramos v. Nielsen*. 336 F. Supp. 3d 1075 (N.D. Cal. 2018). According to the Federal Registrar, the Haiti TPS program has been extended until January 04, 2021 as *Ramos* makes its way through the courts. Continuation of Documentation for Beneficiaries of Temporary Protected Status Designations for El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan, 84 Fed. Reg. 59,403, 59,403-10 (Nov. 04, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-11-04/pdf/2019-24047.pdf>. In *Saget v. Trump*, the Eastern District of New York further enjoined the government from terminating the Haiti TPS program, pending the final merits of the case. 375 F. Supp. 3d 280 (E.D.N.Y. 2019).

Honduras ⁹⁷	January 09, 1999	December 15, 2017 ⁹⁸	T: January 04, 2021 ⁹⁹
Nepal ¹⁰⁰	June 24, 2015	October 26, 2016 ¹⁰¹	T: January 04, 2021 ¹⁰²
Nicaragua ¹⁰³	January 05, 1999	May 16, 2016 ¹⁰⁴	T: January 04, 2021 ¹⁰⁵

⁹⁷ *Temporary Protected Status Designated Country: Honduras*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-honduras> (last updated Nov. 01, 2019).

⁹⁸ Extension of the Designation of Honduras for Temporary Protected Status, 82 Fed. Reg. 59630, 59630-36 (Dec. 15, 2017), <https://www.govinfo.gov/content/pkg/FR-2017-12-15/pdf/2017-27140.pdf>.

⁹⁹ According to the Federal Registrar, the Honduras TPS program has been extended until January 04, 2021. Continuation of Documentation for Beneficiaries of Temporary Protected Status Designations for El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan, 84 Fed. Reg. 59,403, 59,403-10 (Nov. 4, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-11-04/pdf/2019-24047.pdf>. Additionally, in *Bhattarai v. Nielsen*, the Northern District of California issued an order that further enjoined the termination of Honduras TPS program and halted the termination of Temporary Protected Status for foreign nationals from Nepal. Order Stipulating to Stay Proceedings, *Bhattarai v. Nielsen*, No. 19-cv-00731-EMC (N.D. Cal. Mar. 12, 2019).

¹⁰⁰ *Temporary Protected Status Designated Country: Nepal*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-nepal> (last updated Nov. 01, 2019).

¹⁰¹ Extension of the Designation of Nepal for Temporary Protected Status, 81 Fed. Reg. 74,470, 74,470-75 (Oct. 26, 2016), <https://www.govinfo.gov/content/pkg/FR-2016-10-26/pdf/2016-25907.pdf>.

¹⁰² Continuation of Documentation for Beneficiaries of Temporary Protected Status Designations for El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan, 84 Fed. Reg. 59,403, 59,403-10 (Nov. 04, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-11-04/pdf/2019-24047.pdf>. Moreover, in *Bhattarai v. Nielsen*, the Northern District of California issued an order that further enjoined the termination of Honduras TPS program and halted the termination of Temporary Protected Status for foreign nationals from Nepal. Order Stipulating to Stay Proceedings, *Bhattarai v. Nielsen*, No. 19-cv-00731-EMC (N.D. Cal. Mar. 12, 2019).

¹⁰³ *Temporary Protected Status Designated Country: Nicaragua*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-nicaragua> (last updated Nov. 01, 2019).

¹⁰⁴ Extension of the Designation of Nicaragua for Temporary Protected Status, 81 Fed. Reg. 30,325, 30,325-31 (May 16, 2016), <https://www.govinfo.gov/content/pkg/FR-2016-05-16/pdf/2016-11305.pdf>.

¹⁰⁵ The termination of the Nicaragua TPS program has currently been placed on hold because of the ruling from *Ramos v. Nielsen*. 336 F. Supp. 3d 1075 (N.D. Cal. 2018). According to the Federal Registrar, the Nicaragua TPS program has been extended until January 04, 2021. Continuation of Documentation for Beneficiaries of Temporary Protected Status Designations for El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan, 84 Fed. Reg. 59,403, 59,403-10 (Nov. 04, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-11-04/pdf/2019-24047.pdf>.

Somalia ¹⁰⁶	September 16, 1991	August 27, 2018 ¹⁰⁷	E: September 17, 2021 ¹⁰⁸
Sudan ¹⁰⁹	November 04, 1997	January 25, 2016 ¹¹⁰	T: January 04, 2021 ¹¹¹
South Sudan ¹¹²	November 03, 2011	September 21, 2017 ¹¹³	E: November 02, 2020 ¹¹⁴
Syria ¹¹⁵	March 29, 2012	August 01, 2019 ¹¹⁶	E: March 31, 2021 ¹¹⁷

¹⁰⁶ *Temporary Protected Status Designated Country: Somalia*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-somalia> (last updated Mar. 11, 2020).

¹⁰⁷ Extension of the Designation of Somalia for Temporary Protected Status, 83 Fed. Reg. 43,695, 43,695-00 (Aug. 27, 2018), <https://www.govinfo.gov/content/pkg/FR-2018-08-27/pdf/2018-18444.pdf>.

¹⁰⁸ Extension of the Designation of Somalia for Temporary Protected Status, 85 Fed. Reg. 14,229, 14,229-35 (Mar. 11, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-03-11/pdf/2020-04976.pdf>.

¹⁰⁹ *Temporary Protected Status Designated Country: Sudan*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-sudan> (last updated Nov. 01, 2019).

¹¹⁰ Extension of the Designation of Sudan for Temporary Protected Status, 81 Fed. Reg. 4045, 4045-51 (Jan. 25, 2016), <https://www.govinfo.gov/content/pkg/FR-2016-01-25/pdf/2016-01387.pdf>.

¹¹¹ The termination of the Sudan TPS program has currently been placed on hold because of the ruling from *Ramos v. Nielsen*. 336 F. Supp. 3d 1075 (N.D. Cal. 2018). According to the Federal Registrar, the Sudan TPS program has been extended until January 04, 2021. Continuation of Documentation for Beneficiaries of Temporary Protected Status Designations for El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan, 84 Fed. Reg. 59403, 59403-10 (Nov. 04, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-11-04/pdf/2019-24047.pdf>.

¹¹² *Temporary Protected Status Designated Country: South Sudan*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-south-sudan> (last updated Mar. 30, 2020).

¹¹³ Extension of South Sudan for Temporary Protected Status, 82 Fed. Reg. 44,205, 44,205-11 (Sept. 21, 2017), <https://www.govinfo.gov/content/pkg/FR-2017-09-21/pdf/2017-20174.pdf>.

¹¹⁴ Extension of the Designation of South Sudan for Temporary Protected Status, 84 Fed. Reg. 13688, 13688-94 (Apr. 05, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-04-05/pdf/2019-06746.pdf>.

¹¹⁵ *Temporary Protected Status Designated Country: Syria*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-syria> (last updated Mar. 30, 2020).

¹¹⁶ Extension of the Designation of Syria for Temporary Protected Status, 84 Fed. Reg. 49,751, 49,751-57 (Sept. 23, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-09-23/pdf/2019-20457.pdf>.

¹¹⁷ *Id.*

Yemen ¹¹⁸	March 04, 2017	August 14, 2018 ¹¹⁹	E: September 03, 2021 ¹²⁰
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Table 3 shows why a country was terminated (or, in some cases, originally terminated, but the termination is on hold because of a court order) or why a country was granted an extension of TPS by the Secretary of Homeland Security.

Table 3.

Country:	Reason for Termination (T) or Extension (E):
El Salvador	T: Conditions post-earthquake make it permissible for El Salvadorian nationals to return home safely. ¹²¹
Haiti	T: Conditions post-earthquake make it permissible for Haitian nationals to return home safely. ¹²²
Honduras	T: Conditions post-hurricane make it permissible for Hondurans nationals to return home safely. ¹²³

¹¹⁸ *Temporary Protected Status Designated Country: Yemen*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-yemen> (last updated Mar. 02, 2020).

¹¹⁹ Extension of the Designation of Yemen for Temporary Protected Status, 83 Fed. Reg. 40,307, 40,307-13 (Aug. 14, 2018), <https://www.govinfo.gov/content/pkg/FR-2018-08-14/pdf/2018-17556.pdf>.

¹²⁰ Extension of the Designation of Yemen for Temporary Protected Status, 85 Fed. Reg. 12,313, 12,313-19 (Mar. 02, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-03-02/pdf/2020-04355.pdf>.

¹²¹ Termination of the Designation of El Salvador for Temporary Protected Status, 83 Fed. Reg. 2654, 2654-60 (Jan. 18, 2018), <https://www.govinfo.gov/content/pkg/FR-2018-01-18/pdf/2018-00885.pdf>. On January 22, 2018, the USCIS issued a correction to its regulation amending some dates that were incorrect in the January 18, 2018 regulation. *See* Termination of the Designation of El Salvador for Temporary Protected Status, 83 Fed. Reg. 3014, 3014 (Jan. 22, 2018), <https://www.govinfo.gov/content/pkg/FR-2018-01-22/pdf/C1-2018-00885.pdf>. Again, the termination is on hold as *Ramos v. Nielsen*, 336 F. Supp. 3d 1075 (N.D. Cal. 2018), makes its way through the court system.

¹²² Termination of the Designation of Haiti for Temporary Protected Status, 83 Fed. Reg. 2648, 2648-54 (Jan. 18, 2018), <https://www.govinfo.gov/content/pkg/FR-2018-01-18/pdf/2018-00886.pdf>; *see supra* note 96.

¹²³ *See supra* note 99.

Nepal	T: Conditions post-earthquake make it permissible for Nepalese nationals to return home safely. ¹²⁴
Nicaragua	T: Conditions post-hurricane make it permissible for Nicaraguans nationals to return home safely. ¹²⁵
Somalia	E: Ongoing armed conflict prevents Somali nationals from returning home safely. ¹²⁶
Sudan	T: Ongoing armed conflict does not prevent Sudanese nationals from returning home safely. ¹²⁷
South Sudan	E: Ongoing civil war prevents South Sudanese nationals from returning home safely. ¹²⁸
Syria	E: Ongoing civil war prevents Syrian nationals from returning home safely. ¹²⁹
Yemen	E: Ongoing armed conflict prevents Yemeni nationals from returning home safely. ¹³⁰

The Secretary of Homeland Security extended three other TPS programs for approximately six months in September 2016; however, Guinea, Liberia, and Sierra Leone were effectively terminated.¹³¹

¹²⁴ See *supra* note 102.

¹²⁵ Termination of the Designation of Nicaragua for Temporary Protected Status, 82 Fed. Reg. 59,636, 59,636-42 (Dec. 15, 2017), <https://www.govinfo.gov/content/pkg/FR-2017-12-15/pdf/2017-27141.pdf>; see *supra* note 105.

¹²⁶ See *supra* note 108.

¹²⁷ Termination of the Designation of Sudan for Temporary Protected Status, 82 Fed. Reg. 47,228, 47,228-34 (Oct. 11, 2017), <https://www.govinfo.gov/content/pkg/FR-2017-10-11/pdf/2017-22074.pdf>; see *supra* note 111.

¹²⁸ See *supra* note 114.

¹²⁹ See *supra* note 117.

¹³⁰ See *supra* note 120.

¹³¹ *Temporary Protected Status Designated Country: Guinea*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-guinea> (last updated Apr. 19, 2017). When a TPS program is “effectively terminated,” the program in essence has reached its termination date. Foreign nationals who had legal Temporary Protected Status no longer has its protection and is subject deportation due to unlawful status in the United States.

Originally, the Guinea, Liberia, and Sierra Leone TPS programs were created by the Secretary of Homeland Security because of the widespread transmission of the Ebola virus.¹³² The spread of the virus was contained, and it has become safe for a foreign national to return to their home country, so Secretary Jeh Johnson effectively terminated these TPS programs.¹³³ The programs ended on May 21, 2017.¹³⁴ Other past and terminated TPS programs include Angola,¹³⁵ Bosnia-

¹³² *Temporary Protected Status Designated Country: Liberia*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status-deferred-enforced-departure/temporary-protected-status-designated-country-liberia> (last updated Apr. 19, 2017).

