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## California judge temporarily blocks Trump administration's decision to end Temporary Protected Status for nationals of four countries

By Jason Gerrol

On October 3, 2018, Judge Edward Chen of the U.S. District Court for the Northern District of California issued a preliminary injunction in *Ramos v. Nielsen*, temporarily preventing the Trump administration from terminating Temporary Protected Status (TPS) for nationals of El Salvador, Haiti, Nicaragua and Sudan. In his decision, Judge Chen noted that Plaintiffs — TPS beneficiaries who have legally resided in the U.S. for many years along with their U.S. Citizen children — “established without dispute that local and national economies will be hurt if hundreds of thousands of TPS beneficiaries are uprooted and removed,” and substantially supported their claims that the administration’s decision to terminate TPS for these countries was done in violation of the Administrative Procedures Act (APA) and Equal Protection guaranteed by the U.S. Constitution.

### What is Temporary Protected Status?

TPS is a temporary immigration status granted to individuals who are already in the U.S. and who are unable to safely return to their home countries because of temporary conditions in those countries. The Department of Homeland Security (DHS) may designate a country for TPS for reasons such as an ongoing armed conflict, environmental disaster (such as an earthquake or hurricane), epidemic, or other “extraordinary and temporary conditions.” Nationals of a designated country who apply for, and are granted TPS are not removable from the U.S. and are granted work authorization for the duration of the TPS designation. DHS may terminate a TPS designation if it determines the country “no longer continues to meet the conditions” for TPS designation (i.e., there are no barriers to the safe return of its nationals).

While the TPS designations for Haiti, El Salvador, Nicaragua and Sudan were repeatedly extended under prior administrations, DHS under the Trump administration has decided to terminate that designation, with TPS termination dates of November 2, 2018 (Sudan); January 5, 2019 (Nicaragua); July 22, 2019 (Haiti); and September 9, 2019 (El Salvador), respectively. Approximately 300,000

nationals from these countries have lawfully lived and worked in the U.S. during their respective TPS designation periods.

### **What is the basis for the Plaintiffs' lawsuit?**

In short, the Plaintiffs argue the decision to terminate TPS violates both the APA and Equal Protection. With regard to the Plaintiffs' APA claim, the court found that despite evidence that conditions in these countries have not improved, "DHS made a deliberate choice to base the [decision to terminate TPS for these countries] solely on whether the originating conditions or conditions related thereto persisted, regardless of other conditions no matter how bad, and that this was a clear departure from prior administration practice," in violation of the APA and possibly the TPS statute itself. Judge Chen continued to find that this departure from prior policy "may have been made to implement and justify a pre-ordained result" from the Trump administration to end the TPS program.

With regard to the Equal Protection claim, Judge Chen found the Plaintiffs have raised "serious questions whether the actions taken by [DHS] was [sic] influenced by the White House and based on animus against non-white, non-European immigrants in violation of Equal Protection guaranteed by the Constitution." In coming to this determination, Judge Chen reviewed evidence that DHS initially supported an extension of the TPS designation, but as disclosed in DHS internal memos and emails, later changed positions in a "strong break with past practice" to comport with "an America first view of the TPS decision." The decision notes that government counsel "was unable to provide a clear and direct response" to what "America first" meant.

Similar to prior litigation challenging President Trump's "travel ban" executive order, where the U.S. Supreme Court in *Trump v. Hawaii* ultimately ruled in favor of the administration, derogatory statements from President Trump himself are a significant part of the Plaintiffs' argument, which Judge Chen found persuasive as "direct evidence of animus" against non-white, non-European immigrants. Judge Chen devoted a significant portion of his decision to distinguishing the instant case from *Trump v. Hawaii*, although like President Trump's "travel ban," this matter may ultimately be decided by the U.S. Supreme Court.

### **What are the next steps?**

The preliminary injunction will remain in effect while litigation proceeds in this case. As part of the temporary injunction, DHS is enjoined from implementing and enforcing its decision to terminate TPS for Sudan, Haiti, El Salvador and Nicaragua pending resolution of the case, and must take "all steps needed to ensure the continued validity of documents that prove lawful status and employment authorization of TPS holders."

TPS beneficiaries from these countries, and in particular beneficiaries from Sudan whose TPS designation is scheduled to terminate on November 2, 2018, should discuss the impact of the decision with their employers and/or immigration counsel.

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