¹³³ *Temporary Protected Status Designated Country: Sierra Leone*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-sierra-leone> (last updated Apr. 19, 2017).

¹³⁴ *USCIS Reminds Beneficiaries of Temporary Protected Status for Guinea, Liberia, and Sierra Leone of May 21 Termination*, U.S. CITIZENSHIP AND IMMIGR. SERVS., archived at <https://www.uscis.gov/news/alerts/uscis-reminds-beneficiaries-temporary-protected-status-guinea-liberia-and-sierra-leone-may-21-termination> (last updated Apr. 19, 2017). It is important to note that these programs ended as compared to the ones that are expected to end because in Guinea, Liberia, and Sierra Leone it was deemed by the Secretary of Homeland Security safe for foreign nationals to return home because the Ebola virus was nearly or completely eradicated. On the other hand, with the current active TPS programs, the various countries from which foreign nationals hail, the issue of why the country was originally designated TPS has yet to find a remedy/solution, thus making it difficult for a foreign national to return home.

¹³⁵ Termination of the Designation of Angola for Temporary Protected Status, 68 Fed. Reg. 3896, 3896-97 (Jan. 27, 2003), <https://www.govinfo.gov/content/pkg/FR-2003-01-27/pdf/03-1994.pdf>.

Herzegovina,¹³⁶ Burundi,¹³⁷ Guinea-Bissau,¹³⁸ Province of Kosovo,¹³⁹ Kuwait,¹⁴⁰ Lebanon,¹⁴¹ Montserrat,¹⁴² and Rwanda.¹⁴³

On January 15, 2019, the bi-partisan “Venezuela Temporary Protected Status Act of 2019” was introduced in the United States House of Representatives.¹⁴⁴ New Jersey Senator Robert Menendez introduced an identical bill in the United States Senate on February 28, 2019.¹⁴⁵ If passed by Congress and signed by the President, the bill would give TPS to Venezuelans who meet the statutes’ criteria for eighteen months, provide Venezuelans TPS recipients with work authorization and travel documents for extenuating circumstances, and direct the Secretary of State and the Secretary of Homeland Security to work with countries that surround Venezuela to help improve migration of asylum seekers to that country.¹⁴⁶ Congress is introducing legislation to help Venezuelan nationals because of the unprecedented

¹³⁶ Termination of the Designation of Bosnia-Herzegovina for Temporary Protected Status, 65 Fed. Reg. 52,789, 52,789-91 (Aug. 30, 2000), <https://www.govinfo.gov/content/pkg/FR-2000-08-30/pdf/00-22138.pdf>.

¹³⁷ Termination of the Designation of Burundi for Temporary Protected Status; Automatic Extension of Employment Authorization Documentation for Burundi TPS Beneficiaries, 72 Fed. Reg. 61,172, 61,172-77 (Oct. 29, 2007), <https://www.govinfo.gov/content/pkg/FR-2007-10-29/pdf/E7-21128.pdf>.

¹³⁸ Six-Month Extension and Termination of Designation of Guinea-Bissau Under the Temporary Protected Status Program, 65 Fed. Reg. 15,016, 15,016-18 (Mar. 20, 2000), <https://www.govinfo.gov/content/pkg/FR-2000-03-20/pdf/00-6750.pdf>.

¹³⁹ Termination of the Province of Kosovo in the Republic of Serbia in the State of the Federal Republic of Yugoslavia (Serbia-Montenegro) Under the Temporary Protected Status Program, 65 Fed. Reg. 33,356, 33,356-57 (May 23, 2000), <https://www.govinfo.gov/content/pkg/FR-2000-05-23/pdf/00-12856.pdf>.

¹⁴⁰ Termination of the Designation of Kuwait under Temporary Protected Status, 57 Fed. Reg. 2930, 2930-31 (Jan. 24, 1992), <http://cdn.loc.gov/service/ll/fedreg/fr057/fr057016/fr057016.pdf>.

¹⁴¹ Termination of the Designation of Lebanon under Temporary Protected Status, 58 Fed. Reg. 7582, 7582 (Feb. 08, 1993), <http://cdn.loc.gov/service/ll/fedreg/fr058/fr058024/fr058024.pdf>.

¹⁴² Termination of the Designation of Montserrat Under the Temporary Protected Status Program; Extension of Employment Authorization Documentation, 69 Fed. Reg. 40,642, 40,642-45 (July 06, 2004), <https://www.govinfo.gov/content/pkg/FR-2004-07-06/pdf/04-15243.pdf>.

¹⁴³ Termination of Designation of Rwanda Under Temporary Protected Status Program After Final 6-Month Extension, 62 Fed. Reg. 33,442, 33,442-43 (June 19, 1997), <https://www.govinfo.gov/content/pkg/FR-1997-06-19/pdf/97-16050.pdf>.

¹⁴⁴ *Bill Summary: Venezuela Temporary Protected Status Act of 2019*, NAT’L IMMIGR. F. (Mar. 08, 2019), <https://immigrationforum.org/article/bill-summary-venezuela-temporary-protected-status-act-of-2019/>.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

economic, political, and humanitarian crises occurring within its borders.¹⁴⁷ Since 2014, nearly 72,000 Venezuelan nationals have come to the United States, seeking some sort of legal protection.¹⁴⁸ In 2018, nearly 30,000 foreign nationals from Venezuela applied for a form of legal immigration protection in the United States, making it the leading country for foreign nationals seeking asylum in the United States.¹⁴⁹ Nevertheless, the Trump Administration has been resistant to the idea of granting and accepting the proposed Venezuela TPS program, especially as it tries to terminate others.¹⁵⁰

The judicial system has increasingly been stepping in to take action to save Temporary Protective Status holders and their legal status as the Trump Administration plans to cancel more and more programs or as the administration allows a program's deadline to linger. New programs have recently been introduced by members of Congress as chaos engulfs the world. Nevertheless, these new programs have been met by great resistance from the Executive Branch. The courts must continue to step in and save these programs, especially when a foreign national's legal immigration status, livelihood, and future is at stake. It is important, more than ever, that the courts as well recognize that when the government grants TPS to a foreign national, it is deemed as "admission" into the United States. Thus, admission will allow a beneficiary to go through the Adjustment of Status process. Adjustment of Status is an extra-protective process that gives an individual from another country lawful status in the United States.

¹⁴⁷ Venezuela Temporary Protected Status Act of 2019, S. 636, 116th Cong. §§ 2-3 (2019).

¹⁴⁸ Camilo Montoya-Galvez, *TPS for Venezuelans: The Bipartisan Immigration Bill Lawmakers Believe Trump Might Support*, CBS NEWS (Jan. 18, 2019), <https://www.cbsnews.com/news/tps-temporary-protected-status-for-venezuelans-in-us-bipartisan-immigration-bill-lawmakers-believe-trump-might-support/>.

¹⁴⁹ Charles Davis, *Trump Administration to Continue Deporting Venezuelans Despite Crisis*, THE GUARDIAN, <https://www.theguardian.com/world/2019/jul/16/trump-administration-venezuelans-temporary-protected-status-tps-deport> (last modified July 17, 2019, 07:45 EDT).

¹⁵⁰ *Id.*

VI. TPS ADJUSTMENT OF STATUS CASES¹⁵¹

Currently, there are eight cases in which courts have resolved the issue of whether to grant a TPS visa holder the ability to go through the AOS process to obtain LPR status.

A. Circuit Court Cases**1. Ninth Circuit**

The most recent Circuit Court case is *Ramirez v. Brown*,¹⁵² a cause of action that appealed to the United States Court of Appeals for the Ninth Circuit.¹⁵³ In *Ramirez*, Jesus Ramirez entered the United States in May 1999 “without inspection and admission,”¹⁵⁴ nor was he paroled by an immigration officer.¹⁵⁵ In 2001, TPS was granted for El Salvadorians by then Attorney General John Ashcroft.¹⁵⁶ Mr. Ramirez then applied for TPS and subsequent extensions.¹⁵⁷ In 2012, Mr. Ramirez married a United States citizen, Ms. Barbara Lopez.¹⁵⁸ Ms. Lopez then subsequently filed an I-130 petition, “Petition for Alien Resident,”¹⁵⁹ for Mr. Ramirez.¹⁶⁰ Mr. Ramirez simultaneously filed an I-485 application¹⁶¹ under 8 U.S.C. Section 1255¹⁶² to become an LPR.¹⁶³ In April 2013, the USCIS approved Ms. Lopez’s petition but denied Mr. Ramirez’s application because he was not inspected and

¹⁵¹ At the time of publication submission, the cases discussed in Part VI were all the current cases litigated on the issue of whether a TPS recipient is eligible to go through the process as a whole because he or she may or may not be deemed lawfully admitted to the United States at the time the foreign national entered the United States without inspection.

¹⁵² 852 F.3d 954 (9th Cir. 2017).

¹⁵³ *Id.*

¹⁵⁴ *See supra* note 18 for an explanation on “inspection and admission.”

¹⁵⁵ *Ramirez*, 852 F.3d at 957.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ According to the USCIS, the I-130 calls for a foreign national to, “[u]se this form if you are a citizen or lawful permanent resident of the United States who needs to establish their relationship to certain alien relatives who wish to immigrate to the United States.,” *I-130, Petition for Alien Relative*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/i-130> (last updated Feb. 27, 2020).

¹⁶⁰ *Ramirez*, 852 F.3d at 957.

¹⁶¹ *See supra* text accompanying note 29.

¹⁶² *See* 8 U.S.C. § 1255 (2009).

¹⁶³ *Ramirez*, 852 F.3d at 957.

admitted upon his initial entry into the United States in May 1999, nor could he show that he was exempt from the requirement.¹⁶⁴ The USCIS, in its denial, conceded that by granting TPS to Mr. Ramirez, he was to be treated by the government as if he was to have lawful nonimmigrant status. However, the government decided “that treatment does not override the adjustment statute’s general requirement to be inspected and admitted or paroled.”¹⁶⁵

Upon his denial, Mr. Ramirez brought suit in the Western District of Washington under the Administrative Procedure Act (“APA”).¹⁶⁶ The court ruled that Mr. Ramirez was able to adjust his status under 8 U.S.C. Section 1255.¹⁶⁷ The court determined that the government’s interpretation was “incorrect as a matter of law because the TPS statute clearly provides that recipients count as being ‘inspected and admitted’ for purposes of adjusting their status.”¹⁶⁸ Further, the court noted that it does not need to defer to the USCIS’ interpretation, where the TPS statute unquestionably answers the legal question that was being proposed by Mr. Ramirez.¹⁶⁹ Also, according to the court, the USCIS’ “non-precedential decisions” as well do not merit deference because the agency came to the wrong judgment, and it did not carefully analyze the legal question at issue.¹⁷⁰ Lastly, the court concluded that as a matter of “policy consideration,” Mr. Ramirez established a life within the country and did not have to leave the United States to seek admission into it.¹⁷¹

The USCIS appealed the ruling to the Ninth Circuit.¹⁷² The Ninth Circuit began its discussion by narrowing down the legal question to whether Mr. Ramirez had been “admitted” to the United States when the United States government granted him TPS.¹⁷³ To answer this question, the Ninth Circuit turned to a two-prong test as set forth in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council*,

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*; see 5 U.S.C. § 701 (2011).

¹⁶⁷ *Ramirez*, 852 F.3d at 957-58.

¹⁶⁸ *Id.* at 957.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 957.

¹⁷² *Id.* at 958.

¹⁷³ *Id.*

*Inc.*¹⁷⁴ by the United States Supreme Court.¹⁷⁵ Under the first prong, the Ninth Circuit considered whether the TPS statute was unambiguous.¹⁷⁶ In its consideration of the first prong, the Ninth Circuit outright concluded that the statute unambiguously treats foreign nationals who have been granted TPS as “admitted,” thus allowing aliens the ability to go through the adjustment of status process.¹⁷⁷ Additionally, the Ninth Circuit explained that the statutory language was clear; therefore, the USCIS has no “interpretative role” and must follow the congressional statutory mandate.¹⁷⁸ Furthermore, the Ninth Circuit did not analyze the second prong because it was unnecessary.¹⁷⁹ Nevertheless, the court noted that if it were to analyze the second prong because the statute was vague on what constitutes “admission,” the USCIS did not identify which controlling interpretation the court should follow and give deference.¹⁸⁰

Next, the Ninth Circuit turned to the plain language of the TPS statute. The Ninth Circuit held that the plain language of 8 U.S.C. Section 1254a(f)(4)¹⁸¹ strongly provides and supports that a TPS holder is considered by the court (and therefore the government) to be “inspected and admitted” under 8 U.S.C. Section 1255(a).¹⁸² Moreover, in its analysis, the court also addressed the structure of the statutory regime.¹⁸³ The Ninth Circuit stated:

Other familiar interpretive guides reinforce the plain meaning understanding that TPS recipients are considered “admitted” under § 1255. Section 1255 is titled “Adjustment of status of nonimmigrant to that of person admitted for permanent residence.” The heading is not without significance, as it uses language that directly links the adjustment statute to the TPS

¹⁷⁴ 467 U.S. 837. According to the *Chevron* two-prong test, when a court is reviewing an agency’s interpretation of a statute, courts need to consider two questions: (1), “whether Congress has directly spoken to the precise question at issue.” *Id.* at 842 (2) If not, “whether the agency’s answer is based on a permissible construction of the statute.” *Id.* at 843.

¹⁷⁵ *Ramirez*, 852 F.3d at 958.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* (citing *Chevron*, 467 U.S. at 842-43).

¹⁷⁹ *Ramirez*, 852 F.3d at 958.

¹⁸⁰ *Id.* at 958-59.

¹⁸¹ See 8 U.S.C. § 1254a(f)(4) (2018).

¹⁸² *Ramirez*, 852 F.3d at 964.

¹⁸³ *Id.* at 961.

statute and § 1254a(f)(4)'s phrasing of "lawful status as a nonimmigrant." This language and structure signal that Congress contemplated that TPS recipients, via their treatment as lawful nonimmigrants, would be able to make use of § 1255.¹⁸⁴

Therefore, under 8 U.S.C. Section 1254a(f)(4) and 8 U.S.C. Section 1255, Mr. Ramirez and TPS recipients in the Ninth Circuit are able to go through the AOS process because he or she meets the 8 U.S.C. Section 1255(a)¹⁸⁵ "admission" requirements.¹⁸⁶

2. *Sixth Circuit*

In *Flores v. USCIS*,¹⁸⁷ the Sixth Circuit also addressed granting or denying TPS holders the ability to go through the AOS process.¹⁸⁸ In March 1998, Saady Suazo, a citizen of Honduras, entered the United States without inspection and admission.¹⁸⁹ In September 1999, TPS was granted to citizens of Honduras by then Attorney General, Janet Reno.¹⁹⁰ Mr. Suazo applied for TPS, and the Attorney General granted it.¹⁹¹ Subsequently, Ms. Suazo filed for successive extensions and was granted the continuations because of his good moral character.¹⁹² In August 2010, Mr. Suazo married his wife, Mrs. Stacey Leigh Suazo, a United States citizen.¹⁹³ In September 2010, Mrs. Suazo filed an I-130 application, and Mr. Suazo filed an I-485 application on the same day pursuant to 8 U.S.C. Section 1255.¹⁹⁴ The Cleveland District Office of the USIS scheduled Mr. and Mrs. Suazo for an interview and review of the I-130 application on November 29, 2010.¹⁹⁵ The I-130 petition was approved by the USCIS, providing Mr. Suazo, "with an independent basis to become an LPR."¹⁹⁶ The following month, on

¹⁸⁴ *Id.*

¹⁸⁵ See 8 U.S.C. § 1255(a) (2009).

¹⁸⁶ *Ramirez*, 852 F.3d at 964.

¹⁸⁷ 718 F.3d 548 (6th Cir. 2013).

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at 550; see *supra* note 18 for an explanation of "inspection and admission."

¹⁹⁰ *Flores*, 718 F.3d at 550.

¹⁹¹ *Id.*; see *supra* text accompanying note 49.

¹⁹² *Flores*, 718 F.3d at 550.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

December 21, 2010, Mr. Suazo's I-485 application was denied because he had not entered the United States without inspection and admission.¹⁹⁷

After the USCIS denied the AOS application, Mr. and Mrs. Suazo brought a suit against the USCIS in the Northern District of Ohio under the APA.¹⁹⁸ Mr. and Mrs. Suazo argued that the USCIS wrongfully denied the AOS petition and that "Mr. Suazo's TPS status under 8 U.S.C. § 1254a(b)(1)¹⁹⁹ makes him eligible to adjust to LPR status pursuant to 8 U.S.C. § 1255."²⁰⁰ The USCIS, in response to the suit, filed a motion to dismiss on the grounds that the court lacked subject matter jurisdiction and that the couple failed to state a claim upon which relief can be granted.²⁰¹ The court held that it lacked jurisdiction to provide mandamus relief, but the Suazos had an adequate remedy under the APA.²⁰² Nonetheless, the court further held that Mr. and Mrs. Suazo failed to state a claim under the APA.²⁰³ The District Court reasoned that the plain language of 8 U.S.C. Section 1255 precludes a TPS holder, who is not initially admitted and inspected, from going through the AOS process.²⁰⁴

The Suazos appealed the District Court's ruling to the Sixth Circuit.²⁰⁵ Upon appeal, the Sixth Circuit agreed to review the Suazos' APA claim and to consider the question, "whether 8 U.S.C. § 1254a(f)(4) of the TPS statute provides a path to LPR status under the adjustment of status statute, 8 U.S.C. § 1255."²⁰⁶ The Sixth Circuit began its discussion by looking to the *Chevron*²⁰⁷ two-prong test on an agency's interpretation.²⁰⁸ Further, the Sixth Circuit elaborated that "in determining if the intent is clear, courts consider 'the language [of the statute] itself, the specific context in which that language is used,

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ See 8 U.S.C. § 1254a(b)(1) (2018).

²⁰⁰ *Flores*, 718 F.3d at 550. The court does not elaborate why Mr. Suazo was eligible at this point in its opinion.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.* at 550-51.

²⁰⁵ *Id.* at 551.

²⁰⁶ *Id.*

²⁰⁷ *Chevron, U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 842-43 (1984).

²⁰⁸ *Flores*, 718 F.3d at 551; see *Chevron*, 467 U.S. at 842-43.

and the broader context of the statute as a whole.”²⁰⁹ Also “[i]f the statute is found to be silent or ambiguous, and there is an agency interpretation that does not constitute the exercise of the agency’s formal rule-making authority, courts may defer to an agency interpretation, even when the agency is not exercising its formal rule-making authority.”²¹⁰ Additionally, the gravity of the deference that the court gives, if it gives deference, “depends on, ‘the thoroughness evident in [the agency’s] consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.’”²¹¹

After applying the various deference tests, the Sixth Circuit concluded that under the plain language of 8 U.S.C. Section 1255, Mr. Suazo satisfied two of the three requirements for a nonimmigrant who holds lawful TPS status to adjust their status.²¹² The first requirement of the statute that Mr. Suazo met was that he applied for AOS.²¹³ The second requirement of the statute was that an immigrant visa is immediately available, which it was through Mrs. Suazo, a United States citizen.²¹⁴ The requirement under contestation was the third prong, “which reads ‘the status of an alien who was inspected and admitted or paroled’ may be adjusted in the Attorney General’s discretion and also § 1255(a)(2), which states that an ‘alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.’”²¹⁵

The USCIS contested that Mr. Suazo did not meet the third requirement of 8 U.S.C. Section 1255 because TPS beneficiaries who initially enter the United States without inspection and who have an

²⁰⁹ *Flores*, 718 F.3d at 551 (quoting *Nat’l Cotton Council of Am. v. U.S. EPA*, 553 F.3d 927, 933 (6th Cir. 2009)).

²¹⁰ *Id.* (citing *Skidmore v. Swift & Co.*, 323 U.S. 134, 139-40 (1944)).

²¹¹ *Id.* (quoting *Skidmore*, 323 U.S. at 140).

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.* (citing 8 U.S.C. § 1255(a) (2009)). The Sixth Circuit also said in a footnote that:

We recognize that using the term “alien” to refer to other human beings is offensive and demeaning. We do not condone the use of the term and urge Congress to eliminate it from the U.S. Code. We use it here, however, to be consistent with the statutory language and to avoid any confusion in replacing a legal term of art with a more appropriate term.

Id. at 551 n.1.

independent basis for a visa, can never meet nor satisfy the threshold requirement of being “admitted or paroled” or “admissible.”²¹⁶ Furthermore, the USCIS argued that Mr. Suazo is only allowed protection under TPS as long as that designation is conferred upon him by the government.²¹⁷ Moreover, the USCIS argued that Mr. Suazo was not able to adjust via his wife on an independent basis because he was never “admitted.”²¹⁸ Therefore, to become classified as “admitted,” Mr. Suazo would have to leave the United States, take a chance at potentially not being “admitted” into the country, reapply to become an LPR, and then hope he would be able to a green cardholder.²¹⁹

The Suazos countered the USCIS’ argument and contended that “the plain language, when considering the ‘language itself, the specific context in which the language is used, and the broader context of the statute as a whole,’ shows that Congress’s clear intent was that a TPS beneficiary is afforded with a pathway to LPR status.”²²⁰ Additionally, the Suazos conceded that a foreign national must be “admitted” or “admissible.”²²¹ Nevertheless, the couple argued that when the government grants TPS to a beneficiary, a TPS grant acts as an inadmissibility waiver.²²² The Sixth Circuit wholeheartedly agreed with this line of reasoning and were unpersuaded by the USCIS’ arguments and interpretations of the statute.²²³ The court expanded on the fact that the USCIS’ interpretations ignored the plain meaning of the statute and were “unduly narrow.”²²⁴

Furthermore, the Sixth Circuit amplified the fact that the statutory scheme and plain language of the TPS statute adamantly supported the court’s ruling.²²⁵ Therefore, since the court based its holding on the plain language of the statute, the Sixth Circuit did not need to give deference to the USCIS’ interpretation of the statute.²²⁶ Nonetheless, the Sixth Circuit addressed the fact that if the weight of

²¹⁶ *Id.* at 552.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.* at 553.

²²⁵ *Id.* at 553-54.

²²⁶ *Id.* at 554-55 (citing *Pub. Emps. Ret. Sys. v. Betts*, 492 U.S. 158, 171 (1989)).

the deference was to be entertained by the court as set for by the standards established in *Skidmore*,²²⁷ a lower deference standard that an agency needs to meet.²²⁸ The court explained:

[T]he ‘validity of reasoning’ factor weighs heavily against the USCIS and outweighs the consistency factor. Being consistently wrong does not afford the agency more deference than having valid reasoning. The remaining factor—the thoroughness of the reasoning—does not militate strongly for either side. Again, incorrect reasoning, no matter how thorough, does not carry any weight. Any deference afforded would have been minimal, if at all.²²⁹

Therefore, the Sixth Circuit overturned the District Court’s decision and held that, under the plain language of the statute, Congress intended that a TPS hold can go through AOS.²³⁰

3. *Eleventh Circuit*

In *Serrano v. United States Attorney General*,²³¹ the Eleventh Circuit took a different approach.²³² In *Serrano*, Jose Garcia Serrano, a citizen of El Salvador, entered the United States in 1996 without inspection and admission or being paroled.²³³ Mr. Serrano applied for TPS in 2001 when El Salvador was designated based on claims that this home country was an unfit place to live.²³⁴ Mr. Serrano subsequently filed for extensions in 2006, 2008, and 2009.²³⁵ In 2006, Mr. Serrano married Ms. Olga Garcia, a United States citizen.²³⁶ In 2008, Ms. Garcia filed an I-130 petition for Mr. Serrano.²³⁷ Additionally, Mr. Serrano filed his I-485 application concurrently with the I-130 petition so that he may become an LPR.²³⁸ Upon review of

²²⁷ *Skidmore v. Swift & Co.*, 323 U.S. 134, 139-40 (1944).

²²⁸ *Flores*, 718 F.3d at 555.

²²⁹ *Id.*

²³⁰ *Id.* at 555-56.

²³¹ 655 F.3d 1260 (11th Cir. 2011).

²³² *Id.* at 1263.

²³³ *Id.*; see *supra* note 18 for an explanation of “inspection and admission.”

²³⁴ *Serrano*, 655 F.3d at 1263.

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

the I-485, the USCIS denied the AOS petition.²³⁹ The USCIS rejected the application on the grounds that Mr. Serrano did not enter the United States with inspection nor the admittance by an immigration officer.²⁴⁰ Thus, making him ineligible under 8 U.S.C. Section 1255(a).²⁴¹

Mr. Serrano challenged the USCIS' ruling and filed suit in the Northern District of Georgia.²⁴² Mr. Serrano contended that 8 U.S.C. Section 1254a(f)(4) changes the admission requirements as established by 8 U.S.C. Section 1255(a).²⁴³ He further argued that since the requirements for admission into the United States under 8 U.S.C. Section 1255(a) were altered, as a TPS holder, he was entitled to adjust his status as a valid TPS holder.²⁴⁴ The court held that the plain language of 8 U.S.C. Section 1254a(f)(4) did not jibe with the requirements of 8 U.S.C. Section 1255 because Mr. Serrano was not inspected and admitted or paroled.²⁴⁵ Additionally, the District Court elaborated on its holding that 8 U.S.C. Section 1255(a) was ambiguous.²⁴⁶ The USCIS' interpretation was entitled to the *Skidmore*²⁴⁷ deference rule.²⁴⁸

Upon the court's adverse ruling, Mr. Serrano appealed to the Eleventh Circuit.²⁴⁹ Upon review, the Eleventh Circuit turned to the APA claim and the USCIS' statutory interpretation.²⁵⁰ In assessing the interpretation of the statute by the USCIS, the Eleventh Circuit turned to *Chevron*²⁵¹ and its first prong.²⁵² The Eleventh Circuit also stated, in addition to the first prong in *Chevron*, that "[t]he first step of statutory construction is to determine whether the language of the statute, when considered in context, is plain. The court further elaborated that if the meaning of the statutory language in context is

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Skidmore v. Swift & Co.*, 323 U.S. 134, 139-40 (1944).

²⁴⁸ *Serrano*, 655 F.3d at 1263.

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Chevron, U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 842-43 (1984).

²⁵² *Serrano*, 655 F.3d at 1264.

plain, we go no further.”²⁵³ After reviewing the statutes, the court decided in favor of the USCIS and disagreed with Mr. Serrano that the plain language of 8 U.S.C. Section 1254a(f)(4)²⁵⁴ alters the “inspected and admitted or paroled”²⁵⁵ provision to adjust one’s status.²⁵⁶

In interpreting the plain language of the statute, the Eleventh Circuit found that the statute limits the eligibility for adjustment of status.²⁵⁷ The court stated “[t]hat an alien with Temporary Protected Status has ‘lawful status as a nonimmigrant’ for purposes of adjusting his status does not change § 1255(a)’s threshold requirement that he is eligible for adjustment of status only if he was initially inspected and admitted or paroled.”²⁵⁸

Moreover, the Eleventh Circuit addressed Mr. Serrano’s contention that the statutory language was ambiguous.²⁵⁹ The court concluded that Mr. Serrano’s argument does not hold water because the USCIS’ predecessor, the Immigration and Naturalization Service (“INS”), interpreted the statutes the same way the court did.²⁶⁰ The Eleventh Circuit ultimately concluded that the USCIS is entitled to the deference that is provided by *Skidmore*,²⁶¹ even if the statutory language is ambiguous, because the government’s interpretation was “consistent and well-reasoned.”²⁶² Therefore, the Eleventh Circuit does not grant a TPS holder the right to go through the AOS process.²⁶³

²⁵³ *Id.* (quoting *Wachovia Bank, N.A. v. United States*, 455 F.3d 1261, 1267 (11th Cir. 2006)).

²⁵⁴ *See supra* note 181 for statute citation.

²⁵⁵ *See supra* text accompany note 18 and note 21.

²⁵⁶ *Serrano*, 655 F.3d at 1264-65.

²⁵⁷ *Id.* at 1265.

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Id.* at 1264-65.

²⁶¹ The Eleventh Circuit in using the *Skidmore* deference rule was citing to *Quinchia v. U.S. Att’y Gen.*, 552 F.3d 1255, 1259 (11th Cir. 2008). The Eleventh Circuit in *Quinchia* paraphrased *Skidmore* and stated that, “a non-binding administrative interpretation carries a weight dependent upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.”

²⁶² *Serrano*, 655 F.3d at 1266.

²⁶³ *Id.*

B. District Court Suits

In addition to the circuits taking up the adjustment of the status issue for TPS holders, various district courts (without an appeal to their respective circuit courts, except one) addressed and ruled on the issue.

1. *Eastern District of Pennsylvania*

In *Medina v. Beers*,²⁶⁴ the Eastern District of Pennsylvania heard and ruled on the controversy.²⁶⁵ In *Medina*, Melvin Medina, a citizen of Honduras, came to the United States and entered without inspection in October 1992.²⁶⁶ Mr. Medina received TPS soon after the Attorney General designated it for Honduras in 1999.²⁶⁷ In January 2002, Mr. Medina married Catherine Medina, a United States Citizen, and the couple subsequently had three children together.²⁶⁸ In December 2012, Mrs. Medina filed an I-130²⁶⁹ petition for her husband, and Mr. Medina concurrently filed an I-485²⁷⁰ application to adjust his status to become an LPR.²⁷¹

After receiving Mr. Medina's AOS petition, the USCIS made several Request For Evidence²⁷² ("RFE") attempts to address Mr. Medina's eligibility to become an LPR.²⁷³ Mr. Medina responded to all RFEs.²⁷⁴ The USCIS scheduled an interview for Mr. Medina in May of 2012 for an interview to provide a sworn declaration in relation to his application.²⁷⁵ After the interview and no action by the USCIS for about five months on the pending petitions, Mr. Medina went to local the USCIS field office in Philadelphia to explore the status of his requests.²⁷⁶ Soon after visiting the USCIS field office, in October

²⁶⁴ 65 F. Supp. 3d 419 (E.D. Pa. 2014).

²⁶⁵ *Id.* at 438-39.

²⁶⁶ *Id.* at 421.; *see supra* note 18 for an explanation of "inspection and admission."

²⁶⁷ *Medina*, 65 F. Supp. 3d at 421; *see supra* text accompanying note 49.

²⁶⁸ *Medina*, 65 F. Supp. 3d at 421.

²⁶⁹ *See supra* text accompanying note 29.

²⁷⁰ *See supra* text accompanying note 159.

²⁷¹ *Medina*, 65 F. Supp. 3d at 421.

²⁷² A "Request For Evidence" is just as it implies. It is the government requesting an individual or corporation to submit more information/evidence to help establish his or her or its case.

²⁷³ *Medina*, 65 F. Supp. 3d at 421.

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.*

2012, the USCIS issued a Notice of Intent to Deny²⁷⁷ (“hereinafter NOID”) of Mr. Medina’s AOS application under 8 U.S.C. Section 1255(a)²⁷⁸ of the TPS statute.²⁷⁹ The USCIS, in its NOID letter, as well stated:

Therefore, you appear to be statutorily ineligible for adjustment of status under Section 245(a)²⁸⁰ because you entered without inspection. In addition, you appear to be ineligible to adjust your status under the provisions of Section 245(i)²⁸¹ of the Act because no proof of physical presence on December 21, 2000, was provided and no petition appears to be filed on your behalf on or prior to April 30, 2001.²⁸²

In November 2012, Mr. Medina responded to the USCIS’ NOID letter.²⁸³ Mr. Medina argued that the plain language of the statute authorized “his classification as an individual in and maintaining lawful status as a nonimmigrant, and thus eligible for adjustment of status.”²⁸⁴ Mr. Medina expressly relied upon 8 U.S.C. Section 1254a(f)(4)²⁸⁵ as the basis of his argument.²⁸⁶

In May 2013, the USCIS issued its final response to deny Mr. Medina’s AOS petition.²⁸⁷ In its final decision, the USCIS reiterated the reasons why it denied Mr. Medina’s application.²⁸⁸ The USCIS as well claimed that since Mr. Medina failed to respond to the NOID, his

²⁷⁷ According to the USCIS, in describing what is a Notice of Intent to Deny, states “[y]ou will receive a Notice of Intent to Deny if you are currently in valid status and found ineligible for asylum. You will have 16 days to provide a response to the letter. The Asylum Officer will then either approve or deny the claim.” *Asylum Decisions: What is a Notice of Intent to Deny?*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/faq-page/asylum-decisions#t12836n40055> (last visited Feb. 17, 2020). The USCIS on its website is very vague on what actually is a Notice of Intent to Deny. A Notice of Intent to Deny is exactly as the name implies: the USCIS is submitting to a foreign national that is has the intent to deny a petition.

²⁷⁸ See *supra* note 185 for statute citation.

²⁷⁹ *Medina*, 65 F. Supp. 3d at 422.

²⁸⁰ Section 245(a) correlates to 8 U.S.C. § 1255(a).

²⁸¹ Section 245(i) correlates to 8 U.S.C. § 1255(i).

²⁸² *Medina*, 65 F. Supp. 3d at 422.

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ See *supra* note 181 for statute citation.

²⁸⁶ *Medina*, 65 F. Supp. 3d at 422.

²⁸⁷ *Id.*

²⁸⁸ *Id.*

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application was abandoned, and it was denied.²⁸⁹ The following month, in June 2013, Mr. Medina sent a follow-up letter to the USCIS, arguing that he did not abandon his application because he had responded to the NOID.²⁹⁰ Additionally, Mr. Medina, in his response, added a copy of *Flores v. USCIS*,²⁹¹ the Sixth Circuit decision on the matter.²⁹² The USCIS never responded to Mr. Medina.²⁹³ In February 2014, Mr. Medina began civil proceedings against the government.²⁹⁴

Subsequently, as Mr. Medina initiated the cause of action, the USCIS reopened its May 2013 verdict and instead issued a new decision superseding its previous one.²⁹⁵ In its new decision, the USCIS commented that it issued the NOID in error.²⁹⁶ Moreover, the USCIS erred by not logging its response into the file.²⁹⁷ Despite that, the USCIS still denied the application because of the decisions made in *Matter of Sosa Ventura*²⁹⁸ by the Board Of Immigration Appeals (“BIA”) and *Serrano v. United States Attorney General*²⁹⁹ out of the Eleventh Circuit.³⁰⁰

The District Court decisions discussed, elaborated, and explained the *Chevron* deference rule, its two-prong test, and its application to the Executive Branch.³⁰¹ In its opinion, the District Court acknowledged that there was a stipulation by both parties on the sole issue of whether granting TPS meets the requirements of admission to adjust one’s status under 8 U.S.C. Section 1255(a).³⁰² The court declared that the government satisfied the “inspected and admitted or paroled”³⁰³ requirements under 8 U.S.C. Section 1255(a)

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Flores v. USCIS*, 718 F.3d 548 (6th Cir. 2013).

²⁹² *Medina*, 65 F. Supp. 3d at 422.

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ *Id.* at 422-23

²⁹⁷ *Id.*

²⁹⁸ 25 I&N Dec. 391 (BIA 2010). The BIA in this case held that granting TPS “waives certain grounds of inadmissibility or deportability solely for the limited purpose of permitting an alien to remain and work temporarily in the United States for the period of time that TPS is effective.” *Id.* Also, the BIA ruled that “[i]t is not proper to terminate an alien’s removal proceedings based on a grant of TPS.” *Id.*

²⁹⁹ *Serrano v. United States Attorney General*, 655 F.3d 1260 (11th Cir. 2011).

³⁰⁰ *Medina*, 65 F. Supp. 3d at 423.

³⁰¹ *Id.* at 424-25.

³⁰² *Id.*

³⁰³ *See supra* text accompany note 18 and note 21.

by administering TPS to foreign nationals under 8 U.S.C. Section 1254a(f)(1).³⁰⁴ In considering at 8 U.S.C. Section 1255(a), the District Court stated that for a foreign national to go through the AOS process, a foreign national must show “that he or she was ‘inspected and admitted or paroled into the United States.’”³⁰⁵ Furthermore, the court elaborated that a foreign national “must (1) have made an application for an adjustment; (2) be eligible to receive an immigrant visa and be admissible to the United States for permanent residence; and (3) have an immigrant visa immediately available to him at the time his application is filed.”³⁰⁶ Next, there was a stipulation by both parties that Mr. Medina met the three latter requirements, but whether Mr. Medina satisfied the overall threshold requirement of being “inspected and admitted or paroled into the United States.”³⁰⁷

Mr. Medina proclaimed that he satisfied the threshold requirement because of 8 U.S.C. Section 1254a(f)(4), which states, in part, that “[d]uring a period in which an alien is granted temporary protected status under this section . . . for purposes of adjustment of status under section 1255 of this title . . . the alien shall be considered as being in, and maintaining, lawful status as a nonimmigrant.”³⁰⁸ Moreover, Mr. Medina “contends that, given Section 1254’s direct reference to Section 1255, the term ‘considered as being in, and maintaining, lawful status as a nonimmigrant’ equates to being ‘inspected and admitted or paroled in the United States.’”³⁰⁹ On the other hand, the government implored the District Court to take an adversarial interpretation of Mr. Medina’s understanding of 8 U.S.C. Section 1254a(f)(4) and 8 U.S.C. Section 1255(a).³¹⁰ The USCIS argued that the threshold requirement could not be fulfilled by the granting of TPS and nothing in 8 U.S.C. Section 1254a(f)(4) indicates the qualifications needed for AOS under 8 U.S.C. Section 1255(a).³¹¹ Also, the USCIS contended that both provisions Mr. Medina was citing to contain different terms, which suggested that Congress was talking about two separate things.³¹² Therefore, according to the government,

³⁰⁴ *Medina*, 65 F. Supp. 3d at 425.

³⁰⁵ *Id.* at 426 (quoting 8 U.S.C. § 1255(a) (2009)).

³⁰⁶ *Id.* (citing 8 U.S.C. § 1255(a)).

³⁰⁷ *Id.* (quoting 8 U.S.C. § 1255(a)).

³⁰⁸ *Id.* (quoting 8 U.S.C. § 1254a(f)(4) (2018)).

³⁰⁹ *Id.* (quoting 8 U.S.C. § 1254a(f)(4) and 8 U.S.C. § 1255(a)).

³¹⁰ *Medina*, 65 F. Supp. 3d at 426.

³¹¹ *Id.*

³¹² *Id.*

the plain language under 8 U.S.C. Section 1254a(f)(4) provided no path to Mr. Medina to adjust his status.³¹³

Following the discussion of the government's arguments, the District Court analyzed a couple of cases that had already decided on the issue at hand. The court went on to address the cases of *Serrano v. United States Attorney General*³¹⁴ out of the Eleventh Circuit and *Flores v. USCIS*³¹⁵ from the Sixth Circuit.³¹⁶ Ultimately, the District Court sided with Sixth Circuit's rationale and declared that "a TPS beneficiary who applies for adjustment of status, is eligible for an immigrant visa, and has an immigrant visa immediately available to him qualifies for the discretionary adjustment of status under § 1255(a)." After reiterating its holding, the court discussed the contentions made by the USCIS and affirmed its reasoning that the government's arguments were unconvincing.³¹⁷ Additionally, the District Court addressed the deference that is supposed to be granted to executive agencies' interpretations when a statute's language is ambiguous.³¹⁸ The court found that Congress' intent was clear in its plain language under 8 U.S.C. Section 1254a(f)(4) and the court should not give deference to the USCIS' interpretation.³¹⁹

In its final conclusions, the District Court found the USCIS' decision to deny Mr. Medina's application for AOS was "arbitrary and capricious," and the determination is reversed and remanded to the USCIS for further consideration.³²⁰

2. *District of Minnesota*

In another district court case, *Bonilla v. Johnson*,³²¹ the District of Minnesota heard and ruled on the controversy.³²² In *Bonilla*, Lidia Bonilla, a citizen of El Salvador, entered the United States without inspection.³²³ In January 2006, while her asylum claim was pending

³¹³ *Id.*

³¹⁴ *Serrano v. United States Attorney General*, 655 F.3d 1260 (11th Cir. 2011).

³¹⁵ *Flores v. USCIS*, 718 F.3d 548 (6th Cir. 2013).

³¹⁶ *Medina*, 65 F. Supp. 3d at 426-28.

³¹⁷ *Id.* at 429-36.

³¹⁸ *Id.* at 436.

³¹⁹ *Id.* at 436-37.

³²⁰ *Id.* at 437.

³²¹ 149 F. Supp. 3d 1135 (D. Minn. 2016).

³²² *Id.* at 1136.

³²³ *Id.*; *see supra* note 18 for an explanation of "inspection and admission."

with the government, Ms. Bonilla timely applied for TPS.³²⁴ Finding no basis to deny Ms. Bonilla her petition, USCIS granted her TPS in 2007.³²⁵ Since being granted TPS in 2007, Ms. Bonilla had continuously filed applications for extensions of her TPS.³²⁶ In February 2014, Nelly Anderson, a United States citizen over the age of twenty-one³²⁷ and the daughter of Ms. Bonilla, filed an I-130³²⁸ petition for her mother.³²⁹ On the same day, Ms. Bonilla concurrently filed an I-485³³⁰ to adjust her status under 8 U.S.C. Section 1255³³¹ to become an LPR.³³²

In March 2014, the USCIS issued an RFE.³³³ The USCIS was trying to ascertain Ms. Bonilla's "eligibility for adjustment of status, including 'evidence of [her] lawful admission or parole into the United States.'"³³⁴ In response to the USCIS' RFE, Ms. Bonilla submitted copies of her TPS approval notice(s) (including the extensions).³³⁵ Ms. Bonilla asserted that the government granting TPS constituted admission into the United States, thus making her eligible for the AOS process.³³⁶ In July 2014, the USCIS sent a second RFE asking again for evidence that she was inspected, admitted, or paroled.³³⁷ Ms. Bonilla, in response to the second RFE, submitted her TPS approval notices and a brief letter again.³³⁸ In October 2014, the USCIS approved Ms. Anderson's I-130 petition but denied Ms. Bonilla's I-

³²⁴ *Bonilla*, 149 F. Supp. 3d at 1136.

³²⁵ *Id.*

³²⁶ *Id.*

³²⁷ See U.S. CITIZENSHIP AND IMMIGR. SERVS., INSTRUCTIONS FOR FORM I-130, PETITION FOR ALIEN RELATIVE, AND FORM I-130A, SUPPLEMENTAL INFORMATION FOR SPOUSE BENEFICIARY (last updated Feb. 13, 2019). For a child of an alien to file an I-130 petition, that child must meet certain requirements, for example, the child must be a United States citizen and be twenty-one years of age or older.

³²⁸ See *supra* text accompanying note 159.

³²⁹ *Bonilla*, 149 F. Supp. 3d at 1136.

³³⁰ See *supra* text accompanying note 29.

³³¹ See *supra* note 57 for statute citation.

³³² *Bonilla*, 149 F. Supp. 3d at 1136.

³³³ *Id.*

³³⁴ *Id.* (alteration in original).

³³⁵ *Id.*

³³⁶ *Id.*

³³⁷ *Id.*

³³⁸ *Id.*

485 application.³³⁹ The USCIS based its denial on Ms. Bonilla's failure to submit "lawful admission or parole into the United States."³⁴⁰

Soon after the denial by the USCIS, Ms. Bonilla filed suit under the APA.³⁴¹ The District of Minnesota began its discussion by discussing on *Chevron*³⁴² and its two-prong test.³⁴³ After the District Court's discussion of *Chevron*, the court pivoted to the question at issue:

The issue before the Court is one of statutory interpretation. And the threshold question under *Chevron* is whether the plain language of 8 U.S.C. § 1254a(f)(4) (a TPS benefits section), read in context, makes clear that when a person is granted TPS under 8 U.S.C. § 1254a,³⁴⁴ it satisfies the threshold requirement of inspection and admission to the United States under 8 U.S.C. § 1255(a) for purposes of becoming eligible for adjustment to LPR status.³⁴⁵

In answering the question presented, the District Court went into detail of what each cited statutes entails.³⁴⁶ After expanding upon what the statutes encompassed, the District Court stated:

[T]he plain language of the statute as written resolves the question before the Court. 8 U.S.C. § 1254a(f)(4) applies to the entirety of § 1255, allows Plaintiff to be considered as being in lawful status as a nonimmigrant for purposes of adjustment of status under § 1255, and therefore satisfies the "inspected and admitted or paroled" prerequisite of § 1255. And because the statute is clear and unambiguous—not silent or ambiguous—the Court need not consider the agency's interpretation under step two of the *Chevron* deference analysis.³⁴⁷

³³⁹ *Id.*

³⁴⁰ *Id.*

³⁴¹ *Id.* at 1137.

³⁴² *Chevron, U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 842-43 (1984).

³⁴³ *Bonilla*, 149 F. Supp. 3d at 1137.

³⁴⁴ *See supra* text accompanying note 49.

³⁴⁵ *Bonilla*, 149 F. Supp. 3d at 1137.

³⁴⁶ *Id.* at 1137-38.

³⁴⁷ *Id.* at 1138-39.

In its holding, the District Court addressed those arguments upon which the USCIS used as its basis for the case.³⁴⁸ In its defense, the USCIS relied on *Roberts v. Holder*,³⁴⁹ an Eighth Circuit case as precedent.³⁵⁰ The USCIS contested that the Eighth Circuit “only” authorized one way that the government may admit a foreign national into the country post-entry, which was through AOS, not through the granting of TPS.³⁵¹ The District Court rejected this argument outright because the *Roberts* case addressed a completely different question; the question, in that case, was whether an individual who had already gone through the AOS process before being convicted of multiple crimes was eligible for an 8 U.S.C. Section 1182(h)³⁵² waiver.³⁵³ Additionally, as the District Court noted, the *Roberts* case “cuts against” government’s argument.³⁵⁴ The court said, “[s]ection 1255(b)³⁵⁵ treats *adjustment* itself as an ‘admission’ by directing the Attorney General to record ‘admission’ as the date the alien adjusts his status,’ therefore indicating that ‘admission’ is not always limited to only port-of-entry admissions.”³⁵⁶

The USCIS, in its defense, relied on the Eleventh Circuit holding in *Serrano v. United States Attorney General*³⁵⁷ and asked the District Court to follow and accept that ruling.³⁵⁸ The District Court, however, tenaciously disagreed with that ruling and decided in favor of the holdings in *Flores*,³⁵⁹ *Medina*,³⁶⁰ and *Ramirez*,³⁶¹ because *Serrano* was distinguishable on its facts.³⁶² The District Court noted that in *Serrano*, the plaintiff failed to candidly disclose to the

³⁴⁸ *Id.* at 1139.

³⁴⁹ 745 F.3d 928 (8th Cir. 2014).

³⁵⁰ *Bonilla*, 149 F. Supp. 3d at 1139.

³⁵¹ *Id.*

³⁵² See 8 U.S.C. § 1182(h) (2013). Granting of waivers by the Secretary of Homeland Security is found in this part of the INA and under certain subsections.

³⁵³ *Bonilla*, 149 F. Supp. 3d at 1139 (citing *Roberts*, 745 F.3d at 932).

³⁵⁴ *Id.*

³⁵⁵ See 8 U.S.C. § 1255(b) (2009).

³⁵⁶ *Bonilla*, 149 F. Supp. 3d at 1139 (quoting *Roberts*, 745 F.3d at 933).

³⁵⁷ *Serrano v. United States Attorney General*, 655 F.3d 1260 (11th Cir. 2011).

³⁵⁸ *Bonilla*, 149 F. Supp. 3d at 1141.

³⁵⁹ *Flores v. USCIS*, 718 F.3d 548 (6th Cir. 2013).

³⁶⁰ *Medina v. Beers*, 65 F. Supp. 3d 419 (E.D. Pa. 2014).

³⁶¹ At the time *Bonilla* was argued, the Ninth Circuit case, *Ramirez v. Brown*, 852 F.3d 954 (9th Cir. 2017), was only a recently decided District Court case in the Western District of Washington; see *Ramirez v. Dougherty*, 23 F. Supp. 3d 1322, 1327 (W.D. Wash. 2014).

³⁶² *Bonilla*, 149 F. Supp. 3d at 1141.

government that he originally entered the United States illegally without inspection.³⁶³ The District Court ultimately held that on this point that the Eleventh Circuit’s “interpretation too narrow and inconsistent with the plain language of the statute.”³⁶⁴ Furthermore, the court found that the government’s arguments to compare language across the various statutes and rely upon the USCIS interpretation goes against the plain language of 8 U.S.C. Section 1254a(f)(4).³⁶⁵

Moreover, the District Court found that the interpretation of the USCIS would be absurd and quotes *Medina* for its eloquence to the applicable situation:

To interpret the statutes in the manner suggested by Defendants, the Court would have to find that, despite allowing TPS beneficiaries to remain and work in this country in excess of fifteen years, Congress intended that such beneficiaries could never become lawful permanent residents without physically leaving this country, abandoning families that they have created during their extended stay, quitting their employment that they have been allowed to maintain, and returning to a country that the Attorney General has expressly deemed unsafe, simply in order to undergo the immigration process all over again. In addition, these individuals would have to surrender any entitlement to TPS because, by leaving the country, they would fail to maintain “continuous physical presence” as required by the TPS extension. . . . To force [plaintiff] to return to a country that the United States Attorney General has deemed dangerous simply to have [p]laintiff physically reenter the United States is a result that appears to serve no practical purpose.³⁶⁶

The court as well went on to quote *Flores* in depth.³⁶⁷ The District Court also declared that Ms. Bonilla was eligible to adjust her status

³⁶³ *Id.*

³⁶⁴ *Id.* at 1141-42.

³⁶⁵ *Id.* at 1142.

³⁶⁶ *Id.* (quoting *Medina v. Beers*, 65 F. Supp. 3d 419, 435-36 (E.D. Pa. 2014)) (alterations in original).

³⁶⁷ *Bonilla*, 149 F. Supp. 3d at 1142-43.

through her daughter, and it would be ludicrous for Ms. Bonilla to return to El Salvador before she could go through the AOS process.³⁶⁸

In summary, the court concluded that the plain language of 8 U.S.C. Section 1254a(f)(4) and 8 U.S.C. Section 1255(a) provided TPS holders the eligibility to go through AOS and the government's interpretation 8 U.S.C. Section 1254a(f)(4) and 8 U.S.C. Section 1255(a) was "arbitrary and capricious."³⁶⁹ Additionally, recipients of TPS satisfied the threshold question³⁷⁰ under 8 U.S.C. Section 1255(a).³⁷¹ Therefore, the District Court reversed the decision of the USCIS and remanded it back to the agency for further consideration.³⁷²

In the District of Minnesota, *Leymis V. v. Whitaker*³⁷³ was decided in November 2018 on the same merits and nearly identical facts as *Bonilla*.³⁷⁴ The District of Minnesota, again, ruled in favor of TPS recipients.³⁷⁵ The District Court held holders of TPS are eligible to go through AOS because recipients satisfied the standards and requirements 8 U.S.C. Section 1254a(f)(4) and 8 U.S.C. Section 1255(a).³⁷⁶ Also, recipients of TPS—yet again—satisfied the threshold question under 8 U.S.C. Section 1255(a) of being "inspected and admitted"³⁷⁷ into the United States.³⁷⁸ In *Melgar v. Barr*,³⁷⁹ the District of Minnesota in April 2019—yet again—had the sole issue of "whether TPS beneficiaries are deemed "inspected and admitted" to satisfy the threshold requirement for adjustment of status to LPR."³⁸⁰ The District Court held that:

[T]he plain language of 8 U.S.C. § 1254a(f)(4), read in context, makes clear that when a person is granted TPS under 8 U.S.C. § 1254a, it satisfies the threshold requirement of inspection and admission to the United

³⁶⁸ *Id.* at 1143.

³⁶⁹ *Id.*

³⁷⁰ *See supra* note 345.

³⁷¹ *Bonilla*, 149 F. Supp. 3d at 1143.

³⁷² *Id.*

³⁷³ 355 F. Supp. 3d 779 (D. Minn. 2018).

³⁷⁴ *Id.* at 781.

³⁷⁵ *Id.* at 784-85.

³⁷⁶ *Id.*

³⁷⁷ *See supra* note 18 for an explanation of "inspection and admission."

³⁷⁸ *Leymis V.*, 355 F. Supp. 3d at 784-85.

³⁷⁹ 379 F. Supp. 3d 783 (D. Minn. 2019).

³⁸⁰ *Id.* at 784-85.

States under 8 U.S.C. § 1255(a) for the purposes of becoming eligible for adjustment to LPR status.³⁸¹

The government is currently appealing the case to the Eighth Circuit.³⁸² On June 20, 2019, the Eighth Circuit consolidated *Melgar* and *Leymis V.* into one case on appeal.³⁸³ Depending on how the Eighth Circuit rules, it could be an additional form of relief for TPS recipients, or it may spell disaster for all TPS holders within the Eighth Circuit who seek to adjust his or her status.

3. *District of New Jersey*

Most recently, in *Santos Sanchez v. Johnson*,³⁸⁴ the District of New Jersey addressed the issue of whether a TPS holder can go through the AOS process.³⁸⁵ Mr. Jose Santos Sanchez and Mrs. Sonia Gonzalez, a married couple and citizens of El Salvador, entered the United States, respectively, in 1997 and 1998, without inspection.³⁸⁶ In 2001, both Mr. Sanchez Santos and Mrs. Gonzalez applied for TPS, received the protected status, and subsequently applied for extensions.³⁸⁷ In June 2014, Mr. Sanchez Santos and Mrs. Gonzalez submitted an I-485 application to go through AOS and change their status to LPR.³⁸⁸ In March 2015, the USCIS denied the petition.³⁸⁹ After the USCIS issued the denial, Mr. Sanchez Santos and Mrs. Gonzalez filed a cause of action seeking a determination on their eligibility status to go through AOS under the Immigration and Nationality Act (“INA”).³⁹⁰ In November 2016, the USCIS reopened Mr. Sanchez Santos and Mrs. Gonzalez case and issued a NOID.³⁹¹ The NOID declared that Mr. Sanchez Santos and Mrs. Gonzalez were

³⁸¹ *Id.* at 787.

³⁸² *Melgar v. Barr*, 379 F. Supp. 3d 783 (D. Minn. 2019), *appealed sub. nom.*, *Melgar v. Barr*, No. 19-2310 (8th Cir. June 03, 2019).

³⁸³ Order Consolidating Case *Melgar v. Barr* and Case *Leymis V. v. Whitaker, Melgar, V. Barr*, 19-2130 (8th Cir. June 20, 2019).

³⁸⁴ No. 16-651-RBK, 2018 WL 6427894, at *1 (D.N.J. Dec. 07, 2018).

³⁸⁵ *Id.*

³⁸⁶ *Id.*; *see supra* note 18 for an explanation of “inspection and admission.”

³⁸⁷ *Santos Sanchez*, 2018 WL 6427894, at *1.

³⁸⁸ *Id.*

³⁸⁹ *Id.*

³⁹⁰ *Id.* at *1-2.

³⁹¹ *Id.* at *1.

not eligible under 8 U.S.C. Section 1254a(f)(4) and 8 U.S.C. Section 1255(a) to go through the AOS process.³⁹²

In February 2017, the USCIS officially denied the I-485 application.³⁹³ In its denial letter, the USCIS highlighted that Mr. Sanchez Santos was not “inspected and admitted or paroled into the United States” because he was working without authorization that exceeded 180 days, making him, therefore, ineligible under 8 U.S.C. Section 1255(a).³⁹⁴ Also, the USCIS denied Mrs. Gonzalez’s because she was dependent on Mr. Santos Sanchez’s approval.³⁹⁵ The USCIS, however, did recognize Mr. Santos Sanchez’s past entry into the United States via being paroled;³⁹⁶ nonetheless, the executive agency decided that neither Mr. Santos Sanchez’s parole nor his TPS was a proper admission into the United States to overcome the bar to adjust one’s status under 8 U.S.C. Section 1255(c)³⁹⁷ for working without authorization.³⁹⁸ Both parties moved for Summary Judgment on the issues under the INA and APA.³⁹⁹

In beginning its analysis, the District Court set out the standards reviewing an executive agency’s decision.⁴⁰⁰ In discussing the scope of judicial review of the agency’s decision, the court nearly mirrored the language used in *Medina*, and, like *Medina*, the *Santos Sanchez* court highlighted the *Chevron*⁴⁰¹ deference two-prong test.⁴⁰² After setting out the various standards, the District Court pivoted the stipulated issue of the case, “this matter is one of statutory interpretation: whether the grant of Temporary Protected Status under 8 U.S.C. § 1254a satisfies the threshold requirement of being ‘inspected and admitted or paroled into the United States’ for purposes of adjustment of status under 8 U.S.C. § 1255(a).”⁴⁰³ Next, the court addressed the relevant statutes in detail, and then it moved to its main

³⁹² *Id.*

³⁹³ *Id.*

³⁹⁴ *Id.*

³⁹⁵ *Id.*

³⁹⁶ *See supra* text accompanying note 21.

³⁹⁷ *See supra* note 35 for statute citation.

³⁹⁸ *Santos Sanchez*, 2018 WL 6427894, at *1.

³⁹⁹ *Id.* at *2.

⁴⁰⁰ *Id.* at *2-3.

⁴⁰¹ *Chevron, U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 842-43 (1984).

⁴⁰² *Santos Sanchez*, 2018 WL 6427894, at *2-3.

⁴⁰³ *Id.* at *3.

discussion.⁴⁰⁴ In the District Court’s main discussion, it provided an answer to the legal question.⁴⁰⁵ The court wrote that the statute was “clear and unambiguous,” and that:

Section 1254a(f)(4) applies to the entirety of § 1255. Again, section 1254a(f)(4) states, “for purposes of adjustment of status under section 1255 of this title and change of status under section 1258 of this title, the alien *shall be considered as being in, and maintaining, lawful status as a nonimmigrant.*” This lawful status is wholly consistent with being considered as though Plaintiffs had been “inspected and admitted” under § 1255.⁴⁰⁶

After answering the question in contestation, the District Court moved to the applicable case.⁴⁰⁷

The court in assessing the applicable case law looked to *Flores, Medina*,⁴⁰⁸ *Ramirez*,⁴⁰⁹ and *Bonilla*.⁴¹⁰ The District Court cited the latter cases because it supported its position.⁴¹¹ The court then shifted to the government’s argument that *Serrano* applied in the case.⁴¹² The government argued that the District Court should adopt a narrow interpretation of the statute.⁴¹³

Nevertheless, the court rejected the reading of the Eleventh Circuit.⁴¹⁴ The District Court said that *Serrano* offered little persuasive authority, and when a court peeled back the “vener” of the case, it would expose a fundamentally flawed argument.⁴¹⁵ Additionally, the government argued and focused on Mr. Santos Sanchez’s unauthorized work in the 1990s before receiving TPS.⁴¹⁶ By working without

⁴⁰⁴ *Id.* at *3-4.

⁴⁰⁵ *Id.* at *4.

⁴⁰⁶ *Id.*

⁴⁰⁷ *Id.*

⁴⁰⁸ The District Court in *Santos Sanchez* heavily relied upon *Medina*. *Id.* at *6.

⁴⁰⁹ See *supra* text accompanying note 361. The District Court is referring to the District Court case of *Ramirez v. Dougherty*, 23 F. Supp. 3d. 1322, 1327 (W.D. Wash. 2014) instead of the Ninth Circuit case of *Ramirez v. Brown*, 852 F.3d 954 (9th Cir. 2017).

⁴¹⁰ *Santos Sanchez*, 2018 WL 6427894, at *4.

⁴¹¹ *Id.*

⁴¹² *Id.* at *5.

⁴¹³ *Id.*

⁴¹⁴ *Id.*

⁴¹⁵ *Id.*

⁴¹⁶ *Id.*

authorization, as the government stated, barred Mr. Santos Sanchez from maintaining lawful status in the United States.⁴¹⁷ The District Court, in response to the government, called out the government by stating, “[t]his reading of § 1254 does not make sense to the court.”⁴¹⁸ The court further stated that in order for a person to maintain lawful status, an individual must first have lawful status.⁴¹⁹ Overall, “this Court is not fooled by the government’s careful attempt to parse words in light of § 1255’s clear language.”⁴²⁰

The District Court, in the end, granted Summary Judgment for Mr. Santos Sanchez and Mrs. Gonzalez under the APA, and denied the government’s Motion for Summary Judgment, but granted the government’s Motion to Dismiss on the mandamus claims and due process violations.⁴²¹ Furthermore, the case was remanded back to the USCIS for further consideration.⁴²² Though the court remanded the case back to the USCIS, in February 2019, the government appealed the case to the Third.⁴²³ Since the case is on appeal to the Third Circuit, it could spell trouble for the TPS holders in the District of New Jersey and the Eastern District of Pennsylvania.

C. Administrative Appeals Office

The Administrative Appeals Office (“AAO”) is an administrative review agency that reviews unfavorable decisions by a USCIS officer or a USCIS District Director for select immigration categories.⁴²⁴ The AAO regularly issues decisions as non-precedent decisions and apply current policy and law to a case.⁴²⁵ In the *Matter of H-G-G*,⁴²⁶ the AAO issued a policy memorandum stating:

⁴¹⁷ *Id.*

⁴¹⁸ *Id.*

⁴¹⁹ *Id.*

⁴²⁰ *Id.*

⁴²¹ *Id.* at *7.

⁴²² *Id.*

⁴²³ Santos Sanchez v. Johnson, No. 16-651-RBK, 2018 WL 6427894, at *1 (D.N.J. Dec. 07, 2018), *appealed sub. nom.*, Sanchez v. Sec’y U.S. Dep’t, No. 19-1311 (3d Cir. Feb. 06, 2019).

⁴²⁴ *The Administrative Appeals Office (AAO)*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/about-us/directorates-and-program-offices/administrative-appeals-office-ao> (last updated May 04, 2020).

⁴²⁵ *Id.*

⁴²⁶ Adopted Decision 2019-01 (AAO July 31, 2019).

For purposes of adjustment of status under section 245 of the Act, a recipient of Temporary Protected Status (TPS) is considered as being in and maintaining lawful status as a nonimmigrant only during the period that TPS is in effect; a grant of TPS does not constitute an admission, nor does it cure or otherwise impact any previous unlawful status.⁴²⁷

The purpose of the memorandum was to clarify the position of the government and provide guidance for adjudicating officers when assessing a case of whether granting of TPS overcomes the admission requirements of 8 U.S.C. Section 245(a).⁴²⁸ It is the AAO's position that "TPS is not an admission for purposes of section 245(a) of the Act."⁴²⁹ The USCIS and its offices are to apply this non-precedent decision "universally" when adjudicating petitions of this nature.⁴³⁰ Nevertheless, the decision by the AAO is not applicable in the Sixth and Ninth Circuits since both courts have a different stance than the government.⁴³¹

VII. DISCUSSION OF *MORENO V. NIELSEN*

In February 2019, the District Court of the Eastern District of New York issued a slip-opinion on the present case, which was unfavorable to Mr. Moreno.⁴³² In its opinion, the court addressed the issues as per the plaintiffs' complaint.⁴³³ According to the District Court, the "Plaintiffs' pleading alleges that pursuant to 'a policy of refusing to find that a grant of TPS constitutes an "inspection and admission" for purposes of adjustment of status,' USCIS denies applications for adjustment of status filed by 'current TPS holders who were not "inspected and admitted" other than through the grant of TPS.'"⁴³⁴ The court recognized that this policy was consistent with

⁴²⁷ *Id.* at 1.

⁴²⁸ *Id.* at 21.

⁴²⁹ *Id.*

⁴³⁰ *Id.*

⁴³¹ *Id.*

⁴³² *Moreno v. Nielsen*, No. 1:18-cv-01135-RRM, 2019 WL 653139, at *7 (E.D.N.Y. Feb. 15, 2019).

⁴³³ *Id.* at *2.

⁴³⁴ *Id.* (citation omitted).

*Serrano*⁴³⁵ but inconsistent with *Flores*⁴³⁶ and *Ramirez*,⁴³⁷ which accepted that the plain language of 8 U.S.C. Section 1254a)(f)(4)⁴³⁸ requires that a TPS recipient be considered “inspected and admitted” under 8 U.S.C. Section 1255(a)⁴³⁹ for AOS.⁴⁴⁰ On the whole, the plaintiffs are seeking the USCIS and the District Court to endorse *Flores* and *Ramirez* and forego its dependence on *Serrano*.⁴⁴¹

Next, the District Court turned to the Temporary Restraining Order (“TRO”) that Mr. Moreno filed in January 2019.⁴⁴² In Mr. Moreno’s motion, he states that his employer, Jersey Lynne Farms, the company that fortuitously applied for an immigrant visa, would be ceasing operations at the end of March 2019.⁴⁴³ Mr. Moreno contends that once Jersey Lynne Farms ceases to operate, he would lose his job, which would make him ineligible for AOS.⁴⁴⁴ Mr. Moreno further argues that he would have to begin the process of obtaining an immigrant visa again, which, based on past experiences, may take years.⁴⁴⁵

In Mr. Moreno’s first attempt at obtaining an immigrant visa, it took about nine years to go through the entire process of applying.⁴⁴⁶ The process included first filing a Labor Certification⁴⁴⁷ with the

⁴³⁵ *Serrano v. United States Attorney General*, 655 F.3d 1260 (11th Cir. 2011).

⁴³⁶ *Flores v. USCIS*, 718 F.3d 548 (6th Cir. 2013).

⁴³⁷ *Ramirez v. Brown*, 852 F.3d 954 (9th Cir. 2017).

⁴³⁸ *See supra* note 181 for statute citation.

⁴³⁹ *See supra* note 185 for statute citation.

⁴⁴⁰ *Moreno v. Nielsen*, No. 1:18-cv-01135-RRM, 2019 WL 653139, at *1-2 (E.D.N.Y. Feb. 15, 2019).

⁴⁴¹ *Id.* at *3.

⁴⁴² *Id.*

⁴⁴³ *Id.*

⁴⁴⁴ *Id.*

⁴⁴⁵ *Id.*

⁴⁴⁶ *Id.*

⁴⁴⁷ According to the USCIS, a Labor Certification is defined as follows:

A Department of Labor certification required for U.S. employers seeking to employ certain persons whose immigration to the United States is based on job skills or nonimmigrant temporary workers coming to perform services for which qualified authorized workers are unavailable in the United States. Labor certification is issued by the Secretary of Labor and contains attestations by U.S. employers as to the numbers of U.S. workers available to undertake the employment sought by an applicant, and the effect of the alien’s employment on the wages and working conditions of U.S. workers similarly employed. Determination of labor availability in the United States is made at the time of a visa application and at the location where the applicant wishes to work.

Department of Labor to receiving the 2017 denial letter from the USCIS in regard to the AOS petition.⁴⁴⁸ Accordingly, Mr. Moreno is asking the District Court to grant the TRO, or at the very least, a mandatory injunction to again review and re-adjudicate his application.⁴⁴⁹ In response to the TRO motion, the government calls the court's attention to the fact that the USCIS' approval of the immigrant visa will not be revoked because Jersey Lynne Farms would be going out of business.⁴⁵⁰ The government further stated that if Mr. Moreno were to be offered new employment by another employer within the United States in a similar occupational position as with Jersey Lynne Farms, then his AOS petition would be reopened and the new employer would not need to file a new application for AOS.⁴⁵¹ Instead, Mr. Moreno would "only" need to file the Supplement J⁴⁵² form to the I-485⁴⁵³ application.⁴⁵⁴

Subsequently, the District Court elaborated on the standards for a TRO and a preliminary injunction, as set forth by the Second Circuit.⁴⁵⁵ The court states that "the standards for granting a TRO and preliminary injunction are essentially the same, a TRO 'serves a purpose different from that of a preliminary injunction.'"⁴⁵⁶ The

Glossary: Labor Certification, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/tools/glossary/labor-certification> (last visited Feb. 17, 2020).

⁴⁴⁸ *Moreno*, 2019 WL 653139, at *3.

⁴⁴⁹ *Id.*

⁴⁵⁰ *Id.* at *4.

⁴⁵¹ *Id.*

⁴⁵² According to the USCIS, the Supplement J form is used to:

Confirm that the job offered to you in Form I-140, Petition for Alien Worker, remains a bona fide job offer that you intend to accept once we approve your Form I 485, Application to Register Permanent Residence or Adjust Status. Beginning Jan. 17, 2017, if you are filing or have previously filed Form I-485 based on being the principal beneficiary of a valid Form I-140 in an employment-based immigrant visa category that requires a job offer, you will need to file Supplement J instead of submitting a job offer letter; OR[,] [r]equest job portability under INA section 204(j) to a new, full-time, permanent job offer that you intend to accept once we approve your Form I-485. This new job offer must be in the same or a similar occupational classification as the job offered to you in the Form I-140 that is the basis of your Form I-485.

I-485 Supplement J, Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j), U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/i-485supj> (last updated Feb. 27, 2020).

⁴⁵³ See *supra* text accompanying note 29.

⁴⁵⁴ *Moreno*, 2019 WL 653139, at *4.

⁴⁵⁵ *Id.*

⁴⁵⁶ *Id.* (quoting *Garcia v. Yonkers Sch. Dist.*, 561 F.3d 97, 107 (2d Cir. 2009)).

District Court also goes on to elaborate that a TRO is to preserve the status quo until a court has had the chance to rule on the merits of the request for a preliminary injunction.⁴⁵⁷ Furthermore, “[a] TRO cannot exceed fourteen days unless the district court, ‘for good cause,’ extends it for another period of no more than fourteen days.”⁴⁵⁸

When applying the standards that the Second Circuit established, the District Court addressed that a court bases a TRO request on the belief that the USCIS’ approval would automatically rescind Mr. Moreno’s immigrant visa.⁴⁵⁹ The court wrote that “[t]his fear is unfounded.”⁴⁶⁰ The District Court elaborated that it is unfounded because 1) though Mr. Moreno’s employer is ceasing operations, the immigrant visa application is not going to be revoked, and 2) when Mr. Moreno receives a new employment offer that was similar to his position at Jersey Lynne Farms, he would need to file a Supplement J form to the I-485 for the case to be reopened by the government.⁴⁶¹ Therefore, “[w]hile the [c]ourt will not rule on the preliminary injunction motion until the motion is fully briefed [by Mr. Moreno], there is clearly no valid basis for a TRO at this juncture.”⁴⁶²

The District Court, in its opinion, then pivoted to whether Mr. Moreno had standing.⁴⁶³ In addressing the standing issue, the court began its discussion by reiterating the issues at hand, what the Plaintiffs are seeking, and why the USCIS denied Mr. Moreno.⁴⁶⁴ While the District Court was addressing standing, the court did note that:

Defendants’ Opposition concedes that Moreno, having been paroled into the United States following his trip in 2011, meets the “inspected and admitted or paroled requirement” of § 1255(a). Defendants point out that Moreno was denied adjustment of status under §

⁴⁵⁷ *Moreno*, 2019 WL 653139, at *4. The author of this Note has paraphrased this note, however, the District Court in its opinion quoted *Pan Am. World Airways, Inc. v. Flight Eng’rs’ Int’l Ass’n*, PAA Chapter, AFL-CIO, 306 F.2d 840, 842 (2d Cir. 1962), which was quoted in *Garcia*, 561 F.3d at 107.

⁴⁵⁸ *Moreno*, 2019 WL 653139, at *4 (quoting *U.S. D.I.D Corp. v. Windstream Commc’ns, Inc.*, 775 F.3d 128, 132 n.2 (2d Cir. 2014)).

⁴⁵⁹ *Id.* at *5.

⁴⁶⁰ *Id.*

⁴⁶¹ *Id.*

⁴⁶² *Id.*

⁴⁶³ *Id.*

⁴⁶⁴ *Id.* at *5-6.

1255(c), which provides, in pertinent part, that § 1255(a) “shall not be applicable to . . . (2) subject to subsection (k), an alien . . . who has failed (other than through no fault of his own or for technical reasons) to maintain continuously a lawful status since entry into the United States.” Subsection (k) provides, in relevant part:

An alien who is eligible to receive an immigrant visa under paragraph . . . (3) of section 1153(b) of this title . . . may adjust status pursuant to subsection (a) and notwithstanding subsection (c)(2) . . . if –

(1) the alien, on the date of filing an application for adjustment of status, is present in the United States pursuant to a lawful admission.

Defendants contend that Moreno did not qualify for the § 1255(k) exemption because he was paroled, rather than “lawfully admitted,” into the United States following the overseas trip he took in 2011 after being granted TPS.⁴⁶⁵

The District Court also noted that Mr. Moreno might not be able to establish causation or redressability because the relief requested in the amended complaint would not be able to redress Mr. Moreno’s injury.⁴⁶⁶ The court stated:

USCIS never expressly considered the question of whether Moreno met the “inspected and admitted or paroled” requirement of § 1255(a) because it found that he was ineligible for adjustment of status under that subsection. Accordingly, an order declaring Moreno had been “‘inspected and admitted’ for purposes of 8 U.S.C. § 1255(a) pursuant to [his] . . . grant of TPS,” or an injunction directing USCIS to so find, would not affect USCIS’s decision. Similarly, an order declaring “that Defendants’ policy of refusing to find that a grant

⁴⁶⁵ *Id.* at *6.

⁴⁶⁶ *Id.* at *7.

of TPS constitutes an ‘inspection and admission’ for purposes of adjustment of status and all adjustment decisions issued based upon that policy are contrary to 8 U.S.C. § 1254a(f)(4),” and enjoining that policy, would be superfluous since, under other portions of volume 7, part B, chapter 2(A)(5) of the USCIS Policy Manual, Moreno met the “inspected and admitted or inspected and paroled requirement” by virtue of having been inspected and paroled into the United States following his 2011 trip.⁴⁶⁷

Therefore, the District Court denied Mr. Moreno’s TRO motion.⁴⁶⁸

On May 18, 2020, the E.D.N.Y. issued another opinion in the case.⁴⁶⁹ This time the opinion was on Mr. Moreno’s preliminary injunction.⁴⁷⁰ The District Court held that because Mr. Moreno “failed to make a ‘strong showing’ of irreparable harm, [his] motion for a preliminary injunction is denied.”⁴⁷¹ If the District Court had granted the preliminary injunction, it would have required the USCIS to reconsider Mr. Moreno’s petition for AOS. The USCIS would also have been mandated “to apply policies that would result in granting those applications.”⁴⁷² Additionally, the E.D.N.Y. stated that “the Court need not determine whether Plaintiffs have shown a clear or substantial likelihood of success on the merits, or whether the preliminary injunction is in the public interest.”⁴⁷³

VIII. ANALYSIS

In applying the preceding cases that address TPS holders in general (not TPS alien crewmen) to the Eastern District of New York

⁴⁶⁷ *Id.* (alteration in original).

⁴⁶⁸ *Id.*

⁴⁶⁹ *De Jesus Moreno v. Nielsen*, No. 1:18-cv-01135-RRM, 2020 WL 2523052, at *1 (E.D.N.Y. May 18, 2020).

⁴⁷⁰ *Id.* at *8.

⁴⁷¹ *Id.* at *5.

⁴⁷² *Id.*

⁴⁷³ *Id.* at *8. The author of this Note will not be further elaborating on the E.D.N.Y.’s decision to deny Mr. Moreno’s preliminary injunction aside from this brief mention. Also, since the District Court issued the May 18, 2020 opinion after the Note was submitted for publication, the author will not be changing the analysis nor the conclusion of this Note to accommodate the new ruling.

case of *Moreno v. Nielsen*, it is clear that various circuits and district courts, other than the Eleventh Circuit in *Serrano*,⁴⁷⁴ are ruling for TPS holders. The District Court in *Moreno* in February 2019 issued an opinion that favored the government.⁴⁷⁵ The court, via the issued opinion, nearly dismissed the suit. However, it left an opportunity for the plaintiffs in the case to address the standing issue as posed by the court.⁴⁷⁶ This Note supports that if the District Court in *Moreno* were to rule on the overall issue as the government originally presented it, then it would side with the Eleventh Circuit, which held that a foreign national who received TPS could not go through AOS.⁴⁷⁷

Furthermore, the court, if it were to rule on the original issue, would be giving the USCIS the deference the United States Supreme Court afforded it under *Chevron*⁴⁷⁸ and *Skidmore*.⁴⁷⁹ Deference would be a dangerous and costly mistake by the District Court to set a precedent because of the plain language of 8 U.S.C. Section 1254a(f)(4) supports the granting of TPS as admission into the United States, thus making a TPS recipient eligible for AOS under 8 U.S.C. Section 1255. In the *Matter of Areguillin*,⁴⁸⁰ the BIA held that an “admission” into the United States happens when an inspecting customs officer conveys to the foreign national that a determination has been made on whether he or she, as the applicant, is admissible or inadmissible into the country.⁴⁸¹ The BIA further clarified that the communication of admissibility takes place when a customs officer permits the foreign national to pass through the port-of-entry.⁴⁸² By the USCIS granting TPS upon a foreign national or if a foreign national were to be paroled into the United States at a port-of-entry when in possession of TPS status, the government, in essence, is informing that foreign national that he or she is admissible/admitted.

In addition to the “‘language itself, the specific context in which the language is used, and the broader context of the statute as a whole,’ shows that Congress’s clear intent was that a TPS beneficiary

⁴⁷⁴ *Serrano v. United States Attorney General*, 655 F.3d 1260 (11th Cir. 2011).

⁴⁷⁵ *Moreno*, 2019 WL 653139, at *7.

⁴⁷⁶ *Id.*

⁴⁷⁷ *See generally Serrano*, 655 F.3d 1260.

⁴⁷⁸ *Chevron, U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 842-43 (1984).

⁴⁷⁹ *Skidmore v. Swift & Co.*, 323 U.S. 134, 139-40 (1944).

⁴⁸⁰ 17 I. & N. Dec. 308 (B.I.A. 1980).

⁴⁸¹ *Id.* at 310 n.6 (citing *Matter of V—Q—*, 9 I&N Dec. 78 (BIA 1960)).

⁴⁸² *Id.*

is afforded with a pathway to LPR status.”⁴⁸³ Moreover, the BIA’s opinion in the *Matter of Quilantan*⁴⁸⁴ further supports Congress’s clear intent.⁴⁸⁵ In the *Matter of Quilantan*, the BIA stated “that Congress expressed its intention to broaden the statute ‘so as to include all aliens (other than alien crewmen) who have been inspected and admitted or who have been paroled into the United States, thereby providing considerably more flexibility in the administration of the law.’”⁴⁸⁶ Also, the BIA elaborated that Congress intended to continue to allow foreign nationals who physically bestowed themselves for questioning and were admitted by a customs officer at a port-of-entry to have fulfilled the requirement of “inspected and admitted.”⁴⁸⁷

Nonetheless, the proceeding scenarios all pivot on if the District Court were to rule on the initial issue. In actuality, *Moreno* is heading for a dismissal, which in turn might or might not be beneficial to TPS holders who are seeking to go through the AOS process. Additionally, on October 3, 2019, the government submitted a letter to the District Court informing the court of the government’s supplemental authority in the case.⁴⁸⁸ In the letter, the government attached the *Matter of H-G-G*⁴⁸⁹ as an exhibit, and on October 15, 2019,⁴⁹⁰ the government submitted a letter clarifying the applicability of *Matter of H-G-G* to *Moreno*.⁴⁹¹ With the government filing of the applicability of *Matter of H-G-G* and the District Court’s initial opinion, it reaffirms the possible notion that the case is heading for an adjournment.

If the case were to be dismissed by the court, then it would allow the plaintiffs to appeal to the Second Circuit on the earlier issue. If the Second Circuit were to rule affirmatively in favor of the plaintiffs, it would essentially authorize TPS holders within the States of Connecticut, New York, and Vermont the right and the ability to go through AOS and thusly become an LPR. On the other hand, if the

⁴⁸³ *Flores v. USCIS*, 718 F.3d 548, 552 (6th Cir. 2013).

⁴⁸⁴ 25 I&N Dec. 285 (BIA 1980).

⁴⁸⁵ *Id.* at 289

⁴⁸⁶ *Id.* (quoting *Matter of Pires Da Silva*, 10 I&N Dec. 191, 193 (BIA 1963)).

⁴⁸⁷ *Matter of Quilantan*, 25 I&N Dec. at 287-88.

⁴⁸⁸ Letter Respectfully Informing the Court of Supplemental Authority, *Moreno v. Nielsen*, No. 1:18-cv-01135-RRM (E.D.N.Y. Oct. 03, 2019), ECF No. 61.

⁴⁸⁹ *Matter of H-G-G*, Adopted Decision 2019-01 (AAO July 31, 2019).

⁴⁹⁰ Letter Clarifying the Applicability of *Matter of H-G-G*, *Moreno v. Nielsen*, No. 1:18-cv-01135-RRM (E.D.N.Y. Oct. 15, 2019), ECF No. 63.

⁴⁹¹ See source cited at *supra* note 483.

Second Circuit were to rule against the plaintiffs, it would bar TPS recipients within the Second Circuit states from potentially becoming an LPR and thusly opening up TPS to the possibility of deportation when their program expires. Additionally, if the USCIS had originally stipulated that Mr. Moreno met the “admission” requirements under 8 U.S.C. Section 1255(a) because he was paroled back into the United States in 2011,⁴⁹² then the need for the current, pending litigation most likely would not have been filed.⁴⁹³

The Eastern District of New York must analyze the entire procedure of allowing TPS holders the ability to go through the AOS process so that foreign nationals who hold TPS may continue to have lawful status within the United States in its final determination.

IX. CONCLUSION

The Eastern District of New York should rule for Mr. Moreno, with or without class certification. The District Court should acknowledge that a foreign national who entered the United States without “inspection and admission,”⁴⁹⁴ but who subsequently was granted TPS by the government, has satisfied the examination and admittance requirement as set forth by statute to adjust one’s status. If the District Court does not deem the granting of TPS as “inspection and admission” into the United States, it could spell trouble for future cases in other districts and circuits because it would act as an adverse persuasive authority. Further, it would open the floodgates for mass deportations by the government of TPS holders within the Eastern District of New York, which would evolve into far-reaching effects. Undoubtedly, the Second Circuit would likely address the issue on appeal.

It is clear that with the ending of most TPS programs, hundreds of thousands of foreign nationals will lose legal status within the United States. Foreign nationals have an avenue to keep lawful status,

⁴⁹² See *supra* note 465 for how the E.D.N.Y. addressed the standing issue.

⁴⁹³ In lieu of the opinion by the District Court in *Moreno*, I reached out to both the plaintiffs and defendants in the case and asked for their thoughts and comments on the opinion. I also inquired if the court were to rule against their party, if that party would appeal to the Second Circuit. The defendants responded that it was the government’s position to not comment on pending litigation. The plaintiffs responded that it was not their position to speculate on how the District Court may finally rule. Neither party commented on an appeal to the Second Circuit.

⁴⁹⁴ See *supra* note 18 for an explanation of “inspection and admission.”

the Adjustment of Status process. Nonetheless, foreign nationals are facing legal road-blocks left and right created by the United States government because of the USCIS' interpretation of the TPS statute. Courts must grant foreign nationals the right to go through the AOS process. Otherwise, a citizen of another nation will be subject to removal via deportation from the United States.